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IN THE MATTER OF INDEPENDENT

INVESTIGATION UNDER

EXECUTIVE LAW 63(8)

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REMOTE PROCEEDINGS  
ELISABETH LYON SMITH  
MONDAY, JULY 5, 2021  
10:06 a.m.

Reference No. 4688920  
Reported by: Michele Moskowitz

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A P P E A R A N C E S

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WITNESS	EXAMINATION BY	PAGE
ELISABETH LYON SMITH	MS. MAINOO	8

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SMITH

THE VIDEOGRAPHER: Good morning. We are going on the record at 10:06 a.m., Monday, July 5, 2021. This is media unit one of the video-recorded deposition of Witness 7/5/2021 as taken by counsel in the matter of an Independent Investigation under New York State Executive Law 63(8).

This deposition is being held remote video Zoom. My name is Andrew Baker from the firm Veritext Legal Solutions. I'm the legal videographer. The court reporter is Michele Moskowitz, also from Veritext Legal Solutions.

Will the court reporter please swear in the witness. Thank you. We may proceed.

THE COURT REPORTER: The attorneys participating in this investigation acknowledge that I am not physically present in the investigation room and that I will be reporting this investigation remotely. They further acknowledge that, in lieu of an oath administered in person, I will administer the oath remotely.

The parties and their counsel consent

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to this arrangement and waive any objections to this manner of reporting.

Please state your appearance and whom you represent and indicate your agreement on the record.

MR. ROSENBERG: This is Ben Rosenberg and Tanya Warnke of Dechert, we represent the witness, and we consent to the procedure.

MS. MAINOO: This is Abena Mainoo from Cleary Gottlieb but acting as the Special Deputy to the First Deputy Attorney General and we consent.

E L I S A B E T H L Y O N S M I T H ,  
after having first been duly sworn/affirmed by a Notary Public of the State of New York, was examined and testified as follows:

DIRECT EXAMINATION BY

MS. MAINOO:

Q. Please state and spell your name for the record.

A. Elisabeth Lyon Smith, E-L-I-S-A-B-E-T-H L-Y-O-N S-M-I-T-H.

Q. Good morning, Ms. Smith. Thank you

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SMITH

for your time today. My name is Abena Mainoo. I'm a lawyer at the law firm of Cleary, Gottlieb, Stein & Hamilton, but I'm acting as a Special Deputy to the First Deputy Attorney General for the New York State Attorney General's Office.

Now I'll let my colleagues introduce themselves.

MR. WEAVER: Andrew Weaver, also of Cleary Gottlieb, special assistant to the First Deputy New York Attorney General of the State of New York.

MS. REMBAR: Lilianna Rembar with Cleary Gottlieb as well, acting as a special assistant to the First Deputy Attorney General for the New York State Attorney General's Office.

Q. Ms. Smith, before I start asking questions today I'm going to give you some background information and some ground rules. The New York Attorney General has appointed the law firm Cleary, Gottlieb, Steen & Hamilton and Vladek, Raskin & Clark to conduct an independent investigation under New York Executive Law 63(8) into allegations of sexual harassment brought

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against Governor Cuomo, as well as the surrounding circumstances. You're here today pursuant to a subpoena issued in connection with this investigation.

As you can see, today's proceeding is being video recorded. You are under oath. That means you must testify fully and truthfully just as if you were in a court of law sitting before a judge and jury. Your testimony is subject to a penalty of perjury.

Do you understand that?

A. Yes.

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

A. Yes.

Q. Although this is a civil investigation, the New York Attorneys General's Office also has criminal enforcement powers. You have the right to refuse to answer a question if answering the question would incriminate you, but any failure to answer can be used against you in a court of law in a civil court, that is a

1 SMITH

2 noncriminal proceeding.

3 Asserting your Fifth Amendment  
4 privilege does have evidentiary significance. If  
5 you choose to assert your Fifth Amendment  
6 privilege, that fact could be presented to a  
7 judge or jury in a civil proceeding, who would be  
8 free to draw a conclusion from your assertion of  
9 that privilege.

10 Do you understand?

11 A. Yes.

12 Q. You're appearing today with your  
13 attorneys present. You may consult with your  
14 attorneys if you have any questions about the  
15 attorney-client privilege. Do you understand  
16 that?

17 A. Yes.

18 Q. As you can see, we have a court  
19 reporter present with us virtually. And she  
20 needs to take down my questions and your answers  
21 to create a transcript. So that the reporter can  
22 create a clean record, it's important for you to  
23 provide a verbal response to each question, so  
24 please do not shake or nod your head or give  
25 responses like "mm-hmm."

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Do you understand?

A. Yes.

Q. If you do not know the answer to a question, please say you do not know. Please allow me to finish my question before you begin to answer, and I will try to do the same so we do not talk over each other. And that's important to let the court reporter create the transcript.

You will not be permitted to review a transcript of this testimony. If at any time today you want to clarify an answer you've given, please let me know. If you do not understand a question, please let me know and I will try to ask the question in a different way.

I will be asking about names and dates and other specific information, even if you don't remember a specific name or date, I would ask that you give me your best approximate answer while indicating that your answer may not be exactly. If you need a break at any time, please let me know. If there's a question pending, please answer the question first and then we can take a break.

Please confirm who's in the room with

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you.

A. Ben Rosenberg and Tanya Warnke.

Q. And please confirm that none of you is using any technology to create a recording of the proceeding on your end, including screen-capturing tools.

MR. ROSENBERG: We are not using any such technology.

Q. Okay. And Ms. Smith?

A. Yes, we are not using any such technology.

Q. And please confirm that you're not allowing anyone else to listen in, including through any devices.

A. Yes, we are not allowing anyone else to listen in, including through other devices.

Q. Okay.

MR. MAINOO: And counsel?

MR. ROSENBERG: That is absolutely correct.

MS. MAINOO: Okay.

Q. And please confirm that you are not and will not communicate in realtime or during breaks with anyone else about the substance of

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SMITH

your testimony.

A. I can confirm that.

MR. ROSENBERG: As do we.

MS. MAINOO: Thank you.

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

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

Ms. Smith, are you taking any medication or drugs that might make it difficult for you to understand my questions?

A. No.

Q. Have you had any alcohol today?

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A. No.

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

A. No.

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

A. My name is Elisabeth Lyon Smith -- sorry, what was the -- date of birth?

Q. Date of birth.

A. Is [REDACTED]. My home address is

[REDACTED]

[REDACTED]

Q. And your business address?

A. It's [REDACTED] -- it's the same as my home address, [REDACTED]

[REDACTED].

Q. Ms. Smith, have you ever given testimony?

A. No.

Q. Did you do anything to prepare to testify today?

A. Yes. I sat down with my counsel, Ben

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Rosenberg and with Tanya, for a couple of days last week.

Q. How long did you meet with your counsel?

A. For six hours total.

Q. Did you speak with anyone else other than your counsel?

A. About the substance of the testimony?

Q. In preparation for testifying.

A. Not in preparation, no.

Q. Okay. Did you speak with anyone else other than in preparation for testifying?

MR. ROSENBERG: You mean about the deposition or --

Q. So I'm just going back to your previous answer where you clarified, so I want to know if there was anyone else you spoke with in relation to your testimony.

A. Yes. I let my mother know that I would be testifying. I also -- I contacted Jeff Pollock when I was first contacted to let him know that I would be testifying. I spoke with Steve Cohen yesterday just regarding the -- the nature of how I would be paying for my legal

1 SMITH

2 bills for this. And I also received a call from  
3 Chris Cuomo a few days ago letting -- he was  
4 calling me to see if I had been subpoenaed and  
5 who my lawyer was. But none of those  
6 conversations regarded the substance of the  
7 testimony.

8 Q. When did you contact Jeff Pollack?

9 A. The day that I received the subpoena  
10 for -- to be deposed.

11 Q. And what's the reason you contacted  
12 Mr. Pollack?

13 A. I was anxious about it and outside of  
14 my mother, I didn't really know who else to call.  
15 I know that he had been contacted about this and  
16 I wanted to frankly just share some of my agita  
17 and confide some of my anxiety about it, but it  
18 was mostly for just emotional support.

19 Q. What did you discuss with  
20 Mr. Pollack?

21 A. That I was agitated by the fact that  
22 I would have to give a deposition.

23 Q. What's the reason you were agitated  
24 by having to give a deposition?

25 A. I've done a lot of things in my life

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and one of them has never been deposed, being deposed.

Q. Did you speak with Mr. Pollack about anything else in relation to your testimony?

A. No.

Q. And what did you discuss with Chris Cuomo?

A. He -- he called me to ask who my lawyer was.

Q. Did you discuss anything else?

A. No.

Q. Besides your counsel, your mother, Mr. Pollack, Mr. Cohen, and Mr. Chris Cuomo, did you speak with anyone else about the fact that you were speaking with the investigative team?

A. Yes. I spoke with my college roommate from Dartmouth, who's a lawyer.

Q. Anyone else?

A. Just to -- nope. That's it. Wait. Sorry. One other thing, let me just clarify, is I did receive a text messages -- a text message from Melissa DeRosa about connecting when we're in New York City and I told her that we could not be in contact because I was going to be deposed.

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Q. What did Melissa DeRosa's text message say?

A. "Are you around for drinks this week?"

Q. And what did you say in response to her?

A. I said it is best if we do not speak because -- on the advice of my lawyer it is best if we are not in contact because I am -- for -- no. I believe I said, "On the advice of my lawyer, it's best that we are not in contact."

Q. Did she respond to your message?

A. Yes.

Q. What did she say?

A. She responded with three heart emojis.

Q. Did she respond with anything else other than the emojis?

A. No.

Q. And what was the reason for speaking with your college roommate?

A. She's a lawyer, and again, it was another person to offer sort of moral support, advice just about this -- she's someone who

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deposes people on a daily basis.

Q. Did you speak with anyone else other than the individuals you've mentioned?

A. No.

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

A. Sorry, can you repeat that it? You broke up.

MR. ROSENBERG: You broke up.

Q. Of course. Have you spoken with anyone else about -- let's start again.

Have you spoken with anyone about testimony that she or he has given to the investigative team?

A. No.

Q. Let's pull up tab 1, which we will mark as an exhibit.

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

MR. ROSENBERG: Okay. And just so -- so you're going to put this on the screen?

MS. MAINOO: Yes, we will.

MR. ROSENBERG: Okay.

1 SMITH

2 Q. Ms. Smith, please take a moment to  
3 review the document we have on the screen. And  
4 we can scroll down if it would be helpful.

5 MR. ROSENBERG: It's a little bit  
6 hard to see given our technical issues and  
7 we're still waiting to get these printed. I  
8 can represent to the witness that this is  
9 the -- this is the subpoena for --

10 THE WITNESS: I can --

11 MR. ROSENBERG: -- I think for  
12 testimony.

13 MS. MAINOO: Okay. Can you just let  
14 us know if you can't see any of the  
15 documents we put up?

16 Q. Ms. Smith, is this the document  
17 subpoena you received from our office?

18 A. I believe so.

19 Q. Did you read that subpoena?

20 A. I did.

21 Q. Did you do anything to collect  
22 documents in response to this subpoena?

23 A. I did.

24 Q. What did you do?

25 A. I searched my phone, I searched my

1 SMITH

2 text messages, I searched e-mails, I searched my  
3 recording app, I searched notebooks, I searched  
4 Google Docs, I searched -- did I say voicemails?  
5 So to see if I had any responsive documentation  
6 to send to you guys.

7 Q. Were you the person who collected any  
8 responsive documents?

9 A. Yes.

10 Q. Other than the documents that have  
11 been provided to us to date, have you found any  
12 additional documents in response to our requests?

13 A. No.

14 Q. We'll put up tab 2 and we'll mark  
15 that as an exhibit as well.

16 (Subpoena was marked Exhibit 2 for  
17 identification, as of this date.)

18 Q. Can you see this document, Ms. Smith?

19 A. Yes.

20 Q. Is this a testimony subpoena you  
21 received from your office?

22 MR. ROSENBERG: You know, it's hard  
23 to read. We can stipulate that it is.

24 A. Yeah, I believe so.

25 Q. Okay. Thank you. Did you read this

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SMITH

subpoena?

A. Yes.

Q. And do you understand that this testimony today is being taken pursuant to this subpoena?

A. Yes.

Q. Ms. Smith, please take us through your educational background, starting with college.

A. I received a Bachelor of Arts from Dartmouth College in 2005.

Q. What is your current employment status?

A. Self-employed.

Q. And what are you self-employed as?

A. I'm ending -- I'm concluding political consulting on two different projects.

Q. What are those two projects?

A. Sure. One was serving as the executive director of Comeback PAC, which was an independent expenditure on behalf of Andrew Yang's campaign for mayor.

Additionally, the other project was as a senior advisor on the Corey Johnson for

1 SMITH

2 comptroller campaign.

3 Q. Ms. Smith, do you have a relationship  
4 with Melissa DeRosa?

5 A. I do.

6 Q. What relationship do you have with  
7 her?

8 A. I would say that we are both personal  
9 friends and, you know, people who have been  
10 professional colleagues in that past.

11 Q. When did you first meet Ms. DeRosa?

12 A. I believe it was 2013. I believe it  
13 was in the fall of 2013.

14 Q. How did you meet?

15 A. At a parade when I was working for  
16 the incoming Mayor of New York City, Bill de  
17 Blasio, and she was working for the Governor of  
18 New York, Andrew Cuomo.

19 Q. What led to your meeting at that  
20 parade?

21 A. It was a chance meeting on the  
22 street. It's sort of like all the politicians  
23 sort of convene on a corner. And we said hello.

24 Q. You mentioned that you and Ms. DeRosa  
25 were professional colleagues in the past, what

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did you mean by that?

A. From about May -- I think it was April or May of 2018 until November of 2018 I served as a consultant to Andrew Cuomo's reelection campaign for governor and to the New York State Democratic Party, as well as to Tish James's campaign for attorney general.

Q. How did you work with Ms. DeRosa in that capacity?

A. I served in a communications role as a communications advisor on the campaign, so I worked fairly closely, you know, I would say on a daily basis, with her in that role.

Q. How did you come to work for the campaign?

A. She and the Governor reached out to me in about I believe it was March of 2018 to see if I would be interested.

Q. When you say they reached out, what do you mean by that?

A. They texted and called me to see if I would be interested in consulting for his reelection campaign and for the New York State Democratic Party.

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Q. How did you respond?

A. At first I -- at first I declined because I believed I had a conflict of interest, but after subsequent conversations, it was determined that the conflict did not get in the way of me working with them and so in -- again, I'm not -- I'm not exactly sure on the date, but I believe it was May I officially came on board.

Q. What conflict of interest did you think you might have initially?

A. I was working -- sure. I was working on a Congressional primary in New York City, I had a client who was primarying an incumbent member of the -- an incumbent Democrat from the New York City Congressional delegation, so I believed that that could have been a conflict given that as Governor of New York, Andrew Cuomo was -- was sort of the head of the New York Democratic Party.

Q. What were your responsibilities on the campaign?

A. It was overseeing sort of the communication strategy with a heavy focus on how we responded to attacks from opponents and I

1 SMITH

2 oversaw debate prep. But generally I would just  
3 say a response. I did -- in politics we call it  
4 rapid response. So that's largely what I did was  
5 rapid response overseeing communication strategy  
6 and debate prep.

7 Q. What is rapid response? What does  
8 that refer to?

9 A. It's -- it's basically on  
10 campaigns -- and I've done this on other  
11 campaigns, it's where you're the person who helps  
12 come up with a strategy to respond to opponents'  
13 attacks, but also looks at ways that you can --  
14 you know, that you can share with the media  
15 vulnerabilities that your opponents might have.

16 Q. Does this involve opposition  
17 research?

18 A. Yes.

19 Q. And what do you understand by  
20 opposition research?

21 A. Opposition research means taking a  
22 full inventory of -- of your opponents', you  
23 know, personal -- details from their date of  
24 birth to any records on, you know, if they're an  
25 elected official, their votes, sort of any

1 SMITH

2 information that's out there in the public  
3 domain, and anything that could be relevant in  
4 the course of a campaign. It's essentially on  
5 campaigns. You also do the same for yourself.  
6 We do self-research so that you have a sense of  
7 what issues could come up in the media, both  
8 positive and negative.

9 Q. Did you report to anyone in your role  
10 on the campaign?

11 A. The campaign manager, Maggie Moran, I  
12 would say was my direct live report. I'm trying  
13 to think if there's anyone else I reported to.  
14 It would have been -- Maggie would have been my  
15 primary person that I reported to. But I was in  
16 regular contact with other people.

17 Q. Who were you in regular contact with?

18 A. We had a communications team on the  
19 campaign that was **Staffer #6**, who is the  
20 press secretary; Dani Lever, who was the  
21 communications director on the campaign; and I  
22 was also in fairly regular contact with Melissa  
23 and with Larry Schwartz. But I wouldn't say that  
24 I necessarily reported to -- to any of them.

25 Q. What was your title?

1 SMITH

2 A. I didn't have an official title. I  
3 sort of went as a communications consultant. In  
4 some news clips I was called rapid response  
5 consultant. So it really depends. I don't think  
6 that my contract or anything like that had an  
7 official title.

8 Q. Where were you based geographically?

9 A. New York City.

10 Q. Did you interact with the Governor?

11 A. Yes.

12 Q. How often?

13 A. It really depended. Sometimes it  
14 would be once every couple of weeks. The most I  
15 ever interacted with him -- sometimes it would be  
16 once a week. The most I ever interacted with him  
17 was when we were doing debate prep, and that  
18 would be, you know, a few consecutive days at a  
19 time and we probably did two separate debate prep  
20 sessions. But otherwise I would say, you know,  
21 once a week, once every couple weeks.

22 Q. Other than during debate prep, what  
23 types of interactions did you have with the  
24 Governor?

25 A. Phone calls and -- and -- phone calls

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and a couple in-person meetings or interactions,  
yes.

Q. And other than your relationship with  
Melissa DeRosa as personal friends and when you  
worked as a consultant on Andrew Cuomo's  
reelection campaign, do you have any other  
relationship with her?

A. Outside of being personal friends?

Q. Correct.

A. No.

Q. Do you have a relationship with  
Andrew Cuomo?

A. Yes. I mean, he worked for me and we  
have stayed in contact since the campaign.

MR. ROSENBERG: I think you said  
Andrew Cuomo worked for you. I think  
that -- perhaps I misheard.

THE WITNESS: Did I say that?

MS. WARNKE: Yes.

MR. ROSENBERG: I believe so.

A. Yes, well, no. No. I worked for --  
sorry about that. I apologize for that.

MR. ROSENBERG: That's no problem.

A. I would like to think that, but no

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I -- I in fact worked for Governor Cuomo. But I have stayed in touch with him occasionally since the campaign.

Q. Okay. When did you first meet Governor Cuomo?

A. After I was hired, so May of 2018. Again, it might have been April. April or May of 2018.

Q. You said that since you consulted on the reelection campaign you've stayed in touch with him, how often have you communicated with Governor Cuomo since the campaign?

A. I would say sporadically. After the campaign I went and I was a senior advisor for Pete Buttigieg on his presidential campaign and I would hear from the Governor, he would give me a call once every few months to check in. I saw him in person twice during the presidential campaign and then after the presidential campaign, again, we kept in touch sporadically. We kept in touch sporadically over the phone and connected a couple times in person as well.

Q. Did Governor Cuomo communicate with you about the presidential campaign?

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A. Yes.

Q. Other than the presidential campaign, what other topics did Governor Cuomo discuss with you after you stopped consulting on his reelection campaign?

A. Well, in -- during the course of the presidential campaign, it was just the presidential campaign. After that we discussed, you know, COVID and how it was hitting New York City. I'm sorry, New York City. New York State. New York State.

Q. Did he ever ask for your advice?

A. Yes.

Q. What did he ask for your advice about?

A. Just general communication strategy, how I thought he was doing, if there were things that I thought he could be doing better in his press conferences.

Q. Were you compensated for providing this advice?

A. No.

Q. How often would the Governor ask for your advice after you stopped working on the

1 SMITH

2 campaign?

3 A. Again -- -- again, very sporadically.  
4 I would say in 2020 we may be had six phone  
5 conversations.

6 Q. How long was each call on average?

7 A. It could be anywhere from 20 minutes  
8 to an hour.

9 Q. Other than COVID and the presidential  
10 campaign, have you communicated with the Governor  
11 about any topics since you stopped consulting on  
12 his reelection campaign?

13 A. Since I've stopped?

14 Q. Correct.

15 A. Well, we've been in touch -- yeah,  
16 we've been in touch about what we're discussing  
17 today.

18 Q. Okay. When did you start  
19 communicating with the Governor about -- well,  
20 let me start again.

21 What do you mean when you say "what  
22 we're discussing today"?

23 A. About the sexual -- about the  
24 allegations of sexual harassment that he has  
25 faced.

1 SMITH

2 Q. When did you first communicate with  
3 the Governor about allegations of sexual  
4 harassment in this case?

5 A. In -- directly with the Governor, I  
6 can't remember the exact date, it would have been  
7 either in February or March of 2021.

8 Q. What about with anyone else?

9 A. With his staff, that would have been  
10 at the -- toward the end of February 2021.

11 MR. ROSENBERG: 2020. End of  
12 February 2021.

13 THE WITNESS: 2021, yeah.

14 MR. ROSENBERG: Forgive me. I  
15 misspoke.

16 THE WITNESS: Although -- no, no.  
17 No, you're actually correct.

18 A. I first heard from them in December  
19 2020. I believe it was December 2020.

20 Q. And we'll go back to that.

21 Do you have a relationship with Chris  
22 Cuomo?

23 A. I do.

24 Q. What relationship do you have with  
25 Chris Cuomo?

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A. So I work on Democratic campaigns and I have worked with him from that perspective of someone who represents and does -- handles communications and media relations for political candidates and him as a -- as an anchor, so I've had clients appear on his show, do town halls with him, and so it's primarily been in that sense.

Q. When did you first meet Chris Cuomo?

A. Sometime in 2015.

Q. Have you spoken with Chris Cuomo about the allegations of sexual harassment against Governor Cuomo?

A. I have.

Q. When did you first speak with Chris Cuomo about those allegations?

A. I can't remember the exact date, but that would have been either late February 2021 or early March of 2021.

Q. Do you have a relationship with any other current members of Governor Cuomo's Executive Chamber?

A. Yes. Rich Azzopardi. He is -- I think he's a senior advisor on communications

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SMITH

2 with them. He's someone I consider a personal  
3 friend. You know, less -- I'm less close with  
4 him than Melissa DeRosa, but he is someone I got  
5 to know during the 2018 campaign and, you know,  
6 he would occasionally call me for communications  
7 advice in between -- I dealt with him on the 2018  
8 campaign a little bit, but he would call me just  
9 for advice on stuff between 2018 and now and I  
10 think we, you know, socially had a drink a time  
11 or two.

12 And I would see -- I knew Stephanie  
13 Benton a little bit, she's the chief of staff, I  
14 think -- socially. But we were not -- we didn't  
15 really work together a ton, but I would see her  
16 at events and occasionally text. She would text  
17 me during the presidential campaign. Those are I  
18 think the only current staffers that -- that I  
19 have relationships with, but I -- it's possible  
20 that I am forgetting someone.

21 Q. What about former members of Governor  
22 Cuomo's Executive Chamber, do you have a  
23 relationship with any of them?

24 A. Yes. Staffer #6, or she goes by  
25 Staffer #6 now, she was I think the Governor's

1 SMITH

2 Albany press secretary. I can't remember her  
3 exact title, but she was the Governor's campaign  
4 secretary in 2018. I've maintained a social  
5 relationship with her. We, you know, had dinner  
6 once when restaurants reopened in the summer --  
7 summer of 2020.

8 Oh, Dani Lever, she was the  
9 Governor's I think official site communications  
10 director, but she had taken time off to be the  
11 campaign communications director in 2018. I  
12 would say that she and I also maintained a social  
13 relationship where we would -- if I were in town  
14 in 2019 where we would have a drink or, you know,  
15 occasionally text. Usually not about work, just  
16 about social matters.

17 And Peter Ajemian, again, I saw  
18 him -- I saw him at one social -- was it one?  
19 Yeah. At a social occasion during the  
20 presidential race. And we texted a couple of  
21 times during the presidential race just about the  
22 presidential campaign. And then he and I were in  
23 touch during the -- when he was in the Governor's  
24 Office during February and March of 2021. And  
25 you're saying former, right?

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Q. Yes.

MR. ROSENBERG: That was the question.

THE WITNESS: Yeah, sorry. I just need to clarify.

MR. ROSENBERG: That's okay.

A. Josh Vlasto, I was in contact with him in February and March of 2021. I didn't really -- I met him a couple of times before, but I didn't really have a relationship with him prior to that.

Steve Cohen is someone who I was also in touch with in February and March. He had been the secretary to the Governor and I had met him once at a -- when the Governor had like sort of a staff reunion in 2019.

Maggie Moran, who was the Governor's 2018 campaign manager, I maintained just like a text and phone relationship with her during the presidential election, mostly just her checking in, offering moral support. That's -- that's -- that's all that's coming to mind at the moment.

Q. Okay. So you mentioned that the Governor's staff -- well, you mentioned that you

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SMITH

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first heard from the Governor's staff in December

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2020 about the allegations of sexual harassment

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against the Governor, what did you hear from the

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Governor's staff?

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A. So the exact details are a little

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hazy, but what I recall was getting outreach from

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I believe Melissa and -- Melissa and maybe Rich

9

and Dani or some combination of Rich and Dani

10

with regard to a tweet that Lindsey Boylan had

11

posted accusing the Governor of sexually

12

harassing her when she was working for him.

13

Q. Do you remember when you got that

14

outreach from Melissa and Rich and/or Dani?

15

A. It was December I believe.

16

Q. How did they reach out to you?

17

A. They called me.

18

Q. What did they say?

19

A. And this is not verbatim, but that

20

Lindsey Boylan, a former staffer of the Governor,

21

had posted a tweet online accusing the Governor

22

of sexual harassment, they wanted to know if I

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had seen it and, you know, they said that it was

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false and wanted to do sort of a gut check with

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me on how they were planning to respond to it.

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SMITH

Q. Did they tell you how they were planning to respond to it?

A. Yes.

Q. What did they say?

A. That one, they were going to deny the claim and say that there was, you know, no veracity to it; and two, that Ms. Boylan had made inaccurate statements about how her term -- how her employment with the Governor's Office had come to an end and that they were going to clarify the record with, you know, official records from the Governor's Office.

Q. Did they say anything else?

A. That's -- that's what I remember.

Q. What did you say?

A. Sorry?

MR. ROSENBERG: What did you say?

You broke up.

Q. What did you say in response?

A. It sounded like the right course of action.

Q. Did you say anything else?

A. I may have, but that's -- that's just what I remember.

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SMITH

Q. Did they say anything about whether they had looked into the truthfulness of Ms. Boylan's claims?

A. Yes. I -- well, looked into... I think that was implicit in them saying that they were going to correct the record about how her employment was terminated, that they had, you know, records in the Governor's Office that contradicted what her statements were --

Q. Did they --

A. -- about -- about how her employment had come to an end.

Q. Did they tell you what records they had that contradicted Ms. Boylan's claims about how her employment had ended?

A. Yes. They said that they had personnel records.

Q. What did they say about the personnel records?

A. That they contradicted -- that they showed that what Ms. Boylan had said on Twitter about how she had come to leave the office was not true.

Q. Did they say anything else about the

1 SMITH

2 personnel records?

3 A. It's possible, but not that I  
4 remember.

5 Q. Did they describe what the personnel  
6 records showed?

7 A. That it contradicted what she was  
8 saying online. You know, specifically that I  
9 think she had said online that she had, you know,  
10 tried to quit the office multiple times, but it  
11 showed that -- it showed something different. I  
12 can't remember what -- what it was that it  
13 showed, but I think maybe that it had not been of  
14 her choice or something like that.

15 Q. You mentioned two things that you  
16 heard from Melissa and Rich and/or Dani when they  
17 reached out to you in December, the first was  
18 that they were going to deny Ms. Boylan's claims  
19 about sexual harassment and say that there was no  
20 veracity, did they say anything to you about  
21 whether they had looked into Ms. Boylan's sexual  
22 harassment allegations?

23 A. What -- what do you mean by that?

24 Q. Did they say whether they had  
25 investigated Ms. Boylan's sexual harassment

1 SMITH

2 allegations?

3 A. It didn't come up, but you know, I  
4 would -- you know, all she said online was that  
5 the Governor had sexually harassed her. She did  
6 not make any specific allegation of sexual  
7 harassment.

8 Q. Okay. So all Ms. Boylan said was  
9 that the Governor had sexually harassed her, did  
10 Melissa and/or Rich or Dani say whether they had  
11 investigated Ms. Boylan's claims that the  
12 Governor had sexually harassed her?

13 A. They said that it was not true, but I  
14 can't recall whether they said they had  
15 investigate it -- investigated it or not.

16 Q. And then I think the second point  
17 that they communicated to you was that Lindsey  
18 Boylan had made inaccurate statements about how  
19 her employment with the Governor's Office had  
20 come to an end, at the time what had Lindsey  
21 Boylan said about how her employment with the  
22 Governor's Office had come to an end?

23 A. I would have to go back and check the  
24 records, but as I said previously, I believe she  
25 had said that she had tried to quit multiple

1 SMITH

2 times.

3 Q. And so did Melissa and/or Rich or  
4 Dani tell you that Lindsey Boylan had not  
5 previously tried to quit multiple times?

6 A. I believe what they said was that  
7 they had documentation that the -- that it --  
8 that showed the opposite, that -- that there  
9 was -- that that was not the truth about, you  
10 know, how her employment there ended.

11 Q. So I'll ask the question a different  
12 way.

13 Did Lindsey Boylan say anything about  
14 how her employment at the Governor's Office  
15 ended?

16 A. I would have to -- I -- I don't  
17 recall. I would have to see -- but my  
18 recollection -- again, my recollection now, what,  
19 seven months later, is that she had said she had  
20 tried to quit multiple times and had, like, not  
21 been allowed to, but I -- I can't tell you  
22 verbatim off the top of my head what she said in  
23 those tweets that day.

24 Q. When's the last time you had a  
25 discussion with anyone about the Executive

1 SMITH

2 Chamber's clarification of the record about how  
3 Lindsey Boylan's employment with the Governor's  
4 Office came to an end?

5 A. It came up in March -- in February  
6 and March of 2021. So, you know, the latest --  
7 the last time I would say was March of 2021.

8 Q. What discussion took place in March  
9 2021?

10 A. Well, first let me -- it might be  
11 easier if I say what February -- so in February,  
12 late February, she posted a Medium post, a post  
13 on Medium saying -- elaborating on her claim of  
14 sexual harassment against the Governor and so we  
15 discussed it then. I don't think we discussed  
16 the response necessarily, like, how they  
17 clarified the record then.

18 We -- in that discussion we discussed  
19 how -- we discussed sort of the charges that she  
20 was leveling and the veracity of them and how to  
21 respond to them. We discussed the response --  
22 because, sorry, your question was about when we  
23 discussed the response setting the record  
24 straight, right?

25 Q. Correct.

1 SMITH

2 A. That came up -- there were a couple  
3 of stories, maybe one, potentially two -- two  
4 stories that I can remember in March of 2021  
5 that -- that had asked questions about the  
6 response, how the Governor's Office had responded  
7 to her initial claims about how her time there  
8 had -- had come to an end.

9 Q. So there were two stories in March  
10 2021 that asked questions about how the Chamber  
11 had responded to Lindsey Boylan's initial claims,  
12 and so what were the discussions that were had  
13 about the stories?

14 A. And to be clear, there may have been  
15 more stories, there are just two that come to  
16 mind, and they were both in The New Yorker, and  
17 it was just about, you know, making clear what  
18 was in the records and why the records were  
19 shared with the media.

20 Q. Can you collaborate on that?

21 A. Yes. You know, this -- it goes back  
22 sort of to the December conversation, which is  
23 that members of the media were looking into why  
24 these records were released and the Governor's  
25 Office in December -- in March said that they had

1 SMITH

2 released these records to sort of correct the  
3 record and combat what they believe were  
4 falsehoods in Ms. Boylan's tweets in December  
5 2020. So it -- the conversations were about sort  
6 of making sure reporters knew about that.

7 Q. And before the Governor's Office said  
8 in March 2021 that Ms. Boylan's records were  
9 released to correct the record about the  
10 circumstances of her departure from the Executive  
11 Chamber, had you ever heard that explanation from  
12 the Executive Chamber?

13 A. Sorry, can you repeat the question?

14 Q. Sure. Before the Governor's Office  
15 said in March 2021 that Lindsey Boylan's  
16 personnel records were released to correct the  
17 historical record about the circumstances of her  
18 departure from the Executive Chamber, had you  
19 ever heard that explanation from anyone in the  
20 Executive Chamber?

21 A. Yes. In December of 2020.

22 Q. And how is it that you heard that  
23 explanation in December of 2020?

24 A. When I received calls from them about  
25 how they were going to respond and asking sort of

1 SMITH

2 for a gut check, they had -- they ran some sort  
3 of statement by me and also said we are going  
4 to -- we have documentation, records that  
5 contradict what she said about the nature of how  
6 she left the office, and you know, we're going to  
7 share them to set the record straight.

8 Q. So to go back, you mentioned a phone  
9 call in December of 2020, and is it the case that  
10 Melissa and Rich or Dani were all on that phone  
11 call?

12 A. I can't remember. Honestly I cannot  
13 remember the specifics. I just sort of remember  
14 the three of them at that time.

15 Q. Okay. Is it possible that you had  
16 more than one phone call with any of them over --

17 A. Yes. Definitely.

18 Q. Okay. Did you ask any questions  
19 during your discussions with them in December  
20 2020?

21 A. I'm sure I did. I just can't  
22 remember.

23 Q. And other than speaking with them,  
24 did you communicate with them in writing about  
25 the allegations against the Governor in December

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2020?

A. Yeah. We may have texted about it at the time, but I don't remember and I don't have any record of it.

Q. And did they ask you to play any role in responding to allegations against the Governor at that time?

A. No.

Q. Did they ever ask you to play any role in responding to allegations against the Governor?

A. Only in the sense that it was primarily just giving advice to them on how they should respond. The Governor's Office was generally the folks who were doing the responding. I -- I would talk to, you know, members of the -- in -- in February and March I would talk to members of the national media more about sort of how this would play out politically for the Governor, but I never was the person whoever -- they never asked me to, you know, go out and talk about any of these specific allegations or, you know, any of the women that were coming forward.

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Q. Have you played a role in connection with the sexual harassment allegations against the Governor?

A. What do you mean by "play a role"?

Q. Have you -- so you mentioned being called to provide advice.

A. Yes.

Q. Have you done that or done anything else in relation to the allegations against Governor Cuomo?

A. Yes. I -- I was -- I began -- I was called to give advice starting in -- you know, the December thing was sort of informal. It was just sort of out of the blue. I hadn't been in contact with them probably in, I don't know, in a while, but in February they had contacted me about helping with the response to something else, to -- to some of the stuff around nursing homes and then it sort of bled into helping with the response to the sexual harassment allegations.

Q. Who contacted you about helping with the response to nursing homes?

A. It was Melissa DeRosa.

1 SMITH

2 Q. What did she ask you to do?

3 A. So she -- she had had a call with  
4 legislators that had been leaked to the media and  
5 she called to ask me for advice on -- advice on  
6 how to handle it with the media.

7 Q. She called you on the phone?

8 A. Yes.

9 Q. Did she ask you to provide services?

10 A. Define "services."

11 Q. Did she ask to you play a formal  
12 role?

13 A. No. I mean, no, she didn't say,  
14 "Will you play a formal role?" She -- she was  
15 just asking for advice.

16 MR. ROSENBERG: Can we stop for one  
17 minute? There's someone knocking on the  
18 door. It may be documents. Can we take a  
19 minute?

20 MS. MAINOO: Sure.

21 MR. ROSENBERG: We needn't go off.

22 Okay.

23 Q. Did she say she's going to pay you  
24 for your advice?

25 A. No.

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Q. Did she say anyone was going to pay you for your advice?

A. No. She -- when she contacted me in February?

Q. Correct.

A. No. It wasn't -- it was not a discussion we had.

Q. Okay. At any point have you had a discussion with anyone about being compensated for the advice that you're providing?

A. Yes.

Q. When?

A. In March when it became more of a time-consuming endeavor.

Q. You said in February Melissa DeRosa contacted you about -- for advice on how to handle the situation with the nursing homes --

A. Mm-hmm.

Q. -- and that bled into helping with the response to sexual harassment allegations, how did that happen?

A. As we were sort of dealing with that story sort of, you know, my recollection was out of nowhere there was this Medium post that was

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authored by Lindsey Boylan, so they just, you know, continued to ask me, and there was sort of a small group around, for advice on that as well. I -- you know, I describe it sort of as, you know, mission creep.

Q. Do you remember where you were when the Medium -- when you became aware of the Medium post?

A. Probably my apartment [REDACTED], but I'm not positive.

Q. How were you contacted -- how did you become aware of the Medium post?

A. I think it was a phone call from Melissa or maybe Dani. I think one of them pointed it out to me before, like, I saw it online. Yeah, no, it was -- no. It was Melissa I believe. Yeah.

Q. What did Melissa say to you?

A. "Have you seen this Medium post that's online from Lindsey Boylan? She is making, you know, a number of allegations against the Governor."

Q. How did you respond?

A. That I would read it and get back to

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her.

Q. Did you have any other discussions with Melissa or anyone about the Medium post?

A. Yeah. After I read it, you know, we had a discussion about how to respond to it.

Q. I think earlier you said there had been a discussion about the charges in the Medium post and the veracity and how to respond, what discussions were had about the veracity of the allegations in Lindsey Boylan's Medium post?

A. The main one that sticks out to me was she had said something about the Governor suggesting that they play strip poker on a State plane and there were, you know, staffers who were, I guess, present for that plane flight who were going to put out a statement saying that that had never happened.

Q. And is it your recollection that the staffers who were on the plane said they did not remember that happening or that they categorically denied that it had ever happened?

A. I believe it was the latter, that they denied that it had happened.

Q. Were there discussions about any of

1 SMITH

2 the other allegations in the Medium post?

3 A. Yes. There -- you know, I -- the  
4 other allegations aren't coming to mind. I know  
5 that she had -- there were -- I just -- I just  
6 can't remember the specifics of them, but my  
7 recollection was that we discussed them. The  
8 thing that stands out the most to me was the --  
9 the denial of the strip poker thing and the  
10 Governor -- or maybe -- I can't remember if it  
11 was the Governor or through staff denying that he  
12 had forcibly kissed her.

