

**REPORT OF INVESTIGATION
INTO THE RESPONSE BY THE
NEW YORK STATE POLICE AND
OTHERS TO A DOMESTIC INCIDENT
INVOLVING DAVID W. JOHNSON,
AN AIDE TO THE GOVERNOR**

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INTRODUCTION

On February 25, 2010, the Office of the Attorney General of the State of New York (“OAG”) commenced an investigation into possible inappropriate involvement by the New York State Division of State Police (“State Police”) and others in a domestic incident on October 31, 2009 between David W. Johnson – a long-time close aide to Governor David A. Paterson – and Johnson’s girlfriend at the time, Sherr-Una Booker, and events arising therefrom.¹ The OAG commenced its investigation after Governor Paterson requested and authorized such an investigation following a February 24, 2010 New York Times article about the incident that reported, among other things, that the head of the State Police detail assigned to protect the Governor, and the Governor himself, had contacted the victim of the October 31 incident after it occurred, possibly to pressure her not to pursue a case against Johnson.

On March 11, 2010, the Attorney General issued Executive Order Number 17, which, pursuant to Executive Law Section 62 and other applicable laws, appointed Judith S. Kaye, former Chief Judge of the New York State Court of Appeals, as Independent Counsel to the OAG to oversee the investigation. In accordance with the Executive Order, Judge Kaye (the “Independent Counsel”) has directly supervised the OAG Public Integrity Bureau attorneys and staff who have conducted the investigation.² Having concluded the investigation of this matter,

¹ This report will identify by name only those individuals who are public employees and those already appearing in the press.

² Judge Kaye was assisted by David Meister, an attorney of her choice from Skadden, Arps, Slate, Meagher & Flom LLP, the law firm with which she is affiliated. Judge Kaye and Mr. Meister provided their services to the State of New York pro bono. During their service, they did not have access to any confidential OAG information other than information about the matters referred to Judge Kaye under Executive Order Number 17, and were screened from all matters at their law firm that involved the OAG.

the Independent Counsel hereby issues this report pursuant to Executive Law Section 63(8). Set forth below are the findings of the Independent Counsel.³

EXECUTIVE SUMMARY

The investigation focused on whether members of the State Police or Executive Chamber personnel, including the Governor, interfered either with the New York City Police Department (“NYPD”) response to the October 31, 2009 incident or with Sherr-Una Booker’s subsequent pursuit of an order of protection against David Johnson in Bronx County Family Court. The investigation examined the events of October 31, the NYPD and Bronx County Family Court response to and handling of the incident, and subsequent State Police and Executive Chamber contacts with Booker.

The investigation included taking the sworn testimony of more than thirty witnesses (including Governor Paterson), interviewing other witnesses, and reviewing voluminous electronic and documentary evidence collected from more than forty entities and individuals, which included law enforcement reports, 911 audio recordings, records for more than two hundred cellular, home, and office telephone numbers, detailed travel and calendar information, medical and court records, and tens of thousands of e-mails from the Executive Chamber and other state agencies, the State Police, and the personal e-mail accounts of involved parties.

The Independent Counsel finds no evidence that the State Police or the Executive Chamber interfered with the NYPD response to the October 31, 2009 domestic incident. However, evidence revealed errors in the NYPD response to the incident and errors in judgment

³ On March 3, 2010, the New York State Commission on Public Integrity simultaneously referred to the OAG and the Albany County District Attorney certain matters pertaining to the Governor’s attendance at Game One of the 2009 World Series at Yankee Stadium (the “Yankee Ticket Matter”). Executive Order Number 17 also appointed Judge Kaye as Independent Counsel to oversee the Yankee Ticket Matter. On March 23, 2010, Governor Paterson approved the Independent Counsel’s request for Executive Law Section 63(8) authority with respect to the Yankee Ticket Matter. The Yankee Ticket Matter remains under review.

following the incident by the head of the Governor’s State Police protection detail, by Johnson and another close aide to the Governor, and indeed by the Governor himself. There were numerous telephone contacts between the Governor and Booker, some that he initiated even after he became aware of the serious nature of her accusations, and even just after he referred this matter to the OAG. Regardless of any good faith reasons on the part of the Governor for contacts that he initiated, these were errors of judgment.

The Independent Counsel finds that the evidence reviewed warrants consideration of possible charges against David Johnson relating to the October 31 domestic incident. The Bronx County District Attorney Robert T. Johnson is investigating that domestic incident, and will ultimately determine whether or not to pursue charges against David Johnson. The Independent Counsel has shared investigative materials and information with the Bronx County District Attorney to facilitate his investigation. While not binding on the District Attorney, the Independent Counsel has concluded based on her review that no criminal charges should be brought against any other individual with respect to the matters discussed herein.

LEGAL AUTHORITY

The investigation of this matter was authorized under Executive Law Sections 63(3)⁴ and 63(8).⁵

Under Executive Law Section 63(8), the OAG is empowered to “subpoena witnesses, compel their attendance, [and] examine them under oath,” and “require that any books, records,

⁴ Executive Law Section 63(3) permits the Attorney General, upon request of the Governor or the head of any department, authority, division or agency of the State, to “investigate the alleged commission of any indictable offense or offenses in violation of the law . . . in relation to any matters connected with such department, and to prosecute the person or persons believed to have committed the same and any crime or offense arising out of such investigation . . . including but not limited to appearing before and presenting all such matters to a grand jury.”

⁵ Executive Law Section 63(8) permits the Attorney General to, “[w]henver in his judgment the public interest requires it,” “inquire into matters concerning the public peace, public safety and public justice,” when directed or authorized to do so by the Governor.

documents or papers relevant or material to the inquiry be turned over to [it] for inspection[.]”

These investigative powers are bolstered by the law’s requirement that public officers and other persons cooperate with a 63(8) investigation, and by its provision criminalizing disclosure of investigative information.

In New York’s history, Executive Law Section 63(8) has, for example, been used to investigate the operation of private proprietary adult homes, see Friedman v. Hi-Li Manor Home for Adults, 42 N.Y.2d 408 (1977); the nursing home industry, see Sigety v. Hynes, 38 N.Y.2d 260 (1975); the relationship between misconduct by public officials and enforcement of the law by local officials, see Greenspon v. Stichman, 12 N.Y.2d 1079 (1963); the relationship between organized crime and government in New York State, see In re Di Brizzi, 303 N.Y. 206 (1951); and corruption, ethical issues, conflicts of interest, and political favoritism in state government, see N.Y. Republican State Comm. v. N.Y.S. Comm’n on Gov’t Integrity, 138 Misc. 2d 790 (Sup. Ct., N.Y. County), aff’d, 140 A.D.2d 1014 (1st Dep’t 1988).

Section 63(8)’s direction to the Attorney General to investigate matters of “public peace, public safety and public justice” is to be given its “usual and ordinary,” rather than a “narrow and technical,” meaning. Di Brizzi, 303 N.Y. at 214. The typical and appropriate focus of inquiries under Section 63(8) is on “matters affecting ‘the condition of the state’” which are “of importance to the Governor in the discharge of his duties under the Constitution.” Id. at 216 (quoting N.Y. Const. art. IV, § 3). Accordingly, such investigations carry the broad mandate to “secure information to guide executive action.” Id.; see also Sigety, 38 N.Y.2d at 266 (approving a 63(8) investigation designed to “inform the Governor, who, so informed, can more adequately fulfill the obligations of his office”); Matter of Carey, 68 A.D.2d 220, 224 (4th Dep’t 1979) (finding that Section 63(8) “confers general investigative powers and provides a means

whereby the Governor and the Attorney-General may acquire information to guide them in the performance of their executive duties”).

Governor Paterson’s referral of this matter to the OAG requested and authorized the OAG to conduct its investigation pursuant to Executive Law Section 63(3) and, should the public interest merit it, pursuant to Executive Law Section 63(8). After finding that the public interest did require investigation pursuant to Section 63(8), the OAG conducted the investigation of this matter pursuant to both Sections 63(3) and 63(8). Subpoenas calling for testimony under oath or production of documents in this matter were issued under Section 63(8).

The OAG’s jurisdiction under Section 63(3) permitted investigation, pursuant to that statute, of “the alleged commission of any indictable offense or offenses in violation of the law” related to the referred matter. In keeping with the history and purpose of Executive Law Section 63(8), however, the investigation of the matter focused not only on whether there existed any criminal conduct prosecutable pursuant to Section 63(3), but also on gathering information on the public policies, practices, and procedures implicated in the matter, the improvement of which would bolster public peace, public safety or public justice. This acquisition of information to “guide executive action” was an investigative purpose called for by Section 63(8) and by the public interest, which that law is designed to protect. In accordance with the Section 63(8) mandate, this Report outlines the internal processes and procedures at the State Police and elsewhere that did not adequately control for errors and improper conduct related to the matter, and suggests attention by the relevant agency.⁶

⁶ The Governor’s referral referenced New York Times reports of “possible inappropriate involvement by the State Police” in the October 31, 2009 domestic incident involving Johnson, “a former member of [the Governor’s] staff.” The investigation thus required not only identification of any relevant action undertaken by the State Police, but also evaluation of whether any identified action was “inappropriate” either because it was outside State Police jurisdiction or because it was undertaken by, or with the knowledge or at the direction of, individuals in the Executive Chamber.

FACTUAL FINDINGS

I. OCTOBER 31, 2009 DOMESTIC INCIDENT

A. Booker's Report of a Domestic Incident to the NYPD on the Evening of October 31, 2009

On October 31, 2009, Johnson, then a close aide to Governor Paterson, was involved in an altercation with his girlfriend, Sherr-Una Booker.⁷ Booker testified that, on that date, Johnson was angry about her Halloween costume, and became physically violent with her, including choking her, throwing her against a dresser, and tearing off her costume. Johnson made several efforts to prevent Booker from calling the police before he left her apartment. Booker's friend ("Friend 1") was present in Booker's apartment during the incident. According to Booker and Friend 1, Johnson left the apartment when it became apparent that Booker would not be deterred from reporting the incident to the police.⁸

NYPD and other records indicate that Booker called 911 three times that evening. She placed the first call at approximately 8:08 p.m. During that call, Booker provided her address to the operator and said that she was reporting a domestic violence incident, but her call was cut off before she could complete it. Johnson could be heard in the background, denying the accusation. At 8:12 p.m., after Johnson had left the apartment, Booker again called 911, and this time was able to complete the call. Following this second call, the NYPD classified the incident as a "dispute," a low priority call, and a patrol car was dispatched to Booker's apartment.

