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

- - - - - x

Virtual Zoom Investigation

April 15, 2021

10:16 a.m.

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

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

BY COURT REPORTER:

Q. Please state your name for the  
record.

A. Harold George Moore Jr.

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

We have the appearances of  
everyone already.

EXAMINATION BY

MS. KENNEDY PARK:

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

1 H. MOORE

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

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

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

13 Do you understand?

14 A. Understood.

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

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

1 H. MOORE

2 different way.

3 Is that okay?

4 A. That's okay. Understood.

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

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

22 Do you understand?

23 A. Okay.

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

1 H. MOORE

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

6 Do you understand?

7 A. Understood.

8 Q. Are you recording this?

9 A. I am not.

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

13 A. Not that I'm aware of.

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

20 A. Okay.

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

25 A. No, I'm not.

1 H. MOORE

2 Q. Have you had any alcohol today?

3 A. No, I have not.

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

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

9 Q. Great.

10 Can you restate your name and  
11 current address?

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

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

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

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

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

23 A. No, I have not.

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

1 H. MOORE

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

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

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

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

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

13 Q. What is your date of birth?

14 A. It is [REDACTED].

15 Q. Have you ever been deposed  
16 before?

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

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

20 A. No.

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

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

1 H. MOORE

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

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

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

11 Mr. Moore, can you see that?

12 A. Yes, I can.

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

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

17 Q. Have you seen this subpoena  
18 before?

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

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

23 A. Okay.

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

1 H. MOORE

2 A. I understand. Yes.

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

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

8 Q. Please describe your work  
9 history.

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

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

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

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

25 Q. What was your first position in

1 H. MOORE

2 the executive chamber?

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

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

10 A. Started off as an internship.

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

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

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

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

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

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

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

1 H. MOORE

2 York?

3 A. Correct.

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

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

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

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

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

14 A. Yes.

15 Q. When was that?

16 A. I believe that was in 2015.

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

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

22 A. Special technical assistant.

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

1 H. MOORE

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

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

11 A. Correct.

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

14 A. Yes, it does.

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

18 A. That is correct.

19 Q. When did that promotion occur?

20 A. That happened January 1st, 2019.

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

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

25 Q. Did you have to interview for

1 H. MOORE

2 the position?

3 A. It was an interview, but yes.

4 Q. And who was that interview with?

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

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

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

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

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

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

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

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

24 A. I did not interview with Jill.

25 Q. Did you do anything else to

1 H. MOORE

2 secure the position of chief technology  
3 officer?

4 A. No, I did not.

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

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

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

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

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

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

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

22 A. Yes, I do understand.

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

25 A. I do not.

1 H. MOORE

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

6 A. Yes, I do.

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

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

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

25 Q. You said they get a packet of

1 H. MOORE

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

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

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

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

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

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

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

25 You can go ahead and change.

1 H. MOORE

2 You can proceed.

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

7 A. That is correct.

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

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

12 Q. What's missing from this set?

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

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

19 A. You can scroll down again  
20 please.

21 I believe that's it.

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

25 Do you know why that is?

1 H. MOORE

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

5 Q. Did you prepare these documents?

6 A. Did I prepare these documents?

7 Q. Yes.

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

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

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

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

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

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

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

1 H. MOORE

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

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

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

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

16 Q. What is the G-drive?

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

22 Q. Who assigns the shared folders?

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

1 H. MOORE

2 Q. Who do they come from?

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

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

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

10 Q. Can you approximate for me?

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

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

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

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

22 A. He does not.

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

1 H. MOORE

2 A. I believe so.

3 Q. What is the I-drive?

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

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

12 A. That is correct.

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

16 A. That is correct.

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

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

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

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

1 H. MOORE

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

5 Do you see that sentence?

6 A. Yes, I do.

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

10 A. I believe so.

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

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

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

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

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

1 H. MOORE

2 Office of Employer Relations.

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

5 A. Yes, I have.

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

10 A. I don't believe it is.

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

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

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

21 A. That would be Lauren Grasso.

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

1 H. MOORE

2 A. How is it enforced?

3 Q. Yes.

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

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

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

16 Q. Do you recall --

17 A. Say that again.

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

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

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

1 H. MOORE

2 A. No.

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

7 A. I do not recall.

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

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

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

15 A. Yes, they can.

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

18 A. I don't understand the question.

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

22 A. Yes, it is.

23 Q. For what purposes?

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

1 H. MOORE

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

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

7 Q. Is it possible to --

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

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

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

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

25 Q. Is there any document that

1 H. MOORE

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

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

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

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

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

21 A. That is correct.

22 Q. And where is that guidance?

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

25 Q. And how do you do that on the

1 H. MOORE

2 technical side?

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

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

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

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

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

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

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

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

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

1 H. MOORE

2 guidance on that.