13 Q. Was there any discussion about the  
14 Governor kissing Lindsey Boylan, whether it was  
15 forceful or not?

16 A. Yes. Yeah, that's what I meant just  
17 now. Yes.

18 Q. And what was the discussion?

19 A. Was that he denied it.

20 Q. That he kissed Lindsey Boylan?

21 A. Yes.

22 Q. In terms of discussions with the  
23 Governor's staff about the allegations of sexual  
24 harassment against the Governor, you mentioned  
25 communications or a communication in December

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2020 with Melissa, maybe Rich, maybe Dani, you've talked about the discussion with Melissa in February about the Medium post and discussions about how to respond to it, were there any other --

A. And let me -- sorry, I shouldn't have interrupted. Please continue.

MR. ROSENBERG: I think the question was and were there any others so -- right?

A. So there were --

Q. Please go ahead.

A. So by that time there were -- there were more people who were involved in the discussions who were giving advice. Melissa had reached out to a broader group to give advice on the -- the call about nursing homes, the nursing homes response that had leaked to the media and so I remember Jeff Pollack being involved. Jeff was the Governor's poster.

Josh Vlasto, who had -- who had worked for the Governor, Dani Lever, who had -- by that time had left the Governor's Office. Rich Azzopardi. I think Steve Cohen was on those calls.

1 SMITH

2 So my conversations with them then,  
3 it was less like a -- I think Melissa had -- my  
4 recollection is Melissa had called me to make me  
5 aware of the Medium post, but basically from that  
6 point on the conversations that we had about that  
7 and subsequent allegations were had as a group,  
8 with that group that I described.

9 Q. And I had heard, but maybe I  
10 misunderstood, that that group had been contacted  
11 to provide advice about the nursing homes, but it  
12 sounds like that group's mandate also expanded  
13 like yours --

14 A. Yes.

15 Q. -- to include the sexual harassment  
16 allegations?

17 A. Yes.

18 Q. Okay. What was Jeff Pollack's role  
19 in connection with the response to the sexual  
20 harassment allegations?

21 A. Sure. It was the same as mine. He  
22 and I were both offering sort of an outside view  
23 and an outside perspective on how to handle the  
24 press response to these.

25 Q. What about Josh Vlasto?

1 SMITH

2 A. Similar, the same.

3 Q. Dani Lever?

4 A. His was a little bit different  
5 because he had actually worked in the Governor's  
6 Office in Albany and, you know, had a little more  
7 familiarity, but whereas Jeff and I are very much  
8 outsiders, you know, neither of us have ever  
9 worked in -- in the Governor's Office or anything  
10 like that.

11 Q. Okay. How would you describe Dani  
12 Lever's role?

13 A. Offering advice on how to respond  
14 with an understanding like Josh of, you know, the  
15 Albany press corps, how the state press corps  
16 works. That's something that I -- that I and  
17 Jeff wouldn't necessarily understand because we  
18 just didn't really deal with those folks.

19 Q. Rich Azzopardi?

20 A. Rich, you know, was the Governor's  
21 senior advisor on communications, so he was  
22 primarily the person -- primarily the person  
23 who -- he and Peter Ajemian, who was the press  
24 secretary, they were the ones who would  
25 actually -- as a group we would discuss, go back

1 SMITH

2 and forth, this -- this is in, what should we  
3 say, should we say this, should we say this.  
4 It's Rich and Peter who would actually go out and  
5 deal -- deal with reporters, deliver the  
6 response, but they were also a part of the group  
7 and would offer their own input on issues as  
8 well.

9 Q. You also mentioned Steve Cohen?

10 A. Yeah.

11 Q. What role did he play, to your  
12 understanding?

13 A. Yeah. Offering advice and also sort  
14 of with the eye of, you know, none of us in this  
15 group were lawyers or anything like that and, you  
16 know, he had the experience of, you know, being  
17 in Albany, understanding that sort of ecosystem,  
18 the reporters up there, but also a lawyer and I  
19 found generally when you're having conversations  
20 about press responses, it's not the worst thing  
21 in the world to have a lawyer on the line.

22 Q. What's the reason for that?

23 A. Just because you -- lawyers offer a  
24 different perspective on these and it's clear  
25 with certain issues, right, that you can -- that

1 SMITH

2 it can veer into more legal territory, but  
3 generally I just think that it's a good thing  
4 on -- on high profile PR issues to have -- that  
5 it doesn't hurt to have a legal input. And  
6 that's something that, you know, I -- I've  
7 employed throughout my career on presidential  
8 campaigns and the like.

9 Q. So far we've talked about discussions  
10 between December and February when the Medium  
11 post came out, which expanded to include a  
12 broader group, I'd like to know about your  
13 involvement in any discussions about the sexual  
14 harassment allegations, including the Governor's  
15 staff, after the Medium post. What involvement  
16 did you have in those discussions?

17 A. I continued to offer strategic advice  
18 on how the Governor's staff and the Governor  
19 himself should respond in the media to -- you  
20 know, to these allegations. On a few  
21 occasions -- as I mentioned before, you know, my  
22 relationships are with the national press -- I  
23 spoke with the media. You know, never on the  
24 record, but I spoke with the media just about --  
25 you know, national media because what they care

1 SMITH

2 about is not the allegations, it's that they just  
3 care about what it means in the -- and how it's  
4 going to play out. They just care about the  
5 politics of these things. And I would say that  
6 the Albany team doesn't know the national  
7 reporters as well so Jeff -- so Jeff Pollack and  
8 I, you know, had sort of more informal  
9 conversations with the national media about the,  
10 you know, 10,000 foot view of these things.

11 Q. You said those communications that  
12 you had with the national media were never on the  
13 record, what's -- was there a reason for that?

14 A. No. I mean, when I'm giving context  
15 to a reporter, it's generally just not on the  
16 record. They call to say, Hey, how's it going?  
17 How's it shaking? Is there anything I should  
18 know on background? On background meaning, you  
19 know, something they can use the sense of or  
20 something where they can sort of like do a blind  
21 quote or -- but they generally look to us to give  
22 them sort of perspective on, you know, how the  
23 politics are playing out. They don't need a  
24 formal statement and that's, you know, not the  
25 most helpful thing that we can offer.

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SMITH

Q. Were you involved in any other discussions other than about the Lindsey Boylan Medium post and the articles in March about the response to her allegations and your discussions with the national media?

A. Yes. I was involved with the response to the subsequent allegations that came out.

Q. Okay. What was your involvement in the response to subsequent allegations that came out?

A. It was the same.

Q. Take them in turn.

A. Sorry, I didn't mean to interrupt.

Q. Sure. Taking the allegations in turn, what was your involvement in response to them?

A. It was the same. It was primarily offering strategic advice on how the Governor's Office and the Governor himself should respond.

Q. What were those subsequent allegations?

A. So I -- and I can't necessarily remember the exact sequencing, there was Lindsey

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SMITH

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Boylan, Charlotte Bennett or -- yeah, Charlotte

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Bennett, Anna Ruch with a photo at a wedding,

4

Karen Hinton, Ana Liss. There was an Accuser

5

No. -- there was a sixth accuser that was

6

anonymous. There were a couple of -- like, there

7

was couple of anonymous ones I think. And the

8

last was Alyssa Katz.

9

Q. So taking them each in turn -- and

10

thank you for going back and trying to remember

11

this, it's not meant to be a memory test, so

12

we'll go over the allegations later on as well,

13

but starting were Charlotte Bennett, when did you

14

first hear anything about potential issues

15

concerning Charlotte Bennett's interactions with

16

the Governor?

17

A. It was right -- I believe right after

18

the -- the Medium post from Lindsey Boylan.

19

Q. And what did you hear right after the

20

Medium post from Lindsey Boylan?

21

A. We -- the internal team that I had

22

mentioned, that we just went through, had -- had

23

a discussion about, you know, other potential

24

people who might speak out or who had, you know,

25

left the Governor's employ like on not great

1 SMITH

2 terms and my understanding was that there was  
3 some chatter that -- the first time I heard of it  
4 was in the context of oh, that there's chatter  
5 that Charlotte Bennett may, you know, come  
6 forward and say something publicly about some  
7 interactions that she had had with the Governor.

8 Q. Did you hear anything about the  
9 interactions that Charlotte Bennett had with the  
10 Governor?

11 A. Yes. Well, subsequently there was a  
12 phone call where -- and I can't -- so I can't  
13 remember the exact sequencing here, whether she  
14 had come out publicly first or we had discussed  
15 some of the stuff more in detail, but I recall  
16 that there was a call where Judy Mogul, who is a  
17 lawyer in some capacity for the Governor, had  
18 mentioned a -- I'm not sure what the technical  
19 term is for it, some sort of like exit report or  
20 something like that where Charlotte had requested  
21 to be moved from working directly with the  
22 Governor because she had felt uncomfortable at  
23 some of their interactions.

24 I was not on the call where Judy sort  
25 of went through the specifics of that. I had

1 SMITH

2 a -- you know, some other conflict, I missed it,  
3 so I heard that, that's secondhand, but I believe  
4 that was in late February.

5 Q. And who did you hear about the call  
6 from?

7 A. I can't remember what it was.

8 Q. What did you hear about what  
9 Charlotte Bennett had said about her interactions  
10 with the Governor?

11 A. Just that she and the Governor had  
12 developed a close relationship when she was  
13 working I think as his briefer and that she  
14 believed that it was going in a -- that he didn't  
15 believe at the time that it was sexual  
16 harassment, but she believed that it was going in  
17 a direction that was not a good direction for a  
18 boss/employee relationship and had thus requested  
19 that she be moved to like another arm of state  
20 government where she wasn't working directly with  
21 him.

22 Q. Did you hear anything else?

23 A. Yeah. I mean, I -- there was some  
24 specific -- there was some specifics that were in  
25 there I think about where she had mentioned

1 SMITH

2 conversations that they had had about their  
3 personal lives, that they discussed his  
4 leadership on -- I can't remember the name of the  
5 bill, on something -- some legislation he did  
6 related to, you know, sexual assault and sexual  
7 assault reporting and how she herself had been  
8 the victim of sexual assault in college. Those  
9 are the things that I'm remembering right now.

10 Q. What was your -- did you have a  
11 reaction to what you heard about the account of  
12 Charlotte Bennett's interactions with the  
13 Governor?

14 A. No.

15 Q. Was there any discussion about the  
16 truthfulness or credibility of Charlotte  
17 Bennett's allegations?

18 A. To my recollection, at the time what  
19 we had discussed was that the Governor -- and I  
20 didn't discuss it -- I didn't discuss this  
21 directly with the Governor I think when we first  
22 responded. There are other members of the -- and  
23 I could -- I could be off on some of this  
24 timeline here, but my recollection was that some  
25 members of the team discussed this directly with

1 SMITH

2 the Governor and that the Governor acknowledged  
3 that he had had some conversations of the nature  
4 that sort of correlated or were similar to the  
5 nature of what was described but that he had not  
6 intended for them to make, you know, Charlotte  
7 Bennett uncomfortable and that, you know, I think  
8 he -- his recollection of the tenor of them  
9 was -- was slightly different from how she  
10 characterized them in the reports, but it was not  
11 that -- there weren't questions about her  
12 credibility, we didn't discuss her credibility or  
13 anything like that.

14 Q. Did anyone challenge her credibility,  
15 as far as you can remember?

16 A. No. The Governor, you know, through  
17 other people is how I remember hearing that, did  
18 acknowledge that he did have, as he has had with  
19 other staff, myself included, that he does  
20 occasionally ask about, you know, staff's  
21 personal lives. He did not, you know, mean it to  
22 be inappropriate or make her feel uncomfortable.

23 And my recollection is that Charlotte  
24 had not -- that she specifically said -- and I  
25 think Judy or someone said that she had

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SMITH

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specifically said that she didn't consider the  
3 conversations that she had had sexual harassment,  
4 but -- but no, it wasn't a question of her  
5 credibility. I think it was just a question of  
6 how each party remembered it. But also the last  
7 thing that I said was about how she had  
8 characterized it when she had discussed it with  
9 the -- with Judy Mogul I believe.

10

Q. Did you find any conversations about  
11 Charlotte Bennett's sexual harassment allegations  
12 against the Governor to be enraging?

13

A. To be enraging?

14

Q. (Nodding.)

15

A. Maybe.

16

Q. And what do you mean when you say  
17 "maybe"?

18

A. I mean it's entirely possible.

19

Q. And what would you have found  
20 enraging about those discussions?

21

A. I don't know. You know, it's been a  
22 while. Generally -- I mean, when -- when you  
23 do -- when you give communications advice,  
24 strategic communications advice, as I do, there's  
25 a natural push and pull, right, and I

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SMITH

generally -- I like to generally have things done my way when I'm giving advice and so if things aren't necessarily being done my way, I might find them enraging.

Q. And in this context how did you think that the Governor and/or the Executive Chamber should be responding to the sexual harassment allegations? What was your advice?

A. I can't remember.

Q. So what was the relevance of what you just said about how you like things done your way and if they're not done your way --

MR. ROSENBERG: Object. I don't understand what's the relevance of it. I mean, she's trying to -- the witness is trying to answer your question.

THE WITNESS: Yeah.

MR. ROSENBERG: I'm not sure I understand the question. What's the relevance of it?

MS. MAINOO: And that's fine, Ben. You don't need to understand my question, as long as Ms. Smith does.

Q. So Ms. Smith what's the reason --

1 SMITH

2 when I was asking the question about whether you  
3 found any of the discussions enraging, what's the  
4 reason you went back to talking about how you  
5 like things done your way?

6 A. Just generally when I'm giving PR  
7 advice to people asking for it, there's a natural  
8 push and pull, so you know, sometimes I'm happy  
9 with how -- a response that someone gives,  
10 sometimes I'm not. So that's the context I could  
11 see -- you know, nothing -- it's not always  
12 exactly as I like things so that -- that's --  
13 that's what I mean there.

14 Q. And in connection with the sexual  
15 harassment allegations against the Governor, was  
16 there ever a time when either the Governor or the  
17 Executive Chamber was not heeding your advice?

18 A. To my recollection, I think we  
19 usually came back around to things that I was  
20 advising, but it's natural when you do what I do,  
21 when you give advice to people, that not everyone  
22 is going to be on the same page from day one, you  
23 know, on day one, and the process can sometimes  
24 involve a lot of push and pull, but I think  
25 overall that they -- I mean, there might be some

1 SMITH

2 small exceptions but that the Governor usually  
3 ended up in a pretty good place in terms of how  
4 he responded to these things.

5 Q. And what were you advising in terms  
6 of how the Governor and the Executive Chamber  
7 should respond to the allegations of sexual  
8 harassment?

9 A. It depends on what -- what -- which  
10 one you're discussing.

11 Q. What were you advising?

12 A. Again, I -- I -- I would have to see  
13 sort of what -- what we were saying at the time.  
14 I cannot recall, you know, whatever statement we  
15 put out four months ago. I just -- I just can't  
16 remember that off the top of my head.

17 Q. So you mentioned Charlotte Bennett.  
18 I think the other -- the next person you  
19 mentioned was Anna Ruch, what did you hear about  
20 Anna Ruch?

21 A. That it was an interaction at a  
22 wedding where he had put his hands on her face  
23 and she had -- you know, which is a -- and that  
24 she had felt uncomfortable by it, from it.

25 Q. And did you have any discussions

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SMITH

about Anna Ruch's complaints?

A. Yes.

Q. With whom?

A. The group that I mentioned.

Q. What did you discuss?

A. The nature of what she was -- of what she was saying and how to respond to it.

Q. And did you discuss your reaction to what Anna Ruch was saying?

A. Yeah. I do remember that one because I -- you know, I think that as someone who has worked with Governor Cuomo over the years, who has seen how he greets people in public, who, you know, had seen how his father greeted people in public, that the insinuation that that was sexual in nature or inappropriate, I thought that that was -- I -- I did not think that that rose to the -- that sort of level and I thought that that was being unfairly used against the Governor and being lumped in with, you know, with sexual harassment when it was I think a very different sort of interaction.

Q. What is your understanding of sexual harassment, Ms. Smith?

1 SMITH

2 A. I cannot give you a legal definition  
3 of sexual harassment, but it generally does not  
4 include, you know, greeting -- how you greet  
5 strangers at a wedding.

6 Q. Are there any other aspects of your  
7 understanding of sexual harassment?

8 MR. ROSENBERG: Objection. If you  
9 can answer the question, answer it.

10 A. No, I -- I'd just repeat what I said  
11 before.

12 Q. And so your understanding is that  
13 sexual harassment doesn't -- isn't implicated  
14 when someone greets a stranger at a wedding, is  
15 that a fair summary of what you said?

16 A. Yes. I don't know that that's a  
17 technical legal -- legal definition, but yes.

18 Q. And I'm not asking for a legal  
19 definition, I'm just asking for your own  
20 understanding.

21 A. Mm-hmm.

22 Q. And Karen Hinton, what did you hear  
23 about Karen Hinton's allegations?

24 A. So I don't think we heard anything  
25 about it until it was in the -- it was published

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SMITH

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in The Washington Post. We might have -- so with

3

a lot of this stuff -- I'm trying to think. So

4

with a number of these things we get, the

5

reporters reach out in advance for a response.

6

That one is a little bit scrambled in

7

my head because I was traveling that day, I was

8

in Washington, D.C., I remember hearing about it

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when I was at the airport. It must have been

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before it was published because I doubt they

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would have published it without a response. And

12

I think my recollection was just that we would

13

deny -- and I can't remember specifically, but

14

just to deny -- that the Governor -- that the

15

Governor himself denied that it had happened and

16

that the response on the record from the office

17

or whoever gave the response, I can't remember

18

whether it was the office or whether it was the

19

Governor himself, that it would be -- that it was

20

denying her allegation.

21

Q. And how did you understand that the

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Governor denied that what Ms. Hinton said had

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happened actually took place?

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A. That he denied that it happened, that

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he didn't have a recollection of that happening.

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SMITH

Q. And did you hear that from the Governor?

A. I don't know. I can't recall if he was on the call that day. Again, I was at Dulles -- I remember I was at Dulles Airport sitting on the floor in a corner and it was very hectic because I had a flight to catch. I don't -- I don't think the Governor was on the call.

Q. So how did you hear that the Governor denied Ms. Hinton's allegations?

A. I believe it was through Melissa.

Q. And were you involved in responding to Ms. Hinton's allegations?

A. I was -- yes, in giving brief advice on how to respond, yes.

Q. What advice did you give?

A. I thought that their -- that their response, which is to say that it was false, was correct and I thought generally just to deny it was the right approach.

Q. Going back to Anna Ruch, did you give advice on how to respond to her allegations?

A. Yes.

1 SMITH

2 Q. What was your advice?

3 A. Well, part of it being informed by,  
4 you know, my view that this is -- this is sort of  
5 a different animal, right, which is to say that  
6 this is traditionally how he greets people and he  
7 didn't mean to make her feel uncomfortable. And  
8 I think that there was general consensus in the  
9 team that this was being unfairly lumped in with  
10 other allegations.

11 Q. And which other allegations did you  
12 think Anna Ruch's issues were being unfairly  
13 lumped in with?

14 A. Anything having to do with the  
15 workplace. So Charlotte Bennett, Lindsey Boylan.  
16 Because in the media it's being -- you know,  
17 they're trying to -- it was like there was a  
18 narrative that was sort of building and they were  
19 using this as an example when it really isn't the  
20 same sort of situation.

21 Q. And just to be clear, I'm not  
22 suggesting you said this, but I want to  
23 understand, is it your understanding that sexual  
24 harassment is limited to workplace interactions?

25 A. I cannot give you a definition of

1 SMITH

2 sexual harassment, a legal definition of sexual  
3 harassment.

4 Q. And I understand that. I'm asking  
5 about your own understanding. Is it your own  
6 understanding that sexual harassment is limited  
7 to workplace interactions?

8 A. To the extent that I've thought about  
9 it, no, not necessarily.

10 Q. Okay.

11 A. But I don't -- no, not necessarily.

12 Q. And going back to Charlotte Bennett,  
13 did you provide advice on how to respond to  
14 Ms. Bennett's allegations?

15 A. As we discussed, yes, I did.

16 Q. What was your advice?

17 A. Look, again, I can't remember the  
18 specifics of it. I would have to see, you know,  
19 the statement that we put out, but in general --  
20 but in that situation the Governor -- you know,  
21 it was the Governor acknowledging that he may  
22 have made her feel uncomfortable, and so to  
23 acknowledge that and, you know, to show  
24 contrition.

25 Q. Did the Governor follow that advice?

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SMITH

A. Yes.

Q. From the beginning?

A. Define what you mean "from the beginning."

Q. I think earlier you had said something about how ultimately you think you got to the right place, so I'm asking whether initially the -- your advice that the Governor should acknowledge that he may have made Ms. Bennett feel uncomfortable and show contrition was followed.

A. I don't remember the evolution of the statement. And it wasn't a conversation that I necessarily had with the Governor. I believe this was a conversation I was primarily having with the team. But with any sort of statement that you give in response to these things, it's going to -- it's usually going to evolve. You don't get it a hundred percent right on the first try. So it's very likely that it -- that it may have evolved. But again, I don't have a specific recollection of the statement, where it started and where it ended up.

Q. And I think that just now you said

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SMITH

your advice was that the Governor should acknowledge that he may have made Ms. Bennett feel uncomfortable, I think when you were talking about Ms. Ruch you had said her allegations involved an interaction at a wedding where the Governor puts his hands on her face and she felt uncomfortable, in that case was there a reason why you -- you did not advise the Governor to acknowledge that he may have made Ms. Ruch feel uncomfortable?

MR. ROSENBERG: Objection to the form. If you understand the question, you can answer it.

A. I don't really understand the question.

Q. I'll ask the question again.

So I understood you to be saying that with Charlotte Bennett the issue was that Charlotte Bennett may have felt uncomfortable and the advice you provided was that the Governor should acknowledge that he may have made her feel uncomfortable, when you were talking about Ms. Ruch's allegations you said the Governor put his hands on her face and she felt uncomfortable,

1 SMITH

2 so I'm asking -- I'm trying to understand what  
3 distinction you are drawing between Charlotte  
4 Bennett, who felt uncomfortable with her  
5 interactions with the Governor, and Ms. Ruch, who  
6 felt uncomfortable with her interaction with the  
7 Governor.

8 A. I think the Governor did say, you  
9 know, I'm sorry if I -- I made Anna Ruch feel  
10 uncomfortable. Again, I don't remember  
11 specifically, it was a while ago, but I think  
12 that there's a difference between an interaction  
13 with people at a wedding and interaction in the  
14 workplace. And -- and also, again, this is a  
15 traditional greeting that the Governor gives to  
16 people and it is a greeting that when I've seen  
17 him give to people, they've responded very warmly  
18 to, and it's a greeting that I've seen his father  
19 give to people, including myself, and that I  
20 found to be a very warm and endearing form of  
21 greeting someone.

22 So I found that it was -- you know,  
23 the allegation that there is something more to it  
24 is -- I just -- I did not think it was fair to --  
25 to characterize it as sexual in nature or to --

1 SMITH

2 for the media to lump it in with any of the other  
3 allegations.

4 Q. And in your understanding, who  
5 characterized Anna Ruch's interactions with the  
6 Governor as sexual in nature?

7 A. The New York Times story.

8 Q. In your understanding, is sexual  
9 harassment something that is necessarily sexual  
10 in nature?

11 MR. ROSENBERG: Objection.

12 Q. You can answer, Ms. Smith.

13 A. I think I've -- I mean, I've said to  
14 you what I have -- you know, I don't have a  
15 specific definition of -- of sexual harassment in  
16 my head.

17 Q. Right. But in your understanding, is  
18 sexual harassment necessarily sexual in nature,  
19 yes or no?

20 MR. ROSENBERG: Objection.

21 Q. You can answer. To be clear, it can  
22 be "yes," "no," or "I don't know."

23 A. I don't know. And I don't  
24 necessarily understand the question.

25 Q. Well, you said that it was not -- you

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SMITH

didn't think it was fair to characterize Ms. Ruch's interactions as sexual in your nature, so I'm just using your words. In your understanding, is sexual harassment something that is necessarily sexual in nature?

A. I don't know.

Q. So I think the next woman you mentioned was Anna Liss. What did you hear about Anna Liss's --

MR. ROSENBERG: Before we start that, at a reasonable point, it sounds like this might be, can we take a short break?

MS. MAINOO: At a reasonable point we can take a short break.

Q. Ms. Smith, would you like to take a break now?

A. Sure.

MS. MAINOO: Okay. Let's go off the record and we can talk about how much time.

MR. ROSENBERG: Yes.

THE VIDEOGRAPHER: This is the end of media unit number one. We are off the record at 11:46 a.m.

(A brief recess was taken.)

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SMITH

THE VIDEOGRAPHER: This is the beginning of media unit number two. We are on the record at 11:56 a.m.

Q. Ms. Smith, before we took a break, I was just starting to ask you about Anna Liss's allegations. What did you learn about Anna Liss's allegations against the Governor?

A. Through a Wall Street Journal story.

Q. How did that story come to your attention?

A. I think -- I don't know if we had gotten -- if I had heard about it before it had come up or maybe -- maybe I had. I don't remember hearing a ton about it and then I remember seeing the story online.

Q. And what did hear about Anna Liss's allegations?

A. Just whatever was in the story.

Q. Do you remember the nature of her allegations?

A. I think what -- what she said was that she had never -- I think what she had said was that the Governor had once given her a kiss on the cheek and called her, like, darling or

1 SMITH

2 sweetheart or something like that.

3 Q. And did you provide advice on how to  
4 respond to Ms. Liss's complaints?

5 A. I probably did.

6 Q. Do you remember what that advice was?

7 A. I don't.

8 Q. Did you have any discussions about  
9 Ms. Liss's allegations with anyone?

10 A. Yes. We did discuss it briefly,  
11 which -- as a team and I think the consensus was  
12 that the media was starting to maybe write  
13 about -- was -- was -- that this one wasn't  
14 particularly serious or worrying, but it was  
15 indicative of the media's desire to just write  
16 about anything that was coming their way.

17 Q. When you say the consensus was that  
18 this allegation wasn't particularly serious or  
19 worrying, what do you mean by that?

20 A. That we did not believe that the  
21 allegation was particularly serious or worrying,  
22 from a public relations standpoint.

23 Q. And what's the reason you didn't  
24 believe that the allegation was particularly  
25 serious or worrying from a public relations

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standpoint?

A. I think in a lot of workplaces, in most workplaces, giving somebody a kiss on the cheek is seen as a customary greeting.

Q. Ms. Smith, before you started advising -- before you started advising on the response to the sexual harassment allegations against the Governor and at any point over the course of your involvement in responding to the allegations, did you ever speak with anyone about the definition of sexual harassment?

A. I did not.

Q. Did you make any efforts to look into the definition of sexual harassment?

A. No.

Q. And when you say that in a lot of workplaces giving someone a kiss on the cheek is seen as a customary greeting, what is that based on?

A. My experience in a lot of workplaces.

Q. And in your experience in a lot of workplaces, do you give people kisses on the cheek?

A. I do.

1 SMITH

2 Q. And who have you given a kiss on the  
3 cheek in the workplace?

4 A. I mean, how many hours do we have?

5 Q. Maybe --

6 A. You --

7 Q. Have you kissed your subordinates on  
8 the cheek in the workplace?

9 A. I believe so, yes.

10 Q. Have your supervisors kissed you on  
11 the cheek in the workplace?

12 A. Yes.

13 Q. And what about on the lips, have you  
14 given your subordinates a kiss on the lips?

15 A. No.

16 Q. You also mentioned an anonymous  
17 complaintant -- or maybe more than one anonymous  
18 complaintant, when did you first hear about an  
19 anonymous complaintant?

20 A. There was -- in my head I think of it  
21 as Accuser No. 6 and that was -- that would have  
22 been I think around -- the Governor did -- I'm  
23 just going back. The Governor did a press  
24 conference on the 2nd, so it would have been like  
25 March 9th I remember or something like that.

1 SMITH

2 March 9th or 10th or 11th, somewhere in that  
3 week.

4 Q. And how is it that you remember this  
5 time period?

6 A. Because I remembered it was the week  
7 after the Governor had done -- had done his first  
8 press conference addressing the allegations.  
9 That -- sorry, that, and also it was -- that was  
10 the week when -- at the end of that week was when  
11 calls had begun for the Governor's resignation so  
12 it stands out, you know, chronologically more  
13 than, you know, others necessarily would.

14 Q. And what did you hear about the  
15 person you're referring to as Accuser No. 6?

16 A. That she was accusing the -- what I  
17 first heard is -- if my recollection is correct,  
18 we heard like two -- or maybe it was two  
19 different stories. I can't remember whether it  
20 was what I heard or two different stories, but  
21 the Times Union, which is the paper in Albany,  
22 had reached out to the Governor's Office to say  
23 that they were doing a story on an anonymous  
24 allegation that the Governor had forcibly touched  
25 a female staffer at the Governor's mansion.

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Q. How did you hear about this?

A. So I'm a little bit unclear of the -- so on the timing of it, whether it was first through the Times Union and then that we got -- that I heard sort of on the call that there had been -- that the anonymous accuser in question had, like, filed something internally. It's possible that I heard just before we'd gotten a call from the paper that -- that there was a staffer that had filed, like, some internal complaint about it. It was a pretty close proximity time wise. It would have been the same day or, you know, same timing. But I can't remember whether it was -- I heard about the news story first or the complaint first.

Q. What did you hear about the allegations from?

A. It was on a group call with that sort of core group that I mentioned.

Q. And do you remember which member of the core group spoke about the allegations?

A. I don't. It -- I don't.

Q. What discussion was there about the allegations?

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A. That -- one, that the Times Union -- the discussion that I remember, you know, really was one, that the Times Union was going to -- was going to print this, you know, there was a question of how do we respond, but also that, you know, this was an allegation of a different nature and more serious nature than what we had seen previously in the allegations.

Q. Was there any other discussion?

A. No. I mean, that's what -- that's all I can remember.

Q. Was there any discussion about the credibility of the allegations?

MR. ROSENBERG: Objection to the form, but you can answer.

A. What do you mean by credibility of the allegations?

Q. Was there any discussion about whether or not the allegations were true?

A. Yes. Because the Governor vehemently denied them and I -- you know, and -- and this was one where I don't think on the initial call but we had a follow-up call where the Governor was involved and he did vehemently deny these.

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And I think it was noted among the team that these were allegations of -- of a different nature, right, and it didn't really -- that they weren't really in line -- they didn't sort of fit the pattern of -- of what, you know, the other women had alleged in the workplace.

Q. How did the Governor vehemently deny the allegations?

A. He said they're not true.

Q. Did anyone ask him whether the allegations were true?

A. I believe so. I don't remember the exact contours of the conversation, but I do remember that the Governor -- Governor was very adamant that these were not true.

Q. Was there any discussion about investigating the allegations?

A. Can you elaborate on what you mean by investigating the allegations?

Q. Was there any discussion about doing anything, taking any steps to look into the allegations?

A. There was discussion about -- so okay, my recollection of the allegation was that

1 SMITH

2 she said that she had been alone with the  
3 Governor at the residence, at the mansion, and  
4 that this had happened, so to the extent we had a  
5 discussion about it, it was to look up, you know,  
6 what -- when she was at the -- when she was at  
7 the mansion just to see what day she would have  
8 been there.

9 Q. And did anyone look up when she was  
10 at the mansion?

11 A. I think so. I don't -- I don't  
12 remember -- I -- I think so. But I don't  
13 remember, like, ever hearing, like, the specific  
14 dates or anything like that. But I think at  
15 least there was maybe an effort to look it up.  
16 But you would have to double check with someone  
17 else on that.

18 Q. Who was involved in the discussion  
19 about looking up when the complainant was at the  
20 mansion?

21 A. Sort of the group that I mentioned.

22 Q. Did any members of the group say  
23 anything about trying to find out when the  
24 complainant was at the mansion?

25 A. No. It was just more was she there,

1 SMITH

2 when was she there.

3 Q. Was there any discussion about the  
4 identity of the complainant?

5 A. I did hear her name.

6 Q. And what did you hear?

7 A. What her -- what her name is?

8 Q. Correct.

9 A. That her name was Brittany Commisso.

10 Q. And do you know whether any member of  
11 the group confirmed that Brittany Commisso was at  
12 the mansion?

13 A. I can't remember that. So I can't  
14 remember that, but I do know that -- but what I  
15 can say is that -- that her job did involve her  
16 occasionally going over there.

17 Q. And how do you know that?

18 A. Because -- because that just came up  
19 in the conversation. I -- I just can't remember  
20 the specifics of it.

21 Q. What was your reaction to the  
22 allegations by this complainant?

23 A. Well, my initial allegation was that  
24 they were of a different nature and I was a  
25 little bit, you know, put off by the allegations,

1 SMITH

2 you know, given that she was alleging, you know,  
3 forcible physical conduct. That was my initial  
4 reaction.

5 Q. Did you have any other reaction,  
6 either then or later?

7 A. Well, after, you know, discussing it  
8 with the Governor and hearing him, you know, deny  
9 it, I -- you know, I -- and -- you know, I took  
10 him -- I take him at his word, I believe him and  
11 what he had to say about it, especially in light  
12 of, you know -- as someone who has seen a lot of  
13 how these sexual harassment or whatever you want  
14 to call -- sexual misconduct or these things play  
15 out was that this did seem at odds with all the  
16 allegations, it seemed like an anomaly, and it  
17 seemed like something that would have been  
18 extremely out of character for the Governor.

19 Q. Is it your view that the other  
20 allegations were in line with the Governor's  
21 character?

22 A. It -- it is -- in terms of the things  
23 that we've discussed, I think that what I would  
24 say is this, is that this incident seemed just  
25 wildly out of -- out of line with the Governor's

1 SMITH

2 character. The Governor, you know, greeting  
3 someone in public, you know, with putting his  
4 hands around a face, you know, you can find  
5 hundreds of photos of him doing that, so this did  
6 seem anomalous.

7 Q. So you mentioned Anna Ruch's  
8 allegations. What about Charlotte Bennett's  
9 allegations, are those consistent with the  
10 Governor's character?

11 A. I've never heard anything -- any  
12 allegations like that previously, but I -- you  
13 know, I would say that the Governor, and  
14 generally in politics, that the nature of the  
15 business, because it is, you know, sort of close  
16 knit, stressful, that it is pretty common for  
17 people to show an interest in other people's  
18 lives in a way that maybe you don't do at a law  
19 firm.

20 Q. So just focusing on Charlotte  
21 Bennett's allegations as they've been disclosed  
22 in The New York Times, in your mind are those on  
23 the line of anomalous or in line with the  
24 Governor's character?

25 MR. ROSENBERG: I'm going to object

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to the form.

Q. You can answer, Ms. Smith.

MR. ROSENBERG: If you can answer the question, you must answer.

A. No, I -- I don't understand the question.

Q. You said that the anonymous complainant, which you identified as Brittany Commisso's allegations, seemed like something that would have been extremely out of character for the Governor, so I'm asking with respect to the allegations that Charlotte Bennett has made publicly, would you say that those are out of character for the Governor or not out of character for the Governor?

A. I don't think that those are in character for the Governor.

Q. Okay.

A. I do think that what he was saying, which is that -- that his -- I think -- I'm trying to think about how to correctly say this. Is that his interpretation of them is just as having a conversation with staff about, you know, chitchat about personal lives is -- he's just

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SMITH

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someone who I think is friendly with his staff

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and tries to take an interest in staffers' lives.

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That's something he said at the time. You know,

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that's something he said publicly and that is --

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I think the interpretation of his conduct in that

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situation was different from how I would

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interpret it and different from how he

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interpreted it.

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Q. How would you interpret his conduct?

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A. Taking an interest -- taking an

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interest in the lives of people who work for him.

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Q. Charlotte Bennett alleges that the

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Governor asked her if she -- if age differences

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in relationships mattered, is that something that

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is out of character for the Governor in your

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view?

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A. I have never heard him ask that

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question.

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Q. Have you ever heard him ask similar

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questions?

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A. I don't know what similar questions

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to that would be.

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Q. Charlotte Bennett said that the

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Governor asked about whether she would have a

1 SMITH

2 relationship with an older person, an older man,  
3 is that something that you consider to be out of  
4 character for the Governor?

5 A. Again, I haven't heard him ask that  
6 question.

7 Q. And I'm asking --

8 A. I haven't heard --

9 Q. I'm asking whether you think that  
10 would be out of character for the Governor.

11 A. I -- again, I haven't heard him ask  
12 that question so I don't know -- I don't really  
13 know how to answer this beyond that.

14 Q. Okay. And you said that after  
15 discussing with the Governor and hearing him deny  
16 Brittany Commisso's allegations, you believed him  
17 and what he had to say about it, what did he have  
18 to say about Brittany Commisso's allegations?

19 A. That they were false and that -- I  
20 could just tell that he was -- he very strongly  
21 denied them.

22 Q. So he very strongly said Brittany  
23 Commisso's allegations were false, correct?

24 A. That this -- that this -- that this  
25 incident never happened, yes.

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Q. Have you ever heard Brittany  
Commisso's account of what she said happened?

A. Not beyond what was, you know,  
reported, just sort of briefly in news clips.

Q. Have you done anything to look into  
the truthfulness of Brittany Commisso's  
allegations other than hearing the Governor say  
they were false?

A. I saw the news clips, read the news  
clips.

Q. And you said that especially as  
someone who has seen how sexual misconduct  
allegations play out, you believe the Governor's  
denial, what did you mean by that?

A. Well, this was at odds with  
everything else that had been reported publicly  
and so it -- it seemed to stand outside of  
everything else.

Q. So does that mean you believe  
everything else that was reported publicly?

A. No, it does not.

Q. Just so I understand, is it -- is it  
right that -- am I correct in saying that you  
believe Ms. Commisso's allegations are false

1 SMITH

2 because the Governor says they're false and  
3 because her allegations are different from the  
4 other allegations against the Governor?

5 A. This is what I'm saying, is that I  
6 think these are two separate things, but in  
7 other -- in other cases, right, that we discussed  
8 earlier, the Governor did acknowledge that he --  
9 some of the conversations that he may have had  
10 with -- that -- with Charlotte Bennett, but that  
11 he believes that he did not mean to make her feel  
12 uncomfortable. With the Anna Ruch, obviously,  
13 you know, there's a photo of that and the  
14 Governor does acknowledge that that happened. It  
15 was a different situation with the sixth  
16 allegation.

17 Q. Understood that it was a different  
18 situation with the sixth allegation, what I'm  
19 trying to understand is whether you're concluding  
20 from the -- the difference in the allegations  
21 that the allegations are therefore false.

22 A. No. That's me just commenting on --  
23 as someone who has generally seen how these  
24 stories play out, that it seemed notable to me  
25 that this was so at variance with other things.

