

**State of New York
Office of the Inspector General**



**An Investigation of an Allegation That Herbert Teitelbaum,
Executive Director of the Commission on Public Integrity,
Inappropriately Disclosed Confidential Commission
Information Related to
Its Troopergate Investigation**

and

**An Investigation of the Appropriateness of the Commission
on Public Integrity's Response Upon Receiving the
Allegations Against Its Executive Director**

May 13, 2009

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This report is issued in accordance with Executive Law § 53(4), which provides for public written reports of the Inspector General's investigations.

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I. EXECUTIVE SUMMARY

Introduction

On August 6, 2008, Albany County District Attorney P. David Soares referred to the Inspector General allegations that Commission on Public Integrity Executive Director Herbert Teitelbaum inappropriately disclosed confidential information related to the Commission's Troopergate investigation. Soares explained he was referring the matter because he and his staff were witnesses to events related to the allegations, and, therefore, conflicts of interest might exist if his office conducted the investigation. After meeting with District Attorney Soares on August 12, 2008, the Inspector General advised Soares that he was accepting the referral and initiating an investigation.

While investigating the allegations referred by Soares, the Inspector General learned that the same allegations, along with the recorded interviews of two key witnesses, had previously been referred by the District Attorney to the Commission in February 2008 for its review. Accordingly, the Inspector General expanded its investigation to examine what actions the Commission took in response to its receipt of this information.

In conducting its investigation, the Inspector General obtained sworn testimony from 19 witnesses, a number of whom were interviewed on more than one occasion. The Inspector General also examined records including policies, memoranda, internal and external correspondence, e-mails, and investigative documents provided by the Albany County District Attorney's Office, the Commission on Public Integrity, the Executive Chamber, and the Governor's Office of Regulatory Reform.

The Commission on Public Integrity and Its Troopergate Investigation

In September 2007, the New York State Ethics Commission and the New York Temporary State Commission on Lobbying merged into the New York State Commission on Public Integrity, which assumed the powers and duties of both entities. The Commission is charged with administering and enforcing the State's ethics and lobbying laws, anti-nepotism law, and laws pertaining to certain political activities and improper influence.

In October 2007, the Commission's 13 board members were sworn in, including Commission Chairman John Feerick. Herbert Teitelbaum was appointed by the Commission to the position of Executive Director on October 10, 2007. He transitioned from his role as Executive Director of the former Ethics Commission, which he undertook in July 2007. Feerick resigned from the Commission effective February 12, 2009.

Commission officials and staff are required to maintain the confidentiality of their investigations. Executive Law 94(12), which specifically applies to the Commission, categorically states that all Commission proceedings, including investigations, "shall be confidential." Commission officers and employees are also subject to the same ethical standards that apply to all state employees under Public Officers Law § 74. Specifically, Public Officers Law § 74(3)(c) provides that no state employee "should disclose confidential information

acquired by him in the course of his official duties nor use such information to further his personal interest.” Additionally, the Commission’s own policy reflects the clear intent that confidential matters, including investigative information, must remain confidential, and its employees have been required to sign confidentiality statements recognizing the prohibition on disclosing Commission information.

On July 25, 2007, the Commission on Public Integrity (then the Ethics Commission) began a preliminary inquiry and on August 15, 2007, commenced a full investigation of certain aspects of Troopergate. Briefly stated, the Troopergate scandal centered on accusations that officials in the Executive Chamber and the State Police improperly obtained and released confidential information regarding former State Senator Joseph Bruno’s travel records to the news media. The Attorney General’s Troopergate investigation examined the conduct of Executive Chamber and State Police officials, as well as Senator Bruno’s use of state aircraft. The Commission, in its investigation, sought to determine whether members of the Executive Chamber or State Police violated the Public Officers Law.

Leaks of information from the Commission during its Troopergate investigation were the source of numerous media reports appearing at the time. This situation prompted complaints to the Commission by the Executive Chamber, one of whose officials described the Commission as a “sieve” in his testimony to the Inspector General.

Feerick testified that he was “troubled by leaks by staff” and “[p]ossibly by commissioners.” Several steps were taken to prevent leaks, including obtaining confidentiality statements from staff. A special subcommittee within the Commission to handle the Troopergate investigation was also formed, in part to combat leaks. Ironically, this fact was among the improper disclosures of information revealed by the Inspector General’s investigation.

On July 24, 2008, the Commission on Public Integrity issued the findings of its Troopergate investigation in a Notice of Reasonable Cause. The Commission found reasonable cause that four senior officials, Secretary to the Governor Richard Baum, Assistant Secretary for Homeland Security William Howard, Communications Director Darren Dopp, and Acting State Police Superintendent Preston Felton had violated the Public Officers Law. The Commission found reasonable cause to believe that these officials had caused the State Police to gather information regarding Senator Bruno’s travel that would not have otherwise been gathered, to “advance the Governor’s and their own non-governmental interests.” Among its findings, the Commission criticized Felton for releasing information considered confidential under agency policy. Baum and Howard subsequently settled the charges against them when both admitted to violating Public Officers Law § 74(3)(h), which requires a state officer to act in a manner so as not to raise suspicion that he is likely to be engaged in acts violative of his trust. Dopp and Felton have contested the charges against them.

Teitelbaum’s Disclosure of Confidential Information to Robert Hermann in July and August 2007

The Inspector General determined that in late July through early August 2007, Herbert Teitelbaum, Executive Director of the Commission, disclosed confidential information related to

the Commission's Troopergate investigation to Robert Hermann, who was then Director of the Governor's Office of Regulatory Reform. Teitelbaum revealed this information to Hermann as his "back door channel" to convey advice, opinions and recommendations to the Executive Chamber regarding the Chamber's response to the Commission's document demands. In doing so, Teitelbaum apparently violated Executive Law and Public Officers Law provisions prohibiting disclosure of confidential information in the possession of the Commission.

Beginning July 27, 2007, the Commission and the Executive Chamber were engaged in discussions and disagreements regarding the production of documents demanded by the Commission and the assertion or potential assertion of privileges by the Chamber with respect to particular documents. These discussions took place between the Commission and five Executive Chamber officials specifically designated by then-Governor Spitzer as liaisons with agencies investigating the Troopergate allegations: Richard Rifkin, then-Special Counsel to the Governor; David Nocenti, then-Counsel to the Governor; Lloyd Constantine, then-Senior Advisor to the Governor; Peter Pope, then-Director of Policy; and Sean Patrick Maloney, then-First Deputy Secretary to the Governor. It is undisputed that Hermann was not a member of the Executive Chamber, much less an official authorized to be involved in these discussions.

The Inspector General found that from late July to early August 2007, Teitelbaum used Hermann, his close friend and former law partner who happened to be a member of the Governor's cabinet, as an unsanctioned conduit for imparting unsolicited opinions and advice to the Executive Chamber regarding the Spitzer administration's response to the Commission's demands for documents vital to its Troopergate investigation.

The Inspector General further found that Hermann initiated a number of contacts with Lloyd Constantine, a longtime acquaintance who had once worked for him, and on at least one occasion with Peter Pope. In these conversations, Constantine testified, Hermann informed Constantine "about conversations that he was having with Herb Teitelbaum about what was going on at the Ethics Commission." According to Constantine, based upon the information Hermann conveyed, the discussions between Hermann and Teitelbaum included "particular categories of documents, [and] particular privileges that the executive chamber was asserting or thinking of asserting." During this same period, Hermann placed an evening telephone call to Peter Pope and similarly commenced to inform him that "Teitelbaum wanted records quickly and a lot of records quickly," and that "[Teitelbaum] is going to want everything; documents [and] computer records."

Former Commission Investigative Counsel Meave Tooher, who had worked closely with Teitelbaum on the Troopergate investigation, confirmed Teitelbaum's use of Hermann as an unsanctioned conduit to the Executive Chamber. Tooher testified to the Inspector General that Teitelbaum confided to her at this same time, "early on" in the Commission's investigation, that he "was speaking to Bob Hermann with the understanding that Hermann . . . would bring information to the Chamber." Tooher testified:

[Teitelbaum] was trying to use Hermann as another way to encourage the chamber to get us documents . . . What he said to me was something along

the lines of, you know, I have backdoor channels to try and move this along.

Toohar further testified that upon hearing Teitelbaum's admission of using Hermann as his "backdoor channel" she told Teitelbaum, "You shouldn't be talking to anybody about the investigation."

Constantine's testimony of events is further corroborated by Rifkin and Maloney, who both testified to contemporaneous discussions with Constantine in which Constantine reported to them the information that Hermann indicated he had obtained from Teitelbaum. Rifkin testified that while he couldn't "recall the specifics . . . [Herman's disclosures] appeared to relate what was happening in the internal investigation of the Commission."

Concerned about the communications between Teitelbaum and Hermann and the nature of the information Hermann was conveying to him, Constantine sought guidance from Rifkin, who had formerly served as Executive Director of the Ethics Commission, and had been designated the primary liaison with the Commission. After discussing this with the other designated liaisons, Rifkin advised him that Hermann's actions were "not proper" and that Teitelbaum might be "improperly breaching the confidentiality of [the Commission's] investigation." Accordingly, Constantine testified, when Hermann next called, on August 8, 2007, to further impart information derived from Teitelbaum, Constantine ordered him to stop. Constantine recalled that the call came in while he was traveling on business in central New York, and telephone records suggest that it occurred at 8:49 p.m. Constantine testified he told Hermann, "I direct you to cease having these conversations with [Teitelbaum] and I direct you, even if you do continue, I do not want to hear about it." Hermann admitted that he had been admonished by Constantine to cease his conversations with Teitelbaum about the Commission's investigations because, Constantine told him, such communications were "wrong."

Further evincing Hermann's efforts to insinuate himself into the Commission's investigation of the Executive Chamber and the fact that he was in possession of confidential Commission information, is an unsolicited memorandum Hermann faxed to Constantine on July 26, 2007. In this memorandum, Hermann predicted that the Commission "will shortly revise its guidance [on the use of state aircraft], and that revision will be favorable to the Governor's pro-reform position." No public discussion of what new position the Commission would take on this subject occurred until weeks later, on August 16, 2007, when the Commission formally released an advisory opinion consistent with Hermann's prediction.

In his testimony to the Inspector General, Hermann admitted he relayed conversations he had with Teitelbaum to Constantine and Pope in the summer of 2007. While denying memory of his exact words, Hermann did not deny that he may have informed Constantine specifically that "Herb wants" the documents. Hermann further testified that he "had a clear-cut impression from Herb that he did not think that all the documents had been produced." Hermann also testified he told Teitelbaum on a number of occasions that the Executive Chamber asserted it had "produced all the documents you've requested."

Hermann claimed that his discussions with Teitelbaum concerned publicly available information being discussed in the media stemming from disputes between the Commission and the Executive Chamber over document production. Contrary to Hermann's claim, it is clear that in "mid-summer of 2007" and, more specifically, prior to August 8, 2007, when Constantine told Hermann to stop acting as an unauthorized go-between with the Commission, no reports of any such disputes had appeared in the press.

While denying memory of the specifics of their conversations, Teitelbaum admitted to the Inspector General that he and Hermann had discussed the Troopergate investigation, but claimed only in a "general way." Telephone records obtained by the Inspector General show that Teitelbaum and Hermann spoke frequently, exchanging at least 165 phone calls between the announcement of Teitelbaum's appointment to the Commission on June 20, 2007, and November 13, 2007, soon after the Albany County District Attorney confronted Teitelbaum with accusations he had leaked information. Although he denied utilizing Hermann to convey information to the Executive Chamber regarding the production of records, Teitelbaum also testified that it would have been entirely permissible for him to do so even without the clearance of the Commission itself. When asked by the Inspector General if he had discussed certain specific aspects of the Commission investigation with Hermann, Teitelbaum repeatedly claimed lack of memory and answered, "No, not that I remember." It is troubling that the Executive Director of the Commission on Public Integrity could not definitively state that he did not discuss confidential information with an unauthorized party in the most high-profile matter ever investigated by the Commission.

Hermann's Admission that He Conveyed Confidential Information Obtained from Teitelbaum to Lloyd Constantine on November 1, 2007, and Governor Spitzer on November 2, 2007

The Inspector General determined, and Hermann admitted, that on November 1, 2007, Hermann disclosed to Constantine confidential information he had obtained from Teitelbaum regarding the Commission's referral of possible perjury charges against Dopp to the Albany County District Attorney's Office and internal Commission discussions regarding the legal implications of the referral.

On October 17, 2007, Teitelbaum and Meave Tooher met with Albany County District Attorney P. David Soares to discuss inconsistencies between Dopp's October 11, 2007 sworn testimony to the Commission and his previous written statement to the Attorney General. Teitelbaum and Tooher presented Soares and his staff with the relevant portions of Dopp's testimony, and thereafter the entire Dopp testimony, for Soares's review of potential perjury or other criminal violations. The referral of Dopp's testimony to Soares was highly confidential and not even known by all the Commissioners. After a number of discussions between the District Attorney's office and the Commission, on November 1, 2007, Soares confirmed to Teitelbaum he would be pursuing a criminal investigation against Dopp. This decision was also confidential and not intended to be shared with any member of the Executive Chamber.

In the latter part of October 2007, the Commission internally deliberated the implications of the referral to the District Attorney. Specifically, as memorialized in an internal Commission

memorandum from Tooher to Teitelbaum dated October, 24, 2007, the Commission discussed certain Executive Chamber officials now appearing to be essential witnesses, and whether their appearances prior to public knowledge of the District Attorney's investigation created potential appearances of unfairness and self-incrimination issues that required a suspension of the Commission's investigation.

On the afternoon of November 1, 2007, the same day Soares informed Teitelbaum definitively of his intention to pursue the matter against Dopp, Hermann traveled from his Albany office to the Governor's New York City office. Hermann urgently summoned Constantine out of a meeting and revealed to him the Commission's referral of Dopp's testimony to the District Attorney and the substance of Dopp's testimony to the Commission, in which Dopp identified Pope and Nocenti as having influenced his possibly false statement to the Attorney General. In their meeting, Hermann also disclosed to Constantine other confidential information about the Commission's internal operations, including his understanding that the Commission, worried about leaks to the media, had created a special subcommittee to deal with the Troopergate investigation. Hermann correctly identified several subcommittee members and asked Constantine not to identify him as the source of the information.

Constantine advised Governor Spitzer of what Hermann had revealed, and that Hermann was the source. He also so advised Pope, Maloney, Nocenti, and Rifkin, with whom he regularly discussed Troopergate matters as part of their responsibilities as designated liaisons with investigative entities. On November 2, 2007, Hermann himself discussed with Spitzer the District Attorney's investigation, indicating also that a conflict existed with Pope and Nocenti representing the Governor.

As to the source of the information, Hermann, in his testimony to the Inspector General, admitted that he informed Constantine, "I had come upon it from Herb [Teitelbaum]." Significantly, Hermann's disclosures went beyond the fact of the Commission's referral to the district attorney, and included the legal implications regarding Pope and Nocenti. In fact, the information that Hermann disclosed virtually repeated the details and legal analysis contained in Tooher's memorandum to Teitelbaum of October 24, 2007. In describing his disclosures to Constantine and Spitzer, Hermann conceded that this information was not known outside the Commission and, in regard to the Executive Chamber, "they were unaware of it and unfortunately I was aware of it."

As time evolved, Hermann offered varying, inconsistent accounts of how he obtained the information about the referral to the District Attorney. During his initial discussions with Constantine and Governor Spitzer, and a subsequent discussion with Rifkin, Hermann never mentioned having obtained the information other than directly from Teitelbaum. In a second conversation with Constantine in early November, when confronted with the possible impact the revelation of the disclosure would have on his longtime friend Teitelbaum, Hermann still offered no alternative explanation of how he obtained the information. Rifkin testified about his conversation with Hermann on November 8, 2007. Asked by the Inspector General if Hermann denied that Teitelbaum had provided the information to him, Rifkin responded, "There was no denial."

Constantine testified that when he told Hermann that he had reported their previous conversation to Governor Spitzer, identifying Hermann as the source of the information and inquiring why Hermann did not wish his identity revealed, Hermann said, “I know Herb Teitelbaum . . . I know him really well and I know what he’s capable of doing when he’s backed into a corner.” Constantine said that when he asked Hermann to explain, Hermann answered, “[Teitelbaum is] capable of -- of claiming that he didn’t tell me any of this stuff, that I . . . came into possession of it some other way . . . like I broke into his . . . apartment and . . . saw it on his desk or . . . in other words, he didn’t tell it to me, I ‘stole the information.’” Hermann testified that “maybe” he did make these statements to Constantine.

At no point between November 1, 2007, and February 2008, did Hermann ever claim to the Executive Chamber that he had come upon the information regarding the Commission’s referral to the District Attorney inadvertently. It was not until February 7, 2008, three months after his disclosure to Constantine, that Hermann first mentioned to District Attorney Soares that he had acquired the confidential information by viewing brief notes handwritten by Teitelbaum diagonally across a yellow pad to the effect that the District Attorney was “interested” in “inconsistencies” in Dopp’s statements. Hermann claimed to have been able to deduce from this fragment that the Commission had referred to the District Attorney a possible perjury prosecution against Dopp based on discrepancies between Dopp’s testimony to the Commission and his prior statement to the Attorney General.

Hermann also maintained he could further deduce from Teitelbaum’s mention of a “roadblock,” together with his glance at the sentence fragment, that the Chamber officials present when Dopp signed his affidavit were now conflicted from representing the Governor, and that possible self-incrimination implications existed and required suspension or delay of the Commission’s investigation. Even later, when pressed by Constantine about how he had acquired the confidential information, Hermann offered yet another variant account, purporting to have both viewed the notes on the yellow pad and then to have been directly told of the referral by Teitelbaum. The substance of the yellow pad story, its belated telling, and its evolution over time demonstrate that it is not credible.

It is undisputed that Hermann failed to provide the yellow pad account to Constantine, Governor Spitzer, Rifkin, or any other Executive Chamber official in November 2007. Although Hermann claimed to have informed Teitelbaum of this account in November 2007, which he said angered Teitelbaum, Teitelbaum denied that Hermann ever told him the yellow pad story. It is inconceivable that if Teitelbaum had been informed by Hermann of the yellow pad story, he would have withheld it from Feerick when Feerick and he discussed the matter in November 2007. It equally defies reason to believe that Hermann would not have provided the Executive Chamber with this information, which would have exonerated his longtime friend.

Hermann acknowledged in his testimony to the Inspector General that Teitelbaum was the only Commission member with whom he discussed the Commission’s Troopergate investigation. The Inspector General also obtained affirmations from Commission members and staff attesting to their lack of any communication with Hermann concerning the Troopergate matter.

Teitelbaum, in his testimony to the Inspector General, denied disclosing to Hermann the Commission's referral to the District Attorney and disclaimed any recollection of whether he had disclosed other confidential information about the Commission or its investigation.

The Commission's Failure to Investigate Allegations Against Teitelbaum

The Inspector General determined that the Commission failed to investigate allegations that Commission Executive Director Herbert Teitelbaum had disclosed confidential information regarding the Commission's Troopergate investigation.

The day after Hermann disclosed to him the Commission's referral to the District Attorney, Constantine, again troubled by the confidential nature of the information, notified Rifkin, Pope, Nocenti, and Maloney. Rifkin, after consulting with an outside attorney specializing in ethics and consistent with the Executive Chamber's ethical obligations, contacted Soares. A meeting with Soares followed, and Rifkin notified him that the Executive Chamber unwittingly had been made aware of his investigation as a result of Teitelbaum's disclosures to Hermann, who then had informed Constantine. When Soares confronted Teitelbaum with the allegation, Teitelbaum denied it.

Rifkin intended to directly inform Feerick of Teitelbaum's disclosures, but refrained from doing so only upon receiving assurance from Hermann that Teitelbaum himself would inform Feerick of his misconduct. In a contemporaneous memorandum, Rifkin memorialized Hermann's assurance that "Teitelbaum would, in fact, reveal his leak of the information to Feerick." Maloney, too, testified as to why the Executive Chamber attorneys had agreed to let Teitelbaum himself speak to Feerick. Maloney testified, "Had I learned that Teitelbaum had denied being the source, I think we would have gone directly to Feerick to set the record straight." Hermann testified it was his understanding that Teitelbaum would not admit wrongdoing to Feerick, but "simply was going to tell [Feerick] what happened." As noted above, during his conversation with Rifkin, Hermann never denied that Teitelbaum was the source of the information.

Around November 12, 2007, Teitelbaum met with Feerick and informed him of the allegation against him. However, rather than admit to Feerick that he was the source of the leak, as Hermann assured Rifkin he would, Teitelbaum told Feerick that he had confronted Hermann about the allegation, but that Hermann denied it. While Hermann had falsely denied to Teitelbaum that he was the source of the information, Feerick accepted Teitelbaum's account without seeking additional information from Hermann, Constantine or other Chamber attorneys. After hearing Teitelbaum's disclaimer, Feerick took no further action. This represented the first failure of the Commission to investigate the allegations against Teitelbaum.

Early in February 2008, Soares, having concluded his Troopergate investigation, turned his attention to Hermann's and Teitelbaum's disclosures of the District Attorney's acceptance of the Commission's referral regarding Dopp's statements. Soares took statements from Hermann on February 7, 2008, and from Constantine on February 25, 2008. On the evening of the following day, February 26, 2008, Soares played recordings of Hermann's and Constantine's

statements for Feerick, two other commissioners, and Commission General Counsel Barry Ginsberg.

Although Constantine's statement to the District Attorney raised serious allegations that Teitelbaum had disclosed confidential Commission information to Hermann, the Commission did no more than perfunctorily question Teitelbaum and accepted his denial. In a February 28, 2008, letter, Feerick advised Soares that the Commission still had the "highest confidence" in Teitelbaum's ability to lead the Commission's Troopergate investigation. This was the second failure of the Commission to investigate Teitelbaum.

In defending the Commission's lack of any true investigation, Feerick testified to the Inspector General that "there was no exchange of confidential information . . . from our Commission to the Executive Chamber." This was clearly inaccurate, as Constantine's statement to the District Attorney (and provided to the Commission) was that Hermann had disclosed the Commission's perjury referral, which was not only confidential but not even known to all Commission members. Similarly, the identity of members of the Commission's Troopergate subcommittee, which Hermann also disclosed to Constantine, was, by Feerick's own testimony, not publicly known. Given the allegations and Constantine's testimony, it is puzzling that a determination not to investigate the allegations against Teitelbaum could be reached without further inquiring of Constantine, Hermann, and other relevant witnesses.

Feerick also asserted to the Inspector General that the Commission had heard nothing in the District Attorney's recorded interviews of Hermann and Constantine that was "conclusive" or that had "compromise[d]" the Commission's investigation, thereby warranting further investigation by the Commission. Feerick also noted that Teitelbaum enjoyed a reputation for integrity, as did Hermann. The Commission's excuses for not mounting an investigation are unconvincing. It is impossible to know where an investigation will lead prior to actually conducting the inquiry, as it is the very purpose of an investigation to gather conclusive evidence. At the time it received the allegations against Teitelbaum, the Commission was still investigating Governor Spitzer's role in the underlying Troopergate matter and could not know the possible ramifications of Teitelbaum's disclosure of the Commission's referral to the District Attorney. In fact, the District Attorney subsequently launched an investigation into the actions of Executive Chamber staff in regard to Dopp's affidavit.

The Inspector General determined that upon its decision to conduct no further examination of the allegations against Teitelbaum in February 2008, the Commission considered the matter closed and that no further action would be taken by anyone. According to Feerick, Soares informed him, "I've done my duty, now I leave it to you to decide what you think is appropriate, words to that effect."

A third failure to investigate the allegation against Teitelbaum also occurred in the summer of 2008 when, motivated by District Attorney Soares's decision to publicly release the information he had gathered, Commission Counsel Barry Ginsberg telephoned Soares's office and verbally requested an opportunity to re-review the District Attorney's evidence. The District Attorney asked that the Commission place its request in writing with an explanation of the basis for its renewed interest after it had summarily dismissed the same the preceding February. The

Commission chose not to put its request in writing or supply an explanation, and the Commission took no further action.

The Commission rejected another opportunity to review the allegations in August 2008. Commissioner Richard Emery testified that after the Commission released its report on July 24, 2008, he learned from Constantine that Emery had not been made aware of all the information in the possession of Feerick and members of the Commission's Troopergate subcommittee. Emery called for the Commission, at its August 2008 meeting, to re-visit the allegations against Teitelbaum and conduct a full investigation, perhaps by engaging an outside party. The Commission again declined to investigate. This represented the Commission's fourth failure to investigate the allegations against Teitelbaum.

The Commission's Failure to Fully Cooperate with the Inspector General's Investigation

The Inspector General determined that the Commission's response to various requests by the Inspector General for documents was neither prompt, complete, nor without obstacles, and stood in stark contrast to its demands and expectations during its own Troopergate investigation.

While the Commission was quick to criticize the Spitzer administration for incomplete and belated production of records during its Troopergate investigation, it resisted the Inspector General's requests for records. For example, the Inspector General initially was advised that no notes written by Teitelbaum existed; later, after discovering there were extant notes, the Inspector General was told the notes had not been produced because they were not relevant. Eventually, the notes were provided. After receiving what purported to be all of Meave Tooher's notes, the Inspector General learned during Tooher's testimony that she had produced additional notes. These, too, were eventually provided.

In another example, the Commission refused to search its own file of newspaper clippings, as requested by the Inspector General, to confirm that information disclosed by Hermann was not public knowledge at the time of the disclosure, but during its Troopergate investigation the Commission requested that Governor Spitzer, himself, produce newspaper articles to support a statement he had made. On at least two occasions, the Inspector General had to threaten the service of a subpoena, and directly contact Feerick, before records were produced.

Both Teitelbaum and Ginsberg declined to answer basic questions asked by the Inspector General relating to the confidentiality of Commission proceedings. The Inspector General submits that both officials should have been able to articulate a clear understanding of the state confidentiality laws, in particular the applicability of the laws to the Commission.

Conclusion

The Commission is responsible for enforcing the State's ethics laws to ensure public trust and confidence in government. In carrying out this duty, Commission members and staff must adhere to the most exacting standards of integrity, especially so in a matter such as its

Troopergate investigation, which examined alleged misconduct by officials at the highest levels of government.

The Inspector General determined that Commission on Public Integrity Executive Director Herbert Teitelbaum disclosed confidential information regarding the Commission's Troopergate investigation to Robert Hermann, who was not authorized to be in possession of such information. Teitelbaum's actions apparently violated the confidentiality provisions of the Executive Law and the Public Officers Law, as well as Commission policy intended to safeguard the confidentiality of investigations. Regardless of his possible motives in disclosing confidential information to Hermann, Teitelbaum undermined public trust in the Commission's Troopergate investigation and compromised the independence of the Commission.

The Inspector General is also troubled by the fact that when the Inspector General directed numerous specific questions to Teitelbaum regarding disclosure to Hermann of confidential information, Teitelbaum equivocated. The Inspector General and the public to whom it reports expect and deserve straightforward, unambiguous denials when posing such questions.

Hermann, for his part, insinuated himself into the Troopergate investigation, possessing and relaying confidential information to which he had no authorized access. By his own account a "sophisticated" attorney, Hermann also displayed extremely poor judgment by engaging in actions that constituted a serious disservice to state government. Hermann also apparently violated the Public Officers Law.

The Inspector General finds inexcusable the failure of the Commission to conduct a proper investigation when confronted with allegations, and evidence, that Teitelbaum had disclosed confidential information about the Troopergate matter. The Commission had multiple opportunities to conduct such an investigation, and fell short on each occasion.

II. INTRODUCTION AND BACKGROUND

Allegations

1) The Original Allegation Referred by Albany County District Attorney Soares That Herbert Teitelbaum, Executive Director of the Commission on Public Integrity, Inappropriately Disclosed Confidential Commission Information Related to Its Troopergate Investigation

By letter dated August 6, 2008, Albany County District Attorney P. David Soares referred to the Inspector General an investigation his office had commenced of allegations that Commission on Public Integrity (“the Commission”) Executive Director Herbert Teitelbaum “inappropriately released confidential information” related to the Commission’s “Troopergate” investigation. Soares continued: “This matter also involves potentially improper actions on the part of Robert Hermann, the Director of the Governor’s Office of Regulatory Reform.”¹

Accompanying the District Attorney’s letter were transcripts and recordings of unsworn examinations he had conducted of Robert Hermann on February 7, 2008, and of Lloyd Constantine on February 25, 2008; a transcript and recording of a sworn examination of Peter Pope on March 6, 2008; and notes of an interview conducted in March 2008, of Richard Rifkin. The District Attorney explained that he was referring the investigation to the Inspector General because he and two assistant district attorneys had been involved in the investigation and a conflict might exist with their continued involvement in the matter.

Receipt of such letters and materials was followed by a meeting the Inspector General held with the District Attorney and staff on August 12, 2008. Shortly thereafter, the Inspector General informed the District Attorney he was accepting the referral and initiating an investigation.

2) Expansion of the Investigation: The Appropriateness of the Commission on Public Integrity’s Response Upon Receiving the Allegations Against Its Executive Director

While investigating the original allegation referred by District Attorney Soares, the Inspector General learned that the identical allegations and the recordings of Hermann’s and Constantine’s examinations had previously been referred to the Commission on Public Integrity in February 2008. Accordingly, it became necessary for the Inspector General to determine what action, if any, the Commission on Public Integrity took in response to its receipt of such information. Additionally, while it was not the Inspector General’s intention to review the Commission’s investigation of the “Troopergate” matter, as the Inspector General’s investigation proceeded, and as the Inspector General encountered resistance from the Commission, it became appropriate to compare the Commission’s response to the Inspector General’s investigation with the demands the Commission had made upon the Spitzer administration during its Troopergate investigation.

¹ See Appendix A.

Commission on Public Integrity and Its Predecessor, the Ethics Commission

The Ethics Commission was established in 1987, with the Ethics in Government Act.² The Ethics Commission's purpose was to "restore the public's trust and confidence in government through the prevention of corruption, favoritism, undue influence and abuses of official position."³ The Ethics Commission's duties included receiving and investigating complaints alleging violations of Public Officers Law §§73, 73-a, and 74; rendering advisory opinions; processing and maintaining financial disclosure statements; and issuing rules and regulations to implement and enforce the law under its jurisdiction.⁴

The Ethics Commission consisted of five members appointed by the governor: three nominated by the governor, and one each nominated by the state comptroller and the attorney general. The governor designated the chair of the commission and the commission appointed an executive director.

In September 2007, the Ethics Commission and the New York Temporary State Commission on Lobbying merged into the New York State Commission on Public Integrity under the Public Employee Ethics Reform Act of 2007.⁵ The Commission on Public Integrity assumed the respective powers, duties and functions of both entities and its powers were expanded to include the assessment of fines under Public Officers Law §74, the Code of Ethics, and the receipt of complaints under Civil Service Law §107, among other changes. (At times in this report, both the Ethics Commission and its successor, the Commission on Public Integrity, will be referred to as "the Commission.") The Commission is charged with administering and enforcing the State's ethics and lobbying laws, anti-nepotism laws, and laws pertaining to certain political activities and improper influence, in order to ensure public trust and confidence in government.⁶

The Commission consists of thirteen members: seven members, including the chair, are selected by the governor and six members are appointed by the governor on the recommendation of the attorney general, the comptroller, and the four legislative leaders.⁷ In October 2007, the 13 Commission board members were sworn in: Chairman John Feerick, Daniel Alonso, Virginia Apuzzo (on the recommendation of Assembly Speaker Sheldon Silver), John Brickman (on the recommendation of State Comptroller Thomas DiNapoli), Andrew Celli, Jr., Richard Emery (on the recommendation of then-Senate Minority Leader Malcolm Smith), Daniel French (on the recommendation of Attorney General Andrew Cuomo), Robert Giuffra, Jr., David Gruenberg (on the recommendation of former Senator Joseph Bruno), James King, Howard Levine, Loretta Lynch and John Mitchell (on the recommendation of then-Assembly Minority Leader James Tedisco).⁸ Herbert Teitelbaum was appointed Executive Director of the Ethics Commission in

² Laws of 1987, Chapter 813.

³ New York State Ethics Commission, "Public Officers Law," Jan. 2000.

⁴ <http://www.dos.state.ny.us/ethc/eisg.html>.

⁵ Executive Law § 94.

⁶ <http://www.nyintegrity.org/about/mission.html>.

⁷ Executive Law § 94.

⁸ See Appendix B.

July 2007, and was reappointed executive director of the Commission on Public Integrity on October 10, 2007.

Confidentiality of Commission Investigations

The confidentiality of information in the Commission's possession is mandated by two statutory sources: one statute which specifically applies to the Commission and another which governs the conduct of all state agencies and agency employees, including employees of the Commission.

The Commission was created and operates under Executive Law § 94, which establishes its functions, jurisdiction and duties. In regard to disclosure of information, Executive Law § 94(12)(a) categorically states:

If the commission receives a sworn complaint alleging a violation of section seventy-three, seventy-three-a or seventy-four of the public officers law, section one hundred seven of the civil service law or article one-A of the legislative law by a person or entity subject to the jurisdiction of the commission, or if a reporting individual has filed a statement which reveals a possible violation of these provisions, *or if the commission determines on its own initiative to investigate a possible violation*, the commission shall notify the individual in writing, describe the possible or alleged violation of such laws and provide the person with a fifteen day period in which to submit a written response setting forth information relating to the activities cited as a possible or alleged violation of law. If the commission thereafter makes a determination that further inquiry is justified, it shall give the individual an opportunity to be heard. The commission shall also inform the individual of its rules regarding the conduct of adjudicatory proceedings and appeals and the due process procedural mechanisms available to such individual. If the commission determines at any stage of the proceeding, that there is no violation or that any potential conflict of interest violation has been rectified, it shall so advise the individual and the complainant, if any. *All of the foregoing proceedings shall be confidential* (emphasis added).

In addition to the aforementioned statute which specifically applies to the Commission, the Commission's officers and employees, are also subject to the same ethical standards that apply to all state employees and are contained in Public Officers Law § 74. Relevant to this report, Public Officers Law § 74(3)(c) provides:

No officer or employee of a state agency, member of the legislature or legislative employee should disclose confidential information acquired by him in the course of his official duties nor use such information to further his personal interests.

Public Officers Law § 74(3)(h) also provides:

An officer or employee of a state agency, member of the legislature or legislative employee should endeavor to pursue a course of conduct which will not raise suspicion among the public that he is likely to be engaged in acts that are in violation of his trust.

Supplementing these statutes, state agencies such as the Commission may also promulgate their own policies regarding the disclosure of information that are designed for their particular functions and needs. As discussed later in this report, under the Commission's own interpretation of the Public Officers Law's prohibition on dissemination of agency information, these policies are directly relevant to establishing what is considered "confidential" under the Public Officers Law. The Commission's policy is stated in "confidentiality agreements" signed by its staff. These agreements disclose the Commission's plain intent to apply a sweeping definition of the word "confidential," and to impose a categorical ban on disclosure to any person outside the Commission. Specifically, one variation of the the agreement states that confidential matters "include, but are not limited to, identity of callers, requests for advisory opinions submitted to the Commission, Advisory Opinions issued by the Commission, informal guidance issued by the Commission to callers, certain information contained in the Annual Statements of Financial Disclosure which are filed with the Commission, complaints which are received by the Commission alleging violations of the State Ethics Law, interviews of subjects of investigations and witnesses, and other documentary information discovered during investigations." Commission employees must acknowledge that "preserving this confidentiality is absolutely mandatory"; they must further agree that they "will not in any way discuss or disclose my work or other confidential information with anyone outside of the workplace, including but not limited to, current or future employers, family, friends, colleagues, and the media" (emphasis in original).

The Troopergate Scandal

The Troopergate affair has been the subject of extensive media coverage as well as being chronicled in three reports by different governmental agencies. Although the Inspector General's investigation does not relate directly to the facts underlying the Troopergate scandal, a brief summary of its history is warranted.

On July 1, 2007, the *Albany Times Union* reported that then-Senate Majority Leader Joseph Bruno was abusing taxpayer dollars by utilizing a state helicopter under the control of the New York Division of State Police for the purposes of attending political and fundraising events. Soon thereafter, media accounts appeared accusing individuals on Governor Spitzer's staff and the State Police of having improperly obtained and released Senator Bruno's travel records to the media in an effort to impugn him. The media began referring to the incident as "Troopergate."

Both the New York State Office of the Attorney General and the Inspector General immediately commenced investigations of the matter. The Attorney General issued its report on July 23, 2007. In this report, the Attorney General was highly critical of the actions of Governor Spitzer's staff and the State Police for deviating from normal procedure in an effort to embarrass

Senator Bruno, thus impairing the independence and integrity of the State Police. Then-Inspector General Kristine Hamann concurred with the Attorney General's report. As a result of the Attorney General's report, Spitzer suspended Communications Director Darren Dopp and reassigned Assistant Deputy for Homeland Security William Howard.

Immediately after release of the Attorney General's report, newspapers began to report that two central Executive Chamber officials, Communications Director Darren Dopp and Secretary to the Governor Richard Baum, had refused to testify before the Attorney General. Instead, it was learned that Dopp and Baum had submitted brief, written affidavits. Baum denied any involvement in the Troopergate matter, and Dopp apologized for his actions and any appearance of impropriety occasioned thereby.

On July 25, 2007, two days after the Attorney General issued his report, the Ethics Commission (the precursor to the Commission on Public Integrity) undertook a preliminary inquiry, and on August 15, 2007, commenced a full investigation to determine whether the Troopergate incident involved violations of the Public Officers Law. Also in August, the Senate Committee on Investigations and Governmental Operations commenced a series of hearings focused on the investigations of the Attorney General and the Inspector General.

Albany County District Attorney P. David Soares also commenced an investigation to determine if criminal charges were warranted against any state officials involved in the Troopergate matter, resulting in a September 21, 2007, report in which he found no criminal conduct on the part of the Executive Chamber officials.

Directly relevant to this investigation, as discussed in detail below, in October 2007, the Commission on Public Integrity (which assumed the responsibilities of the Ethics Commission including the Troopergate investigation) referred the Troopergate matter to District Attorney Soares to investigate whether Dopp had committed perjury. This referral was based upon discrepancies between Dopp's July 22, 2007, affidavit to the Attorney General and his October 11, 2007, testimony before the Commission.⁹

Pursuant to the Commission's referral, the District Attorney opened a second investigation to determine if a perjury prosecution against Dopp was warranted. Based upon Dopp's account, the District Attorney also examined whether any Executive Chamber personnel present on July 22, 2007, when the affidavit was signed, illegally coerced Dopp to sign it or solicited Dopp to perjure himself. In a March 28, 2008, report detailing his investigation and findings (entitled "Investigation D"), the District Attorney recounted that he had determined that

⁹ The question of whether the forwarding by the Commission of Dopp's testimony to the District Attorney constituted a "referral" became an issue of sensitivity with the Commission during the Inspector General's investigation. According to the attorney representing the Commission during the Inspector General's investigation, an actual "referral" by the Commission requires concurrence by a majority of the commissioners – which did not occur here. The Commission therefore contended that it forwarded the testimony to the District Attorney for "consultation." Regardless of how the Commission wishes to characterize its action, the result was the same: the Commission requested the District Attorney to investigate the Dopp matter for possible perjury or other criminal violation. The use of the word "referral" in this report is the generic definition, not the Commission's legal definition.

Dopp had not committed perjury but may have committed two misdemeanors. Soares found no criminal conduct on behalf of the other Executive Chamber officials present. The District Attorney's report further stated that after being approached by Dopp's attorney with information that Governor Spitzer "was more involved in releasing Senator Bruno's travel records to the media than previously known," the District Attorney had granted Dopp immunity from prosecution in order to obtain Dopp's full testimony regarding the Troopergate affair. After detailing Dopp and Governor Spitzer's accounts, the District Attorney reiterated his finding that there was no evidence of criminal conduct and, as Governor Spitzer had resigned from office, found that a Grand Jury proceeding was not legally justified.

While its and the District Attorney's investigations were pending, on August 16, 2007, the Commission issued an advisory opinion (07-03) regarding the use of state aircraft, amending a prior informal opinion of the Ethics Commission and emphasizing that state aircraft should be used only when the travel is predominantly for official state business.

On July 24, 2008, the Commission issued the findings of its investigation in a Notice of Reasonable Cause, a document constituting a finding by the Commission that sufficient evidence exists for it to proceed to a hearing against an individual for a violation of the Public Officers Law. The Commission found reasonable cause that four senior officials, Richard Baum, William Howard, Acting State Police Superintendent Preston Felton, and Darren Dopp, had violated the Public Officers Law. The Commission found reasonable cause to believe that these officials had caused the State Police to gather information regarding Senator Bruno's travel that would not have otherwise been gathered to "advance the Governor's and their own non-governmental interests." The Commission also found that Felton violated the Public Officers Law prohibition on disclosing "confidential information" by releasing Senator Bruno's travel records to the Executive Chamber knowing (or while he should have known) that such information would be released to the public.

In the spring of 2008, the State Commission on Investigation announced that it would investigate the duplicative nature of the prior investigations. The Commission on Investigation's report, released on January 22, 2009, recommended merger of the state's watchdog agencies.

Scope and Methodology

To investigate the allegations cited on page 12 of this report, the Inspector General first conducted field interviews, and then took sworn testimony from 19 witnesses. A number of witnesses were examined on more than one occasion, for a total of 30 such examinations, all of which were stenographically recorded. The Inspector General personally examined all but one of the sworn witnesses and conducted only the first of Robert Hermann's two examinations and the first of Linda Griggs's two examinations. All witnesses, but one, were examined at the Inspector General's offices in Albany or New York City.¹⁰ The Inspector General also examined records including policies, memoranda, internal and external correspondence, e-mails, and investigative documents provided by the Albany County District Attorney, the Commission

¹⁰ Because of the extensive news coverage of his activities, the examinations of former Governor Eliot Spitzer were conducted at his business office.

on Public Integrity, the Executive Chamber, and the Governor's Office of Regulatory Reform. Following Hermann and Teitelbaum's examinations, their attorneys forwarded letters to the Inspector General offering information to supplement their clients' testimony. The Inspector General considered these letters as well as all other evidence.

This report relates to both the original allegations referred by the Albany County District Attorney and the Inspector General's investigation of the Commission on Public Integrity. Except as deemed integral to such investigations, the report does not relate to the underlying Troopergate allegations.

Accompanying the narrative are relevant quotations of sworn testimony elicited during the investigation. The use of actual quotations is designed to demonstrate demeanor as well as responses of witnesses and to avoid the possibility of mischaracterizing witness answers.

Persons Referenced in the Report

The names, titles, and affiliations of the witnesses who have testified during this investigation are set forth below, as are the names of other individuals who have been mentioned during testimony. References contained in the report to witness testimony will be followed by the initials of the witness and the page number(s) of the transcript citation. At times, transcripts of interviews conducted by the Albany County District Attorney are cited, and noted as such. For ease of reference, a separate listing of the witnesses' initials, in alphabetical order by first name, is also set forth below.

Names of Witnesses Who Have Testified

NEW YORK STATE COMMISSION ON PUBLIC INTEGRITY

- Herbert Teitelbaum, Executive Director (HT)
- John Feerick, former Chair (JF)
- Barry Ginsberg, General Counsel (BG)
- Meave Tooher, former Investigative Counsel (MT)
- Richard Emery, Commissioner (RE)

NEW YORK STATE GOVERNOR'S OFFICE OF REGULATORY REFORM

- Robert Hermann, former Director (RH)

ALBANY COUNTY OFFICE OF THE DISTRICT ATTORNEY

- P. David Soares, District Attorney (DS)
- Linda Griggs, Assistant District Attorney (LG)

NEW YORK STATE EXECUTIVE CHAMBER

- Eliot Spitzer, former Governor (ES)

Designated liaisons with various “Troopergate” investigating bodies:

- Lloyd Constantine, former Senior Advisor to the Governor (LC)
- Richard Rifkin, former Special Counsel to the Governor (RR)
- Peter Pope, former Director of Policy (PP)
- Sean Patrick Maloney, former First Deputy Secretary to the Governor (SPM)
- David Nocenti, former Counsel to the Governor (DN)

Other Executive Chamber attorneys:

- Terry Brown Clemons, former First Assistant Counsel to Governor Spitzer and former Acting Counsel to Governor Paterson (TBC)
- Steve Krantz, Assistant Counsel to the Governor (SK)

Other Executive Chamber employees:

- Darren Dopp, former Communications Director (DD)
- Daniel Doktori, former Deputy Assistant Director of Policy (D)

OTHER

- Michele Hirshman, attorney for Eliot Spitzer (MH)

Additional Names That Have Been Mentioned

NEW YORK STATE COMMISSION ON PUBLIC INTEGRITY

- Loretta Lynch, Commissioner and Acting Chair
- Daniel Alonso, Commissioner
- Andrew Celli, Jr., Commissioner
- Daniel French, Commissioner
- Robert Giuffra, Jr., Commissioner
- David Gruenberg, Commissioner
- James King, Commissioner
- Howard Levine, Commissioner
- John Mitchell, Commissioner
- Joan Sullivan, former Associate Counsel
- Walter Ayres, Public Information Officer

Alphabetical Listing (by First Name) of Witnesses

BG – Barry Ginsberg

D – Daniel Doktori

DD – Darren Dopp

DN – David Nocenti

DS – David Soares

ES – Eliot Spitzer

HT – Herbert Teitelbaum

JF – John Feerick

LG – Linda Griggs

LC – Lloyd Constantine

MT – Meave Tooher

MH – Michele Hirshman

PP – Peter Pope

RE – Richard Emery

RR – Richard Rifkin

RH – Robert Hermann

SPM – Sean Patrick Maloney

SK – Steve Krantz

TBC – Terryl Brown Clemons

III. INVESTIGATION OF THE ALLEGATION THAT HERBERT TEITELBAUM, EXECUTIVE DIRECTOR OF THE COMMISSION ON PUBLIC INTEGRITY, INAPPROPRIATELY DISCLOSED CONFIDENTIAL INFORMATION RELATED TO THE COMMISSION'S TROOPERGATE INVESTIGATION

Robert Hermann, Herbert Teitelbaum, and Other Major Figures

Robert Hermann, Director of the Governor's Office of Regulatory Reform

Robert Hermann attended Dartmouth College and Yale Law School. Hermann was first employed as an associate at Skadden, Arps, and later joined the Legal Aid Society. While at Skadden, Arps, Hermann interviewed Herbert Teitelbaum for a position. Although Hermann departed the firm before Teitelbaum was employed, the two began a friendship.

Following his departure from Skadden, Arps, Hermann served as an Assistant Professor at New York University School of Law and the legal director of the Puerto Rican Legal Defense and Education Fund, a position that was formerly held by Teitelbaum. Hermann went to work at the Office of the New York State Attorney General in 1979. As the Attorney General's Attorney-in-Chief for Public Advocacy, Hermann first met Eliot Spitzer, who was a summer intern in the Attorney General's Antitrust Bureau in 1982. Later, from 1984 to 1986, Hermann served as the State Solicitor General. After a stint at Time Equities Incorporated, Hermann joined the firm of Teitelbaum, Hiller, Rodman, Paden & Hibsher, P.C., where he and Teitelbaum worked together before the firm dissolved in 1996. Hermann then worked as a litigator at Plunkett & Jaffe until 2002, and then at Thacher Proffitt & Wood.

During Spitzer's campaign Hermann spoke to someone in the Appointments Office whom he also knew from the Attorney General's office. He understood that Constantine, his former employee in the Attorney General's office, also recommended him for his position in the Spitzer administration. On February 14, 2007, Governor Spitzer appointed Hermann to serve as Director of the Governor's Office of Regulatory Reform.

Hermann resigned as Director of the Governor's Office of Regulatory Reform effective March 5, 2009, during the course of this investigation.

Herbert Teitelbaum, Executive Director of the New York State Commission on Public Integrity

Herbert Teitelbaum, a graduate of Brandeis University and New York University School of Law, began his career as an associate at the Boston firm of Widett and Kruger and later, at Skadden, Arps. Teitelbaum first met Robert Hermann when Hermann interviewed him for the position at Skadden, Arps. After Skadden, Arps, Teitelbaum served as the founding legal director of the Puerto Rican Legal Defense and Education Fund. Subsequently, Teitelbaum established his own law firm, Teitelbaum, Hiller, Rodman, Paden & Hibsher, P.C. Upon the dissolution of the firm in 1996, Teitelbaum moved to Robinson Silverman Pearce Aronsohn & Berman, which later merged with Bryan Cave LLP in 2002, where Teitelbaum was a senior

litigation partner. In July 2007, Teitelbaum was appointed by the Ethics Commission to serve as executive director. In October 2007, Teitelbaum maintained this title when the Ethics Commission merged with the Temporary State Commission on Lobbying to become the Commission on Public Integrity.