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

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

9 Q. Who is that right now?

10 A. Currently that is [REDACTED]

11 [REDACTED].

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

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

18 A. When an employee departs the  
19 chamber?

20 Q. Yes.

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

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

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

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

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

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2 litigation hold for someone?

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

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

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

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

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

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

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

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

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

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

25 Q. So counsel's office tells you

1 H. MOORE

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

4 A. Correct.

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

8 A. Electronic.

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

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

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

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

23 Q. And why do you do that?

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

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2 impossible.

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

5 MS. KENNEDY PARK: Strike that.

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

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

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

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

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

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

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

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

19 A. No, I did not.

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

22 A. Yes.

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

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2 A. No, I do not.

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

8 A. No, we did not.

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

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

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

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

25 Q. Do you disable auto delete

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2 features when executing a litigation hold?

3 A. We usually do.

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

6 A. Not really.

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

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

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

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

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

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

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

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

9 A. Not until now, no.

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

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

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

19 A. That is correct.

20 Q. How does that get done?

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

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

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2 I-drive?

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

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

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

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

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

17 A. That is correct.

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

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

25 Q. And how do you know which group

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2 folders to hold?

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

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

13 A. Correct.

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

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

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

24 A. I don't understand the question.

25 Q. So instead of -- are there ever

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

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

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

12 A. No.

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

15 A. Yes, I am.

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

18 A. Not to my knowledge, no.

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

21 A. Yes, we do.

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

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

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

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

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

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

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

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

23 A. I do not.

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

1 H. MOORE

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

6 A. That is correct.

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

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

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

16 A. Yes, they do.

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

20 A. Yes, they do.

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

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

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

4 A. No, there are not.

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

7 A. Yes, there are.

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

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

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

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

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

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

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

24 A. Yes, there has been.

25 Q. And did those system updates

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2 cause any loss of data?

3 A. Not that I'm aware of.

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

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

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

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

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

18 A. Okay.

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

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

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

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

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

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

14 Q. So how often are you backing up?

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

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

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

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2 a server that gets replicated.

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

8 A. No, I do not.

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

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

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

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

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

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

1 H. MOORE

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

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

7 A. Not currently, there is not.

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

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

13 Q. And when was that?

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

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

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

25 Q. And who made the decision that

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

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

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

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

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

15 Q. Yes.

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

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

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

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

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

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

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

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

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

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

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2 A. About a week, yes.

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

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

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

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

25 A. They usually -- most people,

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

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

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

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

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

4 Q. Who is ITS?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 A. No, I have not.

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

23 A. Not to my knowledge.

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

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

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

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

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

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

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

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

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

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

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2 A. It was just Exchange 2013 CU23.

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

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

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

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

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

23 A. Exchange 2007.

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

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2 A. No, it does not.

3 Q. There's no archive of it?

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

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

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

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

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

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

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

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

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

1 H. MOORE

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

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

7 A. There was no data loss.

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

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

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

23 A. Not currently being applied.

24 Q. Were they ever applied?

25 A. Yes.

1 H. MOORE

2 Q. And when were they applied?

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

6 Q. Is that true today?

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

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

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

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

15 A. That is correct.

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

18 A. That is correct.

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

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

1 H. MOORE

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

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

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

9 A. Can you ask me that again.

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

13 A. That is correct, yes.

14 Q. And that is a list you maintain?

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

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

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

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

1 H. MOORE

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

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

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

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

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

1 H. MOORE

2 are contained under that.

3 Q. What about the calendar?

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

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

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

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

16 A. 30 days.

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

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

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

1 H. MOORE

2 Is it gone forever?

3 A. Say that one more time.

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

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

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

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

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

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

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

1 H. MOORE

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

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

9 Q. That's in place for everybody?

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

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

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

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

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

1 H. MOORE

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

5 A. No, we do not.

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

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

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

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

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

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

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

25 A. Yesterday was the first time

1 H. MOORE

2 I've seen this memorandum.

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

8 A. That is correct.

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

13 A. I believe that is correct.

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

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

1 H. MOORE

2 the time period.

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

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

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

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

12 A. Yes, it was.

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

16 A. No, I'm not.

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

19 A. That is correct.

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

22 A. Yes, there are.

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

1 H. MOORE

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

4 Q. When was that disabled?

5 A. That has always been disabled.

6 Q. Are there group e-mail boxes?

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

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

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

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

25 A. There's an actual separate

1 H. MOORE

2 mailbox; that is correct.

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

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

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

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

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

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

1 H. MOORE

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

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

7 A. Not that I can recall.

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

10 A. No, we do not.

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

13 A. No, they are not.

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

16 A. Yes.

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

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

1 H. MOORE

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

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

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

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

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

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

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

25 A. Yes. I am aware that ITS uses

1 H. MOORE

2 that. They are on 0365.

