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IN THE MATTER OF INDEPENDENT

INVESTIGATION UNDER

EXECUTIVE LAW 63(8)

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REMOTE PROCEEDINGS

HOWARD ZEMSKY

TUESDAY, JULY 20, 2021

1:32 p.m.

Reference No. 4713377

Reported by: Michele Moskowitz

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9

10 ALSO PRESENT:

11 MARC FRIEDMAN, LEGAL VIDEOGRAPHER

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1 ZEMSKY

2 THE VIDEOGRAPHER: Good afternoon.

3 We are going on the record at 1:32 p.m.
4 Eastern Standard Time on Tuesday, July 20,
5 2021. Please silence your cell phones,
6 computer tone, or any other electronic
7 devices you have near you. Audio and video
8 recording will continue to take place unless
9 all parties agree to go off the record.

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

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

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

1 ZEMSKY

2 state them now.

3 (No response.)

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

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

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

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

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

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

1 ZEMSKY

2 Assistant to the First Deputy Attorney
3 General.

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

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

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

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

15 EXAMINATION BY

16 MS. MAINOO:

17 Q. Please state your name for the
18 record.

19 A. Howard Zemsky.

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

25 As you know, the New York Attorney

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

8

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

17

Do you understand that, Mr. Zemsky?

18

A. I do.

19

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

22

A. I do.

23

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

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ZEMSKY

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

13

Do you understand that?

14

A. I do.

15

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

19

A. I understand.

20

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

1 ZEMSKY

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

4 A. I do.

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

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

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

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

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question first and then we'll take a break.

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

5 A. Boyd Johnson from WilmerHale.

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

A. I am not using any technology at all.

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

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

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

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

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

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

1 ZEMSKY

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

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

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

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

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

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

1 ZEMSKY

2 for you to understand my questions?

3 **A.** **No.**

4 Q. Have you had any alcohol today?

5 **A.** **No.**

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

9 **A.** **No.**

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

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

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

18 A. My business address is

Q. Have you ever given testimony before?

21 A. I have.

22 O. When was that?

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

25 O. And did you testify at a trial?

1 ZEMSKY

2 A. No.

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

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

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

11 A. No.

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

14 A. Over the past -- a few times.

15 Q. Which counsel did you meet with?

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

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

21 A. No.

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

25 A. No. No one outside my family.

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

A. **No.**

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

(Testimony subpoena was marked

Exhibit 1 for identification, as of this date.)

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

A. Yeah.

Q. Did you read the subpoena?

A. Yeah.

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

A. Yes.

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

Mr. Zemsky, is --

MS. MAINOO: And we'll mark this as

1 ZEMSKY

2 an exhibit.

3 (Document subpoena was marked Exhibit
4 2 for identification, as of this date.)

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

7 A. Yeah. Yes.

8 Q. Did you read the subpoena?

9 A. Yes.

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

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

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

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

23 A. Yes.

24 Q. What did you observe about those
25 interactions?

1 ZEMSKY

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

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

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

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

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

22 Q. Was one of those actresses Sofia
23 Loren?

24 A. Quite possibly.

25 Q. What do you remember the Governor

ZEMSKY

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

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

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

14 A. I think that says it.

15 Q. And how did Ms. Boylan react?

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

17 Q. How did you react?

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

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

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

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

5

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

8

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

15

Q. Who do you think it may have been?

16

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

24

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

1 ZEMSKY

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

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

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

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

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

18 MR. KIM: Can I ask a question?

19 MS. MAINOO: Of course.

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

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

1 ZEMSKY

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

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

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

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

14 THE WITNESS: I recall that one time.

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

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

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

1 ZEMSKY

2 MS. MAINOO: Thank you.

3 BY MS. MAINOO:

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

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

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

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

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

25 A. Oh, on the plane.

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

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

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

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

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

A. You know, it would have been sometime

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

9

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

12

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

15

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

17

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

20

MS. MAINOO: Okay.