⁷ In preparation of this Report, all relevant police records, including audio recordings of Booker's 911 calls, were examined, and sworn testimony was taken from Booker, NYPD officers, and witnesses to the incident. In light of the independent review being conducted by the District Attorney, the recounting of the domestic incident in this Report is truncated.

⁸ Johnson declined to cooperate with the OAG's investigation.

B. Call from Major Charles Day of the State Police to Booker

Upon leaving Booker's apartment, Johnson made a series of telephone calls. The first person Johnson was able to reach, at approximately 8:13 p.m., was Major Charles Day, the commanding officer of the Executive Services Detail ("ESD") of the State Police, which provides security to the Governor and the State Capitol.⁹

According to Day, Johnson told him that he had argued with Booker, ripped off her costume, left the apartment, and thought that Booker had called the police. Day testified that Johnson then gave him telephone numbers for Booker. After he hung up with Johnson, Day made efforts to determine the whereabouts of the Governor for security reasons, as he was concerned that Johnson was in the company of the Governor that night. Day also tried to determine whether the NYPD was responding to the incident. Day first called Detective Charles Enright, the NYPD liaison to the ESD, but telephone records suggest that Day was unable to reach Enright that night.¹⁰ Day then called his commanding officer, First Deputy Superintendent Pedro Perez, to alert him that he planned to call Booker, and Perez authorized Day to make the call.

Perez testified that he authorized the call because he had only a brief third-hand description of what had happened and he wanted Day to assess whether a domestic violence incident had occurred, whether Booker needed aid, and if so to help her report any incident to the

⁹ Telephone records show that beginning at 8:11 p.m., Johnson called three numbers associated with Clemmie Harris, Special Assistant to Governor Paterson, but appears to have been unable to connect with Harris. Johnson then called Day at approximately 8:13 p.m. and spoke with him for approximately three minutes before trying Harris again.

¹⁰ Telephone records reflect that there was a call from Day to Enright, which was only 35 seconds, which would not be enough time to have the type of conversation Day described. Day testified that he spoke with Enright on Halloween, asked Enright in substance whether a complaint or report had been filed with the NYPD relating to the incident, and Enright told him that there was "no job," which Day interpreted as meaning that there was no such complaint or report. However, for Day, that did not resolve the question of whether the NYPD had responded. Enright, for his part, testified that he recalled speaking with Day about this incident, but he recalled the conversations taking place on or about November 3, 2009. Telephone records corroborate Enright's account.

proper authorities. Perez further testified that he wanted to determine whether Booker posed any threat to the Governor, and that it was this security issue that brought the incident within the purview of the State Police. Perez claimed that he was concerned that, in his words, Booker might attempt to “retaliate” against Johnson in the presence of the Governor, and that this presented a potential threat of which the ESD needed to be aware. Day, for his part, testified that he was surprised Perez did not raise with him the need to notify the Governor of the incident.

Telephone records show that after Day’s conversation with Perez, and approximately fifteen minutes after Booker’s second call to 911, Day called Booker for the purpose (he testified) of checking on her.¹¹ Telephone records show that the call lasted for one minute and fifty seconds. Booker testified that, still extremely upset, she put the telephone on speaker so that Friend 1, who had not left her side, could hear the call. According to both Day and Booker, Day identified himself and his association with the State Police. Booker testified that Day asked her if she was all right, that she told him she was not all right, and that she said she had called the police and was waiting for them to arrive. Booker testified that Day then asked her not to file charges, and instead to leave the matter to the State Police to resolve internally. Booker testified that, because she believed Day worked for Johnson, she suspected that Day was attempting to interfere with her efforts to obtain assistance from the NYPD.

Day denied that allegation. Day testified that he “might have” but did not remember asking Booker whether she had called the NYPD; he also testified that, having just learned of the incident from Johnson, he wanted to determine whether the NYPD had responded. According to Friend 1, who was listening to the conversation on Booker’s speakerphone, Day said that he was

¹¹ Telephone records show Day initially tried Booker’s mobile telephone and then reached her on her home telephone. Telephone records further indicate that in addition to their conversation on Halloween, Day and Booker had several conversations on November 3 and November 4, 2009. See Part III(A), infra.

trying to help, and Booker responded that Day was “trying to sweep it underneath the rug.” Also according to Friend 1, Day asked Booker if she had already called the police. Friend 1 characterized the call as “a whole bunch of yelling” and she repeatedly urged Booker to end the call because she did not trust Day. When asked if Day indicated that he did not want Booker to talk to the NYPD, Friend 1 said no.

Ultimately, Booker ended the call with Day and waited for the NYPD to arrive. Telephone records show that, after Day spoke with Booker, he called Johnson. Day testified that, during this conversation, he advised Johnson to turn himself in.

C. The NYPD’s Delayed Response

When police officers still had not arrived at Booker’s apartment at 9:10 p.m., a full hour after her first call, Booker called 911 for a third time to report the delay and to find out when assistance would be arriving. According to a recording of the 911 call, Booker reported, among other things, that she was scared that Johnson would come back to “finish[] the job.”

The NYPD patrol car responding to Booker’s residence had previously been assigned multiple simultaneous calls and was left to determine which to pursue first. Because Booker’s call had been relayed to the patrol car as a dispute, a low priority call, the patrol car responded first to a car accident – waiting for a car to be towed before leaving the scene – and then to a landlord-tenant dispute, before proceeding to Booker’s apartment, nearly an hour and a half after her first call to 911.

NYPD patrol officers arrived at Booker’s apartment at 9:34 p.m. The officers interviewed Booker and prepared a complaint and a domestic incident report, which included a handwritten statement signed by Booker that night in the presence of the officers.¹² However,

¹² These documents were consistent with the account Booker provided to the OAG.

the officers classified the incident as “harassment,” a violation,¹³ which was “closed to patrol,” meaning that the complaint would not be referred back to the squad for additional action.

According to Booker, the officers told her that Johnson was not subject to arrest because they did not observe visible injuries. Booker testified that, although she told them she wanted Johnson arrested, the responding officers explained only one option to her, which was to obtain an order of protection in Bronx County Family Court. The officers also suggested that she move, because Johnson, who had been staying in the apartment, might have a right to return to the premises. A responding officer testified that she and her partner saw no visible injuries and did not witness the altercation, and that therefore they provided Booker with the options of which they were aware under those circumstances. When asked during their testimony, NYPD officers were unable to explain how a victim could pursue prosecution of a violation, such as harassment, assuming officers did not arrest on the scene.

The final domestic incident report stated that the incident was “[u]nfounded.” The responding officer testified that she believed the “unfounded” designation was made in error. The officer explained that, when the officer left the scene, she accidentally used a non-existent code to attempt to indicate that the patrol car had completed the assignment at Booker’s residence. The non-existent code that the officer used was similar to the code for “unfounded,” and the officer surmised that an operator must have construed the code as an effort to invoke the code for “unfounded.”

¹³ A violation is a prosecutable offense, but does not rise to the level of a crime under New York Law. See N.Y. Penal Law §§ 10.00(1), (3), and (6).

Late that night, after the NYPD officers had left Booker's apartment, Booker went to the emergency room at Lincoln Hospital in the Bronx where she was treated and met with a staff social worker to discuss domestic violence resources.¹⁴

D. Johnson's Request that Deneane Brown Go to Booker's Apartment on October 31

According to telephone records, after Johnson's initial call with Day, Johnson called Deneane Brown, a mutual friend of his and Booker, and an employee of the New York State Division of Housing and Community Renewal. According to Brown, Johnson explained on the telephone that he had argued with Booker, and asked Brown to go to Booker's apartment to collect his belongings. Brown, accompanied by her sister, arrived at Booker's home shortly ahead of the NYPD. Brown testified that when she arrived, Booker and Friend 1 were in the apartment together, and Booker had her hand to her neck. According to Brown, Booker told Brown that her voice was strained and that Johnson had grabbed her neck and ripped off her costume.

Brown testified that when the NYPD arrived at Booker's apartment, Booker asked the officers why they had taken so long to respond to her 911 call. According to Brown, Booker asked the officers if the State Police had contacted them, and asked if the response to her emergency was delayed because Johnson worked for Governor Paterson; the officers answered that they had not heard from the State Police and did not know or care for whom Johnson worked.

¹⁴ During the investigation, the Inspector General of the New York City Health and Hospitals Corporation (the "HHC IG") alerted the OAG that a likely unauthorized access of Booker's medical records was made at a computer terminal at Lincoln Hospital on February 5, 2010. The access was made using the computer login-ID of a pediatric nurse. The HHC IG informed the OAG that it had been unable to determine the exact time of the access on February 5 and that the access itself was not captured on video surveillance. The OAG reviewed telephone records of, and interviewed, the pediatric nurse, and determined that the access was not made by her. After all reasonable investigative efforts have been exhausted, it is not known who accessed Booker's medical records on February 5, and whether such access was deliberate or accidental. The OAG has referred this matter back to the HHC IG for any further action deemed appropriate by that office.

E. Harris's Contact with Brown After Speaking with Johnson

At about 8:45 p.m. on October 31, before the NYPD arrived, and as Brown was on her way to Booker's apartment, Johnson was able to reach Clemmie Harris by telephone. Harris testified that Johnson informed him of a "really bad argument" that he had just had with Booker regarding a costume, that the police had been called, that Johnson had contacted Brown and directed her to go to Booker's apartment, and that Johnson had also contacted Day. According to Harris, Johnson asked Harris not to inform Governor Paterson of the incident because Johnson wanted to tell the Governor himself.

Harris testified that he had obtained Brown's telephone number from Johnson and that he called Brown immediately thereafter. Starting at around 9:00 p.m., Harris had a series of conversations with Brown. According to Harris, Brown informed him that she was at Booker's apartment, that Booker was extremely upset, that Brown was attempting, without success, to calm her down, that the NYPD had arrived, and that Booker had accused the NYPD officers of delaying their response to her emergency call because of Johnson's position with the Executive Chamber.

Brown testified that Harris asked Brown whether Johnson had in fact physically injured Booker during their argument. Brown testified that she told Harris that Booker "looked fine to [her]. However, she [Booker] looked like something did happen." Brown testified that Harris seemed to be predominantly concerned about whether Booker was going to file a police report, and that she told him that Booker had already filed a report. For his part, Harris testified that he was primarily concerned with Booker's suggestion that Johnson's Executive Chamber position had been misused to interfere with the NYPD's response.

Telephone records show that while at Booker's apartment, Brown fielded several calls from Johnson. Booker testified that she refused to take any calls from Johnson that evening or subsequently. Brown testified that before leaving Booker's apartment, she learned that Booker intended to seek an order of protection against Johnson the following week.

