

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



**EXECUTIVE SUMMARY
AND FINDINGS**

**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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State Inspector General**

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.

Toohr 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.

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 Trooperate 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.