1 SMITH

2 Q. When you say as somebody who has seen  
3 how these stories play out, what are you  
4 referring to?

5 A. Someone who regularly reads the  
6 newspaper and watches TV news.

7 Q. And which stories are you referring  
8 to specifically?

9 A. Any -- I can't -- any sort of stories  
10 about sexual harassment. I can't pull them out  
11 of my head right now.

12 Q. You said that in addition to speaking  
13 with the Governor's staff about sexual harassment  
14 allegations, you also spoke directly with the  
15 Governor, what discussions did you have with the  
16 Governor or what discussions did you have  
17 involving the Governor directly about the sexual  
18 harassment allegations?

19 MR. ROSENBERG: Just as to No. 6 or  
20 any?

21 MS. MAINOO: More generally.

22 Q. Ms. Smith, if you have any of  
23 clarifications, you can let me know.

24 MS. MAINOO: Ben, this is not a  
25 deposition where you object or ask

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SMITH

clarifying questions or anything.

MR. ROSENBERG: We just want a clear record. Really it was -- it was a fair comment on your question.

Q. Ms. Smith, do you remember my question or should I ask it again?

A. Yes, you can ask it again.

Q. Do you need me to ask it again?

A. Yes, please.

MS. MAINOO: Ms. Moskowitz, can you repeat my question?

(The record is read back by the reporter.)

A. So when I spoke with the Governor directly one on one, it usually wasn't about the specifics of the allegations. As I mentioned, I'm someone who -- I worked for him in 2018, he is someone -- he would check in on me during the presidential campaign and so I would just try to check in on him during this, make sure he was doing okay.

That was -- those were most of the conversations that I had with him, which is how are you doing? How are you holding up? How's

1 SMITH

2 your family? How are your daughters? How are  
3 they handling all of this? Occasionally, you  
4 know, we may have discussed just, you know, in  
5 broad strokes some of this, but I would say that  
6 our conversations were generally just more  
7 checking in on a human level.

8 Q. What did the Governor say about the  
9 sexual harassment allegations, whether generally  
10 or specifically?

11 A. I can't remember from our private  
12 conversations.

13 Q. Excuse me?

14 A. I -- I can't remember from our  
15 private conversations.

16 Q. What do you mean when you say your  
17 private conversations?

18 A. Like when I spoke to him one on one  
19 versus when he was on a -- you know, a more  
20 general call. I can't -- I wouldn't be able to  
21 distinguish.

22 Q. I'm not asking you to distinguish.  
23 I'm not limiting my question to any one-on-one  
24 conversations. So what did the Governor say  
25 about sexual harassment allegations in any

1 SMITH

2 discussions in which he was involved?

3 A. Well, it depends what allegation  
4 you're discussing.

5 Q. Okay. Please elaborate on what he  
6 said about different allegations.

7 A. Well, again, it depends what  
8 allegation you're discussing.

9 Q. Okay. So I want to know about all of  
10 the allegations.

11 A. Okay. He said that the Lindsey  
12 Boylan accusations were false. And when it came  
13 to the Charlotte Bennett accusations, he -- he  
14 acknowledged that he had discussed with her, you  
15 know, that he had -- had asked her questions  
16 about her personal life outside of, sort of you  
17 know -- I think that's just the way to  
18 characterize it, that he had asked her questions  
19 about her life and had discussions about, you  
20 know, life in general and that he had never  
21 intended to make her feel uncomfortable.

22 I don't remember any discussion with  
23 him about Ana Liss.

24 I -- with -- when it came to -- I  
25 don't -- as I mentioned before, I can't remember

1 SMITH

2 if he was involved in the conversations about  
3 Karen Hinton. I don't remember him being  
4 involved so I can't remember that.

5 With Accuser No. 6, I remember him  
6 denying it vehemently.

7 Q. Did you ask him any questions in  
8 relation to his denials of the allegations?

9 A. Did I ask him any questions? I mean,  
10 I'm sure I did when we had calls, I just can't  
11 remember anything that I asked.

12 Q. I think earlier you mentioned that  
13 you had conversations or you were involved in  
14 discussions also involving Chris Cuomo about the  
15 sexual harassment allegations; is that correct?

16 A. Yes.

17 Q. What did Chris Cuomo say in those  
18 discussions?

19 A. In which discussions?

20 Q. In any discussions about sexual  
21 harassment allegations against Governor Cuomo.

22 A. I would say that he -- generally he  
23 offered a perspective -- you know, he was joining  
24 the calls obviously, you know, as the Governor's  
25 brother, but he offered the perspective of

1 SMITH

2 someone who understands sort of how the media  
3 works and how things are likely to be covered in  
4 the media and would offer advice from that --  
5 from that perspective. As to specific things  
6 that he said in the conversations, I can't  
7 remember.

8 Q. Do you remember the general tenor of  
9 the advice that he provided?

10 A. It was just generally this is how  
11 this might play in the media. You know, it was  
12 that sort of thing. It depends on -- it probably  
13 would have depended on -- on the case, but I  
14 can't remember a specific -- I can't remember,  
15 you know, the specific things that he was saying.

16 Q. Going back to Charlotte Bennett's  
17 allegations, Charlotte Bennett alleged that the  
18 Governor asked if she had ever had sex with older  
19 men, in your experience is that out of character  
20 with Governor Cuomo or in character with Governor  
21 Cuomo?

22 A. I've never heard him ask that  
23 question.

24 Q. So would you describe that allegation  
25 as an anomaly?

1 SMITH

2 A. I would say that that is out of  
3 character. But I've never heard him ask that  
4 question. Yeah, I've never heard him ask it.

5 Q. Charlotte Bennett also alleges that  
6 Governor Cuomo told her that he was open to  
7 relationships with women in their 20s, is that,  
8 in your understanding, out of character with  
9 Governor Cuomo?

10 A. I've -- so I've never heard him --  
11 I've never heard him say that, but with any of  
12 this stuff, I think it depends on the context.  
13 And there are contexts in which people can be  
14 joking at the workplace. But again, I haven't  
15 heard him ask that or say that.

16 Q. Would you consider that to be in  
17 character for the Governor?

18 A. I have not heard him say that, so I  
19 guess I would say that would not be in character.

20 Q. Okay. And then going back to the --  
21 what you described as the Governor's vehement  
22 denials of Brittany Commisso's allegations, what  
23 specifically did the Governor say?

24 A. "This did not happen." But I --  
25 beyond that, you know, we're talking early March

1 SMITH

2 so I can't remember the specifics.

3 Q. You said that at -- I think you  
4 recalled that around March you talked about being  
5 compensated for your advice when your involvement  
6 became more time consuming.

7 A. Mm-hmm.

8 Q. Please tell us more about that.

9 A. I just discussed with them -- I had  
10 said, "Oh, you know, this is taking up a lot of  
11 my time, it might make sense for me to be  
12 compensated."

13 Q. Who did you say that to?

14 A. Probably Poll -- Jeff Pollack,  
15 Melissa, maybe others. I can't remember. But --  
16 but I do remember specifically discussing it with  
17 those two.

18 Q. How did they respond?

19 A. They said, Yeah, that that would make  
20 sense, let us know.

21 Q. When you said this was taking up a  
22 lot of your time, how much of your time was it  
23 taking up?

24 A. You know, a number of hours a day.

25 Q. More than four hours a day?

1 SMITH

2 A. Well, it depends. There's some days  
3 where -- there's some days where it could be  
4 eight hours a day, ten hours a day, some days  
5 where it could be one hour day. It just depended  
6 on the days. But at the height of things there  
7 was sort of a nonstop avalanche of incoming, but  
8 you know, it's not like this -- it's not the type  
9 of job where you, like, stamp in and out.

10 Q. And at the point when you raised the  
11 topic of compensation, how many hours do you  
12 think you had spent in connection with the sexual  
13 harassment allegations?

14 A. Well, I can't remember when I raised  
15 the topic of compensation and -- so I can't  
16 remember how many hours I would have spent.

17 Q. You said Jeff Pollack and Melissa  
18 DeRosa had said that would make sense, so what  
19 happened next?

20 A. We sort of went back and forth on it.  
21 We never actually really reached a conclusion on  
22 it. I sort of dropped it in part -- I just --  
23 honestly I just sort of dropped it.

24 Q. What's the reason you dropped it?

25 A. The reasoning there was that even

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SMITH

though I had been spending a lot of time doing it is -- it's just politically, you know, if I wanted to be showing up on a report at the time giving paid advice versus unpaid advice.

Q. Sorry. I think I missed what you just said. Politically you did -- I --

A. Whether I wanted to show up on a campaign report at the time giving paid advice versus just offering the unpaid advice that I was giving.

Q. So you raised it as a question, did you not want to show up on a report as providing paid advice?

A. I went back and forth on it.

Q. And what's the reason you went back and forth on it?

A. Because I work in a business that's consumed by optics.

Q. Okay. And so how did that influence your decision-making here?

A. Because I work in a business that's consumed by optics and optics are important in politics and financially I could live without it, you know, it wasn't -- I could live without

1 SMITH

2 whatever the compensation was.

3 Q. Okay. So you said you work in a  
4 business that's consumed by optics, what do you  
5 mean by that?

6 A. So optics, it's, you know, how the  
7 public perceives things and the -- I guess I -- I  
8 don't understand this question is what I'm  
9 saying.

10 Q. So I had asked you what happened  
11 after you spoke with Jeff Pollack and Melissa  
12 DeRosa about getting compensated for spending  
13 some days eight or ten hours a day in connection  
14 with the response to the sexual harassment  
15 allegations and you said you went back and forth,  
16 you never reached a conclusion, and you dropped  
17 it and then I asked what was the reason you  
18 dropped it and I think your response was  
19 politically if I wanted to show up on a report as  
20 giving paid advice.

21 A. Yeah.

22 Q. And I'm trying to understand what you  
23 meant by that and your next response was you work  
24 in a business that's consumed by optics --

25 A. Yes.

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SMITH

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Q. -- and public perception. Were you concerned that the public would not -- were you concerned about a negative perception of your involvement in responding to sexual harassment allegations against Governor Cuomo?

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A. Well, that's sort of what the concept behind optics is, yes. I'd also just been sort of out of the public sphere for a very long time and so that was probably part of my -- is that I didn't have a huge interest to be, you know, necessarily in -- in the report, but yeah, it -- again, it was about the optics.

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Q. And what was your concern about the optics of publicly disclosing your involvement in responding to sexual harassment allegations against Governor Cuomo?

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A. It's not publicly -- it's not even just publicly disclosing. It's just being paid for it, which is that there was -- there were clearly -- there was clearly a lot of interest from his political opponents and everything that was going on and, you know, I didn't want to, you know, have people -- his political opponents seize on it and say, Oh, she's being paid X

1 SMITH

2 amount to do this for the Governor. Again, it  
3 really just has to do with the nature of politics  
4 and especially New York politics.

5 Q. And were you concerned about this  
6 from your perspective or the Governor's  
7 perspective or both?

8 A. My perspective.

9 Q. Okay. And how were you concerned  
10 about it from your own perspective?

11 A. The optics and the -- the nature of  
12 New York -- New York politics where, you know,  
13 the Governor has a lot of political opponents who  
14 jump over everything and I didn't relish the idea  
15 of being attacked in the New York Post for being  
16 paid to give advice to the Governor on this  
17 stuff.

18 Q. And was it your view that by  
19 providing your services for free you would be  
20 less vulnerable to attack?

21 A. I can't tell you that I -- I really  
22 thought it through at this level. As I said, it  
23 was a conversation I'd had with them a couple of  
24 times. I -- potentially that was maybe a part of  
25 my thinking on it. It was -- it was a few

1 SMITH

2 conversations that we'd had.

3 Q. Is there anyone else to whom you  
4 provide your services for free?

5 A. Yes.

6 Q. And on the same scale?

7 A. On the same scale... Yeah. I would  
8 say that I have provided -- and right beforehand  
9 I was providing advice to someone multiple hours  
10 a day, yeah, for free. It's not -- it's not  
11 uncommon. And I've also provided advice to, you  
12 know, people outside the political sphere for  
13 free. But yeah, no, it's not completely uncommon  
14 for me.

15 Q. Was there any discussion about the  
16 rate at which you -- the rate that you may charge  
17 for providing your advice?

18 A. Yeah. Usually I would charge like  
19 [REDACTED]  
20 [REDACTED] depending on -- depending on the  
21 work. I think that's probably what we discussed,  
22 was like somewhere in that range. I can't  
23 remember if it was for a month or for two weeks.

24 Q. And other than Melissa DeRosa and  
25 Jeff Pollack, do you remember discussing the

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financial arrangements with anyone?

A. It's possible that I did. I just remember those conversations with those two people, but it's entirely possible that I did.

Q. Did you have any discussions with the Governor about the financial arrangements?

A. Not about the financial arrangements. The Governor at some point had -- I think the Governor at some point toward all the end of this had -- had been -- had wanted to see if I would consider doing something formally for him, but the financial stuff didn't come up.

Q. Okay. What discussion did you have with the Governor about that?

A. He just wanted to see if I would, you know, formally -- because you know, it was his understanding that I wasn't, like, formally doing this, I was offering behind-the-scenes advice and he just wanted to see if I would formally do it, do something for him, and I said no because I -- by that time I had started to take on other commitments.

Q. When did that discussion happen?

A. Like mid March I think.

1 SMITH

2 Q. And you said the Governor wanted to  
3 see if you would formally do something for him,  
4 did you discuss what the something would be in  
5 any more detail?

6 A. Just sort of what I was doing before  
7 but on a more formal basis. Like, serving as a  
8 spoke -- as a spokesperson.

9 Q. How did the Governor ask if you would  
10 serve as his spokesperson?

11 A. He called me.

12 Q. Was there anyone else on the call?

13 A. I don't know. I can't remember.

14 Q. And what did the Governor say during  
15 that call?

16 A. "Would you consider coming on in a  
17 more formal role for me."

18 Q. And what did you say?

19 A. I said, "I'll think about it, but  
20 probably not, I've got other conflicts."

21 Q. Did either of you say anything else  
22 on that call?

23 A. I mean, it's very possible, but I  
24 can't remember. That was the main gist of the  
25 conversation.

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Q. Do you remember how long that call was?

A. Not particularly long.

Q. Did you have any other discussions about your taking on a formal role?

A. With the Governor?

Q. With the Governor or any member of his staff.

A. I remember that the Governor had -- and this I heard from Josh Vlasto -- is that Josh Vlasto had told me that the Governor had approached him about serving in a more formal role and so I think, you know, maybe Vlasto and I had discussed it and we both said that no, that we weren't going to do it. You know, he probably for different reasons, I can't remember what his thing was, but... That's the -- that's the only one that comes to mind right now.

Q. And do you remember if the Governor had -- did the Governor mention to you that he had also asked Josh Vlasto to take on a more formal role?

A. It's possible. I can't remember the specifics.

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Q. Did you speak with Melissa DeRosa about the request for you to take on a more formal role?

A. Yes, I did.

Q. What did you discuss?

A. That I wasn't going to -- that the Governor wanted me to do -- well, let me just -- let me back up for a second. I believe I informed her after the call, yes, that he had -- that he had requested it and that I was unlikely to do it.

Q. What did she say?

A. I can't remember.

Q. Did she try to encourage you to take on the more formal role?

A. Not that I recall.

Q. Did you have any other discussions with the Governor about taking on a more formal role?

A. Uh-uh. Just that one.

Q. And what were the other conflicts that you thought prevented you from doing that?

A. I had just taken on a client in New York City who had called on the Governor to

1 SMITH

2 resign, so I -- you know, it seemed a little bit  
3 awkward.

4 Q. Did you continue playing a behind-  
5 the-scenes role in connection with the sexual  
6 harassment allegations?

7 A. At that time, right around then, that  
8 was when -- after Accuser No. 6 is when -- it was  
9 sort of the convergence of two events. It was  
10 when the -- there were no real -- no more  
11 accusations coming out. I think there was one  
12 more that came out after that, which was a woman  
13 in like upstate New York or something at an event  
14 said the Governor hugged her or something like  
15 that. I -- I was very -- by that time I  
16 definitely pulled back, but it was the -- the  
17 daily sort of barrage of media incoming had  
18 stopped so there wasn't much use for me to be  
19 involved anymore.

20 But two, I was taking on other work.  
21 So one was that New York City race and I was  
22 in -- and I was, you know, looking to set up the  
23 other thing that I mentioned at the beginning of  
24 this call, which was the -- the independent  
25 expenditure. So it was just sort of a confluence

1 SMITH

2 of those two things, which is that the media  
3 interest in the Governor and all this stuff had  
4 sort of dropped off, there were no new  
5 accusations, and I was taking on other work.

6 Q. When's the last time you spoke with  
7 the Governor or a current or former member of the  
8 Executive Chamber about the sexual harassment  
9 allegations?

10 A. So the -- I saw the Governor about  
11 three weeks ago was the last time. They came up  
12 in broad strokes. We did not relitigate any of  
13 the specifics of it but -- and -- you know, but  
14 obviously there were references to the fact that  
15 these things were out there and it had happened  
16 in our conversation.

17 Q. Okay. That sounded really vague  
18 so --

19 A. It's vague.

20 Q. What happened three weeks ago?

21 A. I'm sorry, and -- but why is that  
22 vague?

23 MR. ROSENBERG: Well, just can you  
24 describe the conversation with the Governor  
25 from three weeks ago?

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THE WITNESS: Oh, yeah, yeah.

A. We -- I had a discussion with him just about sort of how things were going. He just wanted to do a check-in about how things were going, you know, how things were going politically, how his session had gone, you know, we did a review of -- of his -- Jeff -- Jeff Pollack was there, we did a review of his polling numbers.

So it was just sort of looking at the political state of play and it was a -- a broad -- it was a very broad look at the political state of play. And that was just a -- you know, a piece of it. It was really looking at all the major political issues that are out there right now and -- and the things that had come up during session.

Q. How did this discussion take place?

A. We had a meeting at his office in New York, in the city.

Q. At 633 Third Avenue?

A. Yes.

Q. Who was there?

A. Melissa DeRosa, Governor Cuomo, Jeff

1 SMITH

2 Pollack, and Charlie King.

3 Q. When did this meeting happen?

4 A. Like three weeks ago. I'd have to  
5 check the exact date but... Like three weeks ago  
6 or like two and a half weeks ago. It was -- I  
7 just can't remember the exact date. It was like  
8 the week -- it wasn't last week, it wasn't the  
9 week before, it was the week before that.

10 Q. So the week of the 21st of June?

11 A. No. It would have been before then.  
12 Before then.

13 Q. The week of June 14th?

14 A. It was either the week of June 7th or  
15 June 14th.

16 Q. How did this meeting come about?

17 A. Melissa reached out to set it up.

18 Q. Who did she reach out to?

19 A. To Jeff, me, and to Charlie.

20 Q. What did she say when she reached  
21 out?

22 A. "Are you guys free to meet this week  
23 at 633 Third Avenue?"

24 Q. How far in advance did she reach out?

25 A. I can't remember. I don't know.

1 SMITH

2 Maybe a week before, a few days before. Probably  
3 a week before. But I just can't remember.

4 Q. Did you discuss an agenda for the  
5 meeting beforehand?

6 A. No.

7 Q. Did you do anything to prepare for  
8 the meeting?

9 A. No.

10 Q. So I'd like to know the specific date  
11 of the meeting, and I appreciate you'll need to  
12 check that. How long was the meeting for?

13 A. It was about two hours.

14 Q. What did you --

15 A. But I was -- I was late to it, but it  
16 was about two hours.

17 Q. When you say it was about two hours,  
18 what do you mean considering that you were late  
19 for it?

20 A. Meaning that, like, the whole  
21 meeting -- the meeting as a whole was two hours,  
22 but like, you know, I wasn't there for all of it.

23 Q. How much of the meeting were you  
24 there for?

25 A. I probably missed the first 20 or so

1 SMITH

2 minutes. It was -- okay. It was a Thursday. I  
3 remember it was a Thursday. It was a Thursday.  
4 Wait, hold on. I think it was Thursday, the  
5 10th.

6 Q. Of June?

7 A. Yes.

8 Q. And what was discussed at the meeting  
9 while you were there?

10 A. It was -- the entire meeting was just  
11 a -- was it the -- most of the people was -- was  
12 a review of a poll deck that Jeff Pollack had put  
13 together on, you know -- had put together on  
14 public perceptions of the Governor and, you know,  
15 the budget that he'd recently passed as well as  
16 general feelings in the Democratic Party about,  
17 you know, issues like policing Israel Palestine,  
18 capitalism, socialism, and the Governor's  
19 favorability numbers, unfavorability numbers,  
20 that sort of stuff.

21 Q. Was there any discussion about the  
22 sexual harassment allegations?

23 A. And there was a polling section.  
24 Sorry, I was about to add that. There was a  
25 polling section that looked at whether it had --

1 SMITH

2 how it had impacted -- how a variety of different  
3 things had impacted the Governor's numbers, and  
4 that was one, and what the public perception was  
5 of that.

6 Q. Other than the discussion about the  
7 potential polling impact of the sexual harassment  
8 allegations, was there any other discussion about  
9 the sexual harassment allegations, including the  
10 investigations of them?

11 A. The discussion that we had was about  
12 just politically going forward how -- you know,  
13 because his numbers had taken a hit -- had taken  
14 a hit from some of the allegations with the  
15 public because of the media coverage, which is,  
16 you know, realistically how -- you know, how much  
17 is recoverable, whether it's not recoverable,  
18 and -- and sort of just like how much -- how much  
19 would be movable, you know, going forward.

20 Q. Was there any other discussion about  
21 the sexual harassment allegations, including the  
22 investigation?

23 A. The fact that -- the fact that the  
24 investigation was happening was -- was discussed  
25 and that there would be a report coming out was

1 SMITH

2 discussed and that a report could have political  
3 ramifications for the Governor, but none of the  
4 substance of, you know, the investigation or the  
5 allegations was discussed. You know, we didn't  
6 go and relitigate any of the stuff, you know,  
7 that had come out in February or March.

8 Q. And when you say you didn't go and  
9 relitigate any of the allegations, what do you  
10 mean by that?

11 A. What do I mean by that?

12 Q. Correct.

13 A. Is that what you asked?

14 Q. Yes.

15 A. Is that we were looking at things  
16 from the political perspective, which is are his  
17 numbers movable, you know, after these  
18 allegations is he able to improve his numbers  
19 after these allegations, how did these  
20 allegations affect his numbers, you know, and  
21 will the -- will an investigation and all that,  
22 will that ultimately affect his numbers. And so  
23 it was a -- it was a political conversation.

24 Q. And before that meeting three weeks  
25 ago or so, before that meeting on or around June

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10th --

A. I'm sorry, I don't mean to interrupt, but I can go -- when we're off camera, I can double check the dates.

Q. Great. Thank you.

Before that meeting, when was the last time that you had a discussion with the Governor or any members -- any current or former members of his staff about the sexual harassment allegations?

A. So two weeks prior to that we had had a meeting with that same group in the Governor's -- in 633 Third Avenue. That was -- there was no polling presentation at that one. And again, it was just a check-in about how we thought the legislative session was going, you know, how the budget had gone on, issues -- you know, sort of thorny political issues that could come up, we discussed the mayoral race.

Again, we discussed the sexual harassment stuff in the context of the political ramifications in terms of how it -- and that was before we had the polling information, so just, you know, the sense of what -- how much of a hit

1 SMITH

2 he had taken with the public on these numbers.

3 I -- how much he had taken -- how much of a hit  
4 he had taken with the public in his numbers  
5 because of the allegations.

6 Q. Did you discuss anything else in  
7 relation to the allegations or the investigation?

8 A. As with the other meeting, you know,  
9 the fact that there was an investigation  
10 happening, that there would be a report that  
11 would be public, and that it could have political  
12 ramifications.

13 Q. And before that meeting, when was the  
14 last time you had any discussion touching on the  
15 sexual harassment allegations with the Governor  
16 or current or former members of his staff?

17 A. With the Governor, it wouldn't have  
18 been since March -- yeah, it wouldn't have been  
19 since like mid March. With staff, I mean, we  
20 probably just had casual -- like casual, one-off  
21 conversations but nothing -- nothing memorable.  
22 I really, you know -- the sort of group  
23 conversations that I discussed before that we'd  
24 had in February and March really just sort of  
25 petered off in I would say mid to late March

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because that was when the allegations petered off and, you know, for me personally is when I just had other obligations that I had to attend to, other professional obligations.

So you know, I'm sure I had conversations with members of the staff, you know, I consider myself a personal friend of Melissa DeRosa's, but I -- you know, I can't remember any -- anything specific, any specific conversations that we had about it. There was also no new information that came out so really from that point on it was more just looking at how it was playing in the public sphere.

So you know, we'd generally be in contact like about polls that would come out, X number of people feel this way about the Governor because of the allegations, X number of people say the Governor should resign because of these allegations. So it was really looking at it from the broad, you know, political perspective.

Q. Did you ever speak with Melissa DeRosa about receiving subpoenas in connection with our investigation?

A. Yes. I mean, I told her -- when I

1 SMITH

2 got the first subpoena, I told her that I had  
3 been subpoenaed.

4 Q. What did you discuss?

5 A. That I had been subpoenaed.

6 Q. Did you discuss anything else?

7 A. Not really. I -- with Melissa, no.  
8 I -- I also talked with -- with Steve Cohen when  
9 I received that about -- you know, to let him  
10 know I had been subpoenaed and I -- I inquired  
11 with him about the costs of my legal costs given  
12 how much time I'd spent, you know, helping, you  
13 know, the Governor on the front end and I hadn't  
14 asked for compensation and this is obviously a  
15 pretty costly process for someone. And after I  
16 had that conversation with Steve, I did mention  
17 in a -- in a subsequent conversation with Melissa  
18 that I had discussed that with Steve.

19 Q. And what did Steve say in your  
20 discussion about getting your legal fees  
21 compensated?

22 A. That he would look into it.

23 Q. And did he?

24 A. Yes.

25 Q. Okay. What did he tell you

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subsequently?

A. That the campaign is going to reimburse me for my legal costs here.

Q. And I think you mentioned -- well, I believe you mentioned earlier that you had dropped the discussion about compensation, so to be clear, have you received compensation from anyone for any advice that you've given to the Governor or the Executive Chamber in connection with the sexual harassment allegations?

A. No.

Q. And what about in connection with the nursing home allegations?

A. No.

Q. And did Steve tell you how it is that the campaign is going to reimburse you for your legal fees?

A. No.

Q. Based on the interactions that you have had with the Governor and Melissa DeRosa, is it your understanding that Melissa DeRosa speaks for the Governor?

A. Yes. In the sense that we use in politics that, you know -- that -- in politics,

1 SMITH

2 right, with certain politicians, they have aides  
3 that when you're talking to them, you know, it's  
4 sort of assumed that they're speaking on behalf  
5 of the person that they, you know, are working  
6 for. You know, every sort of politician has  
7 people like that. That person can change over  
8 time.

9 It's sort of a stock sort of phrase,  
10 it's sort of a cliché in politics to say, you  
11 know, this person, when they speak, they're  
12 speaking for the Governor, they're speaking for  
13 the senator, they're speaking for the President.  
14 It doesn't mean that literally she's always  
15 speaking, you know, for the Governor, but she is  
16 seen as someone who is close with him and has his  
17 trust and has his ear.

18 Q. Have you ever worked with, worked  
19 for, or provided services to Governor Cuomo's  
20 Executive Chamber?

21 A. No.

22 Q. Before December 2020, were you aware  
23 of any allegations of potential sexual harassment  
24 against Andrew Cuomo?

25 A. No.

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Q. Before you spoke with Governor Cuomo's staff about Lindsey Boylan's sexual harassment allegations, had you discussed with anyone Lindsey Boylan's complaints about the work environment in the Executive Chamber?

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A. I remember like a month earlier she had tweeted something about it being, like, a toxic work environment and there being, like, some conversations around that, but none of it was -- but I -- you know, and I think that was like -- it was like maybe with Staffer #6, Dani, Melissa, but it was just -- I think my recollection is Lindsey had tweeted something about it being, like, a toxic work environment or something.

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Q. And what conversations were had with Staffer #6 Dani, and Melissa and any other current or former members of the Chamber about Lindsey Boylan's complaints?

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A. Just, you know, that she had made them. I can't really remember the conversations around that time. I remember the ones around sexual harassment. That was a while ago. I mean, there must have been before then, but I

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just can't remember the specifics of it.

Q. And do you remember if there was any discussion about responding to Lindsey Boylan's complaints about the work environment in the Chamber?

A. I'm sure there was. They must have had to respond. I just don't remember.

Q. Do you remember providing any advice about responding to Lindsey Boylan's complaints about the work environment in the Chamber?

A. If they asked me for advice, I would have given it, but I don't remember. I don't remember that particular -- any of the specifics of those conversations.

MS. MAINOO: Let's put up tab 9.

MR. ROSENBERG: So should we use -- or may we use the books that you gave us --

MS. MAINOO: Yes.

MR. ROSENBERG: -- to open to tab 9?

MS. MAINOO: Absolutely.

MR. ROSENBERG: Your numbers are the same as ours, I take it. Okay.

(Tweets were marked Exhibit 3 for identification, as of this date.)

1 SMITH

2 Q. So tab 9 are tweets from Lindsey  
3 Boylan on December 13th, including her tweets  
4 about sexual harassment allegations. Ms. Smith,  
5 earlier you had referred to tweets by Lindsey  
6 Boylan about the circumstances under which she  
7 left the Executive Chamber, am I right?

8 A. I referred to tweets about, like,  
9 sexual harassment and how she'd left the office.  
10 I believe so.

11 Q. Right. Can you point me to the  
12 tweets you were referring to about how she left  
13 the office?

14 MR. ROSENBERG: The document goes on  
15 to this page as well.

16 A. So I don't -- I don't see them in  
17 here.

18 Q. Okay. We have other tweets from  
19 Ms. Boylan.

20 MS. MAINOO: So let's go to tab 8.  
21 (Tweets were marked Exhibit 4 for  
22 identification, as of this date.)

23 Q. And let me know if you see the tweets  
24 you were referring to.

25 A. Yeah, that's -- that's the one I was

1 SMITH

2 referring to. Can you give me a second to read  
3 through these though?

4 Q. Sure.

5 A. Okay.

6 Q. So which tweets were you referring to  
7 earlier?

8 A. Well, I think I'm -- I mean, it -- I  
9 think I sort of was maybe conflating the December  
10 5th and December 13th, but the -- the tweets  
11 about -- where were these? Tab 9. So these were  
12 before December. Is the tweet about, "I tried to  
13 quit three times before it stuck," that tweet,  
14 and then also, "Yes, I did not sign whatever they  
15 told me to sign when I left, no."

16 Q. And what did you understand about the  
17 truthfulness of those tweets?

18 A. Was what I had been told, which is  
19 that that was not the condition -- that those  
20 were not the conditions under which she left the  
21 office and that my recollection was -- and --  
22 my -- was that there was something off about the  
23 NDA thing. Or whatever she said here, which is  
24 sign -- I -- because here it sounds like she's  
25 trying to imply that there's an NDA. But I do

1 SMITH

2 remember that -- that in the conversation it was  
3 about the -- the tried to quit three times before  
4 it stuck.

5 Q. And so were you told that no, Lindsey  
6 Boylan did not try to quit three times before it  
7 stuck?

8 A. I can't remember what specifically I  
9 was told. You know, it was all honestly a little  
10 bit complicated. But the -- but I was told that  
11 what she was saying was not true.

12 Q. And were you told in what respect  
13 what she was saying was not true?

14 A. That the conditions -- and again, I  
15 just can't remember -- it -- it's a little -- I  
16 can't remember the specifics, but that what she  
17 was describing as the conditions for how she  
18 left, that that was not true, the -- so --

19 Q. And what are you seeing in these  
20 tweets about the conditions you say she's  
21 describing?

22 A. "Quit three times" and the "did not  
23 sign whatever they told me to sign when I left."

24 Q. So if it were the case that Lindsey  
25 Boylan had actually tried to quit three times,

1 SMITH

2 then would that statement be true?

3 A. It depends on the context. If the --  
4 because I think the context is generally really  
5 important when you're talking about how -- how  
6 you -- how you part ways with a job. So I  
7 don't -- I can't remember the exact specifics of  
8 what eventually came out, but my recollection was  
9 being told that this was not true, that -- that  
10 the Governor's Office had information -- the  
11 record in the Governor's Office showed that this  
12 was -- did not comport with reality.

13 Q. And who was involved in the  
14 discussion with you about Lindsey Boylan's  
15 statement that she tried to quit three times  
16 before it stuck not comporting with reality?

17 A. So as I said earlier, my recollection  
18 was that it was -- was Melissa, Dani, and Rich,  
19 like some combination of those three.

20 Q. Was the Governor involved in any of  
21 those discussions?

22 A. No.

23 Q. And did you have discussions with  
24 Melissa, Dani, Rich, or anyone else from the  
25 Executive Chamber about disclosing information

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SMITH

about Lindsey Boylan's employment at the Executive Chamber to the press?

A. Yes. As I stated earlier, they had like -- so they had done like a gut check with me on a statement and said that, you know, they were going to, you know -- to clarify this, the conditions under which, you know, Lindsey Boylan actually left. So yes.

Q. And what did -- how did they say they were going to clarify the statement about the conditions under which Lindsey Boylan actually left?

A. They were going to share the employment record that showed that -- the actual conditions under which she left and -- employment record, personnel record.

Q. And did you have any understanding of whether the Governor had approved the disclosure of Ms. Boylan's employment records to the press?

A. I don't recall the Governor's -- I don't recall the Governor coming up in that conversation.

Q. But did you have any understanding of whether the Governor approved this disclosure of

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SMITH

Ms. Boylan's employment records?

A. I did not.

Q. Did you ask whether the Governor approved the disclosure of Lindsey Boylan's employment records?

A. I did not.

Q. Is there a reason you did not ask?

A. I didn't even think -- I didn't think to ask. Again -- and let me just give some clarification. I was not -- so in February, March I was very much involved, right, day to day speaking with them. I was called here as just a gut check. I was not involved in day-to-day conversations with them about all this. I was not on, you know, super long phone calls or anything like that. So my involvement here was much more peripheral than it would be in -- in February or March.

Q. And if your involvement had been less peripheral, is there -- would you have approached the situation differently?

A. Not necessarily. But I might have -- it was -- again, I think what I'm trying to do is to say that this was a more just quick

1 SMITH

2 conversation, like a -- when I use the term gut  
3 check, it's -- it's -- to me what a gut check  
4 means is when, you know, someone has made a  
5 decision or has largely come up with a plan and  
6 they just sort of like oh, well, let me call  
7 someone else just to make sure that I'm not,  
8 like, crazy, right. They're not calling me to go  
9 through every single step of something or, you  
10 know, every single part of a decision that's been  
11 made. And that is my sort of recollection of  
12 what the nature of this conversation was.

13 Q. And who did you understand made the  
14 decision to disclose Lindsey Boylan's employment  
15 records?

16 A. I don't know. I just know that the  
17 decision had been made.

18 Q. You say you know that the decision  
19 had been made, did you associate the decision  
20 with anyone?

21 A. Uh-uh, no.

22 Q. Did you assume that the Governor  
23 approved of the decision?

24 A. No. The Governor is not -- is not  
25 always involved in his press decisions, so I

1 SMITH

2 wouldn't make an assumption one way or the other.  
3 And by his press decisions, I mean the decisions  
4 made of his team and how they're going to  
5 interact with the press.

6 Q. And which members of the team did you  
7 understand had made the decision to disclose  
8 Lindsey Boylan's employment records?

9 A. So just to go back to what I said  
10 before, I didn't have that level of discussion  
11 with them. It was --

12 Q. Please go ahead.

13 A. Yes. Yes. I spoke with -- to my  
14 recollection -- and I can't remember the exact  
15 sequencing, whether these were group calls, but I  
16 remember speaking with, to my recollection, some  
17 combination of Melissa, Rich, Dani, and that they  
18 did a gut check. Who specifically did the gut  
19 check, if I recall correctly, it was Melissa who  
20 did a gut check, but it was more in a general  
21 sense of this is a statement we're going to give  
22 and, you know, this is how we're going to back it  
23 up.

24 Q. And what did you understand about how  
25 they were going to back it up?

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SMITH

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A. Just as I said before, that they were going to provide the facts on the nature of how Lindsey's employment with the Governor's Office had come to an end.

6

Q. By showing Lindsey's employment records, correct?

8

A. Yes.

9

Q. To whom?

10

A. With members of the press that were writing on -- on tweets about -- tweets of Lindsey's allegations.

13

Q. Did you understand that Melissa DeRosa was involved in the decision to show Lindsey's employment records to members of the press?

17

A. What do you mean by "involved in the decision"?

19

Q. Melissa DeRosa spoke with you to get a gut check about the decision to provide a statement and back up the statement by showing Lindsey Boylan's employment records to members of the press, correct?

24

A. She was a part of the conversations, yeah. I -- and again, as I, you know, said

25

1 SMITH

2 before and -- and I'm saying this out of caution  
3 because I don't want to mistakenly misrepresent  
4 any conversations I had, that I spoke with some  
5 combination of those three that day and was told  
6 about this plan. My recollection was that  
7 Melissa was a part of those conversations and  
8 that she may have been the one to say it, but  
9 like, you know, I'm doing the best I can here  
10 with something that was not a particularly  
11 memorable, you know, experience in my life.

12 Q. Is it fair to say that you understood  
13 that Melissa DeRosa was part of the decision to  
14 show Lindsey Boylan's employment records to  
15 members of the press?

16 A. She was part of the decision to share  
17 them with the press... Yes.

18 Q. Did anyone say anything about whether  
19 showing Lindsey Boylan's employment records to  
20 members of the press could be considered  
21 retaliation?

22 A. No.

23 Q. Did you consider whether showing  
24 Lindsey Boylan's employment records to members of  
25 the press can be considered retaliation?

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SMITH

A. Sorry, did I consider whether it could be retaliation?

Q. That was the question.

A. No. That -- I didn't consider that.

Q. You referenced a statement, did you ever see the statement that Melissa DeRosa mentioned to you?

A. She may have -- she may have sent it to me or just verbally said it over the phone. My recollection was that they said something very, very brief. But I -- I cannot remember the specifics, again.

Q. Do you remember discussing the statement with anyone other than Melissa DeRosa?

A. Going back to what I said before and adding the caveat again that, you know, this was not a particularly memorable experience in my life, I do remember some sort of combination of Melissa, Rich, and Dani. It's possible that there was another person involved, it's possible that not all three of those were involved, but that is what my -- that is what my recollection is.

Q. And what do you remember about the

1 SMITH

2 statement?