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

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

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

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

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

16 A. Okay.

17 Q. Have you seen this document  
18 before?

19 A. Yes, I have.

20 Q. When did you see it?

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

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

25 A. No, I have not.

1 H. MOORE

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

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

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

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

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

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

22 A. Not to my knowledge.

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

1 H. MOORE

2 deletion user account section of this  
3 document?

4 A. Outside counsel brought the  
5 document --

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

12 MS. KENNEDY PARK: Totally fine.

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

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

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

1 H. MOORE

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

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

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

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

22 A. No, I do not.

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

1 H. MOORE

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

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

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

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

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

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

21 A. Yes, I can.

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

25 A. No, I have not.

1 H. MOORE

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

5 A. No.

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

12 A. No, I have not.

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

17 A. No.

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

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

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

1 H. MOORE  
2 document, that you had not seen them  
3 before yesterday?

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

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

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

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

16 MS. KENNEDY PARK: Sure.

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

19 A. No, I have not.

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

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

25 A. My responsibility would be to

1 H. MOORE

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

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

7 A. Yes.

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

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

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

16 A. Yes, there is.

17 Q. And who is that person?

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

20 Q. Can you spell the last name.

21 A. I believe it's [REDACTED]

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

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

1 H. MOORE

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

4 A. Yes.

5 Q. And who was that?

6 A. That would be Lauren Grasso.

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

9 A. No.

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

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

15 What does that mean?

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

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

1 H. MOORE

2 A. Yes, there are.

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

6 A. Yes.

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

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

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

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

22 MR. FISHMAN: Okay.

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

25 Why were individuals in the

1 H. MOORE

2 executive chamber not transitioned from  
3 BlackBerry to iPhone?

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

6 Q. Yes.

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

11 Q. Approximately when was that  
12 meeting?

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

15 Q. Who was at this meeting?

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

23 Q. Was the Governor there?

24 A. No, he was not.

25 Q. And when you say reference your

1 H. MOORE

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

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

6 Q. Did you say memo?

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

9 Q. And what is the memo?

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

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

15 A. Yes, I did.

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

18 A. Jill DeSrosiers.

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

21 A. Melissa DeRosa.

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

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

1 H. MOORE

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

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

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

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

19 A. That is the device he uses.

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

24 A. No, there was not.

25 Q. What is your understanding of

1 H. MOORE

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

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

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

12 A. Ask that question again.

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

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

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

25 An iPhone can communicate with a

1 H. MOORE

2 BlackBerry, right?

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

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

8 A. Yes.

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

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

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

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

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

1 H. MOORE

2 A. Yes, he does.

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

5 A. No, they do not.

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

8 A. No, it is not.

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

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

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

17 A. Not that I'm aware of.

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

20 A. Yes, I have.

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

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

1 H. MOORE

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

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

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

11 Q. More than once?

12 A. Yes.

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

15 A. Yes, it has.

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

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

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

25 A. No.

1 H. MOORE

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

6 A. No.

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

9 A. No.

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

12 A. Yes, I have.

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

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

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

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

1 H. MOORE

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

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

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

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

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

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

17 A. No.

18 In what sense, technical issues?

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

22 A. No.

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

25 A. Our interactions are actually

1 H. MOORE

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

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

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

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

12 Q. And who communicated that to  
13 you?

14 A. Beth Garvey.

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

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

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

1 H. MOORE

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

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

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

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

15 Q. Anything else you did?

16 A. Not at the time, no.

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

20 A. No.

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

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

1 H. MOORE

2 Q. For e-mail?

3 A. Yes.

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

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

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

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

12 Q. Can you explain what that means?

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

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

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

23 Q. That was the first time?

24 A. Yes, that was the first time.

25 Q. What about the I-drive?

1 H. MOORE

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

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

6 A. Correct.

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

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

12 Q. When did the device collection  
13 begin?

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

17 Q. Do you have an approximation?

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

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

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

1 H. MOORE

2 Q. What about PCs?

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

5 Q. Whose PC is that?

6 A. That would be Melissa DeRosa's.

7 Q. What about SharePoint files?

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

10 Q. And what SharePoint file is  
11 that?

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

14 Q. Have you collected any iPhones?

15 A. I have not collected any  
16 iPhones.

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

20 A. I have not.

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

24 A. Issue any instructions to?

25 Q. Any members of the executive

1 H. MOORE

2 chamber?

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

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

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

11 A. No, I did not.

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

15 A. No, I did not.

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

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

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

25 A. That document, it did not have

1 H. MOORE

2 those instructions. No.