Both Teitelbaum and Hermann testified that the two had been friends for nearly 38 years, since they met at Skadden, Arps around 1970. Hermann reported that the two “maintained a friendship over the years, and we came to be good social friends,” (RH to DA 7) and that the friendship included travel, hiking, and socializing with their spouses. According to Hermann, he suggested to Teitelbaum, who was “interested in making a life change in his career,” that Teitelbaum approach Ethics Commission Chair John Feerick, another former Skadden, Arps attorney, about a position at the Ethics Commission. Hermann testified:

I had, you know, played a role in getting Herb into government in the first place, which he had never been in his entire career. (RH 185)

[Teitelbaum] started to talk to me about being interested in making a life change in his career. Herb is 63, 4 now, almost -- and he wanted to get back more to the kind of thing that he had been doing earlier on in his career. And I suggested to him when I learned of it that someone who had also been at Skadden with us in those days, John Feerick, was, you know, was now going to be doing the Public Integrity Commission and he ought to talk to John, and that’s how that happened. (RH to DA 8)

After being appointed to their respective positions in state government in 2007, Teitelbaum and Hermann rented apartments in the same complex located in Guilderland, NY. Both maintained their permanent residences in the New York City region, but stayed in their Guilderland apartments during the week. Both testified to having dinners “once or twice a week” in each other’s apartments between July and November 2007. (HT 18, RH to DA 9) The closeness of their relationship is evidenced by the frequency of telephone calls exchanged between the two from the announcement of Teitelbaum’s appointment at the Commission on June 20, 2007, until November 13, 2007, soon after the Albany County District Attorney confronted Teitelbaum with accusations that he had leaked Commission information. During this 147-day period, the two exchanged at least 165 phone calls.¹¹ Teitelbaum testified that, except for one other couple, Hermann “was the only friend I had [in Albany]... and we were living in the same place. So we had dinners together, we saw each other in the gym, and this was a long-standing friendship.” (HT 294)

Lloyd Constantine

Constantine, a graduate of Williams College and Columbia University School of Law, began his career at Brooklyn Legal Services. Constantine commenced work for the New York State Attorney General’s Office in July of 1980 as Bureau Chief of Antitrust Enforcement for

¹¹ See Appendix C, detailing calls between Hermann and Teitelbaum during this period, and during several months before and after.

New York State. Hermann testified that, as the Assistant Attorney General in Charge of Public Advocacy, he “recruited [Constantine] in part” for this position and became Constantine’s direct supervisor. (RH 8) As previously noted, Governor Spitzer worked as a summer intern in 1982 in this bureau. From 1989 to 1996, Constantine worked as an adjunct professor in Antitrust Law at Fordham Law School. In 1991, after leaving the Attorney General’s office, Constantine worked at McDermott, Will & Emery until 1994, and then founded the firm Constantine & Partners, where he was joined by Spitzer. In 1998, Constantine was named chair of the transition committee for New York Attorney General-Elect Eliot Spitzer. In November 2006, Constantine became the Co-Chair of Governor-Elect Spitzer’s transition team and was subsequently appointed Senior Policy Advisor to the Governor in January 2007.

Hermann had a long-standing personal relationship with Constantine. Hermann reported that while both worked at the Attorney General’s office, he, Constantine, and their wives would occasionally socialize. (RH to DA 5-6) Both testified to maintaining a friendly relationship subsequent to departing the Attorney General’s office. (RH to DA 5, LC to DA 8) Constantine reported that he and Hermann “remained friendly throughout the next 20 or so years” after Hermann left the Attorney General’s office, and that he, as co-chair of Eliot Spitzer’s Transition team, had helped Hermann to obtain his position as head of the Governor’s Office of Regulatory Reform. (LC to DA 8) Constantine stated he advocated on Hermann’s behalf to the Appointments Secretary and directly to Governor Spitzer.

John Feerick

Feerick, who earned both his undergraduate and law degrees from Fordham University, went on to join the firm Skadden, Arps from 1961 to 1982, where he worked with Hermann. As noted, Teitelbaum joined the same firm around 1970. Hermann testified, “I have known John Feerick longer than I’ve known -- almost as long as I have known Herb Teitelbaum.” (RH 160)

Feerick served as Dean of Fordham Law School from 1982 to 2002. Over the years he chaired the Commission on Government Integrity and the Commission on Judicial Elections, was the President of the New York City Bar Association and was a Special Master panel member for the Family Homeless Litigation, among other achievements. Feerick was appointed by Governor Spitzer to Chair the State Ethics Commission on April 16, 2007, and assumed the same role at the Commission on Public Integrity in September 2007, after the State Ethics Commission merged with the Temporary State Commission on Lobbying. Feerick resigned from this position on February 12, 2009, during the course of this investigation.

Richard Rifkin

Another lengthy relationship existed between Hermann and Richard Rifkin, as Hermann testified, “I’ve known Richard a very long time ...” (RH 152) Rifkin graduated from Yale Law School and assumed the role of Staff Counsel to Assemblyman Leonard Stavinsky in 1970. In 1973, Rifkin was appointed Counsel to the Bronx Borough President. In 1979, he was hired by the Attorney General, where he held titles of Counsel to the Attorney General and First Assistant Attorney General, among others. In 1994 he left the Attorney General’s office to become executive director of the State Ethics Commission. He remained at the Ethics Commission through January 1999 and subsequently returned to the Attorney General’s office under Eliot

Spitzer. In January 2007, Governor Spitzer appointed him as Special Counsel to the Governor and he remained in that position until June 2008, when he accepted a position in the private sector.

Eliot Spitzer

Governor Spitzer received his undergraduate degree from Princeton University and law degree from Harvard University. Spitzer joined the law firm of Paul, Weiss, Rifkind, Wharton & Garrison after law school. He later joined the New York County District Attorney's office in 1986, where he rose from an assistant district attorney to the chief of the Labor Racketeering Unit. In 1992, he left to work at Skadden, Arps, the firm which had also employed Feerick, Teitelbaum and Hermann. In 1994, following a failed run for New York State Attorney General, he joined Constantine & Partners, where he and Constantine worked together for several years. In November 1998, Spitzer was elected Attorney General and in 2006, elected Governor. He resigned effective March 17, 2008.

It was when Spitzer was hired as a summer law student in the anti-trust division of the Attorney General's office that he met Hermann. According to Hermann, he and Spitzer had "been in touch on and off over the years." (RH to DA 3)

Peter Pope

Pope graduated from Harvard College and Yale Law School. Pope then served as a clerk for Honorable Robert W. Sweet in the Southern District of New York before working at the New York County District Attorney's office between 1988 and 1993. He began as an assistant district attorney and was then promoted in 1992 to deputy chief of the Labor Racketeering Unit. Pope went on to become a vice president at Goldman Sachs in 1993, First Assistant Inspector General and Counsel at the New York City School Construction Authority in 1995, and Vice President and Inspector General at the School Construction Authority in 1996. In 1999, Pope became Special Counsel to the New York State Attorney General, and later, in 2000, chief of the New York State Attorney General's Criminal Division. In January 2007, Pope served as Director of Policy to Governor Spitzer, and later to Governor David Paterson. Pope recently Arkin Kaplan Rice LLP as counsel after leaving the Governor's Office.

The closeness of these relationships bears upon the events which are described herein.

A. Teitelbaum's Employment of Robert Hermann as His "Backdoor Channel" to the Executive Chamber

The Executive Chamber's Authorized Liaisons with the Commission and Hermann's Position in the Spitzer Administration

In order to comprehend the nature of the allegations against Teitelbaum and Hermann and the terminology used by witnesses in this report, it is important to understand that while Hermann served in the Executive Branch, he had no sanctioned role in relation to the Commission's investigation.

The Governor serves as the head of the state's Executive Branch which consists of numerous agencies, commissions and boards with authority in regard to particular substantive areas. Each of these subdivisions of the Executive Branch has its own head. Distinct from the Executive Branch as a whole is the "Executive Chamber" which, under state law, is the actual office of the Governor, housing his direct staff, generally including the Secretary to the Governor, Director of State Operations, Counsel to the Governor, Appointments Secretary, Communications Director, Chief of Staff, deputies to such officials, deputy secretaries for state government management, and various other advisors to the Governor. Generally, the agency heads and members of the Executive Chamber comprise the Governor's cabinet.

In order to respond to the various Troopergate investigations,¹² Governor Spitzer designated five members of the Executive Chamber to act as liaisons with the entities conducting the investigations. In regard to the Commission's and other bodies' investigations, the designated Executive Chamber officials were Lloyd Constantine, then-Senior Advisor to the Governor, Richard Rifkin, then-Special Counsel to the Governor, Peter Pope, then-Director of Policy, Sean Patrick Maloney, then-First Deputy Secretary to the Governor, and David Nocenti, then-Counsel to the Governor.

During the time period relevant to this investigation, Hermann served as the head of one of the offices within the Executive Branch, the Governor's Office of Regulatory Reform. The Governor's Office of Regulatory Reform is charged with improving the state's regulatory process by providing oversight of state agencies' reviews and analyses of proposed and existing rules, among other responsibilities, and collaborates with agencies to ensure that the governor's program priorities are pursued.

Hermann was not a member of the Executive Chamber, although he falsely referred to himself as such in his statement to the Albany County District Attorney on February 7, 2008. (RH to DA 22) When he appeared before the Inspector General, he admitted he is "not part of the Executive Chamber...and, while I wasn't formally deputized by them, they knew I was taking an interest in this in trying to be a peacemaker basically." (RH 35-36) Governor Spitzer was explicit on this matter:

Q. You had designated some people, including Lloyd Constantine, to receive information from the commission or at least to serve as liaison in forwarding records or making witnesses available.

A. That is correct.

Q. Rifkin was one of them, Richard Rifkin?

A. That is correct.

Q. Peter Pope?

A. Correct.

¹² As discussed above, investigations of Troopergate were conducted by the Attorney General, the Inspector General, the District Attorney of Albany County, the State Senate Committee on Investigations and Government Operations, and the Ethics Commission, which later became the Commission on Public Integrity.

Q. Sean Maloney?

A. Sean Maloney, that's correct.

Q. But never Robert Hermann.

A. That is correct.

Q. So as far as you know, he was not -- never authorized by you to be the recipient of any type of dialogue with the commission?

A. That is correct. (ES 9-10)

Because Hermann was not a member of the Executive Chamber, much less a member of the subset of Executive Chamber officials designated as liaisons with the Commission and other investigative agencies, he had no more authority to receive information concerning the Commission's investigation and its discussions with the Executive Chamber than any of the numerous other officials in the Executive Branch as a whole.

1) Hermann's Communications to the Executive Chamber of Confidential Commission Investigation Matters Beginning in July 2007

Lloyd Constantine, one of the five designated Executive Chamber liaisons with the Commission and other investigative agencies, testified that, in late July or early August 2007, he related to his fellow Executive Chamber attorneys that, immediately following the Attorney General's July 23 report and "right after the -- at least right after I am aware that the Ethics Commission opened up an investigation [on July 25, 2007]," he began to receive the first of five or six in-person and/or telephonic communications from Hermann in which Hermann "started to talk to me about conversations that he was having with Herb Teitelbaum about what was going on at the Ethics Commission." (LC to DA 11) According to Constantine, the discussions between Hermann and Teitelbaum included "particular categories of documents, [and] particular privileges that the executive chamber was asserting or thinking of asserting..." (LC 12) Constantine further testified that he believed that Teitelbaum was "trying to get messages to [him] through Bob Hermann." (LC 9)

In the District Attorney's examination of Constantine on February 25, 2008, Constantine stated that Hermann told him, in essence, "You know, Herb [Teitelbaum] is trying to be very helpful here and he just doesn't think that, you know, that the approach that you guys are taking with respect to the response to the [Commission's] investigation is the -- is the best response. So he was -- It was all in the nature of advice to be more responsive, quicker in our responses, not to invoke certain privileges, which at the time, we were invoking..." (LC to DA 12) Constantine continued, "The information that I was getting from Bob Hermann was that Herb thinks that you should be doing this, Herb thinks that you should be doing that, Herb doesn't think you should be doing this, Herb doesn't think you should be doing that, and Herb is trying to be helpful. That was the theme of each of the five to six conversations we had, and they were all, you ought to produce this information faster, you ought not to be invoking any sort of privilege, you shouldn't be quibbling over this classification of documents or that classification of documents and all of that." (LC to DA 14)

Commission Investigative Counsel Meave Tooher worked closely with Teitelbaum on the Troopergate investigation. When she appeared before the Inspector General on October 3, 2008, Tooher was asked whether Teitelbaum had ever discussed Hermann in connection with the Commission's investigation and its effort to obtain documents from the Executive Chamber:

A. I recall, and I can't say distinctly what that is, but I do recall Herb saying to me that he was speaking to Bob Hermann with the understanding that Hermann, you know, would bring information to the chamber. And my understanding at that time was he was trying to encourage the chamber to get us documents so he was trying to use Hermann as another way to encourage the chamber to get us documents.

Q. So Teitelbaum told you, during July and August, that he was going to use Hermann to -- as an intermediary with the chamber to get documents from the chamber?

A. I think that's a stronger characterization of what he said to me that I'm intending to relay. What he said to me was something along the lines of, you know, I have backdoor channels to try and move this along.

Q. Did he mention Hermann by name?

A. Yes.

Q. Was this at a time when the chamber was considering the exercise of privileges?

A. I don't think at that point we had discussed privilege yet. That was very early.

Q. Were there certain specific documents that Teitelbaum felt the chamber was not sufficiently responsive to?

A. There weren't particular documents. I don't know what you know of the record. We literally received thousands of pages of documents over the course of about nine months. And based on some of the documents we were getting, we always knew that they weren't providing all the documents and that was sort of a continuing -- (MT 97-98)

A. So there were always gaps and we knew we needed more records. (MT 99)

Q. Did he ever indicate his dissatisfaction with Rifkin as the point man?

A. Well, there was dissatisfaction with the way documents were coming in all the time. (MT 99)

Q. Did Teitelbaum share this with anybody else?

A. I don't know. I know he shared it with me.

Q. How did you respond to that?

A. Which?

Q. Telling you that he's using back channels, he has back channels, that Hermann is going to be -- this person he's going to be contacting to meet as an intermediary?

A. He told me after the fact that he had spoken with him, it wasn't an I'm going to be contacting.

Q. Was it after there had been a complaint that he should not have been using Hermann?

A. No, no, this was very early on and I said you shouldn't be talking to anybody about the investigation. (MT 100)

Richard Rifkin similarly testified that "after the [Ethics Commission] opened its investigation," at a meeting attended by the group of five attorneys, Constantine stated that he was meeting with Hermann and Hermann was conveying information that Hermann said he had received from Teitelbaum. (RR 12) Rifkin testified that although he couldn't "recall the specifics," "they appeared to relate to what was happening in the internal investigation of the Commission." (RR 13) Peter Pope, too, testified to a discussion with Hermann in which Hermann reported on Commission activities. Pope recalled that "in the opening minutes of the [Ethics Commission] investigation," Hermann telephoned Pope and said, "in sum and substance... Teitelbaum wanted records quickly and a lot of records quickly..." "[Teitelbaum] is going to want everything; documents, computer records." (PP 10, 35, 39) Significantly, the information Hermann conveyed to Pope was accurate, as Teitelbaum argued in a September 5, 2007, letter to Rifkin that "the pace of document production [should] accelerate." Pope also testified that Hermann had told him that Teitelbaum was not pleased that Rifkin was a liaison with the Commission. (PP 45)

Peter Pope testified about Hermann's "baffling" intercession (PP 43):

Q. I want to once again turn to communications that Robert Hermann had with you concerning activities by the Ethics Commission which later became the Commission on Public Integrity. Do you recall approximately when the conversations commenced?

A. It was approximately days or a week after the Cuomo report [was] issued. Richard Rifkin was the primary liaison to the commission at that stage. The chamber had designated him to do that because he had significant expertise in the area because he had been the former chair.

One night I got a call from Bob Hermann saying, in sum and substance, that Herb Teitelbaum wanted records quickly and a lot of records quickly and I was I guess a little puzzled by the call because I didn't understand why Herb didn't call Richard or didn't call me or didn't call someone else in the chamber handling the matter. I don't think it was a long call. I think what I had expressed more than anything else was bafflement. Well, of course he wants records and of course he wants records quickly and of

course we'll give him records quickly. Here's my telephone number. I think the next day I called Herb.

Q. The first contact was by telephone?

A. That's certainly what I remember.

Q. So he reached out to you, it was not a matter of running into you and just having a casual conversation, it was him once again reaching out to you?

A. Well, the first conversation was by telephone. Whether or not I was returning a call he had placed to me earlier in the day or not, I don't recall. It certainly could have been that he had left a message and then I called him. But it was --

Q. But it was initiated by him?

A. Yes. (PP 34-36)

Sean Patrick Maloney recalled discussions with the group by early August 2007 in which Constantine related his conversations with Hermann regarding the Commission's Troopergate investigation. Maloney testified that Constantine reported conversations that Hermann was having with Teitelbaum involving "Teitelbaum's dissatisfaction with the Chamber and his interactions with the Chamber" surrounding document production. (SPM 8) Of Hermann's discussions with Constantine on these matters, Maloney testified that he "thought it was improper":

A. I thought it was in - improper.

Q. In what respect?

A. He had no business having conversations of this nature either with the Ethics Commission or with a member of the governor's staff. I thought it was unwise.

Q. Did you discuss this with other members of your group besides the conversations you received from Constantine?

A. Yes.

Q. And what was the reaction?

A. I would say my reaction was the most forceful, but there was unanimity that this was a stupid thing and it should stop.

Q. Was it also unanimity this might constitute a violation of the law for Teitelbaum to be discussing these matters with Robert Hermann?

A. Yes. You know whether in that first moment that was foremost in my mind, I don't know. I don't think I needed to read a law book to know that it was stupid and it shouldn't be happening. But I certainly subsequently came to view that it was a violation of the law and that it was highly improper. (SPM 12-13)

Daniel Doktori, who served as Constantine's principal assistant at the time, testified that at times he overheard Constantine speaking on the telephone to Hermann and that his impression, from what he overheard, was that, "Bob [Hermann] may have been, kind of, advising Lloyd [Constantine] as to how to deal with [Teitelbaum]. You know, I know him, he was doing the investigation, here's what is important to think about when dealing with him." (D 23)

Although Constantine testified that most communications between him and Hermann took place in person or on the telephone, Hermann did compose one memo to Constantine that further suggests he possessed non-public Commission information. On July 26, 2007, Hermann sent Constantine an unsolicited fax labeled "Personal & Confidential." Entitled "Lemons into Lemonade," the document lists Hermann's "Assumptions" and a "Proposal" concerning the Executive Chamber's response to the Attorney General's report on Troopergate, which was released three days earlier. One of Hermann's "assumptions" reads, "The State Ethics Commission will shortly revise its guidance that started this whole thing, and that revision will be favorable to the Governor's pro-reform position." Hermann was correct on both counts. Significantly, on August 16, 2007, the Ethics Commission released Advisory Opinion 07-03, advising that state aircraft should be used primarily for official state business. Although this opinion did not condone the Governor's release of information regarding Bruno's use of the aircraft, it was implicitly critical of Bruno's use of the aircraft and therefore beneficial to the governor's position, as Hermann had predicted.

Hermann's memorandum is reproduced below:

TO: Lloyd Constantine

Personal & Confidential

From: Robert Hermann

LEMONS INTO LEMONADE

Assumptions:

- The fact-finding process to date is incomplete.¹
- This is not going away unless we make it go away.²
- This is a distraction and impediment for all agency heads, not just executive staffers.
- This is damaging the public perception of the Governor and thus his ability to lead.
- Bold action to seize the initiative is plainly better than death by a thousand cuts.
- Even allies and supporters of the Governor believe he had some involvement or knowledge.
- That belief is incorrect and the Governor has personally nothing to hide.
- The State Ethics Commission will shortly revise its guidance that started this whole thing,³ and that revision will be favorable to the Governor's pro-reform position.

Proposal:

Accept Senator Bruno's demand. At a press conference, offer to testify before a joint legislative committee about ethics laws and rules, and needed reforms. (Maybe get the Speaker on board before doing so.) Give that testimony in the presence of media as soon as Senator Bruno and Speaker Silver can arrange for it. Express a willingness to answer any of the questions Senator Bruno wants answered about the events relating to him personally. Let the chips fall where they may in terms of the conduct of Chamber staffers. But keep it in the broader context of ethics. In that widened context, insist that Senator Bruno provide details about his trips, and answer questions as well before the committee (e.g., what did you do the rest of those days?). Come out swinging about the need for stricter standards, but also express personal disappointment about staff overzealousness. A tightened new Commission standard will help set the backdrop for this.

¹ Having two key Chamber players offer evidence by affidavit is amazingly analogous to having two White House counselors offer evidence by interview not under oath.

² Let us hope things do not reach the point, easily foreseeable now, where the words "executive privilege" and "contempt citation" are heard simultaneously in Washington and Albany.

³ This guidance has been wholly misunderstood. It got started when Richard Rifkin, then of the Commission, so advised an inquiring party on the phone a decade ago, and was informally converted into a policy guidance by the Commission's public information office.

Hermann's prescience indicates that he may have had inside knowledge of the Commission's agenda. Although the *Albany Times Union* had reported on the day before Hermann's memorandum that the Commission was "looking into the policy on the use of state aircraft...and considering a review of its position," it was not publicly reported what the result of this review would be, or when the Commission would issue a revised opinion, if any. Primarily, Hermann's memorandum shows that, very early into the Commission's review, which began only the day before, Hermann was interjecting himself into Executive Chamber business with regard to Troopergate.

Constantine's August 8, 2007, Admonishment of Hermann

Constantine testified that he became uncomfortable being the recipient of communications from Teitelbaum via Hermann regarding the Commission's Troopergate investigation and sought the advice of Executive Chamber Special Counsel Richard Rifkin, the former Executive Director of the Ethics Commission. According to Constantine, Rifkin advised "it's not proper, you know, for him to be communicat[ing] this information to Bob Hermann. Bob is not in the Executive Chamber, and it constitutes improperly breaching the confidentiality of – of that office's, you know, processes at an investigation..." (LC to DA 18)

Rifkin testified that the Chamber attorneys, as a group, instructed Constantine to "go back and speak to Bob Hermann and tell Bob that we felt that these conversations were not a good idea and we should cease to have them." (LC 14) "We knew we should not be getting this information." (LC 13) "We were certainly aware that it may very well have violated the statute." (LC 14) Pope recalled that he learned from Constantine that Constantine had "firmly told [Hermann], stop delivering these messages, have Teitelbaum call [the Executive Chamber] directly." (PP to DA 43)

Constantine testified that after Rifkin advised him, he confronted Hermann during their next conversation and admonished him. Constantine was firm in his recollection of when he confronted Hermann, and telephone records obtained by the Inspector General and testimony of Constantine's aide, Doktori, are consistent with Constantine's account. Constantine testified that he was in the midst of a series of visits to upstate SUNY campuses when this conversation occurred. Constantine recalled that, while visiting Skaneateles during August 6-8, 2007, accompanied by Doktori, he confronted Hermann. Telephone records reveal that three calls took place between Hermann and Constantine on August 8, 2007, between 8:49 p.m. and 9:08 p.m., totaling eighteen minutes. Constantine testified, "I was in Skaneateles and I said stop, I'm telling you, Bob, Herb Teitelbaum should not be conveying this information to you and you should not be telling me these things and I direct you to cease having these conversations with him and I direct you, even if you do continue, I don't want to hear about it." (LC 10) Constantine stated that, at least for a period of time, the discussions stopped.

Constantine informed the Inspector General that his principal assistant, Doktori, may have heard some of Constantine's conversations during this trip. Doktori remembered being in the car with Constantine one evening during a visit to the Syracuse area when he overheard Constantine tell Hermann, essentially, "stay out of it." (D 14)

Hermann acknowledged that Constantine had admonished him, saying that Constantine was “uncomfortable.” (RH 35) “Lloyd said this to me, that I should not [be] having, you know, any involvement in this issue.” “Basically they said you shouldn’t have any more role in this. Stay out of it.” (RH 37) Although Hermann maintained that he did not believe he was doing anything wrong, and that he only discussed public information with Teitelbaum, he said that he did cease having conversations with Teitelbaum about the Commission as a result of the admonishment.

An examination of telephone records reveals that Constantine and Hermann had frequent telephone conversations during the period between July 25 and August 8, 2007, the date on which evidence indicates Constantine directed Hermann to cease discussing these matters with him and with Teitelbaum. During this period, Hermann telephoned Constantine 17 times and Constantine telephoned Hermann three times, each time shortly after Hermann had placed a call to Constantine.

Hermann and Constantine exchanged telephone calls on a regular basis prior to July 25, but to a lesser extent subsequent to August 8. Subsequent to August 8, 2007, Hermann and Constantine exchanged only ten calls during the almost three-month period between August 8 and October 31, 2007, and no calls between August 17 and September 19, 2007. One would not expect communication between the two to cease entirely as a result of Constantine’s admonishment, as Hermann still had to contact the Executive Chamber regarding business of the Governor’s Office of Regulatory Reform. Interestingly, Teitelbaum’s appointment book indicates that he was to have a meeting on September 19, with Rifkin and Constantine at 6 p.m. Telephone records indicate that Teitelbaum placed a five-minute call to Hermann at 6:33 p.m. that evening. Later that same evening, at 8:32 p.m., Hermann placed a one-minute call to Constantine, his first call to Constantine for over one month.

2) The District Attorney’s Review of Inconsistencies Between Testimony of Darren Dopp Before the Commission and His Statement to the Attorney General

When Darren Dopp appeared before the Commission on October 11, 2007, he was asked about his affidavit to the Attorney General, dated July 22, 2007, in which he acknowledged that his requests to the State Police for Senator Bruno’s travel records may have created an “appearance of impropriety.” At this time, Dopp refused to acknowledge before the Commission that he had engaged in any improper conduct, and, of his affidavit, stated that he “didn’t sincerely believe it at that moment or now.”¹³ Dopp claimed that he signed the affidavit at the urging of Executive Chamber attorneys David Nocenti and Peter Pope, who told Dopp it was in the best interest of the administration for him to do so. Dopp’s disavowal of his signed affidavit led the Commission working group¹⁴ to present the matter to Albany County District Attorney Soares to consider possible criminal charges against Dopp.

¹³ New York State Commission on Public Integrity, Notice of Reasonable Cause, “In the Matter of an Investigation Into the Alleged Misuse of Resources of the Division of State Police,” July 24, 2008.

¹⁴ Commission Chair John Feerick divided the 13 members of the Commission into separate working groups. One, consisting of five commissioners, was assigned to Troopergate.

On October 17, 2007, Teitelbaum and Tooher met with District Attorney Soares to discuss the inconsistencies between Dopp's affidavit to the Attorney General and his testimony before the Commission. Soares advised Teitelbaum and Tooher that he would review the matter. Between October 17 and November 1, Teitelbaum and other Commission staff had several contacts with the District Attorney's office to discuss the matter.

While there is some disagreement between the Commission and the District Attorney regarding the exact date when the District Attorney informed the Commission that he had officially decided to accept the matter and intended to empanel a Grand Jury, these discrepancies do not substantially affect the findings of this investigation. Irrespective of whether the District Attorney finally informed the Commission of his intentions on October 19, 2007, as the Commission states in its report, or on November 1, 2007, as the District Attorney and his staff maintain, both accounts establish that the Commission had only recently become aware of the District Attorney's intention to pursue the Dopp matter by November 1.

Moreover, Commission records indicate that the District Attorney referral was a frequent topic of discussion at the Commission in the week prior to November 1.

Regardless of whether the District Attorney's formal decision was made on October 19, 2007, or November 1, 2007, or sometime between those dates, Teitelbaum and Soares did have a meeting scheduled for November 1, 2007, at 1 p.m. Soares had just returned from an out-of-town trip lasting two weeks. Soares did not recall that an in-person meeting ever took place. Teitelbaum testified that he believed he had a meeting with the District Attorney and members of his staff at the Commission's office on November 1. Tooher, whose notes indicate that she had planned to accompany Teitelbaum to the 1 p.m. meeting, also does not recall attending such a meeting. Nonetheless, Soares recalled that at some point on November 1, 2007, he informed Teitelbaum, perhaps by telephone, that he had determined to accept the case.

3) Hermann Notifies Constantine on November 1, 2007, and Discusses with Governor Spitzer on November 2, 2007, the Commission's Referral to the District Attorney of Dopp's Testimony Before the Commission

On November 1, 2007, at approximately 2:30 p.m., Hermann informed Constantine that the Albany County District Attorney was investigating an allegation that Dopp's statement to the Attorney General was inconsistent with his later testimony before the Commission.

A meeting between Constantine and Hermann in the Governor's New York City office had been scheduled for 3 p.m. on November 1, 2007, the day Soares remembered informing Teitelbaum of his decision to pursue the case against Dopp. Although the meeting originally had been scheduled for 10 a.m., Hermann asked Constantine on the previous day to postpone the meeting for the afternoon, since Hermann planned to be in Albany that morning. At 8 a.m. on the morning of November 1, Hermann e-mailed Constantine an agenda for the meeting containing four topics of discussion. None of the four topics had any relation to the Commission's investigation or the Troopergate matter. There is no evidence that Hermann gave any indication that there was any urgency to his business with Constantine on the morning of November 1 or the days prior. E-ZPass and swipe card records reveal that Hermann departed

Albany by car at approximately 11 a.m. on November 1 and arrived at the Governor's New York City office at approximately 2:30 p.m.

At 1:32 p.m. Hermann received a call, forwarded by his secretary, on his cell phone while he was travelling from Albany to New York that day. Both Hermann and his secretary testified that they did not remember the call. However, both Hermann and his secretary indicated that there are only a few people for whom she would forward a call to Hermann's cell phone, and Teitelbaum was among them. The telephone records for Hermann's agency do not include incoming calls; therefore the Inspector General could not determine which incoming calls were received by Hermann's secretary that day. A search of all known telephone numbers associated with Teitelbaum failed to reveal a telephone call to Hermann or Hermann's secretary on this date.

Constantine testified that, while attending an afternoon meeting at the Governor's New York City office, he was interrupted several times by a secretary who brought in messages from Hermann. Constantine said Hermann was "so insistent that I break out [of the meeting]." (LC 25) Upon leaving the meeting, Constantine encountered Hermann who was "very upset" and "shaking." (LC 31, LC to DA 23) Of Hermann's demeanor, Constantine testified, "This is a close friend of mine, this is a very experienced lawyer, this is my former boss in the attorney general's office, this is the former Solicitor General of the State of New York, this is a man I've seen argue before the United States Supreme Court brilliantly, so this is not a kid. And therefore, when I see a man of his stature and intelligence and sensitivity like this, I thought somebody had died." (LC 31-32)

Constantine testified that Hermann told him the following:

[The Commission] had referred to the Albany district attorney a matter and that matter being they had determined, the Integrity Commission had determined that sworn testimony that had been given by Darren Dopp before them was either perjurious or constituted false swearing or at least was inconsistent with other sworn testimony or statements that he had made and that a referral -- and this was very specific -- a referral had been made to the district attorney of this potential perjury, false swearing, or inconsistency claim. And that in addition to that, this was a matter of such gravity at the Integrity Commission that they had formed a special group of five people comprised of the executive director, Herb Teitelbaum, and four of the commissioners including the chairman of the commission, John Feerick, Loretta Lynch, and two others...because the Integrity Commission was aware that there had been significant leaks of information about their proceedings and about how they were doing their investigation that they recognized that there had been leaks, many leaks to the press, and therefore they had created this subgroup within the Integrity Commission and they were the only people who knew about this or who had access to the information. (LC 26-27)

Hermann at that point, said, and they know who at least one of the leakers is. And he mentioned -- [a specific commissioner], who I gather is one of the commissioners. They know that [the commissioner] is leaking information to the press and at least one other commissioner but there was no other name attached to the other commissioner. But they know that [the commissioner] is leaking information to the press and they know there is another leaker within the commission which is why they have formed this committee of five to be the only ones who have access to this information and this highly sensitive information and it's been referred to the DA and I know that you need to know this, I know that the governor needs to know this but you can't tell the governor that I'm the source of the information.¹⁵ (LC 27-28)

During this conversation, Hermann also mentioned his knowledge that the Dopp statement to the Attorney General "had been drafted by several individuals in the Chamber" who were working as counsel or special counsel to the Governor, specifically Peter Pope and David Nocenti (LC 75). Constantine continued:

Another basis of Mr. Hermann's concern was that the statement, the sworn statement, that Darren Dopp had made to the attorney general had been drafted by several individuals in the chamber and indeed some of those individuals were working in the chamber at the time as counsel or special counsel to the governor in responding to the various inquiries, the inquiry by the Integrity Commission, the inquiry by the district attorney's office, the inquiry by the senate investigations committee, so he was also concerned about that. And he did mention that David Nocenti was one of those people and that Peter Pope was one of those people...[and he] raised a concern about those individuals, being Pope and Nocenti, now being potentially in a conflict of interest situation. (LC 76-77)

According to Constantine, it was his understanding that Teitelbaum was the source of this information, based on his earlier communications with Hermann in July and August 2007. Constantine testified that his November 1 conversation with Hermann lasted for about fifteen minutes.

Constantine Informs Governor Spitzer and Executive Chamber Attorneys of the District Attorney's Investigation

Constantine testified that Hermann had asked him not to inform the Governor that he had learned of the District Attorney's investigation from Hermann. Constantine testified that Hermann told him, "I just have to get you this information, it's very important. And I know

¹⁵ In his testimony, Teitelbaum admitted that he had heard this commissioner's name mentioned as a possible source of leaks. Hermann, however, claimed that he had never even heard of that commissioner.

you're going to have to reveal this information to the governor but you cannot reveal to the governor who gave you the information." (LC 25-26)

Despite Hermann's request, later the same day Constantine informed Governor Spitzer of the District Attorney's review of the allegations, and that he had learned of this from Hermann. Constantine also contacted Hal Lieberman, an attorney specializing in ethics, to seek further counsel.

On November 2, Constantine notified the four other Executive Chamber attorneys (Pope, Rifkin, Nocenti, and Maloney) who constituted the group serving as liaisons with the various investigative agencies, of Hermann's conversation with him the previous day. Of learning of the referral to the District Attorney, Pope testified that he was "extremely angry," and Nocenti reported he was "surprised." (PP 18, DN 16) Maloney testified he was "dumbfounded," because it was widely understood that there existed no basis for any criminal proceeding resulting from the District Attorney's Troopergate investigation, whose findings, reported on September 21, 2007, uncovered no grounds for any criminal action. (SPM 17) Constantine informed them that Hermann had learned of the District Attorney's investigation from Teitelbaum, and that, according to Hermann, Nocenti and Pope, who had drafted Dopp's statement to the Attorney General, were now potentially in a conflict of interest situation. The group then retained Lieberman, who advised that they should reveal to District Attorney Soares that they had gained this information from Hermann.

Rifkin testified about the meeting at which Constantine told the group that Hermann revealed to him that the Dopp matter had been referred to the Albany County District Attorney: "Darren [Dopp] apparently told the Public Integrity Commission that he did not believe what he said in that statement to be true. That, in fact, his true belief is that he acted properly at all times and that the reason he signed that statement is that he was under great pressure from mainly Nocenti and Pope and I guess to a lesser degree, Maloney, to sign that statement rather than testify before Cuomo." (RR 16) Rifkin added, "Constantine's statement to us was that Teitelbaum revealed this information to Hermann, who revealed it to Lloyd, who was now revealing it to us." (RR 17) Also according to Rifkin, Nocenti and Pope were "walled off" at that time from continuing their representation of the governor's office in relation to any of the Troopergate investigations. A memorandum written by Rifkin on November 11, 2007, closely reiterated the above testimony. Pope recalled events similarly.

The news from Hermann was surprising in that he not only disclosed the fact of a criminal investigation but the very content of sworn testimony that Dopp had given before the Commission. Rifkin explained:

We in the Governor's office did not know the substance of Dopp's testimony to the Public Integrity Commission. We knew only that he did testify. So we learned from Lloyd, who had learned from Bob, who had learned from Herb that Dopp in his testimony before the Commission had said that the so-called affidavit that he submitted to the Attorney General had not been reflective of his true belief at that time. So that was new information that we learned. In addition to the fact, as you pointed out,

that Dopp's testimony to the Commission was that the reason he signed that document was because of the influence of Pope and Nocenti. (RR 48-49)

Rifkin reiterated that there were five people from the Executive Chamber who worked as a unit in dealing with all of the ongoing investigations, including that of the Commission.

Q. And none of the five of you knew?

A. That's correct.

Q. Okay. This was obviously highly confidential information. This involves testimony before the Commission, Dopp's testimony before the Commission; is that correct?

A. Well, the -- I cited to you in my original testimony, the statute that applies to investigations. And the statute says that, in essence, all investigations are confidential. (RR 50)

Governor Eliot Spitzer's Testimony

Governor Spitzer confirmed Constantine's testimony that Constantine had advised the Governor of Hermann's disclosure of the referral by the Commission to the District Attorney:

A. The sum and substance was that Bob Hermann had disclosed to Lloyd that Herb Teitelbaum had disclosed to Bob Hermann that a referral was going to be made to the Albany County District Attorney's office.

Q. Was going to be made or had been made?

A. As I sit here today, I don't know if it was pending, had been made, but a referral was -- honestly, I don't remember what the verb tense was -- and that this disclosure, whatever this verb tense, was in violation of the Ethics Commission's statutory obligation to maintain secret any such referral. (ES 6-7)

Governor Spitzer also recalled that the referral to the District Attorney involved the affidavit that Dopp had submitted to the Attorney General. (ES 29)

The day after Constantine informed Governor Spitzer about his conversation with Hermann, Hermann spoke directly to the Governor himself. This is discussed further beginning at page 50. Spitzer was asked whether he followed up on Constantine's information by speaking directly to Hermann:

I recall having a very, very brief and somewhat cloaked conversation -- by cloaked I mean neither of us -- I certainly didn't feel comfortable talking about it in any way, shape, or form and I also didn't feel comfortable pretending not to have any knowledge that it was there. So we had a brief conversation where the fact of this arose in sort of vague ways and

basically we both kind of said this is not something we're going to talk about. (ES 15)

Hermann testified that Spitzer suggested that Hermann call Spitzer's attorney, Michele Hirshman. Telephone records obtained by the Inspector General confirm several brief calls between Hermann and Hirshman. Hirshman testified that she had asked Hermann to meet with her to discuss how Hermann had learned of the District Attorney's investigation from Teitelbaum. Hirshman testified, "I wanted to find out what it was that Mr. Hermann said Mr. Teitelbaum had said" (MH 15-16) but that after considering her request, Hermann declined. (MH 12)

4) Executive Chamber Attorneys Reveal the Leak to the District Attorney

During the evening of Friday, November 2, 2007, Rifkin telephoned District Attorney Soares at his home, and in Soares's absence, left a message requesting a return phone call. Upon receiving the message, and before returning the call, Soares telephoned Teitelbaum to ask whether Teitelbaum was aware of the purpose of Rifkin's call, and "whether or not the cat was out of the bag." Teitelbaum responded that he did not know. (DS 15) Soares testified that, other than his own staff, Teitelbaum was the only person he had notified at the time that he had determined to go forward with the investigation. (DS 15)

When Soares returned Rifkin's call, Rifkin, with Maloney also on the line, reported that he had learned of the District Attorney's investigation of Dopp's inconsistent statements, and requested a meeting. Both Rifkin and Soares testified that during this telephone call Rifkin did not discuss the source of this information.

Teitelbaum telephoned Soares the following morning, and asked if Soares had discovered how the Governor's office had learned of the District Attorney's investigation. Soares testified that he did not suspect Teitelbaum specifically at this time.

Rifkin and Maloney met with Soares on November 7, 2007. Thinking the two had come to discuss Maloney's participation in the preparation of Dopp's written statement, Soares was surprised to see them accompanied by ethics attorney Hal Lieberman rather than a criminal attorney. Rifkin advised Soares that Teitelbaum was passing information to Constantine and the Executive Chamber through Hermann. In his November 11 memorandum, Rifkin wrote:

I revealed to Soares how we learned of the information, including, specifically, that it was revealed by Teitelbaum. I decided that we had to reveal the details to avoid the implication, charges or criticism that the Governor's office was seeking and receiving confidential information from the Commission.

Following the meeting with Rifkin and Maloney, Soares and members of his staff telephoned Teitelbaum on speakerphone. During the ensuing conversation, Teitelbaum asked Soares if the Executive Chamber representatives had told him who had revealed the Dopp

referral to the Executive Chamber; Soares replied that they had implicated Teitelbaum. Soares and his staff all recall Teitelbaum responding with an exclamation of denial.

Later that day, news of the District Attorney's investigation was published on an *Albany Times Union* blog. At 11:30 p.m. on November 7, 2007, the *Times Union* posted to its Web site: "Sources with knowledge of the investigations said Public Integrity Commission members recently went to the district attorney with concerns about what they viewed as inconsistencies between what Dopp, and possibly others, told commission and Soares."¹⁶ This was the first public statement of the District Attorney's investigation of the Dopp issue.

5) Hermann Tells Lloyd Constantine, "I know Herb Teitelbaum...He's capable of doing anything to protect himself...He's capable of -- of claiming that he didn't tell me any of this stuff..."

A few days after Hermann's conversation with Constantine on November 1, Constantine saw Hermann again, and told him that he, Constantine, had notified Spitzer about Hermann's communication with him on November 1:

I said to him, look, I've told the Governor about this and I told him that you're the source of the information, and Hermann was very, very upset. He wasn't mad, but he was upset, and I said, you know -- I said, exactly what do you expect, Bob? I said, I'm the Governor's, you know, personal advisor. You know, you come to me with this information, which is information that the Governor needs to know and I'm going to tell him and I'm going to tell him the source. I'm not going to play any games about this. I said, you know, we're all adults. I mean -- so, I don't know what -- you know, and why is this a problem for you, I said? You know, is it a problem because you're going to lose a friend here? I said, you know, your friend shouldn't have been talking to you. I said -- and that's -- and then *he said something, which I will never forget*. He said -- and I know Herb Teitelbaum. You know, I know him really well and I know what he's capable of doing when he's backed into a corner. I said, what is he capable of doing? He said, he's capable of doing anything to protect himself, to defend himself. I said, like what? He said, *he's capable of -- of claiming that he didn't tell me any of this stuff*, that I, you know, came into possession of it some other way. I said, like what? He said, like I broke into his -- into his apartment and, you know, saw it on his desk or -- or, you know, somehow came into the -- *in other words, he didn't tell it to me*, I "stole the information" (emphasis added). (LC to DA 44-45)

¹⁶ Rick Karlin, *Times Union* (Albany), "Capitol Confidential: Commission May Recall Dopp," Nov. 7, 2007.

6) Hermann's Entreaty to Rifkin Not to Inform Feerick of the Leak from Teitelbaum

Rifkin testified that on November 8, 2007, the day after Rifkin's meeting with the District Attorney, Hermann contacted him. Hermann was upset upon learning that Rifkin had informed the District Attorney that the Executive Chamber had learned of the District Attorney's investigation from Teitelbaum via Hermann. According to Rifkin, Hermann explained that Hermann's disclosure had caused a great breach in his friendship with Teitelbaum, and he requested that Rifkin not tell Feerick of Teitelbaum's involvement, as Teitelbaum "feared for his job" and wanted to discuss the matter with Feerick himself. (RR 51)

Hermann failed to tell Rifkin that after District Attorney Soares had informed Teitelbaum that attorneys from the Executive Chamber had exposed Teitelbaum as the source of the leak, Teitelbaum called Hermann and confronted him. Hermann, at that point, falsely denied to Teitelbaum that he was the source of the information about the Commission's referral of the Dopp issue to the District Attorney. Rifkin described the visit from Hermann in his testimony before the Inspector General:

Q. We're now at a point where Hermann comes to you. Why don't you follow-up on that. Was it preceded with a phone call, if you recall?

A. I don't remember how we set up the meeting. Hermann comes to me and he told me that Teitelbaum had learned of my disclosure to the District Attorney. That this had caused a rift between Hermann and Teitelbaum, who had been for many years very close both as professional colleagues and personal friends, and that this was all very upsetting to Bob Hermann. His request to me at that meeting was that I not inform Dean [John] Feerick of this information, Dean Feerick being the Chairman of the Commission, that Herb Teitelbaum feared for his job and that Herb would go to Feerick and inform Feerick of these events....Let me just add that I pressed Bob Hermann very hard and he gave me a 100 percent assurance that Teitelbaum would, in fact, reveal this to Feerick.

Q. Did Hermann deny that he had been the source of this information to Constantine?

A. No.

Q. Did he deny that Teitelbaum had provided the information to him which he conveyed to Constantine?

A. No. (RR 50-51)

Q. And once again, no denial that Teitelbaum had provided the information to Hermann or that Hermann had provided such information to Constantine?

A. That is correct. There was no denial. (RR 52)

In a contemporaneous memorandum Rifkin wrote:

Later on Thursday [November 8] afternoon, Herman[n] called me and confirmed that *Teitelbaum would, in fact, reveal his leak of the information to Feerick*. I again said that I would, therefore, refrain from telling Feerick directly (emphasis added).

B. The Testimony of Robert Hermann

Robert Hermann, accompanied by his attorney, testified before the Inspector General on September 22, 2008, and January 14, 2009.

1) Concerning His Early Communications with Constantine and Pope (July – August 2007)

In his testimony to the Inspector General, Hermann admitted to having had contact with Constantine during the early phase of the Commission's Troopergate investigation, and that such discussions involved the Commission's investigation and the Executive Chamber's document production. However, Hermann claimed that he only discussed matters with Constantine that he had learned from the media, or from participating in discussions with the Executive Chamber attorneys.

Hermann also acknowledged having discussed the Commission's investigation with Teitelbaum.¹⁷ Hermann admitted that no one at the Commission, other than Teitelbaum, had ever spoken to him about the Commission's Troopergate investigation. (RH 17-18) However, Hermann denied that he discussed anything with either Teitelbaum or Constantine other than matters that were publicly reported in the press, or that he gleaned from speaking with the Executive Chamber attorneys themselves. In support of his claim that the matters discussed were public knowledge, Hermann differs with Constantine regarding the dates of the discussions. Hermann testified that his conversations with Constantine ceased in mid-September, after news reports began appearing regarding the Executive Chamber and its failure to cooperate with the Commission, whereas Constantine testified the conversations took place over a two-week period and ended on August 8, 2007, when Constantine admonished Hermann not to discuss Troopergate matters with him or Teitelbaum anymore.

Hermann testified to "summer" of 2007 conversations with Constantine and Pope in which he related discussions he had with Teitelbaum regarding document production. (RH 14, 23) However, Hermann claimed that these same matters were "on a general level" (RH to DA 9) and were publically reported in the media at this time. Hermann testified that during this period "there was a public dispute going on about how much the governor's office had to produce by way of documents and there was a lot of sentiment in the executive chamber people, particularly [Constantine] and [Pope] that the document demands that the commission was making were outrageous, overly broad, inappropriate, unprofessional..." (RH 14) According to Hermann, Constantine and Pope approached him "on a number of occasions both of them expressed to me, knowing I was a friend of Herb's, knowing that we lived in the same place in Albany, knowing

¹⁷ Teitelbaum also admitted that he had discussed the Commission investigation with Hermann "just in a very general way." (HT 17)

that I've known him for thirty-five years" and told him that Teitelbaum was "unprofessional, he was out of line, he didn't know what he was doing..." (RH 14-15) Rifkin testified that, to his knowledge, the Executive Chamber attorneys did not attempt to send any messages to Teitelbaum through Hermann. Hermann stated that during this "I wasn't learning anything privately from Herb or -- what I was learning was both from public sources -- this was well covered in the newspapers." (RH 16) He further asserted, "I never saw the [Commission's] document request, I never reviewed it, I never discussed it with Herb. All I knew was whatever the documents were, [the Executive Chamber] should turn them over...because the delay is crippling this government." (RH 26) However, at one point Hermann stated, "I had a clear-cut impression from Herb that he did not think that all the documents had been produced. I don't recall the exact words. I may have said something and he may have harrumphed or something like that. I don't recall." (RH 32) Hermann denied ever mentioning specific witnesses or documents to Constantine, and contended, "All conversations were not initiated by me," rather, some arose from Constantine and Pope. (RH 36)

In addition to asserting that he had learned of the dispute over document production from the press, Hermann also testified that he learned of the problems directly from the Executive Chamber attorneys assigned to the matter. The Executive Chamber attorneys, including Constantine, Pope, and Rifkin, were firm in their testimony that they did not initiate conversations regarding Troopergate with Hermann. Rather, it was Hermann who approached Constantine with information. Telephone records for the two-week period prior to Constantine's admonishment on August 8, 2007, indicate that Hermann had initiated contact with Constantine on each occasion. As noted above, Hermann also faxed the unsolicited "Lemons into Lemonade" memorandum to Constantine.

Hermann also admitted that he had told Pope that Teitelbaum was not pleased that Rifkin was the liaison with the Commission, adding:

Herb said to me at one point that he wasn't -- that Rifkin shouldn't be involved because he doesn't know anything about the documents... (RH 21)

When pressed on his claim that it was Executive Chamber attorneys who had initiated such conversations, Hermann modified his position by stating that he could not "specifically recall who said the first word" that transitioned into such discussions. (RH 18) It is significant to note that telephone records obtained by the Inspector General reveal that Hermann telephoned both Constantine and Pope on August 8, 2007. The call to Pope took place at 8:37 p.m. and the call to Constantine took place at 8:49 p.m. It should be noted that these were not occasions where Hermann, during the course of his presence at the Governor's office, just happened to run into Pope or Constantine by chance and such conversations ensued, but Hermann affirmatively reached out by telephone, during late evening hours, to interject himself regarding the Commission's confidential investigation.

In contrast to Constantine's testimony that this conversation occurred in early August, Hermann stated that he continued to discuss the Commission investigation with Constantine until

early or mid-September 2007. (RH 37) Hermann could not recall when Constantine admonished him, who initiated the conversation, and whether it was in-person or on the telephone. (RH 40)

Hermann's testimony that his communications with Constantine regarding the Commission's investigation continued into September is contradicted by Constantine's testimony that the admonishment occurred during his early August trip to Skaneateles and by Constantine's aide Doktor who confirmed Constantine's account of a telephone call from Hermann. Most importantly, telephone records show that conversations between Constantine and Hermann sharply ebbed after August 8.