3 A. I -- the one thing I remember is it  
4 said something about an allegation made on  
5 Twitter. And again, I could be wrong. And that  
6 I had said take out the on Twitter part because,  
7 like, the on Twitter thing -- Twitter doesn't  
8 matter, right, Twitter's like as formal as doing  
9 something else. That's really all I remember.

10 Q. So did you provide comments on the  
11 draft statement?

12 A. Verbally I think I did.

13 Q. Did you want to be involved in  
14 commenting on the draft statement?

15 A. What -- what do you mean involved  
16 in -- in commenting on the draft statement?

17 Q. Did you want to comment on the draft  
18 statement?

19 A. Want to in what sense?

20 Q. You commented on the draft statement,  
21 is that something you wanted to do?

22 A. If I -- I guess I don't understand  
23 what the question is.

24 Q. Did you consider not commenting on  
25 the draft statement?

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SMITH

A. I -- I don't think I considered it either way.

Q. You were called in December 2020 for your advice on the response to the sexual harassment allegations against Governor Cuomo, correct?

A. Yes.

Q. Did you want to be involved in providing advice on the response to sexual harassment allegations against Governor Cuomo?

A. I generally want to be helpful to people I consider friends and people who are going -- you know, facing serious allegations, so, you know, I don't think about want or not want. So it's -- the wording of your con -- of your question is sort of throwing me off, I guess. I don't know that want is a word that I -- that's -- that's sort of what I'm stuck on but --

Q. Did you consider --

A. -- I generally want -- I would want to help them.

Q. Did you consider it your duty or your responsibility or your obligation to help respond

1 SMITH

2 to the allegations of sexual harassment against  
3 Governor Cuomo?

4 A. I mean --

5 MR. ROSENBERG: If you can answer,  
6 answer.

7 A. I guess I'm -- I'm still -- I'm -- I  
8 just don't understand what you're asking here.

9 Q. When you were called to provide  
10 advice, did you think about saying, "No, I can't  
11 do this"?

12 A. I don't -- I don't think so, but I --  
13 I can't remember what my internal thought process  
14 was, you know, when they called me.

15 Q. At any point in helping behind the  
16 scenes to respond to sexual harassment  
17 allegations against Governor Cuomo, did you  
18 consider saying that, no, you did not want to  
19 help?

20 A. Yes. There were -- I -- there were  
21 times when certainly I'm sure I felt that way.  
22 It's exhausting when you're -- when you're  
23 helping people out who are getting like 30 media  
24 requests a day soliciting your advice and you've  
25 got other things going on. You know, I'm --

1 SMITH

2 that I think would be a natural reaction and  
3 definitely one that I would have, yeah, and  
4 definitely one that I did have. Because again,  
5 it's exhausting, you know, on a -- on an  
6 emotional and just time consumption level.

7 Q. So what were the reasons that you did  
8 help to respond to the allegations of sexual  
9 harassment against Governor Cuomo?

10 A. The reasons is that I am friends with  
11 Melissa DeRosa, I have great respect for Governor  
12 Cuomo, I consider him a friend, I consider him a  
13 mentor, I've worked in politics for a long time,  
14 I understand -- I know that in politics people  
15 are there for you in your highest moments and  
16 abandon you in your lowest moments and I don't  
17 want to be one of those people.

18 I have been someone that has been a  
19 subject of negative press, who has seen what --  
20 who knows what it feels like when people abandon  
21 you and what it feels like when people stand by  
22 you and offer you advice in these tough moments,  
23 so even if it's not necessarily something I feel  
24 like doing or want to do, you know, when, you  
25 know, maybe I'd rather be out having Aperol

1 SMITH

2 Spritzes with friends, it is something that it's  
3 important to me to do on a personal level.

4 Q. And on a professional level was it  
5 also important for you to be involved?

6 A. To me it's more on a -- on a personal  
7 level.

8 Q. Was it also important to you on a  
9 professional level?

10 A. I mean, to the extent that the  
11 Governor is someone I work for, wanted to see  
12 succeed, yes.

13 Q. So you mentioned a statement that you  
14 described as a brief statement regarding Lindsey  
15 Boylan's allegations, did you ever see any other  
16 statements regarding the response to Lindsey  
17 Boylan's allegations?

18 A. Just whatever -- just whatever was in  
19 the press. You know, whatever was in the press  
20 about -- about the allegations.

21 Q. Are you aware of a longer draft  
22 letter or op-ed responding to Ms. Boylan's  
23 allegations?

24 A. I found out about that in March when  
25 it was run about in the media.

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SMITH

Q. And other than what you found out about through media reports, did you learn anything about a longer letter or op-ed responding to Ms. Boylan's allegations?

A. No. That was the first time I'd heard about it. And I didn't hear anything more about it really at the time, at the time in March, but I -- I had had no knowledge about it until, you know, it had popped up in the Wall Street Journal or wherever it popped up.

Q. And as to the draft statement you did comment on, do you know who drafted it?

A. No, no idea.

Q. How did you first become involved in the discussions about that statement?

A. We're talking about with Lindsey Boylan in December?

Q. Correct.

A. You know, as I mentioned, I can't remember the exact sequencing. I just remember, as I recall conversations with some combination of Melissa, Dani, and Rich, again, it could have been another person involved, maybe not all three of a them. It was not a memorable experience in

1 SMITH

2 my life and -- but no, I -- there was no  
3 discussion of -- that I can recall of who drafted  
4 it.

5 Q. Did you see a copy of that draft  
6 statement?

7 A. You know, as I said before,, I can't  
8 remember if I -- if it was, like, texted to me or  
9 something like that or if it was just read to me  
10 over the phone.

11 Q. Other than the discussions that  
12 you've referenced, did you discuss that draft  
13 statement with anyone else?

14 A. Not that I'm aware of.

15 Q. Did you send it to anyone?

16 A. Not that I'm aware of. Because I  
17 also can't remember whether it was verbally or  
18 written -- or it was written down.

19 Q. And do you have any understanding of  
20 the Governor's involvement with that statement?

21 A. I do not.

22 Q. Did it matter to you whether any of  
23 the sexual harassment allegations against the  
24 Governor were true or not?

25 MR. ROSENBERG: Objection.

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SMITH

Q. You can answer, Ms. Smith.

THE WITNESS: Well, you objected.

MR. ROSENBERG: Yes. I think there are problems with the question, but that's -- if you can answer the question, you should answer the question.

A. I don't believe that any of the allegations against the Governor were true.

Q. I think earlier when you were talking about Charlotte Bennett's allegations, you suggested that there was no question about her credibility, what did you mean by that?

A. That -- I'm sorry, what -- that there were no questions about her credibility? Is that what -- and what I meant by that?

Q. That's what I understood. Are you saying that you don't think Charlotte Bennett is telling the truth about her allegations?

A. What I'm saying is that I don't think the Governor intended -- as he said, that the Governor intended to make her feel uncomfortable. I don't think that he -- I don't think he intended to make her feel uncomfortable with that line of conversation -- with -- with any line of

1 SMITH

2 conversation.

3 Do I know what the verbatim  
4 conversations that they had were? I do not. I  
5 know -- I don't know that everything that's been  
6 reported was a verbatim conversation, but I guess  
7 that's something that we'll learn, you know,  
8 coming out through the report.

9 Q. So I guess I'll ask my question more  
10 specifically: does it matter to you whether or  
11 not Charlotte Bennett's allegations, regardless  
12 of what the Governor intended, which she has not  
13 made allegations about, does it matter to you  
14 whether or not Charlotte Bennett's allegations  
15 against the Governor are true?

16 A. Does it matter that -- that what is  
17 being reported and that what she's saying  
18 happened are true?

19 Q. That's -- that's the question, yes.  
20 Does it matter to you?

21 A. I mean, the truth -- this is --

22 MR. ROSENBERG: What do you mean does  
23 it matter?

24 A. I don't even --

25 MR. ROSENBERG: What does it mean?

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SMITH

Matter in what sense?

MS. MAINOO: Ben, I'm not asking you the question.

Q. Ms. Smith --

MR. ROSENBERG: Come on. It's an unfair and too broad a question.

Q. Ms. Smith, if you need me to ask me the question in a different way, I can ask it.

A. Yeah. Okay. Yes. Yeah, let's go. Another version would be okay.

Q. Okay. In helping to respond to the sexual harassment allegations against the Governor that Ms. Bennett has made, did it matter to you whether or not what she was saying was true?

A. Matter to -- it is my understanding that -- that there was a difference of opinion about the intent of the comments made and that as the Governor has stated, that the truth will come out about things that were said, and that his understanding is that his comments were not meant in a way to make her feel uncomfortable. So I -- what matters to me is -- what matters to me is whether I believed -- whether I believed the

1 SMITH

2 Governor acted in an inappropriate manner in the  
3 workplace and I do not believe he did that.

4 Q. So to try to summarize, you do not  
5 believe that the Governor acted in an  
6 inappropriate way in the workplace, is that what  
7 you're saying?

8 MR. ROSENBERG: What was the end of  
9 the question? Can you -- I couldn't hear --  
10 we -- I could not hear the question.

11 Q. Ms. Smith, do you need me to repeat  
12 the question?

13 A. Yes, please.

14 MS. MAINOO: Ms. Moskowitz, can you  
15 do that?

16 (The record is read back by the  
17 reporter.)

18 A. Let me -- let me rephrase that  
19 slightly because I -- I think what the Governor  
20 did say was that if he made anyone feel  
21 uncomfortable or -- now -- that he regrets that  
22 and that he now knows that, you know, some of  
23 these comments could be seen as inappropriate.  
24 Yeah, what would matter to me is the Governor's  
25 intent in all of this and whether or not he made

1 SMITH

2 someone feel uncomfortable.

3 Look, all these things depend on  
4 context and I don't believe that the Governor had  
5 the intent of making people feel uncomfortable or  
6 making, you know, comments that would be  
7 perceived as inappropriate.

8 Q. So I think I just heard you say, but  
9 let me know if I misheard you, that what would  
10 matter to you is if the Governor made anyone feel  
11 uncomfortable, did I hear that correctly?

12 A. No, you did not hear that correctly.

13 Q. Okay. So can you explain to me in  
14 your words then what would matter to you as you  
15 were just saying it?

16 A. Can I ask -- so I have a question,  
17 what is -- can I -- can I ask a question here?

18 MR. ROSENBERG: If you need a  
19 clarification, you can do that.

20 A. I don't even understand these  
21 questions. Does it matter... So what -- no.  
22 What I said was what matters to me is the  
23 Governor's intent. And the Governor, as he said,  
24 and I take the Governor at his word, is that he  
25 did not intend to make anyone feel uncomfortable

1 SMITH

2 and he did not intend to be inappropriate in --  
3 in -- in the comments that he made. And I feel  
4 like we're -- I -- I feel like I need a bathroom  
5 break and we're going in circles a little bit so  
6 can we take a break?

7 Q. Happy to take a break.

8 MR. ROSENBERG: Okay.

9 THE VIDEOGRAPHER: This is the end of  
10 media post number two. We are off the  
11 record at 1:37 p.m.

12 (A lunch recess was taken.)

13 THE VIDEOGRAPHER: This is the  
14 beginning of media unit No. three. We are  
15 on the record at 2:16 p.m.

16 Q. Let's put up tab 14 and we'll mark  
17 that as an exhibit.

18 MR. ROSENBERG: 14?

19 MS. MAINOO: Correct.

20 (Chat beginning with Bates No. NYAGV  
21 003146 was marked Exhibit 5 for  
22 identification, as of this date.)

23 Q. Okay. Let's look at the first page  
24 and the next page.

25 MR. ROSENBERG: I didn't realize it's

1 SMITH

2 the wrong exhibit. I'm sorry.

3 Q. Let's go to the page with the number  
4 3164 on the bottom. So the statement --

5 A. Can I read through -- do I read  
6 through each of them?

7 Q. You can read through each of them for  
8 context if you want. I'm going to ask you about  
9 three lines in this exchange.

10 A. Okay.

11 Q. And the lines I'm going to ask you  
12 about are Lever's statement at the beginning of  
13 that, "The statement they have for Lindsey is  
14 bad. Are you guys talking to them?"

15 Your response, "Yes, I'm working on  
16 it."

17 And then your statement, "I would not  
18 attack her."

19 A. We're going to 164 you said?

20 Q. Yes, please. 3164.

21 A. Okay.

22 Q. So what's the background of these  
23 messages?

24 A. So if you go back to -- so if you go  
25 back to Dani's first -- "The statement they have

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SMITH

for Lindsey is bad, are you guys talking to them" on 3 -- so these -- this is the first time I'm seeing these in a long time, but looking at the --

MR. ROSENBERG: Go ahead.

A. So I would have to double check the date, but it seems like this is probably the day when Lindsey's Medium post came out and we were workshopping what they -- how the Governor or the Governor's Office should respond. And it looks like the next several tweets are between -- or texts or e-mails, I can't tell, texts are between Dani, Josh, and me about the tenor and the words used in this statement.

Q. And --

A. So I believe that was the context.

Q. Okay. And is this consistent with your recollection about the advice you provided at the time, that the Executive Chamber should not attack Lindsey?

A. So I don't remember the statement, nor do I remember the advice that I gave at the time, but it sounds like the advice that I would give.

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SMITH

(2/24/21 e-mail was marked Exhibit 6 for identification, as of this date.)

Q. Okay. Let's turn to tab 15, which I think is a version of the statement.

A. To tab --

MR. ROSENBERG: 15.

THE WITNESS: Okay.

MR. ROSENBERG: Yeah.

A. Okay.

Q. Is this a statement that you were referring to in your texts with Dani and Josh?

A. So it looks like in the -- in the -- what I'm referring to in my text with Dani and Josh is -- let me look at the time. No. I mean, it looks like the ones that I'm -- and again, I can't remember the -- I can't -- I just -- I'm sorry, I cannot remember the sequencing here, but like, if you look at -- can I -- do you mind if I just refer you back to -- hold on -- yes. It looks like that it -- yes, that this first paragraph is what we're referring to in the text back and forth.

Q. And when you say "this first paragraph," what are you referring to?

1 SMITH

2 A. The "This is an ongoing and  
3 transparent..." That.

4 MR. ROSENBERG: The first paragraph  
5 of tab 15.

6 Q. Tab 15, okay. That you are  
7 describing as attacking Lindsey?

8 A. Yes. Well, I don't know if I was  
9 describing it as attacking Lindsey as much as I  
10 was saying that we should not attack Lindsey.

11 Q. Did you have any discussions with  
12 anyone about not attacking any of the  
13 complainants who made sexual harassment  
14 allegations against the Governor?

15 A. Yes. My -- my blanket -- my general  
16 blanket view on all of these was that it -- and  
17 just generally taking a step back, is that I  
18 think it is the wrong strategy when confronted  
19 with these things in the press to attack -- to  
20 like go and do statements -- I mean, look, it all  
21 depends on the context, but yes, I would say to  
22 the extent that I had blanket advice on these  
23 things, it would -- was generally to show some  
24 sensitivity and to never, you know -- to never  
25 put out statements attacking them. Sorry, I'm

1 SMITH

2 just reading this.

3 MR. ROSENBERG: Take your time. It  
4 may be easier to read it here.

5 A. Yeah. But yes, that is what I was  
6 referring to.

7 Q. Okay.

8 A. I believe. Yeah. Yeah. I said I  
9 would not attack her, but I don't remember if it  
10 was in direct relation to this, but generally,  
11 yes, if that make sense.

12 (2/24/21 e-mail was marked Exhibit 7  
13 for identification, as of this date.)

14 Q. Let's go to tab 21.

15 A. Mm-hmm.

16 Q. Okay. And this is an e-mail chain  
17 that includes you. Melissa DeRosa had sent some  
18 information and context in response to a message  
19 that you had sent earlier about a collection of  
20 text messages involving Lindsey Boylan and you  
21 responded at the top, "I think the tweets with no  
22 fingerprints/OTR are fine to pass along. I would  
23 lay off the other stuff because it would only  
24 point back to the Governor's Office and reinforce  
25 bully story line."

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SMITH

Do you recognize this e-mail?

A. I don't remember this e-mail, but it looks like something I would send.

Q. And we're going to mark this as an exhibit. What do you understand by your statement, "I think the tweets with no fingerprints/OTR are fine to pass along"?

A. So because tweets are, you know, public information, right, it's all on the Internet, and so flagging it for reporters with -- you know, without having them say oh, I was sent this by the Governor's Office, you know, it's fine because if I recall correctly, these tweets had already been in stories previously. I can't -- I -- if I recall correctly, that they had been out there, right, they're in the public domain, so that's what I meant by no fingerprints/OTR, which just means, like, flag them for the reporter's awareness and they can use them, but it's not like saying the Governor's Office passed along these tweets.

Q. And what would be the issue if the Governor's Office had passed along some tweets?

A. It just -- it just -- it -- honestly

1 SMITH

2 it's just like if -- with any sort of thing when  
3 I'm working in PR and politics, if someone's  
4 already a matter of public record, it -- it sort  
5 of muddies it to have it being like something was  
6 passed along or whatever because it's already in  
7 the public record.

8 Q. So if something were not in the  
9 public record, how would you approach it?

10 A. It depends.

11 Q. Okay. So what did you mean by your  
12 second statement, "I would lay off the other  
13 stuff because it would only point back to the  
14 Governor's Office and will reinforce bully story  
15 line"?

16 A. Right. So if you look at the other  
17 things -- what is -- so I don't -- I'm not  
18 positive what 9/26/18 at 10:30 a.m. is or 9/30/18  
19 at 10:06 is. Oh, wait. Hold on. But it -- the  
20 things below -- so can you clarify for me? Below  
21 are the 9/30 and 9/26 -- are those text messages  
22 that have been sent -- oh, no, no, no. Sorry,  
23 sorry, sorry, sorry.

24 So I -- I don't know -- 9/26/18,  
25 9/30/18, I don't know where those were from, nor

SMITH

1  
2 do I know where the text messages are from or --  
3 except that it says that they were sent to two  
4 top members of the administration, but my  
5 assumption at the time and my assumption still  
6 would be that those weren't public information  
7 and that while -- while I can understand --  
8 and -- and this is part of, you know, what we do  
9 behind the scenes in PR is you sort of have a --  
10 as I mentioned before, I think we discussed  
11 already the push and pull of, you know, your  
12 internal discussions and I think, you know, this  
13 was an example of push and pull where it was  
14 suggested that these -- in addition to the stuff  
15 that's already publicly available, the four  
16 tweets where that there are these three different  
17 things below that could have also been sent to  
18 the press but they were not public information,  
19 they were private, and so what I was saying was I  
20 would lay off the other stuff because it would  
21 only point back to the Governor's Office, but I  
22 don't mean -- because they're not public, right,  
23 so they had to get them from somewhere and, you  
24 know, people probably aren't going to think that  
25 Lindsey Boylan is providing those herself.

1 SMITH

2 And "reinforce bully story line," by  
3 that point I think in the days leading up to --  
4 I -- and again, I would have to double check,  
5 have my memory jogged on this, but I believe  
6 before 2/24 there started to be stories written  
7 about the Governor's Office being, you know --  
8 having a bully atmosphere and so I was just  
9 saying that this would all point back to the  
10 Governor's Office and will reinforce the bully  
11 story line. And just generally it goes in with I  
12 think what I was saying before, which is like  
13 don't get into a position of attacking, you know,  
14 attacking someone.

15 Q. Were you suggesting that this  
16 information -- just to be clear what you're  
17 referring to, the information about complaints of  
18 bullying and harassment against Lindsey,  
19 information about Lindsey contacting the  
20 Governor's counsel, and information about text  
21 messages that Lindsey had sent to members of the  
22 administration was private information and so it  
23 would be seen as attacking Lindsey if the  
24 Executive Chamber provided that information to  
25 the press?

1 SMITH

2 A. I think it could be perceived as that  
3 way, yes. And -- and there could be -- that's my  
4 interpretation. But there is a legitimate --  
5 there could be a legitimate debate. Obviously  
6 I'm on one side of it. But there could be people  
7 on another side who are saying well, this  
8 provides important context, right. And this is,  
9 in any PR conversation, a lot of the sort of  
10 discussions we have, whether it's this or for  
11 someone else that I work for.

12 Q. And was there such a debate in this  
13 instance?

14 A. It appears so.

15 Q. And what's the basis for saying it  
16 appears so?

17 A. Because -- I mean, I have to see the  
18 others, but it's like -- without more context it  
19 looks like -- you know, I don't really want to  
20 comment on it. I don't want to read too much  
21 into it without more context, but -- and why I  
22 don't want to read into it without more context  
23 is because a lot ideas are thrown out, you know,  
24 behind the scenes and I think just because an  
25 idea is thrown out, it doesn't mean that it's

1 SMITH

2 being suggested that this is a great idea or  
3 something we should do. It's just like offering  
4 a -- sort of a buffet of options of how you can  
5 respond to a story.

6 Q. And do you know whether this  
7 information, the information starting with  
8 "9/26," "9/30," and the text messages was in fact  
9 shared with the press?

10 A. I don't think it was. So I don't  
11 think we shared anything like that from -- like  
12 on -- like, 2/24, I don't remember during my time  
13 in February or March sharing that sort of stuff  
14 with reporters. Again, I wasn't the person who  
15 would have been, you know, the direct contact  
16 sharing this. As I said, I sort of provided  
17 counsel to the Governor's Office on, you know,  
18 actions that they should take so -- but I don't  
19 remember, you know, subsequent to this, like,  
20 this sort of stuff being shared.

21 Q. Your advice was to lay off sharing  
22 that type of information, correct?

23 A. Yes.

24 (Chat messages were marked Exhibit 8  
25 for identification, as of this date.)

1 SMITH

2 Q. So let's go to tab 24 -- 26.

3 A. Okay.

4 MR. ROSENBERG: Take a minute and  
5 read it.

6 Q. Just to orient you, I'm particularly  
7 interested in your statement in the very first  
8 line, "We made a mistake yesterday with this  
9 entire response" and then later on you say,  
10 "Going hard has gotten you guys to where you are  
11 now, which is a very bad place."

12 MR. ROSENBERG: Take your time and  
13 read through it.

14 A. Okay. So --

15 MR. ROSENBERG: There's no question.  
16 Just read through it and then she'll ask a  
17 question.

18 THE WITNESS: Okay, but I do have a  
19 question.

20 MR. ROSENBERG: Oh, you have a  
21 question, okay.

22 A. So with "We made a mistake yesterday  
23 with this entire response" -- because I -- I -- I  
24 see these, but this looks like me quoting  
25 Melissa -- something Melissa maybe said to an

1 SMITH

2 e-mail chain or something. "We made a mistake  
3 yesterday with this entire response." Because  
4 then in my next text I say, "What did you mean by  
5 this?"

6 Q. Okay.

7 A. So I just want to clarify that  
8 because then it goes down here --

9 Q. Okay.

10 A. You know what I mean.

11 MR. ROSENBERG: Why don't you just  
12 take a minute to read this whole thing just  
13 so you have it all, that's fine.

14 Q. Just let me know when you're ready  
15 Ms. Smith.

16 A. Okay. Okay.

17 Q. Okay.

18 A. I'm ready.

19 Q. All right. So let's walk through the  
20 text messages. I understand from your first  
21 statement that in this line, "We made a mistake  
22 yesterday with this entire response," you're  
23 quoting something that Melissa DeRosa had said  
24 and you were asking her what she meant by this,  
25 correct?

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A. Yes, I think so.

Q. And then later you say you disagree with her. And just to be clear, this entire response refers to the statement responding to Lindsey Boylan's allegations in her Medium post; is that correct?

A. This is given the day after we were discussing the Lindsey response, so that would be my assumption, but I don't know that there are other -- if there -- no. That would have been the only statement that we gave on the 24th would have been about Lindsey. So yes, I -- yes. Okay.

Q. And then when you say, "Going hard has gotten you guys to where you are now, which is a very bad place," what do you understand by that?

A. My general view I think with regard to the Cuomo press strategy outside of even -- outside of this, but sort of the general MO from, you know, even before I worked for them is that they I think tend to somewhat overreact in the media to things. I saw that sometimes on the campaign. So it may be a reference to that.

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SMITH

I -- you know, I think you -- generally it is sort of a reference that I am sort of a broken record with them in that I -- I do think sometimes that they go -- are a little bit too combative in how they respond with people. And this is not limited or necessarily just about this. And you know, keep in mind that this is also right after -- this -- what opened the flood gates to all of this stuff, right, which is Melissa had done the call with the legislature, which then leaked, then my -- you know, a member of the legislature -- at least one -- Ron Kim I remember had put out a -- I think he was the one maybe -- I'm just trying to think.

He was the one -- you know, I never worked in Albany, so I'm not familiar with all the names and characters, so forgive me if I'm mixing some of this up, but my recollection was that they did this call, Ron Kim leaked to the media some of the call, and the Cuomo response to that leak was very, very, very aggressive and then that then sort of led to the bullying stories. I feel like it was the bullying stories

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SMITH

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and then that was when the Lindsey Boylan Medium  
3 post came out.

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So -- because I -- when I sort of  
remember in what I discussed in this was that it  
was just this -- you know, it was like a snowball  
effect, right. It just kept getting bigger and  
bigger because of how they were responding and I  
think that they were responding too aggressively.  
So when I'm saying that going hard is -- that it  
is in that context, which is I believed that --  
and I said this to them at the time when I  
watched the Governor do a press conference about  
Ron Kim being very -- thinking at the time that  
this is very unwise how he had handled it and he  
had gone too hard and then... (reading document.)

I said, "I also agree that the Biaggi  
thing was idiotic." I can't remember  
specifically what was said, but I think someone  
in the office had maybe put out a statement  
attacking Biaggi because Biaggi was maybe another  
person who had leaked from the call or criticized  
something from the call. And this was something  
that both Jeff Pollack and I were in agreement  
on, that the Governor's Office should take

1 SMITH

2 soft -- a smarter tone I would say and maybe be  
3 less bellicose.

4 (Messages beginning with Bates No.  
5 MORAN 434 was marked Exhibit 9 for  
6 identification, as of this date.)

7 Q. Let's turn to tab 28. Let me know  
8 when you're ready.

9 A. Okay.

10 Q. Do you recognize this document?

11 MS. MAINOO: We'll mark it as an  
12 exhibit.

13 A. Which, the photo or the --

14 Q. Let's start with the first page.

15 A. Which is the first page? Does it --  
16 I don't see anything on it.

17 MR. ROSENBERG: It's Bates stamped  
18 434?

19 MS. MAINOO: Correct.

20 Q. It looks like it's a text message  
21 from you --

22 MR. ROSENBERG: Okay.

23 Q. -- attaching -- with an attachment.  
24 Do you see that?

25 A. Yeah.

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SMITH

Q. Do you know what it is?

A. It's tweets. Okay. It looks like these are tweets from Kaitlin [REDACTED] that were liked by Charlotte Bennett.

Q. At the time did you know who Kaitlin [REDACTED] was?

A. Yes. So going -- so not really -- not on a personal level, but as I mentioned before, when -- and I can't remember the context in which we were discussing it before, but earlier this morning when the Lindsey Boylan Medium post went up, we had a discussion as a team sort of about okay, well, you know, is there any other gossip out there about, you know, other people who could come forward or other people who left the office on not great terms, and I can't remember exact...

So I think that there are two things. I think one, there's like a little bit of an Albany gossip mill where it's a small world where, you know, somebody had said to someone, you know, gets around or whatever; but two, I -- I think that there was a recognition -- and I think that's how it came up, is that there's a

SMITH

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2 recognition in the office with Julie -- Judy  
3 Mogul because she had had a conversation with  
4 Charlotte when she was leaving that indicated it  
5 was on bad terms, so we were conscious of the  
6 fact internally at this point that -- that  
7 Charlotte was someone who could potentially, you  
8 know, make accusations publicly and Kaitlin was  
9 discussed in a -- like a similar context, but it  
10 was more in the context of I think that the  
11 Governor had treated her in a way that, you know,  
12 that was like more like bullying, like, had  
13 yelled at her for, you know, messing up calls and  
14 stuff like that.

15           So what I -- so knowing that, you  
16 know, like, I would be monitoring people's  
17 Twitter accounts because that's where people  
18 generally leave bread crumbs, right, and where  
19 people leave bread crumbs -- and by that I mean  
20 like, you know, they leave like little pieces  
21 of -- to use lawyer -- evidence -- lawyer words,  
22 like evidence is by their likes, right? Because  
23 they're not thinking people are looking at their  
24 likes. But so I could see that then -- that  
25 Kaitlin was retweeting Lindsey Boylan and that

1 SMITH

2 Charlotte Bennett was liking Kaitlin and Lindsey  
3 Boylan's tweets, which just seemed notable to me  
4 in light of the fact that, you know, we -- I -- I  
5 had received the vague information that these  
6 were two people who had -- I think they maybe  
7 were still in -- I know Charlotte was still in  
8 state government, but who had not left, you know,  
9 working in close contact with the Governor on  
10 good terms.

11 Q. Was the idea that Charlotte Bennett  
12 and Kaitlin [REDACTED] might have allegations to make  
13 against the Governor and so you were monitoring  
14 to see whether they might come public with their  
15 allegations?

16 A. I can't remember if by that time I  
17 learned any of the specifics about Charlotte.  
18 And again, I can't remember the sequencing of  
19 this, right, but I remember basically just like  
20 some like Albany chatter, right, because it's --  
21 you know, state capitals are small worlds and  
22 even though I'm not up there, I think that some  
23 of that was conveyed on these calls.

24 But more formally that Charlotte --  
25 that there was an awareness of Charlotte, you

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SMITH

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know, filing -- I don't know what the technical

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term is. But that. So -- so it was more just

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looking through and out of curiosity being

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like -- so I don't say anything that -- that this

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is what it could be, but it's more curious, like,

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these -- that they're clearly monitoring the

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situation and maybe could be coming out.

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It's -- in politics with opponents

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and stuff like that or opposing staff, one thing

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I've noticed is that -- or -- or reporters or

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anything like that is that people telegraph a lot

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of things through their likes because they --

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they don't think that people are -- are

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monitoring their likes the way that they do

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tweets and replies and it kind of can give you an

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insight into how they're thinking about things.

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So I think that that's sort of what I was getting

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at there.

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Q. What did -- go ahead.

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A. That -- that this is -- that this was

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on their radar screen and if they're, you know,

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sort of liking tweets that are -- liking Lindsey

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Boylan's tweets or tweets that are critical of

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the Governor or saying, you know, this is

1 SMITH

2 difficult -- the helicopter -- and they're doing  
3 this, like, in earshot -- you know, Twitter  
4 earshot of reporters, you know, that's -- that's  
5 as close as you'll get to going public without  
6 actually going public.

7 Q. You saw the tweets as possible  
8 evidence of their intention or the possibility  
9 that may go public with allegations against the  
10 Governor?

11 A. Potentially. I -- I also just think  
12 it's -- that it -- it was something to keep an  
13 eye on and it's -- it was curious to me. It was  
14 curious to me.

15 Q. But you said you had been monitoring  
16 their Twitter, correct?

17 A. As I had with, you know, reporters  
18 and other things like that. But I -- since --  
19 since I had heard their names, yeah, I started to  
20 look just to see if they were leaving any bread  
21 crumbs.

22 Q. Did you monitor anyone -- did you  
23 monitor any other individuals' Twitter to see if  
24 they were leaving any bread crumbs?

25 A. Reporters. Let's see.

1 SMITH

2 Q. What about any other former or  
3 current Chamber staff?

4 A. Yeah. It's -- I mean, it's very  
5 possible. Let me think. I mean, I would have --  
6 obviously by that point Lindsey was on the radar  
7 screen. It's possible, but I can't think of  
8 anyone off the top of my head right now.

9 But I would generally -- for an  
10 example, like, so Jesse McKinley, his -- his  
11 handle is in here, he's a New York Times  
12 reporter, so it's like I might check his likes to  
13 see what he's liking because then that gives me  
14 an insight into what he might be reporting on,  
15 who he's interested in, who his sources are.

16 Q. Did you learn any information  
17 about -- did you learn any details about  
18 Charlotte Bennett's or Kaitlin [REDACTED] potential  
19 allegations at that point?

20 A. As I mentioned I think in our first  
21 session this morning, that -- and I can't  
22 remember the exact chronology, but after the  
23 Lindsey Boylan Medium post, there was an internal  
24 discussion about some of this. There was a call  
25 where -- I think where Judy Mogul discussed

1 SMITH

2 with -- discussed with, you know, some of the  
3 people who are -- you know, were on these calls  
4 some of the things -- I -- a report -- again, I  
5 keep -- I know I'm a broken record here because I  
6 don't know what the exact term is, but something  
7 that Charlotte had said about why she wanted to  
8 be, you know, transferred out of the Governor's  
9 Office and then that that could be something  
10 public.

11 I don't -- I don't know if I was  
12 aware of that by this time when I was monitoring  
13 the tweets. I may have been. But again, that  
14 was also a call I wasn't on myself. I can't  
15 remember why I missed it, but I'd heard about  
16 some of it secondhand so for -- for whatever  
17 reason their names were on my radar screen. I  
18 just can't remember the particulars.

19 Q. What about Kaitlin [REDACTED], what had  
20 you heard?

21 A. That was more informal honestly.  
22 That was -- I -- if I recall correctly -- or what  
23 I recall was hearing about that maybe from Dani  
24 Lever, which is that Kait -- and it was  
25 unofficial, it was again, you know, politics,

1 SMITH

2 state government, state capitals especially are  
3 sort of gossipy places, but that there was I  
4 think some gossip going around that Kaitlin had  
5 said that her -- that she was displeased with,  
6 you know, her time working with the Governor,  
7 that he'd yelled at her she thought  
8 unnecessarily, and that she could be someone who,  
9 you know, could file a complaint or go to the  
10 press or something like that.

11 It was an informal conversation  
12 though with Dani that I think alerted me to it.  
13 And it might have been a conversation with -- for  
14 some reason I recall -- maybe -- for some reason  
15 I remember it was Dani telling me and Josh Vlasto  
16 about it.

17 (2/26/21 e-mail was marked Exhibit 10  
18 for identification, as of this date.)

19 Q. Let's turn to tab 31. And I'll give  
20 you a chance to read it, but just to let you know  
21 what I'm focused on, it looks like it's a draft  
22 statement -- a version of a draft statement with  
23 Melissa DeRosa's edits, Jeff Pollack reacts to  
24 it, and you say, "Melissa, I thought the plan was  
25 now not to do this" and then Melissa sends yet

1 SMITH

2 another version.

3 MR. ROSENBERG: Take a minute to look  
4 through it. Thank you for that. So why  
5 don't you look through the whole thing with  
6 that in mind.

7 A. I can mark it up with my pen?

8 Q. Sure.

9 MR. ROSENBERG: Sure. You may want  
10 to scan the whole thing just to get a sense.

11 A. I am scanning it. I just want to get  
12 a sense --

13 (Simultaneous crosstalk.)

14 A. Okay.

15 MR. ROSENBERG: I think you have to  
16 look at the whole document just so you know  
17 what's in it.

18 THE WITNESS: Okay.

19 Q. Ms. Smith, I'm ready to ask you  
20 questions whenever you are ready. You always  
21 have a chance to go back and look at a document  
22 if you want.

23 A. What page am I supposed to read  
24 through?

25 Q. Okay. So I'm not going to ask you

1 SMITH

2 about a specific page right now. I'm -- I'd like  
3 to know whether you were involved in any  
4 discussions about versions of the draft statement  
5 along these lines.

6 A. Well, it appears that I was.

7 Q. And do you recall those -- please go  
8 ahead.

9 A. So I cannot remember the specifics of  
10 this.

11 Q. Do you recall if there was a push and  
12 pull about this statement?

13 A. Yes. So I don't remember this  
14 specific statement, but I remember there were a  
15 number of times over the course of this month or  
16 so where we would receive sort of longer  
17 statements like this where I would -- and in this  
18 case I said that, you know, the plan was not to  
19 do this.

20 So I was not involved -- I can just  
21 tell from the language used in here that I was  
22 not involved in drafting this and, you know, that  
23 I'd said I thought the plan was not to do this.  
24 But -- but I -- but I don't remember a ton of the  
25 specifics around it.

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Q. Do you recall the origins of this statement? And there's another document, tab 30 I believe, which shows that it -- or maybe tab 29, which shows that it first came from Stephanie Benton.

A. I don't remember -- I don't remember the origins of it.

(February 2021 e-mail chain was marked Exhibit 11 for identification, as of this date.)

Q. All right. Let's flip to tab 29 and see if it jogs your memory. Do you see that there's an e-mail from Stephanie Benton originally to Melissa and Judith Mogul?

A. Yes.

Q. And that Melissa says she will set up a call to go through this? Do you remember talking about this draft statement?

A. I remember -- I remember vaguely this -- because -- because the one thing that I remember having a discussion about was this second -- for some reason I remember a conversation about a statement involving the second one with the artifact from Bill Clinton,

1 SMITH

2 but I don't remember any of the specifics really  
3 of the conversation.

4 Q. Okay. What do you remember about the  
5 discussions about the draft statement?

6 A. I'd have to see the timeline of when  
7 we put out -- because it -- I guess what -- I  
8 would have to see the timeline of when we  
9 initially responded to the Boylan accusation in  
10 the Medium post and what -- if this was before or  
11 after. Because I don't remember.

12 Q. Okay. We can pull up the press  
13 release.

14 (Press release was marked Exhibit 12  
15 for identification, as of this date.)

16 MS. MAINOO: Let's go to tab 12.

17 Q. So do you see that tab 12 is a  
18 February 24, 2021, statement about Ms. Boylan's  
19 claims?

20 A. Yes. Okay.

21 Q. So going back to tab 29, that's  
22 February 26 --

23 A. Yes.

24 Q. -- after --

25 MR. ROSENBERG: 25th and 26th.

1 SMITH

2 A. So this ties together -- my  
3 recollection was that the -- that -- and I -- I'm  
4 sorry if I'm pausing repeatedly because I'm just  
5 trying to -- and I don't want to sort of, you  
6 know, put together things now just because I see  
7 them in front of me, but my recollection was that  
8 we'd done that statement on the 24th, but it was  
9 seen by -- I think as -- as ineffective at  
10 pushing back against some of the allegations so  
11 there was a thought that we'd do a longer -- in  
12 this case much longer statement responding  
13 to that -- sort of the swarm of stories out  
14 there, which was the Boylan stories and the  
15 bullying stories. The Boylan and bullying  
16 stories that had come out in the days beforehand.

17 Q. And who saw the February 24th  
18 statement as ineffective and thought a longer  
19 statement was required?

20 A. I don't remember the exact people who  
21 said -- who signed on to that. I remember  
22 getting this from Melissa and Melissa having  
23 stated to me that we didn't go hard enough and --  
24 but I can't say that I have like a list of who  
25 was on this side or who was on that side.