F. Governor Paterson's Conversation with Harris on October 31

Records show that Governor Paterson left the Governor's Mansion in Albany at approximately 9:45 p.m. on October 31, 2009, heading for a Halloween party at a private residence in New York City. The Governor had no public schedule for that day, and had spent the early part of the evening handing out candy to trick-or-treaters at the Mansion. The trip took approximately two and a half hours.

Telephone records show that during the drive from Albany, Governor Paterson both made and received several telephone calls. At approximately 10:02 p.m., the Governor called Harris (whom he had known for many years) and spoke with Harris for approximately forty minutes.

Harris testified that while he spoke to the Governor on Halloween night, he did not discuss the domestic incident with him because Johnson had asked him not to do so. Instead, according to Harris, the conversation concerned the events of the Governor's day, mutual friends who were staying at the Governor's Mansion, the World Series, and their respective plans for the evening. The Governor similarly testified that, during his conversation with Harris, he did not recall discussing Johnson or Booker, and Harris did not convey any information about the domestic incident.

Harris further testified that the first time he discussed the October 31 incident with Governor Paterson was on Monday, November 2, 2009. During that discussion, according to

Harris, the Governor said that Johnson had informed him of an argument with Booker. Harris did not believe that the subject of police involvement on October 31 came up in his discussion with the Governor. The Governor testified that he did not recall discussing the October 31 incident with Harris during November 2009.

II. BOOKER’S PURSUIT OF AN ORDER OF PROTECTION

A. Bronx County Family Court

Booker went to Bronx County Family Court on Monday, November 2, 2009, and obtained a temporary order of protection against Johnson from the Bronx County Family Court Attorney-Referee (the “Temporary Order of Protection”).¹⁵ The Temporary Order of Protection stated that it remained valid until the next court appearance on November 4, 2009. Booker’s verified Family Offense Petition, dated November 2, 2009, submitted in support of her application, provides an account of the October 31 incident that is consistent with Booker’s testimony and the account she provided to the NYPD, and also notes that she sustained bruises on her arms. She confirmed to the Attorney-Referee under oath and on the record that she had bruises on her arms. Booker testified to the OAG that bruises appeared on her arms some time after her visit to Lincoln Hospital in the early morning hours of November 1, 2009.¹⁶

According to the court transcript, Booker stated she was relieved to get the Temporary Order of Protection because she had thought the incident would be “swept under the table” and the State Police had been “harassing” her to “drop the charges.” According to Booker’s

¹⁵ A temporary order of protection may be issued following the filing of a Family Court petition, Fam. Ct. Act § 828(1)(a), and therefore before service of papers on the person who is the subject of the order. After service in keeping with the Civil Practice Law and Rules, the court decides at a hearing whether to issue a permanent order of protection. *Id.* §§ 165, 832, 833, 835, 841(d).

¹⁶ Booker testified that a family member took photographs of her arms a day or two after the incident to document bruises on her arms. She produced those photographs to the OAG.

testimony in this investigation, here she was referring to the call she had received from Major Day on the night of the incident.

Booker's second appearance at Bronx County Family Court was on November 4, 2009. The transcript for that appearance reflects that Booker told the Judge that Johnson was a senior advisor to Governor Paterson and that "the State Police contacted [her] because they didn't want [her] to get an order of protection or press charges." According to the transcript, when Booker informed the Judge that Johnson had not yet been served, the Judge adjourned the case to December 17, 2009, and gave Booker information about how to effectuate service of the Temporary Order of Protection on Johnson, either by the local NYPD precinct where Johnson lived or by certified mail sent by a third party. With respect to certified mail, the Judge told Booker that a third party had to go to the post office, "fill out an affidavit of service and get one of these green cards," and bring both the affidavit of service and the "green card" back to court with her. The Judge extended Booker's Temporary Order of Protection, but due to apparent clerical error, the Order reflected that it was extended through November 17, and not December 17, 2009, which was Booker's next court date.

Booker testified in this investigation that she appeared at her local precinct to seek assistance with service of the Temporary Order of Protection on Johnson, but was told that the Bronx precinct could not help and that she would need to go to the Manhattan precinct where Johnson's residence was located. Booker further testified that she sought to contact the NYPD by telephone to have the Temporary Order of Protection served on Johnson, but was discouraged by the difficulty and delays she experienced in trying to reach someone. Because the court had informed her of an alternative method of serving Johnson by certified mail by a third party, Booker ceased her efforts to have the NYPD serve Johnson, and instead asked a long-time friend

(“Friend 2”) to send the Temporary Order of Protection to Johnson by certified mail. Thereafter, according to Friend 2, he sent the Temporary Order of Protection by certified mail to Johnson.

When Booker returned to Bronx County Family Court on December 17, 2009 for her third appearance, an attorney appeared on behalf of Johnson. Booker was unrepresented at all of her Family Court appearances. The Judge asked Booker if she had an affidavit of service. As Booker looked for the affidavit, the Judge asked Johnson’s counsel whether he would acknowledge service on behalf of Johnson. Johnson’s counsel declined, stating that Johnson had not been served. Booker then handed the Court what appears from the transcript to have been an affidavit of service. The Judge asked Booker if she had a receipt. Booker replied that Friend 2 “told [her] he never got it.” The Judge stated that she had no proof that certified mail had been accomplished, and she would issue a new summons to be served by certified mail again. The Judge stated, “I need a receipt and I need the card back. And I can’t proceed without proof.” It is not clear from these transcripts exactly which paperwork the Judge required, and it may have been unclear to Booker. The Judge adjourned the case to February 8, 2010, and extended the Temporary Order of Protection through that date.

Booker testified in this investigation that directly after her court appearance on December 17, Johnson’s lawyer waited for her outside the courtroom and asked her, “Do you really want to go through with this?” Booker made clear to him that she intended to pursue the matter.

Booker testified, however, that after December 17 she decided not to continue to pursue the Family Court matter because, among other reasons, Johnson had not contacted her since the incident and she no longer felt a threat. Booker did not appear at Bronx County Family Court on February 8, 2010, and the case was dismissed without prejudice.

B. NYPD Domestic Violence Officers' Home Visits

Pursuant to NYPD policy, in early November 2009, NYPD domestic violence officers made follow-up home visits to Booker. Booker was not home at the time of the first visit, but was home for the second visit. After the second visit, officers making this visit mistakenly noted in the case cover sheet that Booker had already served Johnson with an order of protection. The NYPD spokesman told the New York Times, for a story that appeared on February 26, 2010, that the NYPD had served an order of protection on behalf of Booker on November 9, 2009, the date of the entry in the case cover sheet which incorrectly reflected that Booker had served the order.

III. FURTHER STATE POLICE INVOLVEMENT

Day testified that he continued to be concerned through the first week of November 2009 that the October 31 incident represented a potential security threat for Governor Paterson. Day testified that he did not know whether there was a warrant for Johnson's arrest in connection with the incident, nor did Day know whether Johnson would be served with an order of protection. If Johnson was to be arrested or served, Day testified he did not want either of these events to occur when Johnson was with the Governor.

A. Day's Efforts to Determine Whether Johnson was Subject to Arrest or Service of Process

Governor Paterson and Johnson were scheduled to be in New York City on Tuesday, November 3, 2009, to attend an election night event at the Hilton in midtown Manhattan for William C. Thompson, Jr., a mayoral candidate. Day testified that because he still did not know whether there was a warrant for Johnson's arrest, that afternoon he asked an ESD lieutenant to run Johnson's criminal history on the eJustice system, a web-based system offering access to New York State's criminal history repositories for authorized users. Day did not tell the lieutenant the reason for his request. The lieutenant, who was not certified to use eJustice, asked

a senior investigator to log into the eJustice system and then to leave the room while he conducted a confidential criminal history check. Although this was against protocol, the senior investigator complied with the lieutenant's order, signed onto the eJustice system, and left the room. The lieutenant then obtained a criminal history report on Johnson and provided it to Day.¹⁷ Day further testified that in addition to the eJustice report, that afternoon he obtained a second report – a print-out from the New York Statewide Police Information Network (“NYSPIN”), a computer system utilized to run searches of the Department of Motor Vehicles’ records – showing that a temporary order of protection had been issued against Johnson.

Shortly thereafter, on the afternoon of November 3, 2009, with the eJustice and NYSPIN reports in hand, Day spoke with Booker. According to the testimony of a long-time friend of Booker who was with her that afternoon (“Friend 3”), Booker received a call from a number she recognized as the State Police, but declined to answer the call. Friend 3 decided to answer the call himself.¹⁸ Friend 3 testified that Day identified himself and asked to speak to Booker. Friend 3 told him she was unavailable. According to Friend 3, Day asked him whether Booker intended to pursue her case against Johnson, and Friend 3 informed Day that she did intend to pursue it. Friend 3 testified that Day became aggressive and rude, cautioned Friend 3 that if Booker pursued an order of protection against Johnson, the situation could “get out of hand,” and Day wanted to make sure Booker understood that. Booker testified that she recalled Friend 3 getting upset during the call with Day, and informing Day that, yes, she planned to pursue the matter.

¹⁷ This use of the eJustice system is the subject of a State Police Internal Affairs Bureau inquiry.

¹⁸ Telephone records show that Booker called Day at 3:49 p.m., and that they spoke for approximately nine minutes. However, Day, Booker, and Friend 3 all recall that Day called Booker on the afternoon of November 3 and not that Booker called Day.

When asked during his testimony, Day remembered the call with Friend 3. Day testified that Friend 3 demanded to know why Day was calling Booker. Day told him that he was simply returning Booker's call.¹⁹ Contrary to Friend 3's testimony, Day denied asking Friend 3 whether Booker planned to pursue the case against Johnson, and further testified that he did not say anything that could have been misinterpreted as such.

According to Friend 3's testimony, Day ended the call with him and then called Booker's telephone again, but this time Booker answered. Day testified that he did not specifically ask Booker if she planned to pursue the case against Johnson because he had assumed she was planning to do so, but might have asked her more generally what she was planning to do. According to Booker's testimony, she responded by asking Day what he would advise his daughter to do were she in a similar situation.²⁰ Booker informed Day that she was in the process of seeking an order of protection in Bronx County Family Court and asked Day to ensure that Johnson would appear the following day, November 4, 2009. According to both Day and Booker, Day told Booker that he could not make Johnson appear, but that he would inform him that he should go. Day testified that he did in fact advise Johnson to appear, but Johnson told Day that he had a lawyer taking care of the matter.