Since public reports of the Governor's dispute with the Commission did not appear until September, Hermann's assertion that he discussed only publicly-reported information with Constantine cannot be true if their conversations ceased in early August. Newspaper articles at the time of their late July and early August conversations reported that Spitzer and the Executive Chamber were complying with Commission requests for records and were open to testifying before the Commission, whereas Hermann reported that he was discussing delays with document production that were "crippling this government." (RH 26)

Furthermore, if Hermann's conversations related to information that was public, there would be no basis for the Chamber attorneys advising him that his conversations were not only improper but wrong. Moreover, if the Chamber attorneys had initiated the conversations, why would they tell Hermann to cease such talks as Hermann conceded had occurred?

Q. Did Constantine ever tell you to stop having conversations with --

A. Yes, he did.

Q. Did he tell you that it was improper?

A. He told me that he was uncomfortable with it and he thought it was wrong and he reached that conclusion after consulting Richard Rifkin who said he thought I should stop doing it, and I did.

Q. Well, what was wrong? You described this stuff came from the newspapers.

A. I didn't think it was wrong. I operate in essence, while I'm not part of the executive chamber, my office is the Governor's Office of Regulatory Reform. We have a whole separate reporting relationship to the chamber. I was talking to them and, while I wasn't formally deputized by them, they knew I was taking an interest in this in trying to be a peacemaker basically.

Q. But they told you that, in their judgment, what you were doing was wrong.

A. And I stopped.

Q. And they told you that what Teitelbaum was doing was wrong in talking to you about this; is that correct?

A. Yes, correct. (RH 35-36)

Q. Did Constantine not specifically direct you not to have any conversations with Teitelbaum about the commission's activities?

A. Yes.

Q. Specifically Teitelbaum?

A. Yes.

Q. And did he tell you that, if you continue, he does not want to know about it?

A. Yes.

Q. Did he tell you that he and Rifkin had discussed this and they thought what you were doing was wrong?

A. Yes. (RH 37-38)

Q. And you accepted their admonition not to have any further conversation with Teitelbaum?

A. I did. Again, I want to remind you that all conversations were not initiated by me. Both Lloyd and Peter initiated conversations with me on this.

Q. So they came to you and said, don't talk to me any more?

A. No, that's before they came to me. Sometime in September, I think in mid September or something or early September, I don't recall, Lloyd said this to me, that I should not [be] having, you know, any involvement in this issue. (RH 36-37)

Q. Did you continue to have any further conversations with Teitelbaum about the activities of the commission?

A. No.

Q. So did you cease having conversations with him about the activities of the commission?

A. Yes. (RH 39)

Hermann's attorney referred the Inspector General to a *New York Times* article dated July 28, 2007, that purportedly reported that the Executive Chamber would be asserting executive privilege in response to inquiries from the Senate Committee on Investigations. The attorney argued that Hermann would therefore have concluded that the Executive Chamber would assert similar privileges in response to the Commission. However, a review of this article revealed that it was not reported that the Executive Chamber was asserting a privilege at that time. Rather, the *New York Times* article stated that Spitzer was inclined to testify before the Commission but he needed clearance from legal counsel. The article quoted Spitzer saying, "I would want to - I

hesitate only because executives tend to sometimes have their lawyers say, ‘Executive Privilege, you’ve got to think about this.’”¹⁸

As stated above, during the Commission’s initial inquiry of the Troopergate matter, it began by obtaining evidence already gathered by the Attorney General and the Inspector General during these agencies’ earlier investigations. The first public disclosure of even the existence of documents that were not already in the hands of the investigating agencies was on August 6, 2007, when the *New York Post* reported that the Executive Chamber had not provided certain e-mails to the Attorney General and the Inspector General.¹⁹ Even then, newspaper articles reported that Spitzer and the Executive Chamber were complying with Commission requests for records and were agreeable to testifying before the Commission.

On September 4, 2007, it was first reported in the *New York Post* that the Commission was “secretly battling [Spitzer] and his aides over access to potentially explosive private e-mails.”²⁰ Just over a week later, newspapers carried a story that a Commission subpoena would be contested.

When John Feerick appeared before the Inspector General he brought with him a collection of newspaper articles he had assembled dealing with the activities of the Commission on Public Integrity:

Q. I have found nothing prior to September 4th of ’07, indicating that there was a fight, when I say a fight, some contention between the Spitzer administration and the Ethics Commission over the furnishing of any documents.

Do you have anything prior to September 4th? I am talking about public reporting that there is some contention between the Spitzer administration and your Commission over documents, the furnishing of documents.

A. I believe there were meetings in August that the representatives of the Spitzer administration had with the staff of the Commission on documents. And there were issues in those meetings as to documents and issues in those meetings with reference to privilege. And those would have been discussions in an investigation with the people that you are dealing with. And my understanding is that there was differences in those late August meetings with reference to documents.

Q. And whether privileges would be asserted; is that correct?

A. Yes.

Q. And whether lawyers would appear to represent certain people, or whether they were conflicted?

A. Certainly with reference to documents. And I think you would have had witnesses beginning to testify sort of toward the end of August and the

¹⁸ Patrick Healy, “Spitzer and Two Aides May Testify Before Ethics Panel,” *New York Times*, July 28, 2007.

¹⁹ Fredric U. Dicker, “Spitz’s Hidden E-Trail,” *New York Post*, Aug. 6, 2007.

²⁰ Fredric U. Dicker, “Spitz in their Face – Eliot Fights to Guard Private E-mails,” *New York Post*, Sept. 4, 2007.

beginning of September, represented by counsel. And all of that would have been part of the mix dealing with our staff.

Q. And that preceded the September 4th article? I have found nothing prior to September 4th indicating that there were these discussions between your staff and Spitzer administration over issues like privilege and documents and witnesses. Did you find anything prior to September 4th? (JF 21-23)

Q. Do you see it anywhere before September 4th?

A. In my summary, I don't -- I have a gap between -- I don't see anything up to September 3rd, in terms of my summary of the newspapers. (JF 25)

Q. But prior to September, nothing in July or August indicating a dispute over the exercise of executive privilege or any privilege with regard to records?

A. I don't see it in what I have. (JF 26)

Q. And Dean [Feerick], you would agree, then, from what you have discovered among newspaper stories, that the issue of disputes between your staff and Spitzer people over whether documents or witnesses are going to be protected by privilege and so on, was internal and never reported in the press until September?

A. All I can say is that the document in front of me would suggest that that's correct... (JF 27)

Q. So again, if you find nothing else in the press --

A. Right.

Q. -- as we sit here today, the issue of whether certain documents were going to be withheld from the Commission by Spitzer people because of some type of privilege, was an internal issue and confidential within the Commission; is that correct?

A. Well, internal -- yes, to this extent: That if there's an issue, there's a party outside the Commission that the issue is with. Namely, the attorneys and other representatives of Spitzer.

Q. I understand.

A. Yeah.

Q. When I say Commission, the people involved, it was a confidential thing, it never reported to the press what you people are talking about and discussing, getting certain documents, getting certain witnesses, whether privilege is going to be exerted of some kind. That's all internal until September?

A. I would certainly consider it such. I mean, obviously you have the people involved within the Commission. (JF 28-29)

2) Hermann's Admission That He Was in Possession of Confidential Information He Had Obtained from Herbert Teitelbaum, which He Communicated to Constantine on November 1, 2007, and Discussed with Governor Spitzer on November 2, 2007

Conversation with Constantine

Hermann was questioned about his meeting with Constantine on November 1, 2007, at the Governor's New York City office and the nature and content of his communication. He confirmed that he was "very concerned about the information I was about to give him and what it meant and I felt it was very important for him to get it." (RH 47-48) He also confirmed Constantine's testimony that such conversation continued for about 15 minutes (RH 58-59) and that he requested that Constantine not identify him as the source and "...to leave my name out of it basically." (RH 52)

A. I told him that I had information that I thought was important with regard to the governor's representation by counsel *and that I had come upon it from Herb*. And what I said to him was that it's my understanding that the DA is looking into alleged inconsistencies in Darren Dopp's statements and that that means that, although all of you now think this investigation has ended which is where they were, they thought the investigations had all gone away, it meant that, in my mind, it was simply being stalled, the commission's investigation, by the fact that they had a self-incrimination problem with regard to calling additional witnesses and that I thought it was very important that the governor's legal team be conflict-free and that, if the lawyers who were involved, namely David Nocenti and Peter Pope, knew of this, they would be the first not to want to be in a conflicted situation. That's what I told him, that I thought they needed to take action so the governor's counsel didn't have a conflict of interest because of the fact that the DA had now taken an interest in the alleged inconsistencies in the two sworn statements that Darren Dopp had made (emphasis added). (RH 49-50)

A. I felt that, as a part of the governor's administration, that I got this information and that it affected not at all any of the pending proceedings. All it would affect was the issue of whether the governor and the executive chamber were represented by lawyers who did or didn't have a conflict of interest. And it was pretty clear to me that one had developed and that's the only reason I spoke up. *And that they were unaware of it and that unfortunately I was aware of it* (emphasis added). (RH 102-103))

Q. So this information was that the DA now had decided it was going to pursue the Dopp matter; right?

A. No, what I knew was that the DA appeared to be interested in the alleged inconsistencies and I didn't know anything about what the DA's intentions were. In fact, all I knew was that everybody was assuming at the time that Peter Pope had told me he thought it was all over because the commission was not proceeding to calling the remaining witnesses it would have to call, namely David Nocenti and the governor. It seemed like it was all winding down. My conclusion was that the -- it wasn't winding down, it was stalled until the DA decided what to do about these two sworn statements that it had discussed with the commission, apparently, and that appeared to be inconsistent.

Q. Now, this statement before the DA -- again, I want to read it again to see if I have misinterpreted that -- and the statement is, now, this comes about at the time when the DA's office here had already said it wasn't going to be pursuing the Dopp matter.

That did not mean that you just learned that they are going forward with the Dopp matter?

A. No, I had no idea what they were going to do. What I knew is that *Herb must have had a conversation with them* (emphasis added). (RH 51-52)

Q. Did you tell him that there was inconsistency during the sworn testimony of Dopp before the Ethics Commission, the Commission on Public Integrity, and the sworn statement he gave to Cuomo?

A. I believe that I told him that they have concluded that there was an inconsistency between the statement that Darren Dopp had given to the attorney general in the form of an affidavit and the statement that he made to the commission or else why would the commission be talking to him about them. Those were his only two sworn statements. (RH 53-54)

Hermann explained that he chose Constantine as the Executive Chamber attorney to whom he provided this information "because obviously he didn't have a conflict." Hermann continued, "I asked him to use the information for the purpose of resolving the conflict..." (RH 59)

Hermann denied to the Inspector General that he had told Constantine that the Commission had formed a special committee to deal with this matter because of their concern about leaks, or that the Commission had identified a specific commissioner as one of the leakers. However, he acknowledged telling Constantine that he had had "a number of conversations with Herb about the chamber claims that you're leaking and, you know, that at that time both the chamber and the commission I think were looking into the question of who's leaking because it was perfectly obvious leaking was going on and it was my judgment that leaking was going on from the Commission." (RH 56-57)

Hermann denied that he had received the information concerning the Commission's referral to the District Attorney from a telephone call he received on November 1 from Herbert Teitelbaum, while he was en route from Albany to his meeting with Constantine at the Governor's New York City office.

Conversation with Governor Spitzer

The information that Hermann provided to Constantine on November 1, he then discussed with Governor Spitzer on November 2:

Q. I would like to turn your attention back to the fall of 2007. After your conversation with Lloyd Constantine on or about November 1, 2007, did you ever speak to then Governor Spitzer regarding any conflict of interest which either Peter Pope or David Nocenti may have had?

A. Yes.

Q. When did that occur?

A. The next day.

Q. Tell me about that.

A. I was in the office at 633 [3rd Avenue, New York City]. And I was walking down the hallway in front of his office. And he sort of pulled me into his office.

Q. The Governor?

A. The Governor did. Saw me there, pulled me into his office. Closed the door and we sat down at his table -- or the table in front of his desk and he said, *Is Herb nuts?* And I said, Why? And I figured out that he had talked to Lloyd and he confirmed that he had talked to Lloyd. And he said, What is he doing?

Q. Meaning *Mr. Teitelbaum*?

A. Yes. I said, I don't know what he's doing. What I came to talk about -- what I came to see Lloyd about was that it's *obvious to me* that there's now a conflict of interest among the people who were handling the Troopergate investigation and that needs to be remedied. And I said that, you know, it had to do with the writing -- it had to have to do with the writing of the affidavit because otherwise there was no interest in the -- there would be nothing interesting about it. And he said, well, it's -- you know, it would be ridiculous to think that Peter Pope or David Nocenti would suborn perjury, and I said, well, it would be ridiculous to think it, but no law enforcement agency can assume that (emphasis added). (RH 134-135)

I remember also saying to him that as a former prosecutor, someone who worked in the Manhattan District Attorney's office, he would understand that if there were any inquiry about the -- the -- a perjury inquiry by the

District Attorney with regard to the Dopp affidavit, how could the lawyers who had prepared that affidavit be representing the chamber. (RH 136).

Hermann amplified his concern about the legal issues that Dopp's testimony had presented:

The conflict of interest issue, as someone who is a government lawyer, weighed upon me. I tried to figure out some other explanation for what this was because I knew that this was fraught with peril to do what I did. But here you have two lawyers representing the governor who I believe are honorable people and who, because of the Dopp testimony, were now in a position where they were potential witnesses before the commission, likely witnesses before the commission, that the commission could not then call because they would be setting themselves up in a self-incrimination problem because they can't refuse to testify before the commission because they'd get fired for doing that. And, if they do testify before the commission, then it's admissible against them in a criminal proceeding that they had no idea was even going on because the DA had said up to that point that there was nothing there. And they were giving legal advice.

Now, suppose that they had indeed suborned perjury. Suppose that the two people who wrote this affidavit for Darren Dopp had suborned perjury. They couldn't be representing the chamber then because their whole motivation would be to protect themselves against the subornation charge. So it was completely inappropriate, it seemed to me, if it was ever appropriate in the first place, for these two people to be representing the chamber. They had a conflict problem. I couldn't assume that -- this is a conversation I had with the governor about this.

I said the Public Integrity Commission can't assume that, as you know, that David Nocenti and Peter Pope had, you know, are blame-free. They have to assume that they can't call them because they don't know what they're going to say. And that was what the concern was. I mean, the governor thought that they were nuts. And I said they're not impugning his integrity, Peter's or -- they're just proceeding very cautiously. That's one of the things I tried to get across to Lloyd and Peter which is that these are not incompetent people you're dealing with. You're dealing with a commission of distinguished lawyers and a lawyer whom I've known for thirty-five years who's a very good careful lawyer and that, you know, this is a problem. This is obviously why they're not proceeding, not because they decided to drop the investigation midstream, which is what everybody thought at the time. I don't know if you asked Peter Pope about that, but he was walking around the executive chamber saying it's all over. And he had a conflict and he went out and got himself his own lawyer after this.

That was my motivation. And I have to say, I don't think it was the wrong motivation. I regret having gotten involved in this at all, but that was my motivation and it accomplished the intended purpose, what I did. (RH 103-106)

Hermann testified that this conversation on November 2 was the only one he had with the Governor concerning this matter (RH 138-139). After this conversation, Spitzer suggested Hermann contact Spitzer's attorney, Michele Hirshman (RH 140). Hermann telephoned her but they both agreed it would not be wise to meet and discuss this any further, so no meeting took place. (RH 140-141)

Memorandum of Meave Tooher Dated October 24, 2007

As noted earlier, not only did Hermann know of the referral by the Commission to the District Attorney, but also the very content of the sworn testimony of Dopp.

On October 24, 2007, about one week before Hermann confronted Constantine at the Governor's New York City office with his urgent information, Meave Tooher, Investigative Counsel for the Commission and the attorney who worked closest with Teitelbaum, memorialized the status of the Commission's investigation, and the legal issues involved, in a memorandum addressed to Teitelbaum entitled "Status of NYSCOPI Investigation concerning the Misuse of the State Police."

The memorandum demonstrates the extent and accuracy of Hermann's knowledge of the most intimate details of the internal deliberations of the Commission on Public Integrity.

Tooher's memorandum is reproduced on the following pages:

October 24, 2007

To: Herbert Teitelbaum

From Meave M. Tooher

RE: Status of NYSCOPI Investigation concerning the Misuse of the State Police

At the current time, the Albany County District Attorney's Office has indicated it will go forward with a grand jury proceeding seeking an indictment for perjury against Darren Dopp, former Communications Director for the Executive Chamber. The perjury allegations stem from Dopp's testimony before the Commission on October 11, 2007 at which time he admitted under oath that portions of the sworn statement he had provided to the Attorney General's office in the course of its review of this matter were not true.

As we discussed earlier today, the ongoing perjury prosecution raises issues for the Commission's investigation. At this juncture, the Commission would next interview David Nocenti, Peter Pope and Governor Elliot Spitzer. Nocenti and Pope appear to be essential witnesses in attempting to resolve some of the many outstanding inconsistencies in the testimony thus far. These three witnesses are the remaining witnesses in the Commission's investigation, following which the preparation of a report and any Notices of Reasonable Cause (NORC's) would proceed.

Nocenti and Pope were both present when the alleged false statement was signed by Dopp, and, according to Dopp, exerted pressure in getting him to sign the document, despite his protestations that there were falsities contained therein. Governor Spitzer had previously relayed to the Commission that he wanted to have Peter Pope prepare him for and represent him at, his interview before the Commission.

The interviews of Nocenti and Pope prior to public knowledge of the grand jury proceeding create potential appearances of unfairness, and could raise possible Fifth Amendment issues. After the proceedings become public, any Fifth Amendment issues could be knowingly addressed by the witnesses in advance of giving testimony. Although the Governor has not been implicated in the facts and circumstances underlying the perjury charges, interviewing him in advance of the grand jury proceedings similarly presents potential appearances of unfairness.

Although the Commission could proceed to a report and possible NORC on the testimony received thus far, there are numerous conflicts in the testimony already given. Although it is unlikely that all inconsistencies will be resolved by the remaining witnesses, material information concerning the knowledge within the Executive Chamber of activity which violated the Public Officers Law is anticipated from these witnesses. To issue a report in

Memo

Page 2

advance of that testimony creates the potential for the Commission to be perceived as not pursuing this investigation to its conclusion by interviewing those individuals involved at the highest levels of the Executive Chamber, much like the criticism of the Attorney General's report.

At this juncture staff will continue to work on drafting the Report and establishing the outstanding material issues of conflict, so that at the appropriate time, the remaining interviews can be completed and the report presented to the Commission at the earliest possible juncture.

In his testimony, Constantine related statements made by Hermann which closely track points mentioned by Tooher in her memo:

- The Commission had made a referral to the District Attorney of the matter involving Dopp.
- The potential prosecution of Dopp was for either perjury or false swearing relating to the inconsistency between his sworn statement to the Attorney General and his sworn testimony to the Commission.
- Hermann was concerned that the sworn statement that Dopp had made to the Attorney General had been drafted by individuals in the chamber, some of whom (mentioning Pope and Nocenti in particular) were working in the chamber at the time as counsel or special counsel to the governor in responding to the various inquiries.
- Hermann raised a concern about Pope and Nocenti being in a conflict of interest situation.

In his appearances before the District Attorney and the Inspector General, Hermann, in an even more expansive way, testified about factors reflected in Tooher's confidential memo. He first told the District Attorney the following:

- That he knew that Dopp must have said something to the Commission that was perceived to be different from what he had said to the Attorney General.
- If there was a discrepancy between the two Dopp statements, then there was a potential question of who advised him to make those two statements.
- People reported to have counseled Dopp in connection with the affidavit were still representing the governor.
- The reason why there was going to be a roadblock had to be because the Commission couldn't proceed any further without setting sort of a perjury trap and they couldn't reveal it because of the discussions with the District Attorney's office.
- He concluded that with respect to the people who were advising the governor, there was at least a question as to whether there was an unknown conflict of interest.

In his later testimony before the Inspector General, Hermann stated that:

- Two lawyers, Pope and Nocenti, were in a position where they were potential witnesses before the Commission.

- The Commission could not call them as witnesses, because they would be creating a self-incrimination problem because they can't refuse to testify before the Commission because they'd get fired for doing that.
- If they do testify before the Commission, then it's admissible against them in a criminal proceeding that they had no idea was even going on because the District Attorney had said up to that point that there was nothing there.
- The two attorneys were giving legal advice and thus had a conflict of interest problem.
- The self-incrimination problem was obviously why the Commission was not proceeding.

3) Hermann Initially Claims Not to Recall Telling Constantine That Hermann Knows What Teitelbaum is "Capable Of" but then Admits "Maybe I Did" Say It

Hermann was asked why he did not wish to be identified as the source of the November 1 information, as Constantine had testified. When Constantine's testimony was read to Hermann, he responded as follows:

Q. And do you remember telling him, I know Herb Teitelbaum. You know, I know him really very well. I know what he's capable of doing when he's backed into a corner. Do you remember that?

A. I don't remember those phrases. I think what I said to Lloyd was, if anybody questions anything that you've done or that Herb's done or that I've done, we're all sophisticated litigators, we'll find a self-serving explanation for whatever it is or an innocuous explanation for whatever it is.

Q. And then Constantine said to you, what is he capable of doing. Do you remember that?

A. No. But I know that's what he said.

Q. So you do remember him saying --

A. No, I don't. I know that because Lloyd told me afterwards that he said that.

Q. And you said, he's capable of doing anything to protect himself, to defend himself. Do you remember that?

A. No. I remember it in the way I just told you.

Q. Let me go on. And Constantine says, like what. And you said, he's capable of claiming that he didn't tell me any of this stuff.

A. No.

Q. You never had that conversation with him?

A. No.

Q. That I, you know, came into possession of it some other way. And then he said, like what. And you said, like I broke in his -- into his apartment and, you know, saw it on his desk or, you know, somehow came into the -- in other words, he didn't tell it to me, I stole the information. Did you have a conversation along those lines?

A. I don't recall anything about that.

Q. You never told --

A. Lloyd told me in July that he had said this when questioned and I was frankly dumbstruck that he said that.

Q. You were what?

A. Lloyd told me this past July, he read it to me that this is information he had given to the district attorney and I was dumbstruck by it and I've searched my memory. I have no recollection of such a conversation.

Q. Do you deny saying that to Constantine, under oath?

A. I deny having any recollection of it. These conversations occurred a long time ago but I don't remember ever saying anything like that to him... (RH 78-80)

When, at first, Hermann denied any recollection of this conversation, the Constantine testimony was repeated:

Q. And he said this was a conversation with you that he said he would never, ever forget.

Let me repeat it again.

A. [Told me t]hat, too.

Q. Let me repeat it again. I'll read you the whole thing and then you tell me whether there's any part of it that refreshes your recollection.

I've told the governor we're all adults. Why is this a problem. Because you're going to lose a friend. Your friend shouldn't have been talking to you. And then you said, "and I know Herb Teitelbaum, I know him really well, I know what he's capable of doing when he's backed into a corner."

Constantine: "What is he capable of doing"

"He's capable of doing anything to protect himself, to defend himself."

Constantine: "Like what."

You: "He's capable of claiming that he didn't tell me any of this stuff, that I, you know, came into possession of it some other way."

Constantine: "Like what."

"Like I broke into his -- into his apartment and, you know, saw it on his desk or, you know, somehow came into it. In other words, he didn't tell it to me, I stole the information."

None of this refreshes your recollection?

A. I can't say that none of that is correct. It's conceivable that I said some of that. I don't remember saying it though at this point.

Q. Do you deny saying this?

A. I can't deny saying it. I have no recollection of having said that.

The part that I, you know, that sounds to me like it could be true, apart from obviously that he told me he had spoken to the governor, is that it must have come from somewhere, that part about seeing it on this table or whatever it was that you just read, that must have come from someone. Maybe I said that.

Q. Maybe you did say?

A. Maybe I did because I don't know where else he would have gotten it from. (RH 81-83)

Subsequently in his examination, Hermann offered a further explanation of what he meant by his conversation about people backed into a corner:

What I remember of that conversation is my telling Lloyd that people who are backed into a corner do what they need to do to protect themselves. I consider Herb Teitelbaum a tough guy. I consider Lloyd a tough guy. I consider Peter Pope a tough guy. They see things through their own perspective and through their own eyes, which is why I got in the middle of this in the first place, because they couldn't see the forest for the trees. All of them were banging heads and determined to win and that's why I got involved in this in order to try to get them to remember what this was really all about, that this wasn't a litigation they had to win. (RH 86-87)

4) Hermann's Version of His November 2007 Conversation with Richard Rifkin

Hermann confirmed Rifkin's testimony that shortly after the Executive Chamber attorneys had revealed to the District Attorney their knowledge of the referral from the Commission, and their understanding of how the information had been communicated to Hermann, he approached Richard Rifkin. (RH 90)

Hermann stated that he did not recall most of the circumstances of his meeting with Rifkin. Although he remembered telling Rifkin that Teitelbaum had said he was going to bring this to Feerick's attention, he did not recollect telling Rifkin that Teitelbaum feared for his job. Hermann testified that he "might have" requested that Rifkin not tell Feerick. (RH 100) Contrary to Rifkin's testimony, Hermann testified that Teitelbaum "was going to tell John Feerick what had happened, not that he was a leak." (RH 99-100) Hermann emphasized that "it was not my understanding that [Teitelbaum] was going to tell John Feerick that he had told me anything improper, he simply was going to tell [Feerick] what happened." (RH 100-101) As noted, Rifkin's memorandum, executed by him within days of his conversation with Hermann, is

very clear in that Hermann said Teitelbaum was going to admit to Feerick he was the source of the leak.

When Sean Patrick Maloney testified before the Inspector General, he was also quite firm on why the Executive Chamber attorneys had agreed to let Teitelbaum, himself, speak to Feerick. Maloney testified, "Had I learned that Teitelbaum had denied being the source, I think we would have gone directly to Feerick to set the record straight." (SPM 52)

5) Hermann Falsely Denies to Teitelbaum That Hermann was the Source of the Leak

Hermann and Teitelbaum both testified that soon after Soares informed Teitelbaum of the accusations against him, Teitelbaum confronted Hermann. According to Hermann, Teitelbaum asked, "Are you the source of information that [the Commission was] in conversations in -- that we were talking to the DA's Office about inconsistencies in Dopp's statements." (RH 94) Both men testified that Hermann denied to Teitelbaum that he revealed the information to the Executive Chamber.

Hermann testified that Teitelbaum's confrontation with him occurred about a week after Hermann's conversation with Constantine. Teitelbaum telephoned him while Hermann was on his way to Schenectady:

A. And he said, you know, are you the source of information that we were in conversations in -- that we were talking to the DA's office about inconsistencies in Dopp's statements. Something to that effect; I can't tell you exactly what he said. Initially I denied it. I denied it because it all came out of the blue to me. If you want to know my reasons for it, I'd be happy to tell you. But I initially denied it.

Q. You told Teitelbaum that you were not the source?

A. Right, he wanted to know whether I was the source of information that lead to this contact by the chamber to the DA's office.

Q. He told you that people from the chamber had revealed -- had said you were the source but you denied it to Teitelbaum?

A. Yes. The DA's office must have said it. I don't know whether the DA's office told him that or the chamber told him that. He asked the question straightforward, was I the source of it.

Q. Did he ask you whether you had any ideas as to who might have been the source?

A. No.

Let me just say that I denied it at first because at least two reasons. Number one, because I wasn't sure I had been the source because everybody was leaking all over the place at that time and I didn't know whether that meant that I had been identified as the source or I hadn't been or by whom and so I wasn't sure I was. And secondly, because any of it would have involved -- this is why I went in to see Lloyd and asked him

about executive privilege because I assumed the next thing would be about conversations that I couldn't tell him about. So initially I denied it. And the third thing was I was taken aback so my first instinct was did he really want to know this or not.

Q. To this day is that your position with Teitelbaum, has that always been your position with Teitelbaum?

A. No.

Q. Did there come a time when you told him?

A. I can't tell you exactly what the words were, but I thought that he understood at that point and assumed at the point that I was the source. And I simply wasn't sure whether he really wanted to know that information and whether it was in his interest -- we had a long conversation about this, we talked about a lot of things, and I came away from it thinking that he understood that I was the source despite my denial. (RH 94-96)

Teitelbaum testified of his conversations with Hermann at the time, "I concluded that I wasn't being given all the pieces to the puzzle about this episode, and that was distressing to me. So my relationship with Hermann at that point declined..." (HT 127)

In addition to Hermann's lack of truthfulness with Teitelbaum, his former law partner, and a close friend for over 38 years, Hermann provided sworn testimony, aspects of which were controverted by Lloyd Constantine, Richard Rifkin, Peter Pope and Sean Patrick Maloney. As noted throughout this report, such contradictions were not merely different recollections of detail, but involved issues of substance and significance, and indeed, multiple revisions by Hermann of previous testimony he had provided.

6) The Belated Appearance of the "Yellow Pad" Story on February 7, 2008

It is indisputable that the information concerning the District Attorney's investigation that Hermann relayed to Constantine on November 1, 2007, originated with Teitelbaum. As noted, Hermann testified to the Inspector General that he had told Constantine at the time that the information had come "from Herb." Hermann never indicated to Constantine that he had gained the information other than directly from Teitelbaum. Not until three months later, when interviewed by the District Attorney, did Hermann for the first time offer an alternative explanation. As discussed below, Hermann's account — that he had inadvertently obtained the information by glancing at a few handwritten lines on a "yellow pad" in Teitelbaum's apartment — does not withstand scrutiny.

While Soares learned in early November 2007 of the allegations that Teitelbaum was leaking confidential information to Hermann, he focused primarily on his original review of the Dopp inconsistencies. In February 2008, the District Attorney commenced interviews pertinent to the allegations against Teitelbaum, questioning Hermann, who was accompanied by his

attorney, on February 7, 2008. At Hermann's interview with the District Attorney, he first offered his "yellow pad" explanation.

What indeed was Hermann's "yellow pad" explanation? Following is Hermann's unsworn statement to the District Attorney:

What happened is this. Herb's apartment was a two-minute walk from my apartment, and customarily one or the other of us would make dinner and in this case -- and often he would leave the door open. It was still warm out and we're talking about the end of October here. It was still warm out. He would leave the door open and he would sometimes be on the phone when I came in, sometimes not. On this -- on an occasion that happened right around Halloween of last year [2007], I went to his apartment, the door was open. I walk in and he's on the phone in his bedroom, and I hear him on the phone and he kind of waves to me. . . . So I went and sat down in the area where -- in his living room where we would normally sit and have a couple of drinks, and talk about whatever we were going to talk about. And he had laid out glasses there and he had laid out some wine and this was all on the cocktail table. So I looked on the cocktail table and there is a yellow pad just like this, and on the yellow pad there was a reference on the part that was open. I didn't flip the pages or anything, and the part that was open, and to the best of my recollection what it says on the -- what it said on there was, referred to a contact between him and the District Attorney with regard to alleged inconsistencies in Dopp's statement, and that there was some interest on the part of the District Attorney's office in that. Now, this comes about at the time when the DA's office here had already said it wasn't going to be pursuing the Dopp matter....

And I knew at the time that the Commission had Dopp in to testify because it had been reported in the newspapers that he had been in there to testify, so putting two and two together, it was pretty obvious to me that he must have said -- that Dopp must have something to the Commission that was perceived to be different from what he had said to the Attorney General, because as far as I knew, you know, everybody was following this very very closely, so I knew from published reports and from general scuttlebutt that the District Attorney had interviewed Mr. Dopp, but he had not put him under oath, so if there was an interest on the District Attorney's office in an inconsistency, it had to be an inconsistency between his sworn statements; one of which was give to the Attorney General in the form of an affidavit, and one of which was to the Commission. I didn't know what was in either of those two situations, but it occurred to me, you know, pretty clearly as someone who has been involved in criminal law, been involved as a litigator, worked in the government for a lot of years, that this meant that everything was going in a -- could be going in a very different direction from the way it had been

assumed to be because at that point, nothing much had been happening in the case.

So I saw that one page, and it was like -- and I sat down, sort of took a deep breath and Herb came in the room, saw the notes there, picked up the notes, you know, put them away. He looked like something was concerning him. I said something to the effect of, how is it going. And he said only -- something like -- this is the substance of it, that they had run into a roadblock, but he couldn't talk about it. (RH to DA 13-16)

Hermann testified that he and Teitelbaum then proceeded to have dinner and drinks, but that what he had supposedly seen remained "on [his] mind":

I was concerned as a lawyer and someone who works in the Chamber about the issue of representation, meaning if -- I mean, this mental process that I went through. If indeed there was a discrepancy between the two Dopp statements, then there was a potential question of who advised him to make those two statements. And those two -- and presumably, although not clearly, presumably, the people who had been reported to have counseled him on -- in connection with the affidavit that has, you know, been the subject of much speculation, they were still representing the Governor. Well, it was pretty clear to me that the reason why there was going to be a roadblock had to be because the Commission couldn't proceed any further without setting sort of a perjury trap for the people who had advised the Governor, and that is -- and they couldn't reveal it to them because of the discussions with the District Attorney's office, all of which, you know, is kind of complicated in my head but lead me to conclude that the people who were advising the Governor, there was at least a question as to whether there was an unknown conflict of interest there, and that concerned me as someone who, you know, who advises the Governor, that he -- that people who might conceivably, although not in my personal view would have been, but people who conceivably could have been the subject of an investigation of subornation of perjury were at that time advising the Governor about the handling of both of these investigations. And that concerned me a lot. And that was the basis of any subsequent action that I took that I felt needed to be surfaced that there was -- that there was the possibility of an inconsistency in the two statements, and that -- and that those who were -- you know, that there needed to be an awareness of this so that the Governor was -- who was advised by lawyers who didn't have conflicting interests in this matter. (RH to DA 17-18).

The fact that Hermann's testimony to the District Attorney was unsworn is of no moment. When Hermann was questioned by the Inspector General on September 22, 2008, he was asked about his appearance before the District Attorney:

Q. You testified but not under oath before the district attorney of Albany County on February 7, 2008. Do you recall that?

A. Yes.

Q. You were a public official at that time; correct?

A. Yes.

Q. Did you regard your responsibility as a public official to cooperate with the DA's investigation?

A. Yes.

Q. To tell the truth?

A. Yes.

Q. Regardless of whether you were under oath or not?

A. Yes.

Q. Regardless of whether you were represented by an attorney or not?

A. Yes.

Q. You've had an opportunity to review your testimony before District Attorney Soares?

A. Yes.

Q. Anything in that examination that you wish to correct, amend or change in any way?

A. *I don't want to correct, amend, or change anything*, but there was a lot more that happened in those events which at that time was blocked by the executive chamber's assertion of privilege and it wasn't ever finished (emphasis added). (RH 9-11)

In his examination before the Inspector General, Hermann was pressed on what exactly he had purportedly seen on the yellow pad on "the table where the snacks were": (RH 61)

A. And I'm standing over it like this and I look down and I read something to the effect of -- I can't tell you the exact words -- that the DA is interested in alleged...inconsistencies in Dopp's statement."

Q. That was the sentence?

A. It probably wasn't the sentence. The word that struck me was "inconsistencies," that's the one that I remember best, that it said interested in inconsistencies in Dopp statements. (RH 61-62)

Hermann stated that Teitelbaum then came out of the other room, did not look very happy and they proceeded to have dinner. At some point, according to Hermann, he said something to Teitelbaum to the effect of "is this thing ever going to end, is this investigation, is this whole matter ever going to end" and Teitelbaum said "that they had run into a roadblock but he couldn't discuss it": (RH 63)

Q. The only thing that was on the yellow pad was -- could you repeat that again.

A. The words I remember best are "DA interested in inconsistencies," meaning the DA was interested in the inconsistencies in Dopp's statements.

Q. And that was on the yellow pad?

A. Meaning that *Herb had a call with them*, with the DA's office.

Q. Was that the only thing written on the yellow pad?

A. That was scrawled across diagonally. That's the only thing I remember seeing.

Q. This was on the cocktail table?

A. Yes (emphasis added). (RH 64-65)

Q. Now, the information that you related to Constantine the following day, November 1, or two days later, was information based upon what you had seen on the pad?

A. And based on Herb's remark about the roadblock which he probably thought was inconsequential because I wouldn't know what it meant. Yes, it was based on two of them. (RH 69)

It is beyond dispute that Hermann failed to mention his yellow pad account to any member of the Executive Chamber in November 2007. Indeed, all of the parties involved in either the receipt of the communication from Hermann on November 1 and November 2, 2007, or in discussions concerning the ramifications of such communications, understood from Hermann that Teitelbaum was the direct source of the information.

As discussed above, when he interrupted Constantine's meeting to advise him of the Commission's referral to the District Attorney, Hermann bluntly informed Constantine of the fact of the referral and that he had "come upon it from Herb." Hermann never advised Constantine during this meeting that he had merely viewed ambiguous notes on a pad and that what he had related were conclusions he had drawn based solely upon his own deductions. Similarly, when he spoke directly with Governor Spitzer the next day, Hermann repeated his news without any caveat regarding inadvertently viewing sketchy notes, even in response to being asked by Spitzer, "Is Herb nuts?"

When Hermann approached Rifkin on November 8, 2007, for the distinct purpose of imploring him not to reveal to Feerick Teitelbaum's leak of information, there was no denial that Teitelbaum was the source of the information he had about the Commission's referral to the District Attorney or an explanation that he had come upon it inadvertently from a pad in Teitelbaum's apartment. In fact, Rifkin never heard the yellow pad story until questioned by the Inspector General during this investigation.

Rifkin was questioned by the Inspector General on September 3, 2008, and was asked whether Hermann had ever attempted “to put a different spin on how he obtained the information”:

Q. Anything along the lines that we happened to be in Teitelbaum’s apartment one evening, saw some written notes and that’s how he became so informed about the referral?

A. Never heard anything like that.

Q. Okay. You have a smile on your face.

A. I have assurance because this is -- you know, if anybody told you that, that this is the first time I’m hearing that. (RR 32)

It should be noted that Rifkin’s examination was conducted a full 10 months after he was advised by Constantine of Hermann’s disclosure of the Commission’s referral to the District Attorney. At his second examination, Rifkin was again asked about Hermann’s belated “yellow pad” story:

Q. Okay. Did Hermann ever tell you that he had inadvertently come upon this information by seeing notes on a pad in Teitelbaum’s apartment the night before he spoke to Constantine

A. No.

Q. I believe I raised that with you last time and you said that was the first that you had heard of it.

A. And that is accurate. (RR 53)

Sean Patrick Maloney appeared before the Inspector General on February 6, 2009, and testified that prior to such examination he had “absolutely” never heard of Hermann’s yellow pad story: “It’s nothing I’ve ever heard before.” (SPM 54)

Undermining the yellow pad story and his own veracity, Hermann testified to the Inspector General that “sometime in early November” he informed Teitelbaum about the yellow pad story and that Teitelbaum was “very angry.” Contrary to Hermann’s claims, Teitelbaum testified that Hermann never said a word to him about a “yellow pad” as the explanation for his knowledge of the Commission’s referral. Additionally, Teitelbaum averred that not only did he never tell Hermann that the Commission had hit a “roadblock” but that he did not feel at the time that the Commission had hit a “roadblock” or was stalled.

7) Hermann’s Revised “Yellow Pad” Story

Further undercutting Hermann’s yellow pad story is the revised version he supplied to Constantine after his appearance before the District Attorney. In February 2008, in preparation for his examination by the District Attorney, Constantine was interviewed by Assistant Counsel to the Governor Steve Krantz and then-First Assistant Counsel Terryl Brown Clemons, who had

learned of Hermann's "yellow pad" account to the District Attorney earlier that month but had deliberately not shared such with Constantine. While both testified to the Inspector General that they were skeptical of Hermann's story, they sought to elicit from Constantine his recollection of the exact words Hermann had used with Constantine and whether Teitelbaum's name had been specifically cited by Hermann.

After repeatedly undergoing questioning by Kranz and Clemons and after his own appearance before the District Attorney, Constantine later contacted Hermann in approximately July 2008, in an effort to recall whether Hermann had ever specifically named Teitelbaum, or whether it was Constantine's assumption, albeit, in Constantine's judgment, an accurate assumption, that Teitelbaum had told all such information to Hermann. Constantine testified that he specifically informed Hermann that "this is serious, people may get in trouble, so tell me what happened here." (LC 62) In response, Hermann presented yet another version, now consisting of two ingredients: the yellow pad story and a direct statement from Teitelbaum that the Commission had, in fact, made a referral to the District Attorney:

So I called up Hermann, you know, just tell me. I said, did Herb Teitelbaum tell you this stuff or did you find out about this in some other way, and this is what he told me....What he told me was that he had gotten this information in two ways; that when he was at Teitelbaum's house, there was a file or a piece of paper, you know, on a surface and that he wasn't snooping around -- this is what he said -- but this piece of paper was out there conspicuously and he looked at it and he learned some of this information and that he got some of the information from Teitelbaum in the sense that Teitelbaum told him that a, quote, referral had been made to the district attorney. (LC 44-45)

Constantine then asked Hermann about other details Hermann had related to him on November 1, e.g. the establishment by the Commission of a subcommittee of five commissioners to deal exclusively with the referral matter. According to Constantine, Hermann denied this stating, "Oh, no, no, that happened much earlier, meaning the committee of five had been established sometime well before this referral. I said, well, you told it to me that day. He said, I don't remember that, but that happened a long time before." (LC 46-47)

Based upon this later conversation with Hermann and Hermann's statement to him that the subcommittee had been formed earlier, it was Constantine's belief that despite his admonishing Hermann on August 8, 2007, to discontinue conversations with Teitelbaum about Commission activities, that such conversations, in fact, continued:

From all of this, your Honor,²¹ this is what I believe happened. I believe that, after I instructed Hermann to stop talking to Herb Teitelbaum which

²¹ Prior to his appointment as Inspector General, Joseph Fisch was a Justice of the New York State Supreme Court. Hence, at times during this investigation, witnesses and their attorneys addressed the Inspector General as "Your Honor" or "Judge."

occurred on the sixth, the seventh, the eighth or ninth of August, I believe they continued to talk about these issues.

Sometime between the beginning of August and the end of October they had a conversation and Teitelbaum told him about the formation of the group of five and the reason for that was the leaks that had been occurring at the Integrity Commission and had told him who those people were. He, because I directed him to shut up and not talk to him any more and not to tell me about it, never told me about that. But when this latter information came to him about the referral to the district attorney, he just that day disgorged everything he knew and it was my assumption that this group of five had been constituted for the purpose dealing exclusively with this referral when, in fact, it had been created sometime earlier to deal with this institutional problem that they had at the Integrity Commission about leaks.

A. That is my conclusion here that that's how this whole thing happened. As I sit here, that's what I believe happened.

Q. You buy that?

A. Excuse me?

Q. Do you buy that explanation?

A. It's the best that I have. I don't know. (LC 47-48)

Although Hermann confirmed that he spoke with Constantine in July 2008, he denied stating to Constantine that he received the information in two ways, that Teitelbaum had additionally directly informed him that the Commission had referred the matter to the District Attorney. Rather, Hermann claimed that he repeated to Constantine the version he had provided to the District Attorney and later to the Inspector General, including the "roadblock" reference by Teitelbaum, which, as noted above, Teitelbaum himself disclaimed under oath.

8) The "Yellow Pad" Story: An Analysis

As set forth in detail above, it is undisputed that the Chamber was informed of the Commission's referral to the District Attorney by Hermann on November 1, 2007. It is further indisputable that Teitelbaum was the source of Hermann's information. As the yellow pad story is the only innocent account Hermann has provided as an explanation for his possession of this confidential information, some analysis is warranted. In sum, Hermann's yellow pad story is not credible either internally or as revealed by the belated nature of its appearance and its evolution.

Hermann's Failure to Inform Anyone of the Yellow Pad Story until February 2008

Despite many opportunities to raise this defense of his friend in conversations with Constantine, Governor Spitzer and Rifkin in early November 2007, Hermann failed to do so. On November 1, 2007, when he informed Constantine of the Commission's referral to the District Attorney which he had learned from Teitelbaum, Hermann had every occasion to tell

Constantine that his information was based upon mere deduction from notes inadvertently viewed on a yellow pad. Likewise, when he spoke with the Governor himself on November 2, 2007, and according to Hermann, Governor Spitzer commenced the conversation by asking, “Is Herb nuts?” this rhetorical question did not elicit the yellow pad story from Hermann. Instead, without any tentativeness or hint of uncertainty, Hermann detailed for the Governor the thought processes of the Commission: “I mean, the governor thought that they were nuts. And I said they’re not impugning his integrity, Peter’s or -- they’re just proceeding very cautiously. . . . This is obviously why they’re not proceeding, not because they decided to drop the investigation midstream, which is what everybody thought at the time.” (RH 105)

Additionally, when Hermann next spoke with Constantine about his disclosure, Constantine testified that he informed Constantine that he knows “what [Teitelbaum is] capable of doing when he’s backed into a corner,” and that Teitelbaum is “capable of – of claiming that he didn’t tell me any of this stuff, that I . . . came into possession of it some other way. . . . like I broke into his -- into his apartment and, you know, saw it on his desk or -- or, you know, somehow came into the -- in other words, he didn’t tell it to me, I ‘stole the information.’” (LC to DA 45) Notably, while not denying he may have made these comments to Constantine, Hermann remembered telling Constantine, “that people who are backed into a corner do what they need to do to protect themselves.” (RH 86) Herman further recalled telling Constantine: “If anybody questions anything that you've done or that Herb's done or that I've done, we're all sophisticated litigators, we'll find a self-serving explanation for whatever it is or an innocuous explanation for whatever it is.” (RH 78)

Neither Constantine’s nor Hermann’s version of this conversation is consistent with the yellow pad story, and it strains reason to believe that if such an account were true, it would not have been mentioned by Hermann at this juncture. Significantly, one of the “sophisticated litigators” as characterized by Hermann did eventually offer an innocuous, self-serving explanation for how the information was passed from Teitelbaum to Hermann to the Chamber – Hermann himself.

Additionally, Hermann did not inform Rifkin of the yellow pad when Hermann spoke to him soon thereafter when he sought to speak to Rifkin out of concern for Teitelbaum. Rifkin testified that, while it was evident in November 2007 that Hermann was concerned about the effect of his disclosures to Constantine upon his longtime friend Teitelbaum, Hermann made no mention about his having obtained the information by seeing notations written upon a yellow pad. It was not until Rifkin was testifying before the Inspector General on September 3, 2008, that he had ever heard such story.

Having then been in a position to accept responsibility for thus inadvertently obtaining the information and to absolve his friend Teitelbaum from any suggestion of wrongful disclosure, Hermann stood silent about it and asked Rifkin to permit Teitelbaum to tell Feerick that the Executive Chamber was in possession of confidential Commission information. Hermann himself did not go to Feerick. While the acknowledgment of having read his friend’s notes and of having further disclosed them may have reflected poorly on him, Hermann could still have done so to spare his friend. In fact, Hermann testified that in November 2007, he was worried about losing his friend Teitelbaum.

The Inspector General asked Hermann why he did not make more of an effort at this time to clarify that Teitelbaum was not at fault:

Q. Your very good friend is now in trouble because of something that you had done. Did you make any offer to square this with his employer?

A. Well, it would have been my instinct to try to figure out how to make it better, but the things were getting very complicated very fast and I didn't know if that was a smart or appropriate thing to do. I may have thought about it. I thought about a million things as these events unfolded, but I don't think I ever actually offered to do that. (RH 159)

It is inconceivable that Hermann possessed information in November 2007 which would have exonerated his close friend Teitelbaum but elected not to divulge it despite negligible or no cost to himself. Instead, he permitted Teitelbaum to undergo scrutiny and possible serious consequences stemming from the serious allegation that he had, in violation of law, disclosed confidential information concerning the Commission's Troopergate investigation. All Hermann had to do – if, in fact, the yellow pad story were true – was to admit to the Executive Chamber attorneys, to Rifkin and indeed to Feerick himself, that Teitelbaum had done nothing wrong and that it was Hermann who had inadvertently chanced upon such information in Teitelbaum's apartment. And what, indeed, would have been the consequences of such an admission? Hermann might have been embarrassed for glancing upon something he should not have looked at, and Teitelbaum possibly may have been chided for carelessness in leaving notes exposed on a table in his apartment while entertaining a close friend for dinner. No investigation by the District Attorney would have been necessary, no referral to the Inspector General would have been made, no question raised about the integrity of his close friend, the executive director of the Commission on Public Integrity, and no damage to the Commission as well.

The most persuasive refutation of the yellow pad story is the testimony of Teitelbaum himself in that Teitelbaum denied not only having heard the yellow pad account in November, but that he did not feel that the Commission had hit a "roadblock" at that time. (HT 109) Teitelbaum's refutation of his "yellow pad" story conclusively demonstrates that Hermann never mentioned seeing the information on a pad until more than three months after the accusations were initially leveled that Teitelbaum was leaking Commission information. It is incomprehensible that if Teitelbaum had heard this explanation from Hermann in November, as Hermann testified, which would have completely absolved him of guilt, he would not have so informed Feerick.

