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September 8, 2009

Honorable David A. Paterson
Executive Chamber
State Capitol
Albany, NY 12224

Dear Governor Paterson:

As you will recall, you previously requested that I conduct an investigation to determine whether there has been political interference with the New York Division of State Police ("State Police"). This letter shall serve to inform you of my findings, as well as certain resulting policy recommendations that are based on these findings.*

Importantly, our fundamental finding is that there is no evidence that the rank and file of the State Police – the Troopers who are out there every day doing their job the way it should be done – acted in anything other than the public interest and maintained their integrity. However, we have found certain troubling situations in which, at the highest levels of the State Police, political considerations played an improper and determinative role. Thus, as outlined below, your concern that there may have been political interference with the State Police was justified.

Below, we first describe certain pertinent matters relating to our overall investigation, including the level of cooperation we have received, as well as our continuing investigation of potentially obstructive conduct at the New York Power Authority. Second, we describe certain instances of political interference we have found at the State Police.* Lastly, we make certain policy recommendations for your consideration.

* There are certain open matters that we are still investigating and we will inform you of any additional developments as appropriate.

* In July 2007, this Office completed a report on the Spitzer Administration's misuse of the State Police. The so-called "Troopergate" matter, and the Spitzer Administration's related actions, are not a subject of our review at this time and are continuing matters in other agencies.

I. Summary of Investigation

We have done an extensive amount of work to date with over 130 witness interviews and hundreds of thousands of State Police and Executive Chamber e-mails and documents reviewed. A large team of investigators and attorneys was assigned to work on this investigation. With that said, the investigation has been hampered to some extent by varying levels of cooperation, as well as potentially obstructive conduct at the New York Power Authority (“NYPA”).

A. Varying Levels of Cooperation

During the course of this investigation three senior level State Police officers asserted their Fifth Amendment rights. Former Acting Superintendent Preston Felton, the most senior State Police Official and key figure in the investigation, refused to answer questions. Former Deputy Superintendent David Mack also refused to answer any questions. One witness, Daniel Wiese, refused to answer any questions having to do with his involvement in an investigation into Governor George Pataki’s campaign staff, which took place while he was commanding officer of Governor Pataki’s security detail.

B. Obstruction of Justice Investigation at NYPA

We believe justice may have been obstructed at NYPA and our investigation of this matter is ongoing. News of this investigation became public on April 1, 2008, when the Governor’s referral letter of March 31 was publicly reported in a front-page article in the New York Post. See “Heat on ‘Hatchet Squad,’” *New York Post* (Apr. 1, 2008) (the “April 1 Article”). The April 1 Article noted that the referral letter authorized a “wide-ranging investigation of the State Police and its activities.” It also specifically identified a number of circumstances that were expected to be investigated in the course of the inquiry, including the “suspected behind-the-scenes role current state Power Authority Inspector General Daniel Wiese had in managing the State Police.”

According to NYPA’s records, Wiese arrived at NYPA’s Inspector General (“IG”) suite at 9:10 a.m. on the morning of April 1, 2008. After he arrived, Wiese called his secretary into his office and complained that he was having a problem deleting certain e-mails from his Blackberry. Wiese asked his secretary to call NYPA’s IT Division to request repair of the Blackberry. IT personnel arrived at Wiese’s office soon thereafter. Wiese was advised that the information contained on the Blackberry would be erased when the device was repaired. Wiese authorized the procedure at approximately 11:15 a.m. and the device was taken from Wiese. At 12:48 p.m., Wiese received an e-mail confirming that the device had been “wiped.” Before Wiese authorized the NYPA IT department to wipe his Blackberry, he had a four minute telephone conversation with NYPA General Counsel, Thomas Kelly, during which Kelly spoke with Wiese about the investigation and the April 1 Article.