1 SMITH

2 And there were -- I also know plenty  
3 of people outside who said that we didn't, you  
4 know, respond comprehensively enough or go com --  
5 hit back hard enough, but you know, I -- I don't  
6 remember the specifics. Like, I can -- I can see  
7 in some of these text messages that -- obviously  
8 going back, that Melissa didn't think we were  
9 responding hard enough, that, you know, Josh  
10 Vlasto thought we could be responding harder, but  
11 beyond that, like, I wouldn't really feel  
12 comfortable speculating on -- on who those people  
13 are.

14 But I do know that there was a  
15 general sense that -- that we could have pushed  
16 back harder on -- and more -- in a more detailed  
17 way on some of Lindsey's claims and the bullying  
18 claims that we received from -- that the Governor  
19 had received from members of the legislature.

20 Q. Do you know whether the Governor  
21 favored this more detailed and longer response to  
22 Lindsey Boylan's allegations and the bullying  
23 allegations?

24 A. I don't know that.

25 Q. So this -- looking at tab 29, this

1 SMITH

2 draft statement that was sent from Stephanie  
3 Benton to Melissa DeRosa and Judith Mogul, seeing  
4 that the draft statement comes from Ms. Benton,  
5 the Governor's chief of staff, does that suggest  
6 to you that the draft statement came from the  
7 Governor himself?

8 A. It suggests that that is very  
9 possible. Sometimes that is how he, you know,  
10 sends out his communications is through that way.

11 Q. You had said in an e-mail about the  
12 statement, "Melissa, I thought the plan was now  
13 not to do this," what discussion was there about  
14 whether to issue this longer statement?

15 A. So I don't -- I just -- I don't  
16 remember this specific conversation that we'd had  
17 about it. But I can tell you looking at this now  
18 that I would have said that this is not something  
19 that we should have sent out. But I don't  
20 remember the pros, cons, outside of sort of what  
21 we've just discussed in broad strokes, which is  
22 that -- that -- you know, that always -- or well,  
23 it seemed like in this context that there was  
24 some disagreement on whether we had responded  
25 effectively in the earlier iteration of the

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SMITH

statement and I can't -- I don't remember the exact conversation I was referring to when I said I thought we agreed not to do this, but I can tell you that, like, looking -- looking at this I would have said not to release this statement.

Q. And what's the reason you say looking at this you would have said not to release the statement?

A. Well, a few different reasons. One, we'd already responded. It didn't make sense to respond again and sort of reopen the story. Two, generally when you're, you know, dealing with situations like this with, you know, a series of unsourced allegations -- and I'm not saying that -- that means that they're untrue or true or anything like that -- that there's no PR value in getting in a tit for tat of this is true, this is not true, this is true, this is not true, because if the things aren't true and you're responding to them, that means you're in essence elevating them because a response then gives it air time. So as a PR strategy that just doesn't make any sense.

We'd also, you know, had a statement

1 SMITH

2 saying that this was -- the allegation -- you  
3 know, that -- so when our Medium post came out,  
4 the allegation that got the most sort of traction  
5 in the press and that was seen as like, you know,  
6 the -- was the strip poker thing. We had four  
7 people already on the record saying this isn't  
8 true and I thought that that was pretty  
9 definitive.

10 And a lot of this is -- when you're  
11 doing these responses is, you know the wordier  
12 you get, the more you say, the more it seems like  
13 thou doth protest too much. It just seemed like  
14 a disproportionately long statement to give to,  
15 you know, what we were supposedly responding to.  
16 It was a little bit all over the place frankly  
17 ending with all these random -- ending with all  
18 these sort of out of nowhere, you know, political  
19 quotes. So it's just not something I -- I would  
20 have suggested releasing.

21 Q. Is it your view that this proposed  
22 response generally speaking was disproportionate  
23 to the allegations that Executive Chamber was  
24 responding to?

25 A. Yeah. It -- not just -- not

1 SMITH

2 disproportionate necessarily in terms of the  
3 tone. Like, I don't see anything here that's,  
4 like, overly negative or -- well, some of the  
5 stuff here I think does get a little bit too  
6 personal about -- about Ms. Boylan and it's not  
7 something that I think would have been  
8 appropriate for the Governor to -- to put out  
9 there in his own words, but disproportionate in  
10 that, like, if you're -- a five -- it didn't seem  
11 like these were the things that merited -- that  
12 her comments merited, you know, a five-page  
13 statement.

14 (2/26/21 e-mail was marked Exhibit 13  
15 for identification, as of this date.)

16 Q. Let's turn to tab 32. It's a short  
17 exchange, and just to summarize it, it looks like  
18 another discussion about the same statement, this  
19 time Melissa DeRosa is asking you to work on the  
20 draft and the idea she suggests is to get to  
21 agreed upon language that stays in his voice, I  
22 quote, do you see that?

23 A. Yeah.

24 Q. And does this suggest that the  
25 Governor authored the longer response to

1 SMITH

2 Ms. Boylan's allegations?

3 A. Not necessarily. You know, from my  
4 experience working on the 2018 campaign is that  
5 we draft a lot things in the Governor's voice and  
6 put them out that he never saw. And on political  
7 campaigns or in government offices, a lot of  
8 statements go out in people's voices that aren't  
9 necessarily written by them. It's possible he  
10 had a hand in writing this. It's possible that  
11 other people did. It's possible it was a group  
12 effort. But I just -- I personally -- I just  
13 cannot say with -- you know, say definitively  
14 right now that I know who the author of that was.

15 Q. Did you have a hand in drafting this  
16 statement?

17 A. I did not.

18 Q. And other than seeing Melissa  
19 DeRosa's comments and the e-mail that came from  
20 Stephanie Benton, can you tell if anyone else had  
21 a hand in drafting this statement?

22 A. I don't know.

23 Q. And do you remember any discussions  
24 involving the Governor about this -- about  
25 versions of this longer draft statement?

1 SMITH

2 A. I don't remember having a  
3 conversation about this statement. But again, I  
4 just -- that's because I don't remember. If you  
5 would -- you would have just asked me out of the  
6 blue if I remembered any of this back and forth  
7 or this statement at all, I would not have.

8 MR. ROSENBERG: Abena, when you have  
9 an appropriate time, I'd like to take a  
10 bathroom break, very short.

11 MS. MAINOO: Okay. We can stop now  
12 so we can take your bathroom break.

13 MR. ROSENBERG: I appreciate that.  
14 Thank you. Five minutes.

15 THE VIDEOGRAPHER: This is the end of  
16 media unit number three. We are off the  
17 record at 3:18 p.m.

18 (A brief recess was taken.)

19 THE VIDEOGRAPHER: This is the  
20 beginning of media number four. We are on  
21 the record at 3:24 p.m.

22 (Tweets were marked Exhibit 14 for  
23 identification, as of this date.)

24 Q. Let's go to tab 135.

25 MR. ROSENBERG: 135?

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MS. MAINOO: 135.

MR. ROSENBERG: Okay. It's in this book. Let me take this one from you.

THE WITNESS: Yes.

MS. MAINOO: And we'll mark it as an exhibit.

Q. Ms. Smith, have you seen this tweet before?

A. Yes.

Q. When did you see it?

A. When it was tweeted.

Q. What was your reaction to it?

A. I was surprised.

Q. What's the reason you were surprised?

A. Because I -- because it was false.

Q. And what was false about it?

A. One, Tom Watson is someone I only know of via Twitter; and two, I had participated in no smear on Lindsey Boylan.

Q. Did you respond to this?

A. I did not. On Twitter? No.

Q. Did you respond in any way to it?

A. No.

Q. And do you know Lindsey Boylan

1 SMITH

2 personally?

3 A. I do not.

4 Q. Did you have any concerns about the  
5 optics of this tweet?

6 A. No.

7 Q. Did you have any concerns at all  
8 about this tweet?

9 A. No.

10 Q. Did you speak with any reporters  
11 about Lindsey Boylan's allegations against the  
12 Governor?

13 A. I would only have spoken with  
14 reporters in the context of what we discussed  
15 before, like, my -- did I -- my conversations  
16 with reporters were generally with national  
17 reporters and it was -- or just political  
18 reporters, it's about the political context of --  
19 of these and how this plays out for the Governor.  
20 But this -- as I mentioned before, when it came  
21 to the specifics about, you know, the allegations  
22 being made against the Governor, those were being  
23 handled by the Governor's Office.

24 Q. Did you speak with Isaac Doveere at  
25 The Atlantic about Lindsey Boylan's allegations?

1 SMITH

2 A. I spoke with him about the larger  
3 story line, right. He's a -- he's a national  
4 reporter who writes on, you know the politics of  
5 things.

6 Q. And did you take away from your  
7 discussion with him that he thought the whole  
8 thing was bullshit?

9 A. My recollection -- I -- I don't  
10 even -- I don't recall my conversation with -- of  
11 my conversation with Isaac.

12 (Text messages were marked Exhibit 15  
13 for identification, as of this date.)

14 Q. Let's go to tab 25. Looks like this  
15 is from a text message chain, the name is Rapid  
16 Response/Priv and Confidential. Do you know  
17 anything about the name of this text message  
18 change?

19 A. About -- what do you mean the name?

20 Q. The name Rapid Response/Priv and  
21 Confidential, are you familiar with a group  
22 called Rapid Response/Priv and Confidential?

23 A. Yes. It was a text chain that we  
24 had.

25 Q. Who are the members of this group?

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SMITH

A. Well, just reading it, it's -- it was me, Dani Lever, Peter Ajemian, Rich Azzopardi, Jeff Pollack, Melissa, Steve Cohen, Steph Benton, Beth Garvey, Judy Mogul, and Dani Lever twice.

Q. Do you know who named it Rapid Response/Priv and Confidential?

A. Melissa I believe, because she started it.

Q. And what did rapid response -- what did rapid response refer to?

A. Just that this is a chain where you are sharing information as it comes in, you know, so that you can respond to it. It's -- rapid response is just sort of a catch-all for that sort of stuff.

Q. What about the priv and confidential aspect?

A. I don't know.

Q. So do you see that on February 24th at 8:45:24 p.m. you said, "He's very hard on our side on this"?

A. Yes.

Q. Then you said, "Total mind meld."  
Later on you say, "He says he could be convinced

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SMITH

to write something on Andrew because he thinks this whole thing is bullshit."

A. Mm-hmm.

Q. What -- what do you understand by the statements you made about your discussion with Isaac?

A. That we're discussing the context of everything that's going on. You know, as I mentioned to you guys before, my role -- my informal role here that I took on was talking with national reporters about the bigger picture here and politically sort of what -- you know, what it meant for the Governor. And what Isaac -- and like the politics behind all of this stuff. And that's sort of what Isaac's beat is, is writing about, you know, the political implications of, you know, what someone is doing here or political implications of legislation.

Q. And what did "he thinks this whole thing is bullshit" refer to?

A. I think the general atmosphere is people are just coming for, you know, the Governor and that was when you started to see a drumbeat of, you know, people saying the Governor

1 SMITH

2 should be investigated or consider resigning and  
3 he was -- because it would have been about a week  
4 before was when that call had happened with  
5 Melissa, so there was just like this -- this, you  
6 know, sort of avalanche of negative stories  
7 coming out against the Governor and sort of a  
8 very negative narrative building against the  
9 Governor and so in my understanding of what  
10 this -- this was was talking about how this whole  
11 negative narrative that was building against him  
12 was bullshit.

13 (2/24/21 4:26 e-mail was marked  
14 Exhibit 16 for identification, as of this  
15 date.)

16 Q. Let's go to tab 23.

17 A. Okay.

18 Q. It's an e-mail from you to Melissa  
19 with the subject Questions to Practice. Are  
20 these draft questions you prepared for the  
21 Governor?

22 A. Yes. For media prep.

23 Q. Okay. What do you mean when you say  
24 "for media prep"?

25 A. You know, with candidates, with

1 SMITH

2 people facing big moments or who may have to face  
3 the press, you know, people in my role generally  
4 do media prep with them where we go through  
5 likely Q&A that they'll receive from the media.

6 Q. Did you go through these questions  
7 with Governor Cuomo?

8 A. Eventually, but not February 24th.

9 Q. When did you go through these  
10 questions?

11 A. March 22nd. I'm sorry, March 2nd.  
12 March 2nd.

13 Q. What's the reason you remember that  
14 day?

15 A. Because it was the day -- was it  
16 March 2nd or March 1st? It was the day before he  
17 did his first big press conference addressing the  
18 claims that had come out in the media.

19 Q. How did you speak with him on that  
20 day?

21 A. We held a media prep session in  
22 Albany.

23 Q. Who was there?

24 A. The Governor, me, Jeff Pollack, Rich  
25 Azzopardi, Peter Ajemian, Melissa DeRosa, Linda

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Lacewell, Stephanie Benton, and then maybe Judy Mogul. I think Judy Mogul was there. And his daughter popped in, his daughter Michaela popped in at one moment.

Q. How long were you there?

A. For the -- that media prep session?

Q. Did you do anything other than the media prep session?

A. So for -- the media prep session we did that evening. The next day was when his -- he did his press conference and we did a shorter prep session the next day.

Q. How long was the initial media prep session on March 2nd?

A. About two hours.

Q. How long was the shorter one?

A. About one hour.

Q. Did you cover these questions at the media prep sessions?

A. Some version of them. I don't know that these were the exact ones, but these provided a road map.

Q. How did the Governor respond to the question of whether he forcibly kissed

1 SMITH

2 Ms. Boylan?

3 A. He denied it.

4 Q. And is there a reason that the  
5 question was framed as whether he forcibly kissed  
6 her?

7 A. Yes. So I wrote these questions from  
8 the perspective of if I were a member of the  
9 media and asking questions off of things that  
10 were written in the media. So from the  
11 perspective of being an antagonistic reporter.

12 Q. Did you ask whether the Governor had  
13 just kissed Ms. Boylan?

14 A. No. I think I just asked -- I think  
15 I just asked this question.

16 Q. Did you ask the Governor whether he  
17 touched Ms. Boylan's legs, arms, or torso?

18 A. I can't remember if I asked that  
19 question.

20 Q. Do you remember whether he answered  
21 that question?

22 A. If I had asked it, he would have  
23 answered, but I just -- I can't remember if I  
24 asked all of these questions.

25 Q. Did you ask the Governor whether he

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SMITH

told Ms. Boylan he wanted to play strip poker?

A. I did.

Q. And what did he say?

A. "No."

Q. Did you ask if the Governor told Lindsey Boylan that she looked like a better looking version of his ex-girlfriend?

A. I did.

Q. And what did he say?

A. My recollection is that he had told Stephanie Benton that he thought that she looked -- that Lindsey looked like a better looking version of his ex-girlfriend.

Q. And who did you hear that from? Did the Governor tell you that?

A. From the Governor and from Stephanie Benton as well.

Q. Did you ask the Governor whether he called Lindsey Boylan "Lisa"?

A. I can't remember.

Q. Did you ask the Governor whether he thought it was appropriate that he compared Lindsey Boylan to his ex-girlfriend?

A. I did.

1 SMITH

2 Q. What did he say?

3 A. My recollection was that he said that  
4 they -- they bore an uncanny resemblance. Oh  
5 appropriate -- he said that his recollection was  
6 that they bore an uncanny resemblance and he was  
7 just pointing out a fact.

8 Q. And who was his ex-girlfriend?

9 A. I can't remember the full name. It  
10 was in the news stories.

11 Q. Lisa Shields?

12 A. Yes. Yes.

13 Q. And did you ask the Governor whether  
14 he made unflattering comments about the weight of  
15 female staffers?

16 A. Yes.

17 Q. What did he say?

18 A. "No."

19 Q. Did you ask the Governor whether he  
20 made any comments about the weight of female  
21 staffers?

22 A. I think I just asked the question  
23 as -- as written.

24 Q. Did you ask the Governor whether he  
25 brought up the romantic relationships and

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SMITH

significant others of female staffers?

A. Yes.

Q. What did he say?

A. That he had, but in, you know, joking contexts.

Q. Did you ask the Governor whether he had ever had inappropriate relationships with women on his staff?

A. Yes.

Q. What did he say?

A. "No."

Q. Did you ask the Governor whether he had ever had any relationships with women on his staff?

A. No.

Q. Did you ask the Governor if he thought other women would come forward?

A. No. And to -- so this was written -- these were written on February 24th. That -- by that time it was March 2nd, so, you know, there had been a couple other -- so I remember specific -- that that was moot.

Q. Sorry. Are you saying the question was moot?

1 SMITH

2 A. It was out of date by that point.

3 Q. There were more allegations that came  
4 out after March 2nd, correct?

5 A. Sure. But I -- you know, I remember  
6 specifically not asking that question.

7 Q. Okay. Did you ask the Governor  
8 whether he had regrets about the language he has  
9 used toward women in the workplace?

10 A. Yes.

11 Q. What did he say?

12 A. Some version of what he said in the  
13 press conference the next day, that if he made  
14 people feel uncomfortable, that he regretted  
15 that.

16 Q. Did you ask the Governor -- did you  
17 say to the Governor that he had a long history of  
18 saying inappropriate things to women like the  
19 time he repeatedly told a young female TV  
20 reporter that he wanted to see her "eat the whole  
21 sausage" and did you ask him if he believed those  
22 comments were acceptable?

23 A. Yes.

24 Q. What did he say?

25 A. To look at the context of the

1 SMITH

2 comments and that in the context it was not  
3 inappropriate.

4 Q. Did you ask the Governor any other  
5 questions during the three-hour-or-so prep  
6 sessions that you had with him?

7 A. It's likely that I did, but I can't  
8 say that I remember them.

9 Q. Did you take notes at the prep  
10 sessions?

11 A. I did not.

12 Q. Let's -- we can take that document  
13 down.

14 Did you speak with any reporters  
15 about Charlotte Bennett's allegations against the  
16 Governor?

17 A. Did I speak with any... Not that I  
18 recall. Again, going back to what I've said  
19 before, my conversations with reporters were  
20 about the -- the sort of general context. I  
21 would receive comments from reporters about --  
22 about some of the allegations, but I -- no, I --  
23 my role was to speak with national reporters  
24 about sort of the political ramifications of  
25 these things.

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SMITH

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Q. And when you spoke with reporters, was it because someone had asked you to speak with reporters?

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A. Oftentimes reporters would reach out directly as -- because they know I'm someone -- you know, a woman who had worked for the Governor. Occasionally -- you know, we knew that there were people -- national reporters who were sort of looking into this, you know, looking into these story lines for national publications and you know, they wanted someone who could sort of speak to them, you know, on background, sort of about what everything meant for the Governor, and in those cases I would sometimes speak to reporters.

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Q. As you advised the Executive Chamber and the governor in responding to allegations of sexual harassment against the Governor, was your advice informed by what you knew about potential other allegations against the Governor?

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A. Sorry, can you repeat that?

Q. Yeah. For example, as you advised the Governor and the Executive Chamber about how to respond to Lindsey Boylan's sexual harassment

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SMITH

allegations, was your advice informed by what you knew about potential other allegations against the Governor from Charlotte Bennett, for example?

A. I don't recall. And I don't recall the timing either, if we had responded, you know, before some of this. But I just don't recall.

(Chat messages were marked Exhibit 17 for identification, as of this date.)

Q. Let's go to tab 30. This looks like a conversation between you and Melissa DeRosa about a draft response to Charlotte Bennett's allegations, do you see that?

A. I think we're looking at the wrong --

MR. ROSENBERG: We're looking at something different. We're looking tab 30, but it's not --

MS. MAINOO: 33.

MR. ROSENBERG: 33. Sorry about that. Give us one minute to take a look at it.

Q. Are you ready?

A. Yes.

Q. What's the background of this?

A. I don't remember.

1 SMITH

2 Q. Is it fair to say that you and  
3 Melissa DeRosa are discussing a draft response to  
4 Charlotte Bennett's allegations?

5 A. I don't remember.

6 Q. The statement at 1:09:05 a.m.  
7 February 27th is a draft response to Charlotte  
8 Bennett's allegations, correct?

9 A. Correct.

10 Q. And you asked Melissa DeRosa in the  
11 text message before whether she had talked to the  
12 Governor about that draft statement, correct?

13 A. I said, "Have you talked to Andrew  
14 about this?"

15 Q. "Andrew" refers to the Governor?

16 A. I don't know -- yes.

17 Q. Okay.

18 A. But I can't tell from the context  
19 here if that meant that it was about the next  
20 text I sent. The next text I sent was almost two  
21 hours later, so to me those don't necessarily  
22 correlate.

23 Q. Okay. And then your next -- Melissa  
24 responded to say, "I think it would be helpful if  
25 you talk to him," do you see that?

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SMITH

A. Yes.

Q. And then you respond, "That convo was so enraging," do you see that?

A. Yes.

Q. Do you interpret those text messages to suggest that you spoke with Governor Cuomo, that you had a conversation with Governor Cuomo?

A. No. Because I don't remember the context of them.

Q. Okay. Do you have an alternative interpretation of these text messages where you asked Melissa DeRosa if she has spoken to the Governor, Melissa says she thinks it would be helpful for you to speak to the Governor, and then you respond saying that conversation was so enraging?

A. So she asked me to speak to the Governor, but I -- at 10:17 and I responded at 10:17, "That convo was so enraging," so I don't think that, you know, in the 20 seconds between those texts that I had the chance to speak with the Governor so I don't think it was about a conversation that I'd had with the Governor.

Q. In between the texts?

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A. Yeah.

Q. Okay. You said, "That statement is enraging," are you referring to the draft response to Charlotte Bennett's allegations?

A. I don't recall the context and what this was referring to.

Q. Any idea what you are referring to?

A. No idea.

Q. That was on February 27th, the day that Charlotte Bennett's allegations were publicized, correct?

A. If that's the date that they became publicized, then yes.

Q. Is it plausible that you were discussing Charlotte Bennett's allegations when you were talking about conversations and statements being so enraging?

A. Meaning -- can you clarify that? We were talking about -- that my comment, "That statement is enraging" was about Charlotte Bennett's comments?

Q. That it had something to do with either Charlotte Bennett's allegations or the response to Charlotte Bennett's allegations, is

1 SMITH

2 that plausible?

3 A. It's possible, but, you know, again,  
4 I don't know just from looking at these texts in  
5 a vacuum.

6 (New York Times article was marked  
7 Exhibit 18 for identification, as of this  
8 date.)

9 Q. Let's go to tab 35. Tab 35 is a New  
10 York Times article about Charlotte Bennett's  
11 allegations, do you see that?

12 A. Mm-hmm.

13 Q. Is that a yes?

14 A. Oh, yes. Sorry.

15 Q. And that's February 27th?

16 A. Yes.

17 Q. Did you read this article about  
18 Charlotte Bennett's allegations?

19 A. At the time, yes.

20 Q. And what did you think of these  
21 allegations at the time?

22 A. Sorry, can I reread the story?

23 Q. Of course.

24 A. Okay. Sorry, and your question was?

25 MS. MAINOO: Ms. Moskowitz, can you

1 SMITH

2 read back my question?

3 (The record is read back by the  
4 reporter.)

5 A. That they were -- that these would  
6 require, you know, a serious and substantive  
7 response from him and likely in person.

8 Q. What you mean by "likely in person"?

9 A. Versus, you know, via a statement.  
10 So before we had just given out statements from  
11 the Governor and with -- this is when we began  
12 to, you know, decide that he needed to do an  
13 in-person press conference.

14 Q. Did you speak with the governor about  
15 Charlotte Bennett's allegations as detailed in  
16 February 2021?

17 A. We discussed it at the media prep  
18 that I mentioned.

19 Q. Did you prepare --

20 A. I can't --

21 Q. Please go ahead.

22 A. But I can't remember if I discussed  
23 it in -- in any other forums with him.

24 Q. Did you prepare questions for the  
25 Governor for that media prep regarding

1 SMITH

2 Ms. Bennett's allegations?

3 A. I would have, yes.

4 MS. MAINOO: And Counsel, if we have  
5 not received those questions, we would like  
6 them.

7 Q. And do you remember --

8 MR. ROSENBERG: I understand.

9 Q. Do you remember what questions you  
10 asked for that media prep?

11 A. I don't.

12 Q. Do you remember if you asked the  
13 Governor whether he asked Ms. Bennett questions  
14 about her sex life?

15 A. I don't remember the questions.

16 Q. Do you remember if you asked the  
17 Governor whether he asked Ms. Bennett if she had  
18 ever had sex with older men?

19 A. I don't.

20 (Chat messages were marked Exhibit 19  
21 for identification, as of this date.)

22 Q. Let's go to tab 37. This is another  
23 discussion between you and Melissa DeRosa about a  
24 draft response to Ms. Bennett's allegations,  
25 correct?

1 SMITH

2 A. Yes.

3 Q. And on the last page, at 2:17:32  
4 p.m., you made a comment that, "Paternalistic is  
5 really creepy. People are going to pick up on  
6 that word as really creepy," do you see that?

7 A. Mm-hmm. Yes.

8 Q. And do you remember making that  
9 comment?

10 A. Yes.

11 Q. What do you remember about the draft  
12 statement?

13 A. That the draft statement used the  
14 term "paternalistic" because I -- and I see it  
15 in -- you know, two pages prior in -- I don't  
16 know -- like, two pages before that I see a draft  
17 of the statement I think that used that term and  
18 I said that I thought that that was a creepy term  
19 to use.

20 Q. And what's the reason you thought  
21 that was a creepy term to use?

22 A. I just think it's -- honestly I just  
23 think it sounds creepy to use in this context.

24 Q. What do you mean by "creepy"?

25 A. I can't really -- I can't -- I'm not

1 SMITH

2 sure I can necessarily put my finger on it, it  
3 just -- it -- I just think paternalistic is a  
4 weird word.

5 Q. And is it the case that you thought  
6 describing the Governor's conduct toward  
7 Charlotte Bennett as paternalistic was consistent  
8 with allegations of sexual harassment that she  
9 was making?

10 A. No.

11 Q. Did you think that describing the  
12 Governor's conduct towards Charlotte Bennett as  
13 paternalistic suggested something inappropriate  
14 in his conduct toward her?

15 A. No.

16 Q. What did you find creepy about the  
17 use of the term "paternalistic"?

18 A. I just didn't like the word. I --  
19 sometimes a word just doesn't sound right and,  
20 you know, I -- Melissa had suggested  
21 mentor/mentee, that sounded better to me. I --  
22 the word "paternalistic" has a lot of  
23 connotations to me that I just think are weird.

24 Q. What connotations does it have?

25 A. It -- I mean, it depends on the

1 SMITH

2 context in which it's used.

3 Q. In this context what connotations did  
4 you think it had?

5 A. I -- I -- I can't -- I honestly don't  
6 know except that I just didn't like the use of  
7 the word paternalistic in this -- in this  
8 context.

9 Q. Later on in the text you made a  
10 connection between the word paternalistic and  
11 pushups, can you explain that statement?

12 A. Yes. My understanding was that there  
13 had been some sort of like pushup contest or  
14 something and I just thought again using the term  
15 paternalistic, it just doesn't correlate with --  
16 with that, you know. It -- I just think that the  
17 use of the word paternalistic just seemed off  
18 in -- in this statement.

19 (Chat messages were marked Exhibit 20  
20 for identification, as of this date.)

21 Q. Later you said you thought the term  
22 paternalistic sounded creepy retreading, what did  
23 you mean by that?

24 MR. ROSENBERG: I couldn't hear you.

25 A. Sounded what?

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Q. Creepy rereading.

A. Oh, I think I meant -- wait. Where is that?

Q. This is tab 42.

MR. ROSENBERG: Oh.

A. I think I meant to say creepy rereading.

Q. Okay. Did you discuss the draft statement responding to Charlotte Bennet's allegations with Governor Cuomo?

A. I can't remember.

Q. In the second line you say in the statement -- you said, "I don't love the word paternalistic in the statement, but Melissa, he seemed pretty set on it." Who were you referring to as "he" there?

A. It would seem to imply the Governor.

Q. What discussions did you have with the Governor or what discussions did you have involving the Governor about Charlotte Bennett's -- about the response to Charlotte Bennett's allegations?

A. I don't remember. So let me rephrase that. I remember having a conversation that -- I

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remember discussing prior to the press conference that we discussed -- I don't remember the specific questions that were asked. And I remember reviewing the statement that we discussed, right, the statement that used the term "paternalistic." So I mean, that's -- those -- that's what I remember.

(Chat messages were marked Exhibit 21 for identification, as of this date.)

Q. Let's go to tab 50.

MR. ROSENBERG: Read it from the back. This is first.

Q. Just so you know, I'm focused on Josh Vlasto's statement on February 27th at 3:02 p.m. that, "Spoke to MDR, this clause has to come out. Nor did I ever think that I was acting in any way that was inappropriate."

A. Okay.

Q. Do you remember any discussions about taking out the clause "Nor did I ever think that I was acting in any way that was inappropriate" from the draft statement responding to Charlotte's allegations?

A. I don't.

1 SMITH

2 Q. Do you remember any discussions about  
3 whether the Governor thought his conduct in  
4 regard to the sexual harassment allegations was  
5 inappropriate?

6 A. Yes. During the media prep session,  
7 outside of the Q&A, he read -- he -- he started  
8 it out by reading his draft of his statement that  
9 he was going to deliver at the press conference  
10 and the draft that he read was basically what he  
11 delivered the next day in the press conference  
12 and in it -- in the statement he said -- he  
13 addressed it by saying something like I never --  
14 I didn't intend for these -- I didn't think I was  
15 saying anything inappropriate, I didn't intend to  
16 make anyone feel uncomfortable. You'd have to --  
17 I would have to go back and check the exact  
18 language, but that was -- that was when it was  
19 addressed.

20 Q. Ms. Smith, did you ever advise Peter  
21 Ajemian to delete tweets about Kavanaugh,  
22 Franken, Me Too, Weinstein, people resigning, or  
23 sexual harassment?

24 A. Yes, I did.

25 Q. Okay. And how did you give him this

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advice?

A. I can't remember. Like over the phone or text or something, but I told -- before -- but I did tell him to do that.

Q. What's the reason you told him to do that?

A. Just because I knew that Republicans or people would come back and try to see -- and try to do a gotcha of any time that he or, you know, others on the campaign staff had -- had -- had, you know, talked about these issues online and, you know, tried to weaponize them against him. It's a pretty common tactic in politics.

Q. Did you have similar tweets that you deleted yourself?

A. Mm-hmm.

Q. Is that a yes?

A. Oh, yes. Sorry.

Q. And when was -- when did you delete similar tweets?

A. Late February, early March.

Q. Did you give anyone else similar advice?

A. Rich and Melissa, if I recall

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correctly.

Q. Did you think there was anything inconsistent between the tweets that you deleted and your position with respect to the sexual harassment allegations against the Governor?

A. I don't understand the question.

Q. Did you think there was anything contradictory between the tweets that you deleted and the position you were taking with respect to the sexual harassment allegations against the Governor?

A. Meaning?

Q. Did you think that anything in the tweets that you had deleted undermined or was at odds with or was inconsistent with or conflicted with any of the positions you were taking as to the sexual harassment allegations against the Governor?

A. No. My concern was that people online would just use them sort of in a cheap gotcha way to say oh, well, you said this about Kavanaugh, now you're defending Governor Cuomo. It was -- it was to avoid a lot of the cheap shot tactics that dominate social media. It was -- it

1 SMITH

2 was to avoid a minor annoyance for staff.

3 Q. And you communicated your advice to  
4 Peter Ajemian via Signal, correct?

5 A. I don't remember how I -- how I  
6 communicated them.

7 Q. Let's pull up tab 34 and we'll mark  
8 it as an exhibit.

9 (Signal chat was marked Exhibit 22  
10 for identification, as of this date.)

11 Q. Does this fresh -- does this jog your  
12 memory about how you communicated your advice to  
13 Mr. Ajemian?

14 A. Yes.

15 Q. And how did you communicate your  
16 advice to Mr. Ajemian?

17 A. This looks like it was over Signal.

18 Q. Is there a reason you used Signal to  
19 communicate that advice?

20 A. I can't tell you what the reason was.

21 Q. How does Signal work, Ms. Smith?

22 A. It's like text message. It's  
23 encrypted. But it's encrypted. It's -- it's  
24 generally how I communicate with -- with people  
25 in politics, on campaigns, et cetera. On

1 SMITH

2 campaigns these days and state government these  
3 days you are told -- you're advised to  
4 communicate via Signal versus text message.

5 Q. In your discussions with the  
6 Executive Chamber between December 2020 and the  
7 present, has anyone advised you to communicate  
8 via Signal?

9 A. No.

10 Q. Have you advised anyone to  
11 communicate via Signal in those communications?

12 A. I don't think so.

13 Q. Is it the case that on Signal you can  
14 set messages to disappear?

15 A. Yes.

16 Q. Did you set your communication with  
17 Mr. Ajemian to disappear?

18 A. I can't remember.

19 Q. Did you speak with Josh Dawsey about  
20 Charlotte Bennett's allegations?

21 A. I spoke with Josh Dawsey, but I don't  
22 remember the content of our conversations. It  
23 was -- I -- the content of our conversation, but  
24 again, my recollection of the conversation was  
25 that it was more broadly about sort of the

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political ramifications about this for Governor Cuomo.

Q. In your discussions with reporters about the allegations against Governor Cuomo, did you ever deny the allegations against Governor Cuomo?

A. I would have because -- I would have used the -- I would have said what Governor Cuomo had said about individual allegations I would think.

(Statement from Governor Cuomo was marked Exhibit 23 for identification, as of this date.)

Q. Let's go to tab 57. Is tab 57 a statement from Governor Cuomo responding to Charlotte Bennett's allegations?

A. Sorry, was that a question?

Q. That's a question, yes.

A. Yes.

Q. Okay.

MS. MAINOO: And we'll mark it as an exhibit.

(2/28/21 e-mail chain was marked Exhibit 24 for identification, as of this

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date.)

Q. So let's go to tab 62. Does tab 62 contain another statement, this time a draft statement responding to Charlotte Bennett's allegations?

A. Okay.

Q. Is that a yes?

A. Sorry, what -- sorry, what was the question?

Q. The question is does tab 62 contain another statement responding to Charlotte Bennett's allegations?

A. It seems to contain, you know, a few different drafts of a statement responding to it.

(Statement from Governor Cuomo was marked Exhibit 25 for identification, as of this date.)

Q. Let's go to tab 64. Is that a final version of a second statement responding to Charlotte Bennett's allegations a day after the first statement?

A. Can I -- can I see the previous statement? What tab was that at?

Q. The previous final statement? That

1 SMITH

2 was tab 57.

3 A. Okay. So yes, this looks like a  
4 second statement we put out in addition to the  
5 first one.

6 Q. What's the background for issuing two  
7 statements within a day of each other responding  
8 to Charlotte Bennett's allegations?

9 A. I would have to go back and check the  
10 record. My recollection was the first statement  
11 was what we gave The New York Times and we also  
12 released it publicly just for one story, right.  
13 It was -- it was essentially just for one story  
14 but we decided to put it out publicly as well and  
15 that the next day we put out a more full  
16 statement after seeing the full story.

17 Q. What --

18 A. But I would have to go back and just  
19 check the timing on that.

20 Q. And what would you check?

21 A. Just that that's the sort of -- the  
22 chronology of -- of those things.

23 Q. Are there documents that you would  
24 use to check the record?

25 A. The Times story and things like that,

1 SMITH

2 that's what I would look at.

3 Q. What do you know about the second  
4 statement?

5 A. I -- I don't -- I don't remember  
6 anything about it except that we put it out  
7 apparently. I just -- I can't tell you that I  
8 remember the specifics of -- of this statement.

9 Q. Were you involved in drafting the  
10 second statement?

11 A. I believe so, but I don't -- I don't  
12 have any specific memories of it, but I -- I --  
13 but I believe I was -- was involved in it.

14 Q. Did you ever hear about any articles  
15 planning to publicize your involvement in  
16 responding to the sexual harassment allegations  
17 against the Governor?

18 A. Yes.

19 Q. How did you hear about those  
20 articles?

21 A. From -- from other people. From -- I  
22 remember one time Dani Lever told me. And a  
23 reporter had reached out to me, I think it was  
24 from -- from one of the -- from an Albany paper.  
25 And another time I had heard from Rich Azzopardi

1 SMITH

2 I believe about a Wall Street Journal story.

3 Q. What was your reaction to those  
4 possible stories?

5 A. That my preference would be not to be  
6 named in them.

7 Q. And what's the reason your preference  
8 was not to be named in the stories?

9 A. For the same -- I mean, we had this  
10 discussion before, which is any mention of my  
11 name would bring scrutiny upon me and generally I  
12 prefer -- less scrutiny is better I think.

13 Q. Were you concerned that any mention  
14 of your involvement would bring scrutiny on your  
15 business?

16 A. On my -- on my business...

17 Q. Let me ask the question a different  
18 way.

19 Were you worried any scrutiny of you  
20 might negatively impact your business?

21 A. Yeah. It's possible.

22 Q. And were you able to keep your name  
23 out of the stories?

24 A. I myself did not do -- did not have  
25 any contact with the reporters who -- I didn't

1 SMITH

2 have any contact with the reporters who were  
3 planning to use my name in stories, if I remember  
4 correctly. My recollection is that Dani, Rich  
5 spoke with reporters and my name didn't end up in  
6 stories.

7 Q. And did you ask Dani or Rich to  
8 intervene on your behalf and speak with the  
9 reporters to keep your name out of the stories?

10 A. I remember with Dani -- because Dani  
11 was going to be mentioned in one as well and we  
12 were both like, you know, all things being equal,  
13 we'd prefer not to be mentioned in the story.  
14 And Dani was close with the reporter who was  
15 writing it. I -- I can't remember the  
16 publication. It was like an Albany reporter. It  
17 wasn't someone that I knew.

18 And with Rich, I don't think I told  
19 Rich, you know, "Get my name out of the story,"  
20 but my name didn't end up being in the story.

21 Q. Did you communicate to Dani or Rich  
22 that you did not want your name in the story?

23 A. Yes. So you know, as I said before,  
24 you know, all things being equal, I think my  
25 preference would be not to be named in the

1 SMITH

2 stories.

3 Q. And in fact, the reporter reached out  
4 to ask whether you were involved in connection  
5 with the sexual harassment allegations?

6 A. That's the Albany reporter that I  
7 mentioned before that had also reached out to  
8 Dani. It was someone -- but it's someone I don't  
9 know and don't have a relationship with.

10 Q. I think my question had been whether  
11 you had been in contact with any of the reporters  
12 about your involvement in the sexual harassment  
13 allegations -- in responding to sexual harassment  
14 allegations.