Additional Information Which Could Not Have Been Gleaned From the Yellow Pad

It will be recalled, that Hermann and Constantine spoke for 15 minutes on November 1, 2007, and that, according to Constantine, Hermann revealed not just the fact of the Commission's referral of Dopp's inconsistent statements to the District Attorney, but also

identified Pope and Nocenti as having influenced Dopp's possibly false statement to the Attorney General. In their meeting, Constantine testified, Hermann also disclosed other confidential information about the Commission's internal operations, including that the Commission, worried about leaks to the media, had created a special subcommittee to deal with the Troopergate investigation. Further, Hermann correctly identified several subcommittee members and named a specific Commissioner as having been suspected of leaking Commission information.

When questioned by the Inspector General about the source of this additional information, Hermann admitted that the pad he said he observed in Teitelbaum's apartment did not contain the names of the Commission's subcommittee members, any reference to leaks by the Commission, or the name of a specific commissioner suspected of leaking Commission information. Hermann reiterated that the only thing he recalled seeing on the yellow pad was the reference to the District Attorney and the word "inconsistencies."

How, the Inspector General further asked Hermann, could he know that Pope and Nocenti were involved in the preparation of Dopp's statement to the Attorney General and would therefore be implicated in the District Attorney's investigation. Hermann responded, "Well, I think it was known at the time. . . . I don't know how I knew that, but I knew that at that point." (RH 137) Similarly, Hermann had testified to the District Attorney that, "I have -- the information I have is what I saw on the sheet of yellow paper and I'm sure it won't surprise you, that there was a lot -- there was daily reporting going on about this." (RH to DA 13) Similarly, when further pressed as to how he specifically knew that Pope and Nocenti would be witnesses before the District Attorney, Hermann could not provide a satisfactory answer if his information was solely based upon the yellow pad:

Q. How did you know that these lawyers would be witnesses before the Commission?

A. Because I assumed everybody would be witnesses before the Commission. If they were looking at Dopp and his affidavit, they would certainly call -- they would certainly be interested, if they thought -- when I say "they" the DA would want to call them if there were any question of subornation of perjury. (RH 171)

The Inspector General's review of public information available at the time further reveals that it had not been publicly disclosed that Pope and Nocenti had been involved in the preparation of Dopp's statement. To the contrary, newspaper articles referenced in a letter to the Inspector General from Hermann's attorney reported that Pope and Maloney had coached Dopp, telling him to submit a sworn statement.²² Notably, Nocenti is not mentioned in relation to Dopp's statement, except as the notary.²³ Nonetheless, when Hermann went to Constantine, he was specific about Pope and Nocenti being implicated, and said nothing about Maloney.

According to Maloney, the Dopp statement was executed the evening of July 22, 2007, a Sunday, in David Nocenti's office in Albany. (SPM 58) Present were Dopp, Dopp's attorney,

²² Fredric U. Dicker, "Spitzer 'Gag' Reflex, 'Counsel' Ploy Silenced Aides in AG's Probe," *New York Post*, July 30 2007.

²³ Rick Karlin, "Governor Tells His Side," *Times Union* (Albany), July 27 2007.

Nocenti and Pope. Maloney testified that he had occasionally left the room and may not have been present when the statement was actually signed, and that Baum may have been present in his office but did not participate in the meeting. (SPM 60) Maloney was asked about Hermann:

Q. Was Robert Hermann there?

A. No, not that I know of.

Q. By November 1st was it well known who was present when the statement was made?

A. Judge, I don't know if it was well known. If by that you mean it was publicly reported, I think the answer is, no, it was not.

Q. Okay.

A. I think there was subsequently a lot of attention paid to that, but as of November 1st I don't think anybody knew beyond those of us who were there. (SPM 61)

Swipe card records indicate that Hermann was not present in the Capitol in Albany that day.

When Darren Dopp testified before the Inspector General he stated "with a hundred percent certainty" that he had never told Constantine, Pope, Rifkin, or Maloney that in his testimony before the Commission he had named Pope and Nocenti in connection with influencing his statement to the Attorney General. (DD 15) He did speak to Nocenti the day of Dopp's appearance before the Commission, but did not tell him that he had named Nocenti or Pope in his testimony. (DD13) Dopp also testified he never had a conversation with Hermann about anything. (DD 18)

The Implausibility of the Yellow Pad Story

Even if Hermann had not first espoused the yellow pad story three months after first informing the Chamber of the information he learned from Teitelbaum, this account would strain credulity.

Hermann testified that after having purportedly viewed a reference on a yellow pad about the “DA” being “interested” in Dopp’s “inconsistencies,” he was able to surmise that Dopp’s testimony before the Commission was not simply internally inconsistent, inconsistent with other evidence which had been presented before the Commission, or inconsistent only with the statement Dopp had submitted to the Attorney General. Rather, based upon Teitelbaum’s purported use of the word “roadblock,” Hermann was able to deduce that not only did the notes on the yellow pad refer to inconsistencies between Dopp’s testimony before the Commission and his written statement submitted to the Attorney General, but that any such inconsistencies must be related to the roles played by particular attorneys in the Executive Chamber with respect to the written statement. It was for this latter reason, he concluded, that the Commission’s investigation was not winding down, as some believed. Instead, it was “stalled” by the fact that the Commission considered there to be a self-incrimination problem with regard to calling additional witnesses until the District Attorney decided what to do about these two apparently inconsistent sworn statements that it had apparently discussed with the Commission. Additionally, Hermann was able to divine from his glance of these words that possible self-incrimination problems awaited Nocenti and Pope requiring their recusal from representation of the Governor and his assumptions exactly mirrored the internal discussion being conducted within the Commission at the time as memorialized in Tooher’s memorandum to Teitelbaum on October 24, 2007.

The Inspector General is not alone in rejecting the facial plausibility of the yellow pad account. While not dispositive, this story has been greeted with immediate incredulity by those who were made aware of it with the notable exception of the Commission itself, as discussed in detail below. Assistant Counsel to the Governor Steve Krantz and then-First Assistant Counsel Terryl Brown Clemons learned of Hermann’s “yellow pad” story from Hermann’s attorney in the course of authorizing a waiver for Hermann’s return interview before the District Attorney in February 2008. When questioned by the Inspector General, both characterized the yellow pad story as implausible. (SK 36, TBC 42)

Krantz was asked his reaction upon hearing the “yellow pad” story, he aptly responded:

I was deeply skeptical that in the normal course of events there would ever be a pad which would contain all the information that Mr. Hermann had supposedly gleaned from a pad, especially that it contained on the top page. Although, I don’t recall whether something was explicitly said about whether he was limited to reading the top page or whether he had read only the top page. But the detail of information that was recounted at that point, which I can’t remember everything right now, definitely led me to be extremely skeptical that that would ever occur, unless somebody was for some unusual reason putting a lot of information in a very visible way

on a pad. By my experience of the normal way that people take notes in an investigation is that it would be most unusual for so much detailed information in such explicit form to be readily accessible on a pad. (SK 35-36)

C. The Testimony of Herbert Teitelbaum

Herbert Teitelbaum, accompanied by his attorney, was examined by the Inspector General on October 10, 2008, and February 17, 2009.

1) Discussions with Robert Hermann and Communications with the Executive Chamber in July – August 2007

In connection with the Commission's Troopergate investigation, Teitelbaum dealt with a number of attorneys from the Executive Chamber including Peter Pope, Richard Rifkin, Lloyd Constantine, David Nocenti, and Sean Patrick Maloney. (HT 11-12) Although Meave Tooher also dealt with these Executive Chamber attorneys, Teitelbaum was the "main person" who was dealing with them. (HT 14)

Teitelbaum was asked about the Troopergate investigation:

Q. Did you regard the investigation that you were conducting as serious?

A. What do you mean by that?

Q. Serious, of consequence.

A. I think every investigation is serious.

Q. Confidential?

A. What do you mean by that?

Q. You don't understand what I mean by confidential?

A. Yes. I don't understand. (HT 15)

The Inspector General explained that by "serious" and "confidential" he meant that it should not be shared with people not designated as Executive Chamber liaisons authorized to receive such information. Teitelbaum stated that the fact the Commission was conducting an investigation was publicly reported, and that he never thought about whether the existence of the investigation was confidential.

Q. Did you ever talk to Mr. Hermann about the investigation the Ethics Commission and then [the Public Integrity Commission] was conducting?

A. Just in a very general way. He knew that I was doing an investigation.

Q. Tell me what you mean by a general way.

A. That we were doing an investigation, that I was exhausted by the investigation. Bob Hermann and I, as I told you, knew each other a long time. We discussed many things. We had dinners together. One of the subjects that comes up is current events, reports in the newspaper about the current investigation, about me. I might have commented to him that I was being excoriated in the press unfairly, that kind of stuff, that the press don't know what they're talking about, that kind of thing.

Q. I want to go back to the beginning of the inquiry and investigation. You said you spoke to Hermann generally. What do you mean by generally?

A. Just as I described.

Q. That there was an investigation, that's all you told him that we're doing an investigation?

A. There's not much more than that except I might have commented on newspaper articles, I'm sure I did, about what was being said by me. (HT 17-18)

Teitelbaum denied Hermann's testimony that Teitelbaum had expressed dissatisfaction with Rifkin as a person Teitelbaum had to deal with, and denied any disclosure to Hermann of investigative information. (HT 30) Teitelbaum testified "I didn't talk to Bob Hermann about [what] I was doing in my investigation, I didn't do that. That didn't happen." (HT 21) He further denied that he ever asked Hermann to intercede on his behalf with the Executive Chamber, although Teitelbaum asserted that had he done so, it would not have been improper.

A. If I thought going to Hermann to get documents, to get documents, because they were not forthcoming, that would be okay, as far as I'm concerned, because it would have been consistent with the goal of my investigation, which is to get a complete record. And if I had to use Hermann to do it, I would have done it, I would have done it....But the reason I didn't do it is because Hermann had no influence on these people.

Q. And you never used Mr. Hermann to assist you with the chamber in getting records?

A. Never.

Q. Did you ever tell anybody at the commission that you were using Mr. Hermann to assist you with the chamber?

A. No.

Q. Do you know Meave Tooher?

A. I do.

Q. Did you ever tell her that you were using him to assist you with the chamber?

A. No. (HT 25)

Teitelbaum's testimony was contradicted by Tooher, who shared responsibility with Teitelbaum for communicating with the Executive Chamber during the Commission's investigation. As noted earlier, Tooher testified that Teitelbaum had advised her he was "trying to use Hermann as another way to encourage the chamber to get us documents." According to Tooher's testimony, Teitelbaum mentioned Hermann by name, referring to him as Teitelbaum's "backdoor channel" to the Chamber. Tooher testified that this conversation took place very early and that there was dissatisfaction with the production of documents. Tooher testified that Teitelbaum told her "after the fact that he had spoken to [Hermann], it wasn't an I'm going to be contacting. Tooher admonished Teitelbaum, telling him, "You shouldn't be talking to anybody about the investigation." (MT 97-100)

Teitelbaum acknowledged that he had referred to Hermann as a "back channel," but stated that information flowed only from the Executive Chamber through Hermann to Teitelbaum. (HT 25) Teitelbaum testified, "The Executive Chamber lawyers that I was dealing with were very negative about me...and thought that I had overstepped the line and was conducting an investigation that was, from their perspective, too aggressive." (HT 25-26) Alternatively, Teitelbaum asserted that he "didn't need a conduit" because he "was talking directly to the executive chamber." (HT 133-134) Teitelbaum denied, however, that he had told Meave Tooher that he was using Hermann to bring information to the Chamber and also denied ever telling her that he had "backdoor channels" to try to move things along. (HT 26) Teitelbaum testified he could not recall whether Tooher had ever told him he should not be talking to Hermann about the investigation and testified that Hermann had never told him that Constantine had admonished him not to talk to Teitelbaum about the investigation. (HT 27, 31)

In contradiction to Tooher's testimony that Teitelbaum and the Commission were "dissatisfied" with the production of documents from the Executive Chamber, which led Teitelbaum to use Hermann as a "backdoor channel," Teitelbaum testified that there could not have been a dispute about production of documents until August 14 when the Commission submitted its formal document request. Accordingly, any allegation of Hermann's discussions with Executive Chamber attorneys about this subject was not accurate, Teitelbaum contended.

Teitelbaum's assertion that there was no dispute over document production prior to August 14, 2007, is contradicted by the Commission's own records of correspondence during that period. In late July 2007 and prior to August 14, 2007, there was communication and disagreement between the Commission and the Executive Chamber about the assertion of privilege and about documents being withheld because of the assertion of privilege. In the first letter, dated July 27, 2007, Richard Rifkin informed Teitelbaum that with respect to the documents then being furnished:

We stress that much of this material is highly confidential and request that it be treated accordingly. We provide these documents subject to and

without waiving any privileges or rights relative to any other public or private entity, including but not limited to any other branch of government. Further, we incorporate by reference the positions articulated in our July 16 letter to the OAG [Attorney General], which I have included with the enclosed production materials.

In response, by letter also dated July 27, 2007, Teitelbaum wrote:

The July 16, 2007 letter to [OAG], references the tape recording and transcript of an interview of William F. Howard, an Executive Chamber employee. Please provide a copy of the tape and/or transcript of Mr. Howard's interview, as well [as] any and all other recordings and/or transcripts provided by the OAG in the course of its investigation.

Out of an abundance of caution, we request that you provide written confirmation that no document was withheld (sic) from the OAG or this Commission on the basis of a claimed privilege or the attorney work product doctrine.

This letter also serves as a continuing request for any and all other documents within the control of the Executive Chamber, which relate to the underlying facts and circumstances set forth in the [Attorney General's] Report (emphasis added).

The July 27 letters quoted above are reproduced in the following pages:

July 27, 2007

Herbert Teitelbaum
Executive Director
New York State Ethics Commission
Alfred E. Smith State Office Building, #1147
Albany, NY 12210

Re: **Documents Produced to the Offices of the Attorney General and Inspector General**

Dear Mr. Teitelbaum:

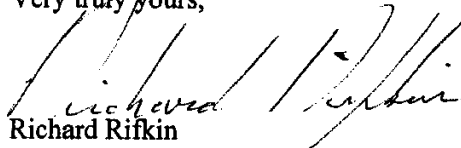
On behalf of the Executive Chamber, I am enclosing with this letter certain Chamber materials, bearing Bates numbers AG 00001 to 00286, which were produced voluntarily to the Office of the Attorney General ("OAG") over the course of a week beginning on July 16, 2007 in response to a request for documents we received on July 13, 2007. The identical documents were produced to the Inspector General.

We stress that much of this material is highly confidential and request that it be treated accordingly. We provide these documents subject to and without waiving any privileges or rights relative to any other public or private entity, including but not limited to any other branch of government. Further, we incorporate by reference the positions articulated in our July 16 letter to the OAG, which I have included with the enclosed production materials.

We provide these items in a desire to cooperate fully with the Ethics Commission. Please do not hesitate to contact me if you have any questions about this production. However, I am planning on being away from the office next week, but Peter Pope will be available in my absence to assist you in any way we can.

He can be reached by calling my telephone number.

Very truly yours,


Richard Rifkin

July 27, 2007

HAND DELIVERED

Richard Rifkin
Special Counsel
The Executive Chamber
The Capitol
Albany, New York 12224

Re: Attorney General's Report

Dear Mr. Rifkin:

The State Ethics Commission is reviewing the underlying facts and circumstances surrounding the "Report of Investigation into the Alleged Misuse of New York State Aircraft and the Resources of the New York State Police" ("Report"), issued by the Office of the Attorney General ("OAG") on July 23, 2007. By cover letter dated July 27, 2007, you delivered to the Commission documents from the Executive Chamber which comprise all documents provided by the Executive Chamber to the OAG in response to a document request received from that office on June 13, 2007, together with the cover letters of June 16, 2007 and July 20, 2007, to Ellen Nachtigall Biben, Special Deputy Attorney General for Public Integrity, OAG.

The July 16, 2007 letter to Ms. Biben, references the tape recording and transcript of an interview of William F. Howard, an Executive Chamber employee. Please provide a copy of the tape and/or transcript of Mr. Howard's interview, as well any and all other recordings and/or transcripts provided by the OAG in the course of its investigation.

Out of an abundance of caution, we request that you provide written confirmation that no document was withheld from the OAG or this Commission on the basis of a claimed privilege or the attorney work product doctrine.

This letter also serves as a continuing request for any and all other documents within the control of the Executive Chamber, which relate to the underlying facts and circumstances set forth in the Report.

Thank you for your continuing cooperation in this matter.

Very truly yours,


Herbert Teitelbaum
Executive Director

It is evident from this correspondence that the Commission had not only made a request for documents beyond those the Executive Chamber had produced to the Attorney General and the Inspector General prior to August 14, 2007, but also that, from the outset, the issue of privileges had been raised. It was raised again in an August 1 letter from Peter Pope to Teitelbaum wherein it was stated:

In response to your inquiry, we withheld no documents from the OAG on the basis of any claim of executive privilege. We represented to the OAG that we possessed certain documents to and from Counsel to the Governor. They asked neither for the documents nor a log. *Pursuant to our discussion*, we will shortly be forwarding you a log under separate cover (emphasis added).

August 1, 2007

Herbert Teitelbaum
Executive Director
New York State Ethics Commission
Alfred E. Smith State Office Building, #1147
Albany, New York 12210

Dear Mr. Teitelbaum:

This is in response to your letter of July 27 to Richard Rifkin and the telephone discussions you had with Mr. Rifkin and me following receipt of your letter.

We supplied you Friday with a substantial number of documents, which we understand you are reviewing. In addition, although not yet knowing the scope of your potential inquiry, we are preserving all documents and emails that may potentially be relevant. Be assured that we will fully cooperate with the Commission's needs for information, if any, after you have completed this review and defined those needs.


We are also providing with this letter: (a) documents provided to the OAG and the IG before the OAG's formal request of July 13, 2007, and (b) sworn statements of Darren Dopp and Richard Baum. These were initially produced without numbers. They are now numbered E-00001 to E-00083.

Neither the Attorney General ("OAG") nor the Inspector General ("IG") has provided us with a tape or transcript of their witness examinations or interviews, so we are unable to provide them to you.

In response to your inquiry, we withheld no documents from the OAG on the basis of any claim of executive privilege. We represented to the OAG that we possessed certain documents to and from Counsel to the Governor. They asked neither for the

documents nor a log. Pursuant to our discussion, we will shortly be forwarding you a log under separate cover.

Sincerely,



Peter B. Pope

A privilege log for certain email correspondence of Counsel to the Governor David Nocenti was enclosed with the August 3 letter of Sean Patrick Maloney to Teitelbaum.

August 3, 2007

Herbert Teitelbaum, Esq.
Executive Director
New York State Ethics Commission
Alfred E. Smith State Office Building, #1147
Albany, New York 12210

Dear Mr. Teitelbaum:

Enclosed is a privilege log for certain email correspondence of Counsel to the Governor David Nocenti.

As noted previously, the Attorney General's office ("OAG") did not seek to review Mr. Nocenti's emails, nor did they request a privilege log. In response to your request, we have endeavored to create a log that would have been the one provided to the OAG had they requested it. That is, the scope of these materials tracks the production we made to the OAG.

Please do not hesitate to contact us if you require something further or if you have any questions about this document.

Very truly yours,

A handwritten signature in black ink, appearing to be "SM", written over a horizontal line.

Sean Maloney, Esq.

Enclosure

In one of the two letters dated August 14, 2007, which Teitelbaum sent to Rifkin, he noted that prior discussions had occurred, stating:

The invocation of attorney-client privilege is addressed in a letter to you of even date. No other privilege has been asserted. More particularly, *in the course of my telephone discussions with Executive Chamber staff*, I was advised by Peter Pope, Esq. that, in regards (sic) the Commission's review, there would be no assertion by the Executive Chamber of any purported executive privilege (emphasis added).

Teitelbaum's letter referenced the delivery of certain documents as well as a description of documents which had not been produced to the Attorney General on the ground of attorney-client privilege. Consistent with Constantine's testimony about Hermann having relayed Teitelbaum's interest in documents being furnished quickly, the letter also provided:

In order to conduct this review in a thorough, complete and timely manner, we are requesting that the Executive Chamber provide the Commission with the information and documents described below as they become available, and no later than the close of business on August 20, 2007.

Teitelbaum's second letter to Rifkin dated August 14, 2007, addressed more particularly the issue of privilege, and provided as follows:

August 14, 2007

Hand Delivered

Richard Rifkin
Special Counsel
The Executive Chamber
The Capital
Albany, New York 12224

Dear Mr. Rifkin,

We are in receipt of a letter from Sean Maloney, Esq. dated August 3, 2007 with an attached privilege log identifying e-mails exchanged primarily between David Nocenti, Esq. and William Howard from May 24, 2007 to June 5, 2007. We understand this log was created in response to my request, since the Office of the Attorney General did not ask to review Mr. Nocenti's e-mails nor request a privilege log.

The log does not indicate the grounds for withholding the e-mails nor does it identify the general subject matter of the e-mails. [See generally, CPLR Section 3122(b)]. Moreover, the log does not identify the party asserting the privilege. Please provide that information. In the absence of the information, we are requesting that all e-mails identified in this privilege log be released to the Commission.

Perhaps even more to the point, we are concerned that there is no basis for the assertion of the privilege. If an individual is asserting a privilege, the burden of proving each element of the privilege rests upon the party asserting it. (*Priest v. Hennessy*, 51 NY 2d 62). A fundamental element of an attorney-client privilege is that an attorney-client relationship has been established. This "relationship arises only when one contacts an attorney in his capacity as such for the purpose of obtaining legal advice or services." (*Priest v. Hennessy*, *supra*, pp. 68-69, emphasis added.)

The Executive Law clearly identifies Mr. Nocenti's responsibilities as Counsel to the Governor, to wit, advising the Governor on the legal effect of bills, clemency matters, and "such other legal matters as may be referred to him by the governor." (*McKinney's Consolidated Laws of New York*, Executive Law, Section 4.) It would appear this statute precludes attachment of the privilege to communications between Mr. Nocenti and any one other than the Governor,

Richard Rifkin

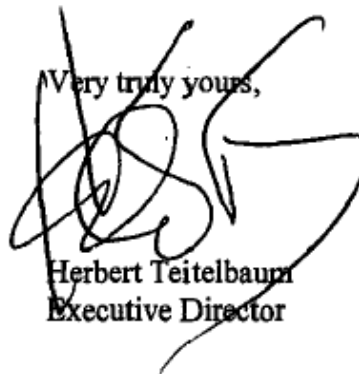
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unless Mr. Nocenti was directed by the Governor prior to the communications to become involved in this particular matter. Even if the existence of an attorney-client relationship with Mr. Nocenti is established, it must also be demonstrated that the communications with Mr. Nocenti were confidential communications for the provision of legal advice. Discussions dealing with policy, political or media related matters, for example, or discussions disclosed to other individuals would not be protected.

Given the nature of this matter, the Court of Appeals' observation that, even in instances where the technical elements of the privilege are met, the privilege "may, nonetheless, yield, in a proper case, where strong public policy requires disclosure [citations omitted]" seems particularly applicable (Priest v. Hennessy, *supra*, p. 69). It is in the interest of all parties that there be the fullest disclosure in this matter. Toward that end, we ask that the assertion of privilege be reconsidered and withdrawn. Should a party assert that these e-mails are protected by the attorney-client privilege, please provide all relevant information by the close of business on Thursday, August 16, 2007 establishing each element of the privilege, particularly in light of Executive Law Section 4, and explain why the strong public policy inherent in this case would not require disclosure of these e-mails.

Thank you for your consideration.

Very truly yours,

A large, stylized handwritten signature in black ink, appearing to be 'H. Teitelbaum', is written over the typed name and title.

Herbert Teitelbaum
Executive Director

Finally, the Commission itself, on page 9 of its Troopergate report, noted the issue of document production:

On August 1, 2007, the Ethics Commission learned that the Executive Chamber had withheld certain documents from the OAG on the basis of claims of attorney-client privilege and the attorney work product doctrine. Although the Executive Chamber had not provided a privilege log to the OAG,¹ the Commission requested that the Chamber produce a privilege log to the Commission. The Executive Chamber then produced the first of what ultimately would be six privilege logs, collectively listing 109 documents that the Chamber sought to withhold – without legitimate basis – from the Commission.²

1. A privilege log describes generally the documents being withheld and asserts a reason for doing so.

2. The Executive Chamber produced a total of six privilege logs to the Commission, all in 2007, on the following dates: August 2, revised on August 10; August 16 and 28; September 14; October 4 and 16.

As noted earlier, Constantine testified that during the July to early August 2007 conversations with Hermann, Hermann spoke not only of specific document production which the Commission wanted but also privileges which the Chamber was asserting or considering.

The letters referenced above involved documents relating to William Howard, David Nocenti, Darren Dopp and Richard Baum. The exchange of correspondence on July 27, August 1 and August 3, between the Executive Chamber attorneys and Teitelbaum is consistent with Constantine's testimony concerning the substance of communications he was receiving from Hermann during this period, and supports Meave Tooher's testimony that Teitelbaum stated he used Hermann as a "backdoor channel" to "try and move this along," "bring information to the chamber" and try to "encourage the chamber to get [the Commission] documents." (MT 97-98)

It is interesting to note that while Teitelbaum, on the one hand said he was not using Hermann in such fashion, he then said it "would be okay" to do so, "because it would have been consistent with the goal of my investigation, which is to get a complete record." (HT 296)

In pursuing Teitelbaum's testimony that he only spoke to Hermann about the Troopergate investigation in "a general way" (HT 17) Teitelbaum was asked whether such discussions were ever specific:

Q. Did you ever discuss with Hermann records or category of records that you wanted produced from the executive chamber?

A. No, not that I remember.

Q. Did you ever discuss with Hermann witnesses that you wanted to examine before the commission?

A. Not that I remember, no. (HT 149-150)

Teitelbaum also testified that he did not remember whether he had ever told Hermann that there was a dispute between the Executive Chamber and the Commission over the production of records, nor did he remember whether Hermann had ever indicated to him that he was aware of a controversy:

I don't remember whether he ever indicated to me that he knew that there was controversy. I just don't remember that. I don't know whether he knew that, but I don't remember telling him. (HT 148)

Teitelbaum was asked whether disclosing such issues to Hermann, e.g. what witnesses and categories of documents the Commission was interested in, would have been "inappropriate."

A. Not so much that it would be inappropriate, it would be inconsistent with how I conduct investigations.

Q. Would it have been wrong?

A. It would have been inconsistent with how I conduct investigations. I told my staff not to have conversations of that sort with anybody and that has been my modus of operation.

Q. Using that as a parameter, should you have not have had such conversations with Hermann about what witnesses the commission was interested in?

A. According to my standard --

Q. Yes.

A. -- I believe and I wouldn't have.

Q. So the answer is you should not have advised Hermann about what witnesses the commission was interested in?

A. According to the rules of Teitelbaum, yes.

Q. Would it have been inappropriate or wrong for you to have discussed with Hermann categories of documents or documents that the commission was interested in receiving from the chamber?

A. That should not be discussed. (HT 152-153)

Teitelbaum testified that he was being questioned about conversations that might have occurred almost a year ago, and although he had no specific recollection, he did not believe he had such conversations with Hermann. (HT 154-155)

2) The Working Group and Concern Over Leaks

It will be recalled that according to Constantine, Hermann advised him on November 1, that a working group had been formed, in large part because of the Commission's concern about

leaks. That the Commission was plagued by leaks was candidly acknowledged by Commission Chair John Feerick himself.

The composition of the subcommittee was a determination made by Feerick after consultation with Teitelbaum. Tooher testified on this subject:

Q. The concern about the leaks, was that a factor in the formation of subcommittees?

A. Yes, absolutely. There was very much a concern that -- the commission's investigations are always confidential and here obviously there was a serious allegation involving the governor and clearly there was information going to the press. So that was certainly one of the factors that went into forming the working group.

Q. The group which consisted of Feerick, Loretta Lynch, Howard Levine, I think Giuffra?

A. And John Mitchell. (MT 83)

Q. That subcommittee, was that formed partially because of the leaks?

A. Yes, that was one of the factors for forming that working group. (MT 84)

Teitelbaum acknowledged that the issue of leaking "may have been" a factor in the formation of the subcommittee. (HT 77) When asked whether the composition of this subcommittee was publicly disclosed prior to November 1 (when Hermann revealed its members, according to Constantine), Teitelbaum at first claimed it was, because Fredric U. Dicker, in a *New York Post* article dated October 22, 2007, wrote that a subcommittee had been created to handle the Troopergate probe. Although the article did not list the composition of the working group, Teitelbaum testified that Dicker was aware of four of the five members. When Dicker contacted the Commission prior to the October 22 article, the Commission's public information officer responded that "he couldn't confirm Feerick's creation of [the] subcommittee," suggesting that the Commission did not consider the committee's composition to be public information.²⁴ Teitelbaum acknowledged that although Dicker had such information, it was not published.

Teitelbaum stated he had advised the District Attorney and members of the Executive Chamber who the members of the subcommittee were. (HT 82, 78) Hermann however was not a member of the Executive Chamber. Teitelbaum testified that "he had no idea whether [Hermann] had or not had an official position with the chamber. My information was that he did not." (HT 80) Teitelbaum testified further as follows:

Q. Did you ever disclose to Hermann the composition of this subcommittee?

²⁴ Fredric U. Dicker, "'Tricks' Probe Is Tainted: GOP," *New York Post*, Oct. 22, 2007.

A. Not that I remember.

Q. Did you ever mention Loretta Lynch to Hermann?

A. I don't remember that one way or the other.

Q. Did you ever mention Howard Levine...In connection with being a member of the subcommittee?

A. I don't remember one way or the other.

Q. Would you have any reason to discuss that with Hermann?

A. Do I have a reason to discuss it with him? Not that I recall there was a reason to discuss it with him, no. (HT 80-81)

Teitelbaum further testified that the existence of the working group was previously made public and its membership was already known to individuals in the Executive Chamber. A review of published articles did not reveal the names of any subcommittee members. Governor Spitzer also testified that he was previously aware that a subcommittee existed, but did not know its membership. Spitzer testified that the Chamber complained to the Ethics Commission "with regularity" about leaks, and that a subcommittee had been formed to handle the Troopergate inquiry because of concern over leaks. Although he knew of the existence of such committee, he did not know what its composition was:

I was told that there was a subgroup of the Ethics Commission that had been formed to handle the inquiry because they were concerned about leaks. I never knew the constituency of that commission and I don't know from whom I heard that. I don't remember whether it was Lloyd or Dave Nocenti. Because there were a number of people who had interactions with the Ethics Commission. Frankly we were worried, troubled, deeply troubled by leaks that were emanating from the commission. We raised it with them with regularity and I think, as a consequence, we were told at some point that there was this subgroup. Again, I don't know who was on it or from whom I heard it, but I knew of its existence. (ES 18)

Once again, Hermann had confidential information which was not only not publicly known, but not even known by the Governor.

Teitelbaum was then questioned about whether he had heard that a specific commissioner was a suspected leaker. Constantine testified that, in his 15 minute conversation with Hermann at the Governor's office on November 1, Hermann stated that a specific commissioner had been suspected of "leaking" information. (LC 28) It is to be noted that John Feerick and Meave Tooher both testified that they had never heard this specific commissioner's name mentioned as a possible leaker. (JF 16, MT 86)

Teitelbaum was asked whether this commissioner's name had ever been raised, whether fairly or unfairly:

A. So I think that somebody may have said to me...he might be the person leaking. But in my interaction with [the commissioner], there was absolutely no evidence of that. I have found him to be hard working, fair, and apolitical in how he conducted himself.

Q. But the name came up?

A. I think it did, but I can't tell you who may have mentioned it to me and I'm not certain of it, I'm really not certain of it. But I want to give you an answer to this thing, to your question. It may not have happened but I think somebody had floated that to me and, if they had floated it to me, if that comment was made, I have no doubt that my response to that would have been I don't see that at all, end quote. (HT 73)

Q. But you heard his name come up? You said that before. Whether fairly or unfairly.

A. I understand. I have a very vague memory, and I could be wrong on this -- I want to be square with you -- I think it was mentioned to me. I couldn't tell you who mentioned it. It would have -- and if it had been mentioned to me, I would have tamped it down because my experience with the man has been nothing but positive and I believe that that's also true of John [Feerick]. (HT 112)

When Teitelbaum was then asked whether he had ever told Hermann that the named commissioner had been suspected of leaking information, he replied that he didn't believe that commissioner was leaking information and "wouldn't have said that" to Hermann. (HT 160) It was then pointed out to him that the issue was not whether Teitelbaum believed that the commissioner was, in fact, leaking, but whether he had ever communicated such suspicion to Hermann. Teitelbaum stated, "No. I don't remember that at all." (HT 160)

The one Commissioner whom Teitelbaum and Feerick expressed concern about was Richard Emery, because of his known relationship with Constantine. Tooher confirmed that Teitelbaum and Feerick had concerns about Emery. This is discussed at page 108.

3) Teitelbaum's Conversations in November 2007 with Relevant Parties re Allegations Made Against Him

When Constantine informed the other Executive Chamber attorneys of Hermann's communication with him on November 1, they realized they had been made aware of highly confidential information which should not have been disclosed to them. After engaging an attorney experienced in ethics, Rifkin telephoned District Attorney Soares at his home during the evening of November 2.

Prior to returning Rifkin's call, the District Attorney telephoned Teitelbaum to inquire if he knew why Rifkin had called and whether "the cat was out of the bag." According to Soares, it

was only the day before, that he had informed Teitelbaum that he was proceeding with his investigation. Teitelbaum was the only external person, Soares testified, to whom he had imparted this information.

On November 7, Rifkin and Maloney met with the District Attorney. Following the meeting, the District Attorney, in the presence of members of his staff, telephoned Teitelbaum. The Inspector General questioned Teitelbaum about this:

Q. As a matter of fact, there was a telephone call, I believe?

A. Yes.

Q. And he told you about that. And he told you that the information was that Hermann had related information to Constantine which Hermann had claimed had come from you.

A. That I didn't hear.

Q. But that Hermann was the source and you were supposed to have been the original source. I'm putting this in the widest context.

A. Let me tell you what I was told, Judge.

Q. What were you told?

A. I was told that the district attorney had met with some representatives of the executive chamber and they had said that Hermann told Constantine -- I'm paraphrasing now -- that the DA was back in the game in terms of an investigation and that I was the source of Hermann's information. I wasn't told what Hermann told Constantine, you know, about their conversation. (HT 85-86)

Teitelbaum denied to the District Attorney that he had revealed this information to Hermann. (DS 28) Teitelbaum then spoke to Hermann. According to both Hermann and Teitelbaum, Hermann denied to Teitelbaum that he, Hermann, was the source of the information. Hermann's explanation of his false denial is set forth at pages 56-58.

In his testimony before the Inspector General, Hermann confirmed Rifkin's testimony that Hermann had contacted Rifkin and asked Rifkin not to tell Feerick, but to permit Teitelbaum, himself, to inform Feerick. Rifkin testified, and his memorandum, composed within days of Hermann's entreaty, states that Hermann advised Rifkin that Teitelbaum was going to reveal to Feerick that he, Teitelbaum, was the source of the leak.

Teitelbaum testified that he did speak to Feerick, but contrary to the understanding of Rifkin and the Executive Chamber attorneys, Teitelbaum asserted a different position:

Q. And did there come a time when you spoke to Feerick about that?

A. Yes.

Q. How did that come about?

A. How I spoke to John Feerick? We were driving up to Albany together.

Q. What did you tell him?

A. I told him that -- I related the phone conversation that I just described to you. I told him that I had put the issue to Hermann, you know, I asked Hermann about this and he denied it.

Q. That was the end of the whole thing?

A. I told John that I thought I was being set up.

Q. That you were set up?

A. I thought I was being set up.

Q. By whom and why?

A. I just didn't know. I didn't know who and I didn't know why. I surmised because of my relationship with the executive chamber by that time had become quite contentious and I surmised -- I want to underscore surmised -- that they wanted me out of the investigation. (RH 86-87)

Q. So you told Feerick that you spoke to Hermann and Hermann denied it?

A. Yes. (HT 87)

Teitelbaum was asked whether he had any further discussions with Hermann:

Q. Did you have any further conversations with Hermann about this?

A. Oh, yes.

Q. Tell us about that.

A. I had numerous telephone conversations with Hermann in November.

Q. Did you ask him if he had any explanation as to why?

A. I did.

Q. What did he say?

A. That's when he told me they were negative on me, that the executive chamber people didn't like me. I don't know if he meant it personally but thought that I was being too aggressive and inappropriate. And I tried to find out as much as I could about his conversations with the executive chamber. I didn't get anywhere. I tried to find out what he knew about leaks to the newspaper because there were newspaper articles coming out around this time disclosing that the district attorney had commenced an investigation or was looking into Dopp. (HT 89-90)

Teitelbaum also had other conversations with Feerick:

A. Well, after the phone call from the district attorney and my having told John what I just told you, there was nothing else that happened in this -- on this subject for months. I don't remember any conversations that I had with John between that conversation -- I'm sure there was another conversation or another two conversations around that time but I don't remember and I don't remember if there were. It wouldn't surprise me if there were.

Q. At this point in time you hear the allegations from the DA, you deny it, you call Hermann and he denies that; correct?

A. Yes. (HT 88-89)

Teitelbaum testified, "There was nothing else that happened in this -- on this subject for months." (HT 88)

There was no mention by Hermann, according to Teitelbaum, of a "yellow pad" or any explanation by Hermann that he had chanced upon a few words on a pad on a table in Teitelbaum's apartment from which he made all the deductions, and conclusions, which he communicated to Constantine on November 1 and discussed with then-Governor Spitzer on November 2.

Teitelbaum was questioned very specifically about when he first heard Hermann's yellow pad story, which according to everyone involved, never emerged until Hermann's statement to the District Attorney on February 7, 2008. On both occasions on which Teitelbaum was examined by the Inspector General, he was asked very specifically about Hermann's "yellow pad" story, and on both occasions he was firm that such explanation by Hermann did not appear until Hermann testified before the District Attorney in February 2008.

At his first appearance, Teitelbaum was asked if he had any idea of how Hermann could have known on November 1, 2007, that the District Attorney was proceeding with his investigation:

A. The only thing I know is that I learned what he had told the district attorney, I learned about that at the end of February 2008. I know what he said to the district attorney.

Q. So from February to today, have you reflected upon how he might have had that information?

A. Well, he says he looked at notes of mine.

Q. He might have seen notes?

A. He said that he saw notes of mine, that's what he told the district attorney. (HT 97)

A. From November to the latter part of February, the only thing that I had was communication from the district attorney and communications with

Hermann concerning my communication with the district attorney. I was concerned about what I felt I wasn't hearing and what I was hearing in those various conversations. That's why I put distance between myself and Bob at that point in time. I didn't think about how he could have learned anything because I didn't know what he knew. All I knew is that he denied it and I knew that I didn't tell him anything.

I found out in the latter part of February when members of my commission and [Commission Counsel] Barry Ginsberg went to the district attorney's office and heard these two recordings. And soon after that, I found out that Bob Hermann told the district attorney that he saw notes in my apartment. So that's what I understand he said. So if you ask me if I thought about how he found out, Hermann said that's how he found out. (HT 98-99)

Teitelbaum reiterated that the first time he heard the yellow pad story was at the end of February 2008 (HT 107), and this never arose during the District Attorney's conversation with him in November 2007, when the District Attorney confronted Teitelbaum with suspicions that Teitelbaum had leaked information about his investigation.

A. No, Judge, because there was nothing about what the District Attorney told me that would have caused me to think that there was something that happened at a dinner or anything of that sort. The only time that the issue of a dinner at or around Halloween 2007 or notes came into my knowledge was at the end of February when I was told what Hermann told the district attorney. (HT 108)

Q. You went to Feerick and you told him you had heard these allegations and they're not true?

A. You mean what the D.A. had relayed to me?

Q. Yes.

A. Correct.

Q. Did you know anything about Hermann purportedly having learned about this from notes in your --

A. Did I ever learn?

Q. --he saw in your apartment?

A. You mean at that time?

Q. At that time.

A. No.

Q. And what was the first time you heard about that?

A. My recollection is that it was when the Commission heard the tapes --

Q. February tapes of --

A. Constantine --

Q. -- Constantine?

A. -- and Hermann.

Q. -- and Hermann.

A. Right.

Q. And that was based upon members of the Commission having heard those tapes?

A. Yes, that's my recollection. (HT 199-200)

Teitelbaum's denial of Hermann's claim that he, Hermann, had told Teitelbaum about seeing notes on a yellow pad was corroborated by other interested parties. Rifkin was never told about this when the allegations about Teitelbaum arose in early November 2007, and told the Inspector General during his examination on September 3, 2008, that it was now the first time he had ever heard such story. (RR 32) Notable as well is a memorandum Feerick composed and distributed to the other commissioners after hearing the February 2008 recordings of the interviews of Hermann and Constantine by the District Attorney. Feerick's memorandum notes that Teitelbaum came to him in November 2007, informed him of the allegations against him, and also advised Feerick that he, Teitelbaum, had spoken to Hermann and that Hermann denied it.

Once again, nothing was ever said by Teitelbaum to Feerick in November 2007 about a yellow pad.

4) Teitelbaum's Response to Hermann's Yellow Pad Story and Teitelbaum's Note-Taking and Shredding Practices

Teitelbaum testified that the very first occasion where he learned of Hermann's belated yellow pad story was in February 2008, when District Attorney Soares played a recording of Hermann's interview. Although Hermann testified he told Teitelbaum about this in November, Teitelbaum was firm that such never happened, and the evidence recounted at pages 60-73, supports Teitelbaum's testimony.

Teitelbaum confirmed that he and Hermann have apartments in the same housing complex in the Albany area, and had dinner together frequently. He stated that there was nothing outstanding about any of those dinners, and couldn't remember one dinner from another. He testified he learned of Hermann's story in February 2008, and was told that Hermann had viewed the yellow pad when the two of them had dinner on either October 30 or October 31:

A. Now I'm standing at the end of February, 2008 and saying, well, on October 30 or October 29 or October 31 did I leave notes out, did I have dinner with Bob Hermann on those dates. I don't know. Hermann may be right that we did have dinner around that time. It wouldn't surprise me because of the frequency with which we were having dinner. But I don't have a specific recollection of a particular dinner, that dinner that he spoke

about or any other dinner. The two conversations were two guys talking about our families, our children, our jobs.

Q. Did you ever tell him that the commission had run into a roadblock -- (HT 108-109)

A. I didn't believe that we had come into a roadblock, first of all. I didn't believe it then and I don't believe it now. It's not a roadblock. I just don't remember conversations with Bob, you know, these kind of casual conversations with him. But I don't believe I said that. But I don't have a memory of these things, a conversation at the end of October. If you ask me again did I sit Hermann down and say, Bob, go to the executive chamber and say something, that I'd remember, because that was a strategic decision. I'd remember that.

Q. Did you have at your home any crib notes with the name of Lynch, with the name of the composition of that working group, would that have been on crib notes at your home?

A. I don't remember what notes contained concerning the subject. I suspect that I had notes concerning this subject. (HT 109-110)

Teitelbaum testified that he did not know if he had notes in his apartment that evening, explaining that he worked at home and had notes in his apartment on nights (HT 100, 110-111). Teitelbaum emphasized however that he had no specific memory of having a dinner with Hermann on October 30 or 31. (HT 103)

When the Inspector General commenced its investigation in late August 2008, it contacted the Commission on Public Integrity and requested memoranda, notes, diaries and other documents and records. The Inspector General recalls that Commission Counsel Barry Ginsberg stated that "Herb is not a note-taker," and accordingly the Inspector General did not at that time receive any notes purporting to have been generated by Teitelbaum, and assumed none existed. It was not until the Inspector General's examination of Feerick on October 2, 2008, that the Inspector General learned from Feerick that he had observed Teitelbaum making notes. The Inspector General then confronted Ginsberg who stated that there did exist notes of Teitelbaum's but they had never been forwarded because they were not relevant to the Inspector General's inquiry.²⁵ Until thus learning of notes by Teitelbaum in October 2008, the Inspector General proceeded on the basis that Teitelbaum did not take notes. Linda Griggs, an Albany County Assistant District Attorney, was present during a number of meetings with Teitelbaum and testified that she never saw him take notes, and Commission Investigative Counsel Meave Tooher also testified that because Teitelbaum was generally the one who spoke at meetings, she too could not recall ever seeing him take notes.²⁶ (LG 10-11, MT 13-14)

²⁵ There is a disagreement between the Inspector General who recalled Ginsberg's disclaimer of the notes being "relevant" and Ginsberg, who disputes that he so characterized the notes, but rather said that the notes were not "responsive."

²⁶ See pages 139-140.

Teitelbaum explained his practice regarding notes:

And while I do take notes at meetings from time to time, generally I do not because generally at meetings I'm talking and I can't do both of those things. Somebody else is doing that. And typically I have somebody else in a meeting of the sort of meeting with the district attorney. I do have notes. I did take notes in the sense that crib notes, and you've got examples of them. I would have talk points before I would have a conference call, before I would have a -- speaking to John Feerick very frequently during that period. I couldn't say every night but just about every night he and I spoke. I would say he was my first call in the morning and my last call at night. And I would have, not on every phone call, but I would have crib notes of things I wanted to discuss with him. I would have crib notes generally when I would meet with the working group of things I wanted to raise with them. Those are the notes that I have. You're correct that I didn't generally take notes during the meetings, but I had crib notes that I could refer to at meetings to cover the things I wanted to discuss. (HT 101-102)

Because of Hermann's testimony before the Inspector General that what he saw on the yellow pad was a reference to "inconsistencies" in Dopp's testimony, and a reference to the District Attorney, Teitelbaum was asked whether he had such specific notes:

Q. Did you ever have notes, crib notes or otherwise, indicating conversations with the district attorney and inconsistencies in the Dopp testimony?

A. I don't remember specifically a set of notes of that sort. But if you're asking me to bet whether I had that, I'd bet that I did. If you're asking me to bet whether I had notes about the Dopp situation, crib notes -- understand what I'm defining as crib notes, things that I have before the discussion -- I would bet that I had notes of that sort but I can't tell you definitively yes I had those notes and that's what I said.

Q. Do you keep that on the cocktail table in your apartment?

A. There was no one place that I kept notes. My apartment was such that I have a bedroom, a small bedroom and a small living room and a dining room that's connected to the living room with a table and a kitchen. I didn't work in the bedroom except for the phone calls. So did I have notes in these other rooms? Yeah, I'm sure I did. (HT 102-103)

When asked where the notes he occasionally had in his apartment were, he testified:

Q. Where are those notes?

A. I have those notes shredded, Judge. I don't keep my crib notes, I don't keep them. The only notes that I have are the ones you have. I didn't keep them. (HT 100)

Q. You mentioned shredding the crib notes. Do you have a shredder at home?

A. No, I have a shredder at the office.

Q. So you would bring the crib notes to your office to shred if you had them at home?

A. In other words, I didn't keep notes at home, Judge. I take a briefcase back and forth.

Q. So the shredding would be you'd bring it back into the office and shred it there?

A. What happens is -- again, I can't talk about a specific set of notes.

But generally with papers and not just notes, other kinds of papers, edits, marginal notations, I would have these things shredded not every day but periodically, yes, at the office. (HT 112-113)

Significantly, Teitelbaum was asked whether he had notes reflecting conversations he had had with the District Attorney on October 17 regarding Dopp's testimony:

Q. He claimed to have seen something on a yellow pad on your cocktail table, Dopp's inconsistency, DA, something along those lines. Did you write that down at any time? Because you said you never took notes when you had conversations with the DA.

A. Judge, let me be -- so that I can help on this, that is correct, I did not take notes at my conversation with the district attorney because at that meeting I was doing the talking. (HT 100-101).

Teitelbaum emphasized several times that what he referred to as "crib sheets" or "crib notes" were notes he would take before a meeting or telephone conference listing items he wished to discuss at such meetings. (HT 42) Teitelbaum confirmed the testimony of Tooher and Griggs who attended meetings with Teitelbaum and observed him talking and not taking notes.

Oftentimes I would have notes in the nature of a crib sheet before I'd have a telephone conference or a meeting with somebody, but not every time. And those notes were -- I didn't keep those notes, I didn't keep notes of that sort. I did not take notes -- typically I would not take notes during a meeting in which I was doing the talking because it's hard to do that at the same time. (HT 43)

The way it would work is that staff would generally take notes during a meeting but, as I said, I would have crib sheets to the things I wanted to address either in a telephone conference or in a face-to-face meeting. (HT 45-46)

My note-taking practice is what I just described to you. There are times that I do take notes during a meeting but it is not typical because I'm talking. (HT 46)

Given Teitelbaum's testimony regarding his note-taking practices, the existence of the notes purportedly observed seems unlikely. If Hermann did view "talk points" made in advance of a meeting, seemingly they were not made in advance of a meeting with the District Attorney or his staff, because Teitelbaum should not have needed a reminder to inform the District Attorney of his own interest in something. Because of confidentiality constraints, the only other individuals with whom Teitelbaum should have discussed the matter were Commission personnel. In view of the handwritten minutes of working group meetings held in late October 2007, which reflect intense discussions about the District Attorney and the Dopp matter, it appears improbable that Teitelbaum would have or should have been in need of a "talk point" reminder to discuss this subject with anyone within the Commission.