Later that night, the Governor and Johnson attended the Thompson event at the Hilton in New York City. Having confirmed the existence of a temporary order of protection against Johnson, according to NYPD Detective Charles Enright (who was working security for the event), Day approached Enright and asked him to determine whether Johnson was going to be

¹⁹ Booker testified she had contacted Day regarding getting information about Johnson's car to Johnson.

²⁰ Day acknowledged that Booker asked him that question during one of their conversations.

arrested that night at the event.²¹ Enright testified that he did so, and informed Day that although there had been an incident involving Johnson, it had been “closed to patrol,” meaning there was no outstanding warrant for Johnson’s arrest.

B. Superintendent Corbitt Informs Secretary Denise O’Donnell

State Police Superintendent Harry Corbitt testified he learned of the October 31, 2009 incident that night from First Deputy Superintendent Perez, who told him that Johnson had reached out to Day because Johnson had been involved in an incident with his girlfriend, and wanted Day to check on Booker. According to Corbitt, he instructed Perez to treat Booker as a crime victim, and to have Day reach out to her, assess the situation, and explain her options.

Either later that night or the next day, according to Corbitt, Perez reported back to him that Day had made the call, had determined that Booker was all right, and had explained her options to her. According to Corbitt, Perez had also learned from Day that Johnson had torn Booker’s costume and may have pushed her. Corbitt did not report the incident to the Governor or to the Secretary to the Governor, who, according to Corbitt, was in Corbitt’s chain of command to relay information to the Governor. Corbitt testified that because Johnson was an advisor to the Governor who saw the Governor every day, it would have been Johnson’s responsibility to inform the Governor of the incident, not the State Police’s responsibility.

Corbitt testified that on January 7, 2010, during a routine breakfast meeting, he mentioned the domestic incident to Deputy Secretary for Public Safety Denise O’Donnell, though he did not say when the incident occurred. According to O’Donnell, Corbitt characterized the incident as an argument involving Johnson and his girlfriend that had given rise to a domestic incident report, and did not volunteer details of any physical altercation that may

²¹ Day has no recollection of the Thompson event, and believes that these conversations with Enright happened over the telephone on Halloween night, but telephone records tend to support Enright’s account.

have occurred, leaving O'Donnell with the impression that this was an argument and nothing more. Also according to O'Donnell, Corbitt told her that the NYPD had responded to the incident, and that it was not a State Police matter; when she asked whether Governor Paterson had been informed of the incident, Corbitt told her that the Governor had been informed. O'Donnell testified that she left the conversation with the impression that this had been a minor incident that had occurred some months earlier and that there was no State Police involvement.

According to Corbitt, during their January 7 meeting, he informed O'Donnell that Johnson had torn Booker's costume and that he may have pushed her, and that the State Police had offered Booker assistance at the time of the incident but were not otherwise involved. Corbitt did not recall any mention of the Governor in his discussion of the incident with O'Donnell.

Subsequently, Corbitt made a statement to the New York Times, which appeared in the print edition on February 25, 2010, in an article by William K. Rashbaum, Danny Hakim, David Kocieniewski, and Serge F. Kovalski, entitled "Questions of Influence in Abuse Case of Paterson Aide," asserting that the State Police had communicated with Booker after the incident, and that it was standard operating procedure to do so in such "special circumstances" involving "high-profile" persons. O'Donnell testified that, upon reading the article, which also revealed that Governor Paterson had spoken with Booker about the incident, she informed the Governor that she was resigning; she stated that the Governor urged her not to resign, and stated that Booker had called him, not that he had called Booker. O'Donnell resigned effective February 25, 2010.

C. Johnson's Attempt to Obtain a Pistol Permit Through the State Police

Both Corbitt and Day testified that, sometime after Paterson became Governor and prior to the events of October 31, 2009, Johnson sought to obtain a pistol permit through the State Police. According to Corbitt, Johnson told Corbitt in substance that he could be more helpful in his role as travel staff to the Governor if he were armed and that he, therefore, required a permit to carry a concealed weapon. Corbitt explained that if Johnson wanted a permit, he would have to follow the rules of his local jurisdiction, New York City, and that Corbitt could not help him. According to Day, rather than file an application with the appropriate New York City authority as required, Johnson continued to seek assistance from the State Police, gave his application packet to Day, and told Day to take it to Corbitt. Johnson told Day that Corbitt would be expecting the application. Day testified that he strongly discouraged Johnson from making this request, but nonetheless presented the application packet to Corbitt. Corbitt testified that he did not recall receiving the packet from Day, but that he did not help Johnson with any pistol permit application.²²

D. Day's Testimony in this Investigation

Day testified on three separate occasions during this investigation. In his initial testimony, Day withheld key facts that were responsive to questions posed to him regarding his involvement in the October 31 incident. For example, Day testified that, when they spoke on October 31, Johnson made no mention to him of any possible NYPD involvement in the incident, and said nothing about a physical component to his argument with Booker. Day also denied that Booker told him on the night of the incident that she had been harmed by Johnson, or that she had already called the NYPD.

²² There is no evidence that Johnson's request for a pistol permit was connected to the October 31 incident, and there is no evidence that any permit was issued to Johnson.

In subsequent testimony, Day acknowledged that his previous testimony had been incomplete and inaccurate, insofar as he had previously denied that Johnson had informed him on October 31 that he was concerned that Booker had called the police. When pressed as to why he withheld this information, Day recounted telephone conversations with Johnson that took place after the Governor had referred the matter to the OAG on the night of February 24, 2010. During those conversations, according to Day, Johnson had asked Day, with respect to the October 31 incident, “are we okay?” Day assured him that they were. Reflecting on those conversations, Day stated that he did not necessarily feel that Johnson was intending to pressure him, although Day felt pressure. Ultimately, Day explained that he had previously testified as he did “[t]o protect the Office of the Governor.”

E. Resignations of Corbitt and Perez

Superintendent Corbitt resigned his position with the State Police on March 2, 2010. In a television interview, Corbitt cited the pressure of continued media scrutiny stemming from the incident as a significant reason for his departure. First Deputy Superintendent Perez was then elevated to the position of Acting Superintendent of the State Police, but resigned one week later, on March 9, 2010. In his resignation letter, Perez indicated that he was not resigning due to this investigation, but was stepping aside because of reports that Governor Paterson was seeking a new Superintendent to lead the State Police.

IV. EXECUTIVE CHAMBER INVOLVEMENT AFTER THE INCIDENT

A. Harris's Efforts Through Brown to Dissuade Booker from Proceeding Against Johnson

Harris testified that on November 1, 2009, he spoke with Brown, who had been present at Booker's apartment the previous evening.²³ He testified that his primary concern in reaching out to Brown was to look into any suggestion that the Executive Chamber or the State Police had somehow intervened in the NYPD's response to Booker's 911 call because such a suggestion might be inflammatory. According to Harris's testimony, Brown was the only person he called in investigating this allegation. Harris testified that, once Brown had recounted her understanding of the incident to him, including that the NYPD had assured Booker that nobody had interfered with its response, he was satisfied that neither the Executive Chamber nor the State Police had interfered with the NYPD response.

Harris then turned his attention to the issue of potential media exposure and the effect it might have on the Executive Chamber. Harris was concerned that if the media caught wind of a domestic dispute involving one of Governor Paterson's aides, it would be embarrassing for the Governor. Harris testified that he said to Brown, in substance:

I asked her, I said [l]ook, can you have a talk with [Booker], take her out to dinner, sort of get her to understand that if this thing moves the distance, that it's not just going to be the Governor, the media is going to manipulate what is essentially a private situation between two people.

When asked to explain what he meant by "moves the distance," Harris testified:

I knew that the police had already been called so it was clear to me that at least one public institution had been identified. And that if the media . . . wanted to pull the police records that David Johnson's name was already, I presume, . . . going to be out there. I didn't know whether or not she had intended on going to court. I

²³ Telephone records show at least five calls between Brown and Harris on November 1, 2009, one lasting more than twenty minutes.

was concerned that she would go to court and if she had gone to court, then here is another sort of public institution for which, you know, this story would get told[.]

Harris further testified that he wanted Brown to ask Booker “to try to find a more noninterventionist way” to handle the situation with Johnson. When asked to clarify what he meant by “noninterventionist,” Harris testified, “If you are asking me if is it possible I might have said to her, you know, please, tell her not to go to court, it’s possible that I said it.”

For her part, Brown testified that she felt uncomfortable talking to Harris, and did not confirm to him whether Booker was even planning on seeking an order of protection, though Brown knew that she was. According to Brown, she reported her conversation with Harris to Johnson, who asked Brown not to speak further with Harris about the matter. According to both Brown and Booker, Brown did not actually pass on any suggestion that Booker not pursue the matter against Johnson.

B. Johnson Speaks to Governor Paterson on November 1, 2009

On Sunday, November 1, 2009, Governor Paterson attended ceremonies associated with the New York City Marathon in Central Park. After the ceremonies, Johnson, accompanying the Governor as travel staff, returned with the Governor to his Manhattan residence. Once they arrived, Johnson escorted the Governor to his apartment, and according to the Governor’s testimony, Johnson explained to the Governor that “he had a huge fight with [Booker], and it was very acrimonious, that a third person intervened, and he had words with the third person, and that somebody called 911.” The Governor testified that he later became aware that Johnson was not present at Booker’s apartment when the police arrived. According to the Governor, Johnson did not inform him of any physical dimension to the incident and did not appear to be concerned

about any police follow-up action; further, Johnson did not inform him that he had called Day upon leaving Booker's apartment.

The Governor acknowledged that he felt it must have been "a pretty unruly argument" to cause someone to call 911, but when asked whether he was alarmed that 911 had been called, the Governor responded:

A. I didn't see it that way. I got the impression that this was a loud, emotional exchange, and that the police had been called.

Q. The fact that the police were called, did it raise any concern in your mind that this was an unusual fight? I mean people fight all the time. Obviously, the cops don't get called. I'm just trying to understand, in your mind, why you were not alarmed about the police being called, in this context?

A. I think I may have asked him, is anything coming of this, and he didn't seem to think so. And I said, you know, if it does, you know, keep the office posted, or something like that. So I did. You know, you're right, it's not something you hear every day.

The Governor testified that he did not tell anyone in the Executive Chamber about this conversation with Johnson, because he did not want to spread negative information about Johnson through the office. The Governor testified further that he did not remember speaking with Harris about the incident during November 2009, but he could not rule it out. The Governor testified that he was unaware of contact between Harris and Brown on October 31.

C. Brown Meets with Governor Paterson in January 2010

In an unsworn interview on a day subsequent to her testimony in this investigation,²⁴ Brown, who testified that she had previously worked for Governor Paterson when he was State Senator, stated that Johnson called her in mid-January 2010 and asked her to bring lunch to the

²⁴ Brown provided testimony during one session in this investigation, but thereafter declined to give further testimony.