21

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

23

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

25

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

1 ZEMSKY

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

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

18 Q. Sure. And how about in 2018?

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

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

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

25 Q. Did any of the other people on the

ZEMSKY

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

A. No, not to me.

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

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

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

A. Not beyond what I've described.

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

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

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

1 ZEMSKY

2 **A.** **No.**

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

5 **A.** **No.**

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

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

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

15 Q. Did the Governor ever comment on your
16 attractiveness?

17 A. No.

18 Q. Did you observe any touching between
19 the Governor and Ms. Bovlan?

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

25 O. Did you ever see the Governor kiss

1 ZEMSKY

2 Ms. Boylan?

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

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

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

11 Q. Do you remember what you said?

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

21 Q. How did she respond?

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

1 ZEMSKY

2 this" or "I'll handle it," some -- I can't recall
3 exactly, but it was -- that was the essence of
4 it.

5 Q. Did you continue the conversation
6 after Ms. Boylan said something along those lines
7 of she was okay, she had it, and would handle it?

8 A. I said if you -- I did say if you --
9 you know, let me know if you change your mind.

10 Q. Do you remember when you had this
11 conversation with Ms. Boylan?

12 A. I don't remember when I had the
13 conversation. Sometime after -- sometime I think
14 pretty shortly after a plane trip. I don't
15 remember which plane trip. And I don't remember
16 the -- the date or even the approximate date.

17 Q. Do you remember if it was before or
18 after Ms. Boylan joined the Chamber as deputy
19 secretary?

20 A. I believe it was before.

21 Q. What's the reason you had that
22 conversation with Ms. Boylan?

23 A. Because I wanted to -- you know, I
24 didn't know exactly -- I really didn't know how
25 she was feeling and I thought -- you know, she

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

9

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

12

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

17

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

19

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

22

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

24

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

1 ZEMSKY

2 taking any steps to intervene?

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

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

9 A. I didn't.

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

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

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

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

1 ZEMSKY

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

5 A. No.

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

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

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

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

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

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

1 ZEMSKY

2 one more time?

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

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

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

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

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

17 A. Yes.

18 Q. What did you hear the Governor say?

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

21 Q. Who was that statement directed at?

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

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

1 ZEMSKY

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

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

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

7 Q. How did Ms. Boylan respond?

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

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

17 A. I think nothing.

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

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

25 MR. KIM: You don't remember any

1 ZEMSKY

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

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

9 BY MS. MAINOO:

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

13 A. On the plane.

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

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

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

1

ZEMSKY

2

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

8

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

10

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

19

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

22

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

1 ZEMSKY

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

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

5 A. I don't believe so.

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

9 A. I don't believe so.

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

13 A. It was, you know, sometime in '17 or
14 '18, but I don't recall when in months or...

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

19 A. Right, correct.

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

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

ZEMSKY

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

8 Q. Yes, please.

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

1 ZEMSKY

2 know, what you're talking about."

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

16 Q. And then what happened?

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

1 ZEMSKY

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

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

9 MS. MAINOO: Go ahead.

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

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

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

25 THE WITNESS: Yes. I interpreted it

1 ZEMSKY

2 as not in jest.

3 MR. GRANT: Thank you.

4 BY MS. MAINOO:

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

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

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

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

1 ZEMSKY

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

4 Q. Do you remember when this was?

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

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

12 THE WITNESS: She typically sat
13 across from him.

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

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

19 MR. GRANT: Thank you.

20 BY MR. MAINOO:

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

ZEMSKY

A. I don't believe so.

Q. Did you read that article at any point?

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

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

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

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

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

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

1 ZEMSKY

2 statement?

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

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

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

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

18 A. I don't believe so.

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

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

1 ZEMSKY

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

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

A. Not much time.

10 O. Was it an hour or less than an hour?

11 A. Less than an hour.

12 Q. Was it less than 15 minutes?

13 A. Yes. I would say yes.

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

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

Q. Did she say who that was?

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

21 Q. What did Melissa say during that
22 second call?

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

1 ZEMSKY

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

4 Q. What did you say?

5 A. I said, "Okay."

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

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

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

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

16 O. Did she say anything in response?

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

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

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

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

25 A I don't

1 ZEMSKY

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

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

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

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

13 A. I -- I don't recall.

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

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

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

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

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

1 ZEMSKY

2 attractiveness?