5) Teitelbaum's Alternative Defense to Using Hermann as a Back Channel: I Didn't Do It, But, If I Did, I Was Allowed To

As discussed in detail below (see pages 145-152), in his testimony before the Inspector General Teitelbaum evinced a selective understanding of the Commission's confidentiality rules depending upon the circumstances. When defending himself and the Commission to the *New York Law Journal* the day after the release of the Troopergate Notice of Reasonable Cause, Teitelbaum noted that, "the commission and its staff had to take the 'slings and arrows' and innuendos in silence because state Executive Law requires investigations by the agency to remain confidential until charges are brought," and Teitelbaum informed the media on other occasions that his lips are "legislatively sealed." Yet, when questioned about his own actions by the Inspector General, Teitelbaum not only disavowed knowledge or comprehension of the application of the Commission's confidentiality rules but averred that he is not authorized to apply these rules without formal Commission assent. Specifically, when inquired about his understanding of these provisions, Teitelbaum informed the Inspector General that "staff, which includes me, are precluded from opining on what something means -- for example, 'confidentiality' -- unless there's an advisory opinion issued by the Commission. I'm not authorized to do it." (HT 233)

At his second examination by the Inspector General, Teitelbaum was shown a letter dated October 31, 2007, addressed to Richard Rifkin under Teitelbaum's signature. The letter referred to a meeting held with Executive Chamber attorneys in August 2007. In his October 31 letter, Teitelbaum disclaimed having disclosed to Rifkin or his colleagues at such meeting any legal theory the Commission may have advanced to address their document request, pointing out:

As the Executive Chamber is aware, we are barred from making such a disclosure pursuant to Section 94(12)(a) of the Executive Law.

In attempting to explain his letter, Teitelbaum testified that because the Commission had not advanced any legal theory, “it would have been inappropriate for me – it would have been improper for me, and would have been inconsistent with the statute for me to have spoken for the Commission before the Commission spoke.” (HT 258) He was then asked whether the letter represented an instance of “opining,” as he had earlier professed he was prohibited from, and he replied “If it were opining about the statute, I had no authority to do it.” (HT 259)

At his second interview with the Inspector General, Teitelbaum raised a defense to his actions that was inconsistent with both his professed ignorance of the state’s confidentiality laws and his prior statements to the *Law Journal* and to Rifkin that those same laws imposed strict limits on his ability to comment on Commission matters. Although, to the extent he conceded memory, Teitelbaum denied that he had disclosed confidential information to Hermann concerning the Commission’s investigation or its internal deliberations or proceedings, he nonetheless asserted that such disclosure would have been permitted. Teitelbaum’s attorney asserted that even had Teitelbaum told Hermann everything he is alleged to have told him, he could have done so “without violating any rule, regulation, obligation, as long as Teitelbaum thought it was in furtherance of his commission’s operations.” (HT 188-189, 229)

Teitelbaum echoed his attorney’s arguments claiming that it would not have been improper to use Hermann to obtain documents if they were not otherwise forthcoming.

A. And, by the way, if I thought that going to Hermann -- if I thought going to Hermann to get documents, to get documents, because they were not forthcoming, that would be okay, as far as I’m concerned, because it would have been consistent with the goal of my investigation, which is to get a complete record.

And if I had to use Hermann to do it, I would have done it, I would have done it. (HT 296)

Q. So you did not use him to get documents?

A. No. (HT 296)

Teitelbaum was asked, if any problems existed in obtaining documents, should not that have been an internal issue for his own agency, the Commission, to deal with:

Q. Mr. Teitelbaum, I’m not trying to be unfair to you, but isn’t it the type of stuff that is really internal, if there’s a battle with the -- between the agency, your agency and the chamber, and the fact that this is -- there is a dispute, it’s nobody’s business, is it; it’s not Hermann’s business?

A. And I really don’t remember. I -- I -- don’t remember one way or the other. You know, if I said to you it didn’t happen, it would mean I

remember -- I don't remember. Did I -- did I -- did I say to him that they were complaining about leaks? I mean, I -- I just don't remember....As long as you're not trampling on people's rights, as long as you're not trampling on people's rights and what you're doing is consistent with your mandate, you make decisions going -- you know, going down the road of the investigation as to who to talk to, what to say, in order to get what you need, in order to get what you need to do your investigation. Nobody has said, except the newspapers -- and they don't know -- that we compromised our investigation. Nobody says that. Nobody has given an instance where we interfered with somebody's investigation. District attorney never said we interfered with his investigation. (HT 297-299)

As set forth above, Executive Law § 94(12) categorically states that the Commission's proceedings (specifically including its investigations) are "confidential"; therefore, on its face, Teitelbaum's assumption of an exception for disclosures he personally deems to further an investigation is contradicted by the unequivocal language of the statute. This confidentiality provision serves at least two purposes: to protect the integrity of the Commission's investigations but also to protect the reputation and interests of the subject of an investigation who may eventually be found innocent of any wrongdoing. This latter rationale is reflected in the fact that, once the Commission finds a reasonable belief that a subject committed a violation, the confidentiality of the proceeding is eliminated. While common sense dictates that some limited revelation of an investigation must be permissible for the Commission to conduct an examination (i.e. contacting witnesses, requesting documents), policy and logic dictate that this implied exception be read narrowly to protect both the integrity of the Commission's investigations and the reputation the investigation's subject.

It is undisputed that Hermann had no sanctioned involvement in the Troopergate matter and, thus, stood in the same position in relation to the Commission's investigation of Troopergate as any of the numerous other officials who serve in the Executive Branch, state government, or the community at large. Indeed, the genesis of Hermann's involvement in the matter did not legitimately arise from the facts and circumstances of the investigation itself or the subjects' intentions to afford him access to relevant information, but instead stemmed solely from the mere happenstance of Hermann's close relationship with Teitelbaum and his long-term acquaintance with Constantine. Given Hermann's lack of any authorized role in the Commission's inquiry, under Teitelbaum's theory, he seemingly could disclose information to any individual so long as he personally, without consultation with the Chair or the Commission as a whole, deemed the revelation in furtherance of his mission. This theory is unsupported and troubling, as there is no indication from the Legislature or from the Commission itself of such a broad and malleable exception to its confidentiality provision or that it was intended to vest this unfettered authority solely in the hands of the Commission's executive director at his complete discretion.

In addition to violating Executive Law § 94(12), the Commission's confidentiality statute, Teitelbaum's self-created power also appears inconsistent with Public Officers Law §74(3)(c), the general confidentiality rule governing all public employees. As discussed in this report's introduction, the Commission is the agency designated by the Legislature to adjudicate

violations of the Public Officers Law, and its Troopergate report is the only guidance available regarding interpretation of the confidentiality provisions contained in § 74(3)(c).

In its Troopergate report, the Commission found reasonable cause against State Police Commissioner Preston Felton for releasing confidential State Police materials. The finding against Felton related to his alleged abrogation of the State Police's policy of "historically treat[ing]" certain information as "confidential." The State Police policy which served as the basis of the Commission's finding that the information Felton disclosed was "confidential" is not required by statute. Rather, as discussed in the Attorney General's report, the State Police's historic denial of access to these materials emanates from the fact that New York's Freedom of Information Law provides certain exemptions from disclosure which an agency may lawfully invoke and had been traditionally invoked by the State Police to deny access to this particular information. The specific exemption traditionally invoked by the State Police, Public Officers Law § 87(2)(f) allows an agency to withhold information "if [the information] disclosed could endanger the life or safety of any person."

The New York Court of Appeals has repeatedly held that there is a presumption of public access to information in the possession of state agencies and, accordingly, an agency need not invoke a FOIL exemption even if it would validly apply. Moreover, in keeping with this presumption and encouragement of access, it is unlawful for an agency to utilize a blanket rule as to a class of materials, and the agency must examine particular items to determine if an exemption applies.

The confidentiality standard applicable to Commission investigations is significantly more restrictive than the agency policy Felton was alleged to have violated in the Commission's Notice of Reasonable Cause in that, unlike a FOIL exemption, the Commission's statute is mandatory and an agency official, such as Teitelbaum, cannot avoid the application of statutory confidentiality by merely choosing not to invoke it.

This difference is particularly apparent once Felton and Teitelbaum's respective roles are compared. At the time of the acts described in the Commission's report, Felton served as Acting Superintendent of the Division of New York State Police, the head of that state agency. As such, by definition, Felton had the authority to direct agency policy and practice and further has been specifically granted the power to "make rules and regulations subject to approval by the governor for the discipline and control of the New York state police..."²⁷ In contrast, Teitelbaum does not serve as the head of any agency, but has been appointed by the Commission as executive director, and Teitelbaum's authority is strictly limited by statute. Pursuant to Executive Law § 94(9)(a), the Commission's executive director has prescribed powers in that the Commission must "[a]ppoint an executive director **who shall act in accordance with the policies of the commission**. The commission may delegate authority to the executive director to act in the name of the commission between meetings of the commission provided such delegation is in writing and the specific powers to be delegated are enumerated" (emphasis added).

²⁷ Executive Law § 215(3).

Juxtaposing the Commission's finding against Felton with the latitude Teitelbaum affords himself creates an untenable legal outcome; an agency head could be guilty of violating the Public Officers Law confidentiality rule by choosing not to invoke a FOIL exemption in a particular instance while a subordinate agency officer with limited delegated authority would have the unchecked, unilateral discretion to violate an explicit legislative determination of confidentiality if he personally deemed it in the agency's best interest. This conclusion is anomalous and simply defies logic. Regardless, as Teitelbaum has advocated that he is prohibited from interpreting the Commission's statute unless the Commission has issued a formal proclamation and the Commission has not done so, he cannot avail himself of this alternative defense.

D. Additional Evidence Establishing Teitelbaum as Sole Source of Commission Information to Hermann

1) Affirmations by Commissioners and Staff Attesting to Absence of Any Communications with Robert Hermann Regarding the Commission's Troopergate Investigation

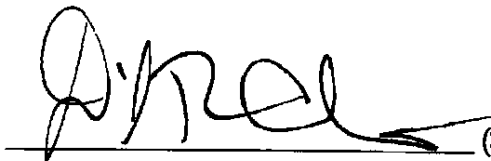
Hermann acknowledged that Teitelbaum was the only one at the Commission who had ever discussed the Troopergate investigation with him. (RH 33) As noted earlier, Hermann was in possession of confidential information concerning the Commission's transmittal of the testimony of Darren Dopp to the Albany County District Attorney, and indeed, the content of Dopp's sworn testimony.

Such information, which he communicated to Constantine on November 1, 2007, and discussed with Governor Spitzer the following day, was not previously known to any of the Executive Chamber attorneys and, indeed, Commissioner Richard Emery testified that it was not even shared with all of the commissioners. The close relationship between Teitelbaum and Hermann and their admission of having discussed the Commission's investigation, although they claimed only "in a general way" is documented earlier. Other than Teitelbaum, no other member of the Commission, neither commissioners nor staff, had any communication with Hermann regarding Troopergate.

In order to further eliminate all Commission personnel other than Teitelbaum as possible sources of information, the Inspector General requested and received affirmations from Commission personnel that they had "never spoken, corresponded or communicated in any manner or form" with Hermann regarding any matter "directly or indirectly" relating to the Commission's "Troopergate" investigation.

Following is one such affirmation by Commissioner Daniel R. Alonso:

I hereby aver that I have never spoken, corresponded or communicated in any manner or form with Robert Hermann of the Governor's Office of Regulatory Reform, regarding any matter directly or indirectly relating to the investigation initiated by the NY State Ethics Commission and continued by its successor, the NY State Commission on Public Integrity, into allegations that officials of the administration of former Governor Eliot Spitzer improperly caused the NY State Police to gather information in connection with the travel of former State Senator Joseph Bruno for non-governmental purposes (the so-called "Troopergate" investigation).

 (Signature)
Daniel R. Alonso (Print Name)
Commissioner

2. The Diary of Darren Dopp

When Teitelbaum testified the second time before the Inspector General on February 17, 2009, he was asked whether he had any explanation for Hermann's possession of such confidential information as the referral of the Dopp matter to the District Attorney, and the content of Dopp's sworn testimony which the Commission had forwarded to the District Attorney. Teitelbaum stated that the Executive Chamber may have learned about Dopp's testimony before the Commission. During his testimony, Teitelbaum stated that "I also know that the executive chamber -- I can't say to a certainty, but I wager you on it -- had the substance of Dopp's testimony the night that it was taken." (HT 208) His attorney then suggested that the Inspector General review a copy of Dopp's diary, as it contains an entry about Dopp having called Nocenti during the evening after his testimony before the Commission. The Inspector General explored this possibility with Teitelbaum and his attorney and Teitelbaum conceded, "It doesn't say that in the document I gave you. It doesn't say that specifically." (HT 319)

A review of Dopp's October 11 diary entry reveals no indication that Dopp had informed Nocenti about anything related to the circumstances surrounding his signing of the statement submitted to the Attorney General or the content of his testimony. Teitelbaum was pressed on this point:

MR. FISCH: Let me get back again. Is there anything you have, besides what you've just given me now about the Dopp's diary, that would indicate that Maloney, Nocenti, Rifkin, Constantine -- whom else did I --

MS. OSTERER: Pope.

MR. FISCH: -- that any of them, on November 1st, were aware of the content of the Dopp testimony?

A. That would indicate that they were aware of it?

Q. The content of the testimony.

A. I don't know if they were aware of it.

MR. FISCH: No, I'm saying, do you have any indication that would demonstrate that they did know the content of his testimony on November 1st?

A. As I sit here now, I think I've given you what I know.

MR. CAMPRIELLO: We think -- we think that the excerpt we showed you supports the inference --

MR. FISCH: I understand.

MR. CAMPRIELLO: -- that they knew. But it clearly doesn't say it.

MR. FISCH: I understand.

MR. CAMPRIELLO: But it clearly doesn't say it.

MR. FISCH: I understand it.

MR. CAMPRIELLO: And you can draw a different inference, as you articulated. (HT 323-324)

When he testified before the Inspector General, Dopp stated that his telephone conversation with Nocenti following his testimony was brief and did not include a discussion of the content of his sworn testimony. (DD 13) He denied having told Nocenti in their conversation that he had named either Nocenti or Pope during his testimony. He also denied having had any conversations about his Commission testimony with anyone from the Executive Chamber between the time of his testimony on October 11 and November 1.(DD 14) He also denied ever having had a conversation with Robert Hermann about anything. (DD 18)

When Nocenti testified before the Inspector General, he too denied that Dopp had revealed to him the content of his sworn testimony before the Commission. Nocenti testified that he was "firm" and had "no doubt in [his] mind" that Dopp did not reveal the content of his sworn testimony before the Commission (DN 14). Nocenti also stated that while he knew Hermann to say hello to him, Hermann had never discussed with him any information concerning the Commission's activities.

IV. INVESTIGATION OF THE APPROPRIATENESS OF THE COMMISSION'S RESPONSE UPON RECEIVING THE ALLEGATIONS THAT ITS EXECUTIVE DIRECTOR HAD DISCLOSED CONFIDENTIAL INFORMATION

A. Background

1) John Feerick and the Commission

John Feerick is an icon of integrity, ethics and political independence, and has devoted many years of his life to public service. In addition to, and even during his service as Dean of Fordham Law School from 1982 to 2002, John Feerick chaired the New York State Commission on Judicial Elections, as well as the New York State Commission on Government Integrity. The latter service led to the adoption of the 1987 Ethics in Government Act. Dean Feerick has been honored by numerous groups including Common Cause, the League of Women Voters, the New York Lawyers for Public Interest, and various Bar Associations.

Members of the Commission on Public Integrity include individuals of similarly outstanding reputation and achievement,²⁸ and it is only fair and proper that such history be recognized.

Having acknowledged this, however, this report addresses whether the Commission on Public Integrity, and its predecessor Ethics Commission, faithfully, independently and effectively discharged its duties and responsibilities as the State's primary guardian of ethics in government.

2) Leaks of Confidential Information

The Inspector General found that the Commission could not control its own leaks, even as it undertook an investigation of leaks by the Executive Chamber.

Allegations Regarding Spitzer Administration Leaks

Part of the Troopergate investigation conducted by the Commission involved the issue of whether the Spitzer Administration had disclosed to the press confidential information. (JF 12-13)

Feerick confirmed this at his examination before the Inspector General on October 2, 2008:

Q. And there are different aspects of that. For example, the state police surveillance, allegedly, of Senator Bruno?

A. All of that would have been part of the mix.

²⁸ See Appendix B.

Q. And also the disclosure to the newspapers of some of the allegations about Bruno. That was also part of it?

A. It would have been all part and parcel of the basic investigation, certainly.

Q. But specifically, disclosures, allegations that the Spitzer administration had disclosed some of its observations of Bruno, some of its interest in Bruno, was part of the investigation; am I correct?

A. I would say so, yes. (JF 10)

Q. But one of those areas, I want to just focus, because there were many things, the use of the helicopter, whether it was on official business or political business -- I don't want to talk about that. But just the fact that there is a question as to whether or not some disclosures had been made on the initiative of Spitzer officials or an official rather than in response to a FOIL request.

That was one of the allegations, correct?

A. Yeah. See -- yes. I would define that as part of Troopergate. (JF 11-12)

Q. But wasn't the issue whether the Times Union obtained it in response to a request --

A. Yes. That was part of our investigation.

Q. -- or whether it had been, again, for want of a better term, leaks?

A. I would say so. (JF 13)

Spitzer's Testimony

As noted earlier, former Governor Spitzer confirmed, in his examination before the Inspector General, that Lloyd Constantine had informed him on November 1, 2007, of communications from Robert Hermann. Spitzer commented on what he characterized as an irony in Hermann's disclosure to Lloyd Constantine of such confidential information, i.e., that the Commission had made a referral to the Albany County District Attorney:

Q. Was going to be made or had been made?

A. As I sit here today, I don't know if it was pending, had been made, but a referral was -- honestly, I don't remember what the verb tense was -- and that this disclosure, whatever this verb tense, was in violation of the Ethics Commission's statutory obligation to maintain secret any such referral.

Now, as I said, the underlying issue is not one for me to pass judgment upon, that is the domain of others. But the reason I remember it so clearly is that the irony could hardly have been missed. Here was the Ethics Commission's chief counsel allegedly -- and again, I don't want to pass

judgment -- allegedly violating the statutory obligation to maintain secret a particular matter under investigation when the allegation that had triggered this entire hullabaloo related to the disclosure of public information pursuant to a media request for that information and this tension struck me as merely highlighting the Alice in Wonderland nature of the entire underlying endeavor which, to me, has been an unfortunate irony that has not been sufficiently noted. (ES 7-8)

Leaks within Commission on Public Integrity; Exacting Confidentiality Statements and Creation of Special Working Group

13) Feerick testified that the issue of leaks was serious and troubled him for a long time. (JF

A. And obviously, as Chair of a very important Commission, dealing with one of the state's most difficult investigations, I was terribly troubled by leaks having to do with our investigation. And as you take a look at the newspaper articles, you will see references to sources that are close to the DA, sources that are close to the A.G., sources within the executive branch, references to our Commission, insider, a source close to the Commission. It would take someone quite an effort to, I would say, over a good stretch of time, to get to the bottom of all those leaks. And I had to live through this matter with that all around me. No question. And I approached it in terms of making sure that all the commissioners took a public oath of office. Not just write out and have notarized a note of office. That was not an accident. That was my way of reminding every commissioner of their obligations. Staff also executed confidentiality statements. In addition to that, it was a subject of discussion with the staff, a subject of discussion by me with the commissioners, and it's what I had to deal with. And I must say, it troubled me greatly. It still does.

Q. Forgetting every other entity but your commission.

A. Yes.

Q. Were you troubled about leaks by commissioners?

A. Possibly by commissioners. I couldn't -- I was troubled by leaks by staff. And I never had -- you know, and I tried to address it in a lot of different ways. And the Commission did. We talked about it as a Commission.

Q. You spoke to Teitelbaum about this as well?

A. Absolutely. I spoke to him. I spoke to all the commissioners. (JF 14-16)

To deal with leaks from the Commission, Feerick assured that all the Commissioners executed a public oath of office and Feerick exacted confidentiality statements from Commission staff.²⁹ Feerick continued:

In the Commission, I spoke to the work group. I would have had, presumably -- and I don't want to speculate, because you have enough speculation. But my practice would have been to talk to commissioners, but I think we had a very difficult meeting in December. The December meeting of the Commission. I think I spent two-and-a-half hours talking about leaks and confidentiality. (JF 37)

When asked whether there were any specific commissioners he was particularly concerned about, Feerick identified Richard Emery and stated he knew of Emery's relationship with Constantine, which was the basis of his concern. Feerick testified he never suspected the commissioner Constantine testified Hermann named in their conversation on November 1, 2007, and unlike Teitelbaum, did not recall ever hearing this commissioner suggested as a source of leaks.

In addition to exacting confidentiality statements as one response to the concern over leaks, the creating of working groups was another. Meave Tooher testified that such concern was "absolutely" a factor in deciding which commissioners would constitute the working group to deal exclusively with the Troopergate investigation, and Teitelbaum testified "it might have" influenced the choice of commissioners. While Hermann learned from Teitelbaum the actual names of some members of the working group, the Governor himself was not aware of such internal Commission information.

While there were undoubtedly "leaks" emanating from other investigative entities, as Feerick noted, it is undisputed that the Commission itself was a prolific source, or as Sean Patrick Maloney testified, "a sieve." (SPM 23)

Letters from Executive Chamber to Commission Complaining of Leaks

The proliferation of leaks from the Commission provoked a number of letters from the Executive Chamber to John Feerick complaining of leaks attributed to "commission sources."

Several such letters dated September 5 and 12, 2007 (to the Ethics Commission), and one dated February 19, 2008 (to the Commission on Public Integrity), are reproduced below:

²⁹ See Appendix D.

September 5, 2007

Hon. John Feerick
Chairman
State Ethics Commission
Fordham Law School
140 West 62nd Street
New York, New York 10023

Dear Chairman Feerick:

As you probably know, the Executive Chamber has been voluntarily providing documents on a rolling basis to the Commission related to its pending inquiry of Chamber employees. Part of this process has been an ongoing dialogue, both orally and in writing, as we have been working to supply the Commission with the information it needs.

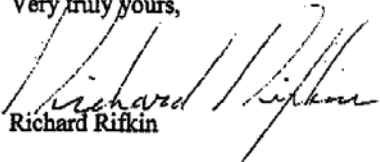
We became very concerned after reading yesterday's article in the New York Post headlined "Spitz in Their Face." It discussed -- and seriously mischaracterized -- specific discussions conducted last week between the Chamber and the Commission. For example, it said that "Spitzer and his aides want to narrow the definition of what constitutes a scandal 'record' and to deny the Commission access to what they contend are 'irrelevant' or 'peripheral' references to the dirty-tricks plot." This account appeared shortly after a meeting between lawyers from the Chamber and staff of the Ethics Commission in which both sides worked to resolve outstanding questions and issues relating to the Commission's document request.

The article also mentioned that the Chamber asked the Commission to seek private emails (other than the Governor's, which have been searched and the results reported to Commission staff) directly from the individuals in question. Far from "punting," as the source in the article suggests, this is the only way for the Commission to assure that it receives all the documents from private individuals that it is seeking.

After reading the article, I called Herb Teitelbaum, who told me that he was confident that no member of the Commission staff would have revealed this information to a reporter. Certainly, it was not in the interests of this office to publicly discuss this matter.

We very much want to work with the Commission to allow it to conclude its inquiry as quickly as possible. It was certainly our expectation, based on the confidentiality that surrounds Commission investigations (Executive Law, §74(12) (a)) that our correspondence and discussions with Commission staff would not appear in a newspaper story. I fully accept Herb's representation that his staff did not speak to any reporter. Nevertheless, I think it is important to emphasize the seriousness of this situation and the need to ensure compliance with the confidentiality rule.

Very truly yours,


Richard Rifkin

September 12, 2007

Hon. John Feerick
Chairman
New York State Ethics Commission
Fordham Law School
140 West 62nd Street
New York, New York 10023

Dear Chairman Feerick:

I write to follow up my letter of September 5 and our telephone conversation. Earlier this week in the *New York Post*, the following paragraphs appeared in an article that began on page 1:

A source close to the Ethics Commission also confirmed a report in last week's *Post* that Spitzer and his aides 'are really stonewalling the commission in terms of requests for documents that have been made.'

Another commission source said investigators had gained access to some of the computer hard drives used by aides to the governor and were 'attempting to recreate some of the previously deleted e-mail records' relating to the scandal.

Also, a commission source confirmed an increasingly widespread belief that the Ethics Commission, which is set to be replaced by a new Commission on Public Integrity on Sept. 22, doesn't appear to have enough time to complete the dirty-tricks probe.

'The current commission is going to have to hand the probe off to the new commission, and that's going to create a complex set of problems of its own,' said the source. The new, 13-member commission will be dominated by appointees of Spitzer.

(emphasis added)

For reasons that are all too obvious, this is a matter of great concern.

Moreover, we take strong exception to any accusation that the Chamber has been "stonewalling". The Commission's initial document request was extremely broad, extending even to records that the Executive Chamber has yet to create and seeking materials clearly covered by the attorney-client privilege and other items not within our custody or control. Nevertheless, in the few weeks since receiving the Commission's document request, the Chamber has examined in excess of 15,000 pages of materials, and voluntarily produced approximately 1000 documents in five separate productions, including every document supplied to the offices of the Attorney General and Inspector General. We made supplemental productions when the Commission expanded its initial request. And, as of today, we have substantially complied with the entirety of the Commission's requests for documents. In addition, we have stated that the Governor will voluntarily testify if the Commission needs his testimony.

We have no knowledge of the Commission's having access to any computer hard drives from the Executive Chamber or any other source. The article's implication that e-mails were being deleted is flatly untrue. We made extensive efforts to preserve all e-mails and other documents when the OAG's investigation began, and we have acceded to the Commission's highly unusual request for a sworn statement of the steps taken to safeguard documents.

Finally, we are deeply troubled by the final paragraph in the article, in which the "commission source" is forecasting that Commission will not finish before it expires. We hope that this is not true, given that eight weeks will have elapsed from the start of the Commission's inquiry up until that point.

For these reasons, and out of deep respect for the reputation and standing of the Commission, we formally ask that the Commission immediately and publicly correct the improperly leaked and highly prejudicial statements that appeared in the New York Post. We also renew our previous request that the Commission staff provide assurances that conduct of this nature will not reoccur.

Very truly yours,


Richard Rifkin

February 19, 2008

John Feerick
Chairman
Office of Public Integrity
54 Broadway
Albany, NY 12207

Dear Chairman Feerick:

Yesterday, the New York Post cited a "source close to the commission" to substantiate a report that David Nocenti, the Counsel to the Governor, appeared last week to give testimony before the staff of the Commission on Public Integrity. (New York Post, February 18, 2008 at 2) The attribution of this report follows on the heels of a report in last Monday's Daily News that Mr. Nocenti "was grilled for several hours last week by the state Commission on Public Integrity, according to a source familiar with its investigation." (New York Daily News, February 11, 2008 at 10) Equally notable on that day was a New York Post article citing "two sources" regarding Mr. Nocenti's testimony before the Commission, as well as the content and substance of "a 'secret executive' session" of the Commission. (New York Post, February 11, 2008 at 2)

Yesterday's report is especially disturbing because, following the news articles that appeared on February 11, Michele Hirshman, the Governor's privately retained attorney, sought to speak with you about this apparent breach of investigative protocol and potential violation of Commission rules and criminal laws. Her request was referred by your staff first to the Commission's spokesperson and then to your Executive Director, Herbert Teitelbaum. Mr. Teitelbaum indicated to Ms. Hirshman that he had been designated to return her call. She has advised me that Mr. Teitelbaum offered to meet with her after she communicated the Governor's personal dismay at last week's disclosures and the reputational harm to Mr. Nocenti resulting from those disclosures. You will recall that in December, I similarly requested a meeting with you to discuss, among other things, a series of detailed press accounts about the Commission's confidential investigation. After initially agreeing to meet with me, you apparently changed your mind and I was contacted by Mr. Teitelbaum who met with me in your stead. In the roughly two months since that meeting, many additional improper disclosures have occurred, including those detailed above.

Notwithstanding Mr. Teitelbaum's offer to meet with Ms. Hirshman, yesterday's disclosure makes clear that this matter requires oversight and attention at the Commission as well as the staff level. These repeated improper disclosures do incalculable harm to innocent individuals and threaten the integrity and the perception by the public of the integrity of the Commission's core mission. Ms. Hirshman and I would very much appreciate the opportunity to speak directly with you about this matter.

Sincerely,



Lloyd Constantine
Senior Advisor

In his response dated February 21, 2008, to Constantine, Feerick wrote that "no reliable evidence" was found linking the newspaper stories which were the subject of the February 19

letter to the Commission. However, Feerick continued, because of the Commission's sensitivity "under the law" to protect "the confidentiality of its investigations," he had requested the Commissioners to execute a public oath of office at its inaugural meeting in October 2007, and Teitelbaum also asked staff members to sign confidentiality statements.

Following is John Feerick's letter:

CONFIDENTIAL

February 21, 2008

Mr. Lloyd Constantine
Senior Advisor, Governor Eliot Spitzer
Executive Chamber
State Capitol
Albany, NY 12224

Dear Mr. Constantine:

This will serve to confirm what I conveyed to you today that the press disclosures to which you make reference in your letter of February 19 are not attributable to our Commission. I have reviewed the two reports in question, and past press reports as well, and find no reliable evidence linking these reports to our Commission.

The Commission has been very sensitive to its obligations under the law to protect the confidentiality of its investigations. As I shared with you, mindful of the importance of these obligations, I requested the members of the Commission to take a public oath of office at the Commission's inaugural meeting in October 2007. Herbert Teitelbaum also asked members of the staff to sign confidentiality statements.

It is the intention of the Commission to continue to abide by the laws that apply to it and the commitments of confidentiality made by members and staff of the Commission.

Very truly yours,


John D. Feerick

CC: : Herbert Teitelbaum
Michele Hirshman

B. Failure to Investigate Allegations Against Teitelbaum

1) Teitelbaum's Disclosure to Feerick in November 2007 of Allegations About Him: the First Failure by the Commission to Investigate Teitelbaum

After Hermann's disclosure to Constantine on November 1, 2007, of his knowledge of the Commission's referral to the District Attorney of the Dopp sworn testimony, Constantine notified other Executive Chamber attorneys and the Governor. A meeting with the District Attorney followed and they disclosed that the information had been conveyed from Hermann who had been informed of this by Teitelbaum. Shortly thereafter, Hermann met with Rifkin and entreated Rifkin not to notify Feerick, but to allow Teitelbaum to do so, because Teitelbaum feared for his job. While Rifkin and Hermann provided conflicting testimony on what exactly Teitelbaum was going to tell Feerick, Teitelbaum, in fact, did go to Feerick and denied the allegations.

Feerick was questioned by the Inspector General about Teitelbaum's conversation with him in November 2007:

Q. What did Teitelbaum tell you?

A. He said, when this came up, that essentially that it was not true. It was -- I remember him saying -- he was shocked by it. He also, I think, said to me that he had called Hermann at that time and Hermann said something to the effect that Herb had not communicated and he didn't communicate that Herb had communicated information. And that was it. And now this is coming to me from Herb. I never hear it from the District Attorney. (JF 50)

Q. I want to get back, you said that Teitelbaum had told you, had said something to you that he learned there was an allegation that he had leaked information to --

A. He got a call from the District Attorney.

Q. And he said that the allegation was that he had leaked information to Hermann, correct?

A. Right.

Q. And Hermann to Constantine or to others, to somebody in the chamber, right?

A. Yeah.

Q. Okay.

A. We saw two different kinds of communications, as I recall, My recollection, and my diary would reflect that, that on November 2nd, Herb tells me -- I would have had several conversations with him that day. In one of those conversations later in the day, I believe, he tells me that he

had a call from the District Attorney who said to him that his investigation, his District Attorney's investigation had been leaked. Because he got a call, in turn, the District Attorney was saying, from some members of the executive branch who wanted to meet with him, And he told him they better have lawyers, something like that. Herb tells me that. He tells me that, I believe, around November 2nd, but there would be a note in my diary when that was.

Then I recall -- so that's November 2nd. What I remember is Herb telling me on a Monday, November 12th -- if that's a Monday. Let me just check my calendar.

Q. Do you have this, or do you want it?

A. It's here. On Monday, November 12th what I remember is -- and this is the best I can tell you -- that he, Herb, received a call from the District Attorney on Friday, November 9th. And the District Attorney must have conveyed to him in a conversation that day that he had met with some representatives of the Spitzer Administration, presumably that week. And that they had shared with him that they knew of his investigation from a communication that Herb had with -- say a communication between Herb, Hermann and Constantine. And Herb relates that communication from the District Attorney on November 9th to him to me, I believe, on Monday, the 12th, and, in addition to reporting it, I believe he said to me something to the effect that he had called Bob Hermann. Obviously -- it was clear to me he was shocked by the District Attorney's communication. There was no question about that. And Hermann told him that he never told anyone, essentially, that Herb had communicated confidential information to him. (JF 52-54)

Feerick accepted Teitelbaum's disclaimer and did nothing further.

2) Evidence Received from District Attorney Soares in February 2008: the Second Failure to Investigate

On February 8, 2008, Feerick received a telephone call from Albany County District Attorney Soares, requesting an opportunity to meet. The two met at 4:00 p.m. that day.

It will be recalled that information was conveyed to the District Attorney in November 2007, from members of the Executive Chamber, that they had learned of the Commission's referral to him of the Dopp testimony and that the source of such confidential information was Teitelbaum. At this time in November 2007, the District Attorney was immersed in his Troopergate investigation, and accordingly, did not attempt to investigate such information regarding Hermann and Teitelbaum. When his Troopergate investigation had concluded, the District Attorney turned his attention to those allegations about Teitelbaum.

On February 7, the day before Feerick's meeting with Soares, Hermann, accompanied by his attorney, provided an unsworn statement to the District Attorney. It was at this interview that Hermann, for the first time, revealed his story of having seen a yellow pad on a table in

Teitelbaum's apartment one evening around Halloween of 2007, and from a few notes, deduced everything that he told Constantine on November 1. Based upon such interview, the District Attorney contacted Feerick, and at their meeting on February 8 expressed his concern to Feerick that Teitelbaum had disclosed confidential information about the Commission's investigation. At this point, the District Attorney was still conducting interviews, and had only Hermann's statement. Soares testified to the Inspector General that Feerick was troubled by the information. (DS 35) In a memorandum to the Commission, written on February 28, Feerick described his February 8 meeting with District Attorney Soares.

On the day of the last Commission meeting (Feb. 8), I received a call from David Soares, the District Attorney of Albany, to ask if he could meet with me. We met that afternoon alone at a coffee shop and what he said to me was that he had uncorroborated information about the subject of our investigation that he might need to share with us once he corroborated it, if he did. He expressed a concern that we had a leak, mentioning a relationship between Herb and Robert Herman[n] who in turn spoke with Lloyd Constantine, senior advisor to the governor. He suggested that what was going on in our Commission was getting back to the executive chamber through this route.

Feerick reported that Soares had also informed him that knowledge of his investigation of Dopp in October 2007 had gotten back to the Executive Chamber that way and "mentioned leaks from our Commission without any specificity."

Feerick told Soares that the Commission had confidence in Teitelbaum's leadership.

On February 25 the District Attorney conducted a recorded interview of Lloyd Constantine. The next day, February 26, according to Feerick's memorandum, he received a call around 5 p.m. from the District Attorney who was on speaker phone with two others from the District Attorney's office. Soares told Feerick that he now had information about Teitelbaum in recorded form which he wished to share with him, and would get back to him shortly. The call by the District Attorney to Feerick was followed by a facsimile from the District Attorney to Feerick stating, "We believe that Mr. Teitelbaum's continued involvement in this matter could compromise the integrity of the Commission's investigation."

Feerick discussed this information with working group members Commissioners John Mitchell, Robert Giuffra, Howard Levine, Commission Counsel Barry Ginsberg, and Teitelbaum. Feerick was not able to contact Commissioner Loretta Lynch at such time.

At about 7:30 p.m., Feerick, Mitchell, Giuffra (by phone), and Ginsberg arrived at the District Attorney's office and listened to recordings the District Attorney had made of his interviews of Robert Hermann and Lloyd Constantine. Before listening to the recordings, the District Attorney explained that in early November, after Teitelbaum had given him the Dopp transcript, the District Attorney received a telephone call from Richard Rifkin, which was followed by a meeting the District Attorney had with Rifkin and Sean Patrick Maloney wherein

they described having learned of his investigation from Constantine who had been informed of it by Hermann, who in turn had learned about it from Teitelbaum. The District Attorney mentioned that he had deferred acting upon it, because it did not involve the substance of his Troopergate investigation.

After meeting with the Commission representatives, Soares told them that he had discharged his responsibilities by bringing the matter to the Commissioners' attention and it was now up to them to deal with it as they might.

In his memorandum to the Commission, John Feerick disclosed that in November [2007], Teitelbaum had, in fact, advised him that the District Attorney had told Teitelbaum about allegations that he had communicated information to Hermann who in turn had brought it to Constantine's attention. According to Feerick's memorandum, Teitelbaum told Feerick he had confronted Hermann, who denied it. Also, according to Feerick's memorandum "that was the end of the matter, as far as Herb and I knew, until my meeting with Soares on February 8 [2008]."

Following is an excerpt of Feerick's memorandum, describing what he and the other commissioners heard:

John Mitchell, Bob Giuffra, Barry Ginsburg [sic], and I listened to the tapes at Soares's office on Tuesday evening. Essentially, what we heard, and Bob, John, and Barry, can supplement my rendition as they choose. Bob Herman[n], who lives in the same complex as Herb, described an evening where they were having dinner at Herb's apartment. Herb was in another room having a conversation with someone and Bob was in another room and saw on a yellow pad on Herb's table and some notes on [the] pad about Dopp's transcript and the DA. He subsequently mentioned that to Lloyd Constantine. Herman[n] said that Herb had not given him any specific information at any time about the Commission's investigative work. In this tape recorded interview, Constantine described receiving this information from Bob Herman[n] and then seeking advice of Hal Lieberman, an ethics expert, and they then brought it to the attention of the District Attorney in late October or early November. Constantine also described communications he had received from Bob Herman[n] in late July and early August about cooperating with the Commission's investigation, turning over documents, and the importance of it being complete. He said he was annoyed about these back channel approaches, since he was the governor's senior adviser and should have been dealt with directly.

While listening to the recordings, Ginsberg took notes. Feerick testified that after listening to the recordings they returned to the Commission office and Ginsberg, Giuffra (via phone), Mitchell, and Feerick discussed what they had heard. Feerick also reached out to

Commissioners Dan French, Howard Levine, and Dan Alonso and discussed the matter with them.

After listening to the recordings, and following their discussions, Feerick wrote to the District Attorney, stating that the information the District Attorney furnished had been carefully considered, and

After reviewing this information, the Commission continues to have the highest confidence in Mr. Teitelbaum's ability to lead the Commission's investigation for the current matter involving the Executive Chamber.

Copies of the correspondence between the District Attorney and John Feerick follow:

February 26, 2008

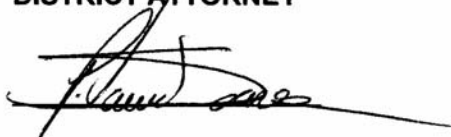
John D. Feerick, Esq.
Chair of the Commission on
Public Integrity
NYS Commission on Public Integrity
540 Broadway
Albany, NY 12207

Dear Mr. Feerick:

I am sending this letter in follow up to our meeting on February 8, 2008. During that meeting, I advised you that we had received allegations that Executive Director Herbert Teitelbaum was inappropriately releasing confidential information pertaining to the Commission's investigation of the release of documents on Senator Bruno's use of state aircraft. Since our meeting, we have secured evidence which supports the allegations against Mr. Teitelbaum. We believe that Mr. Teitelbaum's continued involvement in this matter could compromise the integrity of the Commission's investigation. I would like to meet with you to discuss this further.

Very truly yours,

P. DAVID SOARES
DISTRICT ATTORNEY

A handwritten signature in black ink, appearing to read "P. Soares", written over a horizontal line.

February 28, 2008

HAND DELIVERY

P. David Soares
District Attorney of
Albany County
6 Lodge Street
Albany, NY 12207


Dear District Attorney Soares:

Thank you for meeting with us yesterday evening to review the information that you shared with us. The two other Commissioners who participated, our General Counsel and I appreciate the time you and your staff spent with us.

We have carefully considered the information you provided to us. We have discussed this information with other Commissioners, and have evaluated this information based on our own understanding of the Commission's investigation, including our discussions with Mr. Teitelbaum. After reviewing this information, the Commission continues to have the highest confidence in Mr. Teitelbaum's ability to lead the Commission's investigation of the current matter involving the Executive Chamber.

This letter is authorized by the full Commission.

Very truly yours,


John Feerick
Chair

March 3, 2008

HAND DELIVERY

John D. Feerick, Chair
New York State Commission on Public Integrity
540 Broadway
Albany, New York 12207

Dear Chair Feerick:

We are in receipt of your letter dated February 28, 2008. As you know, on February 26, 2008, we shared with you information regarding alleged acts on the part of Executive Director Herbert Teitelbaum which we believe, at a minimum, create an appearance of impropriety. Even so, you maintain that "the Commission continues to have the highest confidence in Mr. Teitelbaum's ability to lead the Commission's investigation of the current matter involving the Executive Chamber."

While we appreciate your confidence in Mr. Teitelbaum's abilities, in light of the nature of the information we shared with you, we feel it is necessary to seek independent counsel to advise us on our ethical obligation to disseminate to the Commission information on our underlying investigation of the Executive Chamber, as well as our responsibility to interested parties.

Very truly yours,

P. DAVID SOARES
DISTRICT ATTORNEY

Feerick conceded that some of the crucial and confidential information Hermann provided Constantine was accurate, e.g., the information about the “referral” to the District Attorney, but pointed out that it was not a “referral” but a “consultation” with the District Attorney. (JF 77-78) Feerick also confirmed the purpose of forwarding the matter to the District Attorney, and that the information was only known to the District Attorney and to Commission staff.

Q. But the meeting was provided to the DA for his consideration of whether there was a conflict between testimony before you and the statement before the Attorney General?

A. And also the role of others in the Executive Chamber who were involved with that statement.

Q. Okay.

A. That was -- that was of the subject matter of the testimony.

Q. And that was given to the DA?

A. Correct.

Q. Was anybody aware of that, outside of people in the Commission?

A. Not to my knowledge. I’m just trying to -- trying to think. Certainly the work group and the staff associated with that. (JF 79)

However, Feerick contended that Hermann was incorrect in some specific aspects of his communication to Constantine, and therefore could not have learned the information from Teitelbaum. Feerick provided the following explanations when asked about the Commission’s expressin of having the “highest confidence” in Tetielbaum:

(a) Hermann’s statement to Constantine concerning the creation of the working group was “totally wrong” and “nonsense.” (JF 65)

(b) Hermann and Teitelbaum are people of outstanding reputations, “and if you are going to bring those two people down, I have got to see a lot more evidence than I saw on those tapes.” (JF 66)

(c) Lloyd Constantine “seemed to speculate that there was [sic] actual communications from Teitelbaum to Hermann.” (JF 66)

(d) The Commission was experiencing some difficulty with the Executive Chamber attorneys and they felt Teitelbaum was too aggressive. (JF 74-75)

(e) Contrary to Hermann’s statement, “There was no determination by our Commission that Mr. Dopp or anyone else had violated the law or had committed perjury.” (JF 78)

As to Feerick’s testimony that Hermann was wrong in that “there was no determination by our Commission that Mr. Dopp or anyone else had violated the law or had committed

perjury,” (JF 78) both Teitelbaum and Tooher testified that the question of whether such a crime had been committed constituted the basis for the Commission’s forwarding Dopp’s testimony to the District Attorney. Teitelbaum testified that, while the Commission “didn’t take a position” on the issue, the working group wanted the District Attorney to review it:

A. We didn’t take a position.

Q. But you wanted him to take a look at it?

A. Well, we thought it was appropriate that we should do that.

Q. Okay. And didn’t any of the commissioners feel there might have been a false statement? Didn’t Levine feel that there might have been a false statement or some perjury involved?

A. Levine -- you know, Levine expressed himself that way when he first, you know, saw the transcript, but, you know, people say something and --

Q. I understand.

A. -- and they may think about it some more. But you know...

Q. The D.A. was looking into it?

A. This is before the D.A. got the transcript.

Q. Then you gave it to the DA to -- consultation?

A. “Here. Do with it what you please.” (HT 307)

Tooher testified that after Dopp’s testimony, she, together with Teitelbaum and Commission Associate Counsel Joan Sullivan, met with Commissioner Howard Levine and reviewed with him the Dopp testimony and Dopp’s statement to the Attorney General and, “Judge Levine was concerned that there might be a perjury issue there.” (MT 9-10) This was discussed with the working group and then presented to the District Attorney for his review. (MT 10-11) Even if Hermann was incorrect about the Commission making a formal “determination,” the substance of his information was nonetheless correct.

Feerick explained to the Inspector General that while the Dopp matter did indeed come before the subcommittee, the committee had not been specifically created for that purpose, and that was how Hermann was “wrong.” Despite Feerick’s assertion that Hermann was “totally wrong” on the purpose for the creation of the subcommittee, Feerick agreed that names of the subcommittee members were not publicly known at this time. Feerick also acknowledged that Hermann possessed confidential information:

Q. My point, Dean, is that on November 1st --

A. Right.

Q. -- Hermann communicated to Constantine information that was confidential within your Commission. How he got it, we will deal with.

A. Right.

Q. But that’s correct:

A. What I would understand is what's in the tapes. (JF 84-85)

Q. Did the providing the District Attorney with the information and the --

A. I considered that within our -- within our group as --

Q. Confidential?

A. -- information that we should protect.

Q. Confidential?

A. Absolutely.

Q. Okay.

A. I mean, confidential in terms of we should protect.

Q. And --

A. You know, that information, you know, that bringing over the transcript, was information we should protect. (JF 87)

Q. Dean, the fact that it had been turned over to the DA for whatever purpose, that was accurate and that was confidential, it was not publicly known?

A. I'd say -- can I put it in my words? I think we are -- well, as far as I know, the fact that we had the consultation with the DA concerning issues that might be raised in the transcript, that was within our small group. That was, you know, within the work group and the staff. And it was not publicly known, as far as I knew. (JF 88)

Feerick was then asked about Constantine's second conversation with Hermann, wherein, according to Constantine, Hermann said, "I know what [Teitelbaum is] is capable of doing when he's backed into a corner...he's capable of -- of claiming that he didn't tell me any of this stuff, that I you know, came into possession of it some other way." (LC to DA 45) Feerick testified that he recalled those portions "in a general way," (JF 96) and when asked how he interpreted those words, responded as follows:

Let me tell you what it all meant to me and to my fellow commissioners. When we came back, Giuffra was on the telephone, myself, Mitchell and Barry, and it was fresh in our mind that night we had heard it. And we didn't hear any compromise of the Commission's investigation. We saw suppositions by Constantine. We heard what Hermann said on the tape. We heard what Constantine said, that he assumed, and we didn't see anything that was conclusive to take out of the box, our Executive Director, and having compromised the Commission's investigation. And I think it was Commissioner Giuffra who raised the question whether everybody wants to kill the prosecutor. And we saw -- at least one

reflection. We saw in some of the supposition, you know maybe, you know, if you are disposed to go where you want to go, I suppose, for your reasons, not enough to say to us that we shouldn't act on what Hermann had said, what Herbert had said, two people with outstanding reputations, that there was no exchange of confidential information, you know, from our Commission to the Executive Chamber. And that's essentially where our Commission came out. (JF 97-98)

Feerick added that what they heard "wasn't enough for us" (JF 99). Why, Feerick was then asked, did not the Commission itself, call Hermann and question him about some of his statements:

Q. You said you had Hermann's testimony.

A. On the tape.

Q. But you did not have him answering questions about what he meant the week later, when he said he is liable of coming up with this story?

A. No, no, we didn't have that.

Q. Did you consider calling him, and asking him to explain that?

A. There wasn't a single commissioner that suggested we do so -- the answer is no. There wasn't a single commissioner asked whether we do so. And the context of where we were, either we were going to continue and finish probably one of the state's most difficult investigations, or we were just going to -- I would have to -- and the other commissioners, in my opinion -- I mean, you don't have to just ask other commissioners if you wanted to. I would have to have something conclusive, and it wasn't there, to say to Mr. Teitelbaum, all right, we are going to suspend you or we are going to go into some kind of leak investigation. In my opinion, it would have harmed this Commission. It would have certainly destroyed this investigation which was done carefully and thoroughly. I'm not a very popular guy and Herb's not a very popular guy. But what the state got were two independent guys and an independent Commission. And -- and, you know, that's the way this went. And -- and to say that Herb Teitelbaum, on this record, on February 27th, 26th, 28th, should be sort of pushed aside and that we go into some kind of broad inquiry about leaks, which, in my opinion, would have been destructive. However, if I thought, if the Commission thought that there was something substantial based on what we heard, we would have had to take steps. We didn't see it. (JF 99-101)

Feerick added that when the District Attorney had this information in November, he took no action, and when Feerick and the other Commissioners left his office on February 26th after listening to the recordings, the District Attorney told them, "I've done my duty, now I leave it to you to decide what you think is appropriate, words to that effect." (JF 105)

Feerick's statement that the Commission felt an inquiry into the allegations about Teitelbaum would have required a suspension of their Troopergate investigation is unpersuasive. The notion that any one person is so indispensable to an investigation so as to justify ignoring substantial allegations of misconduct by that person in regard to that very investigation is unsettling. There are many circumstances in which a person involved in a matter is required to cease his or her involvement ranging from the legal (i.e., subsequently discovered grounds for recusal) to chance (i.e., medical issues, previously planned vacations). Other Commission officials including experienced attorneys and investigators, such as Meave Tooher and Joan Sullivan, were actively involved in the Commission's Troopergate investigation and, with the assistance of additional Commission staff and under the guidance of the Commission, could have, at a minimum, proceeded until reasonable inquiry into the allegations against Teitelbaum had been completed. If this was not feasible and completion of its investigation would have been simply rendered impossible without Teitelbaum, further questions are raised regarding the administrative viability of the Commission. Regardless, by permitting Teitelbaum to continue to lead such a high profile matter after merely summarily dismissing serious allegations of impropriety against him risked undermining public confidence in the Commission's examination and its ultimate findings.