Governor's New York City residence. Brown did so, and she and the Governor then traveled to the Governor's Manhattan office building, where Brown also worked. According to Brown, once they arrived at the Governor's office, the Governor told Brown that the incident with Johnson and Booker never should have happened, that the relationship between them should have ended long before October 31. According to Brown, the Governor told her that Johnson was too close to the October 31 incident, and that the Governor was going to deal with the situation himself.²⁵

Governor Paterson remembered that Brown brought him lunch and traveled with him to his office during this general time period. However, the Governor testified that, while it would not have been unusual for him to discuss the relationship between Booker and Johnson with Brown, he did not remember discussing it on this occasion, and he never told Brown that he intended to "handle" the situation with Booker.

D. Escalating Rumors of Personal Scandal

In late January 2010, rumors began to circulate that the New York Times was going to run a story that alleged inappropriate behavior by Governor Paterson and various members of his administration, including Harris and Johnson. The Governor testified that the rumors of inappropriate behavior were unfounded and that he was frustrated and disturbed both by the non-specific, salacious nature of the rumors and by their escalation. The Governor and his press staff, including Peter Kauffmann, the Governor's Director of Communications, focused on tracking and responding to the growing media firestorm. During this same time period, the Governor was preparing to announce his 2010 gubernatorial campaign within a matter of weeks.

²⁵ Brown's recollection was that the Governor said this to her either during the in-person meeting in January or during a subsequent telephone conversation that Brown had with the Governor during the first week of February 2010. However, available telephone records do not establish a telephone conversation between Brown and the Governor during that week.

On or about January 28, the Governor, Kauffmann, Harris, Johnson, and Marissa Shorenstein, the Governor's Press Secretary, met to discuss the rumors. By this time, Kauffmann testified, the rumor mill had reached a "fever pitch."

It was in this context, according to the Governor, that he heard Booker's name as a possible source of these rumors. He testified that during the first few days of February, he was informed by both a lobbyist and a staff member, perhaps Johnson, that Booker may have been the source of the latest rumors. As the rumors grew, reports circulated that the supposedly forthcoming New York Times story would be so damaging to the Governor he would be forced to resign in disgrace.

Governor Paterson decided to speak with a Times editor (the "Editor") in an effort to confront the rumors and understand the nature of any story the Times might actually be working on. On February 4, 2010, the Governor spoke with the Editor by telephone for more than thirty minutes. According to the Governor, during the interview, the Editor asked him about the October 31 incident, and whether Booker had obtained an order of protection against Johnson.

According to an audio recording Kauffmann made of the Governor's side of the interview,²⁶ when asked about the October 31 incident, the Governor stated, "[s]o no incidents of violence, or police interacting, or – uh, you know – police reports saying that anything – as the case is. I see it as just a bad breakup." The Governor later testified that when he told the Editor there was no "police interacting," he had meant that there were no arrests resulting from the incident, notwithstanding that he knew from Johnson the police had been called. The Governor

²⁶ Kauffmann explained that while he spoke to the Governor on one telephone, the Governor spoke to the Editor on a second telephone, so that Kauffmann could hear (and record) only the Governor's side of the conversation without hearing the Editor's side.

also emphasized that he was unaware of the existence of a formal police report when he spoke with the Editor.

The recording reveals that, when the Editor asked Governor Paterson whether Booker had obtained an order of protection against Johnson, the Governor responded:

I don't know the answer to that question. I don't believe so, but don't hold me to that. There is? Okay. Well, well – I'm certainly going to ask about that. I – I mean – maybe she's trying to get an order of protection against him. Um, so I don't [unintelligible] – you know I think perhaps that's the case. But, um, she has to win the order of protection. And – but whether she's put a complaint in to bring him in, uh, I – I wouldn't, uh, that wouldn't surprise me. But I – I didn't know that as – as we have this conversation.

The Governor testified that this was the first time he had heard mention of a possible order of protection arising from the incident with Booker. According to the Governor, after the interview with the Editor, he informed Kauffmann that they should look into the issue of the order of protection. However, according to Kauffmann, he did not even become aware of an incident involving Johnson and Booker until five days later, on February 9, when the Governor was interviewed by a Times reporter at the Executive Mansion. Because Kauffmann heard only the Governor's side of the conversation on February 4, he did not understand that the Editor and the Governor were discussing an incident involving Booker.

The Governor testified that in the days after the interview with the Editor, he followed up with Johnson about the order of protection. According to the Governor, Johnson assured him “it's about nothing, there is no order of protection.” The Governor testified that he did not speak to anyone else in the Executive Chamber about an order of protection, and stressed that he was focused not on this issue at the time, but rather on the press rumors that continued to grow in intensity over the next several days.

E. Governor Paterson's Conversation with Booker on February 7, 2010

According to the Governor, on the evening of February 6, 2010, Harris informed him that Booker had reached out to Brown complaining about being “harassed” by a Times reporter.

According to Harris, the Governor informed him that he wanted to speak to Booker about the media. Harris did not have Booker's number, and so he called Brown. Telephone records show that this call likely occurred on the morning of Sunday, February 7, 2010. According to Brown, Harris asked her whether Booker was speaking to the press. According to Harris, Brown informed him that a Times reporter was “stalk[ing]” Booker, and that Booker had therefore left the state. Harris testified that he told Brown that the Governor wanted to speak to Booker about the media, and then told the Governor he had delivered the message to Brown.

According to the Governor, he believed that Booker wanted to speak to him, and that was why she had contacted Brown in the first place. The Governor testified that he believed that Booker wanted the Executive Chamber to get involved and help her handle the media, and he therefore instructed Harris to let Booker know that he was available to speak with her if she wanted to talk. The Governor testified that if Booker “wanted some assistance from me, that I was available. I did not make a request for her to call me.”

Booker testified that Brown called her on February 7, 2010, told her that Governor Paterson wanted to speak with her, and gave her a telephone number for the Governor. Booker called the Governor shortly thereafter. During their conversation the Governor asked her whether she had been spreading rumors about him, which Booker denied. The Governor also asked her how she was doing, and if there was anything that he could do to help her.

The Governor testified that Booker told him that a Times reporter had visited her apartment while she was out, and had persuaded her 13-year-old son to allow the reporter inside.

According to the Governor, at the reporter's request, Booker's son called his mother, so that the reporter could speak with her. The reporter asked Booker to provide her side of the story, representing that he had already heard from the Governor. Booker declined to comment and told the reporter to leave her apartment.

Booker testified that she told the Governor about incidents with a Times reporter, and then asked the Governor to get the media "off [her] back." The Governor indicated he would try to help her, and told her that he was sorry this was happening to her.

Booker further testified that the subject of her Bronx County Family Court date the following day did not come up during her conversation with the Governor. Booker testified that she did not realize that she had a court date the following day, and thought that the court date might have already passed. Booker testified that, in any event, she did not intend to go back to court because, among other reasons, Johnson "had left [her] alone" since the incident and she no longer felt a threat.

Governor Paterson testified that on this call with Booker he did not raise the subjects of the order of protection or the October 31 incident. Indeed, according to the Governor, during the call with Booker, he was unaware that the incident was more than an "unruly argument," that Booker had been seeking an order of protection against Johnson in Bronx County Family Court, or that she had a court date the following day. When asked why he had not asked Booker about the order of protection, given that he had previously told the Editor he would look into that issue, the Governor responded:

I was speaking . . . to Ms. Booker for the sole purpose of trying to put aside another rumor that's been manufactured somewhere, that's floating around. And the, the other issues, I doubt I was even thinking about at this point, because the ones that are prominent in the media, and in all of the tabloids, and the New York Times, and all over the State, have to do with [rumors of] my

impending resignation, and my inability to run for public office. David Johnson and Sherri Booker, though I would have compassion for Ms. Booker if she was the victim of any kind of a crime, are issues that can be addressed. But they're not issues that are on my mind that weekend.

On February 8, 2010, the Governor met with the Times editorial board. In preparation for that meeting, the Governor told Kauffmann about his conversation with Booker. Kauffmann testified that according to the Governor, Booker was being badgered by the Times and a reporter had shown up at her apartment, but she was not the source of any negative rumors about the Governor.

F. Governor Paterson's February 9, 2010 Interview with a Times Reporter

A Times reporter interviewed Governor Paterson at the Executive Mansion in Albany on February 9, 2010. During the interview, the reporter asked the Governor about the October 31 incident. According to an audio recording of the interview, the Governor again characterized the incident as a break-up "like break-ups you hear about all the time." When asked during his testimony in this investigation about this portion of the interview, the Governor testified that he did not understate to the Times what had occurred between Booker and Johnson, but rather by this time, he simply did not want to provide additional information, as he felt that the Times would use that information to "create character assassinations [of] my staff and then hold me responsible because I hired them." The Governor reiterated:

I'm not saying that I understated the break-up. I'm just saying that I didn't give any information. I've already provided information to [the Times Editor]. I – it seemed to me like a break-up you hear about all the time – maybe not all the time, there's a 911 call. But I'm not getting the impression that I've still heard anything about this break-up that makes it extraordinary.

G. Governor Paterson Seeks a Press Statement from Booker

On February 16, 2010, the Times informed the Executive Chamber that it planned to publish a story on Johnson. In attempting to respond to questions put to the press office, Kauffmann questioned Governor Paterson about the October 31 incident. Kauffmann testified that the Governor told him “he had looked into it, and the matter has been withdrawn, the complaint has been withdrawn, it was a messy break-up.” The Governor testified that he did not remember having such a conversation with Kauffmann, but that he may have. Kauffmann testified that later that day, when a Times reporter asked the Governor’s press office whether there had been an order of protection against Johnson associated with the October 31 incident, Kauffmann again questioned the Governor, who responded that “there may have been something written up but it was dismissed, the application was not pursued.” Kauffmann testified that he passed along to the Times that, with respect to the possible police report about which the reporter was asking, there had been “no follow up complaint and no follow up action.”

According to Kauffmann’s testimony, Governor Paterson told him that Booker was being “harassed” by the press. Kauffmann testified that he was under the impression from the Governor that the October 31 incident was just a “messy break-up,” and therefore Kauffmann suggested that Booker should make a statement to the press if she wanted to be left alone.

Kauffmann further testified that in response to his suggestion:

A. The Governor says okay, that makes sense, I’ll let her know. I said Governor, I don’t believe that you should call Sherri Booker, I don’t believe that’s appropriate.

Q. Why not?

A. I’m not an attorney. I just didn’t feel comfortable that the Governor should be having a conversation with her if she was part of the story.