15 A. I remember receiving an e-mail from  
16 an Albany reporter in March about it, and that  
17 was one where Dani had also been mentioned and  
18 spoke with the reporter. There was a Wall Street  
19 Journal story. And it's very possible that other  
20 reporters brought it up. I -- I have a  
21 recollection of maybe someone with The New York  
22 Times, maybe Katie Glueck with the New York  
23 Times, raising it. That is it --

24 Q. How did you --

25 A. -- in terms of what I can remember.

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Q. How did you respond to the reporters?

A. I didn't respond to Albany reporter because Dani spoke with him. I never spoke with The Wall Street Journal. In terms of The New York Times, I remember just sort of the conversation just sort of fizzled out, but I just -- I can't remember the exact -- what we said exactly.

Q. Did you admit your involvement in helping to respond to the sexual harassment allegations?

A. I don't -- I don't think I ever received a point-blank, like, question, like, from it. I just can't recall the specifics of the conversation.

Q. Do you remember that you were asked, "Are we wrong to include you on a list of long-time allies who have been involved in helping Cuomo navigate the series of crises recently, even if informally"?

A. Sorry, can you repeat that?

Q. Do you remember being asked, "Are we wrong to include you on a list of long-time allies who have been involved in helping Cuomo

1 SMITH

2 navigate the series of crises recently, even if  
3 informally"?

4 A. Is that -- that may be what I was  
5 referring to from The New York Times.

6 MR. ROSENBERG: The question is do  
7 you remember.

8 A. I mean, I don't remember the exact  
9 wording. I just don't.

10 Q. Would that have been a point-blank  
11 question?

12 A. No. That doesn't sound like a point-  
13 blank question to me.

14 Q. What would a point-blank question  
15 have sounded like then?

16 A. Just "Are you doing this or not?"

17 Q. What was Linda Lacewell's role in  
18 developing responses to press inquiries or  
19 drafting press statements?

20 A. She was just to give advice. You  
21 know, I can't say that she had any, like,  
22 specific -- specific role that I can, you know,  
23 sort of pinpoint.

24 Q. What kind of advice was she giving?

25 A. It would just depend on -- I -- it

1 SMITH

2 would be hard for me to characterize it. You  
3 know, it's -- I just don't recall. Maybe change  
4 this statement a little bit here, change this a  
5 little bit here, but I -- I -- you know, I -- I  
6 don't know that I have a precise characterization  
7 of the type of advice that she was giving.

8 (3/9/21 e-mail was marked Exhibit 26  
9 for identification, as of this date.)

10 Q. Let's go to tab 104. This is on  
11 March 9, 2021, Melissa DeRosa sends a draft  
12 statement. The last line is, "The Governor's  
13 previous statement that he has never touched  
14 anyone inappropriately stands" and then you say,  
15 "I thought we weren't having that last sentence  
16 in there."

17 What's the reason you thought that  
18 last sentence was not going to be included?

19 A. I don't remember the context.

20 Q. Were there any concerns about saying  
21 that the Governor had never touched anyone  
22 inappropriately?

23 A. I don't know that -- no, not that I  
24 recall. But this sort of seems like an odd place  
25 to put that sentence. But I don't remember the

1 SMITH

2 context.

3 Q. Well, let's keep going. So I'm on  
4 page 10 of the PDF, this is 1480 Bates numbered,  
5 and Jeff Pollack says, "What do you want with the  
6 last sentence? I don't love it, but I don't want  
7 them saying we didn't address it."

8 Does this jog your memory about the  
9 discussion?

10 A. No. I still don't remember.

11 Q. And continuing onto -- not the next  
12 page, but the one after that --

13 MR. ROSENBERG: Which page number?

14 Q. 4182. You say, "Saying that seems to  
15 confirm the charge," what do you understand by  
16 that statement?

17 A. I don't know.

18 Q. Were you involved in discussions  
19 about an independent investigation into the  
20 sexual harassment allegations against the  
21 Governor?

22 A. Meaning -- sorry, meaning what?

23 Q. Broadly understood, were you involved  
24 in any discussions about anyone independently  
25 investigating the sexual harassment allegations

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against the Governor?

A. Yes.

Q. What discussions were you involved in?

A. Putting out -- I remember there was a drafting of a statement about -- about it. I can't remember the person's name, but the Governor did put out I think a statement about -- saying that someone -- that he was appointing someone to handle an independent investigation. I remember that.

Q. When did you first become involved in any discussions about appointing someone to do an independent investigation into the allegations?

A. Well, to be clear, I was only involved in discussions about any statements around it.

Q. Okay. When did you first become involved in any discussions about an independent investigation, including any statements about an independent investigation into the allegations against the Governor?

A. It would have been whenever we were having those discussions.

1 SMITH

2 Q. Right. And I'm trying to find out  
3 when were you having those discussions?

4 A. I would have to take a look at the  
5 timing in the e-mails or in the press because I  
6 don't remember off the top of my head when that  
7 was. Except -- because I don't remember whether  
8 it was after accuser 6 or after his press  
9 conference. You know, it -- the chronology is --  
10 gets a little mixed up in my head sometimes when  
11 I go back and try to think of these things.

12 Q. Do you remember the candidates who  
13 were discussed?

14 A. There was a judge maybe or retired  
15 judge, Barbara Jones.

16 Q. Do you remember any other candidates  
17 who were referenced?

18 A. Janet DiFiore.

19 Q. Anyone else?

20 A. No. Those are the names that come to  
21 mind.

22 Q. Do you remember any discussion about  
23 Robby Kaplan?

24 A. No, I don't.

25 Q. Were you involved in any discussions

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about making a referral to the Attorney General's Office?

A. I think so.

Q. What discussions were you involved in?

A. I don't -- so I don't recall the exact specifics, but I remember that there was discussion about naming -- and again, this is where, you know, you -- there are -- some of the limitations of me being a PR person versus a legal person sort of intervene here so -- is -- that -- if I recall correctly, there was criticism when the -- when the Governor had said he was referring it to Barbara Jones and then there was pressure on the Governor to refer it to the AG's office.

Q. Was the Governor involved in any of those discussions?

A. I believe he was, but -- but not with -- but I don't think I was a part of those conversations.

Q. Did you discuss with the Yang campaign the sexual harassment allegations against the Governor?

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A. I checked in with them to see if they were going to put out any statements about them.

Q. When you say you checked in with them, what do you mean by that?

A. Just to say are you guys planning to put out any statements on the -- on the allegations against the Governor.

Q. Who did you ask?

A. Probably maybe his campaign manager or -- or his friend, [REDACTED]. I don't know what his position was. Either -- it was either [REDACTED] or maybe [REDACTED].

Q. What did you learn?

A. At that time they weren't going to.

Q. Did that change?

A. Yes.

Q. When did it change?

A. I can't remember the timing, but you know, later. A few days later. I -- I can't remember the exact timing.

Q. Did you have any discussion with anyone on the campaign before they changed their position?

A. Not that I recall.

1 SMITH

2 Q. Did you ever make any suggestions  
3 about how the Yang campaign should respond or not  
4 respond to the sexual harassment allegations  
5 against the Governor?

6 A. I don't think so.

7 Q. Did you flag information about the  
8 appointment of an independent investigator to the  
9 Yang campaign?

10 A. I don't recall.

11 (2/28/21 e-mail was marked Exhibit 27  
12 for identification, as of this date.)

13 Q. Let's look at tab 53. So going to  
14 the fourth page, this is number 556, you said --  
15 in relation to a statement that Andrew Yang had  
16 issued, you said, "This was fine from Yang.  
17 They're not going to do anything else."

18 Does this jog your memory about  
19 whether you had any discussions with the Yang  
20 campaign about any statements they would issue?

21 A. So as I mentioned, I had asked them  
22 if they were putting out a statement, they did,  
23 and it appears that I did have that communication  
24 with them about it, yes.

25 Q. And you communicated with them about

1 SMITH

2 whether they were going to do anything else; is  
3 that correct?

4 A. According to this e-mail, but I don't  
5 recall the exact conversation.

6 Q. And is there any reason to think the  
7 e-mail is incorrect?

8 A. No.

9 Q. And you also flagged the possible  
10 appointment of Barbara Jones for the Yang  
11 campaign; is that correct?

12 A. Yes. According to this e-mail.

13 Q. What did you flag to the Yang  
14 campaign about Barbara Jones' appointment?

15 A. So I don't recall, but you know, we  
16 had put out a statement I think saying that the  
17 Governor was kicking it to Barbara Jones to  
18 investigate, so I assume that's what I meant by  
19 that.

20 Q. Did you have any discussions about  
21 the response to the Governor's proposal to  
22 appoint Barbara Jones to investigate the  
23 allegations against the Governor?

24 A. With -- with whom?

25 Q. With anyone.

1 SMITH

2 A. With anyone?

3 Q. Correct.

4 A. Yes.

5 Q. Okay. Who did you discuss it with?

6 A. I remember discussing it with  
7 reporters, with a couple reporters. I don't  
8 remember the specifics. I remember that we sort  
9 of divvied up making sure that people saw it.

10 Q. And what did you discuss with  
11 reporters?

12 A. Just that the Governor had -- had  
13 done that.

14 Q. Did you get any questions from  
15 reporters about the Governor's appointment of an  
16 investigator to investigate himself?

17 A. I may have. I just -- I don't  
18 remember.

19 Q. And did you have any discussions with  
20 anyone about the referral to the Attorney  
21 General?

22 A. I mean, I think in -- we discussed it  
23 internally. Externally I can't remember.

24 Q. What internal discussions did you  
25 have?

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A. About whether the Governor would refer it to the Attorney General.

Q. And what was discussed?

A. My recollection is that the -- his referral to -- and again, I might not be using the proper terminology here, is that the Barbara Jones thing wasn't going over well and that it was sort of an inevitability that he would have to refer it to the attorney general's office.

Q. And how did you understand that?

A. Understand that it would -- he would have to -- likely have to refer to it the Attorney General's Office?

Q. Correct.

A. Because the Barbara Jones news wasn't going over well. I can't remember exactly what it was, but there might have been some media backlash or backlash from politicians and it just did not seem like a politically tenable position.

Q. And internally who did you have those discussions with?

A. Steve Cohen, Josh Vlasto. Those are the two I remember. But again, I -- those are the two that I remember off the top of my head.

1 SMITH

2 Q. Did you have any discussions with  
3 Melissa DeRosa about this?

4 A. I may have.

5 Q. And do you know what the Governor's  
6 position was on referring the allegations and  
7 complaints to the Attorney General?

8 A. My recollection was that the  
9 Governor's preference was that it go to Barbara  
10 Jones.

11 Q. And did you understand the reasons  
12 the Governor preferred that the complaints go to  
13 Barbara Jones?

14 A. I don't know that I ever discussed  
15 it. And I just don't recall if I ever discussed  
16 it with the Governor himself.

17 Q. And even if you did not discuss it  
18 with the Governor himself, did you understand  
19 based on your discussions with anyone why the  
20 Governor preferred that Barbara Jones look into  
21 the allegations?

22 A. I still don't -- so I don't feel  
23 comfortable if -- with, you know, my recollection  
24 being vague, you know, ascribing anything to the  
25 Governor. This is -- what I would feel more

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comfortable saying is that I do know that there were concerns that -- that it could become more politicized if it were handed off to another political office.

Q. And you're describing the Attorney General's Office as another political office?

A. Yes. As -- yes. As another elected office.

(2/28/21 text message marked Exhibit 28 for identification, as of this date.)

Q. Let's go to tab 60. So this is a text message from you in which you say, "Just give Tish what she wants," what did you mean by that?

A. Meaning just -- referring to the AG's office.

Q. And what's the reason you were saying that?

A. As I mentioned before, it seemed untenable. We were monitoring the media coverage, the -- the chatter on Twitter, and it did not seem like, you know, the Governor's decision -- that Barbara Jones stuff was going over well and it just seemed inevitable that it

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was going to end up in the hands of the AG.

Q. And what exactly did you understand was politically untenable?

A. The -- the Barbara Jones situation.

Q. And what are you referring to when you talk about the Barbara Jones situation?

A. So again, I'm not -- I don't -- I'm not great with the specific legal -- the specific legal language here, but I know that whenever we said that or -- or made it known that he was going to refer to that, that there was, you know, some backlash online. I can't remember the specific back -- who it was from, whatever, I just remember on Twitter and amongst some journalists, maybe some electeds, that it -- it -- that it wasn't received well.

Q. Were there questions about whether it made sense for Barbara Jones to do the investigation considering that she had worked with Steve Cohen?

A. That's possible. I just don't remember those specifics.

(2/28/21 10:02 e-mail was marked

Exhibit 29 for identification, as of this

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SMITH

date.)

Q. Let's go to tab 58. So do you see the e-mail from Dana Rubinstein on February 27th?

A. Yes.

Q. Do you see that Dana Rubinstein raised two questions: one, why did it make sense for Barbara Jones, who worked with Steve Cohen, to do the investigation; and, two, why did it make sense for the Governor to have any role in selecting who conducted the investigation? Do you see that?

A. Yes.

Q. Does this jog your memory about some of the questions that were raised about the Barbara Jones appointment?

A. So I see this now and I've got -- I -- you know, I'm going to go back to what I said before, I am not -- I'm not an expert on Albany, on state government procedures, on legal stuff. Of the things that we've discussed today, this would be the thing that I would understand the least and understand the least about how it's traditionally done the way that you do it.

So I can't say that I had a ton of

1 SMITH

2 understanding about it at the time or have a lot  
3 of understanding about it today even looking at  
4 these. So what I do remember though was just  
5 seeing some backlash about it online, you know,  
6 from reporters and from politicians and the like.

7 Q. And to be clear, I'm not asking about  
8 your understanding. I'm not interested in your  
9 understanding. I'm interested in hearing the  
10 nature of the backlash to the proposal to appoint  
11 Barbara Jones.

12 A. Yeah. So what I -- so --

13 MR. ROSENBERG: Wait. Let her finish  
14 the question.

15 A. Sorry.

16 Q. Please go ahead, Ms. Smith.

17 A. So I guess what I'm saying is that it  
18 would be hard for me to understand the nature of  
19 the backlash because this is just not, like, my  
20 bailiwick. Like, you know, this is -- again,  
21 this is something that's sort of out of my normal  
22 comfort zone. I don't know how special  
23 investigators and these things are usually set  
24 up. I don't know who Barbara Jones is. I've  
25 never heard that name before. I don't know how

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SMITH

things are always done in Albany. I'm not super familiar with, like, the legal system.

So I can't -- so asking me to say I understood this, it just -- I just -- this is sort of out -- you know, outside of my realm of -- of my comfort zone is what I'm trying to say.

Q. To make it simpler, you're on this e-mail, correct? You're on the e-mail at the top?

A. Yes.

Q. Okay. So you received an e-mail from Peter Ajemian, right?

A. Yes.

Q. Okay. And Peter Ajemian forwarded this e-mail from Dana Rubinstein, right?

A. Yes.

Q. And Dana Rubinstein raised those two questions in her e-mail, correct?

A. Yes.

MR. ROSENBERG: The screen has just gone blank. Can you hear us?

Q. I can hear and see you.

MR. ROSENBERG: Can you see us okay?

1 SMITH

2 MS. MAINOO: Yes.

3 MR. ROSENBERG: Our screen just went  
4 blank -- we're back.

5 (Messages beginning with Bates No.

6 MORAN 711 were marked Exhibit 30 for  
7 identification, as of this date.)

8 Q. Let's go to tab 68.

9 MR. ROSENBERG: I'm sorry, 68?

10 MS. MAINOO: Correct, 68.

11 Q. So do you see here, Ms. Smith, you  
12 ask Peter Ajemian if he screamed at The Times?  
13 What did you mean by that?

14 A. I don't remember the exact content --  
15 context of that day, but you know, it seems to be  
16 whether he, you know, pushed back with The Times  
17 on a story.

18 Q. Whether he yelled at The Times?

19 A. I wouldn't take it that literally.

20 Q. Okay. So you used the term "scream"  
21 to refer to pushing back?

22 A. Sometimes. It depends. I mean, I  
23 don't think I was using it seriously in this  
24 context. Peter Ajemian is not much of a  
25 screamer.

1 SMITH

2 Q. Okay. So let's go to page 9 of this  
3 document, which has the number 719 at the bottom  
4 and here --

5 A. Yes.

6 Q. -- you say, "You guys have turned me  
7 into a monster. I screamed at my editor at  
8 Harper Collins today," what did you mean by that?

9 A. That -- just by -- I think the stress  
10 of all this was getting to me.

11 Q. Were you suggesting that you were  
12 behaving like members of the Executive Chamber  
13 and yelling at people?

14 A. No. I think I was -- I think some of  
15 this is gallous humor and just is making, you  
16 know, bad jokes to cut some of the tension.

17 Q. And then going to page 13 of this  
18 document, which is -- has the numbers 723 at the  
19 time, you describe a discussion you had with the  
20 New York Times, I believe about an article  
21 regarding Anna Ruch, is this also a joke?

22 A. Yes. It definitely reads like a  
23 joke.

24 Q. And when you say on the next page,  
25 "He took it in stride," what did you mean by

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SMITH

that?

A. That he took it in stride as it was intended, which is, you know, a joke. I don't think that anyone -- that it is a particularly serious conversation when you're saying I'm going to mock something on Twitter.

Q. And what did you mean at the end when you said, "I'm trying to get them to Biden in this story"?

A. To -- just to put it in context that -- so my recollection was that was -- that was a story about the hands, which is that, you know, that Biden had faced similar criticisms during the presidential campaign.

Q. Earlier you had talked about a media press -- a prep session on March 2nd and March 3rd, so that would have been a day or two after this exchange, correct?

A. Yes.

Q. How did the prep sessions come about?

A. After -- I believe it was -- well, one, at some point the Governor had to address these issues head on, on camera, himself, versus just doing what we had been doing, which is

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SMITH

2 putting up statements from him, you know, either  
3 at, you know, individual one-offs and stories or  
4 in -- you know, in Vlasto's statements and so it  
5 became clear at some point that he had to address  
6 it head on and so after -- I believe that was  
7 right after the Charlotte Bennett thing, after  
8 Anna Ruch that it was just like, you know, let's  
9 just get out there, let's get out there and  
10 address it.

11 Q. And you mentioned that the first prep  
12 session was on March 2nd and the second was on  
13 March 3rd, did both prep sessions take place in  
14 the mansion?

15 A. Yes.

16 Q. So did you travel to Albany for the  
17 prep sessions?

18 A. I did.

19 Q. How did you get there?

20 A. I drove.

21 Q. Who did you go with?

22 A. Jeff Pollack.

23 Q. And how long were you in Albany for?

24 A. We got up there about 6 p.m. on the  
25 2nd and we left right after his press conference

1 SMITH

2 on the 3rd.

3 Q. Where did you stay when you were in  
4 Albany?

5 A. Jeff and I spent the night at the  
6 Governor's mansion.

7 Q. Did anyone else spend the night at  
8 the Governor's mansion?

9 A. Well, the Governor, his daughter. I  
10 think that -- I think that's it.

11 Q. Do you know whether Jeff Pollack has  
12 been compensated for his work in connection with  
13 the response to sexual harassment allegations?

14 A. I don't know. You know, he -- I know  
15 that he continues to conduct polling for the  
16 Governor, but you know, that would be a question  
17 for Jeff.

18 Q. Did you ever speak with Jeff about  
19 your role in helping with the response to sexual  
20 harassment allegations?

21 A. Yes.

22 Q. What discussions did you have with  
23 Jeff?

24 A. I mean, we were in it together, so we  
25 sort of -- it was -- I'm sorry, that's just a

1 SMITH

2 broad question. Is there a more -- is there  
3 something specifically that you're interested in?

4 Q. What do you mean when you say "we  
5 were in it together"?

6 A. We were, you know, serving in these  
7 roles as advisors -- in similar roles as advisors  
8 in this situation.

9 Q. And were you doing this work jointly?

10 A. No. No.

11 Q. Did you participate in the press  
12 conference on March 3rd?

13 A. Like -- what do you mean did I  
14 participate in it?

15 Q. In any capacity did you participate  
16 in the press conference?

17 A. No. I watched it.

18 Q. Did you provide advice during the  
19 press conference?

20 A. Yes. Jeff and I were texting with  
21 Melissa in realtime.

22 Q. And what were you texting with  
23 Melissa in realtime about?

24 A. Just how we thought the -- how it was  
25 going, if there were any -- you know, she's up

1 SMITH

2 there sort of on the dais or, I don't know,  
3 however you describe it, with the Governor and,  
4 you know, if there are any -- any pointers she  
5 could give to him while they were up there  
6 together.

7 Q. And was there a spin that you wanted  
8 to emphasize during the press conference?

9 A. During or after?

10 Q. During or after.

11 A. Just, I mean, I think that he had --  
12 you know, that he had handled it well, that it  
13 wasn't -- frankly, it wasn't -- you know, that  
14 was what we wanted to emphasize, but it ended up  
15 being a lot of what the coverage reflected, which  
16 was that he addressed the -- you know, the  
17 allegations head on, spoke directly to the people  
18 of New York, was contrite, handled it well.  
19 Those were -- those were the main things.

20 MR. ROSENBERG: Do you want to keep  
21 going or do you want to take a break?

22 THE WITNESS: Yeah, can we take a  
23 break? I'm just getting a little bleary  
24 eyed.

25 THE VIDEOGRAPHER: This is the end of

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media unit number four. We are off the record 5:05.

(A brief recess was taken.)

THE VIDEOGRAPHER: This is the beginning of media unit number five. We are on the record at 5:14 p.m.

Q. I think that before my video froze I was asking about the spin you wanted to emphasize during the March 3rd press conference. What was that spin?

A. Just, you know, a role that -- you know, I didn't want to push too hard, but the Governor had done well, he had, you know, taken every question that was there, he had taken a lot of questions, he had been contrite, and had spoken directly to the people of New York, did a good job.

(Messages beginning with Bates stamp MORAN 809 were marked Exhibit 31 for identification, as of this date.)

Q. Let's look at tab 76. So tab 76 is a live text exchange during the Governor's press conference; is that correct?

A. Well, it says 7:36 p.m., is that --

1 SMITH

2 all right. No, no, sorry. 1:36. Okay. Got it.  
3 Got it. Got it. Yeah, that could have been  
4 something I sent during the press conference.

5 Q. So on the first page you say, "What  
6 is he doing?" and Jeff Pollack says, "And now he  
7 is not sounding contrite so let's get back to  
8 that."

9 Does this jog your memory about the  
10 evolution of the Governor's performance during  
11 the press conference?

12 A. Yeah, a little bit. I mean, I --  
13 I -- I don't remember the second-by-second play  
14 by play, but I do remember Jeff -- Jeff and I  
15 were both, you know, sort of sending realtime  
16 texts to Melissa at the time and to the group at  
17 the time.

18 Q. And you were urging the Governor to  
19 sound contrite during the press conference; is  
20 that correct?

21 A. Well, sort of urging the powers that  
22 be to help him sound -- it's not like we were  
23 communicating directly with him or anything.

24 Q. You were communicating with Melissa  
25 to try to get the Governor to sound contrite

1 SMITH

2 during the press conference?

3 A. Well, if -- in this, right, we're  
4 texting -- we're doing this as the Governor is  
5 speaking. It's not like he -- she can interrupt  
6 him and say, you know, you need to sound more  
7 contrite. A lot of this, frankly, is just us  
8 speaking amongst ourselves to get sort of our  
9 anxiety out.

10 Q. So you're reacting to the press  
11 conference; is that fair to say?

12 A. Yeah, yeah.

13 Q. Okay. And you say on the third page,  
14 that's the page with numbers 810 --

15 A. Okay.

16 Q. -- and 811, you say, "Stop." Maybe  
17 this is 811. And 812 is "Stop." And then you  
18 say it again, "Stop" on 812. And then you say,  
19 "Tone is not contrite," do you see that?

20 A. Yup.

21 Q. On 813?

22 A. Mm-hmm.

23 Q. Is that a yes?

24 A. Yes, yes.

25 Q. And then you say on page 817 and 818,

1 SMITH

2 "Melissa, soften"?

3 A. Mm-hmm.

4 Q. Does that reflect you suggesting to  
5 Ms. DeRosa that somehow the Governor needed to be  
6 told to soften his tone?

7 A. Yes. But this doesn't -- you know,  
8 I -- if I recall -- you know, if I recall  
9 correctly, a lot of this was just Jeff and me  
10 just sending these texts as it was happening, not  
11 necessarily at a time when it could be, you know,  
12 changed or anything like that. You know, it's  
13 just sort of the anxiety that comes with being in  
14 these -- watching a press conference where you  
15 otherwise feel pretty helpless.

16 Q. Who is Katie Tur, Ms. Smith?

17 A. She's an anchor on MSNBC.

18 Q. And you texted with Katie Tur after  
19 the press conference, correct?

20 A. Yes.

21 Q. Katie was repeating your spin on TV;  
22 is that correct?

23 A. Yes.

24 Q. And what was that spin?

25 A. If I -- I remember she said something

1 SMITH

2 like, you know, friends of Andrew Cuomo say he  
3 did -- that he did well, was contrite, you know,  
4 something like that.

5 Q. And that was based on information you  
6 were providing to Ms. Tur?

7 A. Yes.

8 (Messages beginning with Bates No.  
9 MORAN 918 was marked Exhibit 32 for  
10 identification, as of this date.)

11 Q. Let's go to tab 78. This is still on  
12 the day of the press conference, correct?

13 A. Yeah.

14 Q. And you ask, "Can we get allies  
15 complimenting him?" You're referring to Quinn,  
16 Kaplan, on Twitter. So who are you referring to  
17 as the Governor's allies?

18 A. So when I use the term "allies," I  
19 mean, it's just anyone who's a -- friendly toward  
20 him or might be inclined to say positive things  
21 or just, you know, anyone who will say anything  
22 positive. You know, after a politician does a  
23 high-profile press conference or a big press  
24 conference, you know, a standard practice in my  
25 line of work is that you have -- we call them

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validators, allies put out statements or tweets or whatever sort of reinforcing the message and saying oh, he did a great job. You know, it's -- you see that from, you know, the President on down to city council members.

Q. And which individuals were you referring to? Who is Quinn?

A. I believe that's Christine Quinn.

Q. And what's the reason you were describing Christine Quinn as a potential ally or validator?

A. High -- she's a high-profile woman who had been a supporter of the Governor.

Q. And who is the Kaplan you referred to here?

A. I believe it's Robby Kaplan.

Q. And what's the reason you had described her as a potential ally or validator?

A. I think, again, she's a high-profile woman who in the past has been supportive of the Governor.

(Text messages were marked Exhibit 33 for identification, as of this date.)

Q. Let's go to tab 140.

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MR. ROSENBERG: I'm sorry, 1 --

MS. MAINOO: 140.

Q. And I'm interested in just the last page. It's a 42-page exchange and I'm only interested in the last page, to a text message that you sent on March 3, 2021, saying, "Yeah, it's good, but all depends on who else comes out. He has been sleeping with people he works with for decades I have been told. Consent when power is involved is complicated, as is flirtation."

A. Yes. If you look at the text above it says, from wapo, meaning from Washington Post. So that was me copying and pasting an e-mail I received from a Washington Post reporter into the text chain.

Q. Before that Melissa DeRosa says, "What's everyone hearing," right?

A. Yes. So she said, "What's everyone hearing?" And so I said from Washington Post and I am copied and pasted the e-mail I received from someone at the Washington Post. So I -- or maybe a text. I don't know.

MS. MAINOO: If you haven't produced that text message, we would like it.

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A. If I didn't produce it, it's because I don't have it.

Q. Okay. Have you heard anything about the Governor sleeping with people he works with for decades?

A. Have I? No. Except from this reporter.

Q. And who was the reporter?

A. Michael Scherer at the Washington Post.

Q. Did you ask Michael Scherer from the Washington Post for any additional context?

A. No.

Q. When your text message says, "Consent when power is involved is complicated, as is flirtation," are those your words or Michael's words?

A. No. These are all the Michael's words. If you look at the text above, I say, "From Washington Post" and then this. These are all his words.

Q. How are you so sure of your memory now?

A. Because I remember that conversation

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SMITH

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well.

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Q. What else do you remember from that conversation?

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A. I remember he and I had talked on the phone and I asked -- and I just asked him what he was writing and he told me that he was, like, looking into some of these claims but hadn't found anything concrete yet, that he was working on a story for the Washington Post about it, and he wanted to talk to me as a woman who had worked with Governor Cuomo.

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Q. Anything else?

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A. Not really. I mean, he was just looking into sort of doing a story, I guess, about Governor Cuomo, about -- it was sort of a mixture of office culture and, you know, they were going to -- you know, office culture, whether it was bullying culture, and to see if there was any more stuff they could add in about sexual harassment.

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Q. And that conversation took place over the phone?

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A. Yes.

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Q. In a phone call?

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A. Yes.

Q. So your text message, was that you transcribing what you were hearing from Michael?

A. I can't remember -- I honestly -- I got to tell you I can't remember exactly. Or if -- or if he had texted or e-mailed that. That's not language that I myself would use. It's just not how I talk. But I can't remember if it was language I had taken from like an e-mail or a text or if it was something I had transcribed from over the phone.

(3/3/21 e-mail was marked Exhibit 34 for identification, as of this date.)

Q. Let's go to tab 141. Here you are asked by a reporter, "I'm working on a story on Cuomo and who is advising him amid the sexual harassment turmoil. Are you part of the team advising Cuomo?"

Did you respond to this, Ms. Smith?

A. No, I didn't. I forwarded to it Dani Lever because I don't -- this is the Albany reporter that I had referenced before. Because I just don't have a relationship with him. I don't know him.

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SMITH

Q. Is this another example of a question that was not specific enough about your role in responding to the sexual harassment allegations?

A. No, I wouldn't say that. You -- so if you want to go back, you had asked me about reporters who had reached out about this and I mentioned a reporter that I didn't know well, then some Albany reporter that reached out, this was the Albany reporter in question.

I forwarded it to Dani because she knew him and, you know, I -- I felt like it sort of weird -- it was sort of a cold, weird outreach to me and so, you know, I remember that Dani had mentioned he'd reach out to her as well so Dani talked to him and then that was it.

Q. And you said --

A. Sorry. Go ahead.

Q. You said it would be bad for your credibility -- you said, "This would be bad for my credibility and yours," what did you mean by that?

A. Just, you know, right there being in the middle of all of this, you know -- of advising I think it -- I believe that the context

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SMITH

was just in the middle of, you know, advising during this like sort of fire storm on -- around sexual harassment.

Q. In what way would it be bad for your credibility to -- for it to be known that you were advising the Governor in responding to the sexual harassment allegations?

A. It was -- because it was just a big national story at the time and I just don't think I, you know, felt the need to be featured prominently in it.

Q. What did you mean by your credibility?

A. I think what I just said, that, you know, it was a big national story, you know, big fire storm and it was not something that I felt like I needed to be in the middle of.

Q. You were already in the middle of it; isn't that right?

A. No. There's a big difference between being in the middle of it and behind the scenes and being in the middle of it in a newspaper. So I do think that's different.

Q. And you didn't want your involvement

1 SMITH

2 in helping the Governor's Office respond to the  
3 sexual harassment allegations to be public,  
4 correct?

5 A. Yeah, I had been -- I had been  
6 advising people behind the scenes for, you know,  
7 the last, you know, bunch of months. The  
8 Governor's not the only person at that time that  
9 I was, you know, spending time on behind --  
10 advising people behind the scenes and I didn't  
11 feel the need to have my name in the paper.

12 Similarly, I know Dani had just taken  
13 the job at Facebook and I feel like, you know,  
14 she didn't want her name in the paper either.

15 Q. When you said "and yours," who were  
16 you referring to?

17 A. Dani I believe. Honestly, looking at  
18 it, I believe it was Dani, but I'm not positive.

19 Q. Right. Because you're responding to  
20 Rich Azzopardi's e-mail, correct?

21 A. Yeah. But my -- but, you know,  
22 the -- it was -- the -- this guy, John Campbell,  
23 had reached out to both Dani and me. So you  
24 know, when I'm reading it, I'm thinking about  
25 Dani and me because Dani had just started the job

1 SMITH

2 and, you know, she didn't want to be mentioned in  
3 the story because she, like, literally just  
4 started the job. But this is one where I -- you  
5 know, it's hard for me to read and figure out the  
6 exact context, you know, this far removed from  
7 it.

8 Q. Did you have a concern, Ms. Smith,  
9 that your credibility would be undermined if it  
10 was known that you had been helping the  
11 Governor's Office respond to the sexual  
12 harassment allegations given that you were  
13 presenting yourself as an independent source with  
14 respect to the sexual harassment allegations?

15 A. There was maybe -- that was a maybe  
16 minor thing. In my conversations with reporters  
17 I -- in my conversations -- the conversation that  
18 I had with reporters, you know, I didn't go out  
19 of my way to -- to, you know -- I'm trying to  
20 think about how best to -- I'm just going to --  
21 what my conversations were at the time. There  
22 was maybe a small element of that because, you  
23 know, I wasn't going out of the way -- my way to  
24 tell reporters, you know, about, you know, the  
25 fact that I was advising the Governor at this

1 SMITH

2 level, but at the same time I wasn't dealing with  
3 a ton of reporters, as we discussed earlier.

4 My -- my biggest concern -- my -- my  
5 real concern was I just didn't want to be in  
6 the -- I just didn't want to be in the -- in the  
7 media right then. I just didn't want to be, you  
8 know, in the middle of this fire storm right then  
9 and, you know, that -- that was sort of my main  
10 concern.

11 And thinking back, that's -- like, in  
12 looking back and, you know, remembering the  
13 feeling at that time was just, you know, we're  
14 coming off a pandemic, I just didn't, you know,  
15 feel like, you know, going from that to jumping  
16 into the, you know -- this big media thing.

17 (Messages beginning with Bates No.  
18 MORAN 681 were marked Exhibit 35 for  
19 identification, as of this date.)

20 Q. Let's go to tab 66. This is March  
21 1st, right?

22 A. Yup.

23 Q. And you said you had incoming from  
24 Dawsey, Scherer, Charlotte Alter, Dan Merica at  
25 CNN.

1 SMITH

2 A. Yes.

3 Q. Are all of these reporters?

4 A. Yes.

5 Q. And these reporters were all  
6 contacting you, correct? On the next page you  
7 said you did not have bandwidth to handle these,  
8 right?

9 A. Yeah.

10 Q. Okay. Did you ever speak with Dawsey  
11 about the sexual harassment allegations against  
12 the Governor?

13 A. Yes. I remember connecting with  
14 Dawsey on the phone, yes.

15 Q. You spoke with Scherer about the  
16 sexual harassment allegations against the  
17 Governor?

18 A. Yes.

19 Q. You communicated with Alter about the  
20 sexual harassment allegations against the  
21 Governor?

22 A. I think we connected via phone.

23 Q. You also connected with Dan Merica  
24 about sexual harassment allegations against the  
25 Governor?

1 SMITH

2 A. I'm trying to remember if he and I  
3 contacted via phone. Yeah, I mean, it's possible  
4 that he and I might have contacted via phone.  
5 And you know, to be clear, like, I remember -- I  
6 do think that I connected with them all via  
7 phone. I just remember Charlotte and Merica were  
8 writing pretty simplistic stories just about,  
9 like, what this means for the Governor and, like,  
10 the politics of it.

11 (March 2021 e-mail chain was marked  
12 Exhibit 36 for identification, as of this  
13 date.)

14 Q. Let's go to tab 80. I'm interested  
15 in your e-mail at the top and you're asking, "Why  
16 am I not getting media reports and why are we not  
17 even trying to work anyone when they have the  
18 worst political actors on their shows attacking  
19 the governor, his reflexive critics are on TV  
20 with zero pushback or context."

21 What are you saying there, Ms. Smith?

22 A. So you know, generally after sort of  
23 a big event, like a big press conference, you get  
24 like media reports. Like what is being covered  
25 where, like, what shows are picking it up and

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SMITH

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discussing it. And it allows you a way to make

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sure that you're -- you know, that you are

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getting allies on shows to sort of balance out

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the news and make sure that a different

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perspective -- the Governor's perspective or

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whoever's perspective is offered on there.

8

Q. So are you trying to connect with

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people in the media to make sure that the

10

Governor's perspective was represented?

11

A. Not specifically I'm not. I'm trying

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to tell them to do that. I'm trying to tell the

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Governor's Office that they -- that -- that they

14

need to be doing that.

15

Q. And was there a reason you were not

16

doing that yourself?

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A. That's -- because that's just not

18

what I -- that's not really what I do. That

19

would be something that is -- the Governor's

20

Office would do.

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(Messages beginning with Bates No.

22

MORAN 1091 were marked Exhibit 37 for

23

identification, as of this date.)

24

Q. Let's go to tab 87. Here you refer

25

to texting with Bill Maher's producer?

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SMITH

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A. Yes.

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Q. And you ask for information, including presumably the Governor's statement, apology, and you say, "He wants everything we have, can someone get it together? Please help me help you."

8

A. Yes.

9

Q. What's going on there?

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A. That was before Bill Maher's show. I was the only person on the team that had a relationship with Bill Maher, so I was trying to reach out to get -- you know, he's got a big audience, so just reach out to get him stuff.

15

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Q. And what were you discussing with Bill Maher's producer?

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A. Just getting him, like, the background of -- you know, of everything that was going on with all the situations. Like, you know, usually in a situation like this you just put together all the background points, what did the Governor say, you know, what are -- you know, what are the best points that you have on your side and, you know, I was trying to get that -- that sort of stuff to him for his show.

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SMITH

Q. And when you were communicating with Bill Maher's producer, in what capacity were you communicating with him?

A. So I'm friends with the producer because I've done Bill Maher's show and I had done it not long before then, so I -- you know, I don't think we had ever really discussed capacity, but I can't remember.

Q. Did you tell him that you were helping the Governor's Office respond to the sexual harassment allegations?

A. I can't remember, to be honest.

Q. Is there a reason you would have told him when you were trying to keep it a secret?

A. Well, one, I -- I didn't talk to him. Two, I mean, I don't -- I'm trying to keep it -- I'm not sure, you know, trying to keep it secret is the right way to -- you know, to describe this. Obviously I'm reaching out to be helpful on his behalf, on the Governor's behalf.

Q. Do you think that you would have told Bill Maher's producer that you were helping the Governor's Office respond to the sexual harassment allegations?

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SMITH

A. I may have. I just -- I don't remember.

(3/5/21 chat messages were marked Exhibit 38 for identification, as of this date.)

Q. Let's go to tab 83. The first text message is from you to Melissa DeRosa on March 5th and you say, "Also would like to help with the sec harassment stuff. The Maher people offered to do a call with me today, but I need something from your team."