Barry Ginsberg, Counsel to the Commission, was also questioned about the allegations against Teitelbaum the Commission received from the District Attorney, in the form of recorded interviews:

Q. Should that cause an investigation?

A. The Commission conducted an investigation?

Q. The Commission conducted an investigation?

A. To Mr. Teitelbaum.

Q. You spoke to Teitelbaum?

A. Uh-huh.

Q. You spoke to Teitelbaum?

A. Not alone, but yes.

Q. Who spoke to Teitelbaum?

A. It was me, John Feerick, I believe there would be -- but I couldn't describe --

Q. And what did Teitelbaum say?

A. He said [he] never disclose[d] information to Mr. Hermann. He could not recall anything along the lines that Hermann was describing. That was the substance of what he said.

Q. Did you call Hermann as part of an investigation? You called Teitelbaum and you got his explanation. Did you ever call Hermann?

A. We had Mr. Hermann's testimony over at the D.A.

Q. No?

A. No, we did not call.

Q. Did you ever call Constantine?

A. No. (BG 68-69)

Ginsberg was asked how long his "investigation" took:

Q. For approximately how long a period of time did you speak with him?

A. I'm not good on times so it would be a guess. But half hour, probably a good guess, but it might be longer, but it's a guess. I didn't keep track of the time. (BG 79-80)

As noted above, the Commission chose not to question Hermann or Constantine directly, relying instead on the recordings of their interviews taken by the District Attorney. When Hermann appeared before the Inspector General, he was asked whether he, Hermann, had ever reached out to Feerick:

A. I don't know how that would have necessarily made it any better, so -- I mean, he could have called me too.

Q. Who, Feerick?

A. Yeah, I mean if he wanted to hear anything from me, he could have called me too.

Q. He never did?

A. He never did, no. (RH 159-160)

An interesting corollary to that comment occurred later in Hermann's examination when he was questioned about the Commission's referral of Dopp's testimony to the District Attorney for consideration of whether Peter Pope and David Nocenti might have suborned perjury because of their role in the drafting of Dopp's statement to the Attorney General:

Q. How did you know that the Public Integrity Commission couldn't assume that David Nocenti and Peter Pope were blame-free?

A. How could they? They didn't -- you know, they can't assume facts; they are supposed to investigate the facts. (RH 173-174)

One of Feerick's explanations for the Commission's failure to act on the information it had received from the District Attorney was that the evidence presented by the District Attorney did not reveal any conduct by Teitelbaum which "compromise[d]" the Commission's investigation. (JF 97) A similar comment was made by Teitelbaum when questioned by the Inspector General about his alleged use of Hermann as a "backdoor channel" to the Executive

Chamber. While denying he did so, Teitelbaum claimed it would have been permissible “to [go] to Hermann to get documents.” (HT 296) As discussed fully beginning on page 98, Teitelbaum testified

As long as you’re not trampling on people’s rights...and what you’re doing is consistent with your mandate...Nobody has given an instance where we interfered with somebody’s investigation. District attorney never said we interfered with his investigation. (HT 298-299)

Any experienced investigator recognizes that one never knows where an investigation will ultimately lead. It is therefore absolutely essential that the confidentiality of an investigation remain inviolate. It is impossible to determine, much less guarantee, that an investigation will not be “compromised” by disclosure of confidential information collected during an investigation. Moreover, the very fact that the statutory officer of the Commission charged with supervising its day-to-day operations, including and the most notable investigation of its then-brief existence, may have violated the Commission’s confidentiality rules could, in and of itself, undermine the integrity of the Commission’s investigation and public confidence in its results. At a minimum, the conclusion that Teitelbaum’s conduct was somehow *de minimis* could not reasonably have been determined based upon the perfunctory review of the evidence engaged in by the Commission without any effort to corroborate or validate any witness’s account.

More specifically, at the time Teitelbaum allegedly disclosed the information about the Commission’s consultation with the District Attorney to Hermann (a member of Governor Spitzer’s administration) in November 2007, and at the time the select Commission officials reviewed the evidence, then-Governor Spitzer was still under investigation by both the Commission and the Albany County District Attorney regarding the extent of his involvement in, and his knowledge of, the Troopergate affair. According to the District Attorney’s second Troopergate report (entitled “Investigation D”), dated March 28, 2008, after the Commission’s referral in November 2007, Dopp informed the District Attorney that Spitzer “was more involved in releasing Senator Bruno’s travel records to the media than previously known.” Based upon Dopp’s information, on February 5, 2008, the District Attorney granted Dopp immunity from criminal prosecution in order to compel him to testify as to the full nature of “what occurred during ‘Troopergate’” including examining Spitzer’s alleged involvement. The District Attorney stated in his report that he decided to grant Dopp immunity because of the difficulties in pursuing a perjury charge against him and the fact that “the People of Albany County and the State of New York would be better served by uncovering the truth” of the matter than by prosecuting Dopp. After receiving immunity, Dopp then recounted to the District Attorney that Governor Spitzer had been directly involved in the conduct being investigated by the Commission and had actually approved Dopp’s actions. As Dopp’s immunized statements were inconsistent with statements the District Attorney had taken from former Governor Spitzer in which he disclaimed all involvement, the District Attorney stated that he “intended to present these conflicting accounts to a grand jury” to resolve, but Governor Spitzer’s resignation in March 2008, obviated the need and authority to do so.³⁰

³⁰ Albany County District Attorney, “Investigation ‘D’”, March 28, 2008.

The Commission's Troopergate report was not issued until four months after the District Attorney's second report and almost nine months after Teitelbaum's alleged disclosure. Notably, in its report, the Commission not only extensively discussed what, if any, involvement Spitzer may have had, but left open the possibility that further action by the Commission against the former Governor or others was not foreclosed, stating, "Following the issuance of this NORC, if warranted by additional reliable evidence, including evidence adduced in the course of a hearing on the charges set forth herein, the Commission will pursue additional Public Officers Law violations that may have been committed by any person not named in this NORC, including any individual who may have previously received or may in the future receive a 'fifteen-day letter' pursuant to Executive Law §94(12)(a)."

As at the time of Teitelbaum's alleged disclosure and the Commission's review of the evidence provided by the District Attorney, the conduct of Spitzer and his executive staff was still being investigated by both the Commission and the District Attorney, Feerick's assertion that the Commission's minimal review of the evidence against Teitelbaum was sufficient to convince them that their inquiry had not been "compromised" was unfounded.

3) The Commission's Belated Request in August 2008 for Another Opportunity to Review the February Evidence from the District Attorney: the Third Failure to Investigate Teitelbaum

When the Inspector General met with District Attorney Soares on August 12, 2008, to discuss his referral of the Teitelbaum allegations, Assistant District Attorney Linda Griggs informed the Inspector General that a few days prior to the meeting, Barry Ginsberg had telephoned the District Attorney, requesting another opportunity to review the recordings that the District Attorney had played for the Commission on February 26. ADA Griggs told Ginsberg that the request should be put in writing with an explanation of why the Commission now wished to hear the recordings again. (LG 32)

If the Commission decided in February that it was not going to pursue any investigation of the recordings, why, Feerick was asked, did the Commission counsel contact the District Attorney in August 2008 requesting another opportunity to review the recording and transcript of Constantine:

A. Two reasons, basically, as best I recall, it depends on what the date of the call was. We were getting a lot of press inquiries. There was a lot of commentary that the District Attorney was going to release a lot of records, and we would have to deal with the tapes. And some of the commissioners said we should see if there are transcripts, because we are going to have to deal with this as an issue. Once the District Attorney releases -- I don't have the date when he released his report. Chances are that was sometime in August. You would have to help me on that. I know we issued -- not his report. When he issued the testimony that he issued. We issued our report in something like July 24th -- don't hold me to that. He, sometime in August, I think, issued transcripts and whatever he issued

at that time. And there was a distinct possibility that we would have to address these issues in the press and therefore we wanted access to whatever we would get access to.

That -- that was -- I think that was why Barry [Ginsberg] made the call. But, you know, I'm sure he would be able to tell you, you know, if you needed to know that precisely. But that's my recollection. (JF 106-107)

Ginsberg was also asked why the Commission sought from the District Attorney another opportunity to listen to the February 2008 recordings of Constantine and Hermann:

Q. Why the second request?

A. Why the second request? The Commission wanted to obtain it if we could. We have just issued the Notice Of Reasonable Cause. I believe at the time there was some media reports that District Attorney Soares would be releasing his file, quote, unquote, whatever that meant.

And we were -- almost every day getting criticized in the media by one of the people who was the subject of [the] Notice Of Reasonable Cause, and we thought it would be good if we could get a copy at that time to review the transcripts.

I made -- my specific request was if -- I remember it correctly, was a copy of the tapes, failing that, or in addition to that if there was a transcript, a transcript. My preference was the tapes.

Q. You spoke to Linda Griggs?

A. I did.

Q. What was her response?

A. Some days later three or four or five days later, she responded that she had spoken -- in substance what she said was that she had spoken with the D.A. She told me when I first called, she'd have to confer with the D.A., which I understood. And then her subsequent call was that she had talked to the D.A. and his response was to the effect that they had given the Commission an opportunity to hear these recordings and that if we wanted an additional opportunity, we should put our request in writing which we did not.

Q. Request that be put in writing and an explanation of why you wanted it again?

A. Correct. (BG 37-39)

Notably, District Attorney Soares did not refuse to afford the Commission a second opportunity to review the evidence he had gathered against Teitelbaum. Soares merely asked that the Commission's request be placed in writing and contain a reason for the Commission's renewed interest in reviewing evidence it had summarily discounted when first presented. The Commission never provided the District Attorney with such a written request. It is difficult to

avoid concluding that the Commission's failure to provide such written documentation of its request is that its reasons for requesting to view the evidence again would not place its actions in a good light: either the Commission would have been forced to admit that the evidence compiled by Soares was not afforded sufficient attention by the Commission in February 2008, or that once the information was made public by the District Attorney, the Commission would be faced with defending its inaction to a skeptical public and media.

4) Commissioner Richard Emery's Discovery of Information about Teitelbaum Which Had Been Withheld from Him: The Fourth Failure to Conduct an Investigation

The formation of the subcommittee, which consisted of Commissioners Levine, Mitchell, Lynch, Giuffra and Feerick, was, according to Meave Tooher, influenced by concern of leaks among the Commissioners. Teitelbaum conceded that such concern "may have been" a factor (HT 77). Not included as a member of that subcommittee was Richard Emery, whose relationship with Constantine concerned Feerick.³¹ Indeed Feerick, Teitelbaum and Tooher testified that Emery was a commissioner suspected of leaks (JF 17, HT 72, MT 87).

According to Constantine, however, he and Emery took special measures to avoid even the appearance of a compromising relationship, including never discussing Commission activity, and even canceling a skiing trip they had planned, to avoid being seen together.

Emery appeared before the Inspector General on November 17, 2008. Emery testified that he was not aware that allegations of Teitelbaum disclosing confidential information concerning the Commission's investigation had been brought to Feerick's attention in November 2007. (RE 9)

Emery also was not aware of the full content of Constantine's testimony to the District Attorney in February 2008. Emery's discovery occurred after the issuance of the Commission's Troopergate report in July 2008, when Constantine telephoned and complained about Footnote 7, which appeared on Page 15 and which read as follows:

Based on Executive Chamber claims made to the ODA [Office of the District Attorney], the ODA raised concerns with the Chair in February, 2008 regarding the alleged disclosure of confidential information by the Commission's Executive Director. These claims were reviewed by all of the Commissioners who unanimously concluded that the Executive Director's handling of the investigation was entirely proper. The Chair so informed the ODA, and the ODA continued to make available to staff confidential material relevant to the Commission's investigation.

Constantine testified about his telephone call to Emery:

³¹ Constantine testified that he and Emery are "close friends" and "athletic buddies," and Emery testified that the two were "good friends." (LC 87, RE 33)

Q. There came a time after the commission published its final report that you spoke to Emery?

A. I did. The day the Integrity Commission's report came out and I read it, I called Richard Emery. I was very upset with one part of the report. I don't have the report with me here today, but it was a footnote in the report where the commission adverted to -- it was not very specific but adverted to allegations that had been about the very facts and matters that you, the inspector general, are inquiring into. And what it seemed to say is we've looked at it and we're fine; we've examined our own conduct and we are as pure as the driven snow.

And what I said to -- and I got really upset. I got upset because here was a guy I knew and the question I had in my mind is, you know, when you sign this opinion, when you've signed this report, were you aware of all the facts. And I was quite mad. So I called up Emery and I said, you know, you should know -- do you know about all this stuff. And he said no, I don't. And this stuff being the conversations between -- the conversations that Hermann had with me and all of that, he said, no, they kept all of that -- they meaning Chairman Feerick and Teitelbaum -- kept that close to the vest and they did not share that with all the commissioners. (LC 91-92)

Emery was upset and told Constantine that he was going to "demand of Chairman Feerick a full airing of all of this." (LC 93)

Constantine also objected to the word "claims" in the footnote, pointing out that the Executive Chamber attorneys had been directed by Hal Lieberman, the ethics attorney they had engaged, to bring to the District Attorney's attention the information Constantine had received from Hermann on November 1, 2007. Constantine stressed that neither he nor any of the Executive Chamber attorneys were making any "claims" but merely following instructions from Lieberman.

Commissioner Emery Requests That the Commission Revisit the Teitelbaum Allegation

Commissioner Emery confirmed that after the Commission released its report on Troopergate on July 24, 2008, he received a telephone call from Constantine. During the conversation, Constantine spoke of his statement to the District Attorney regarding the Teitelbaum allegation and urged Emery to review Constantine's testimony in its entirety.

Emery testified that Constantine asked whether Emery was aware of what he had told the District Attorney:

He said, "Do you know what I told the District Attorney?" And I said, "No, other than" -- I repeated to him what I remembered about February. He said, "Well, you should know what my testimony was." I said, "Well, tell me what [your] testimony was." And I think it was the next day he

read it to me over the telephone. And he subsequently e-mailed it to me under a promise that I would not provide it to anyone else. (RE 33-34)

Emery testified that, after reviewing Constantine's February statement to the District Attorney, "I felt that it was important to do our own internal investigation of whether these allegations were true..." (RE 34) Emery requested of Feerick that this item be placed on the agenda for the August 2008 meeting of the Commission, and it was. Emery testified that he felt it was appropriate to revisit the allegations at this time, in part because the Commission's Troopergate investigation was completed, but also because:

Given the fact that there was a transcript of Lloyd's [Constantine's] comments that was in Soares' possession -- and I think Soares, at that point, had already announced that he was going to provide all his documents under the Freedom of Information Law. I thought it was inevitable that that transcript was going to be made public. And consequently for that reason, pragmatic reason, political reason, for the good of the Commission, and also because I believed that the transcript was -- Lloyd's comments, was troubling and detailed and significant, though equivocal and ambiguous, that it was necessary to investigate it. So, I argued that it should be investigated....I argued that for our own well-being, it should be investigated, that we should get an outside person to investigate it. Or do it somehow, in some credible manner or something. (RE 37-38)

"The Commission, as a whole, discussed it extensively," Emery reported, "and I was overruled. The other Commissioners didn't agree with me." (RE 35, 38, 45) "They made many good arguments. I thought about it carefully and I didn't think that I should push the issue further and that I could understand their points of view and I was willing to go along with the group."¹ (RE 45)

Emery confirmed that when he concurred with Feerick's letter to the District Attorney on February 28, 2008, expressing the Commission's confidence in Teitelbaum, he did not have all of the information concerning Constantine's testimony. (RE 27) While he would have liked to have had it, he stated he did not believe it would have made any difference. He explained that he and the other Commissioners had felt the Troopergate investigation "had gone on much too long." (RE 28)

A. Because to, at that point, stop the investigation further, longer, and to investigate Herb when there was nothing really about this matter that, in my view, made it seem as if Herb wasn't aggressively getting the facts out, as I had a lot [of] experience with him aggressively obtaining all of the relevant evidence over that period and aggressively attempting to go get documents and aggressively trying to get all the information which culminated in our ultimate report, I was not willing to short-circuit the investigation any further at that point by allowing what I viewed to be

equivocal accusations to create collateral disputes that would take our eye off the ball with getting this investigation done.

That was my view and I have a sense that that was other Commissioners' views.

Q. Does this not boil down into two parts -- and I don't want to be simplistic.

A. Yes.

Q. Number one, did Teitelbaum do anything wrong, and secondly, if so, what do we do about it?

A. Right.

Q. And what we do about it is I think what you're addressing. You're doing an investigation that is much more significant and important, and you don't want to be detracted or distracted by this. Am I overstating this?

A. I think that's true. And I think that like the Dopp information communicated to Soares, both things, that and any questions about whether Teitelbaum did anything wrong or not should have waited until the end of our investigation. We should deal with him at that time which is what I had recommended. (RE 30-32)

If this was so, Emery was questioned further about his request at the August 2008 meeting of the Commission for an investigation of the allegations against Teitelbaum, and the timing of such investigation.

Q. Let me see if I understand. You felt that the allegations required investigation?

A. Yes.

Q. But the question was when that investigation should be commenced?

A. That's correct.

Q. At the beginning, your sense was that we have more important matters to do, the investigation, and so on. So you were comfortable to put it on the back burner until you finished what your -- what you got is the more significant work; is that fair?

A. Yes. I don't want to go quite as far as that characterization. I was comfortable not investigating Herb at the time of the phone call because --

Q. The February phone call about the D.A. testimony?

A. That's correct, the late February phone call. Because he had denied the conversations, because Hermann had explained how he got the information from the pad, and because it was conveyed on the phone call,

as is correct from the transcript of Mr. Constantine's interview that there were questions about what Mr. Constantine knew, and because it was fairly typical to attack the prosecutor in a prosecution, namely, attack the investigator here, Herb Teitelbaum. (RE 41-42)

Q. So again, why did that change later on?

A. Well first of all, the timing. The investigation was done. Second of all, it was pretty clear to me that this information would have eventually been made public and cast -- the press spins things. There was an awful lot of bad press about the Integrity Commission's delay and leaks, and all these issues. I felt that we would be subjected unfairly to a lot of press criticism if we didn't take measures to investigate this ourselves.

And I felt that the details of Lloyd's transcript required a full vetting by the Commission itself to make sure that Herb had not done what he said he hadn't done. (RE 43-44)

Emery testified that all the Commissioners should have been notified that the Commission had forwarded the Dopp testimony to the District Attorney. (RE 50) Emery testified that the way he learned that the testimony of Dopp and his statement before the Attorney General had been transmitted to the District Attorney for consideration was "by reading the newspaper," and he "was upset by learning it that way." (RE 59-60)

C. Significant Misstatements of Evidence

As noted above, in February 2008, Albany County District Attorney Soares advised Feerick that he had obtained evidence, in recorded form, supporting his allegation that Teitelbaum had disclosed confidential information about the Commission's investigation to Hermann. The evidence consisted of the recorded interviews the District Attorney conducted of Hermann and Constantine, which were played for Feerick and other members of the working group.

Commission Counsel Barry Ginsberg joined Feerick and the other available members of the working group in listening to the recordings, and, at Feerick's direction took notes. In late July 2008, after learning that the District Attorney was planning to release his files, and facing press inquiries, on July 31, 2008, Ginsberg prepared a memorandum, which purported to represent the content of the Hermann and Constantine statements. Although Ginsberg prefaces his memorandum by stating that it "is not and is not meant to be a complete transcript or summary of everything" that Hermann and Constantine stated during their interviews, the Ginsberg memorandum seriously misstates the true content of both statements.

Ginsberg's additional comment in his preface to the memorandum, that the District Attorney refused to permit Ginsberg an additional opportunity to review the recordings or transcripts, was not true. In fact, the District Attorney requested only that the Commission's request be put in writing with an explanation of why the Commission wanted a second review of

the same evidence he had provided to them five months earlier. Furthermore, the absence of the recordings or transcripts in July does not detract from the fact that Ginsberg omitted information included in his own notes, which were in his possession when he prepared his memorandum.

1) Hermann's Dinner

Ginsberg's memorandum reports that Hermann stated that he and Teitelbaum had dinner at Teitelbaum's apartment one evening around Halloween 2007 and Hermann saw a few notes on a yellow pad on a table in Teitelbaum's apartment while Teitelbaum was in another room on the telephone.

According to Ginsberg's memorandum,

Around Halloween, after there had been recent news reports that the Albany County District Attorney was conducting an investigation relating to Darren Dopp's testimony in connection with the Commission investigation... (emphasis added).

This account in Ginsberg's memorandum incorrectly reports Hermann's testimony to the District Attorney. Hermann stated in his interview by the Albany County District Attorney that it had been publicly reported that the *Commission* had Dopp in to testify:

Mr. Hermann: And I knew at the time the Commission had Dopp in to testify because it had been reported in the newspapers that he had been in there to testify, so putting two and two together, it was pretty obvious to me that he must have said -- that Dopp must have [said] something to the Commission that was perceived to be different from what he had said to the Attorney General ..." (RH to DA 15)

There exists a significant difference between what Hermann actually stated to the District Attorney and what Ginsberg inaccurately memorialized in his memorandum. If, in fact, there were published reports — as Ginsberg's memorandum alleges — that the District Attorney was investigating Dopp's testimony before the Commission, then Hermann communicated only public information to Constantine on November 1. As established in this report, Hermann's communication to Constantine included highly confidential information that not even most Commissioners knew, and no one else in the Executive Chamber knew.

2) Constantine's Statement to the District Attorney Regarding Hermann's Concern about "What Teitelbaum is Capable of"

In addition to incorrectly attributing to Hermann's statement newspaper accounts which never existed, Ginsberg omitted a significant statement by Constantine.

It will be recalled that Constantine testified to the District Attorney that when he informed Hermann that he had advised the Governor that Hermann was the source of the information, Hermann told Constantine, "I know Herb Teitelbaum...really well and I know what

he's capable of doing when he's backed into a corner," which included, among other things, "claiming that he didn't tell me," a statement Hermann made twice (emphasis added) (LC 45).

Constantine described to the District Attorney a conversation he had with Hermann shortly after their November 1 conversation.

Ginsberg's notes on this conversation follow:

one addit one - week or so later -
w/ LC 10/31 or 11/1 conv
LC Saw BH - LC said told Gov and
BH source - BH upset
LC asked why a problem - your friend
should not have been telling to you -
I know HT - what he is capable
of doing when cornered -
HT capable claiming did not tell me -
- like broke into apt -
- HT did not tell - I stole it

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As cited above, Ginsberg's notes report Constantine saying that he saw BH [Bob Hermann] a week or so after their conversation on October 31 or November 1 and "LC [Lloyd Constantine] said told Gov and BH source - BH upset LC asked why a problem- your friend Should not have been talking to you - I know HT- what he is capable of doing when cornered - HT capable claiming did not tell me -- like broke into apt-- HT did not tell - I stole it."

Yet in his memorandum, Ginsberg notably does not describe the full conversation, and omits a significant comment by Hermann. His memorandum reads:

About a week or so after the Hermann/Constantine conversation that occurred on October 31 or November 1, Constantine saw Hermann. Constantine told Hermann that he had told the Governor what Hermann had told him and also that he had identified Hermann as the source. Hermann was very upset. Constantine asked why that was such a problem and said that your friend, Teitelbaum, should not have been telling these things to you. Hermann responded to Constantine that he didn't know Teitelbaum and what he was capable of doing when he was cornered.

Hermann said that Teitelbaum was capable of claiming that someone broke into his apartment and stole the information.

Conspicuously omitted from his memorandum was Hermann's statement that Teitelbaum was capable of "claiming did not tell me" and that Hermann broke into his apartment, and "HT did not tell – I stole it."

Ginsberg was questioned about the omission:

Q. And H.T., meaning Herb Teitelbaum, capable of claiming, did not tell me like broke into apartment. H.T. could not tell I stole it. Do you see that?

A. Yes.

Q. In your written memo, you say merely, Hermann said Teitelbaum was claiming that someone broke into his apartment and stole the information.

A. Um-Hmm.

Q. Is there any reason why you did not include in your written memo that portion of Hermann's explanation that Teitelbaum was capable of saying that he did not tell me?

A. I can't recall. I can't give you a reason.

Q. Or that Teitelbaum was capable of saying that he, Hermann, had stolen the information, not that someone broke into the apartment and stole information?

A. I don't know why I wrote it that way.

Q. Do you recognize the distinction?

A. They are different, sure.

Q. Someone broken [sic] into his apartment as opposed to I took it.

A. I said, yes. (BG 40-41)

V. RESPONSE TO THE INSPECTOR GENERAL'S INVESTIGATION

On August 12, 2008, shortly after accepting the referral of the allegations against Teitelbaum from Albany County District Attorney Soares, the Inspector General telephoned the Commission. The Inspector General notified Commission Counsel Ginsberg that the Inspector General was undertaking an investigation and requested that Chairman Feerick and Executive Director Teitelbaum be apprised.

In order to fulfill its statutory duties to investigate complaints of allegations of corruption, fraud, criminal activity, conflicts of interest or abuse in agencies within its jurisdiction, the Inspector General has broad authority to acquire information and materials from agencies within its jurisdiction such as the Commission. The Inspector General has the power to examine witnesses under oath, require the production of relevant materials and "notwithstanding any law to the contrary, examine and copy or remove documents or records of any kind prepared, maintained or held by any covered agency."

Upon notification that the Inspector General had commenced an investigation and review and in his testimony, Chairman Feerick pledged that the Commission would abide by the Executive Law and fully cooperate with the Inspector General's investigation. Unfortunately, and in spite of its own reported frustrations obtaining records during its Troopergate investigation, the Commission did not fulfill Chairman Feerick's promise of full compliance.

Interestingly, the first substantive section of the Commission's Troopergate report is entitled, "The Executive Chamber's Frustration of the Commission's Investigation." In this section, the Commission details the "numerous improper obstacles" it was required to overcome in completing its examination. According to its report, these impediments included the Chamber's "piecemeal" production of documents, its initial withholding of certain items and its claims of privilege (labeled by the Commission as "spurious") as to certain other documents only overcome when the Chamber learned that the Commission was going to seek court intervention. The Commission concluded this section of its report by declaring that, "The Executive Chamber's actions were flatly at odds with its duty to assist this Commission's investigation and the promises of Governor Spitzer that his Administration was cooperating fully with the Commission's investigation."

Despite Chairman Feerick's promise of unconditional cooperation, the Commission did not fully cooperate with the Inspector General's investigation and engaged in behavior reminiscent of that for which it faulted the Chamber in its Troopergate report. Most significantly, in regard to document production, the Commission also supplied items piecemeal and only supplied other critical materials after the Inspector General independently learned of their existence.

A. Production of Commission on Public Integrity Records and Documents

The Inspector General spoke to Ginsberg again on August 20, 2008, at which time the Inspector General requested Commission documents, including notes generated by Teitelbaum. It was the Inspector General's recollection that Ginsberg stated "Herb is not a note taker," but

Ginsberg recalled talking to an Inspector General counsel and telling her Teitelbaum was “not much of a note taker.” (BG 7-8)

Teitelbaum’s habit of taking or not taking notes was significant because of Hermann’s statement to the District Attorney in February 2008 that he discovered the information he conveyed to Constantine on November 1, 2007, from Teitelbaum’s notes on a yellow pad in Teitelbaum’s apartment around Halloween 2007.

The Inspector General relied on Ginsberg’s assertion, which was confirmed by observations of Assistant District Attorney Linda Griggs and Meave Tooher, until learning from Feerick that he had seen Teitelbaum take notes.

Griggs testified that when Teitelbaum, accompanied by Tooher, furnished the Dopp testimony to the District Attorney in October 2007, and a discussion was held concerning its implications for criminal prosecution potentially involving high officials of the Spitzer administration, Teitelbaum spoke but took no notes.

Q. At the meeting of October 17th, when they first came to you, Meave Tooher and Mr. Teitelbaum, do you recall whether Teitelbaum took any notes at that time?

A. I don’t remember, but it doesn’t click in my mind ever seeing Herb Teitelbaum ever take notes at any meeting.

Q. Okay. You’re firm on that recollection?

A. Yes.

Q. You’ve never seen him take notes at any at the meetings?

A. It just doesn’t click in my mind. When you say has he ever taken notes, I don’t ever remember seeing him write anything down on a pad.

Q. Did you ever see him with a pad in front of him?

A. I don’t remember seeing him with a pad in front of him. (LG 10-11)

Meave Tooher accompanied Teitelbaum to the meeting with the District Attorney and the District Attorney’s staff, and worked closely with Teitelbaum throughout the Troopergate investigation. She confirmed Griggs’ account of the October meeting and went further:

Q. During the various discussions about this issue with members of the working group and any of the other people from the commission, did Mr. Teitelbaum take notes?

A. I know not at the DA’s office, neither one of us took notes at the DA’s office.

During the meeting with the commission or the working group prior to going down there, I don’t think Mr. Teitelbaum ever took notes.

Q. We understand he was not a note-taker generally; is that correct?

A. I think that's correct.

Q. Let me ask you, during all the time you've been with him, do you ever recall him taking notes?

A. No, I don't think I do.

Q. And this would cover what period of time and, if you can estimate -- I'm not going to try to pin you down on the number of such occasions that he was present, meetings were had, discussions were had, he did not take notes?

A. No. Frequently at the meetings Mr. Teitelbaum would be an active participant in terms of the discussion.

Q. I'm talking about note-taking only.

A. Because of that I think he wouldn't be taking notes.

Q. When somebody else is talking?

A. No, I don't remember that.

Q. Do you ever recall him taking notes?

A. Ever recall him taking notes? I can't say that I do. (MT 13-14)

When John Feerick was examined on October 2, Feerick stated that he "absolutely" had seen Teitelbaum "jot things down on paper." (JF 68) Upon hearing this, a recess was taken and the Inspector General confronted Ginsberg, who had accompanied Feerick on October 2, but was waiting in a room outside during Feerick's examination. Ginsberg told the Inspector General, that yes, there were notes by Teitelbaum, but he had not regarded them as relevant. When Ginsberg was examined under oath, he testified that he told the Inspector General, the notes were "not responsive" and did not recall saying they were not relevant.

Ginsberg's "not responsive" excuse for withholding what proved undisputedly relevant information was but one example of obstacles the Commission interposed in response to the Inspector General's document requests. On at least two occasions, when Ginsberg interposed objections to providing documents, the Inspector General threatened to serve a subpoena. The Inspector General withheld doing so and instead telephoned Feerick. It was only upon the threat of subpoenas or Feerick personally interceding that records were received. Feerick testified that his instructions were to cooperate fully and to provide whatever documents the Inspector General requested. Such instructions, however, apparently were not without internal Commission resistance:

Even though I had commissioners that had all kinds of issues about the independence of the Commission, about deliberative privilege -- I've heard more privileges in this investigation than I know existed. At the end of the day, the Commission supported me. (JF 62-63)

Between the Inspector General's call on August 12 informing the Commission of its investigation, and the examination of Feerick on October 12, the Inspector General experienced repeated resistance from the Commission in response to requests for document production. On August 18, 2008, the Inspector General made both oral and written requests for records pertaining to Teitelbaum (namely Blackberry, computer log-ons, contacts, e-mails, travel, telephone records) and, in addition, requested, "all [Commission] records regarding...notification of the [DA] to [the Commission]" of the Teitelbaum leak." While the Inspector General received material related to the former request on September 8, 2008, the Inspector General received no records relative to the latter relevant request at that time. Indeed, documents that should have been provided at the outset of this investigation were provided at a much later date, and often only provided after specific requests from the Inspector General. For example, on September 11, 2008, Ginsberg alerted the Inspector General that other telephone lines might have been utilized by Teitelbaum and subsequently provided those records on September 15, 2008.

More importantly, it was only after the Inspector General learned through its investigation of the existence of documents authored by Meave Tooher directly relevant to this investigation that had not been provided, that the Commission belatedly provided this material. Specifically, the Commission failed to provide the Inspector General with a copy of Tooher's memorandum dated October 24, 2007, and one page of handwritten notes dated October 22, 2007. The Inspector General only learned of the existence of these relevant materials during Tooher's examination when she was shown what the Inspector General had received from the Commission, and Tooher informed the Inspector General that she had generated other documents with which the Inspector General had not been provided. On September 16, 2008, after being contacted by the Inspector General, Ginsberg allowed this office to review the documents on-site, and copy them. Similarly, the Inspector General independently learned of Commission "Working Group" minutes relating to the subject matter of this investigation and these minutes were first provided to this office on September 19, 2008, after a subsequent request was made. These records included 38 pages of handwritten notes and memoranda pertaining to the Commission's consultation with the District Attorney in October of 2007, and subsequent Commission Working Group meeting notes, including notes and memoranda related to the Teitelbaum allegation, obviously pertinent to the inquiry and within the scope of material requested. Even later, on September 22, 2008, members of the Inspector General's office were first allowed to view and copy selected pages of Feerick's calendar.

On September 26, 2008, the Inspector General independently discovered that Teitelbaum utilized a telephone in the Commission's Manhattan office and that these telephone records had not been provided to the Inspector General. The Commission subsequently provided these records on September 29, 2008. In addition, after a specific inquiry from the Inspector General based upon information gleaned from Tooher, the Commission provided the Inspector General with four pages: Tooher's calendar for October through December 2007 and handwritten notes of the same period. Counsel Ginsberg wrote in a cover letter accompanying these items that these documents had not been produced due to an oversight by the Commission in that his office was not aware of a box of documents in its "war room" directly relevant to this investigation. On October 3, 2008, the Commission provided the Inspector General with 18 pages of

documents including various Teitelbaum handwritten notes and Tooher's notes of August 20, 2007 (which were referred to in Teitelbaum's handwritten notes). Interestingly, Teitelbaum's notes, which the Commission had purportedly determined did not pertain to the subject specified by the Inspector General, included one in which Hermann's knowledge of the Commission's Working Group was discussed.

When the Inspector General advised John Feerick during his examination on October 2, 2008 of the lack of cooperation, he was disturbed,

A. Well, let me just -- with all due respect to, you know, the important work of your agency. The Commission has been concerned from the start of this matter, concerning the role it plays as an independent Commission with an ongoing and current investigation and its responsibilities to, you know, protect its role in government. And it has certainly been my understanding that Barry [Ginsberg] principally, I guess, has tried to deal with your office in a way that was responsive, respectful. (JF 72)

As a result of the Inspector General advising Feerick during his examination of the Inspector General's dissatisfaction with the Commission's cooperation, a letter from Commissioner James P. King was forwarded to the Inspector General listing the documents it had furnished. While such letter accurately itemized the Commission's production of documents, it did not address the difficulty the Inspector General experienced in eliciting such production.

B. Refusal to Examine Its Newspaper File to Verify Hermann's Story as Requested by the Inspector General, as Contrasted with Commission's Demand Upon Governor Spitzer During Troopergate Investigation

When Hermann was interviewed by the District Attorney on February 7, 2008, he stated that he had dinner at Teitelbaum's apartment one evening around Halloween of 2007 and on that occasion saw notes on a yellow pad, which provoked his conversations with Constantine on November 1 and with Governor Spitzer on November 2.

In his statement to the District Attorney, and again during his examination under oath before the Inspector General on September 22, 2008, Hermann asserted that it had been publicly reported in the press that Dopp had appeared before the Commission.

When District Attorney Soares played the recordings for the commissioners of interviews he had conducted in February 2008 of Hermann and Constantine, Ginsberg was present and took notes of such recorded interviews. He later reduced his handwritten notes to a memorandum. His notes which read, "dinner with BH [Bob Hermann] near Halloween," became the following in his memo:

Around Halloween, after there had been recent news reports that the Albany County District Attorney was conducting an investigation relating to Darren Dopp's testimony in connection with the Commission

investigation, Hermann and Teitelbaum had arranged to have dinner at Teitelbaum's apartment (emphasis added).

In advance of his appearance, the Inspector General telephoned Ginsberg and advised him that one of the questions the Inspector General planned to ask him was whether, in fact, there were such newspaper articles published around Halloween reporting the District Attorney's investigation of Dopp's testimony before the Commission. This was, of course, significant, because if indeed there had been no such published reports, it would mean that Hermann had possessed confidential information concerning the District Attorney's investigation, and had communicated such information to Constantine and Governor Spitzer.

Ginsberg testified that his memo and notes merely reflected what Hermann said on the recording. A colloquy then followed between the Inspector General and Zachary Carter, who was representing the Commission. The Inspector General explained why he was requesting such information: An examination by the Inspector General's staff of newspaper articles at the Commission's office had failed to discover any such published news story.

Accordingly, when Ginsberg testified that "I didn't look in great detail," the Inspector General requested that Ginsberg "please check and see if there was anything around that Halloween time." (BG 17) The Inspector General explained:

We have, as Mr. Ginsberg pointed out, examined everything that [the Commission] has collected by way of news. We found nothing. And as a matter of exhaustive fairness, I would -- wanted to make sure that I haven't missed anything. (BG 18)

Ginsberg's attorney responded:

MR. CARTER: At this stage, whether or not Mr. Ginsberg can go back on his computer and punch in Google and put in appropriate search terms to find whether or not an article was in fact published in that time frame is absolutely irrelevant to this inquiry. (BG 20)

When Carter stated that he understood an examination of the Commission's newsclips by the Inspector General had discovered no such article, the Inspector General again explained the purpose of the request:

MR. FISCH: Mr. Carter, as a suggestion, I want to make sure I didn't miss anything. That's the whole thing.

MR. CARTER: You have to forgive me if it sounds like -- and, again, with all respect, it sounds like a facetious question.

MR. FISCH: No, it's not. You spoke about sometimes people can think they have everything, and then all of a sudden they discover that they

missed something. I want to make sure I have not missed something. (BG 22)

Carter, upon ascertaining from Ginsberg that the Commission had two binders of news clips, advised the Inspector General that the Commission would review its newspaper clip file.

The results of the Commission's review were subsequently provided to the Inspector General in a letter from Acting Chair Loretta Lynch dated April 15, 2009. Noting that Ginsberg had inaccurately reported what Hermann had said in his recorded interview before the District Attorney, the letter stated that in fact, "The first news media report about the ODA's interest in pursuing an investigation of Mr. Dopp's potential perjury apparently was not published until after Mr. Hermann's October 31 or November 1, 2007 conversation with Mr. Constantine."

Contrast with Commission's Demand upon Governor Spitzer during the Troopergate Investigation

In its Troopergate report, the Commission detailed the fact that it had questioned Governor Spitzer about the contents of an e-mail he had sent to his Secretary Richard Baum wherein he stated that he wanted to "punch back" at former Senator Joseph Bruno for making "personal attacks" on him. After its interview with Spitzer, the Commission requested that Spitzer produce any news articles to which he was referring to containing the "personal attacks" he mentions in this e-mail. As set forth in their report, in response, Spitzer produced one such article.

The Commission's request to Spitzer during its investigation demonstrates that it is not averse during the course of its own investigations to placing the onus on a subject or a witness, even the Governor, to search news files to support a witness's claim or inform its investigation. Yet, in regard to the allegations against Teitelbaum relating to a much more critical issue, the Commission failed to honor the Inspector General's request to merely examine its own news clippings to verify this statement which was reported in a memorandum by Commission counsel. The Commission thus highlighted the divergence between its expectations of the subjects of its own investigations and the standard it holds itself to, by not only refusing to conduct such a search upon the Inspector General's request but objecting to the very concept of such a demand.

C. The Non-Responsive Testimony of Teitelbaum and Commission Counsel Ginsberg Regarding Applicability of Confidentiality Provisions

As the subject of the Inspector General's investigation involved alleged disclosure of confidential information, the Inspector General questioned witnesses regarding their understanding of relevant statutes establishing confidentiality of Commission information. Both Teitelbaum and Ginsberg declined to answer such questions, at times claiming ignorance of the relevant statutes. Given their respective positions as executive director and counsel of the Commission on Public Integrity, the Inspector General finds their refusal or incapability to answer such questions to be in conflict with the duties imposed upon them in those titles. As senior Commission officials, Teitelbaum and Ginsberg are responsible for being knowledgeable

regarding state statutes applicable to their own agency, as well as statutes enforced by the Commission.

1. Teitelbaum

Because the Inspector General's investigation involved allegations of the disclosure of confidential information by Teitelbaum, an effort was made to elicit from him his understanding of relevant law.

At his first examination before the Inspector General on October 10, 2008, Teitelbaum was asked whether certain disclosures to Hermann about Commission activities would be regarded as confidential:

A. I don't know whether it was confidential or not. It was not disclosed.

Q. Should that have been disclosed to Robert Hermann?

A. I didn't disclose it to Robert Hermann.

Q. I didn't ask you that.

A. You're asking me to make a legal conclusion now?

Q. You're a lawyer.

A. I am. I haven't done the research on what constitutes confidentiality under [Executive Law §] 94(12). I have my own notion of what constitutes confidentiality under 94(12) and [Public Officers Law §] 74(3)(c). (HT 67)

Teitelbaum conceded that, regardless of whether it was deemed confidential by statute he "would not have wanted Hermann" to be made aware that Nocenti and Pope should not be representing the Governor because he tried to keep information on a "need to know basis." (HT 68) Hermann, Teitelbaum testified, did not need to know that information because "he was not involved in the investigation." (HT 68)

Teitelbaum expanded:

A. My position was that people in my commission should not be talking to people in the executive chamber except through the lawyers who were working on the investigation.

Q. Now, you're the director of the Commission on Public Integrity, you deal with state employees. If Hermann had that information and received it from somebody on the commission, would that be an offense, a violation of the statute, of the Public Officers Law?

Mr. Campriello: You're asking for his legal conclusion on this?

Q. Your judgment. You're an attorney, lawyer, you have a long legal standing.

A. Judge, I can only tell you what my MO was in conducting this investigation. I haven't done research on what the executive law deems to be confidential or doesn't deem to be confidential. And I haven't done research on what 74(3)(c) means by the word "confidential." So I can't tell you that. I assume that you all have done that research. I have not. I mean, I know what I believe should and shouldn't be done in this investigation and what I wanted done and what I didn't want done. (HT 69-70)

Teitelbaum agreed that the testimony by Darren Dopp before the Commission wherein he named members of the Executive Chamber as having influenced the statement he made to Attorney General Cuomo was confidential. (HT 55-56)

At his second examination before the Inspector General four months later on February 17, 2009, an effort was again made to elicit Teitelbaum's understanding and applicability of statutory law. On this occasion, Teitelbaum was hostile and refused to answer questions with which he was, or should have been, familiar as executive director of the Commission:

Q. Are you familiar with the Executive Law that provide[s] confidentiality of proceedings by your agency?

A. Show me the Executive Law, I'll tell you what it says. (HT 172)

Q. Are you familiar with the Executive Law that provides confidentiality to your proceedings?

A. I'm familiar with 94(12). If you want me to tell you what it says, I'll tell you what 94(12) says, when you show it to me, but I'm not going to paraphrase it. (HT 172-173)

Q. What do you understand its provisions to mean?

A. Show me the law and I'll read it to you.

Q. Do you understand what proceedings are regarded as confidential by the statute? (HT 173)

A. You and I went over this last time.

Q. You said you had to research it. You said you hadn't done any research on it. You're the executive director. Since that time -- and you know that you're a subject of an investigation. Have you researched it since then? (HT 173-174)

Q. Have you researched it?

A. No.

Q. Are you familiar with the provisions of the Public Officers Law?

A. Which one?

Q. 74, subdivision 3 c.

A. Do you have it in front of you? Can I look at it?

Q. Are you familiar with it without me showing it to you?

A. I'm familiar with it generally.

Q. With it generally?

A. Generally, but I don't like to talk about specific statutes without looking at the statute.

Q. Okay. Have you looked at the statute since you became executive director of the Commission?

A. Yes.

Q. Have you looked at the Executive Law Section 94, subdivision (12) (a) since you became director?

A. I'm sure I looked at all of the provisions (12) (a).

Q. And can you tell me what your understanding is with regard to confidentiality of proceedings before your agency?

A. I answered that question last time. (HT 174-175)

At this point, Teitelbaum's, attorney claimed that Teitelbaum was recalled for his second examination in order to "trap" him because the Inspector General had not provided Teitelbaum with a copy of his prior testimony (HT 176) and that Teitelbaum's response was therefore "I stand on my testimony." (HT 330) Teitelbaum and his attorney were reminded that at Teitelbaum's prior examination he said he had "not researched the law" and the Inspector General inquired why it would be necessary for Teitelbaum, as executive director, to read his prior testimony to be able to answer questions about confidentiality provisions that apply to his agency.

Q. Alright. What are the provisions of the statute with regard to confidential proceedings before your agency?

A. If you show me the statute, I'll tell you what it says.

Q. And without me showing you the statute, you can't answer the question?

A. I don't paraphrase statutes. (HT 179)

Q. I'm not asking you --

A. I haven't finished. I don't paraphrase statutes in this kind of context.

Q. Does the statute permit employees sharing information about matters involving investigations outside the office?

A. If you show me the statute, I'll tell you what it says. (HT 179)

Q. Are you familiar with the confidentiality statement that employees of your agency are required to sign?

A. I don't remember what it says, but I'm familiar that there is one.

Q. Okay. Is it fair to say that your commission has a strict policy prohibiting disclosure of any matters before the Commission?

A. The Commission's policies are embodied in resolutions passed by the Commission. If you have a resolution passed by the Commission on the matter of confidentiality, I'd like to see it. I don't know of any at this point. (HT 180)

Q. Are you bound by the same confidentiality statement that the other employees signed?

A. If I have -- do you have my confidentiality statement? Do you have it?

Q. No, I don't have it. You're not familiar with it?

A. I think I answered that question.

Q. Okay. Can you tell me what you are permitted to disclose about investigations?

A. I answered that question last time. (HT 181-182)

Teitelbaum's evasive responses to questions about the confidentiality statements exacted from Commission staff should be viewed in the context of John Feerick's letter dated February 21, 2008, to Constantine, which is reproduced on page 2. In such letter, Feerick notified Constantine that in addition to commissioners requested by Feerick to take a public oath of office, "Herbert Teitelbaum also asked members of the staff to sign confidentiality statements."

Teitelbaum stated that there were no advisory opinions issued by the Commission as to what constituted confidentiality and he and staff are therefore not authorized to opine on its meaning. (HT 233) Teitelbaum's disclaimer of familiarity with statutory confidentiality provisions is disingenuous at best.

Undermining Teitelbaum's profession of ignorance as to the scope and meaning of Executive Law § 94(12), is the fact that both the Commission and Teitelbaum himself have recently opined on the meaning of this statute. Indeed, both the Commission and Teitelbaum have unconditionally acknowledged the breadth of the Commission's confidentiality provision [Executive Law § 94(12)] and have frequently relied upon this statutory guarantee of confidentiality in relation to Troopergate and other matters pending before the Commission in response to questions from the media.

Following the publication of the Commission report on July 24, 2008, Teitelbaum was interviewed by the *New York Law Journal*. In its article, "Teitelbaum Defends Integrity of

Spitzer Investigation,” dated July 28, 2008, Teitelbaum spoke about the Commission and confidentiality:

Mr. Teitelbaum said Friday the commission and its staff had to take the “slings and arrows” and innuendos in silence because state Executive Law requires investigations by the agency to remain confidential until charges are brought. That stage was reached last week.

“When we’re attacked, when the commissioners are attacked, we can’t say, ‘Well, look, we’re putting everybody under oath,’” Mr. Teitelbaum said. “‘We’re backing every request for documents with a subpoena. We’re going to court to get documents. We’re threatening to go to court to get documents as to which privileges were being claimed. We’re taking the testimony of every high-ranking official.’”

In February 2008, Teitelbaum informed the press that under the confidentiality law, his “lips legislatively are sealed” and, thus, he could not answer any questions regarding the status of a Commission investigation. Similarly, the Commission itself has declared, in reference to this statute, that “the law does not allow [the Commission] to comment on investigations.” Most directly, in a letter to the editor of the *New York Law Journal* in the midst of its Troopergate inquiry, the Commission, in response to a *Law Journal* article criticizing its discussion of a lobbying investigation in a non-public session, asserted the import and scope of its statutory confidentiality:

Executive Law §94(12) explicitly requires the commission to maintain the confidentiality of all of its investigations, including investigations of possible Lobbying Act violations, unless and until it determines there is reasonable cause to believe there has been a violation. If and when the commission makes such a determination, it issues a Notice of Reasonable Cause, commonly referred to as an NORC. See Executive Law §94(12)(a) and (b). After such a determination, and only then, is the statutory confidentiality requirement removed, as Executive Law §94(12)(a), unambiguously provides: ‘All of the foregoing [i.e., pre-NORC] proceedings shall be confidential.’