3 A. No.

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

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

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

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

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

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

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

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

1 ZEMSKY

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

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

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

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

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

20 MR. GRANT: Gotcha.

21 BY MR. MAINOO:

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

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

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ZEMSKY

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Q. Can you speak more to that?

3

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

8

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

12

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

16

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

21

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

1 ZEMSKY

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

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

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

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

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

1 ZEMSKY

2 wanted to play strip poker on the plane.

3 MR. GRANT: Gotcha.

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

6 BY MR. MAINOO:

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

9 A. Yes.

10 Q. What is it?

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

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

20 A. I don't.

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

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

ZEMSKY

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

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

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

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

Q. What did Lindsey's communication say?

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

Q. How is it that you remember Lindsey's

1 ZEMSKY

2 communication so clearly?

3 A. I'm sorry?

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

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

9 Q. Did you respond to it?

10 A. I didn't.

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

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

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

18 A. I told some people in my family.

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

21 A. I told some people in my family.

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

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

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ZEMSKY

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

9

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

23

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

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ZEMSKY

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

3

Q. Is there a reason you did not?

4

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

8

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

12

A. No.

13

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

14

Thanks. And we'll mark it as an exhibit.

15

(Article was marked Exhibit 4 for identification, as of this date.)

17

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

21

A. Yes.

22

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

24

A. Yes.

25

Q. And based on your memory, after you

1 ZEMSKY

2 | initially -- well, let's start again.

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

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

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

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

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

1 ZEMSKY

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

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

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

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

12 A. Is Lindsey going to an event.

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

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

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

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

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

23 A. You know, I don't know.

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

1 ZEMSKY

2 asking?

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

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

8 A. It could have been -- it could have
9 been Stephanie, it could have been Melissa, it
10 could have been -- it could have been, you
11 know -- could have been the Governor, could have
12 been -- could have been others, but that would be
13 my guess.

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

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

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

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

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ZEMSKY

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

5

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

7

A. No. Not that I can recall.

8

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

11

A. Yes.

12

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

14

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

16

Q. Do you remember where that was?

17

A. On the plane.

18

Q. Do you remember who else was there?

19

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

21

Q. Do you remember the context?

22

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

1 ZEMSKY

2 you mean.

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

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

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

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

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

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

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

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

1

ZEMSKY

2

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

6

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

8

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

10

11

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

12

MS. MAINOO: Sure.

13

14

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

15

16

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

17

18

MR. JOHNSON: How should we do that?

I mean, I know how to take a break, but --

19

20

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

21

MR. JOHNSON: Okay.

22

23

24

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

25

(A brief recess was taken.)

1 ZEMSKY

2 THE VIDEOGRAPHER: The time is 2:57

3 p.m. We are back on the record and this

4 will be the start of media unit number 2.

5 Counsel.

6 MS. MAINOO: Thank you.

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

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

14 Q. Sure.

15 A. -- together here?

16 Q. Okay.

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

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

1 ZEMSKY

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

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

8 Q. Okay.

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

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

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

21 Q. Okay.

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

25 Q. Okay.

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ZEMSKY

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

5

Q. Okay.

6

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

10

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

12

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

16

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

18

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

22

Q. Okay.

23

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

1

ZEMSKY

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

9

Q. Okay.

10

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

14

Q. Yes, please.

15

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

19

Q. Okay.

20

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

23

Q. Okay.

24

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

1 ZEMSKY

2 or --

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

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

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

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

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

1 ZEMSKY

2 | **A.** **No.**

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

6 **A.** **No.**

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

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

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

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

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

25 O. And this is a September 18, 2018.

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ZEMSKY

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

6

A. Mm-hmm.

7

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

9

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

10

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

16

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

20

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

24

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

1 ZEMSKY

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

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

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

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

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

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

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

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ZEMSKY

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

8

Q. And what did Miss Lacewell say?

9

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

11

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

14

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

17

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

19

A. I don't recall.

20

Q. Do you remember what you heard?

21

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

1 ZEMSKY

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

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

7 A. I don't.

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

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

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

17 A. No.

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

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

1 ZEMSKY

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

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

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

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

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

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

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

22 Q. Okay. But --

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

1 ZEMSKY

2 clear.