Q. But he told you he had already been speaking with her?

A. Yes.

Q. How did the Governor respond?

A. He said yes, yes, I agree, I agree, I'll take care of it. I got it, I got it, I'll take care of it. A little while later, maybe a couple of hours later, maybe an hour later Marissa Shorenstein [the Governor's Press Secretary] let me know the Governor [had] called her and directed her to call Sherri Booker, and my understanding was to give her an opportunity to give a statement to the story.

Kauffmann indicated that Shorenstein had already made the call to Booker by the time she notified him of the Governor's request. The Governor testified that he had no memory of having had such a conversation with Kauffmann.

Governor Paterson testified that he "offered" a statement to Booker on February 16, once he was notified that the Times intended to publish a story concerning Johnson later that night. The Governor stated that when the Executive Chamber was contacted by the Times at around 4:00 or 5:00 p.m., he believed that Booker was attending a class or otherwise unavailable. Because of the tight deadline to turn a statement around, the Governor testified that he instructed Harris to find Brown, who the Governor believed would be able to contact Booker. Telephone records show that the Governor spoke with Brown on February 16 at around 5:43 p.m. for approximately seven minutes.

Regarding his conversation with Brown, the Governor testified:

And I said to Deneane [Brown] that they're doing a story. And again, they're back to D.J. [Johnson] and Sherri. And if there's one thing D.J. and Sherri finally agree on, it's that they don't really want to be involved in this. And so I thought Sherri might want to make some statement to that effect. And my best recollection is that [Brown] consulted with Sherri, and then came back and suggested to me that I have my press secretary call Sherri.

Brown testified that during their conversation, the Governor informed Brown that Booker “needed to make a statement” about her relationship with Johnson.²⁷ Brown testified that she viewed what the Governor was saying to her as an instruction that she felt she had to carry out, in part because of her position as a state employee. However, Brown also testified that her feeling was not based on anything that the Governor actually said to her during her conversation with him. The Governor, when asked, testified that he did not suggest that Brown talk Booker into making a statement.

Brown further testified that after her conversation with the Governor, she contacted Booker and told her that the Executive Chamber wanted her to make a statement. According to Brown, Booker told her that she was open to the idea of making a statement, but that she would not say anything about her relationship with Johnson that was not true.

Shorenstein testified that the Governor spoke with her on the evening of February 16, 2010, and told her to compose a public statement for Booker to release to the press. According to Shorenstein, the Governor told her that Booker would be willing to make a short statement denying that the break-up had been acrimonious, though acknowledging that the end of the relationship was not friendly. The Governor, according to Shorenstein, then gave Shorenstein telephone numbers for both Booker and Brown. Regarding the information he gave Shorenstein to compose the statement, the Governor testified that he:

gave her sort of neutral language like the relationship [between Booker and Johnson] ended in an unfriendly way, but there’s no current acrimony, or something that’s really designed to promote the idea that our relationship is our business, and we don’t want to get into the New York Times massacre of David Paterson. So I

²⁷ In her testimony, Brown placed the date of this conversation as February 7, 2010. However, telephone and e-mail records show that the conversation almost certainly occurred on February 16, 2010.

was clearly looking out for myself, but I was trying to find a way that perhaps would end their continued harassment of Sherri.²⁸

Shorenstein testified she drafted the statement as directed by the Governor. After speaking with Brown, Shorenstein sent Brown an e-mail message at 7:43 p.m. that evening with the subject line, “Draft statement,” containing the following statement for Brown to forward to Booker: “David Johnson and I dated from X date until October 2009. Though our break-up was not friendly, there was nothing acrimonious about our relationship or its ending. Any allegations to the contrary are false.”

Brown created a new internet e-mail account, cut and pasted the proposed statement into a new message, and sent the e-mail to Booker at 8:56 p.m. Brown testified that she created a new e-mail account because she believed that the proposed statement was untrue and she was uncomfortable sending it from her usual account. Booker testified she reviewed the statement and told Brown that she would not issue it because she refused to say anything false about her relationship with Johnson.

When asked whether he considered the text of the statement to be accurate or inaccurate in light of what he understood about the October 31 incident at that time, the Governor responded:

A. That statement was a draft and –

Q. Was it accurate or not accurate?

A. I would say it was neither. I would just say it was a statement designed to get the media off of my back about Sherri Booker and David Johnson, and off of either of their backs, because they didn’t seem to want to talk about whatever their

²⁸ The Governor testified that, as of February 16, 2010, he was still unaware that Booker had described the incident as violent, although the Governor acknowledged that Johnson had told him on November 1, 2009 that the police had been called to Booker’s apartment on the night of October 31 following an acrimonious argument. There is no evidence that Kauffmann or Shorenstein knew that the proposed statement was inaccurate at the time that they were involved in suggesting or drafting the statement for Booker.

relationship was And so what I'm saying is, I don't know if it's accurate or it isn't accurate. I know they don't like each other. And I know that they have no further use for each other. But that was why I was running the statement by them. It was based on my perception of where they would be publicly. Privately, they might hate each other's guts. But publicly, hey, we're moving on. That's what the statement was designed to say.

Shortly after Shorenstein sent the statement to Brown, the Times posted online its story, by Danny Hakim and William K. Rashbaum, "Paterson Aide's Quick Rise Draws Scrutiny," which was printed the next day, February 17, 2010. In the story, the Governor was quoted describing the October 31 incident as a "bad break up."

After the story was posted online, the Times contacted Kauffmann seeking clarification as to whether the administration was aware of an order of protection against Johnson, as the Governor's previous statements on the matter had been ambiguous. Kauffmann called the Governor. According to Kauffmann:

I said Governor, we need to independently verify if there's an order of protection out there.... Did you know there was an order of protection and what are you basing that on? He says let me check, I'm going to call DJ [Johnson]. He hangs up with me, I assume he calls DJ. He calls back and said I talked to DJ, there was no order of protection. This is where I say very pointedly Governor, this is after 11 o'clock at night, I have to get back to the New York Times. I am going to communicate on the record that you are not aware of an order of protection, that no order of protection exists; and you're going to base whether or not an order of protection existed against DJ, based off of DJ telling you he wasn't served with an order of protection. I know you're close with him, I know this is a personal relationship, I'm not disputing his veracity. I'm telling you is that enough for you for me to now go in your voice and say there is no order of protection. He said yes. So I called [the Times Editor] back and I said [] to our knowledge there is no order of protection. We weren't aware of an order of protection because there was no order of protection.

According to Kauffmann, the next morning, on February 17, 2010, the day after the Times story first appeared online, a spokesperson for the NYPD read him portions of the police report of the October 31 incident by telephone, and confirmed that a temporary order of protection had been filed on November 2, 2009 and extended until February 8, 2010. Kauffmann informed Governor Paterson of the substance of the police report, which reflected Booker's recounting of events, and informed the Governor about the order of protection. Kauffmann testified that the Governor then proceeded to explain to him that in a legal sense, an order of protection did not exist unless it had been served on Johnson.

Also on the morning of February 17, telephone records show that Booker and Governor Paterson had a forty-minute telephone conversation. The Governor testified that during that conversation, Booker informed him that she would not make the statement proposed by the Executive Chamber because the statement was false. According to Booker, the Governor told her that she would not need to make a statement after all because it appeared that the story was "going to blow over."

Booker testified she was upset by Governor Paterson's characterization of the October 31 incident in the Times story as a "bad break up," and for the first time she told the Governor the details of the incident. According to Booker, the Governor was apologetic and said he had been unaware of the details. The Governor testified that Booker told him during this call that everything in the police report was true. Although the Governor did not remember Booker telling him in detail about the incident, he came away from the call with the impression that, from Booker's perspective, it was a frightening experience.

Governor Paterson did not amend his prior statement to the Times or take any action with respect to Johnson at that time. On that same day, February 17, the Executive Chamber issued a press release in response to the Times story stating, among other things, that:

the conclusions reached by the Times report are not supported by the facts. There is no independent evidence presented that would substantiate any claims of violence committed by David Johnson against a woman, a fact underscored by the absence of a single judicial finding that any such incident ever took place.

When asked about the February 17 press release, Governor Paterson testified that he did not know whether the release was issued prior to or after his conversation with Booker, but that it was “probably the position of the office,” and that it was consistent with his understanding as well. By this time, the Governor at least knew from Kauffmann that Booker had obtained a temporary order of protection against Johnson.

H. Resignations of Kauffmann and Shorenstein

Kauffmann resigned his position in the Executive Chamber on March 4, 2010. Kauffmann testified that, as of the date of his testimony in this investigation, he felt he had been misled, as he had come to believe that his statement to the Times that there was no order of protection was based on technical arguments advanced by the Governor and his advisors, and he would not have made such a statement if he had known all the facts at that time.

Shorenstein resigned her position in the Executive Chamber on March 17, 2010, releasing a statement explaining that she could no longer perform her job duties effectively due to circumstances that led to her “unwitting involvement in recent news stories[.]”

I. Governor Paterson’s Communications with Booker After Referring the Matter to the OAG

On the evening of February 24, 2010, the Executive Chamber learned that the Times would soon publish a story about Johnson and the October 31 incident. The Times indicated to

the Executive Chamber that the story would report details of the incident as recounted in the police report, that the newspaper was aware that the Governor had called Booker during the first week of February, and that Booker had testified in Bronx County Family Court that the State Police had pressured her.

Telephone records show that approximately twenty minutes after the Times e-mailed questions for the story to the Executive Chamber, Governor Paterson repeatedly tried to reach Booker beginning at 5:13 p.m., calling three times and leaving two voice messages for Booker at approximately 5:15 p.m. and 5:17 p.m. Telephone records show that Booker returned the Governor's call at approximately 5:17 p.m., and the two spoke for approximately twenty minutes.

Booker testified that the Governor called to tell her about the Times story, and to prepare her for the fact that, despite her wish to get on with her life, the story was going to be made public. The Governor testified that during this conversation, Booker told him that she believed that Johnson had directed the State Police to prevent the NYPD from responding to her apartment the night of the incident.