The Commission has also stated that its interpretation of § 94(12) to prohibit any discussion of pending investigations has been long standing: “The [commission] is an amalgam of the former state Ethics and Lobbying commissions. The Ethics Commission did not discuss investigations of violations until formal charges were brought against state employees.”³²

In addition, Teitelbaum conceded that he was intimately involved in the Commission’s Troopergate investigation and, in fact, “would do heavy edits on the draft” of the Commission’s

³² Joel Stashenko, “Agency Faulted for Closing Lobbying Probe Discussions,” *New York Law Journal*, August 7, 2008.

eventual report, which contained a finding against Acting Superintendent Felton under the Public Officers Law's confidentiality provision.

As the Commission and Teitelbaum himself have unambiguously commented on the broad scope of the Commission's confidentiality statute and have repeatedly wielded this statute to deny media inquiries during Teitelbaum's tenure as executive director, Teitelbaum's claim of ignorance to the Inspector General as to the meaning of Executive Law § 94(12) is unavailing and his refusal to answer inquiries inexcusable.

Linda Griggs, Assistant District Attorney in the Albany County District Attorney's office, worked on the investigation of the Dopp referral from the Commission on Public Integrity. She and Meave Tooher, who worked closely with Teitelbaum, both testified that the transmittal by the Commission of the Dopp testimony came in two parts, and on two separate occasions. The transcript of Dopp's testimony was considered highly confidential by the Commission. Griggs told the Inspector General:

I remember taking it home because when Herb Teitelbaum turned it over to us he said keep this confidential, and I thought it was stupid that they put "Dopp's testimony" on the outside spine of it, and I remember pulling that off so I could take it out of the office. (LG 48)

Tooher was very explicit on the issue of confidentiality. Tooher testified that the Commission considered the District Attorney's request for Dopp's complete testimony:

We talked about it, you know, because we had the confidentiality issues at the commission. So there was always a concern of how do we provide this, what's the context, does it cause a problem with any of confidentiality issues. (MT 46)

The Inspector General's review of notes taken by Commission staff attorneys Meave Tooher and Joan Sullivan reflect discussions among members of the working group regarding restraints imposed upon the Commission by confidentiality provisions.

The minutes of two meetings of the working group contain references to concerns having been raised about confidentiality. On October 23, 2007, during a discussion about whether transcripts other than that of Dopp would be provided to the District Attorney, it was noted, without attribution, that someone had mentioned "statutory confidentiality." During the same discussion, Teitelbaum stated that they "need to be very careful – could just say no – Or need rationale for other [transcripts]," and then Commissioner Levine raised "statutory confidentiality." These notes also reveal that sensitive and confidential information was shared with only some of the commissioners.

As reflected in the minutes of the second meeting, on October 25, 2007, during a discussion about how to proceed with the Commission's investigation in light of the DA's inquiry, mention is made about waiting until the DA's inquiry is publicly known or at least until

the potential witnesses learn of it. Teitelbaum stated that “given fact info now have – DA empanelling a GJ after 11. 5. 07. Not prudent to go further [with Pope, Nocenti and Governor].” It was also noted that someone had suggested that they “Wait til GJ becomes public – swing into gear again.” Commissioner Giuffra – “2 questions – when will people learn of inquiry on some basis – he will not go public until GJ det. to indict. for ex. put PP, DN in GJ - will have notice – then we can say – go in abeyance for a while - or they may say we want to go forward.” When Commissioner Levine raised the question about what they should share with the full commission regarding Dopp, the notes reflect that General Counsel Ginsberg stated, “Share with wkg. group now – more broadly when [necessary]. Levine agreed, and then stated, “but what of other Comm[issioners]?”, [is there] no oblige. to go to Comm before completion?” Teitelbaum then raised the possibility of Chair Feerick communicating with individual commissioners regarding postponement “for now” without disclosing the reasons and Commissioner Lynch mentioned that the other commissioners were expecting some report back. Levine then stated “Constraints from Soares not to reveal crim invest. Leak necessitates need for confidentiality. JF [John Feerick] + HT [Herbert Teitelbaum] to call.”

Meave Tooher was also asked her understanding of what constituted a violation of the confidentiality provisions of the Commission:

Q. Would Teitelbaum’s disclosure of the fact that the DA had agreed to undertake an investigation have constituted a violation? (MT 26-27)

A. In my opinion?

Q. Yes.

A. Yes, I would consider that a breach of the confidentiality provisions of the commission. (MT 27)

The sensitivity of the Commission to the issue of confidentiality was so profound and pervasive that when the Commission anticipated that the District Attorney was going to release allegations about Teitelbaum, they were not confident that they could respond in defense of their own Executive Director. Tooher testified:

I know there was a meeting about it and there was a meeting about -- there was a commission meeting by telephone, by conference call sometime the end of March or beginning of April, because I know Joan Sullivan was still there. We all participated by telephone conference call. It was a Sunday evening. And that -- one of the topics of that conference call -- it was a full commission meeting which was somewhat unusual, we didn’t do a lot of full commission meetings.

For some reason it had been believed -- I think there was a comment in the press -- that the DA was going to release the information about Teitelbaum. And the commission called this meeting as to what the commission’s response should be to that public release because there was

a schism in the commission about whether or not we could respond at all because our proceedings are confidential... (MT 69-70)

In his testimony before the Inspector General, Chair Feerick did not require that copies of the statutory provisions dealing with the confidentiality of Commission investigations and proceedings to be shown to him before answering questions:

Q. Did...providing the District Attorney with the information and the --

A. I considered that within our -- within our group as --

Q. Confidential?

A. -- information that we should protect.

Q. Confidential?

A. Absolutely.

Q. Okay.

A. I mean, confidential in terms of we should protect. (JF 87)

When Commissioner Richard Emery was questioned regarding the Commission's failure to investigate the allegations against Teitelbaum, the Inspector General took the opportunity to solicit Emery's view of the confidentiality of Commission matters:

Q. Would you regard as a violation of law if Teitelbaum communicated to Hermann the contents of sworn testimony before your Commission?

A. I think I would.

Q. "Dopp had testified before your Commission that the affidavit" -- I put that in quotes because there is an issue about sworn, this document, that [Dopp] had testified that members of the chamber, specifically Pope and Nocenti, had influenced him in the drafting of that affidavit.

A. Assuming that Teitelbaum told that to Hermann, Hermann was part of the Executive, but I take it he was not part of the Governor's office. He had his own responsibilities and regulatory affairs.

Telling a person, other than the people you're dealing with, something outside of the substance of testimony, I think I would view that as a violation of confidentiality, if it occurred. (RE 16-17)

2. Commission Counsel Barry Ginsberg

The Inspector General enjoyed a similar lack of success in the examination of Counsel Ginsberg:

Q. I take it you would agree that disclosure of sworn testimony before the commission is confidential?

A. If we were faced with that question --

Q. Sorry?

A. If we were faced with that question, I would consider it. I think this goes to what Mr. Carter was saying before about the facts and circumstances.

Q. Could it be disclosed to Hermann?

A. If I were asked to give an opinion by one of the Commissioners if there was a question of the Commission, it wouldn't be a shoot from the hip. It would be considered based on research, discussion with other staff members, which I haven't had the opportunity to do. (BG 57)

Q. Would, if it occurred, disclosure by [Teitelbaum] to Hermann of the sworn testimony of the contents of the sworn testimony of Dopp's before the Commission, constitute a violation of the [statute]?

A. Again, I don't -- I'm not in the practice of giving shoot from the hips in order to give answers to questions like that.

Q. That shooting from the hip? Disclosure of sworn testimony before the Commission, disclosing it to somebody -- to Hermann who had no -- was not -- had no official position?...Teitelbaum to Hermann, sworn testimony by Dopp before the Commission, is that a violation of the statute? Not inadvertent, direct.

A. Can you give me more facts and circumstances?

Q. What more facts do you need? The testimony is taken under oath, the Commission, of Dopps [sic], he swears under oath, testifies under oath, all right? Dopps [sic] and Teitelbaum -- Teitelbaum refers that to Hermann. Is that a violation of your statute? Hermann is not a member of the Chamber with whom he is -- he has [not] been authorized, designated to be the liaison or to deal with the Commission on any of its investigations.

A. I don't think that I'm here to give you my legal opinions. I am here to answer factual questions and answer them as best I can.

Q. The fact is you're Counsel to the Commission, okay? And I don't think the attorney-client deliberative process, I don't think any of that permits you to avoid answering. If you want to cooperate, you want to cooperate with the Commission. It's a very simple thing.

MR. CARTER: No, it is not a very simple thing the way you are putting it unless your question is just to satisfy curiosity --

MR. FISCH: He needs to satisfy the report that we're going to ultimately be writing, okay?

MR. CARTER: The very reason you're asking the question is because of its significance coming from General Counsel with respect to what opinion he may hold as to whether or not the conduct that is alleged here

would constitute a violation of the Executive Law and to the extent that he has repeatedly said that he is not prepared to give a shoot from the hip opinion on a matter that requires some research from a careful lawyer, I think is a valid answer.

And I don't believe that my client should be penalized because he is a careful lawyer. I wouldn't answer that question either.

THE WITNESS: The other thing I would say, for the Commission -- speaking for the Commission. The Commission makes the decisions in the individuals [sic] cases, not General Counsel.

MR. FISCH: Could I ask Mr. Ginsberg to research that for me and come back with a response, with a legal opinion as to whether that constitutes a violation of the statute? Take as much time as you want.

MR. CARTER: Actually, no. And here's the reason why you can't. It's the same reason why you can't ask him to go to his computer and Google whether or not --

MR. FISCH: Mr. Carter, that's not what I asked him to do. Don't misstate that. I didn't ask him to do that.

MR. CARTER: You asked him to do the legal research necessary to determine whether or not in his opinion, certain conduct would constitute a violation of the Executive Law. Whatever he finds out on November 17th of 2008 is absolutely irrelevant to your inquiry.

Now, the only question is what advice was sought or given -- the only conceivable relevant question would be what advice was sought and given at the time, and that's covered by the privilege. (BG 58-62)

Teitelbaum's and Ginsberg's demeanor and lack of responsiveness at their interviews by the Inspector General is disheartening. Despite the fact that Teitelbaum, as the Commission's Executive Director, is entrusted with overseeing the day-to-day operations of the Commission, and Ginsberg serves as its chief legal officer, both shared the same tactic and refused to provide the Inspector General with their opinions or even minimally elaborate on the confidentiality rules which govern their daily professional lives and the lives of other Commission staff whom they directly supervise. As discussed above, the applicable confidentiality statutes, in particular, Executive Law § 94(12), are not obscure provisions of law which only warrant recognition at the Commission in unusual and infrequent circumstances. Rather, as reflected in the confidentiality statements executed by Commission staff, these confidentiality rules pervade the Commission's operations on a daily basis and reside at the very core of its functional life. Notwithstanding the importance of these confidentiality provisions and Teitelbaum's and Ginsberg's respective roles at the Commission, both aggressively professed a logic-defying inability to discuss even a straightforward application of these confidentiality provisions and, when pressed, expressed outrage at the audacity of the prospect that it was rational to assume they possessed a conversational knowledge of these foundational concepts. High-ranking state officials are entrusted by the public with great authority and discretion and correspondingly owe the public a high degree of accountability and candor. Teitelbaum's and Ginsberg's testimonies evince ignorance of a critical aspect of their duties, willful obstruction of the Inspector General's

investigation, or, at a very minimum, refusal to cooperate by sharing information potentially damaging to Teitelbaum and the Commission. In any event, their refusal or incapacity to discuss matters well within the core of their professional responsibilities diminishes their credibility and undermines public confidence in Commission operations.

VI. EVENTS SUBSEQUENT TO THE INVESTIGATION AND PRIOR TO THE PREPARATION OF THE REPORT

A. Requests by Attorneys for Teitelbaum and Hermann for a Meeting with the Inspector General

On February 19, 2009, E. Stewart Jones, Jr., attorney for Robert Hermann, in anticipation of the issuance by the Inspector General of a Public Report and Findings, wrote to the Inspector General requesting that he and Hermann be permitted to review the proposed report and respond to it prior to publication. Alternatively, Jones requested an opportunity to meet and discuss the report. By letter dated February 24, 2009, Austin V. Campriello, attorney for Herbert Teitelbaum, forwarded a similar request to the Inspector General.

Upon receipt of these letters, the Inspector General and staff reviewed the testimony of all witnesses who had appeared before the Inspector General, including Hermann and Teitelbaum, together with the correspondence of their attorneys.

On April 21, 2009, the Inspector General wrote to both attorneys and advised them that, although the Executive Law provisions pertaining to the office of the Inspector General do not provide for a review of the Inspector General findings by individual subjects of an investigation prior to the issuance of a public report, and although the Inspector General's policy has historically not permitted such review, their respective requests had been carefully considered. However, the Inspector General denied the requests, as no purpose would have been served by such review.

A copy of the Inspector General's letter to Mr. Jones, which is identical to the response to Mr. Campriello, follows:

Mr. E. Stewart Jones, Jr.
E. Stewart Jones, Law Firm PLLC
28 Second Street
Troy, New York 12180

April 21, 2009

Dear Mr. Jones:

I apologize for not responding sooner to your letter of February 19th, 2009 wherein you request an opportunity for you and Mr. Robert Hermann to meet with me and discuss the findings of our investigation, which our Report will ultimately cite.

Executive Law Article 4-A does not provide for a review of the Inspector General's findings by individual subjects of an investigation prior to release of a public report, and the policy of the Inspector General's office has historically not permitted such.

Nevertheless, I have discussed your request with the staff members of my office who worked with me on our investigation and we have all, independently, reviewed the testimony provided by Mr. Hermann as well as the testimony of all our witnesses. We have also reviewed your correspondence offered to supplement Mr. Hermann's appearances. Having done so, we all agree that there exist no issues with which you and Mr. Hermann are not thoroughly familiar, and which Mr. Hermann has not had full opportunity to address in the course of his responding to questions propounded to him during his two examinations. Indeed, your client was expressly invited for a second interview to provide him an additional opportunity to address the allegations against him and answer inquiries still open after his first interview. Accordingly, my staff and I agree that no purpose would be served to afford Mr. Hermann yet a third appearance to address the identical issues and substance of his two prior examinations.

Sincerely,



Joseph Fisch
Inspector General

B. Resignation of John Feerick and Meetings with Acting Chair Loretta Lynch and General Counsel Barry Ginsberg

On January 12, 2009, Feerick resigned as Chair of the Commission, effective February 12, and Commissioner Loretta Lynch succeeded him as Acting Chair.

In his January 12 letter to the Governor, announcing his resignation,³³ Feerick explained, “It is very difficult for me to make this decision but my health and energy have declined and I no longer believe that I can give my responsibilities the attention they require. As you are aware, I am also a professor at Fordham Law School and founding director of its Feerick Center for Social Justice.”

As noted earlier, when the Inspector General notified Feerick of the investigation, Feerick pledged his full cooperation, and voluntarily provided the Inspector General some memoranda and materials. There is no doubt that such promise of cooperation was sincere, and that Feerick was genuinely surprised when the Inspector General advised him during his examination on October 2 of the obstacles the Inspector General’s office experienced in obtaining documents and records.

By letter dated February 27, 2009, Commissioner Lynch advised the Inspector General that she was serving as Acting Chair and requested an opportunity to meet and discuss the progress of the Inspector General’s investigation.

On March 12, Commissioner Lynch met with the Inspector General and Investigative Counsel Arlene Osterer. The Inspector General advised Ms. Lynch of what he anticipated his office’s ultimate findings would be regarding the Commission, with particular reference to its response upon receiving evidence from the Albany County District Attorney concerning the allegations against Herbert Teitelbaum. Ms. Lynch sought an opportunity to return and she and General Counsel Barry Ginsberg returned on March 24 and met with Ms. Osterer. Subsequently, by letter dated April 15, 2009, Ms. Lynch addressed various issues which had been discussed at her two meetings with the Inspector General.

The Inspector General believes the following is a fair summary of Ms. Lynch’s letters regarding the Inspector General’s investigation and her response to the Inspector General’s anticipated findings. .

Credibility, Motive and Political Agenda

In her letter of February 27, 2009, requesting a meeting, Ms. Lynch stated that such meeting would be helpful to the Inspector General in assessing “credibility, motive and political agenda” fundamental to the Inspector General reaching sound conclusions. Herbert Teitelbaum directly raised such issue during his testimony before the Inspector General when he stated the Inspector General’s investigation was not “free from political influence,” and that the Inspector

³³ See Appendix E.

General was performing the work of the District Attorney, who had been embarrassed by the result of the Commission's investigation. (HT 231)

When Ms. Lynch similarly addressed the issue of the District Attorney's referral, the Inspector General told Ms. Lynch, that regardless of what might have motivated the District Attorney, the Inspector General's Report and Findings speak for themselves.

During the meeting on March 24, 2009, Lynch also expressed concern about Lloyd Constantine's motive as a witness and his credibility as well. The alleged motive related to the contentious relationship which developed between the Commission and the Executive Chamber during the Troopergate investigation. Contrary to Ms. Lynch's contention, the record is clear that Lloyd Constantine evinced no malevolent motive against Hermann, Teitelbaum or the Commission.

The Executive Chamber attorneys who testified before the Inspector General were in accord that Hermann's disclosure to Constantine had been brought to the attention of the Albany County District Attorney solely upon the advice of retained ethics counsel. At no time did Constantine or any other Chamber employee lodge a complaint about Hermann or Teitelbaum with the Commission or with the Inspector General, even after Constantine's conversation with Hermann in July 2008, wherein Hermann, according to Constantine, acknowledged that Teitelbaum himself had disclosed to him the referral to the District Attorney. It should be recalled that Constantine knew Hermann both personally and professionally for many years, and Hermann acknowledged that Constantine assisted in obtaining a position for Hermann with the Spitzer administration. If anything, the record suggests that the Executive Chamber attorneys afforded particular courtesies to Hermann and to Teitelbaum.

While Ms. Lynch does not contend, for example, that Richard Rifkin had a motive against the Commission, it was in fact Rifkin, and not Constantine, who brought the disclosed information to the attention of the District Attorney. As in the case of Constantine, Rifkin had also known Hermann for many years, and bore him no ill will. Notwithstanding his concerns about there having been a possible violation of the confidentiality provisions of the Executive Law, Rifkin, the former Executive Director of the Ethics Commission and the Chamber's primary liaison with the Commission, made no complaint to the Commission about Teitelbaum. Rather, as a courtesy to Hermann and to Teitelbaum, Rifkin acquiesced to Hermann's entreaty not to speak to Feerick and instead, to let Teitelbaum do so, as he feared for his job. Maloney, too, testified about the Chamber's forbearance in order to permit Teitelbaum the opportunity to bring his leak to Feerick's attention. It was most apparent that all of the witnesses who gave testimony under oath before the Inspector General, Constantine included, did so reluctantly and only because they regarded themselves as obliged to do so.

Attack Upon District Attorney Soares

Lynch stated in her letter of April 15, 2009, that the Inspector General was incorrect in stating that the Commission had done nothing upon receiving the allegation against Teitelbaum. She stated that the Commission reviewed the District Attorney's February 2008 investigation but did not "re-do" it. She did not address the fact that Commissioner Emery, after learning in July

2008 of information which had been withheld from him, requested at the Commission's August 2008 meeting that the Commission conduct an investigation which they again declined to do.

Curiously, Lynch criticized the District Attorney for not conducting a more detailed investigation of the allegations against Teitelbaum, noting that the Commission had questioned Teitelbaum but conspicuously omitting any reference to their multiple failures to interview Constantine or Hermann.

Lynch's attack upon the District Attorney recalls the comment of two commissioners in refusing to investigate the allegations against Teitelbaum. Commissioner Emery testified "it was fairly typical to attack the prosecutor in a prosecution" (RE 42) (meaning Teitelbaum) and Dean Feerick was of similar persuasion in his testimony that "I think it was Commissioner Giuffra who raised the question whether everybody wants to kill the prosecutor." (JF 97) It should also be noted that when the District Attorney played the recordings of his interviews of Hermann and Constantine for the Commission, he advised them that by doing so, he felt he had discharged his duty by providing the evidence to the Commission, and it was now the Commission's responsibility to do, or not to do, the rest. They chose to do nothing.

Alleged "Unreliability" of Constantine's Recollection of Material Events and Conversations

(a) At the meeting and in her letter of April 15, Ms. Lynch persisted in the erroneous contention that no dispute existed between the Chamber and the Commission concerning document requests during the time period when, according to Constantine, he had conversations with Hermann concerning such issue.

Documents furnished to the Inspector General by the Commission itself refute this argument. Reproduced on pages 76-84 are copies of a series of letters dated July 27, August 1, August 3, and August 14, between Executive Chamber attorneys and Herbert Teitelbaum, evidencing communication and disagreement between the Chamber and Commission regarding the assertion of privilege and the withholding of documents because of the assertion of privilege. Such correspondence confirms Constantine's testimony that during this early period, that while some documents were being furnished to the Commission pursuant to its request, others were being withheld because of privilege.

(b) Lynch claimed that Constantine's testimony should be discarded because he was in error when he testified that he told Hermann that he "meet[s] with [Teitelbaum]" and therefore it was not necessary for Hermann to intervene to obtain the documents in late July or early August. Lynch stated that no meeting took place between Teitelbaum and Constantine before August 20. The Inspector General thereafter contacted Constantine and requested that he check his records. After doing so, Constantine reported that the first record he had of a meeting with Teitelbaum revealed that the meeting had indeed occurred on August 20. He maintained, however, that prior to his admonishment of Hermann, there had been various communications, whether by telephone or in writing, with Teitelbaum and the Commission, and that his error about the date of their first meeting did not otherwise affect his recollection of his conversations with Hermann. Constantine's statement is supported by the testimony of other Executive Chamber attorneys

who were liaisons with the Commission. They testified that when they received news from Constantine of Hermann's intercession in late July until early August, they advised Constantine to tell Hermann that Teitelbaum should contact them directly and there was no need for Hermann to serve as Teitelbaum's emissary.

Pope, for example, testified when Hermann contacted him and said Herb said "he's going to want everything; documents, computer records" he was baffled that Teitelbaum hadn't called him directly and told that to Hermann. (PP 10-12)

(c) In yet another strained and specious attack upon Constantine, Lynch claims that because Constantine, in reciting Hermann's disclosure on November 1, 2007, accurately mentioned only several but not all of the members of the Commission's Troopergate subcommittee, his testimony on this subject should be discounted. She additionally cites Feerick announcing the formation of the working group at the Commission's public hearing on October 10, 2007, but Lynch conceded that Feerick "did not name the members." When Teitelbaum appeared before the Inspector General he testified that prior to November 1, 2007, when, according to Constantine, Hermann revealed the names of some of the subcommittee members, the identities of the members of this committee were not publicly disclosed (HT 78) and Feerick likewise testified that the identities of the committee members were not publicly known. Another instance of Lynch's effort to discredit Constantine is her contention that because Hermann in his statement to the Albany County District Attorney had never mentioned the special committee, Constantine's statement to the District Attorney stating that Hermann had told him about the committee could not be accurate. Lynch overlooks the fact that Hermann appeared before the District Attorney on February 7 and Constantine on February 25, so Hermann could not have been confronted with Constantine's statement. Moreover, Hermann never returned for another interview by the District Attorney because of the District Attorney's insistence that it be conducted under oath.

(d) According to Lynch's letter, when Commission staff members met with David Nocenti on March 5, 2009, he said that Constantine had told him in the fall of 2007 that he had learned that the Commission "would be 'referring'" the Dopp perjury matter to the District Attorney. It is contended that this shows that Constantine's recitation of material events has been inconsistent in important respects and is thus unreliable. However, in their testimony before the Inspector General, Rifkin, Pope and Maloney all testified that Constantine told them that Hermann had told him that a referral had been made to the District Attorney. District Attorney Soares also testified that the attorneys from the Executive Chamber had information about the matter having been referred to him by the Commission.

Additionally, on the very same day as he purportedly spoke to the Commission, March 5, 2009, Nocenti also testified under oath before the Inspector General. While at one point in his testimony he mentioned a "potential referral", it is clear that Nocenti had been told by Constantine that a referral had already been made. (DN 9) Nocenti testified as follows:

A. Constantine informed me and others that he had heard from Hermann that Hermann had heard from Teitelbaum that the Commission had

referred to the DA potential, those potential inconsistencies that you just referred to.

Q. Prior to this communication from Constantine, did you have any knowledge yourself of this referral?

A. No.

Q. As far as you know, did this also represent news to the other liaison officials?

A. That is correct. (DN 11)

Ms. Lynch, in attempting to identify sources of information other than Teitelbaum in connection with Constantine's recitation of the confidential information Hermann communicated to him on November 1, opines that in addition to Fredric U. Dicker of the *New York Post* speaking to the Commission's public information officer, Walter Ayres, about the subcommittee, "it is quite possible" that Dicker spoke to one or more of the Executive Chamber officials. Elsewhere, Lynch notes "As we all know from experience, however, the reporter may well have had the information well before publication and reached out to various individuals for information and corroboration." Such abstract supposition represents no refutation of the sworn testimony and other evidence presented in the Inspector General's report.

Lynch also cites numerous newspaper articles as purported sources of information for Hermann, none of which however predate the November 1, 2007, disclosure by Hermann to Constantine of confidential information he had obtained from Teitelbaum, and Hermann in his own testimony refers to Teitelbaum as his source. (See page 48)

Lynch's effort to distance Teitelbaum as the source of Commission confidential information to Hermann is refuted by the testimony of Herman himself that Teitelbaum was the only individual at the Commission with whom he had ever discussed their Troopergate investigation. Additionally, the Inspector General obtained affirmations from members of the Commission, including Commissioners, staff and former staff which attest to the fact that they had never communicated with Hermann concerning any Troopergate matters (pp 102-103). Teitelbaum was the only source of Troopergate information to Hermann, and both acknowledged having discussed the Commission's investigation.

VII. FINDINGS

A. Regarding the Allegations that Herbert Teitelbaum, Executive Director of the Commission on Public Integrity, Inappropriately Disclosed Confidential Commission Information Related to its Troopergate Investigation

- 1) From the very onset of the Commission's investigation into the Troopergate matter commencing in late July through early August 2007, Herbert Teitelbaum, Executive Director of the Commission, utilized Robert Hermann, his close friend and former law partner, as his personal "backdoor channel" to the Executive Chamber, and as a conduit for offering unsolicited opinions and advice to the Executive Chamber regarding the Spitzer administration's response to the Commission's demands for production of documents and records related to its Troopergate investigation.
- 2) In order to deal with the Commission and the other governmental entities investigating Troopergate, then-Governor Eliot Spitzer specifically designated five Executive Chamber members as the liaisons with such investigative agencies. They were Richard Rifkin, Peter Pope, Sean Patrick Maloney, Lloyd Constantine and David Nocenti.
- 3) Throughout such period, Robert Hermann served in the Spitzer administration as Director of the Governor's Office of Regulatory Reform, and although a member of the Governor's cabinet, was not a member of the Executive Chamber, although he falsely claimed to be such in his statement to the Albany County District Attorney. Additionally and significantly, Hermann was not one of Executive Chamber attorneys specifically designated by the Governor as liaisons with the Commission and with other entities investigating Troopergate. Accordingly, Hermann was never authorized to play any role whatsoever relating to Troopergate, and was not sanctioned by the Chamber to obtain any information relating to the Commission's investigation.
- 4) Herbert Teitelbaum advised Meave Tooher, Investigative Counsel to the Commission who worked closely with Teitelbaum, that he was utilizing Hermann as his "backdoor channel" to the Executive Chamber in an effort to facilitate the production of records. Tooher informed him that he "shouldn't be talking to anybody about the investigation."
- 5) While, on the one hand, Teitelbaum denied using Hermann to intercede with the Executive Chamber in facilitating the production of documents, Teitelbaum also testified that it would have been entirely permissible to do so if he thought it was in furtherance of the investigation. The utilization of such unauthorized "backdoor channel" is in violation of Executive Law § 94(12)(a) and Public Officer Law § 74(3)(c), both of which prohibit the disclosure of confidential Commission information.
- 6) During this initial late July-early August 2007 period, Teitelbaum disclosed to Hermann details of the Commission's Troopergate investigation relating to documents sought by the Commission and the withholding of documents by the assertion of privilege.

- 7) During the same period in which Teitelbaum confided in Meave Tooher his utilization of Hermann, Hermann initiated a number of conversations with Lloyd Constantine and one with Peter Pope, two of the designated liaisons with the Commission, at which time he specifically identified Herbert Teitelbaum as the source of his requests for prompt production of Spitzer administration documents for the Commission. Intervention by Hermann was aggressive rather than casual, and records reveal that he initiated all telephone contacts at this time. For example, during the late evening of August 8, 2007, Hermann telephoned both Pope (8:37 p.m.) and Constantine (at 8:49 p.m.) while Constantine was out of town.
- 8) Hermann's intrusion, on Teitelbaum's behalf, into the Troopergate investigation was unwelcomed by the Executive Chamber attorneys who regarded the Teitelbaum to Hermann communications as wrong, improper, and a likely violation of statutory confidentiality provisions. They advised Constantine to admonish Hermann to cease such conversations with Teitelbaum.
- 9) On or about August 8, 2007, at 8:49 p.m., Hermann telephoned Constantine while Constantine was upstate in Skaneateles, NY. Constantine admonished Hermann to cease any and all communications with Teitelbaum regarding Troopergate.
- 10) Both Herbert Teitelbaum and Robert Hermann admitted they had discussions about the Troopergate investigation, but, to the extent they admitted any memory of these discussions, claimed to have discussed Troopergate only in a general way. The evidence however establishes that Teitelbaum disclosed to Hermann specific confidential information regarding not only the Troopergate investigation, but also the internal operations of the Commission.
- 11) Three weeks prior to the publication by the Ethics Commission of its revised Opinion 07-03 relating to the use of state aircraft, Hermann faxed to Constantine a document labeled "Lemons Into Lemonade," which included the "assumption":

The State Ethics Commission will shortly revise its guidance that started this whole thing, and that revision will be favorable to the governor's pro-reform position.

Hermann was correct, and testified that he may have discussed the issue of the Opinion with Teitelbaum. Thus Hermann insinuated himself in Executive Chamber business relating to Troopergate.

- 12) On October 11, 2007, Darren Dopp, Communications Director for the Spitzer administration, testified under oath before the Commission. His testimony before the Commission appeared in conflict with the statement he had provided to the Attorney General dated July 22, 2007. Accordingly, on or about October 17, 2007, Teitelbaum and Meave Tooher met with Albany County District Attorney P. David Soares and presented to him and his staff, the relevant portion of Dopp's testimony, and thereafter the entire Dopp testimony. Such testimony was provided to the District Attorney for his

review of potential perjury or other criminal violations. The action of referring Dopp's testimony to the District Attorney was highly confidential and was not even known by all the Commissioners.

- 13) Between October 17 and November 1, 2007, discussions about the Dopp matter continued between the Office of the District Attorney and Teitelbaum, Meave Tooher and a limited number of Commission members. On November 1, 2007, the District Attorney affirmatively advised Teitelbaum that he would be pursuing a criminal investigation against Dopp. This decision was confidential and was not designed to be shared with any member of the Executive Chamber.
- 14) During this same period, between October 17 and November 1, 2007, internal discussions were held within the Commission about the implications of the Commission's referral to the District Attorney, specifically regarding possible conflicts of interest by Nocenti and Pope, and Fifth Amendment self-incrimination issues. These discussions were memorialized by Meave Tooher in an internal memorandum to Teitelbaum dated October 24, 2007.
- 15) On November 1, 2007, Robert Hermann travelled to the Governor's New York City office, and at approximately 2:30 p.m., urgently summoned Constantine from a meeting, disclosed to him the referral by the Commission of Dopp's testimony to the Albany County District Attorney, and requested that Constantine bring this information to the Governor's attention, but not to disclose his identity as the source.
- 16) Hermann advised Constantine that he "had come upon [the information] from Herb."
- 17) In the course of this November 1 conversation with Constantine, which both Hermann and Constantine agreed consumed about 15 minutes, Hermann disclosed other confidential information concerning the internal operations of the Commission on Public Integrity. Hermann advised Constantine that because of concern about leaks from within the Commission, a special subcommittee had been created to deal with the Troopergate investigation, and Hermann correctly identified several of its members. Hermann also related to Constantine that Dopp had identified Peter Pope and David Nocenti as having been involved in the drafting of his false statement to the Attorney General.
- 18) Teitelbaum did not provide definitive answers when questioned about allegations that he had disclosed confidential information to Hermann. The following questions and answers are illustrative:

Q. Did you ever disclose to Hermann the composition of this subcommittee?

A. Not that I remember. (HT 80)

Q. Did you ever discuss with Hermann records or category of records that you wanted produced from the executive chamber?

A. No, not that I remember.

Q. Did you ever discuss with Hermann witnesses that you wanted to examine before the commission?

A. Not that I remember, no. (HT 149)

Such answers from the Executive Director of the Commission on Public Integrity are not acceptable. The Inspector General and the public it reports to, deserve unequivocal answers to such questions.

- 19) On November 2, 2007, Hermann discussed with then-Governor Spitzer that a conflict of interest existed with Pope and Nocenti representing the Executive Chamber because of the District Attorney's investigation of possible subornation of perjury by Pope and Nocenti.
- 20) Hermann's disclosure on November 1 to Constantine and on November 2 to the Governor went beyond the fact of the referral by the Commission of Dopp's testimony to the District Attorney but also cited the legal implications regarding David Nocenti and Peter Pope. In doing so, Hermann virtually repeated in specific detail the exact legal issues being discussed within the Commission as memorialized in Meave Tooher's confidential, internal October 24, 2007, memorandum to Teitelbaum.
- 21) In his testimony before the Inspector General, Hermann admitted that he communicated such confidential information to Constantine on November 1 and the Governor on November 2, adding that "they were unaware of it and unfortunately I was aware of it."
- 22) On November 2, 2007, Constantine informed the other liaison members (Rifkin, Pope, Maloney and Nocenti) of Hermann's disclosure to him of the referral by the Commission of Dopp's testimony to the District Attorney. None of the Executive Chamber attorneys were aware of the referral prior to Hermann's disclosure. The attorneys engaged an ethics attorney, Hal Leibermann, who advised them that they had an ethical obligation to notify the District Attorney they had unwittingly been made aware of his investigation.
- 23) Hermann acknowledged, in his testimony before the Inspector General, that the only member of the Commission with whom he ever discussed Troopergate was Herbert Teitelbaum. The Inspector General also obtained affirmations from Public Integrity Commissioners and present and former staff attesting to their lack of any communication with Hermann concerning any Troopergate matters. Such affirmations plus the recitation by Hermann to Constantine on November 1 and the Governor on November 2 of virtually every detail and legal issue and analysis in Meave Tooher's October 24 memorandum to Teitelbaum, together with Hermann's admission that Teitelbaum was his only source of Commission information regarding Troopergate, establish that Teitelbaum provided to Hermann the information he conveyed to Constantine and the Governor in November 2007.

24) Immediately after being advised by Constantine of Hermann's disclosure of the District Attorney's investigation, and in fulfillment of their ethical obligation, Richard Rifkin contacted the District Attorney, thereafter met with him, and notified him that the Executive Chamber had been made aware of his investigation by Teitelbaum disclosing the information to Hermann who then informed Constantine.

25) When the District Attorney confronted Teitelbaum with the allegation that Teitelbaum had revealed the existence of the District Attorney's Dopp investigation, Teitelbaum denied it. Teitelbaum then confronted Hermann and Hermann falsely denied to Teitelbaum that he was the source of the leak. In his testimony before the Inspector General, Hermann offered several explanations for his false denial to Teitelbaum, concluding,

I thought that he understood at the point and assumed at that, point that I was the source. And I simply wasn't sure whether he really wanted to know that information and whether it was in his interest—we had a long conversation about this, we talked about a lot of things, and I came away from it thinking that he understood that I was the source despite my denial.

26) Richard Rifkin refrained from directly informing Commission Chair John Feerick of Teitelbaum's disclosure to Hermann only upon receiving assurance from Hermann that Teitelbaum would himself inform Feerick of his disclosures to Hermann. In a memorandum written contemporaneously with Hermann's communication to him, Rifkin stated, "late on Thursday [November 8th] afternoon Hermann called me and confirmed that Teitelbaum would, in fact, reveal his leak of the information to Feerick. I again said that I would therefore, refrain from telling Feerick directly."

27) Sean Patrick Maloney testified that the only reason the Executive Chamber attorneys did not inform Feerick directly was Hermann's assurance that Teitelbaum would admit to Feerick that he was the source of the leak of the District Attorney's investigation of Dopp.

28) Rather than admit to Feerick that he was the source of the leak, as Hermann assured Rifkin he would, Teitelbaum notified Feerick that he had confronted Hermann who denied having conveyed the information in question to Constantine. Teitelbaum also told Feerick he thought he was "being set up." Feerick accepted Teitelbaum's story and did nothing further.

29) Upon completion of his Troopergate investigation, District Attorney Soares undertook an investigation concerning the leak on November 1 of his investigation of Dopp. In February 2008, he interviewed Robert Hermann and Lloyd Constantine. Hermann, for the first time, stated that he had seen notes on a single open page on a yellow pad while having dinner at Teitelbaum's apartment around Halloween 2007. He stated that his notice of the words "DA" and "inconsistencies" led him to conclude that the District

Attorney was investigating possible perjury involving Peter Pope and David Nocenti, that they faced a conflict of interest and could not represent the Governor, etc.

The Inspector General finds this story not credible. It is doubtful that Hermann could have concluded the information he conveyed to Constantine, specifically the *fact* of an investigation by the District Attorney, and the specific implications for Executive Chamber attorneys Pope and Nocenti, based on the brief notes he claimed to have seen. Moreover, Hermann's attribution of his knowledge to the yellow pad did not surface until several months after his disclosure to Constantine. Teitelbaum testified that Hermann never told him the yellow pad story when allegations were made against Teitelbaum in November. When Richard Rifkin appeared before the Inspector General, he testified he had never heard such story before the Inspector General questioned him about it on September 3, 2008. If the yellow pad story were true, it is inconceivable that Hermann chose not to disclose it to Rifkin, to Teitelbaum and to others in November, when doing so would have exonerated his life-time friend.

It is additionally significant to note that shortly after being advised by Hermann on November 1 of the District Attorney's investigation of Dopp, Constantine asked Hermann why he did not wish to be identified as the source of such information. Hermann told Constantine that he knew Teitelbaum really well and knew what Teitelbaum was capable of doing to protect himself. Hermann stated "he's capable of claiming that he didn't tell me any of this stuff... that I broke into his apartment and saw it on his desk....in other words he didn't tell it to me...."

- 30) Teitelbaum testified that if there were notes in his apartment, they no longer exist, because they were shredded. Teitelbaum further testified that Hermann never informed him that Hermann had learned of the District Attorney's investigation from notes viewed in Teitelbaum's apartment.
- 31) Further supporting the Inspector General's finding that Hermann's "yellow pad" story is untrue is Hermann's communication to Constantine in around July 2008 of yet another explanation for his possession of confidential information in November 2007, namely Hermann's assertion that he questioned Teitelbaum about the notes he had observed on the yellow pad and Teitelbaum informed him that the Commission had referred the Dopp testimony to the District Attorney.
- 32) The Inspector General finds that Herbert Teitelbaum's conduct apparently violated section 74(3)(c) of the state Public Officers Law, which provides that "no officer or employee of a state agency...should disclose confidential information acquired by him in the course of his official duties nor use such information to further his personal interest"; and that the conduct of both Teitelbaum and Hermann apparently violated section 74(3)(h) of the Public Officers Law, which states that "an officer or employee of a state agency...should endeavor to pursue a course of conduct which will not raise suspicion among the public that he is likely to be engaged in acts that are in violation of his trust."

- 33) It has been the general practice of the Inspector General to refrain from recommending specific employment measures against State employees who were the subject of investigation, preferring instead to refer the issue of disciplinary action to the agency head of such employee. However, the evidence amassed demonstrating the betrayal of the public trust by Herbert Teitelbaum compels the finding that his retention in state service is contrary to the public interest and accordingly, the Inspector General recommends his termination.
- 34) On March 5, 2009, Hermann resigned as director of the Governor's Office of Regulatory Reform and assumed employment with the state legislature. As he is no longer employed by the Executive Branch, the sole branch of state government over which the Inspector General has jurisdiction, it is not within the Inspector General's authority to recommend disciplinary action against Hermann. Nevertheless, the Inspector General finds that while he was an employee of the Executive Branch, Hermann violated the public trust, and would recommend his termination were he still so employed.

B. Regarding the Appropriateness of the Commission on Public Integrity's Response Upon Receiving the Allegations Against Its Executive Director

- 1) In view of the fact that one aspect of the Commission's Troopergate investigation involved the allegation of a leak by the Spitzer administration, it is ironic that the Commission, itself, was plagued by internal "leaks" concerning its operations, deliberations and Troopergate investigation. While other entities were also sources of leaks, no doubt exists that members of the Commission disclosed confidential information to the press.
- 2) While it was operationally prudent for the Commission to divide its labors among its members by the creation of working groups, the problem of internal "leaks" was a consideration in the formation of the group assigned to deal exclusively with the Troopergate investigation.
- 3) Although such information was confidential, Herbert Teitelbaum disclosed the names of the Troopergate working group to Robert Hermann, information which the Governor did not possess.
- 4) One Commissioner about whom Feerick was concerned was Richard Emery because of his close relationship with Constantine. The Inspector General has received testimony that Constantine and Emery took measures to not only avoid discussing Commission matters, but even cancelled a joint skiing vacation to avoid being seen together. Evidence that they did not discuss Commission matters is demonstrated by the fact that it was only after the publication of the Commission's report in July 2008 that Emery learned from Constantine of information Constantine had given in February 2008 to the District Attorney which the District Attorney thereafter relayed to the Commission.
- 5) From the onset of its investigation in July 2007 and continuing into August 2007, the Commission and the Executive Chamber were involved in discussions and disagreements regarding the production of documents, the assertion of privilege by the Chamber to avoid disclosure, and the piecemeal production of records, etc. Teitelbaum disclosed such issues to Hermann and attempted to use him to expedite the Chamber's production of documents and records, and to offer advice to the Executive Chamber attorneys regarding the production of such records.
- 6) Feerick was advised in November 2007 by Teitelbaum, that Teitelbaum had been accused by the District Attorney of disclosing the Commission's referral to the District Attorney of the investigation into Dopp's possible perjury to Hermann, who in turn relayed such information to the Executive Chamber. Teitelbaum told Feerick he had confronted Hermann with such allegation and Hermann denied it. Feerick accepted Teitelbaum's disclaimer and took no further action. This represented the first failure of the Commission to investigate the allegations against Teitelbaum.

- 7) In February 2008, District Attorney Soares provided the Commission with evidence in the form of recorded unsworn statements by Robert Hermann and Lloyd Constantine concerning the disclosure of the Commission's referral in October 2007 to the District Attorney of Dopp's sworn testimony and information concerning the internal operations of the Commission. Although the statement by Constantine raised serious allegations that Teitelbaum had disclosed confidential Commission information to Robert Hermann, the Commission did no more than perfunctorily question Teitelbaum and accept his disclaimer. This was the second failure of the Commission to investigate Teitelbaum.
- 8) There exists no justification for the Commission's failure to investigate the serious allegations that the confidentiality of the Commission's Troopergate investigation had been violated by its Executive Director after learning of Constantine's testimony to the District Attorney. At a bare minimum, the Commission should have questioned both Hermann and Constantine. Both were public officials and there was no reason to believe they would not have agreed to be interviewed. The Commission's failure to investigate these serious allegations against its Executive Director was inexcusable.
- 9) The statement by John Feerick expressing the view of the Commission that "there was no exchange of confidential information, you know, from our Commission to the Executive Chamber" was totally inaccurate. Constantine's statement to the District Attorney was that Hermann had disclosed to him the Commission's transmittal of Dopp's testimony to the District Attorney, information which was highly confidential and was not even known to all members of the Commission. Likewise the identity of some of the members of the working group was, by Feerick's own testimony, an internal matter not publicly known. Constantine's statement to the District Attorney was that Hermann had provided him with such information.
- 10) The Commission's statement that investigating these allegations would have required a suspension of their Troopergate investigation is unconvincing. Working closely with Teitelbaum was Meave Tooher, and other counsel who could have continued the Troopergate matter. Another explanation Feerick proffered in behalf of the Commission was that they heard nothing in the recordings of Constantine's and Hermann's interviews that represented "any compromise of the Commission's investigation." It is impossible, as any experienced investigator recognizes, to know where an investigation will ultimately lead. At the time Hermann disclosed his information to the Executive Chamber, then-Governor Spitzer was still under investigation by both the Commission and the Albany County District Attorney. Indeed, when the Commission issued its final Report, it not only disclosed what, if any, involvement Spitzer may have had in Troopergate, but left open the possibility that further action by the Commission against the former Governor or others was not foreclosed. Teitelbaum's disclosure to Hermann of confidential information regarding the Commission's Troopergate investigation, indeed represented a potential compromise of its investigation.
- 11) Feerick's further contention that the Commission heard nothing "conclusive" in the District Attorney's recorded interviews warranting further investigation is puzzling. A requirement for "conclusive" evidence as a predicate for commencing an investigation

defies logic, as an investigation exists to seek such evidence and, in fact, the existence of such “conclusive” evidence would obviate the need for any further investigation.

- 12) The Commission’s profession of confidence that no investigation of allegations it received from the District Attorney in February 2008 was warranted is belied by its actions once it learned that the District Attorney’s evidence would be publicly disclosed. When the Commission discovered in August 2008 that the District Attorney had concluded his investigation and was going to release his file, and when press inquiries were made, the Commission became concerned, according to Feerick, that “we would have to deal with the tapes.” Commission General Counsel Barry Ginsberg then telephoned the District Attorney seeking the same recordings the Commission had heard in February. Feerick testified that “there was a distinct possibility that we would have to address these issues in the press.” If the Commission had in fact been justified in its failure to conduct an investigation in February, there was no need to re-examine the same evidence in August.
- 13) The District Attorney responded to the Commission’s request by asking that it place its request in writing with an explanation of why the Commission wished a second opportunity to review the evidence. The Commission opted not to provide such a letter and explanation. This represented the Commission’s third failure to investigate Teitelbaum.

It is difficult to avoid concluding that the Commission’s choice not to follow-up on its effort to review the recordings again was based upon the fact that any explanation it provided the District Attorney would not place its actions in a good light: either the Commission would be forced to admit that the evidence was not afforded sufficient attention by the Commission in February 2008, or the Commission would be faced with conceding that once the information was made public by the District Attorney, it could not defend its inaction from public scrutiny.

- 14) One of the determinative factors in the Commission’s failure to investigate the evidence it received from the District Attorney in February 2008, was the District Attorney advising them that by providing the evidence to them he felt he had discharged his duty and it was now up to the Commission as to whether it wished to do anything. John Feerick testified that when he and the other Commissioners who listened to the recordings left the District Attorney’s office in February, the District Attorney told them “that he was finished with the matter and it was up to us.” The Inspector General finds that the Commission believed this represented the end of the matter and was comfortable in taking no action, confident that the issue would never arise publicly.
- 15) Commissioner Richard Emery testified that when he concurred with Feerick’s letter to the District Attorney dated February 28, 2008, expressing full confidence in Teitelbaum, he was not aware of all of the information Feerick and members of the special subcommittee had. He complained about this to Feerick and also requested that the Commission re-visit the allegations against Teitelbaum and conduct a full investigation, perhaps by engaging an outside person. The Commission once again declined to

investigate the allegations against its Executive Director. This represented the fourth failure by the Commission to investigate Teitelbaum. It is worth noting that Robert Hermann was in possession of confidential Commission on Public Integrity information with which Richard Emery, one of the commissioners, was not entrusted.

- 16) When the recordings of the District Attorney's interviews of Hermann and Constantine were played for the Commission, its General Counsel Barry Ginsberg took notes. When the Commission became concerned in July 2008 regarding the District Attorney's intention to release his files, and with the commencement of press inquiries, these notes then were incorporated into an official memorandum. Ginsberg's memorandum, significantly, does not accurately report the statement of either Constantine or Hermann. With regard to Hermann's statement, the memorandum grossly misrepresents a crucial portion of such statement, resulting in the impression that information which Hermann communicated to Constantine on November 1, 2007 was public information rather than confidential information Hermann had obtained from Teitelbaum. The distinction constituted the very essence of the allegations against Teitelbaum. The statement of Constantine regarding a second conversation he had with Hermann is also inaccurately reported, omitting crucial information Constantine had revealed to the District Attorney which appears in Counsel's notes, but which he chose to omit from his memorandum. The result of such inexplicable omission converts a damaging statement by Hermann into a benign non-sequitur.
- 17) The Commission's response to the Inspector General's investigation stands in sharp contrast to the position it took during its Troopergate investigation. The Commission refused to examine its own newspaper files to confirm the Inspector General's finding that certain information in Hermann's possession was confidential and never publicly reported, which was a highly significant issue. However, during its Troopergate investigation, the Commission requested that the then-Governor himself search for a particular newspaper article. Similarly, both Teitelbaum, the Commission's executive director and General Counsel Ginsberg refused to answer basic questions concerning the confidentiality of Commission proceedings. Whether based upon obstinacy, willful obstruction or ignorance, such refusals on the behalf of the senior management of the Commission are inexcusable.
- 18) The Commission's response to the various requests by the Inspector General for documents was neither prompt, complete, nor without obstacle. The Inspector General was initially advised that there existed no notes by Teitelbaum, and upon discovering there were, the Inspector General was told they had not been produced because they were not relevant or responsive.