On April 2, 2008, we served a subpoena on Wiese requiring production of all documents in his possession concerning the New York State Police (the “Wiese Subpoena”). On April 3, 2008, we served a subpoena on NYPA requiring production of, among other things, all

communications between Wiese and the State Police (the “NYPA Subpoena”). The NYPA Subpoena and the Wiese Subpoena essentially called for production of the same or similar documents, specifically, any State Police related documents or communications. On April 3, 2008, Wiese was put on paid leave from NYPA and told not to come into the office. The next day, the lock on Wiese’s door was changed. On April 4, 2008, NYPA’s General Counsel authorized two NYPA employees to retrieve personal items from Wiese’s office and return them to Wiese. Among the items returned to Wiese were documents, none of which were copied; the only record of the items removed is a handwritten, perfunctory inventory. On the morning of Monday, April 7, 2008, Thomas Kelly, the NYPA General Counsel, authorized Wiese to gain access to his NYPA office in order to retrieve documents responsive to the Wiese Subpoena. Wiese removed two bags of materials, including one bag of documents. None of the documents removed by Wiese were copied, and no inventory was kept.

At around 2 p.m. on the afternoon of April 7th, after Wiese removed documents from his office, two NYPA attorneys conducted a search of Wiese’s office for documents responsive to the NYPA Subpoena. Neither attorney knew that Wiese had been in his office earlier that day.

As a result of the conduct of Wiese and Kelly, information in both electronic and paper form may have been destroyed. This investigation is ongoing.

II. Findings of Political Interference with State Police

A. Political Appointment of David Mack

In September 1995, David Mack, one of Governor Pataki's supporters in his initial gubernatorial campaign, was appointed by Superintendent James McMahon to the unsalaried position of Deputy Superintendent, Facilities Management of the State Police. McMahon testified that he was pushed to make the Mack appointment by Wiese who stated that the Governor wanted it done. McMahon also testified that he was uncomfortable making the appointment but was unable to avoid it because, although he never spoke directly to Governor Pataki about it, he felt the directive was coming from the Governor since Weise had said as much.

David Mack is an active political donor and, by some accounts, is a “police buff” and has been given police titles by politicians he supports. The position of Deputy Superintendent is a uniformed position which carries the title of Colonel, the third highest rank in the State Police. Prior to Mack’s appointment, that position had not existed in the State Police. Mack held that title until January 19, 2007, when his position was terminated in a letter sent to him by William Howard, a member of Governor Spitzer’s Administration.

Mack was subpoenaed to testify in connection with this investigation. On October 23, 2008, Mack appeared for his interview and asserted his Fifth Amendment rights as to every question asked of him, including questions concerning his background.

Former Superintendent Wayne Bennett testified that the day that Mack received the appointment “it was like a cannon going off across the state. [The Troopers] didn’t think he had earned the right to call himself what he was calling himself. Certainly hadn’t earned the right to wear the uniform.” Bennett testified that the letter terminating Mack, which was sent when Bennett was Superintendent, came from the Governor’s office because “this appointment clearly started from the executive level, not within the agency. And nobody was going to terminate that until the executive branch signed off on that.” (Bennett Tr. 164).

The appointment of Mack to Deputy Superintendent, one of the highest positions in the State Police, appears to have been politically motivated and negatively impacted morale in the rank and file of the State Police.

B. Politicization of the Executive Services Detail

The Executive Services Detail (“ESD”), formerly called the Protective Services Unit (“PSU”), is a detail within the State Police that is responsible for providing protection to the Governor, Lieutenant Governor, dignitaries visiting New York State, and any other public official, at the direction of the Superintendent.

ESD structurally falls under the authority of the Superintendent. The commanding officer of ESD reports directly to the First Deputy Superintendent. Despite the stated chain of command, the Executive Chamber traditionally has exerted significant authority over the operations of ESD. Since at least the Carey Administration (1975-1982), the Governor has effectively chosen the Major, or commanding officer, of ESD.

When Daniel Wiese assumed command of the Governor’s detail after the November 1994 election of Governor Pataki, he revamped its procedures, procured updated cars and equipment, and changed its name from “Protective Services Unit” to “Executive Services Detail.”

Wiese at times gave ESD members assignments unrelated to ESD’s protective and security-related functions. ESD members generally did not question these assignments. The State Police is a “paramilitary organization” and, as an Investigator explained, if a “[c]ommanding officer tells you what to do, you do it or you quit.” Some examples of these non-security related duties are the following:

- In 1995, Wiese assigned ESD members to conduct an investigation into a break-in at the Pataki campaign headquarters on Lexington Avenue in Manhattan despite the fact that ESD had no protective duties as to the Pataki campaign headquarters and no non-threat related investigative duties. The culprit was an individual who worked for the Pataki campaign. At Wiese’s direction, the individual was not arrested, “because he was a member of [the campaign] team.” Instead, the individual was put into rehabilitation.