A. Right. Which is -- I mean, that's just sort of going back to what we were just discussing, which is that, like, sort of, like, me to get the background together to send to them.

Q. And what does this first part of this statement mean, "Also would like to help with the sec harassment stuff"?

A. Sorry. It was sex, like sexual harassment stuff.

Q. So were you offering to Melissa DeRosa that you would like to help with the sexual harassment allegations?

1 SMITH

2 A. I -- I don't know. I mean, I think I  
3 already was at that point.

4 Q. So do you have any --

5 A. So I -- yeah.

6 Q. I'm just trying to understand what  
7 this statement then meant, "Also would like to  
8 help with the sex harassment stuff"?

9 A. I think what I meant was I'm trying  
10 to help you guys with Bill Maher. I don't -- I  
11 think that reads pretty clear.

12 Q. Did you have a call with the Maher  
13 people on March 5th?

14 A. Did I have a call with them? I think  
15 I did. I think I had a brief call maybe with his  
16 producer. I can't --

17 Q. Did you --

18 A. I -- I think I had a brief call with  
19 his producer.

20 Q. What did you discuss?

21 A. The Governor's statement on -- on  
22 the -- on March 3rd.

23 Q. And what about the Governor's  
24 statement on March 3rd?

25 A. You know, the substance of the

1 SMITH

2 statement, what I think he achieved, things like  
3 that.

4 Q. Basically your spin on the Governor's  
5 performance on March 3rd?

6 A. Yeah.

7 (Messages beginning with Bates No.  
8 MORAN 1159 were marked Exhibit 39 for  
9 identification, as of this date.)

10 Q. Let's go to tab 88. So this is a  
11 text message from Melissa DeRosa forwarding an  
12 e-mail chain between her and Charlotte Bennett,  
13 correct?

14 A. Yes. Sorry. It's a little hard to  
15 read. There's a lot of stuff there. But yes,  
16 that's what it looks like.

17 Q. Were you involved in any discussions  
18 about providing Charlotte Bennett's e-mail to  
19 anyone?

20 A. No. And I don't recall there being  
21 any discussions about providing that to anyone.

22 Q. Was there any discussion about  
23 publicizing that e-mail?

24 A. Not that I recall.

25 Q. Let's flip to the sixth page of that

1 SMITH

2 exchange. The number is 1164 on the bottom. Do  
3 you see Melissa DeRosa says, "Should I get this  
4 out there?"

5 A. Yes.

6 Q. Does this jog your memory about  
7 whether there was any discussion about  
8 publicizing Charlotte Bennett's e-mail?

9 A. I mean, I don't -- when the first  
10 response is "no" and that's the extent of the --  
11 the thing, that doesn't sounds like a  
12 conversation to me.

13 Q. Okay.

14 A. A conversation to me sounds like  
15 where it's an interchange of ideas. This doesn't  
16 sound like a conversation.

17 Q. Okay. Did anyone make a statement  
18 about publicizing Charlotte Bennett's e-mail?

19 A. Did anyone make a statement about it?

20 Q. Yes.

21 A. Meaning what? What do you mean by  
22 "statement"?

23 Q. Did anyone say anything at any point  
24 about publicizing Charlotte Bennett's e-mail?

25 A. Out -- there's this question from

1 SMITH

2 Melissa saying, "Should I get this out there?"  
3 and Jeff saying, "No." I mean, I think that's --  
4 that was the extent of it. But I can't -- I  
5 can't remember. I honestly don't even remember  
6 this interaction.

7 Q. Did you ever communicate with George  
8 Stephanopolous or Chuck Todd about the sexual  
9 harassment allegations against the Governor?

10 A. Yes. I -- I did talk with them once  
11 or twice.

12 Q. What did you talk to them about?

13 A. The Governor's -- I talked to them  
14 about the Governor's -- I think it was just about  
15 the Governor's stuff on March 3rd.

16 Q. When you spoke with them, did you  
17 tell them you were helping the Governor's Office  
18 respond to the sexual harassment allegations?

19 A. They knew -- they know I'm an ally,  
20 that I worked for the Governor, and that I was,  
21 you know, friendly with him.

22 Q. To ask my question again, did you  
23 tell them you were helping the Governor's Office  
24 respond to the sexual harassment allegations?

25 A. I -- I can't -- I don't recall the

1 SMITH

2 substance of my conversations, and frankly, I  
3 don't open up, you know, all of my  
4 conversations -- my conversations with reporters  
5 I've known for a long time by, you know, stating  
6 something like that.

7 You know, both Chuck and George have  
8 known me for a long time and have known that I'm  
9 friends with the Governor, that I've worked for  
10 him in the past, and it's just sort of assumed  
11 that, you know, if I'm reaching out to them, that  
12 I would be helping him.

13 Q. That you'd be what?

14 A. That I would be, you know, helping  
15 him in some, you know, form of another.

16 Q. Do you describe yourself as allied  
17 with the Governor?

18 A. Yeah. I would consider him a friend.  
19 Yeah.

20 Q. The word I used was allied. I think  
21 you started using that earlier. Do you described  
22 yourself as allied with the Governor?

23 A. Sure.

24 (3/14/21 chat message was marked  
25 Exhibit 40 for identification, as of this

1 SMITH

2 date.)

3 Q. Let's go to tab 117. This is a text  
4 message from Chris Cuomo forwarding a purported  
5 set of documents concerning Charlotte Bennett  
6 from her time in college, do you see that?

7 A. I do. Or it looks like tweets, like  
8 he's sending tweets about something.

9 Q. And on the second page, the page with  
10 the number 471, there is a [REDACTED]  
11 [REDACTED] against [REDACTED]  
12 [REDACTED] that involves Charlotte Bennett, do you  
13 see that in the tweet?

14 A. Yeah.

15 Q. Were you involved in any discussions  
16 about this [REDACTED] ?

17 A. No.

18 Q. Do you remember reacting to this  
19 tweet from -- or this information that Chris  
20 Cuomo shared?

21 A. I honestly don't even remember this.  
22 And I'm still having trouble understanding what  
23 this is saying. Is it -- is this -- wait. No, I  
24 don't remember this.

25 Q. So just to follow up, were you

1 SMITH

2 involved in any discussions about sharing this  
3 information with anyone?

4 A. Not that I remember.

5 Q. And to make sure I'm clear, did  
6 anyone raise the question whether to share that  
7 information with anyone?

8 A. Not that I recall.

9 (Chat messages beginning with Bates  
10 No. 1018 were marked Exhibit 41 for  
11 identification, as of this date.)

12 Q. Let's go to tab 85. This is a series  
13 of text messages about another allegation, do you  
14 see that?

15 A. I do.

16 Q. You said, "I have a bad feeling about  
17 this one."

18 A. Yes, I see that.

19 Q. And I presume this is about Karen  
20 Hinton's allegations. I'll let you flip through  
21 this.

22 MR. ROSENBERG: Take a minute to flip  
23 through it.

24 THE WITNESS: Okay.

25 MR. ROSENBERG: Take a minute.

1 SMITH

2 Q. What were you referring to when you  
3 said, "I have a bad feeling about this one"?

4 A. I -- so I don't -- I just don't  
5 remember the context of it. Looking at the rest  
6 of the text messages, I can see that this is  
7 about -- I can deduce that this is about the  
8 Washington Post story. I don't know if it was --  
9 if I was saying anything specifically about the  
10 Post story or if I just had a generally bad  
11 feeling about it.

12 Q. And do you remember what your bad  
13 feeling was?

14 A. No. As I was saying, I -- I can't  
15 remember whether it was about anything specific  
16 in there or the story in general or -- you know,  
17 but Josh Dawsey and Michael Scherer are, you  
18 know, pretty heavy hitter reporters, so it's  
19 possible that I just had a bad feeling about the  
20 story in general. But I just -- I don't remember  
21 what I'm actually saying I have the bad feeling  
22 about in that text.

23 Q. Okay. So I understand you don't know  
24 what you were reacting to in the article when you  
25 say you had a bad feeling, but what did it mean

1 SMITH

2 to say you had a bad feeling about this one?

3 A. Again, I mean, it's hard for me to  
4 say out of context. It's hard -- it's difficult  
5 for me to say out of context.

6 Q. Were you saying that you had a bad  
7 feeling about the potential impact of the  
8 allegations in the article?

9 A. It's possible.

10 Q. Let's go to the page numbered 1026 on  
11 the bottom. And for context, you should look at  
12 the page before that, 1025.

13 A. Yeah.

14 Q. And the page before that, 1024,  
15 where -- so Dani Lever says, "Calling men  
16 pussies" and you say, "That's survivable. This  
17 isn't."

18 A. Yeah.

19 Q. What are you referring to?

20 A. Again, I just -- I can't remember.  
21 So with that survivable, I'm saying that in  
22 reference to the Governor, you know -- I remember  
23 the Washington Post said that he called men  
24 pussies. I said that's survivable. This, I just  
25 don't know what this -- this is in reference to.

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SMITH

Q. Have you ever heard the Governor call anyone a pussy?

A. I don't think so.

Q. Is it possible that you've ever heard the Governor call someone a pussy?

A. I've heard a lot politicians call people pussies so it would -- and I've worked on 20 -- 20 political campaigns. So it's very possible. But that's because of the nature of politics. That's -- people use pretty coarse language in this business.

(Messages beginning with Bates No.

MORAN 1179 were marked Exhibit 42 for identification, as of this date.)

Q. Let's go to tab 93. There Rich Azzopardi asks whether he should deny the claim that the Governor called men pussies and you responded to say you wouldn't push back too hard on pussies, is there a reason you made that statement?

A. I mean, when you're pushing back on stories, you got to pick your battles, right. By this point there had been a number of stories about the Governor using coarse language or, you

1 SMITH

2 know, being, you know, a tough boss in the  
3 workplace, I just think if you've got limited  
4 bandwidth for these stories to really push back,  
5 that's not -- that's really not worth the effort.

6 Q. Is it possible that you also advised  
7 Rich not to push back on denying claims that the  
8 Governor called anyone a pussy because the  
9 Governor may indeed have called someone a pussy?

10 A. I mean, that's reading a lot into,  
11 you know, a few words on the page here. Again, I  
12 just think that you've got limited bandwidth to  
13 push back on these stories and political -- the  
14 politically damaging these things in these  
15 stories were not the Governor's, you know, use of  
16 coarse language. That's not really what people  
17 were focused on.

18 Q. So is this what you're remembering  
19 now or are you making this assumption?

20 A. Sorry, is -- is -- is this what I'm  
21 remembering now or is -- am I making an  
22 assumption? No. I -- as I said, I just wouldn't  
23 push back too hard on pussies. I just don't  
24 think that's a great use of time. So that's what  
25 my advice would be. That's what my advice is

1 SMITH

2 now. So I just -- I don't have any more context  
3 for you on it than that.

4 Q. To be clear, are you saying that your  
5 interpretation of your statement, "I wouldn't  
6 push back too hard on pussies" is that you said  
7 that because you didn't think the Chamber should  
8 spend the time or effort to push back on the  
9 claim that the Governor called anyone a pussy?

10 A. Sorry, what was that question again?

11 MS. MAINOO: Ms. Moskowitz, can you  
12 repeat the question?

13 (The record is read back by the  
14 reporter.)

15 A. I mean, that would -- you were  
16 breaking up saying that. Can you say that again?

17 (The record is read back by the  
18 reporter.)

19 A. Yeah, I just did not -- it just  
20 didn't seem like a great use of time.

21 (Messages beginning with Bates No.  
22 MORAN 1452 were marked Exhibit 43 for  
23 identification, as of this date.)

24 Q. Let's go to tab 101. Melissa DeRosa  
25 mentions an important call, do you remember

1 SMITH

2 joining a call on March 9th?

3 A. I do not.

4 Q. You wrote back to ask for the dial-in  
5 information, you said you were talking to Chris  
6 Cuomo and he asked to be included, does that jog  
7 your memory about whether you joined a call on  
8 March 9th that Melissa DeRosa described as an  
9 important call?

10 A. I cannot remember if I joined a call  
11 on March 9th. If -- you know, the e-mail seems  
12 to indicate that I may have, but I do not -- I  
13 cannot tell you off the top of my memory if I got  
14 on a call on March 9th.

15 (3/9/21 chat messages were marked  
16 Exhibit 44 for identification, as of this  
17 date.)

18 Q. Let's go to tab 142. There is a call  
19 on March 9th between -- now it's between you and  
20 Melissa DeRosa, do you see these texts?

21 A. Mm-hmm.

22 Q. And then you say at 11:24:48 a.m.,  
23 "Did your assistant get me too'd? That's gross."

24 A. No, no, no, no. Okay. 11:24 I say  
25 that "If your assistant texts I'll get on." Her

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SMITH

2

assistant wasn't texting so I made a bad joke

3

because I wasn't hearing back. Because I was

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having -- I -- when they send an e-mail, you

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can't click on it and it immediately goes, right.

6

I don't know -- it's some formatting thing with

7

Gmail. So that was me making a bad joke.

8

Whatever that -- if you look at the

9

time lapse between 11:24 and 11:20 -- 11:36,

10

those two things are not connected. This is

11

connected to her assistant not being responsive

12

to getting me the number and me making a -- a

13

stupid joke.

14

Q. And who are you referring as Melissa

15

DeRosa's assistant?

16

A. I don't know. Whoever -- usually

17

she's just got people who are sending texts with

18

things to the group to get onto calls.

19

(3/9/21 chat messages were marked

20

Exhibit 45 for identification, as of this

21

date.)

22

Q. Let's go to tab 102. You say,

23

"What's with all these women going to the

24

mansion? Can you just fire every woman in the

25

office?" What's this about? Same date March

1 SMITH

2 9th.

3 A. I think -- yeah. I think what it is  
4 about is me having a not particularly funny sense  
5 of humor, but me engaging in gallous humor in the  
6 middle of a stressful situation.

7 Q. What's the reference to, "What's with  
8 all these women going to the mansion?"

9 A. If I recall correctly, that was when  
10 another story had come out. It could have  
11 been -- you know, because there had been a couple  
12 of stories about people at the mansion. So it  
13 was after one of those came out and me making  
14 comment, you know, out of frustration about that  
15 and then me making a bad joke, can you just fire  
16 every woman in the office? Obviously that was  
17 just a bad joke.

18 Q. What were the couple of stories about  
19 women in the mansion?

20 A. There was Charlotte Bennett, Accuser  
21 No. 6. I think that those -- those -- I think  
22 those were the ones that I'm thinking of.

23 Q. What did you hear about Accuser No. 6  
24 again?

25 A. That she was someone who was like an

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SMITH

assistant to the Governor or to Stephanie or in the office.

Q. And you mentioned earlier hearing either about an internal complaint or a Times Union article about Accuser No. 6, correct?

A. Yes. I just can't remember if it was on that day.

(Times Union story was marked Exhibit 46 for identification, as of this date.)

Q. Let's go to tab 100.

A. Okay. This is the Times Union story.

Q. Is this the story about the woman you've been describing as Accuser No. 6?

A. Yes.

Q. Earlier you had said there was an anonymous complaint, you think of that person as Accuser No. 6, and you heard about it on March 9th, 10th, or 11th, it was the week after the Governor had done the first press conference addressing the allegations and the week when calls had begun for the Governor's resignation, correct?

A. Yes.

Q. And you said you heard that her name

1 SMITH

2 was Brittany Commisso, right?

3 A. Yes.

4 Q. And you said her job involved her  
5 occasionally going to the executive mansion,  
6 right?

7 A. I think so. I don't know -- like,  
8 honestly I don't know what her, like, specific --  
9 what specifically it was but yes, I -- that's --  
10 yes.

11 Q. So when you were referring in your  
12 text messages with Melissa DeRosa and you said,  
13 "Did your assistant get met too'd," were you  
14 referring to Brittany Commisso?

15 A. No. I don't think so. I -- not to  
16 my recollection. I don't think Brittany was her  
17 assistant.

18 Q. Other than your understanding that  
19 you don't think Brittany was her assistant, is  
20 there any reason why you don't think you were  
21 referring to Brittany Commisso's allegations?

22 A. Yeah. I think I was just making a  
23 bad joke because I wasn't hearing from the  
24 assistant.

25 Q. So when you said after, "Did your

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SMITH

assistant get me too'd" "that's gross," what were you referring to?

A. So again, you've got to -- there's a difference -- I can -- you -- and by the way, who am I talking to because I can't see the person on the screen here?

MR. ROSENBERG: It's the same -- it's the questioner who's been on all along.

Q. The one who's been asking questions all day.

A. If you look at the text messages, the "That's gross" is clearly -- that's like 12 minutes removed from the previous comments. So I think saying that it's, like, related to that is, like -- I don't know that that necessarily reflects the flow of the conversation.

Q. I'm not saying anything. I'm asking you questions.

A. No, actually you were. Because what you were saying was you said this and then you said "that's gross" as if the two were connected.

Q. What did you mean when you said "That's gross," Ms. Smith?

A. So I can't recall because this is --

1 SMITH

2 I -- like, as you'll note during a lot of these  
3 text conversations, we are texting in the middle  
4 of phone conversations. So they're in the  
5 context of a phone conversation. So I don't have  
6 the context of the phone information in front of  
7 me while we're reading these texts.

8 Q. Okay. So were you on the phone --  
9 were you on a phone conversation on March 9th?

10 A. My guess is if I'm just saying  
11 "that's gross" out of context, then probably. I  
12 know you had asked if I had been on the March 9th  
13 call, and off the top of my head I can't remember  
14 if I was on a call on March 9th, but you know,  
15 given the circumstantial evidence that, you know,  
16 Melissa had tried to get me on a call and we had  
17 texts during then and that, you know -- this  
18 story was the 11th. That -- yeah, that it was  
19 likely then that I was on a call on the 9th.

20 Q. Going back to tab 102, what does the  
21 statement, "What's with all these women going to  
22 the mansion" mean?

23 A. I think it was in reference to the  
24 story about -- a story about a woman at the  
25 mansion, and it could have been this -- the

1 SMITH

2 Accuser No. 6. I'd have to check the timing  
3 of -- of the -- the timing of that text and the  
4 timing of, you know, the Albany Times Union  
5 story.

6 Q. Well, the story was published on  
7 March -- let's see. We can go to the story, but  
8 you also said you might have learned about the  
9 allegations from an internal complaint, correct?

10 A. So my recollection though was that  
11 there are two stories about this, that there was  
12 one that -- that the one that we had just read  
13 was the later one, that there was a story a  
14 couple of days before that was more vague in the  
15 Times Union that had said that someone had, like,  
16 lodged a complaint about something that had  
17 happened at the mansion.

18 So it would be helpful, honestly, to  
19 see that story because that's what my  
20 recollection was, was that there was like maybe a  
21 more innocuous, like, public, you know, rendering  
22 of that story. That the Times Union had popped a  
23 story on it that said, you know, a staffer had  
24 said something had happened at the mansion, but  
25 then two days later that -- or three days later,

1 SMITH

2 whatever it was, had popped a story that had,  
3 like, more details in it.

4 Q. Okay. So we'll try to find that.  
5 But I guess I'm trying to understand, so let's  
6 say there was this earlier story, what would it  
7 help you to understand?

8 A. Potentially what we're talking about  
9 on March 9th I think is -- is what -- isn't that  
10 what we're trying to get at here?

11 Q. What are the possibilities right now  
12 other than Brittany Commisso's allegations?

13 A. Well, I'm saying that it could be the  
14 earlier iteration of that story, not the  
15 September 11th -- sorry, not March 11th story.

16 Q. But same complainant, correct?

17 A. It's possible, but I would -- I would  
18 sort of have to see the timing of it.

19 Q. Okay.

20 A. I mean, you also have to keep in mind  
21 that, you know, I'm doing -- I'm trying to  
22 remember all this stuff and I'm looking at these  
23 text messages, but, like, this was a time when  
24 there was a lot going -- there was a lot going on  
25 and every day you're overloaded with information,

1 SMITH

2 new this, new that, story here, story there, and  
3 I'm looking at texts months later. So it's hard  
4 to always get the -- you know, to remember the  
5 exact context.

6 I can tell when I'm making a bad joke  
7 because I know, you know, the tone I use when  
8 I -- when I employ my horrible sense of humor,  
9 but it is hard for me sometimes -- and I can  
10 understand that it might be hard to sort of  
11 comprehend the -- the -- how these texts are done  
12 because I can also see that some of these are  
13 back to back in response to each other, but some  
14 are also probably just responsive to things that  
15 are happening in the middle of a phone  
16 conversation.

17 Q. Okay. So on March 9th you also spoke  
18 with Dani Lever about Brittany Commisso's  
19 allegations, correct?

20 A. I don't remember.

21 Q. Did you ever speak with Dani Lever  
22 about Brittany Commisso's allegations?

23 A. I don't recall.

24 (3/9/21 chat messages were marked  
25 Exhibit 47 for identification, as of this

1 SMITH

2 date.)

3 Q. Let's look at tab 103. So you say to  
4 Dani Lever on March 9th, "Did you hear what it  
5 is?"

6 Dani Lever says, "No. What is it?"

7 You say, "Pushed this chick up  
8 against the wall, kissed her, put hand up her  
9 shirt."

10 Do you see that?

11 A. Yes, I do.

12 Q. Okay. This is about Brittany  
13 Commisso's allegations?

14 A. It would appear so.

15 Q. And this is the same day that you are  
16 texting with Melissa DeRosa about firing every  
17 woman in the office and asking what is it  
18 about -- what's with all these women going to the  
19 mansion, correct? Same date?

20 A. Well, can I -- I'd like one  
21 clarification there, which is that the fire every  
22 woman was clearly a joke and, you know, you're  
23 not treating it that way. And I think  
24 that that's an incorrect and frankly unfair  
25 interpretation of it.

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SMITH

Q. On the same day, on March 9th, when you said -- when you texted with Dani Lever, that was the same day that you had texted with Melissa DeRosa and you made the statements, "What's with all these women going to the mansion? "Can you just fire every woman in the office?" Is that correct?

A. Yes. It's the same day, but again, what I'm -- I guess what I'm taking issue with is that you are sort of -- you're -- what was clearly a comment that was made as a bad joke is something that you're representing as a serious comment.

Q. So let me ask you a question, Ms. Smith, because as I said, I'm just here to ask questions.

A. Sure.

Q. When you said, "Can we just fire every woman in the office," what did you mean by that, Ms. Smith?

A. I was making a very bad joke.

Q. Okay. And what were you making a very bad joke about?

A. I'm just -- that there are a lot of

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SMITH

women in the office and that -- you know, I think it was just out of frustration. I was not literally saying to fire all women in the office.

Q. Okay.

A. You know, I myself am a woman that works in politics, I hire a lot of women in politics, and like a lot people in stressful situations, I engage in gallous humor, and I would say that that's what that was.

Q. When you say --

A. Yeah.

Q. Please go ahead.

A. No, no, no. Continue.

Q. When you made the very bad joke about can you fire -- can you just fire every woman in the office, were you referring to the Executive Chamber as the office?

A. No. I don't think I was being that specific in my humor. It was -- a bad joke is a bad joke and I don't think it was very -- I don't think I, you know, had limits around it. I don't think it was the Executive Chamber versus EDC versus, you know, constituent services versus anything.

1 SMITH

2 Q. Were you --

3 A. And I think that -- I think that  
4 reading it -- you know, reading that way is -- I  
5 just -- I just don't think that that's the  
6 accurate way to read that.

7 Q. When you made the very bad joke, were  
8 you referring to the Governor's administration  
9 more generally?

10 A. I mean, maybe, yeah. I don't think I  
11 put that much thought into it to be honest.

12 Q. Just now you said there were a lot of  
13 women in the office, so just now when you said  
14 that, what were you referring to?

15 A. Oh my God. In the Governor's  
16 administration. I don't know. Look -- and, I'm  
17 sorry, we're -- again, we're going around in  
18 circles here, but you know, sometimes in text  
19 messages I make bad jokes. I don't put a ton of  
20 thought into them. I'm not sure that I can give  
21 you a full breakdown of what my thought process  
22 was there then and, you know, I'm not sure what  
23 else to say there except, you know, I -- I engage  
24 in gallous humor at times.

25 Q. And when you said, "What's with all

1 SMITH

2 these women going to the mansion," did the  
3 mansion refer to the executive mansion?

4 A. Yes.

5 Q. Was that very bad joke you were  
6 making in reaction to Brittany Commisso's  
7 allegations?

8 A. I'm sorry, can we look at just --  
9 because this would help me is -- can we look at  
10 the timing of -- it would seem to make sense that  
11 it would be, but can we just look at the timing  
12 of it relative to when I had the text with Dani?  
13 Because I just can't remember the time of day  
14 that we learned about this and when this -- the  
15 March 9th story came out.

16 Q. Of. Course what do you want to look  
17 at, Ms. Smith?

18 A. Like when my texts with Melissa were.  
19 and when the Times Union March 9th story came  
20 out. Because I believe there was a story on  
21 March 9th and March 10th. The story that you  
22 have in here is March 11th. Oh, so that's the --  
23 March 9th at 4:14.

24 MR. ROSENBERG: This is March 9th. I  
25 don't know if this is --

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SMITH

THE WITNESS: Is this Eastern Time?

MR. ROSENBERG: I don't know. If you can figure it out it, you say. If you can't, just say you can't figure it out.

A. I'm sorry, I just cannot figure out the timing here. I just -- I can't remember the sequencing of this.

Q. So tab 101, right, is the text message Melissa on March 9th, it says, "Important call. Need you guys on," and according to the subject it's at 11:14:58 a.m., do you see that?

A. Yes, I do. So my text with Dani here, that would -- that would suggest that that was in reference to Accuser No. 6.

Q. Okay.

A. But I -- I don't remember the sequencing of the timing when I heard about this, whether it was on the 9th, the 8th. You know, with some of these stories we found out from the reporters as the stories were being filed, from some we found out before, and with this one, I know we talked about it earlier, but you know, it's been a long day and I'm just -- I'm struggling to recall the exact timeline of it.

1 SMITH

2 And I would like to be helpful on it, it's just  
3 that I am -- I'm just -- I just cannot remember  
4 the exact timing of this.

5 Q. Of course. So your text to Dani, tab  
6 103, began at 11:40:57 a.m., do you see that?

7 A. Yes.

8 MR. ROSENBERG: Is that Eastern Time?  
9 Because it says UTC minus 5. Do you  
10 understand that to be Eastern Time?

11 MS. MAINOO: You produced -- this was  
12 produced. I would not know.

13 Q. So let's move to tab --

14 MR. ROSENBERG: Okay.

15 Q. -- 102, the text message that I was  
16 asking about, "What's with all these women going  
17 to the mansion," according to --

18 A. So then --

19 Q. -- the time stamp it's 11:37:15 a.m.,  
20 same day, March 9th, and my question was do you  
21 understand that joke or statement or whatever it  
22 is to be in reaction to the allegations by  
23 Accuser No. 6?

24 A. Now looking at these texts side by  
25 side, that would appear what it would be. But as

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SMITH

I've stated again, and I'm going to state it again because I want to make this clear, I was not seriously suggesting to fire everyone in the office. And I just want to have that be very clear on the record.

But looking at the sequencing here, right, is that it looks like this would be some sort of correlation, right, because that was an -- that was a story about a woman making an allegation that occurred in the mansion and then me a few minutes later texting Dani. So you know, I don't recall this. I don't recall the timing of this, the sequencing of this, but looking at these back to back, that would make sense.

Q. Is the joke, Ms. Smith, that since women were making -- is the joke that since a series of women were making sexual harassment allegations against the Governor, then the solution was just to fire every woman in the office? Is that what the joke was?

A. I guess. You know, I -- I guess so. It's not very funny in retrospect, but yes.

Q. Okay. Let's go back to the other

1 SMITH

2 text message. I think it might be, if I'm  
3 remembering correctly, tab 142. According to the  
4 time stamp, this is March 9th, 11:24:48 a.m., and  
5 there you ask did you -- "Did your assistant get  
6 me too'd?"

7 And then there's a later statement,  
8 "That's gross."

9 Melissa DeRosa responds, "Which  
10 part?"

11 And you respond, "All of this." Is  
12 this --

13 A. Right.

14 Q. -- in response to the allegations by  
15 Accuser No. 6?

16 A. So not the "Did your assistant get me  
17 too'd." If you're looking at -- let's just -- if  
18 we look at the time stamps here, 11:36, 11:36,  
19 11:36 to 11:37, right, and that's where I'm  
20 saying "that's gross", she says "which part," I  
21 say "all of this," that's at 11:36. At 11:37 I  
22 say what's with all these women going to the --  
23 to the mansion. So I think that, you know, 11:36  
24 to 11:42 is, you know, its own conversation.

25 Prior to that, these are all, you

1 SMITH

2 know -- from 11:21 to 11:24 it's me expressing  
3 frustration about not being connected to the call  
4 or not getting the, you know, call-in sent to me  
5 in the right format.

6 Q. So is it your understanding that the  
7 text messages beginning "that's gross," "which  
8 part," "all of this" are in response to the  
9 allegations by Accuser No. 6?

10 A. Looking back now and seeing the full  
11 context of this, again, it's hard for me to say  
12 definitively, but that seems like it would be  
13 the -- the context of those comments.

14 Q. Did you have a discussion with  
15 Ms. DeRosa about this business about dial-in  
16 numbers and who should send the dial-in numbers?

17 A. Yes. I mean, I think there are other  
18 e-mails in here about, you know -- or me with  
19 Stephanie or whatever. I'm notoriously bad with  
20 dialing into phone calls and I think with -- on  
21 various chains you'll see me -- you know, on  
22 e-mail chains that I, you know, sent to you guys  
23 or whatever that, like, you'll see me complaining  
24 about having trouble dialing into phone calls.  
25 I'm just notoriously bad at that.

1 SMITH

2 Q. Did you ever get any explanation from  
3 Ms. DeRosa about why she was sending the --  
4 sorry, about why her assistant was not sending  
5 the dial in information?

6 A. No. I don't -- no. Because it was  
7 just an offhand comment that I was making so I  
8 don't think so.

9 Q. Was your initial reaction to the  
10 allegations by Accuser No. 6 -- what were your  
11 initial reactions now that you're seeing these  
12 text messages?

13 A. Well --

14 MR. ROSENBERG: What was the  
15 question? I'm sorry, what was it, now that  
16 you're seeing the text messages?

17 Q. Ms. Smith, did you understand my  
18 question?

19 A. That what -- you said what was my  
20 initial reaction now seeing these text messages?

21 Q. Correct.

22 A. Well, I'm -- earlier -- you know,  
23 earlier today you had asked me and I think what I  
24 had said was that I had had, you know, a bit more  
25 of a -- I can't remember the word I used, but you

1 SMITH

2 know, a bit more of a reaction to this, you know,  
3 relative to -- to other accusations because it  
4 was, you know, different in nature. You know,  
5 it -- the allegation of, you know -- of physical  
6 contact at the -- you know, forced physical  
7 contact at the mansion, the allegation of that, I  
8 think it would be hard for someone not to have a  
9 reaction to that.

10 Q. Were you disturbed by those  
11 allegations?

12 A. Yeah.

13 Q. How did you get the information that  
14 you were relating to Dani Lever in the text  
15 messages in tab 103?

16 A. So I just -- I can't recall exactly.  
17 Like, we've got these texts in front of us that  
18 seem to indicate that I was on a call at 11:20 or  
19 something and that then I'm relaying this to Dani  
20 at 11:40, so it would appear that I got it on  
21 that call, but I don't -- I don't recall the  
22 specific circumstances.

23 Q. Do you remember who was on the call?

24 A. I -- I'm sorry, I don't.

25 Q. Was Melissa DeRosa on the call?

1 SMITH

2 A. It appears so from these text  
3 messages.

4 Q. Was Chris Cuomo on the call?

5 A. I don't recall.

6 Q. Steve Cohen?

7 A. I don't recall.

8 Q. Jeff?

9 A. I don't recall.

10 Q. The Governor?

11 A. I don't recall, but I seriously doubt  
12 that.

13 Q. What's the reason you seriously doubt  
14 that?

15 A. Because he's on -- he's -- he's on  
16 very few calls so I just -- there were -- there  
17 were very few of these calls that he was actually  
18 on so I just doubt it. And I just -- I have -- I  
19 just cannot tell you -- I just can't remember the  
20 details of this call, who was on it, that sort of  
21 stuff.

22 Q. Just so I'm clear, what's the reason  
23 you were disturbed by these allegations other  
24 than that they were different?

25 MR. ROSENBERG: Other than what she

1 SMITH

2 said?

3 A. I mean, we discussed this now a  
4 couple of times, so I would just refer you to  
5 what I said earlier.

6 Q. So that they were different?

7 A. Yeah. I gave you -- I said a few  
8 different things earlier, so I just refer you to  
9 what I said earlier.

10 Q. Well, what I understood you to say  
11 earlier was that these allegations were different  
12 from the other allegations, is there anything  
13 else you have to say on --

14 A. I think I said more than that, but I  
15 mean, I don't know, let's -- if we want, can we  
16 check the transcript? Because I think we  
17 discussed it a couple of times. I'm sorry, it's  
18 just been a long day and I'm just -- it's hard to  
19 just keep answering the same questions over and  
20 over again. So I would just refer you to what I  
21 said earlier.

22 Q. Appreciate that. I would like to  
23 understand what you found disturbing about these  
24 allegations other than the fact that they were  
25 different from the other allegations.

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SMITH

MR. ROSENBERG: She said she's given an answer to that several times. She also said they were different and they involved physical contact.

MS. MAINOO: Ben, I don't need you to testify and it will take us longer if you continue to --

MR. ROSENBERG: No. What's taking this long is you're asking the same question again and again. That's what's taking us longer.

Q. Ms. Smith, anything you have to add?

A. No. Like, again, I think I did address this a couple of times, so I would refer you to, you know, Ms. Moskowitz's transcript because we've talked about it a couple of times.

Q. Is there anything that you're concerned about in trying to answer the question a second time?

A. No. I'm just -- I'm just running out of steam a little bit to be honest with you.

Q. At any point did you believe the allegations by Accuser No. 6?

A. I would say when I first heard them,

1 SMITH

2 I was surprised and I very much did want to hear  
3 what the Governor's response was. And as I said  
4 previously he vehemently -- very vehemently  
5 denied them and denied that they had happened  
6 and, you know, I believe the Governor.

7 Q. To ask my question again, because I  
8 did not get an answer to it, at any point did you  
9 believe the allegations by Accuser No. 6?

10 A. I think, as I said, when I heard  
11 them, I was shocked by them and I wanted to hear  
12 what the Governor said before I sort of drew a  
13 conclusion and when I -- you know, I think it --  
14 to -- to me it's important to hear what both --  
15 what different sides have to say and when I, you  
16 know, heard him, you know, I believed him.

17 Q. And considering that it's important  
18 to you to hear what different sides have to say,  
19 have you heard what Accuser No. 6 has to say  
20 about the allegations?

21 A. Yes. I've read the press coverage.

22 Q. You've read the press coverage. Have  
23 you heard what she had to say about the  
24 allegations?

25 A. The press coverage is the only -- the

1 SMITH

2 only publicly available things that she said, so  
3 that's what I'm going off of.

4 Q. Do you recall that the Governor had a  
5 press conference around the time that Accuser  
6 Number 6's allegations came out?

7 A. Yes.

8 Q. Did you have any discussions about  
9 what the Governor should say if those allegations  
10 came up?

11 A. So my recollection is -- again, so  
12 this is -- this is what's complicated and this is  
13 what's complicated about the way that we're  
14 discussing it is that the way you have it  
15 organized in here is that it was like one time,  
16 but if I recall correctly, there was one story  
17 that came out one day and another that came out  
18 one day with more details, so it -- it's hard  
19 because it almost seems like you guys are  
20 conflating these two things even though it's the  
21 same story, same -- I would say same accuser, but  
22 they're two different stories, right.

23 If I recall correctly, there was one  
24 midweek and one, like, end week. Maybe there was  
25 like one on a Tuesday, one on a Thursday. And

1 SMITH

2 that the stories were slightly different. So --  
3 and that's part of what is adding to the  
4 confusion here with reading the texts is that  
5 the -- is that the Albany paper sort of did two  
6 versions of it. I don't know why that is, but  
7 they did. So -- so you're asking me about  
8 something, but my recollection is I think he  
9 ended up doing two different things, responding  
10 to two different iterations of this story.

11 Q. Okay. Let's take them in turn. What  
12 was the Governor's response to the first  
13 iteration of the story?

14 A. Well, part of the problem here is out  
15 of the first iteration of the story in here,  
16 which is fine, because you don't have every  
17 iteration of every story in here, but I remember  
18 him -- I remember there being a press conference  
19 call -- I think both were press conference calls.  
20 I -- I know I did not brief him before this  
21 second one. The second one I think was on a  
22 Friday, and that was the one that came out  
23 after -- it was either on a Thursday or Friday.  
24 That was the one that came out after this  
25 iteration, whatever iteration you have in here,

1 SMITH

2 which is the --

3 MR. ROSENBERG: March 11th.

4 A. March 11th one. But there was a more  
5 sort of like -- I don't know. There was a more  
6 vague iteration of that story had come out a  
7 couple of days beforehand and I remember like  
8 15 -- like 30 minutes or something like after it  
9 went on a line that he did a press conference  
10 call and I believe -- if I recall correctly, I  
11 think I was on a brief call with him before it  
12 with a small group of people.

13 Q. What was discussed?

14 A. The allegations that were -- you  
15 know, the allegations that were in the story.  
16 And again, now I can't -- I'm having trouble  
17 remembering what exactly was said in the first  
18 iteration of it and, you know, what we discussed  
19 on the call because it -- this was more  
20 complicated because of how it played out, but I  
21 remember that the story came out and he just --  
22 he -- we just told him to go and just -- you  
23 know, go out there and address it so that it  
24 didn't just keep -- didn't stay out there in the  
25 ether and -- without a response from him.

1 SMITH

2 I don't -- and I can't remember  
3 exactly what was said on the call except he  
4 denied it. Because again, I can't remember the  
5 specifics of this story. But we just told him it  
6 was important to go out there and, you know,  
7 address, you know, the allegation. Which I think  
8 the allegation was like that a woman alleged  
9 improper behavior at the mansion or something  
10 like that. And he did a call -- a short press  
11 call where he addressed it and took a few  
12 questions.

13 Q. Did you prepare any questions for the  
14 Governor to help him get ready for discussions  
15 about the allegations?

16 A. It -- no. It would have all been on  
17 the fly because it was very last minute. Like,  
18 it would have only just been a couple of people  
19 throwing out questions on the phone and then  
20 that's it.

21 (Times Union article was marked  
22 Exhibit 48 for identification, as of this  
23 date.)