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

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

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

10 Have you seen this document  
11 before?

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

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

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

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

1 H. MOORE

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

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

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

9 MR. FISHMAN: Okay. Thanks.

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

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

17 So please clarify.

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

1 H. MOORE

2 iPhone.

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

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

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

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

1 H. MOORE

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

9 So I just wanted to clarify  
10 those points.

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

13 [Discussion held off the  
14 record.]

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

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

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

1 H. MOORE

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

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

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

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

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

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

1 H. MOORE

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

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

9 A. That is correct.

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

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

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

19 A. No, I don't.

20 Q. The instruct --

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

23 MS. KENNEDY PARK: Yeah.

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

1 H. MOORE

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

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

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

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

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

16 A. Correct.

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

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

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

1 H. MOORE

2 to ask how to do it?

3 A. Correct.

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

6 A. I did not.

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

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

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

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

18 A. No, I'm not.

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

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

25 A. It wasn't a verbal instruction

1 H. MOORE

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

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

7 A. For e-mail.

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

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

12 Q. For everyone in the executive  
13 chamber?

14 A. For everyone. All accounts.

15 Q. For all accounts?

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

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

1 H. MOORE

2 rid of it. But everything was disabled.

3 There is nothing that automatically

4 happens including the recycle bin.

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

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

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

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

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

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

20 Q. Shortly after March 1st.

21 A. Correct.

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

25 What was the folder?

1 H. MOORE

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

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

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

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

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

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

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

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

1 H. MOORE

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

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

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

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

12 A. We technically disable that.

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

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

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

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

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

1 H. MOORE

2 meeting.

3 Q. Has the Governor ever touched  
4 you?

5 A. No.

6 Q. Has the Governor ever kissed  
7 you?

8 A. No.

9 Q. Has the Governor ever hugged  
10 you?

11 A. Yes. And that was yes.

12 Q. When was that?

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

15 Q. Where were you?

16 A. In the Red Room in the capital.

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

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

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

25 Q. You made a joke about his

1 H. MOORE

2 Mustang?

3 A. Yes.

4 Q. You don't remember the joke?

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

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

10 A. Yeah.

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

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

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

18 A. Correct. Yes.

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

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

24 A. No.

25 Q. Okay. Has the Governor ever

1 H. MOORE

2 made sexually suggestive remarks to you?

3 A. No.

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

6 A. No.

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

9 A. No.

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

12 A. No, I have not.

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

15 A. Yes, I have.

16 Q. On what occasions?

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

20 Q. Who was he hugging?

21 A. I think it was Carl Hastie.

22 Q. Can you say the last name again?

23 A. Carl Hastie.

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

1 H. MOORE

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

4 A. No.

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

8 A. No.

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

12 A. No.

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

15 A. No.

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

18 A. No.

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

22 A. No.

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

25 A. No.

1 H. MOORE

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

4 A. Yes, he has.

5 Q. What has he said?

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

8 Q. I can't hear.

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

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

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

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

18 Q. Did he say anything after that?

19 A. No.

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

22 A. No.

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

25 A. No.

1 H. MOORE

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

5 A. No.

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

9 A. No.

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

13 A. No.

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

17 A. No.

18 Q. Do you personally know Lindsey  
19 Boylan?

20 A. No, I do not.

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

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

25 Q. Fair point.

1 H. MOORE

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

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

7 A. No.

8 Q. Do you know Charlotte Bennett?

9 A. Professionally, yes.

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

13 A. Yes.

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

17 A. No. It was always work.

18 Q. Do you know Kaitlin [REDACTED] ?

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

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

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

25 Q. Do you know Alyssa McGrath?

1 H. MOORE

2 A. Yes, I do.

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

5 A. Yes, I have.

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

8 A. Yes, I have.

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

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

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

16 A. No.

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

20 A. No.

21 Q. Do you know Anna Liss?

22 A. I do not actually.

23 Q. Do you know Brittany Commisso?

24 A. Yes, I do.

25 Q. Have you had any conversations

1 H. MOORE

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

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

7 Q. Any conversations about the  
8 Governor?

9 A. No.

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

13 A. No.

14 Q. Okay.

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

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

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

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

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

1 H. MOORE

2 to clarify before we conclude?

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

13 Q. Okay.

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

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

20 A. Correct. Correct.

21 Q. And which executive assistant  
22 was that?

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

25 Q. Anything else you'd wish to

1 H. MOORE

2 clarify?

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

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

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

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H. MOORE

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

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

A. No, I have not.

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

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

A. Thank you. Nice meeting you.

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

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HAROLD MOORE

Subscribed and sworn to before me

this \_\_ day of \_\_\_\_\_, 2021.

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Notary Public

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CERTIFICATION

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

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

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

IN WITNESS WHEREOF, I have hereunto  
set my hand this 25th day of April, 2021.



SAMUEL HITTIN