- In approximately 1998, Wiese assigned ESD members to provide security to Darryl Strawberry, a member of the New York Yankees, when he was hospitalized at Columbia Presbyterian Hospital in Manhattan. Wiese testified that Strawberry was a friend of his, and that ESD members volunteered to provide security to Strawberry and did so on their own time. An ESD member who provided security for Strawberry testified, however, that he was given that assignment by Wiese, and he provided the security while on duty. Governor Pataki's principal staff members were unaware that ESD members had provided security to Strawberry.
- As set forth in detail below, in November 1997, Wiese assigned ESD member Michael Prunty to work with the NYPD in conducting an investigation into the Pataki campaign staff. That investigation, again, had no connection to ESD's mission of providing protection to the Governor and other dignitaries.

ESD supervisors knew that Wiese was assigning ESD members to do other things, referred to by one witness as "secret squirrel missions" and another as "Colonel missions." The witnesses testified, however, that they rarely questioned Wiese's authority to pull members from their ESD duties for these special assignments.

C. Involvement of Wiese in Federal Investigation of Pataki Campaign

In approximately September 1997, the New York City Police Department ("NYPD") began an investigation into the Pataki campaign in response to a citizen complaint that a \$23,000 contribution had been made to the campaign in return for a promise to use influence over the New York State Parole Board to obtain the early release of a family member of the contributor. On September 16, 1997, NYPD Detectives went to the Pataki campaign headquarters in Manhattan and spoke with a campaign employee about a fundraiser for the Pataki campaign.

Despite the fact that ESD had no non-threat related investigative duties and no protective duties as to the Pataki campaign headquarters or staff, Wiese inserted himself into the NYPD's investigation. Accompanied by Detective Thomas Curitore, the NYPD's liaison to the State Police, Wiese met with the NYPD's Chief of Detectives. The Chief of Detectives called the lead Detective into his office, required the Detective to explain the investigation to Wiese, ordered the Detective to keep Wiese apprised of the status of the investigation and agreed to permit a member of the State Police to work on the investigation.

After that meeting, Wiese assigned both Curitore and an ESD Investigator, Michael Prunty, to work with the NYPD on its investigation. This is the only time that Wiese ever assigned Prunty to work on an investigation unrelated to a potential threat.

Prunty and the NYPD liaison proceeded to meet with the NYPD Detective running the investigation. They met with an informant and interviewed several witnesses who provided information concerning the actions of the fundraiser and a member of Pataki's campaign staff. Consistent with Wiese's instructions, Prunty kept him apprised of the status of the investigation.

The NYPD brought the investigation to the United States Attorney's Office for the Eastern District of New York ("EDNY"). When the EDNY learned of Wiese's involvement in the investigation, they directed the NYPD Detective to have no further contact with the State Police since the investigation centered on the Governor's campaign staff.

Some NYSP members who testified in the grand jury informed us that after their testimony they were approached by other members of ESD who tried to find out what they had said in the grand jury. Two of the NYSP witnesses told us that after they testified in the EDNY grand jury, they were directed by a supervisor to report to the Governor's counsel. Each individual stated that in that meeting, a member of the Governor's counsel's office asked them what they had been asked in the grand jury. Each individual indicated that they refused to divulge that information.

On July 10, 1998, Wiese was called to testify in the EDNY grand jury. Prior to appearing in the grand jury, Wiese was advised by the prosecutors that he was a target of their investigation in connection with his alleged obstruction of the investigation into the Pataki campaign. According to published reports, Wiese asserted his Fifth Amendment rights in the grand jury. Ultimately, no criminal charges were brought against Wiese by the EDNY. At some point in or about 1999, Wiese resumed his full duties as the head of ESD.

Despite the fact that Superintendent McMahon knew while the investigation into the Pataki campaign was on-going that Wiese was a target of the EDNY investigation for allegedly committing obstruction, no internal NYSP investigation was conducted of Wiese pertaining to those allegations. McMahon testified that Rule 3.1 of the NYSP Administrative Manual essentially mandated that an investigation should have been conducted. McMahon testified that, in hindsight, he "probably should have" notified IAB of Wiese's status as a target of a criminal investigation and allowed IAB to determine whether or not an investigation could be conducted without interfering with the EDNY investigation. McMahon's decision not to initiate an internal investigation of Wiese's conduct further served to enhance the rank and file's impression that he was powerful and untouchable.