24 Q. Okay. I think we've been able to  
25 pull up the first iteration, so we can put it up.

1 SMITH

2 MS. MAINOO: Thanks, Anna.

3 A. Okay. Thank you. That's helpful.  
4 Because again, these were two stories that came  
5 out within days of each other.

6 MR. ROSENBERG: It's hard to see. Is  
7 this dated the 9th?

8 THE WITNESS: Yes.

9 MR. ROSENBERG: I can't --

10 MS. WARNKE: It is.

11 MR. ROSENBERG: It is? Okay.

12 A. On what page is the 11th? What tab  
13 is that one in here? So this one was --

14 MR. ROSENBERG: Do you want Ms. Smith  
15 to read this?

16 MS. MAINOO: She asked for it.

17 Q. So Ms. Smith, feel free to read it to  
18 answer the question.

19 A. Yeah. So -- and if you -- my  
20 recollection is that -- so this says it posted at  
21 3:10. I feel like if you look at the record,  
22 that the Governor did like a press call around 4  
23 or something that day, like, pretty quickly  
24 afterwards, and that there had been -- that there  
25 had been just very brief, like, on the fly sort

1 SMITH

2 of call with -- with whoever could get on the  
3 call with him beforehand about it and that we  
4 knew -- I think that we had been told by the  
5 reporter about the allegations that ultimately  
6 came out on the 11th but for -- the story on the  
7 11th, but for whatever reason the reporter didn't  
8 use it in the story on the 9th. But I had heard  
9 about the allegations on the 9th and we had been  
10 asked -- the Governor's Office had been asked  
11 about the accusations on the 9th and I had heard  
12 about them on the 9th.

13 Q. Was there any discussion about  
14 whether the Governor had a consensual  
15 relationship with any of the women alleging  
16 sexual harassment against him?

17 A. In this one I remember asking --  
18 asking a couple people if -- if by chance, like,  
19 this had been a consensual thing because it -- it  
20 seemed -- because I just remember it being, you  
21 know -- given the accusations of physicality, I  
22 don't know, for some reason I just -- I was just  
23 curious to see do you think that there's any  
24 possibility that maybe that this was a consensual  
25 thing that had gone wrong. I think I had asked a

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SMITH

couple members of staff about it.

Q. What did they say?

A. No. And that the Governor had said that -- that that wasn't the case here. I don't remember if I asked the Governor directly about it, like, that specific question, but I remember he had -- had very vehemently denied that this had happened.

Q. Which staff members did you ask?

A. I can't remember off the top of my head. I just -- I can't remember off the top of my head.

Q. Did you ask Melissa DeRosa?

A. So this is -- I'm sort of -- this is -- would be me sort of -- I -- of going in a direction of saying the people I would be most likely to ask would have been Melissa and, like, Jeff Pollack would probably be the people I'd be most likely to ask, but again, I don't remember the specifics of who I asked.

Q. What did you mean when you said given the physicality of the allegations you -- you asked whether there was a consensual relationship between the Governor and Accuser No. 6?

1 SMITH

2 A. I think it -- just in my head I was  
3 just trying to piece together -- you know,  
4 because as I mentioned before, I just thought  
5 that this was -- sort of came really out of far  
6 left field and was just trying to wrap my head  
7 around, you know, different possibilities.

8 Q. Did you consider any other  
9 possibilities?

10 A. Did I consider other possibilities?

11 Q. Right.

12 A. Yes. You know, potentially that this  
13 could have happened. Potentially that it could  
14 not -- that it didn't happen. You know, but then  
15 as I mentioned, spoke with the Governor or I --  
16 or I can't -- you know, my -- my brain is getting  
17 a little fried now, but the Governor was -- had  
18 been very vehement in his denial that this had  
19 ever happened.

20 Q. And to be clear, did you hear the  
21 Governor's denial directly from him?

22 A. I think so, yes.

23 Q. And --

24 MR. ROSENBERG: I was going to say at  
25 an appropriate time I'd like to take a

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break, especially as the witness has  
understandably said a couple times her brain  
is fried or something like that. We've been  
going a long time.

MS. MAINOO: Of course. Let's take a  
break.

A. Okay. Thank you.

THE VIDEOGRAPHER: This is the end of  
Medium post number five. We are off the  
record at 6:49 p.m.

(A brief recess was taken.)

THE VIDEOGRAPHER: This is the  
beginning of media unit No. 6. We are on  
the record at 7:00 p.m.

(3/10/21 text messages were marked  
Exhibit 49 for identification, as of this  
date.)

Q. Ms. Smith, let's turn to tab 105.

A. Okay.

Q. Looks like a series of text messages  
about a call on March 10th, do you remember this  
call?

A. I do not remember the call.

Q. Did you join the call?

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A. It appears from the text messages that I did.

(3/12/21 text messages were marked Exhibit 50 for identification, as of this date.)

(3/12/21 text messages were marked Exhibit 51 for identification, as of this date.)

Q. Let's move to tabs 109 and 110.

A. Okay.

Q. Do you recognize these documents?

A. Yes.

Q. What are they?

A. From March 12th?

Q. Correct.

A. These are the statement that I think the Governor gave on TV that Friday morning. Or Friday afternoon on the 12th.

Q. What were the statements concerning?

A. It was -- so after the second iteration of the Times Union story came out that evening, the evening of the 11th, and the morning of the 12th, that's when you started to see like a rush of people calling on the Governor to

1 SMITH

2 resign. I believe like the Congressional  
3 delegation did. And so he gave a statement  
4 that -- and this is a statement he gave basically  
5 being like -- responding to those and -- and  
6 specifically saying I'm not going to resign.

7 Q. Were you involved in drafting the  
8 statements, either of them?

9 A. I was not.

10 Q. Did you comment on the statements?

11 A. I did not.

12 Q. Did you have any role in connection  
13 with the statement?

14 A. I did not.

15 Q. Did you review the statement?

16 A. I did not.

17 Q. Did you discuss the statement with  
18 anyone?

19 A. I did not.

20 Q. So you just received the e-mails?

21 A. Yes.

22 Q. Is there a reason you were not  
23 involved?

24 A. Yes. By that time it had been about  
25 two weeks and I remember that morning was the day

1 SMITH

2 that my body just gave in and I had a very bad  
3 cold, I missed the e-mails, I missed the calls,  
4 and I think I even missed the Governor when he  
5 went on live TV to do this. So I -- I -- I might  
6 have only tuned in to see the sort of tail end of  
7 this. But I wasn't a part of any of the calls or  
8 any of the e-mails that morning because I was  
9 sick.

10 Q. When you say that your body gave out,  
11 was -- did you understand it to be a response to  
12 anything?

13 A. Yeah. Just general, you know,  
14 exhaustion which is -- I -- happens to me when I  
15 work long hours or get stressed or sick like  
16 that. But I just got a cold. I just got a bad  
17 cold.

18 Q. And was it related to all the work  
19 that you were doing in relation to the response  
20 to the sexual harassment allegations?

21 A. Possibly. Just a lot of late nights.

22 Q. Earlier you had mentioned a  
23 conversation you had in mid March about getting  
24 compensated for all your work in helping respond  
25 to sexual harassment allegations, did those

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SMITH

conversations happen before or after March 12th?

A. I can't remember.

Q. Do you remember if those conversations happened before or after the allegations by Accuser No. 6?

A. I can't remember.

Q. Were you involved in response to the allegations by Accuser No. 6 at all at any point?

A. Yes. The -- the response for -- on the 11th I was involved with -- with the response for that story. And as we were discussing before, we -- we went to break, there had been sort of a very last-minute short call before -- I believe the Governor did like a press conference call on the 9th shortly after The Times -- the first Times Union story posted.

And then I remember being a part of the response that he gave for the September -- sorry, I don't know why -- I guess because it's September 11th, like, I think of September 11th. But for the March 11th story. And I remember helping to write the statement for that and being on a call about that.

(3/10/21 chat messages were marked

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Exhibit 52 for identification, as of this date.)

Q. So let's go to tab 139.

A. Okay.

Q. Do you recognize this document?

A. Yes.

Q. What is it?

A. It was a conversation between Melissa, Peter, Rich, and me during a fact check from New York Magazine.

Q. Who was on the call other than -- well, who was on the -- was there a phone call?

A. Yeah. It was Rich had a phone call with them and Rich had -- Rich was speaking with the fact checker and Melissa and Peter Ajemian were in the room and then they -- they called me and, like, I -- and, like, there was muting so that I could just listen, like, and just hear what was being said.

Q. Did you announce yourself on the call?

A. No.

Q. Okay. What's the reason you were involved in the call?

1 SMITH

2 A. Because I wanted to listen in on the  
3 fact check and see what was going to be in the --  
4 what they were being fact checked on.

5 Q. And you say at 8:19 p.m. "OMG it's  
6 Kaitlin. I fucking lost it at the lumberjack."  
7 What is that in reference to?

8 A. So one of -- so with the -- with  
9 Kaitlin, I think as I mentioned earlier, we heard  
10 that she had said to other staffers that she --  
11 that she was upset because the Governor had been  
12 upset with her when she, like, failed to transfer  
13 a call, and that detail was in the story. It was  
14 from like an unnamed staffer, so me saying, "OMG  
15 it's Kaitlin" was me guessing that it must have  
16 been Kaitlin who was the blind source for the  
17 story.

18 Q. Then later at 8:33 p.m. you state,  
19 "That last chick wouldn't have lasted an hour in  
20 Pete for America comms," what are you referring  
21 to?

22 A. Yeah. There was an unnamed staffer  
23 in the -- in the report who complained about  
24 being reprimanded for I think typos in a press  
25 release, so I was just making a joke about, you

1 SMITH

2 know, that they wouldn't last, you know, for an  
3 hour on a presidential campaign communications  
4 operation.

5 Q. And what was the joke?

6 A. That, you know, generally when you  
7 work in, you know, high-profile press offices you  
8 do get reprimanded when you make errors in  
9 press -- in press releases.

10 Q. I think earlier you referred to a  
11 couple of articles in March in The New Yorker  
12 regarding the sexual harassment allegations, were  
13 you involved in discussions about those articles?

14 A. What do you mean was I involved in  
15 discussions about the articles?

16 Q. Were you involved in any internal  
17 discussions with members of the Chamber, current  
18 or former, about either reacting to, responding  
19 to, or providing comments on those articles?

20 A. Yes. With sort of that -- with  
21 the -- the team that was on that, like, text  
22 chain.

23 Q. What was your involvement?

24 A. Just giving advice on how to respond.

25 Q. What advice did you give on how to

1 SMITH

2 respond?

3 A. We would have to go over the  
4 specifics in there. It was -- it was sort of a  
5 detailed story with like a -- a fairly detailed  
6 fact -- fact check.

7 (3/31/21 text messages were marked  
8 Exhibit 53 for identification, as of this  
9 date.)

10 Q. Let's go to tab 114. Starting with  
11 your text on March 14th at 3:18:09 a.m. according  
12 to the time stamp --

13 A. Yes.

14 Q. -- are those about a New Yorker  
15 article?

16 A. Yes. And I remember the context of  
17 this, yes.

18 Q. What's the context?

19 A. I called a friend of mine who's like  
20 a PR professional who has handled a lot of New  
21 Yorker stories and I asked him sort of what is,  
22 like, the best way for -- if you had  
23 recommendations on how to handle a story like  
24 this, like, can you just give me point by point  
25 by point what you would do. And so I wrote -- I

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SMITH

wrote out points based on what -- what the person told me for Peter Ajemian to use.

Q. And who is that person?

A. The person who gave me these points?

Q. Yes.

A. His name is [REDACTED].

(Text messages were marked Exhibit 54 for identification, as of this date.)

Q. Let's go to tab 120. I'd like to understand the context for these messages.

A. This was just -- so I see -- I don't remember who the fourth person is on here. Melissa just sent -- so I think there had been -- earlier today we went over -- and I think these were texts -- these tweets were mentioned in an earlier e-mail that we reviewed. It could have been for this story or another story about, you know, some of, you know, Lindsey Boylan's tweets that maybe were -- that were worth potentially flagging for a reporter.

Q. Okay. Did you provide advice on this?

A. Yes. It says yes, I agree, why not -- why not provide the tweets. Because --

1 SMITH

2 and again, we had discussed this earlier today  
3 with regard to another story about the tweets  
4 because, you know, public domain.

5 Q. You're saying the tweets are already  
6 in the public domain, so it was fine to provide  
7 them?

8 A. Yeah. Yeah.

9 Q. And do you understand Beth Garvey's  
10 statement about saying, "I don't have a problem,  
11 but I'm not sure how many of these are false that  
12 we had to respond to"?

13 A. I don't know. No. I'm -- I can't  
14 say that I know -- I don't know that I know the  
15 context of that, no.

16 Q. What did you mean by your statement?

17 A. I think I was just referencing just  
18 some other things that -- regarding Lindsey.  
19 Just as I was saying, like, when we have internal  
20 discussions, like, I remember that there had been  
21 an internal discussion that she had been  
22 represented by a Tara Reade lawyer and had sent  
23 threatening -- and during the course of -- you  
24 know, in the previous few weeks had sent, like,  
25 threatening messages to members of our staff, of

1 SMITH

2 the Governor's staff, like Dani Lever and people  
3 like that.

4 (3/14/21 chat messages were marked  
5 Exhibit 55 for identification, as of this  
6 date.)

7 Q. Moving to tab 121, what's the context  
8 of that chat?

9 A. This was again passing on advice  
10 about how to handle The New Yorker story, which  
11 is for the fact check, which is, like, to, like,  
12 get as much as possible in writing, like, what --  
13 what are they going to -- you know, what are they  
14 likely to say in this story. And then if I  
15 recall correctly, this was also advice that I had  
16 gotten, you know, from [REDACTED], who had worked  
17 with -- you know, who had worked these fact  
18 checks before. And so, like, I was just sort of,  
19 like, taking notes on our conversation.

20 And then the end goal is to make sure  
21 that all evidence proving the accounts are  
22 challenged and that the proof is included in the  
23 story to provide readers with objective facts to  
24 consider on a evaluating credibility.

25 So okay, this was a point that -- so

1 SMITH

2 okay. The point that -- if I recall correctly,  
3 that [REDACTED] -- that my friend was making was that  
4 sometimes with The New Yorker stories there will  
5 be -- in the fact checking process things will be  
6 brought up to you, right, to -- let's say things  
7 would be brought up potentially to Peter, who's  
8 handling the fact check, that are demonstrably  
9 false, right, and Peter can knock them down  
10 immediately but -- and I'm in a normal article,  
11 the author could keep in those inaccurate facts  
12 and include the pushback.

13 But sometimes what happens in -- in  
14 New Yorker stories is that the facts that have --  
15 you know, the inaccuracies, the things that have  
16 been knocked down, are completely taken out of  
17 the story, which then sort of presents a  
18 distorted sense of the story because you don't  
19 have a sense that a lot inaccurate statements  
20 have been made and knocked down.

21 So anything that sort of like  
22 challenges the -- the, you know, underlying  
23 thesis of the story or -- or, you know, shows --  
24 like, makes it seem shaky is -- is taken out. So  
25 objective facts that allow readers to evaluate

1 SMITH

2 the credibility of, you know, a New Yorker story  
3 are sort of removed because they're inconvenient  
4 and so -- so the end goal -- thus the end goal is  
5 to make sure that the inaccurate facts are still  
6 included in the story with the pushback because  
7 then it shows that a lot of inaccurate facts have  
8 been presented and it allows the reader to see  
9 okay, well, you know, there are a lot of  
10 inaccuracies that are being presented in this  
11 story.

12 Q. And do you remember whether there  
13 were any discussions about potential responses to  
14 the points in The New Yorker article being  
15 possibly retaliatory?

16 A. Sorry, what?

17 Q. Do you remember any discussions about  
18 whether any of the responses to the points raised  
19 by The New Yorker could be considered  
20 retaliatory?

21 A. It's possible. I don't know. It's  
22 possible.

23 (3/28/21 e-mail chain was marked  
24 Exhibit 56 for identification, as of this  
25 date.)

1 SMITH

2 Q. Let's go to tab 130. So this is  
3 still about the Ronan Farrow piece. At the  
4 bottom of the e-mail chain Peter drafts a  
5 response to a statement by Ms. Boylan and you  
6 say, "I'm not sure name calling coming from you  
7 guys is super credible," what did you mean by  
8 that?

9 A. As I said, you know, earlier today, I  
10 think that -- and not -- and frankly not really  
11 in this case, in -- in how they were tying it  
12 into sexual harassment stuff, but that the, you  
13 know, Cuomo administration can sometimes be a  
14 little hard engaged in how they respond to  
15 people. Frankly, you know, it's sort of a --  
16 it's sort of a New York politics thing where  
17 people do engage in more name calling than you  
18 see in -- you know, in maybe like Ohio or South  
19 Dakota and so the point that I was making there  
20 is that like -- is that -- is that, like,  
21 seeming, like, you're above name calling isn't  
22 super credible.

23 Q. Because they engage in name calling  
24 all the time?

25 A. You're -- that -- all the time I

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SMITH

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think is -- is your word choice there. I -- what

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I would just say is that -- that they have

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engaged in name calling, as do a lot of New York

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politicians, and you know, I think my -- the

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advice that I would give to Bill de Blasio would

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be the same as well.

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(Handwritten notes were marked

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Exhibit 57 for identification, as of this

10

date.)

11

Q. Let's go to tab 138. What is it?

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A. What is this? These are notes from

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a -- it looks like a conversation with Peter

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Ajemian -- okay. So this goes back -- the first

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thing here goes back to the point I made a couple

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e-mails ago that -- right, is that if you knock

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off one thing -- that, like, to keep these things

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in stories that you knock off because that -- if

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it -- if it shows that there is like a litany of

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inaccuracies that are in a story and it's like

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someone said this, the Governor's Office provided

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proof that that's false, someone said this, the

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Governor's -- that that -- you know, that's

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really important context that should be in a

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story for reporters, but that The New Yorker sort

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SMITH

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of has a history of taking that important context

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out of stories and that, like, if you take out

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some of that context -- if you keep that context

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in, then a lot of other things can, like, fall --

6

fall apart in terms of, like, you know, making

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sense or -- or -- or, you know, creating a rock

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solid story for The New Yorker.

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On the second point, this is --

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Ajemian was saying how in his conversation

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that that something that The New Yorker was

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looking into was the chain of custody with -- I

13

believe that was in relation to the Lindsey

14

Boylan -- sort of the Lindsey Boylan personnel

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file back in the day and the general sense that

16

the Cuomo -- that The New Yorker was asking about

17

Cuomo intimidating the press and trying to smear

18

his opponents. So it was notes on -- it was just

19

sort of shorthand notes on those conversations.

20

Q. Is it your practice to take notes of

21

conversations that you have?

22

A. Sometimes. It just depends.

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Q. On what?

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A. On whether I take notes or not,

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whether I have a pen and paper in front of me.

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SMITH

Q. Have you taken notes of any other conversations regarding the sexual harassment allegations against the Governor?

A. When I was looking through my records and all of that, this was all I could find.

(New York Times article was marked Exhibit 58 for identification, as of this date.)

Q. Let's go to tab 132. So this is an article from March 19, 2021, in The New York Times about allegations by Alyssa McGrath against the Governor, do you see that?

A. Yup.

(3/19/21 chat messages were marked Exhibit 59 for identification, as of this date.)

Q. Let's go to tab 134. And these are text messages between you and Dani Lever. You say, "I just reread The Times story. He's so fucked. It's bad."

Are you referring to the article in The Times about Alyssa McGrath's allegations that we just looked at in tab 132?

A. Yes.

1 SMITH

2 Q. What did you mean by, "He's so  
3 fucked. It's bad"?

4 A. So I -- my recollection here was that  
5 there's something in here that I misread as  
6 contemporary corroboration of something or a --  
7 I'm looking through it. Oh, okay. If you go  
8 down to 1, 2, 3, 4 -- okay. If you look at  
9 paragraphs 4 through 7 here, I -- I -- the -- I  
10 misread it in a way that I thought was troubling  
11 and it was a -- I remember it because it was a  
12 mistake that a bunch of other reporters had made  
13 and I think other people in the group had made in  
14 reading it.

15 You have to read it a couple times to  
16 see the -- the true -- the meaning of it, right,  
17 which is that the way it read the first time I  
18 read it was, like, that -- that -- that she was  
19 saying that she had like contemporaneous, like,  
20 corroboration or -- of what had been said by  
21 Accuser No. 6 and she had been alleging that she  
22 had contemporaneous corroboration and I thought  
23 that that would be just like really, really  
24 damaging with the media, and then upon a third,  
25 fourth reading or even -- or maybe it was a

1 SMITH

2 conversation with a co-worker, I realized that I  
3 had misread that.

4 Q. So what did -- what had you misread?

5 A. If you look at 4 through 7, I  
6 misread -- I had misread that section.

7 Q. Can you read the first sentence of  
8 the section that you're referring to?

9 A. "The most serious accusation against  
10 the Governor..."

11 Q. Okay. And you said you had initially  
12 read that as contemporaneous corroboration of  
13 Accuser No. 6?

14 A. Yes. And that the press would take  
15 that -- that that could be taken as just like,  
16 you know, sort of like an escalation of things in  
17 addition to just like another story coming out.  
18 But I -- I can't remember whether someone else on  
19 the team or whatever told me I had read it wrong.

20 But I also remember at the time that  
21 a bunch of reporters were tweeting oh, my God,  
22 this is so bad, there's like this in there. They  
23 had also misread it. So it was a combination of  
24 my interpretation, but probably also what I was  
25 reading online of reporters saying that.

1 SMITH

2 Because, you know, when stories come out, I try  
3 to see what are people saying in realtime and I  
4 just remember reporters being like oh, you know,  
5 this is a death knell or whatever. So I think my  
6 recollection is that -- that that was sort of the  
7 context of my text to Dani.

8 Q. And your initial interpretation was  
9 about how the press was going to react to the  
10 information, not whether the allegations were  
11 true, correct?

12 A. No. It was actually how they were  
13 reacting in realtime.

14 Q. Okay.

15 A. And there -- there were -- and I  
16 remember there were tweets from reporters being  
17 like this is -- this is a whole other level, this  
18 is a death knell, this is a -- you know, there  
19 was a lot of doom and gloom and I -- I myself had  
20 misread it, but I -- I do remember a number of  
21 reporters being like he's screwed blah, blah,  
22 blah and, you know, you know, people were -- it  
23 was very reactive and I was, you know, probably  
24 being very reactive as well.

25 Q. You said initially that you had

1 SMITH

2 spoken with a co-worker about this, what do you  
3 mean by co-worker? What did you mean by  
4 co-worker?

5 A. I mean like Dani or other people on  
6 the team. By, like, Dani or Jeff or Rich or  
7 someone like that. I think Rich was the one who  
8 pointed out that -- and he was the one who got it  
9 clarified with -- with reporters who were  
10 tweeting, like, this is awful, this is -- who had  
11 sort of misread it and got those tweets taken  
12 down.

13 Q. Has Melissa DeRosa said anything to  
14 you about the allegations of sexual harassment  
15 against the Governor?

16 A. Has she said anything to me about  
17 them? I mean --

18 Q. Has she said anything to you or in  
19 your presence about the allegations?

20 A. Yes. I mean, that's sort of what all  
21 these conversations are that we've discussed.  
22 It's been -- this is sort of a running discussion  
23 of it over, you know, I don't know, many-week  
24 period. So I mean, I think it's -- it's clear in  
25 here that we discussed that.

1 SMITH

2 Q. Has she said anything in your  
3 presence or to you about the truthfulness of any  
4 of the allegations?

5 A. In the same way that any of us have  
6 discussed the nature of these allegations.

7 Q. To ask my question again, has she  
8 said anything about the truthfulness of the  
9 allegations about whether the allegations are  
10 true or not?

11 A. Yeah, I mean, she's of the opinion, I  
12 think like others on the team, that they're not,  
13 that they're not true.

14 (2/22/21 text messages were marked  
15 Exhibit 60 for identification, as of this  
16 date.)

17 Q. Let's go to tab 143. Specifically  
18 the end of it. On the last page there's a  
19 message from you on March 24th at 5:50:47 p.m. at  
20 the end, "I am getting the sense that they have  
21 sicked a whole bunch of pro Melissa partisans on  
22 me, including you, which is fine."

23 A. Yes. That was a reporter -- they  
24 sicked -- that was from -- oh, this was -- oh,  
25 oh, oh. This was me -- this was a message that

1 SMITH

2 Henry Goldman at Bloomberg News had -- had said  
3 to me -- had sent to me.

4 Q. What was the context?

5 A. He was writing a profile of Melissa  
6 DeRosa and I had called him about the profile or  
7 he had called me about the profile to ask, like,  
8 what was my experience, like, working with  
9 Melissa in 2018.

10 Q. And did you respond?

11 A. Did I respond to Henry?

12 Q. Yes.

13 A. To the reporter? Yeah. He and I had  
14 a couple conversations.

15 Q. What did you tell him?

16 A. I thought that the -- that Melissa's  
17 tough and politics is a tough business and -- and  
18 you know, Melissa's a tough person, but she works  
19 as hard as anyone else. I was quoted in the  
20 story, so it would have been in the story I  
21 think.

22 Q. Did anyone ask you to provide a  
23 comment for the story other than the reporter?

24 A. Yeah. So generally with stories like  
25 this about anyone, whether it's about a

1 SMITH

2 politician, whether it's about a staffer, you  
3 get -- like, there's sort of an effort to get  
4 people to comment, right, because you want people  
5 writing stories to do more positive ones, but in  
6 this case Henry had reached out to me -- Henry  
7 had reached out to me proactively, I think even  
8 before the Cuomo people even knew that this story  
9 was happening.

10 Q. Did you also speak with the Cuomo  
11 people about Henry's story?

12 A. Did I?

13 Q. Yes.

14 A. Yes.

15 Q. What did you discuss with them?

16 A. That I relayed the conversation that  
17 I had with Henry about it. He also had reached  
18 out to them as well. I think it was after our  
19 conversation or, you know, contemporaneously or  
20 something like that.

21 Q. In your interactions with Andrew  
22 Cuomo, has he ever spoken harshly to you?

23 A. No. He's -- he's been a pretty good  
24 boss.

25 Q. When you describe him as being a

1 SMITH

2 pretty good boss, what do you mean by that?

3 A. You know, I've worked for 20 -- you  
4 know, on 20 different campaigns, I've worked for  
5 all sorts of different politicians and people  
6 with different personalities, and some people  
7 that I've liked, some people that I've disliked,  
8 some people who have treated me, you know, with  
9 respect, some people who I think have, you know,  
10 been -- you know, treated me with less respect, I  
11 would put him on the spectrum of treating me with  
12 more respect and someone who's been supportive of  
13 my career as well. You know, when I -- after  
14 I -- I left working for him and I was working for  
15 Pete Buttigieg, it was a long-shot campaign, but  
16 he would call just periodically to check in, see  
17 how things were going.

18 Q. Has he ever yelled at you?

19 A. No.

20 Q. Insulted you?

21 A. No.

22 Q. Threatened you?

23 A. No.

24 Q. Thrown anything at you?

25 A. No.

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SMITH

Q. Has he ever touched you?

A. Hugged each other, given a kiss on the cheek, high five, fist bumped.

Q. Has he ever kissed you on the lips?

A. No.

Q. Has he ever commented on your appearance?

A. Yeah, I mean, I think to say, "I like your dress," something like that.

Q. Has he ever made any other comment on your appearance?

A. Not that come to mind.

Q. Has he ever commented on your relationship status?

A. Yes. We discussed my relationship status. I would -- you know, when I was working for him, I would sometimes seek his advice on -- on, you know, my -- my personal life, my boyfriend situation, things like that. So in the context of me sort of soliciting sort of -- sort of soliciting advice, things like that, but that's, you know, something I would do with any politician that I work for.

Q. Would he ever initiate discussions

1 SMITH

2 about your relationship status?

3 A. Maybe just ask, "Hey, how's it going  
4 with this guy?" or "What's the latest?"

5 Q. Did you ever hear him make comments  
6 of a sexual nature?

7 A. No.

8 Q. Did you ever hear him make comments  
9 about the size of his hands?

10 A. No.

11 Q. Did you ever hear him make comments  
12 with sexual innuendoes?

13 A. In a joking context I probably did.

14 Q. What do you mean?

15 A. So I can't -- I can't think of any  
16 specific -- I can't think of any specific  
17 examples or anything that stand out as  
18 inappropriate, but -- I'm trying to think. I  
19 sort of -- like, I remember at, like, fundraisers  
20 he would sometimes rib some of the, you know,  
21 politicians, some of the male politicians there  
22 about stuff, but I can't really -- I -- I  
23 honestly can't remember the specifics to be  
24 honest. But you know, it was sort of -- I just  
25 sort of remember that sort of thing a couple

1 SMITH

2 times. Or maybe it was like labor guys, that  
3 sort of context.

4 Q. Do you remember anything about that  
5 ribbing?

6 A. For some reason I'm just going back  
7 to like -- I feel like there was a laborer  
8 that -- in 2018 that I remember that was really  
9 funny, but I just can't remember any of the  
10 specifics.

11 Q. Have you ever observed or heard about  
12 Andrew Cuomo being upset with anyone?

13 A. I've certainly read news stories that  
14 alleged about him being upset with people.

15 Q. Other than what may have been  
16 publicly reported?

17 A. Have I ever seen -- have I ever --

18 Q. Seen or heard about Andrew Cuomo  
19 being upset with anyone?

20 A. I have not seen it, but I've heard  
21 rumors.

22 Q. What have you heard?

23 A. Just that he's someone who can be  
24 abrasive with people and with -- you know, is --  
25 in the sort of New York style, the Albany style

1 SMITH

2 forth with people, you tussle with them a little  
3 bit when you're going over legislative stuff. I  
4 think, again, some of this is very much native to  
5 the New York political style.

6 Q. Have you ever heard about any  
7 incident of Andrew Cuomo being upset with anyone?

8 A. I mean, yes. I guess I -- I --  
9 again, I'm thinking of -- of media stories --

10 Q. Setting aside media stories?

11 MR. ROSENBERG: Did you say setting  
12 aside --

13 A. I'm trying to think if I heard anyone  
14 personally relay... I'm just blanking, I'm  
15 sorry. Outside of media stories, I just can't  
16 think of, you know, anything that, like, I had  
17 heard firsthand or secondhand.

18 Q. Have you ever seen or heard about  
19 Andrew Cuomo yelling at anyone other than media  
20 stories for all of these questions?

21 A. Yes. From -- you know, former  
22 staffers have said that he could sometimes raise  
23 his voice, you know, in the office when he was  
24 frustrated.

25 Q. Have you ever seen him yelling at

1 SMITH

2 anyone?

3 A. I have not.

4 Q. Have you ever seen Governor Cuomo  
5 curse at anyone?

6 A. Curse at anyone... Not in a -- not  
7 in an unfriendly, like, malicious way.

8 Q. In what context have you heard  
9 Governor Cuomo curse at anyone?

10 A. Just in the way that, you know, I  
11 think a lot of people use cuss words in, you  
12 know, day-to-day -- you know, in day-to-day  
13 conversations. And politics, for good or for  
14 bad, is a business where people do tend to use a  
15 lot of cuss words, especially in New York.

16 Q. Can you give an example?

17 A. An example... I mean, I'm sorry,  
18 you're putting me on the spot so I'm struggling  
19 to think of like a specific example, but in  
20 day-to-day conversation, I've definitely heard  
21 him use cuss words. I just can't think of  
22 anything that's specific or memorable.

23 Q. Have you ever heard the Governor  
24 insult anyone?

25 A. Insult anyone?

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SMITH

Q. Yes.

A. Yes. I've heard him call the mayor of New York incompetent.

Q. Anything else?

A. I'm sorry, I'm just drawing a blank. But that's the first one that came to mind.

Q. Have you ever hear of the Governor insulting anyone?

A. Have I heard of the Governor insulting anyone? I mean, again, I've read this in news -- in news accounts secondhand. Have I heard of the Governor -- from someone in -- has someone told me outside of a news report about the Governor insulting someone? I just can't think of a specific example.

Q. Have you ever --

A. But -- because it -- what you're asking for is a specific example.

Q. My first question is not a specific example. I'm just asking whether you've heard of the Governor insulting anyone, setting aside media reports.

A. I mean, I'm sure I have, I just -- I'm just -- I just can't -- you know, some of

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SMITH

these questions are very tough because it's like they're very broad questions and my mind is just freezing at -- at them. So I have, but I just cannot think of any, you know, specific examples to cite.

Q. Have you ever heard of the Governor threatening anyone?

A. No.

Q. Have you ever heard the Governor threaten anyone?

A. No.

Q. Have you ever seen the Governor throw anything at anyone?

A. Hold on. Can I go back to the other one? Just because I -- in the story about Ron Kim, I read in the media that he had threatened Ron Kim.

Q. For all these questions I'm asking about anything other than media stories.

A. Right. But I just I wanted to give you -- I wanted to at least -- to say that. Have I heard about, sorry, throwing anything? No, I've never heard that or read anything about that.

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SMITH

Q. Have you ever seen the Governor throw anything at anyone?

A. No.

Q. Have you ever heard of the Governor throwing anything at anyone?

A. No.

Q. Have you ever seen the Governor flirt with anyone?

A. No. Well, I mean -- sorry. I mean, he had -- I saw him at events with -- with Sandra Lee. I don't know if that's flirting, but you know, relationship flirting, I guess.

Q. Have you ever heard of the Governor flirting with anyone who was not Sandra Lee?

A. No. Except -- okay. Let me just clarify. I've heard rumors that the Governor has had flirtatious relationships with people, yes.

Q. What rumors have you heard?

A. You know, in Albany, which is a town, again, that likes to talk, there certainly were rumors that he had a -- a flirtatious relationship with **Senior Staffer #1**.

Q. Have you heard any other rumors?

A. Sorry? Excuse me?

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SMITH

MR. ROSENBERG: Any other rumors.

A. Any other rumors? No. Just that he had a flirtatious relationship with Senior Staffer #1 [REDACTED].

Q. What did you hear regarding the Governor's relationship with Senior Staffer #1 [REDACTED] ?

A. You know, because they do have -- and again, this is not what you're asking, but I'm -- I'm just going to --

MR. ROSENBERG: Just answer her question.

THE WITNESS: Just answer her question.

A. That they had a -- a close relationship. I think that people in Albany like to speculate about, you know, the nature of that relationship.

Q. Had you observed anything in the Governor's interactions with Senior Staffer #1 [REDACTED] that caused you to speculate about the nature of that relationship?

A. No.

Q. Have you ever seen anyone sit on the Governor's lap?

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SMITH

A. No.

Q. Have you ever heard about anyone sitting on the Governor's lap?

A. Only in the -- we got -- there was a media request we got and I know -- this is not what you're asking, but again, I'm trying to answer to the best of my ability and -- and give you stuff that's -- a reporter for a story was looking into whether, you know, a female staffer had sat on his lap, but they did not, you know, ultimately track it down or anything like that. But that was the only hint of anything I've heard about that.

Q. And who was that staff member?

A. I don't remember who that staffer was.

Q. Have you ever heard the Governor use nicknames to refer to anyone?

A. Yeah, I -- he definitely has used nicknames for people. I'm just blanking. I'm so bad at these types of questions. I just -- I can't -- I just can't remember any specifics.

Q. Have you ever heard the Governor refer to anyone as "mean girls"?

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SMITH

A. No. Only in the media reports.

Q. Are you aware of any articles about the Governor and Senior Staffer #1 relationship?

A. In March the -- I believe it was in March -- the [REDACTED] ran -- you know, ran a piece, like, showing the Governor and Senior Staffer #1 [REDACTED] and it was, you know, saying that they were being flirtatious.

Q. Did you discuss that article with anyone?

A. Yes. I -- I, you know, discussed it with Senior Staffer #1 and sort of the core group around. She was just curious about whether, you know, we thought it would get pickup, if it was something she should be worried about, et cetera.

Q. Did you discuss anything else with Senior Staffer #1 about the article?

A. No. Just -- just sort of the -- if there would be any other press pickup of it.

Q. I'll pause to look over my notes and let my colleagues ask any questions they may have.

MR. ROSENBERG: Do you want to take a break while you go over and -- or can we

1 SMITH

2 just stay on?

3 MS. MAINOO: Sure. Let's take a  
4 three-minute break. We can come back --

5 MR. ROSENBERG: Fine. Okay. Then  
6 we'll go over our notes as well.

7 MS. MAINOO: Okay.

8 MR. ROSENBERG: Okay.

9 THE VIDEOGRAPHER: We are off the  
10 record at 7:58 p.m.

11 (A brief recess was taken.)

12 THE VIDEOGRAPHER: We are back on the  
13 record at 8:02 p.m.

14 Q. Ms. Smith, are you aware of any  
15 opposition research into members of the  
16 investigative team appointed by the Attorney  
17 General?

18 A. No.

19 Q. Are you aware of any other potential  
20 or actual allegations of sexual harassment  
21 against Andrew Cuomo that have not been made  
22 public?

23 A. No.

24 Q. Is there anything you would like to  
25 add or any answers you wish to clarify before we

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SMITH

finish?

A. No.

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

A. No.

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

A. I'm good. Thank you.

Q. We are now going to conclude this examination. Thank you again for sticking with us today. I'll remind that you have continuing obligations under our subpoenas. If we need you to come back to answer questions, we will contact you through your attorney. If you have additional documents that are responsive to our documents subpoena, you have a continuing obligation to produce them to us. And I'll also remind you again that under Executive Law 63(8), you're not allowed to discuss with anyone your testimony today?

MR. ROSENBERG: We understand. Thank you.

THE VIDEOGRAPHER: This is the end of media unit No. 6. We are off the record at

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SMITH

8:03 p.m., Monday, July 5, 2021, and this concludes today's testimony given by Witness 7/5/2021.

(Time noted: 8:04 p.m.)

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CERTIFICATION

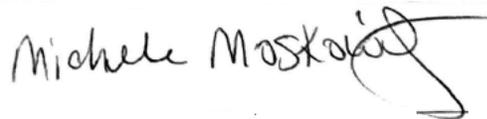
STATE OF NEW YORK )  
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COUNTY OF NEW YORK )

I, MICHELE MOSKOWITZ, a Shorthand Reporter  
and Notary Public within and for the State of New  
York, do hereby certify:

That ELISABETH LYON SMITH, the witness whose  
examination is hereinbefore set forth, was duly  
sworn by me and that this transcript of such  
examination is a true record of the testimony  
given by such witness.

I further certify that I am not related to  
any of the parties to this action by blood or  
marriage and that I am in no way interested in  
the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my  
hand this 9th day of July, 2021.



\_\_\_\_\_  
MICHELE MOSKOWITZ