At approximately 8:00 p.m., the Times posted to its website an article, by William K. Rashbaum, Danny Hakim, David Kocieniewski, and Serge F. Kovalski, entitled "Questions of Influence in Abuse Case of Paterson Aide." The Governor testified that shortly thereafter, in consultation with his senior staff, he decided to refer this matter to the OAG, and apprised the Attorney General of his decision by telephone. At approximately 9:03 p.m., Kauffmann e-mailed a statement from the Governor to the Times announcing this referral. According to telephone records, the Governor again called Booker at approximately 9:40 p.m. and left a voice message on her cellular telephone. The audio of the voice message is as follows:

Sherri, this is David. You should see the way they wrote this story. They're trying to make it look like I pressured you into dropping this court case. Please help me. Your lawyer – his statement makes it sound the same way. Um, I mean – I was trying to find out about the rumors involving myself. You placed the call to me around ten minutes to four on Sunday, February the 7th – it was the day of the Superbowl. And, um, in the conversation, we just talked about the things that – that – you didn't say anything about me, and I didn't say about you. Then we went on to talk about other stuff, but – I hope, uh – you remember that I was not trying to make you do anything, and – I hope your lawyer will do something to help me here, because this, uh, doesn't look good for me, and I wasn't in this. And this is exactly what they're after. And I – I was just not in this and didn't – um, you know – want to play a role in it. And, to be honest with you, I believe you. So – um, anyway, uh – if you can help to clear this up, because it – that portrayal, that conversation – we didn't talk for one minute, we talked for ten or fifteen minutes. And, um – I did tell you that I was there for you, and you could call me. But I wasn't doing it to try to trade it for you dropping the ca- I didn't even know the court date was Monday, to be honest with you. I'll talk to you later.

After leaving the message, telephone records show that the Governor immediately re-dialed Booker's number. This time they connected and spoke for approximately sixteen minutes. Booker testified that she was in her car with Friend 1 when the call came in, and that she took the call on speakerphone. According to Booker, the Governor urged her to amend her lawyer's statement. He wanted to make it clear that Booker had called him on February 7 and not the other way around. Booker told the Governor not to "play with words." She pointed out that technically the Governor was correct – she had called him – but, Booker said, she had only called the Governor after Brown had contacted her and told her to do so at the Governor's request. According to Booker, the Governor conceded this point to her, but reiterated that he did not know when they spoke on February 7 that Booker had a court date, and despite that, the Times story made it appear as though the Governor was trying to discourage her from going to

court. Friend 1's recollection of the content of the February 24 conversation is consistent with Booker's account.

The Governor testified that during their conversation, Booker put his mind at ease about the issue of her court appearance, as she stated, in substance, that nobody pushed her to do anything. According to the Governor, he informed Booker that he had referred the matter for investigation to the OAG, and that he had suspended Johnson pending the outcome of that investigation.

During his testimony, when asked if he understood that Booker was likely to be called as a witness in the investigation at the time that he called Booker on February 24, the Governor testified that he did not believe that his communications with Booker would be the subject of the that investigation. Regarding his referral, the Governor stated:

I referred it because of what seemed to be a very dangerous allegation, that perhaps a member of my staff was being accused of recruiting the State Police in an instance involving [Booker], and the fact that the State Police may have become involved. And that was what I referred the case to. The issue of the allegations, that I tried to pressure [Booker] not to go to court, to me, seemed to be bogus, because, first of all, I didn't do it; secondly, I don't think that I was aware of the court date; third, I didn't know if she was, for sure, if she was seeking an order of protection. So I didn't see it as part of the investigation. I really didn't.

When asked whether he regretted leaving the voicemail message for Booker, the Governor stated that he was not thinking when he left the message, that he was upset because he felt that the Times article had misrepresented the facts about his conversation with Booker on February 7, and that his distress may have "gotten the better of [his] judgment." When asked whether he intended to influence Booker's testimony, the Governor responded that he only wanted Booker to tell the truth because "I knew that the truth would be the best thing for me."

ANALYSIS, CONCLUSIONS, AND RECOMMENDATIONS

I. SHERR-UNA BOOKER

During the investigation, Booker was obliged by the needs of the investigation to recount her story multiple times. She never wavered, remaining faithful to the narrative she presented in this investigation from the first moments of her cooperation.²⁹

II. ANALYSIS OF CRIMINAL LAWS

The Independent Counsel finds that the evidence reviewed warrants consideration of possible charges against David Johnson relating to the October 31 domestic incident. The Bronx County District Attorney Robert T. Johnson is investigating that domestic incident, and will ultimately determine whether or not to pursue charges against David Johnson. The Independent Counsel has shared investigative materials and information with the District Attorney to facilitate his investigation. While not binding on the District Attorney, the Independent Counsel concludes based on her review that no criminal charges should be brought against any other individual with respect to the matters discussed herein. The Independent Counsel's analysis of relevant criminal laws is set forth below.³⁰ The principal sections of the Penal Law at issue here are as follows:³¹

²⁹ In the days after Booker's identity was revealed in the press, the media reported that Booker had recently purchased a car, suggesting that this was connected to Booker's decision not to pursue the order of protection. Any such suggestion is wholly unfounded.

³⁰ The Public Officers Law sets forth minimum standards of conduct and certain ethical prohibitions for State officers and employees. See, e.g., N.Y. Pub. Off. Law §§ 73-74. This report does not address potential violations of the Public Officers Law because the New York State Commission on Public Integrity has primary jurisdiction over such matters. See id. §§ 73(18), 74(4); N.Y. Exec. Law § 94(12)(a).

³¹ For purposes of this analysis, other sections of the Penal Law were also reviewed, but were found inapplicable to the facts of this investigation, including tampering with a witness in the first (N.Y. Penal Law § 215.13), second (N.Y. Penal Law § 215.12), and third degrees (N.Y. Penal Law § 215.11); obstructing governmental administration in the first (N.Y. Penal Law § 195.07) and second degrees (N.Y. Penal Law § 195.05); intimidating a victim or witness in the first (N.Y. Penal Law § 215.17), second (N.Y. Penal Law § 215.16), and third degrees (N.Y. Penal Law § 215.15); official misconduct (N.Y. Penal Law § 195.00); coercion in the first degree (N.Y. Penal Law § 135.65); and related offenses.

Tampering with a witness in the fourth degree, New York Penal Law § 215.10, a class A misdemeanor (“Witness Tampering”). As applicable here, to support a Witness Tampering charge, the defendant must:

1. know that a person is or is about to be called as a witness in an action or proceeding, and
2. wrongfully induce or attempt to induce the person to absent himself from or otherwise avoid or seek to avoid testifying at the action or proceeding, or
3. knowingly make any false statement or practice any fraud or deceit with intent to affect the testimony of the person.

Criminal Solicitation in the fifth degree, New York Penal Law § 100.00, a violation (“Solicitation”). To support a Solicitation charge, the defendant must:

1. with intent that another person engage in conduct constituting a crime,
2. solicit, request, command, importune or otherwise attempt to cause such other person to engage in such conduct.

Coercion in the second degree, New York Penal Law § 135.60, a class A misdemeanor (“Coercion”). As applicable here, to support a Coercion charge, the defendant must:

1. compel or induce a person to:
 - i. engage in conduct in which the latter has a legal right to abstain from engaging, or
 - ii. abstain from engaging in conduct in which he has a legal right to engage;
2. by means of instilling in him a fear that, if the demand is not complied with, the actor or another will:

- i. engage in conduct constituting a crime; or
- ii. use or abuse his or her position as a public servant by performing some act within or related to his or her official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely.³²

A. Governor Paterson

There is no evidence that Governor Paterson committed Witness Tampering or any related offense. Because there is no evidence that the Governor knew that Booker was or was about to be called as a witness in an action or proceeding on February 7, or that he attempted to induce her not to appear in court or testify, or otherwise engaged in any fraud or deceit to affect her testimony, none of the elements of Witness Tampering or any related offense has been met.

1. February 7, 2010 Contact

With respect to the Governor's conversation with Booker on February 7, 2010, the day before a scheduled appearance in the Bronx County Family Court, none of the elements of Witness Tampering has been met.

The first element of Witness Tampering is that the defendant knew that the person at issue was or was about to be called as a witness in an action or proceeding.³³ The Independent

³² There are several other kinds of threats delineated in the statute, but none are applicable here.

³³ “[A]n action or proceeding’ includes any matter in which testimony could be taken before a court, body, agency, public servant or other person authorized by law to do so” New York Criminal Law, Third Ed., § 25.8. For purposes of the crime of Witness Tampering, an “action or proceeding” must have been initiated before the tampering occurred. Id.; see also People v. Uhrey, 169 Misc. 2d 1015, 1017-18 (Sup. Ct. Kings County 1996). The legislature added to the Penal Law the crimes of witness intimidation (which are inapplicable here as they require use of physical force or instilling fear of it to intimidate the witness) to correct the fact that the witness tampering statutes do not apply prior to a victim “acquiring witness status” through the commencement of a judicial process. See People v. Delgado, 143 A.D.2d 1033, 1034-35 (2d Dep’t 1988). Language differences between the witness tampering statute and other Penal Law sections, which, for example, make it criminal to tamper with physical evidence when it is to be used in “in an official proceeding or a prospective official proceeding” (N.Y. Penal Law § 215.40 (emphasis added)), support that a proceeding must have commenced to sustain a Witness Tampering charge.

Counsel found no evidence that the Governor knew that Booker was or was about to be called as a witness in an action or proceeding on February 7. It is true that the Governor called Booker the day before her scheduled appearance in Bronx County Family Court. However, Booker testified that she and the Governor did not discuss the order of protection, her Bronx County Family Court proceeding, or any other action or proceeding during their conversation on February 7.

The evidence shows that the Governor's first awareness of any possible order of protection was on February 4, 2010 when the Times Editor raised the issue. According to the Governor, he asked Johnson about this issue at some point before calling Booker, and Johnson denied that such an order existed.³⁴ There is no evidence that the Governor knew that a Family Court proceeding existed at the time of his conversation with Booker.

With respect to the second and third elements of Witness Tampering, there is no evidence that the Governor wrongfully induced or attempted to induce Booker not to appear in court the next day (or any other time) or to avoid testifying about the incident, or made any false statements or practiced any fraud or deceit during that call with the intent to affect Booker's testimony. According to both Booker and the Governor, the subject of the October 31 incident and related events, including Booker's pursuit of an order of protection or any court appearance, did not arise during the conversation. Rather, according to the separate sworn testimony of both Booker and the Governor, the conversation focused on the rumors that were then circulating concerning the Governor and the media's attempts to reach Booker in connection with those rumors. In addition, Booker testified that prior to speaking with the Governor on February 7 she had decided not to pursue the order of protection against Johnson.

³⁴ The Governor was not briefed about the police report and the temporary order of protection until February 17.

2. February 24, 2010 Contact

With respect to the Governor's February 24, 2010 voicemail left for Booker at approximately 9:40 p.m. and their subsequent conversation, the evidence fails to satisfy the second and third alternative elements of Witness Tampering.