On May 25, 2000, Supt. McMahon promoted Wiese from Staff Inspector to Assistant Deputy Superintendent, which holds the rank of Lieutenant Colonel. As happened in 1996 when McMahon promoted Wiese to Staff Inspector, McMahon did so after Wiese told him that the Governor wanted Wiese to be promoted.¹

Unlike other promotions above the rank of Lieutenant, Wiese's promotion to Staff Inspector in 1996, and Assistant Deputy Superintendent in 2000, were not discussed with the Superintendent's promotional group, which consisted of the First Deputy Superintendent, who at that time was Wayne Bennett, and the Deputy Superintendents. McMahon generally did not

¹ Investigators from the Attorney General's Office sought information from Governor Pataki regarding possible political interference with the New York State Police. Governor Pataki responded in writing that "I am aware of no effort to use the State Police as a vehicle to collect information, exert influence or coerce elected officials as part of any political agenda."

seek input from the Governor or his administration concerning promotions. Bennett testified that he was not consulted about Wiese's promotion to Assistant Deputy Superintendent, and that such a promotion for the person running the Governor's detail was unprecedented: "never saw it since 1968." Bennett "[h]ad some concerns about [Wiese's promotion] in the sense of . . . is there going to be a credibility gap now by [Wiese] with the rank and file. Does it cause a morale issue, that type of thing. And I'm sure it did. But beyond that, that was, you know, the business of Jim McMahon, that for whatever reason they didn't choose to consult with me."

D. Appointment of Wiese as Special Assistant to the Superintendent

By letter dated April 24, 2003, after Wiese had joined NYPA, Superintendent McMahon appointed Wiese Special Assistant to the Superintendent. The letter states as follows:

Pursuant to the authority vested in me by virtue of Executive Law §215, I hereby appoint you, effective this date, as a sworn member of the New York State Police to serve, at the pleasure of the Superintendent, and without compensation, in the position of Special Assistant to the Superintendent.

(McMahon Exh. 4; Wiese Exh. 13).

Former Superintendent Bennett, who at the time of the appointment was First Deputy Superintendent, and therefore second in command of the State Police, testified that he became aware of the appointment shortly after it happened. He was not aware, however, that Wiese continued to carry a shield and a gun after his retirement from State Police. The State Police Manual specifically requires retired members to "surrender all issue[d] equipment before the end of [the member's] last duty tour." (State Police Manual Section 8J2(b)(5)). Neither the State Police nor any of the witnesses has been able to identify any retired member other than Wiese who has been appointed Special Assistant to the Superintendent in this manner. His name was not maintained on the books of the State Police, yet he remained a sworn member and continued to carry a State Police shield and firearm.

Numerous e-mails were uncovered during the course of this investigation that illustrate Wiese's continued involvement in the State Police, in matters big and small, after his retirement in April 2003. For example, in an e-mail dated March 24, 2005, nearly two years after Wiese's retirement from State Police, a Trooper assigned to ESD, wrote to other members of ESD, at the behest of the ESD Major, stating:

Col. Wiese and Lt. Day [the head of ESD's Capitol Police unit] have requested the following information be sent to all ESD personnel:

Col. Wiese still uses the Command Center as a contact. Please do not advise people that he does not work here anymore. Take messages as usual and forward to him.

E. Wiese's Continuing Influence Over State Police During Spitzer Administration

Roderick Covington testified that he consulted with Wiese constantly after he was appointed commanding officer of Governor Spitzer's security detail. Covington testified that he regularly sought Wiese's advice, that he respected that advice, and he followed it more often than not. (Covington Tr. 67). Indeed, between November 6, 2006, the day that Covington joined Spitzer's transition security team, and March 13, 2008, the day after Spitzer resigned as Governor, there were approximately 300 telephone calls between Wiese's phones (cell phone and NYPA phone) and Covington's cell phone, ranging from one minute to 36 minutes. In that same time period, Wiese made approximately 86 phone calls to the Executive Chamber. Also during that time period, approximately 40 phone calls took place between Wiese and phone numbers assigned to ESD. Among the matters about which Covington consulted Wiese were hiring, security at the Spitzers' apartment, the need to have ESD members travel on aircraft with the Governor, and scheduling difficulties.