After receiving what purported to be all of Meave Tooher's notes, it was not until her examination of what had been produced, and notification by her that production of her records was incomplete, that the Inspector General's additional request was satisfied. The Commission forgot, the Inspector General was advised, that it maintained a New York City Office and hence Teitelbaum may have used yet another, previously undisclosed, telephone line. On at least two occasions the Inspector General had to

threaten the service of a subpoena, and telephone John Feerick, before records were produced. While the Commission was quick to criticize the Spitzer administration in its July 24, 2008, Notice of Reasonable Cause for piecemeal and belated production of documents, it exercised no restraint in its resistance to complying with the Inspector General's requests.

- 19) The Inspector General's investigation was in response to a referral by the Albany County District Attorney in August 2008 of evidence the District Attorney had provided the Commission approximately six months earlier. The Commission failed to act upon such evidence. The Inspector General did, and this Report is the result.

Appendix A



COUNTY OF ALBANY
OFFICE OF THE DISTRICT ATTORNEY

P. DAVID SOARES
DISTRICT ATTORNEY

ALBANY COUNTY JUDICIAL CENTER
6 LODGE STREET
ALBANY, NEW YORK 12207
(518) 487-5460 - FAX (518) 487-5093

MARK B. HARRIS
CHIEF ASSISTANT DISTRICT ATTORNEY

CHERYL K. FOWLER
DEPUTY CHIEF ASSISTANT
DISTRICT ATTORNEY

August 6, 2008

By Fax & U.S. Mail

Honorable Joseph Fisch
State Inspector General
Empire State Plaza
Agency Building 2, 16th Floor
Albany, NY 12223

Re: Referral

Dear Inspector General Fisch:

The Office of the Albany County District Attorney is referring our Investigation D-1 to your agency. This matter involves allegations that Commission on Public Integrity Executive Director Herbert Teitelbaum inappropriately released confidential information pertaining to the Commission's investigation of the release of documents on ex-Senator Bruno's use of state aircraft. This matter also involves potentially improper actions on the part of Robert Hermann, the Director of the Governor's Office of Regulatory Reform.

During our investigation, we secured evidence which supports the allegations. However, we believe a conflict may exist with our continued handling of the matter as both myself and the two assistant district attorneys who worked on this case may be called as witnesses. Since you have jurisdiction over State officials and employees, we are referring this matter to you.

I would like to schedule a meeting with you at your earliest convenience to discuss this case. In the interim, I will have Assistant District Attorney Linda Griggs coordinate with your office to turn over our investigatory materials.

Very truly yours,

P. DAVID SOARES
DISTRICT ATTORNEY

Appendix B

Announcements of Commission Appointments

FOR IMMEDIATE RELEASE:
September 21, 2007

GOVERNOR SPITZER ANNOUNCES APPOINTMENTS TO THE NEW YORK STATE COMMISSION ON PUBLIC INTEGRITY

Governor Eliot Spitzer and Lieutenant Governor David Paterson today announced appointments to the New York State Commission on Public Integrity which was established by the Governor and the Legislature as part of sweeping ethics and lobbying reforms enacted earlier this year.

Governor Spitzer's appointments include the current Chairs of both the State Ethics Commission and the Temporary State Commission on Lobbying as well as two other members of those commissions, two former judges, and two former U.S. Attorneys. The current chair of the State Ethics Commission, John D. Feerick, will be appointed as Chairman of the new commission.

The Commission on Public Integrity consists of thirteen members: seven members, including the Chair are selected by the Governor and six members are appointed by the Governor on the recommendation of the Attorney General, the Comptroller, and the four Legislative leaders. No more than four of the seven members appointed by the Governor can belong to the same political party.

Members of the Commission on Public Integrity are:

John D. Feerick is appointed to serve as Chairman of the Commission on Public Integrity. Mr. Feerick is the current Chair of the State Ethics Commission and serves as the Norris Professor of Law at Fordham Law School. He is also the Founder and Director of the Law School's Feerick Center for Social Justice and Dispute Resolution.

From 1982 to 2002, Mr. Feerick served as Dean of Fordham Law School. In addition, Mr. Feerick has chaired the New York State Commission to Promote Public Confidence in Judicial Elections and previously served as a court-appointed Judicial Referee in the case of Campaign for Fiscal Equity v. New York State. From 1987 to 1990, serving as Special Deputy New York State Attorney General, Mr. Feerick chaired the New York State Commission on Government Integrity that led to the adoption of the 1987 Ethics in Government Act.

Mr. Feerick was a member of the law firm of Skadden, Arps, Slate, Meagher and Flom from 1961 to 1982. He also participated in the formulation, adoption and implementation of the 25th Amendment to the U.S. Constitution, which relates to presidential succession and was ratified in 1967. Mr. Feerick has been recognized for his extensive work in the field of ethics reform. He has been the recipient of honors and recognitions from various groups, including Common Cause, The League of Women Voters, and the New York Lawyers for Public Interest. He has received the highest awards from the New York State Bar Association, the Association of the Bar of the City of New York, and the New York County Lawyers' Association for his contributions to the legal profession.

Mr. Feerick received his B.S. from Fordham College and his J.D. from Fordham Law School.

Daniel R. Alonso is appointed to serve as a member of the Commission on Public Integrity. Mr. Alonso is currently a partner in the litigation department of Kaye Scholer LLP. His practice is focused on internal investigations, white-collar defense, general civil litigation, and SEC enforcement. Before joining Kaye Scholer LLP, Mr. Alonso was the Chief of the Criminal Division in the United States Attorney's Office for the Eastern District of New York. In that capacity, he supervised approximately 110 federal prosecutors in the investigation and prosecution of a vast array of crimes, including securities fraud and other types of white collar crime, organized crime, public corruption, narcotics trafficking, computer crimes, terrorism and violent gangs. From 1990 to 1995, Mr. Alonso served as an Assistant District Attorney in the New York County District Attorney's Office, where he handled white-collar criminal cases while assigned to the Frauds Bureau and the Special Prosecutions Bureau. He has also served as a law clerk to Judge Joseph W. Bellacosa of the New York Court of Appeals.

Mr. Alonso is a four-time winner of the Justice Department's Director's Award for Superior Performance as an Assistant U.S. Attorney, and is a recipient of the Henry L. Stimson Medal, awarded by the Association of the Bar of the City of New York to outstanding Assistant U.S. Attorneys.

Mr. Alonso received his B.A. from Cornell University and his J.D. from New York University School of Law.

John M. Brickman is appointed to serve as a member of the Commission on Public Integrity. Mr. Brickman is a partner in the law firm of Ackerman, Levine, Cullen, Brickman and Limmer, LLP. He is the head of the firm's litigation group, practicing primarily in the area of commercial litigation. From 1971 to 1975, he served as Executive Director of the New York City Board of Correction, overseeing the operation of the New York City prison system. In addition, from 1991 to 2006, he was Adjunct Professor of Law at Touro College's Jacob D. Fuchsberg Law Center.

Mr. Brickman is pro bono legal counsel to the Manhasset-Great Neck Community Service Center. He also serves as Chairman of the Correctional Association of New York, a Director of the Nassau Health Care Corporation, and a Director of the Levitt Foundation. From 1992 to 1994 he served as a Trustee of The Johns Hopkins University and President of The Johns Hopkins Alumni Association.

Mr. Brickman received his undergraduate degree from The Johns Hopkins University and his J.D. from Columbia University School of Law.

Andrew G. Celli, Jr. is appointed to serve as a member of the Commission on Public Integrity. Mr. Celli is a founding partner in the Manhattan Law firm of Emery, Celli, Brinckerhoff and Abady. From 1999 to 2002, Mr. Celli served as Chief of the Civil Rights Bureau in the Office of the New York State Attorney General. Mr. Celli is a former associate at Cravath, Swaine and Moore and clerked for United States District Court Judge Charles P. Sifton. He has extensively litigated commercial, civil rights and constitutional cases in state and federal courts.

In 2004, Mr. Celli was appointed as a member of the New York Temporary State Commission on Lobbying and served as the Commission's Vice-Chair. He is a graduate of Hobart College and New York University School of Law.

Daniel J. French is appointed to serve as a member of the Commission on Public Integrity. Mr. French is currently a partner in the Syracuse firm of French-Alcott, PLLC. His practice includes complex civil litigation and criminal defense, along with a federal relations practice. Prior to forming this partnership, Mr. French was a member and later of counsel at Green and Seifter. Before entering the private sector, Mr. French served as United States Attorney for the Northern District of New York where he was the Chief Federal Law Enforcement Officer for 32 of New York's 62 counties and serving over 3.5 million state residents. He oversaw the work of 39 Assistant United States Attorneys located in Syracuse, Albany, and Binghamton.

Previously, Mr. French served as an Assistant United States Attorney assigned to the criminal division in Syracuse and as a confidential Law Clerk for then United States District Court Judge Rosemary S. Pooler. In addition, Mr. French served as Acting Deputy Staff Director to the United States Senate Committee on Finance, Executive Assistant to United States Senator Daniel Patrick Moynihan and as a professional staff member to the United States Senate Committee on Environment and Public Works.

Mr. French is a member of the American Bar Association, the New York State Bar Association, the Onondaga County Bar Association and the Association of Former United State Attorneys. He is a former member of the Board of Directors of the Thousand Island Land Trust and Save the River.

He received his B.A. from the State University of New York College at Oswego and his J.D. from Syracuse University College of Law.

Robert Giuffra is appointed to serve as a member of the Commission on Public Integrity. Mr. Giuffra is a partner in Sullivan and Cromwell's Litigation Group. His practice focuses on complex securities, white-collar criminal, class action, commercial, insurance, banking and tax litigation. He is the Coordinator of Sullivan's Securities Litigation Practice, the Co-Head of Business Development, and a member of the Management Committee.

Since 1998, Mr. Giuffra has served as a Commissioner on the New York State Ethics Commission. From 1995 to 1996, he was Chief Counsel of the United States Senate Committee on Banking, Housing, and Urban Affairs and was the primary drafter of the Private Securities Litigation Reform Act of 1995. In 1994,

Mr. Giuffra served on Governor-Elect Pataki's Criminal Justice Advisory Committee. In addition, Mr. Giuffra was a Special Assistant District Attorney in New York County from 1991 to 1992.

Mr. Giuffra clerked for United States Supreme Court Chief Justice William Rehnquist and the Honorable Ralph Winter on the United States Court of Appeals, Second Circuit. He is a graduate of Princeton University and Yale University Law School.

David L. Gruenberg is appointed to serve as a member of the Commission on Public Integrity. Mr. Gruenberg is currently a solo practitioner in Troy. From 1983 to 2004, he served as Senior Counsel to the Senate Judiciary Committee. He has also served as Counsel to Senator Joseph Bruno and Senator Roy Goodman. In addition, from 1984 to 2003, Mr. Gruenberg served as Counsel to the Majority in the Rensselaer County Legislature. He was an Assistant Public Defender in Rensselaer County from 1979 to 1982 and was an Assistant Attorney General with the New York State Office of the Attorney General from 1974 to 1977.

Mr. Gruenberg established and staffed the Office of the Rensselaer County Conflict Defender. He received his B.A. from Cornell University and his J.D. from Boston University School of Law.

James P. King is appointed to serve as a member of the Commission on Public Integrity. Mr. King is currently the Government Lawyer in Residence at the Government Law Center of Albany Law School and has been an Adjunct Professor since 1984. From 2000 to 2002, he was the General Counsel for the New York State Department of State and was a judge on the New York State Court of Claims from 1995 to 2000. Judge King served as an Assemblyman from 1991 to 1995 serving as the ranking member of the Codes and Ethics Committee. In addition, he was an Assistant Attorney General for the New York State Office of the Attorney General, heading the Tort Unit. Judge King was also an Assistant Professor of Law at Stetson University in Florida from 1981 to 1983. He has previously served as a Brigadier General in the United States Marine Corps, becoming the ranking Judge Advocate.

Judge King was a Commissioner on the New York State Commission on Public Authority Reform and was appointed to the New York Temporary State Commission on Lobbying in 2006.

He received his L.L.M. from Washington University, his L.L.B. from Albany Law School and his B.A. from Westminster College.

Howard A. Levine is appointed to serve as a member of the Commission on Public Integrity. Mr. Levine is currently Senior Counsel at Whiteman Osterman & Hanna. From 1993 to 2002 he was an Associate Judge on the New York State Court of Appeals and from 2000 to 2002 he was Chair of the New York Federal-State Judicial Council. Judge Levine was an Associate Justice on the Supreme Court Appellate Division, Third Department from 1982 to 1993. In 1981, Judge Levine was a Justice of the State Supreme Court, Fourth Judicial District. Judge Levine has also been a Family Court Judge and was the District Attorney for Schenectady County from 1967 to 1970 after serving as an Assistant District Attorney from 1961 to 1966.

In 2000, Judge Levine was the recipient of the Distinguished Public Service Award from the Federal Commercial Litigation Section of the New York State Bar Association and in 2003 he received its Annual Gold Medal Award for Distinguished Service in the Law.

Judge Levine received his B.A. and L.L.B. from Yale University.

Loretta E. Lynch is appointed to serve as a member of the Commission on Public Integrity. Ms. Lynch is a partner at Hogan & Hartson, LLP. Her practice focuses primarily on commercial litigation, white collar criminal defense, and corporate compliance issues. From 1999 to 2001, Ms. Lynch served as U.S. Attorney for the Eastern District of New York. During her tenure, she oversaw an office of more than 150 attorneys who represented the federal government in both civil and criminal matters. Prior to being named U.S. Attorney, Ms. Lynch served as the Chief Assistant U.S. Attorney for the district. She also served as Chief of the Long Island office from 1994 to 1998, after serving as the Deputy Chief of General Crimes and as Chief of Intake and Arraignments for the district. Ms. Lynch has been a frequent instructor for the U.S. Department of Justice in their Criminal Trial Advocacy Program and has served as an adjunct professor at St. John's University School of Law. She has also participated in trial advocacy workshops for the prosecutors of the International Criminal Tribunal for Rwanda.

Ms. Lynch is a former member of the Board of Directors for the Federal Reserve Bank of New York, The Legal Aid Society, the National Institute for Trial Advocacy, the Office of the Appellate Defender and the

National Institute for Law and Equity. Ms. Lynch is also a Member of the Board of Advisors for the Brennan Center for Justice, NYU School of Law.

She received her A.B. from Harvard College in 1981, and her J.D. from Harvard Law School in 1984.

John T. Mitchell is appointed to serve as a member of the Commission on Public Integrity. Mr. Mitchell is currently of counsel to the law firm of Tobin and Dempf, LLP. Prior to that, Mr. Mitchell was with the firms of Dugan, Casey, Burke & Lyons and Casey, Yanas & Mitchell. Mr. Mitchell was Counsel to the Town of Bethlehem Planning Board from 1989 to 1990 and was a member of the Planning Board in 1988.

Mr. Mitchell has been a Member of the New York State Public Employment Relations Board since 1999. He is a founding member of the Albany County Bar Foundation and a past president of the Albany County Bar Association.

He received his A.B. from Canisius College and his J.D. from Albany Law School of Union University.

The members of the Commission on Public Integrity do not receive salaries.

For Immediate Release:
October 11, 2007

Silver Names Apuzzo To Commission On Public Integrity

Assembly Speaker Sheldon Silver announced today that he has named Virginia Apuzzo to the New York State Commission on Public Integrity.

A widely-respected public servant and activist, Apuzzo was a key administrative aide to President Bill Clinton and served as president of the New York State Civil Service Commission.

"Ginny Apuzzo is well-known and respected for her outstanding service in state and federal government. Her wealth of experience and long record of success illustrate her ability to make government work effectively and function at the highest level of integrity," Silver said. "She will be a valuable addition to the Commission, and I am grateful that she has agreed to continue to serve our state."

"Ginny Apuzzo's public service in the executive branch of New York's government and her key role in the Clinton White House demonstrate the gravitas this key position deserves and the high priority the Assembly places on assuring public integrity," said Legislative Ethics Commission Co-Chair Assemblyman Kevin Cahill (D-Ulster / Dutchess Counties). "As a community activist and my neighbor here in the Hudson Valley, Ginny has an admirable record of accomplishment, advanced with dignity and energy."

Apuzzo served in the Clinton Administration as assistant to the president for administration and management. In this role, she oversaw White House operations including the travel office, the visitors office, the intern program, White House military and personnel security and also directed administrative functions such as salaries, office space and budget.

Prior to holding the White House position, she was associate deputy secretary in the U.S. Department of Labor.

From 1985 to 1991, Apuzzo was deputy executive director of the New York State Consumer Protection Board, a position to which she was appointed by Governor Mario Cuomo. She concurrently served as the Governor's liaison to the lesbian and gay community. She later served as executive deputy commissioner in the Division of Housing and Community Renewal and in 1994 was named commissioner of the State Department of Civil Service and president of the Civil Service Commission.

Earlier in her career, Apuzzo served as executive director of the National Gay and Lesbian Task Force and the Fund for Human Dignity, another lesbian and gay civil rights organization. She also held several management-level positions in the New York City government.

Apuzzo was a tenured lecturer at Brooklyn College, taught at the College of Mount St. Vincent in the Bronx and was social studies department chair in the Marlboro, New York Central School District. She received a Bachelor's degree from State University of New York at New Paltz, and a Master of Arts in urban education from Fordham University.

The Commission on Public Integrity was established by the Governor and the Legislature as part of sweeping ethics and lobbying reforms enacted earlier this year. The Commission consists of thirteen members. Seven members including the chair are selected by the Governor and six members are appointed by the Governor on the recommendation of the Attorney General, the Comptroller, the Assembly Speaker and the three other Legislative leaders.

NEWS IN BRIEF

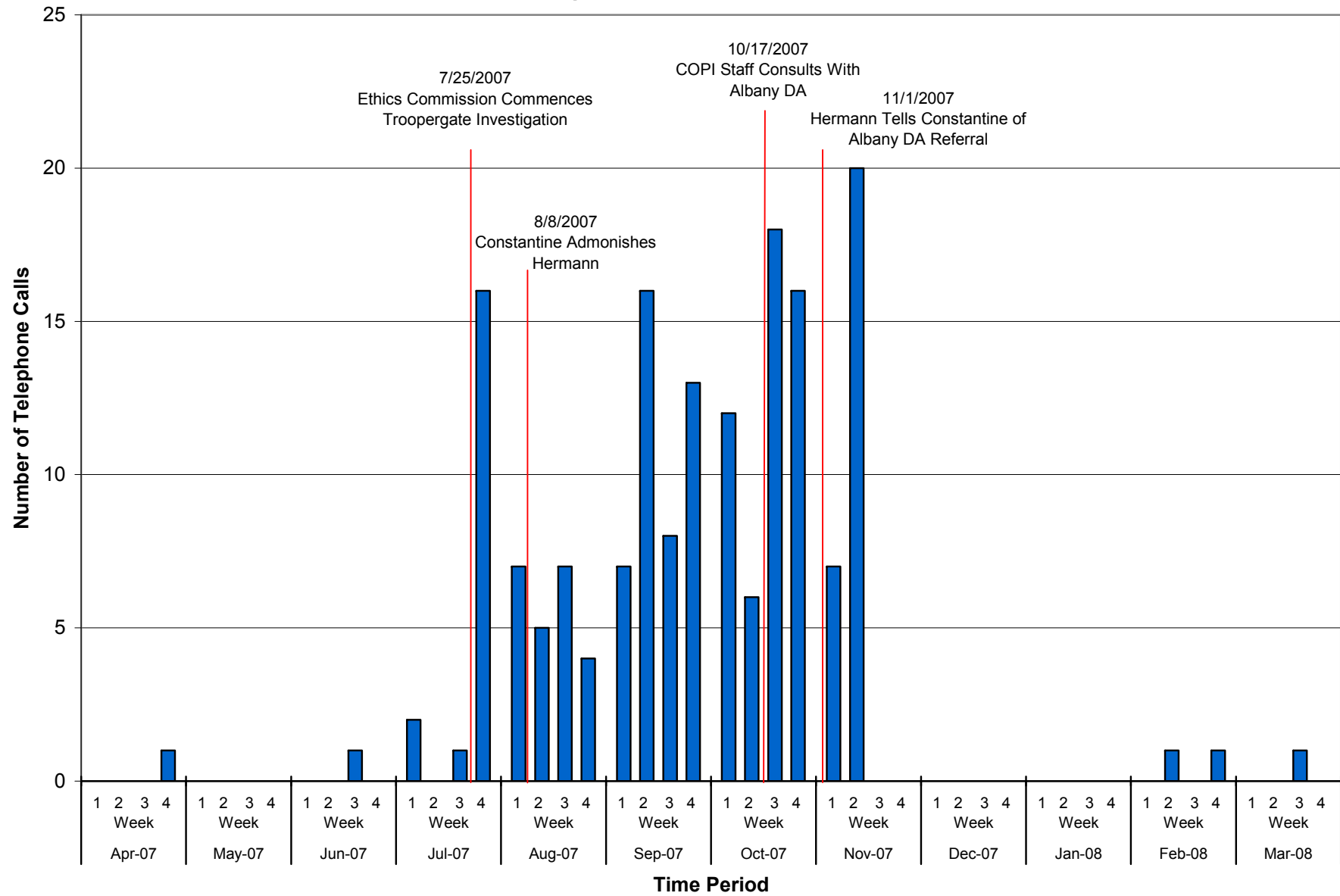
Final Member Named to Integrity Commission

Albany's political leaders have completed filling out the roster of the board of the Commission on Public Integrity. Assembly Speaker Sheldon Silver yesterday made Virginia Apuzzo his selection to the new commission, which has absorbed the duties of the former state lobbying and ethics commissions. Ms. Apuzzo, a former president of the state Civil Service Commission, was assistant to the president for administration and management in the Clinton administration. Ms. Apuzzo, the final selection to the commission's board, is the only non-attorney on the 13-member body. She missed the board's first meeting on Wednesday in Albany.

The other vacant seat on the board was filled in time for Wednesday's meeting by Senate Minority Leader Malcolm Smith's selection of Richard D. Emery. Mr. Emery, a member of the Commission on Judicial Conduct, is a partner at Emery Celli Brinckerhoff & Abady. Seven of the commission's board members were appointed by Governor Eliot Spitzer, including Chairman John Feerick. Others getting one selection each were Attorney General Andrew M. Cuomo, Comptroller Thomas P. DiNapoli, Senate Majority Leader Joseph Bruno and Assembly Minority Leader James Tedisco. -- Joel Stashenko

Appendix C

Number of Telephone Calls Between Hermann and Teitelbaum April 2007-March 2008



Detail of Hermann-Teitelbaum Calls
April 2007 – March 2008

DATE OF EVENT	TIME	DESCRIPTION OF EVENT	Duration
Monday, April 23, 2007	8:07 PM	Hermann (Blackberry) called Teitelbaum (NYC Apartment)	2 MIN.
Saturday, June 16, 2007	8:40 AM	Hermann (Blackberry) called Teitelbaum (Home)	2 MIN.
Saturday, July 07, 2007	9:20 AM	Hermann (Blackberry) called Teitelbaum (NYC Apartment)	1 MIN.
Saturday, July 07, 2007	9:21 AM	Hermann (Blackberry) called Teitelbaum (Home)	3 MIN.
Tuesday, July 17, 2007	3:24 PM	Hermann (Blackberry) called COPI (Teitelbaum's Secretary)	3 MIN.
Thursday, July 26, 2007	4:49 PM	Hermann (Blackberry) called COPI (Teitelbaum's Secretary)	2 MIN.
Friday, July 27, 2007	5:11 PM	Hermann (Blackberry) called COPI (Teitelbaum's Secretary)	1 MIN.
Friday, July 27, 2007	5:15 PM	Hermann (Blackberry) called Teitelbaum (Blackberry)	4 MIN.
Friday, July 27, 2007	5:20 PM	Teitelbaum (Blackberry) called Hermann (Blackberry)	1 MIN.
Friday, July 27, 2007	6:06 PM	Teitelbaum (Blackberry) called Hermann (Blackberry)	2 MIN.
Saturday, July 28, 2007	8:03 AM	Hermann (Blackberry) called Teitelbaum (Home)	1 MIN.
Saturday, July 28, 2007	8:04 AM	Hermann (Blackberry) called COPI (Teitelbaum's Secretary)	1 MIN.
Saturday, July 28, 2007	8:05 AM	Hermann (Blackberry) called Teitelbaum (Blackberry)	3 MIN.
Saturday, July 28, 2007	9:27 AM	Hermann (Blackberry) called Teitelbaum (Blackberry)	3 MIN.
Saturday, July 28, 2007	5:49 PM	Hermann (Blackberry) called Teitelbaum (Blackberry)	1 MIN.
Monday, July 30, 2007	6:29 AM	Teitelbaum (Blackberry) called Hermann (Blackberry)	1 MIN.
Monday, July 30, 2007	7:44 AM	Hermann (Blackberry) called Teitelbaum (Blackberry)	5 MIN.
Monday, July 30, 2007	7:00 PM	Hermann (Blackberry) called Teitelbaum (Blackberry)	1 MIN.
Tuesday, July 31, 2007	8:32 AM	Hermann (Blackberry) called Teitelbaum (Blackberry)	1 MIN.
Tuesday, July 31, 2007	9:11 AM	Hermann (Blackberry) called Teitelbaum (Blackberry)	1 MIN.
Tuesday, July 31, 2007	9:14 AM	Hermann (Blackberry) called COPI (Teitelbaum's Secretary)	1 MIN.
Wednesday, August 01, 2007	6:17 PM	Teitelbaum (Blackberry) called Hermann (Blackberry)	1 MIN.
Wednesday, August 01, 2007	7:06 PM	Teitelbaum (Blackberry) called Hermann (Blackberry)	2 MIN.
Thursday, August 02, 2007	8:09 AM	Hermann (Blackberry) called Teitelbaum (Blackberry)	2 MIN.
Monday, August 06, 2007	5:53 PM	Teitelbaum (Blackberry) called Hermann (Blackberry)	1 MIN.

DATE OF EVENT	TIME	DESCRIPTION OF EVENT	Duration
Monday, August 06, 2007	5:54 PM	Hermann (Blackberry) called Teitelbaum (Blackberry)	1 MIN.
Tuesday, August 07, 2007	4:59 PM	Hermann (Blackberry) called Teitelbaum (Blackberry)	1 MIN.
Tuesday, August 07, 2007	4:59 PM	Hermann (Blackberry) called COPI (Teitelbaum's Secretary)	2 MIN.
Thursday, August 09, 2007	1:16 PM	Teitelbaum (Blackberry) called Hermann (Blackberry)	4 MIN.
Friday, August 10, 2007	9:00 AM	Teitelbaum (Blackberry) called Hermann (Blackberry)	2 MIN.
Monday, August 13, 2007	9:38 AM	Hermann (Blackberry) called COPI (Teitelbaum's Secretary)	2 MIN.
Monday, August 13, 2007	9:46 AM	Hermann (Blackberry) called COPI (Teitelbaum's Secretary)	2 MIN.
Tuesday, August 14, 2007	12:45 PM	Hermann (Blackberry) called Teitelbaum (Blackberry)	1 MIN.
Friday, August 17, 2007	5:29 PM	Teitelbaum (Blackberry) called Hermann (Blackberry)	4 MIN.
Saturday, August 18, 2007	9:12 AM	Hermann (Blackberry) called Teitelbaum (Home)	23 MIN.
Monday, August 20, 2007	7:55 AM	Teitelbaum (Blackberry) called Hermann (Blackberry)	2 MIN.
Monday, August 20, 2007	7:58 AM	Teitelbaum (Blackberry) called Hermann (Blackberry)	1 MIN.
Monday, August 20, 2007	12:12 PM	Hermann (Blackberry) called Teitelbaum (Blackberry)	1 MIN.
Monday, August 20, 2007	1:40 PM	Hermann (Blackberry) called Teitelbaum (Blackberry)	1 MIN.
Tuesday, August 21, 2007	9:06 PM	Hermann (Blackberry) called Teitelbaum (Blackberry)	1 MIN.
Wednesday, August 22, 2007	9:22 AM	Teitelbaum (Blackberry) called Hermann (Blackberry)	2 MIN.
Wednesday, August 22, 2007	9:27 AM	Teitelbaum (Blackberry) called Hermann (Blackberry)	5 MIN.
Wednesday, August 22, 2007	12:57 PM	Teitelbaum (Blackberry) called Hermann (Blackberry)	1 MIN.
Wednesday, August 22, 2007	1:39 PM	Teitelbaum (Blackberry) called Hermann (Blackberry)	4 MIN.
Wednesday, September 05, 2007	6:36 PM	Teitelbaum (Blackberry) called Hermann (Blackberry)	14 MIN.
Thursday, September 06, 2007	8:30 AM	Teitelbaum (Blackberry) called Hermann (Blackberry)	1 MIN.
Thursday, September 06, 2007	8:33 AM	Teitelbaum (Blackberry) called Hermann (Blackberry)	1 MIN.
Thursday, September 06, 2007	1:30 PM	Teitelbaum (Blackberry) called Hermann (Blackberry)	1 MIN.
Thursday, September 06, 2007	2:50 PM	Teitelbaum (Blackberry) called Hermann (Blackberry)	1 MIN.
Thursday, September 06, 2007	3:16 PM	Teitelbaum (Blackberry) called Hermann (Blackberry)	1 MIN.
Thursday, September 06, 2007	3:28 PM	Hermann (Blackberry) called Teitelbaum (Blackberry)	1 MIN.
Saturday, September 08, 2007	11:53 AM	Hermann (Blackberry) called Teitelbaum (Home)	1 MIN.
Saturday, September 08, 2007	11:53 AM	Hermann (Blackberry) called Teitelbaum (Blackberry)	2 MIN.

DATE OF EVENT	TIME	DESCRIPTION OF EVENT	Duration
Saturday, September 08, 2007	12:23 PM	Teitelbaum (Blackberry) called Hermann (Blackberry)	2 MIN.
Sunday, September 09, 2007	6:38 PM	Teitelbaum (Blackberry) called Hermann (Blackberry)	1 MIN.
Monday, September 10, 2007	6:29 AM	Teitelbaum (Blackberry) called Hermann (Blackberry)	1 MIN.
Monday, September 10, 2007	6:31 AM	Teitelbaum (Blackberry) called Hermann (Blackberry)	1 MIN.
Monday, September 10, 2007	6:40 AM	Teitelbaum (Blackberry) called Hermann (Blackberry)	3 MIN.
Monday, September 10, 2007	6:44 PM	Teitelbaum (Blackberry) called Hermann (Blackberry)	1 MIN.
Monday, September 10, 2007	7:11 PM	Teitelbaum (Blackberry) called Hermann (Blackberry)	1 MIN.
Tuesday, September 11, 2007	1:45 PM	Teitelbaum (Blackberry) called Hermann (Blackberry)	2 MIN.
Wednesday, September 12, 2007	6:50 PM	Hermann (Blackberry) called Teitelbaum (Blackberry)	1 MIN.
Wednesday, September 12, 2007	7:11 PM	Teitelbaum (Blackberry) called Hermann (Blackberry)	1 MIN.
Thursday, September 13, 2007	7:53 AM	Hermann (Blackberry) called Teitelbaum (Blackberry)	1 MIN.
Thursday, September 13, 2007	2:55 PM	Teitelbaum (Blackberry) called Hermann (Blackberry)	2 MIN.
Thursday, September 13, 2007	6:55 PM	Hermann (Blackberry) called Teitelbaum (Blackberry)	1 MIN.
Thursday, September 13, 2007	7:30 PM	Teitelbaum (Blackberry) called Hermann (Blackberry)	5 MIN.
Monday, September 17, 2007	1:45 PM	Teitelbaum (Blackberry) called Hermann (Blackberry)	1 MIN.
Monday, September 17, 2007	5:14 PM	Teitelbaum (Blackberry) called Hermann (Blackberry)	3 MIN.
Tuesday, September 18, 2007	9:15 AM	Hermann (Blackberry) called Teitelbaum (Blackberry)	5 MIN.
Wednesday, September 19, 2007	9:28 AM	Teitelbaum (Blackberry) called Hermann (Blackberry)	10 MIN.
Wednesday, September 19, 2007	6:33 PM	Teitelbaum (Blackberry) called Hermann (Blackberry)	5 MIN.
Thursday, September 20, 2007	5:11 PM	Hermann (Blackberry) called COPI (Teitelbaum's Secretary)	1 MIN.
Thursday, September 20, 2007	5:22 PM	Teitelbaum (COPI Desk Phone) called Hermann (Blackberry)	36 SEC.
Thursday, September 20, 2007	9:11 PM	Teitelbaum (Blackberry) called Hermann (Blackberry)	24 MIN.
Saturday, September 22, 2007	9:15 AM	Hermann (Blackberry) called Teitelbaum (Blackberry)	2 MIN.
Saturday, September 22, 2007	9:52 AM	Teitelbaum (Blackberry) called Hermann (Blackberry)	1 MIN.
Saturday, September 22, 2007	10:07 AM	Teitelbaum (Blackberry) called Hermann (Blackberry)	1 MIN.
Saturday, September 22, 2007	1:19 PM	Hermann (Blackberry) called Teitelbaum (Blackberry)	5 MIN.
Sunday, September 23, 2007	12:04 PM	Hermann (Blackberry) called Teitelbaum (Blackberry)	2 MIN.
Monday, September 24, 2007	4:32 PM	Teitelbaum (Blackberry) called Hermann (Blackberry)	1 MIN.

DATE OF EVENT	TIME	DESCRIPTION OF EVENT	Duration
Tuesday, September 25, 2007	12:15 PM	Teitelbaum (Blackberry) called Hermann (Blackberry)	2 MIN.
Tuesday, September 25, 2007	2:01 PM	Teitelbaum (Blackberry) called Hermann (Blackberry)	1 MIN.
Tuesday, September 25, 2007	2:45 PM	Hermann (Blackberry) called Teitelbaum (Blackberry)	2 MIN.
Wednesday, September 26, 2007	1:54 PM	Teitelbaum (Blackberry) called Hermann (Blackberry)	1 MIN.
Wednesday, September 26, 2007	6:48 PM	Teitelbaum (Blackberry) called Hermann (Home)	2 MIN.
Friday, September 28, 2007	5:42 PM	Hermann (Blackberry) called Teitelbaum (Blackberry)	1 MIN.
Friday, September 28, 2007	6:22 PM	Teitelbaum (Blackberry) called Hermann (Blackberry)	16 MIN.
Monday, October 01, 2007	2:15 PM	Hermann (Blackberry) called COPI (Teitelbaum's Secretary)	2 MIN.
Monday, October 01, 2007	3:29 PM	Teitelbaum (Blackberry) called Hermann (Blackberry)	2 MIN.
Monday, October 01, 2007	6:40 PM	Hermann (Blackberry) called Teitelbaum (Blackberry)	1 MIN.
Wednesday, October 03, 2007	12:53 PM	Teitelbaum (Blackberry) called Hermann (Blackberry)	1 MIN.
Wednesday, October 03, 2007	1:25 PM	Hermann (Blackberry) called Teitelbaum (Blackberry)	1 MIN.
Wednesday, October 03, 2007	1:43 PM	Teitelbaum (Blackberry) called Hermann (Blackberry)	4 MIN.
Wednesday, October 03, 2007	5:44 PM	Hermann (Blackberry) called Teitelbaum (Blackberry)	1 MIN.
Wednesday, October 03, 2007	5:47 PM	Teitelbaum (Blackberry) called Hermann (Blackberry)	3 MIN.
Wednesday, October 03, 2007	7:45 PM	Teitelbaum (Blackberry) called Hermann (Blackberry)	1 MIN.
Friday, October 05, 2007	5:57 PM	Teitelbaum (Blackberry) called Hermann (Blackberry)	1 MIN.
Friday, October 05, 2007	6:03 PM	Hermann (Blackberry) called Teitelbaum (Blackberry)	1 MIN.
Friday, October 05, 2007	6:36 PM	Teitelbaum (Blackberry) called Hermann (Blackberry)	20 MIN.
Monday, October 08, 2007	10:01 AM	Teitelbaum (Blackberry) called Hermann (Blackberry)	14 MIN.
Monday, October 08, 2007	1:17 PM	Teitelbaum (Blackberry) called Hermann (Blackberry)	1 MIN.
Tuesday, October 09, 2007	4:46 PM	Hermann (Blackberry) called COPI (Teitelbaum's Secretary)	1 MIN.
Wednesday, October 10, 2007	7:35 AM	Teitelbaum (Blackberry) called Hermann (Blackberry)	2 MIN.
Wednesday, October 10, 2007	7:13 PM	Teitelbaum (Blackberry) called Hermann (Blackberry)	2 MIN.
Thursday, October 11, 2007	7:45 AM	Hermann (Blackberry) called Teitelbaum (Blackberry)	2 MIN.
Monday, October 15, 2007	9:23 AM	Teitelbaum (Blackberry) called Hermann (Blackberry)	2 MIN.
Monday, October 15, 2007	10:49 AM	Hermann (Blackberry) called Teitelbaum (Blackberry)	2 MIN.
Tuesday, October 16, 2007	7:20 AM	Hermann (Blackberry) called Teitelbaum (Blackberry)	1 MIN.

DATE OF EVENT	TIME	DESCRIPTION OF EVENT	Duration
Tuesday, October 16, 2007	8:57 AM	Teitelbaum (Blackberry) called Hermann (Blackberry)	2 MIN.
Tuesday, October 16, 2007	5:51 PM	Hermann (Blackberry) called COPI (Teitelbaum's Secretary), Teitelbaum (Blackberry)	1 MIN.
Tuesday, October 16, 2007	6:33 PM	Teitelbaum (Blackberry) called Hermann (Blackberry)	1 MIN.
Wednesday, October 17, 2007	8:12 AM	Hermann (Blackberry) called Teitelbaum (Blackberry)	1 MIN.
Wednesday, October 17, 2007	6:14 PM	Hermann (Blackberry) called Teitelbaum (Blackberry)	1 MIN.
Wednesday, October 17, 2007	6:51 PM	Teitelbaum (Blackberry) called Hermann (Blackberry)	2 MIN.
Friday, October 19, 2007	9:18 AM	Teitelbaum (Blackberry) called Hermann (Blackberry)	1 MIN.
Friday, October 19, 2007	9:19 AM	Teitelbaum (Blackberry) called Hermann (Blackberry)	1 MIN.
Friday, October 19, 2007	9:26 AM	Hermann (Blackberry) called COPI (Teitelbaum's Secretary)	1 MIN.
Friday, October 19, 2007	9:41 AM	Hermann (Blackberry) called COPI (Teitelbaum's Secretary)	4 MIN.
Friday, October 19, 2007	11:21 AM	Teitelbaum (COPI Desk Phone) called Hermann (Blackberry)	108 SEC.
Saturday, October 20, 2007	10:15 AM	Teitelbaum (Blackberry) called Hermann (Blackberry)	2 MIN.
Saturday, October 20, 2007	10:31 AM	Hermann (Blackberry) called Teitelbaum (Blackberry)	15 MIN.
Sunday, October 21, 2007	4:59 PM	Teitelbaum (Blackberry) called Hermann (Blackberry)	1 MIN.
Sunday, October 21, 2007	5:17 PM	Hermann (Blackberry) called Teitelbaum (Blackberry)	2 MIN.
Monday, October 22, 2007	6:30 AM	Teitelbaum (Blackberry) called Hermann (Blackberry)	12 MIN.
Monday, October 22, 2007	9:07 AM	Hermann (Blackberry) called Teitelbaum (Blackberry)	5 MIN.
Monday, October 22, 2007	6:09 PM	Hermann (Blackberry) called Teitelbaum (Blackberry)	2 MIN.
Monday, October 22, 2007	6:10 PM	Teitelbaum (Blackberry) called Hermann (Blackberry)	1 MIN.
Tuesday, October 23, 2007	8:44 PM	Teitelbaum (Blackberry) called Hermann (Blackberry)	2 MIN.
Thursday, October 25, 2007	8:34 AM	Teitelbaum (Blackberry) called Hermann (Blackberry)	9 MIN.
Thursday, October 25, 2007	8:42 AM	Teitelbaum (Blackberry) called Hermann (Blackberry)	5 MIN.
Sunday, October 28, 2007	5:24 PM	Teitelbaum (Blackberry) called Hermann (Home)	5 MIN.
Monday, October 29, 2007	8:32 AM	Hermann (Blackberry) called Teitelbaum (Blackberry)	13 MIN.
Monday, October 29, 2007	6:03 PM	Hermann (Blackberry) called Teitelbaum (Blackberry)	1 MIN.
Monday, October 29, 2007	7:59 PM	Teitelbaum (Blackberry) called Hermann (Blackberry)	1 MIN.
Tuesday, October 30, 2007	4:08 PM	Teitelbaum (Blackberry) called Hermann (Blackberry)	1 MIN.
Tuesday, October 30, 2007	6:21 PM	Teitelbaum (Blackberry) called Hermann (Blackberry)	1 MIN.

DATE OF EVENT	TIME	DESCRIPTION OF EVENT	Duration
Wednesday, October 31, 2007	8:11 AM	Hermann (Blackberry) called Teitelbaum (Blackberry)	2 MIN.
Wednesday, October 31, 2007	8:13 AM	Teitelbaum (Blackberry) called Hermann (Blackberry)	3 MIN.
Wednesday, October 31, 2007	8:55 PM	Hermann (Blackberry) called Teitelbaum (Blackberry)	9 MIN.
Saturday, November 03, 2007	9:00 AM	Teitelbaum (Blackberry) called Hermann (Blackberry)	7 MIN.
Monday, November 05, 2007	7:32 AM	Hermann (Blackberry) called Teitelbaum (Blackberry)	2 MIN.
Monday, November 05, 2007	5:48 PM	Teitelbaum (Blackberry) called Hermann (Blackberry)	1 MIN.
Tuesday, November 06, 2007	3:50 PM	Teitelbaum (Blackberry) called Hermann (Blackberry)	2 MIN.
Tuesday, November 06, 2007	3:51 PM	Hermann (Blackberry) called Teitelbaum (Blackberry)	2 MIN.
Tuesday, November 06, 2007	5:37 PM	Teitelbaum (Blackberry) called Hermann (Blackberry)	2 MIN.
Tuesday, November 06, 2007	6:37 PM	Hermann (Blackberry) called Teitelbaum (Blackberry)	2 MIN.
Thursday, November 08, 2007	8:34 AM	Teitelbaum (Blackberry) called Hermann (Blackberry)	4 MIN.
Thursday, November 08, 2007	9:53 AM	Teitelbaum (Blackberry) called Hermann (Blackberry)	1 MIN.
Thursday, November 08, 2007	9:58 AM	Hermann (Blackberry) called Teitelbaum (Blackberry)	5 MIN.
Thursday, November 08, 2007	10:02 AM	Hermann (Blackberry) called Teitelbaum (Blackberry)	1 MIN.
Thursday, November 08, 2007	10:18 AM	Teitelbaum (Blackberry) called Hermann (Blackberry)	33 MIN.
Thursday, November 08, 2007	1:16 PM	Hermann (GORR Office Phone) called Teitelbaum (Blackberry)	3 MIN.
Thursday, November 08, 2007	1:25 PM	Teitelbaum (Blackberry) called Hermann (Blackberry)	4 MIN.
Thursday, November 08, 2007	2:33 PM	Teitelbaum (Blackberry) called Hermann (Blackberry)	1 MIN.
Thursday, November 08, 2007	2:53 PM	Hermann (Blackberry) called Teitelbaum (Blackberry)	10 MIN.
Thursday, November 08, 2007	5:13 PM	Teitelbaum (Blackberry) called Hermann (Blackberry)	5 MIN.
Friday, November 09, 2007	9:03 AM	Hermann (Blackberry) called Teitelbaum (Blackberry)	1 MIN.
Friday, November 09, 2007	9:27 AM	Teitelbaum (Blackberry) called Hermann (Blackberry)	4 MIN.
Friday, November 09, 2007	2:39 PM	Teitelbaum (Blackberry) called Hermann (Blackberry)	1 MIN.
Friday, November 09, 2007	3:01 PM	Hermann (Blackberry) called Teitelbaum (Blackberry)	4 MIN.
Sunday, November 11, 2007	3:08 PM	Teitelbaum (Blackberry) called Hermann (Blackberry)	12 MIN.
Monday, November 12, 2007	6:11 PM	Teitelbaum (Blackberry) called Hermann (Blackberry)	7 MIN.
Tuesday, November 13, 2007	9:21 AM	Teitelbaum (Blackberry) called Hermann (Blackberry)	4 MIN.
Tuesday, November 13, 2007	9:33 AM	Teitelbaum (Blackberry) called Hermann (Blackberry)	1 MIN.

DATE OF EVENT	TIME	DESCRIPTION OF EVENT	Duration
Tuesday, November 13, 2007	12:52 PM	Teitelbaum (Blackberry) called Hermann (Blackberry)	10 MIN.
Tuesday, November 13, 2007	5:52 PM	Teitelbaum (Blackberry) called Hermann (Blackberry)	1 MIN.
Friday, February 08, 2008	6:49 PM	Hermann (Blackberry) called Teitelbaum (Blackberry)	1 MIN.
Thursday, February 28, 2008	7:40 AM	Hermann (Blackberry) called Teitelbaum (Blackberry)	1 MIN.
Wednesday, March 19, 2008	11:18 AM	Hermann (Blackberry) called Teitelbaum (Blackberry)	3 MIN.

Appendix D: Examples of Commission Confidentiality Agreements

JOHN D. FEERICK
CHAIR

DANIEL R. ALONSO
JOHN M. BRICKMAN
ANDREW G. CELLI, JR.
RICHARD D. EMERY
DANIEL J. FRENCH
ROBERT J. GIUFFRÀ, JR.
DAVID L. GRUENBERG
HON. JAMES P. KING
HON. HOWARD A. LEVINE
LORETTA E. LYNCH
JOHN T. MITCHELL
MEMBERS



NEW YORK STATE
COMMISSION ON PUBLIC INTEGRITY

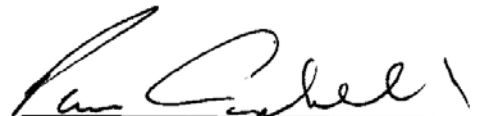
540 BROADWAY
ALBANY, NEW YORK 12207

HERBERT TEITELBAUM
EXECUTIVE DIRECTOR

PHONE: (518) 408-397
FAX: (518) 408-397

This will confirm my understanding that information I am likely to obtain in the course of my employment with the Commission on Public Integrity is of a confidential nature. I agree to protect the confidentiality of that information against disclosure to any source outside the Commission unless authorized to do so by the Chair and/or the Commission, or required to do so pursuant to law.

Dated: October 22, 2007


PAUL CAMPBELL

NEW YORK STATE ETHICS COMMISSION
CONFIDENTIALITY AGREEMENT

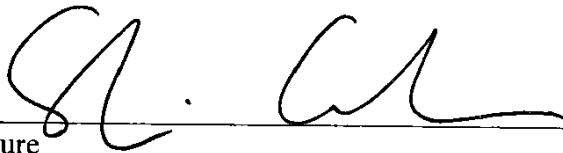
As a worker in the offices of the New York State Ethics Commission and thereafter the New York State Commission on Public Integrity (together "Commission"), I realize that I may be exposed to confidential matters of all types. These include, but are not limited to, identity of callers, requests for advisory opinions submitted to the Commission, Advisory Opinions issued by the Commission, informal guidance issued by the Commission to callers, certain information contained in the Annual Statements of Financial Disclosure which are filed with the Commission, complaints which are received by the Commission alleging violations of the State Ethics Law, interviews of subjects of investigations and witnesses, and other documentary information discovered during investigations.

I understand that preserving this confidentiality is absolutely mandatory. I will not in any way discuss or disclose my work or other confidential information with anyone outside of the workplace, including but not limited to, current or future employers, family, friends, colleagues, and the media.

I HAVE READ THIS CONFIDENTIALITY AGREEMENT, FULLY UNDERSTAND THE AGREEMENT, AND HEREBY AGREE TO ABIDE BY THE TERMS AND THE SPIRIT OF THIS AGREEMENT.

Name: **SHARI CALNERO**

Signature



Date

9/20/07

Appendix E: Feerick Resignation



FORDHAM UNIVERSITY
THE SCHOOL OF LAW

JOHN D. FEERICK
FOUNDER AND DIRECTOR

FEERICK CENTER FOR
SOCIAL JUSTICE AND
DISPUTE RESOLUTION

January 12, 2009

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

Dear Governor:

I hereby tender my resignation as a member of the New York State Commission on Public Integrity, effective at the close of business on February 12, 2009.

It is very difficult for me to make this decision but my health and energy have declined and I no longer believe that I can give my responsibilities the attention they require. As you are aware, I am also a professor at Fordham Law School and founding director of its Feerick Center for Social Justice.

My tenure as chair of both the ethics commission and this Commission has not been without its challenges, but amidst the challenges, I will forever be grateful to the staffs and members of these commissions for their outstanding service. It has been a special privilege for me to come to know the men and women of the Commission's staff and to serve with the Commission members, who give enormous uncompensated volunteer time to the people of the State. I feel proud of all that has been accomplished by the Commission in its many areas of responsibility, as reflected in its reports and daily work, and how it has done its work in a dispassionate and non-partisan manner. I feel special gratitude to Judge James King and Executive Director Herbert Teitelbaum for their invaluable contributions in helping achieve an effective transition of the lobbying and ethics commissions into this Commission. Their support and that of Judge Levine have been particularly meaningful to me and I wish to acknowledge them in this parting letter as well as the other members of the Commission and the senior staff for their dedicated service.

I wish you well and every success in discharging the important responsibilities of your office and I thank you for your support of the work of the Commission.

Respectfully,

John D. Feerick