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

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

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

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

14 Q. I'll try to be clearer.

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

20 A. I don't.

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

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

1 ZEMSKY

2 working in the Executive Chamber?

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

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

7 A. Yeah.

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

10 A. I think whenever they were made.

11 Q. What did Melissa say she said?

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

20 Q. And then what did Melissa say?

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

25 Q. And what did you say?

ZEMSKY

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

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

6 A. I don't recall.

7 Q. Was anyone else --

8 A. Not that long.

9 Q. Was anyone else on the call?

A. Not that I'm aware of.

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

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

Q. Did you say anything else?

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

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ZEMSKY

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

7

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

9

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

17

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

24

Q. Was this a second conversation with

Melissa, what you were just describing?

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ZEMSKY

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

9

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

13

A. No.

14

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

18

A. Yes.

19

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

21

A. No.

22

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

25

A. No.

1 ZEMSKY

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

5 A. Nope.

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

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

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

14 A. Yes.

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

18 A. I was not.

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

21 A. In December.

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

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

1 ZEMSKY

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

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

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

14 Q. Sure. We can go off the record.

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

17 (A discussion was held off the
18 record.)

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

21 A. Can you repeat your question, please?

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

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

1
2 mean, I've been searching my mind for like -- you
3 know, I attend ESD board meetings, but the
4 Executive Chamber is not really involved in
5 those. I haven't been speaking -- communicating
6 directly with Jill or -- you know, other than the
7 conversations with Melissa that I've conveyed to
8 you, seeing the Governor once at, you know, the
9 Moynihan Train Hall. That's what I can recall.
10 I can't recall anything else.

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

14 **A.** **No.**

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

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

19 MS. CLARK: I'm good too.

MR. KIM: Same here. Thank you.

21 MS. MAINOO: Thank you.

MR. KIM: Thank you, Mr. Zemsky.

THE WITNESS: Okay, thank you.

24 MS. CLARK: Thank you.

Q. Mr. Zemsky, is there anything you

1 ZEMSKY

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

4 THE WITNESS: Anything?

5 A. We're good.

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

8 A. I don't think so.

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

11 A. A brief what?

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

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

16 MR. KIM: Noted on the record.

17 A. Don't forget about us.

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

24 A. Okay. Thanks for your time.

25 MR. KIM: Thank you very much,

1 ZEMSKY

2 Mr. Zemsky.

3 MR. JOHNSON: Thank you.

4 THE WITNESS: Thank you.

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

10

11 HOWARD ZEMSKY

12

13

14 Subscribed and sworn to before me

15 this __ day of _____, 2021.

16

17 Notary public

18

19

20

21

22

23

24

25

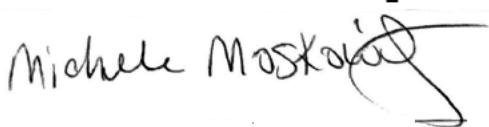
1 C E R T I F I C A T I O N
2 STATE OF NEW YORK)
3)
4 COUNTY OF NEW YORK)
5

6 I, MICHELE MOSKOWITZ, a Shorthand Reporter
7 and Notary Public within and for the State of New
8 York, do hereby certify:

9 That HOWARD ZEMSKY, the witness whose
10 examination is hereinbefore set forth, was duly
11 sworn by me and that this transcript of such
12 examination is a true record of the testimony
13 given by such witness.

14 I further certify that I am not related to
15 any of the parties to this action by blood or
16 marriage and that I am in no way interested in
17 the outcome of this matter.

18 IN WITNESS WHEREOF, I have hereunto set my
19 hand this 26th day of July, 2021.

20 

21
22
23 MICHELE MOSKOWITZ
24
25