F. State Police Involvement with Police Report Relating to Former Congressman John Sweeney

On December 2, 2005, as a result of a 911 call of a domestic violence incident involving then U.S. Congressman John Sweeney and his wife, Gaia Sweeney, a member of the NYSP responded to the Sweeney home. Based on that response, an incident report was prepared with the incident type described as "Domestic-Domestic Dispute". The incident report was saved in the NYSP computer system. On December 15, 2005, thirteen days after the incident, NYSP received a FOIL request from the media calling for NYSP documents related to the Sweeney domestic incident. Superintendent Wayne Bennett, fearing that a NYSP member had leaked confidential NYSP documents to the press, directed that the original incident report be removed from the NYSP computer system. As a direct result of Superintendent Bennett's order, the original incident report was replaced in the NYSP computer system with a sanitized report that made no mention of a domestic dispute. The NYSP, citing privacy reasons, refused to produce a copy of the incident report in response to any Sweeney related FOIL requests, adhering to its policy that because no arrest had been made, the information was non-public.

Days before the November 7, 2006, Congressional election, the media reported the incident and published the State Police blotter review report as it related to the Sweeney domestic incident. The Sweeneys denied that a domestic violence incident had taken place at their home, claimed the police report provided to the media was false and called on NYSP to release the "real incident report". On November 6, 2006, the media reported that two incident reports existed – the true incident report and the sanitized incident report.

In November 2006, after the Albany Times Union reported that it was in possession of the NYSP blotter report, the State Police instituted an internal investigation in an effort to determine who had leaked the police report to the press. The investigation concluded without answering that question. We attempted to determine how the Albany Times Union came into possession of the blotter report, but the Times Union would not provide any information on the

matter. Accordingly, our investigation has been unable to determine thus far who at the State Police may have leaked the blotter report to the media.

G. Problems with Executive Chamber Oversight of State Police

1. Role of Director of Public Safety

In January 2007, Governor Spitzer appointed Michael Balboni as Deputy Secretary for Public Safety, a Cabinet position that was created to oversee the State Police, Department of Corrections, the Division of Criminal Justice Services, the Division of Parole and Homeland Security. Prior to his appointment as one of Governor Spitzer's Cabinet members, Balboni had served for eighteen years as a Republican member of the State Assembly and then the State Senate, where he forged a close relationship with Senator Joseph Bruno. Balboni did not have a law enforcement background.

In early July, a newspaper article appeared on the use of state aircraft by Senator Bruno, causing the start of a series of so-called "Troopergate" investigations. After the articles appeared, both Governor Spitzer and Richard Baum, Secretary to Governor Spitzer, asked Balboni to "try to take the temperature" of his former Republican colleagues in the Senate. In an e-mail dated July 5, 2007, Balboni reported to Baum on his talks with his former Senate colleagues, and wrote to Baum the following: "It was suggested to me that I, 'Demonstrate my independence and call for an investigation of who ordered the Superintendent to cond[u]ct the surveillance.' (Since State Police falls under my directorate.) Yeah. Right." (emphasis added, Balboni Exh. 7).

Later, as is set forth in detail in this office's report on the Troopergate matter, William Howard, Assistant Deputy Secretary for Homeland Security under Balboni, testified that he specifically chose not to inform Balboni that he had asked Acting Superintendent Felton to gather Senator Bruno's travel records because he did not want to put Balboni "in an uncomfortable position."

Balboni's position on this matter highlights the conflict under which he was operating while overseeing the State Police. On the one hand, Balboni's subordinate chose not to inform him of the Administration's efforts concerning Senator Bruno because of Balboni's Republican affiliations. On the other hand, because he was a member of a Democratic administration, to whom he needed to display his loyalty, Balboni dismissed a Republican call for an investigation into inappropriate political activity. Party politics should have absolutely no bearing on the decisions made by officials with supervisory responsibilities over the State Police. Rather, the public should have confidence that the State Police and those overseeing the State Police act at all times without political motives.