With respect to the first element, Governor Paterson was aware that Booker was about to be called as a witness in an action or proceeding. Although the Governor's referral letter to the Attorney General is dated February 25, 2010, the Governor actually made the referral on February 24. Specifically, the Governor spoke with the Attorney General and authorized an e-mail announcing the referral to the OAG approximately one hour before he left Booker the voice mail message in question.

The Governor claimed that he did not view Booker as a witness at that time, because he believed that the investigation would center on contacts between the Executive Chamber and the State Police. However, the evidence reflects that the Governor understood (or should have understood) that Booker would be an important source of information in determining that issue.

With respect to the second and third elements of Witness Tampering, there is no evidence that the Governor wrongfully induced or attempted to induce Booker not to testify in this investigation, or knowingly made any false statement or practiced any fraud or deceit with the intent to affect Booker's testimony in this investigation. The February 24 voicemail recounted the Governor's view of the contents of his February 7 conversation with Booker. The only two parties to the February 7 conversation, the Governor and Booker, both testified that the voicemail on February 24 accurately reflected their conversation on February 7. Although Booker disagreed with the Governor's characterization on the voicemail that she had initiated the call (because she did so at what she understood to be the Governor's request), in a conversation

immediately following this voicemail, the Governor and Booker discussed and resolved this point.

The next day, on February 25, 2010, when Booker testified in this investigation, she provided testimony regarding both the February 7 and February 24 conversations that was consistent with the Governor's February 24 voicemail and their subsequent conversation. Friend 1's recollection of the February 24 call, which she overheard, is consistent with the accounts of both Booker and the Governor.

Thus, there is no evidence to sustain charges of Witness Tampering against the Governor, and no evidence warrants further analysis of any other criminal charges with respect to the Governor's conduct.³⁵

B. Clemmie Harris and Deneane Brown

In his testimony, Harris acknowledged that he asked Brown to steer Booker toward "non-interventionist" ways of resolving her dispute with Johnson, so as to help avoid any potential media attention. Harris further acknowledged that he may have told Brown to tell Booker not to go to court. However, there is no evidence to support a Witness Tampering charge against Harris.

First, most of these conversations have no bearing because they occurred prior to November 2, the day Booker initiated a proceeding in Bronx County Family Court. Second,

³⁵ In particular, there is no evidence to support Coercion or Solicitation charges against Governor Paterson with respect to his contacts with Booker and Brown. As discussed above, no evidence exists that the Governor compelled or induced Booker to testify falsely, refrain from testifying, or to do or refrain from doing anything she had a legal right to do. Further, there is no evidence that the Governor "instill[ed]" fear in Booker. With respect to the Governor's request that Brown ask Booker to make a statement for the press on February 16, while Brown perceived the Governor's request as an "instruction" rather than as a choice, and was concerned about maintaining her state employment, she testified that the Governor did not allude to her employment, and there is no evidence that Governor Paterson "instill[ed]" a fear that he would take any action against her if she did not comply. In addition, the Governor's actions do not constitute Solicitation because the investigation revealed no evidence that the Governor attempted to cause anyone to commit a crime.

with respect to communications on November 2, there was no evidence that Harris was aware that Booker's proceeding was pending in Bronx County Family Court on that date.

With respect to Brown, there is no evidence that she engaged in Witness Tampering. Brown testified that she did not convey Harris's requests to Booker, and Booker testified that Brown made no effort to dissuade her from proceeding with her Family Court matter.

C. Major Charles Day

There is no evidence that Day, or anyone else from the State Police, interfered with the NYPD's response to Booker's 911 calls on October 31, 2009. Communications between Day and Booker on October 31 were prior to the initiation of any action or proceeding. Day's communications with Booker on November 3 occurred while he was aware that there was a pending Bronx County Family Court proceeding. However, according to both Booker and Day, Day did not attempt to induce Booker not to appear in court or otherwise affect her testimony during that proceeding.

During this investigation, Day knowingly gave inaccurate testimony, but corrected his testimony during the investigation, which is a statutory defense to perjury and therefore precludes prosecution.³⁶

III. EXECUTIVE CHAMBER AND STATE POLICE INVOLVEMENT

A. Relationship Between Executive Chamber and the State Police

Evidence revealed potential risks inherent in the relationship between Executive Chamber staff on the one hand, and members of the ESD and the leadership of the State Police on the other. For instance:

³⁶ See N.Y. Penal Law § 210.25.

- Johnson called Day immediately following the October 31 incident, and Day then contacted Booker before the NYPD arrived. At the very least, evidence shows that Day inserted the State Police into a local law enforcement matter, simply because a member of the Executive Chamber was involved and had asked him for assistance. No policy or procedure required Day to do so.
- Day used resources of the State Police, such as the NYSPIN and eJustice systems, to attempt to determine whether Johnson was subject to arrest or service of process. It is a violation of State Police protocol and eJustice regulations to access a criminal history without a legitimate investigative purpose.
- Day admitted that Johnson's account of his conduct on October 31 could have subjected Johnson to arrest. Booker sought Day's assistance with securing Johnson's appearance in Family Court, but, according to Day, he did nothing more than advise Johnson to appear, and took Johnson's word that he was "handling" the matter. Day was entitled to make appropriate inquiries to ensure that an arrest did not occur in the presence of the Governor given the security issues that would raise. Yet neither Day nor his superiors notified the Executive Chamber that a Chamber employee who was the principal travel staffer for the Governor was the subject of a complaint of domestic violence that had triggered a call to the police.
- When called to testify, Day initially testified inaccurately "[t]o protect the Office of the Governor." ESD's protective function obviously does not require or authorize law enforcement officers to testify inaccurately.
- Superintendent Corbitt did not inform the Governor of the October 31 incident because he incorrectly believed Johnson to be above his reporting chain for relaying

information to the Governor, a chain that terminated with the Secretary to the Governor.

- Johnson asked Day and Corbitt for help in obtaining a pistol permit, and continued to press for it even after being told that the State Police was not the proper issuing authority. Although there was no evidence that Johnson's request was connected to the October 31 incident, his attempt to obtain a permit through State Police channels is evidence that he believed that his relationship with the State Police entitled him to seek favors from them.

The extent and seriousness of the conduct revealed by the evidence warrants further review of the reporting structure of ESD. Clearer policies should be promulgated regarding the scope of the ESD's official duties and the parameters of appropriate contact between the ESD and Executive Chamber staff.

B. Governor Paterson

The Governor was aware by November 1 that Johnson had been involved the night before in an "acrimonious" argument with his girlfriend at her home and that the police had been called. Beyond speaking to Johnson, the Governor did not inquire or ask others to inquire into the events of October 31. Although the Governor understood that Booker would be entitled to seek remedies such as an order of protection depending upon the nature of the domestic incident, the Governor did not ensure that the Executive Chamber made appropriate inquiry or took any appropriate action with respect to Johnson. Even after the Times asked the Governor on February 4, 2010 about an order of protection, the Governor did nothing to determine whether such an order existed, and chose not to ask Booker about it when he spoke with her on the telephone three days later. Instead, the Governor relied solely on Johnson as a basis to make

denials to the media. It is hard to reconcile this conduct with the Governor's expressed commitment to the cause of domestic violence prevention.

C. Clemmie Harris

Harris knew that Booker had alleged that the State Police had interfered with the NYPD response to the domestic incident between her and Johnson. Beyond speaking to Brown, Harris took no steps to determine whether Booker's allegation was founded. Harris testified that he chose not to speak to the State Police about the issue to avoid any appearance that Harris was trying to interfere in the domestic incident. However, Harris at least should have notified the Secretary to the Governor that an Executive Chamber employee had been involved in a police matter which entailed an allegation of State Police interference, so that the Secretary could make appropriate inquiry and take any necessary action.

Instead, Harris was more concerned about protecting the Governor from potential negative media coverage of a close aide's domestic dispute. Harris thus asked Deneane Brown to persuade Booker not to pursue the matter. Even if Harris believed the incident was not more than a serious argument, Harris's conduct – seeking to steer a domestic violence complainant away from the protections available to her by law – was inappropriate, especially for a public official with a law enforcement background as a former member of the State Police.

D. Record-Keeping Issues

The ESD distributes each day a list of the shifts to which ESD members will be assigned for the following day. However, the ESD does not record details of these assignments or whether the member actually performed the assigned duties each day.³⁷ Given this lack of

³⁷ Day testified that a desk officer in Albany would make handwritten notations of which officers were assigned to accompany the Governor on a given day on a paper copy of the Governor's schedule posted at the Albany command center. According to a protocol adopted in 2009, these paper records are maintained for one month and then destroyed.

written, retrospective documentation of the duties performed by ESD members on a given day, the only available evidence of such information was the ESD members recollections of the duties they performed. The ESD should consider maintaining clearer records going forward of the daily assignments actually performed by ESD members.

IV. NYPD INVOLVEMENT

The Independent Counsel concludes that there is no evidence of interference with the NYPD's response to Booker's apartment on October 31, 2009, either by the State Police or by Executive Chamber personnel. The officers of the 47th precinct who responded to the scene, the domestic violence officers, and the sergeants to whom these officers reported, demonstrated good faith both in their response to the incident and in their cooperation with this investigation. As the officers responding to the scene explained to Booker, the fact that Johnson worked for the Governor had no bearing on their response.

However, as set forth above, the response to the October 31, 2009 incident merits the attention of the NYPD.

V. BOOKER'S DIFFICULTY SERVING THE ORDER OF PROTECTION

Evidence shows that Booker encountered difficulties obtaining an order of protection against Johnson as a result of the October 31 incident. The Bronx County Family Court transcripts reflect confusion as to how Booker, unrepresented by counsel, could effectively serve, and prove that she had served, the order of protection on Johnson. Booker's experience merits the attention of the court system.

VI. COOPERATION

The Executive Chamber did not keep its public commitment to cooperate fully with the investigation that the Governor had referred to the OAG. Investigators learned inadvertently that

Counsel to the Governor was providing the Governor's personal counsel with the substance of the investigators' requests for documents and the responsive documents themselves. These documents included not only the Governor's files and communications, but also those of staff members. This conduct raised concerns. First, the Chamber seems to have shared materials without regard for the confidentiality or official nature of these materials. Second, once the Governor's personal counsel had custody of these materials, he was under no apparent constraint not to share these materials with counsel for other witnesses. Finally, based on these concerns, the Independent Counsel asked the Chamber to desist from this practice, but it is unclear whether the Chamber did so.

Furthermore, the Executive Chamber did produce voluminous documents, but the slow pace of production at times considerably delayed the progress of the investigation. The Executive Chamber reasonably attributed the delay at times to the press of state business and negotiation of the budget, but it does not appear that the production was given its due priority.