The evidence further showed confusion about the reporting chain between the State Police and the Governor's Office. Felton testified in this office's Troopergate investigation that he understood William Howard to be his "supervisor" who was at the "top of the chain of command" in the State Police. Howard agreed with that characterization. Balboni testified that

Howard was not the Superintendent's supervisor. According to Balboni, he, the Director of Operations, the Secretary to the Governor and the Governor supervised the State Police. (Balboni Tr. 183). As noted below, the reporting chain between the State Police and the Governor's Office should be both clarified and adjusted.

2. State Police Assigned to the Secretary to the Governor

In recent years, the Secretary to the Governor was provided with a 24-hour State Police Detail. State Police First Deputy Superintendent Pedro Perez arranged for a two man, full time detail.

State Police protection is to be provided as a law enforcement activity only when justified by a security threat. Proper procedure is for the State Police to perform a threat assessment to determine if an official should be protected. There is no evidence that any threat assessment was conducted in this instance. Traditionally, State Police details are only provided for the Governor and the Lieutenant Governor (who is in the line of succession and in theory could be needed immediately). The State Police detail for the Secretary to the Governor is not based on succession or a legitimate threat assessment. It is inappropriate.*

III. Recommendations for your Consideration

The State Police have taken significant steps to address the weaknesses and vulnerabilities of ESD, which unfortunately were exposed dramatically in the wake of Governor Spitzer's resignation. I believe the new Superintendent has made progress. Several issues for your consideration:

1. A Governor should not make political appointments to the State Police. Personnel decisions should be left to the sound discretion and judgment of the Superintendent.
2. There should be a direct line of communication between the Secretary to the Governor and the Superintendent, and the Superintendent should know that he/she may and should contact the Governor directly if necessary.
3. Any vacancy in the position of Superintendent of the State Police should be filled promptly. "Acting" status Superintendents pose problematic vulnerabilities and uncertainties. Throughout the history of the New York State Police, there have been

* We have been informed that the then-Secretary relied upon an opinion from the then-Governor's Counsel justifying his use of a State Police detail. We have received a draft memorandum written by the Governor's prior Counsel to the Secretary which was never finalized. The draft memorandum to the Secretary states that it "sets forth the guidance that we have provided regarding your use of a State vehicle and State Police drivers." The memorandum goes on to say that the Secretary had been authorized to utilize State Police drivers "based in part upon a review conducted by Deputy Secretary for Public Safety Michael Balboni." However, Balboni testified that he did not conduct a risk assessment or a security review and that he made no recommendations that a State Police detail was appropriate.

thirteen appointed Superintendents. All but one of those Superintendents was installed within one month of his predecessor stepping down.

4. The New York State Police should never alter or sanitize official reports maintained in the regular course of its business. The act of selectively altering or sanitizing official reports creates the impression that State Police records are not to be trusted and cannot be accepted at face value. In addition, the act of altering or sanitizing an official record pertaining to an elected official creates the impression that the State Police is partisan.

5. The Secretary to the Governor should not be driven by State Police officers unless a threat assessment is completed and justifies police protection. Civilian drivers for Chamber personnel in the normal course of business are appropriate.

6. The Deputy Secretary tasked with liaison to the State Police should be a law enforcement professional as opposed to a political official.

As mentioned above, we have done an enormous amount of work on this investigation to date. Former federal prosecutor Sharon McCarthy, a Special Counsel, left private practice to lead the investigation and worked tirelessly on it. The team conducted an in depth and careful probe that was both diligent and fair in all respects. Ms. McCarthy, as well as the rest of the team are to be commended and we thank them for all of their work and their commitment to justice. Chief Joseph D'Amico's investigative team did much forensic and recovery work and they too should be lauded.

Linda Lacewell, a former federal prosecutor and now a Special Counsel in this Office, has been working on the case and will continue the investigation focused on the NYPA obstruction matter, as well as any other remaining open matters. Benjamin Lawsky, also a former federal prosecutor and my Special Assistant, has been overseeing the case and will continue to do so.

Special thanks are due to Robert Fiske, Esq. and Michael Armstrong, Esq., who served as advisers to the effort and have been most helpful, bringing their years of experience and reputations for fairness and devotion to the rule of law to this investigation. The State owes them both a deep debt of gratitude for their time and commitment, and I thank them for all of their labors.

Sincerely,

A handwritten signature in black ink, appearing to read 'Andrew M. Cuomo', with a stylized, sweeping flourish extending to the right.

ANDREW M. CUOMO