

1 STATE OF NEW YORK

2 OFFICE OF THE INSPECTOR GENERAL

3 -----  
4 AN INVESTIGATION CONCERNING ALLEGATIONS

5 THAT HERBERT TEITELBAUM, EXECUTIVE DIRECTOR

6 OF THE COMMISSION ON PUBLIC INTEGRITY,

7 DISCLOSED INFORMATION CONCERNING THE

8 COMMISSION'S INVESTIGATIONS  
9 -----

10  
11 VOLUME II

12  
13 STENOGRAPHIC MINUTES OF CONTINUING EXAMINATION

14 conducted of TERRYL BROWN CLEMONS, pursuant to Notice, on

15 the 1st day of December, 2008, at the State of New York

16 Office of the Inspector General, Empire State Plaza, Agency

17 Building 2, 16th Floor, Albany, New York, commencing at 2:31

18 p.m.; before THERESA L. KLOS, a Shorthand Reporter and

19 Notary Public within and for the State of New York.  
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## 1 APPEARANCES:

2 STATE OF NEW YORK  
3 OFFICE OF THE INSPECTOR GENERAL  
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7 (518) 474-1010  
8 BY: JOSEPH FISCH, ESQ.  
9 Inspector General

10 -and-

11 SHERRY L. AMAREL, MS, CFE,  
12 Deputy Chief Investigator

13 -and-

14 JONATHAN MASTERS, ESQ.  
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16 NIXON PEABODY, LLP  
17 677 Broadway, 10th Floor  
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19 (518) 427-2664  
20 On behalf of Terryl Brown Clemons  
21 BY: ANDREW C. ROSE, ESQ.  
22  
23  
24  
25

## 1 P R O C E E D I N G S

2 MR. FISCH: Today is December 1st, 2008. I  
3 am Joseph Fisch, Inspector General of New York  
4 State. Accompanying me are two members of the IG  
5 staff, Sherry Amarel and Jonathan Masters. And  
6 the witness today for a continued examination is  
7 Terryl Brown Clemons who is appearing once again  
8 voluntarily in response to my call with Attorney  
9 Mr. Rose.

10 Would you note your appearance, please?

11 MR. ROSE: Sure. Again, it's Andy Rose. I'm  
12 with Nixon Peabody. I'm here again today on  
13 behalf of Ms. Brown Clemons. And so long as this  
14 is a continued interview, Judge, I will just say  
15 that we're here under the same stipulations we  
16 made the first time around.

17 MR. FISCH: Thank you.

18 Thereupon

19 TERRYL BROWN CLEMONS,  
20 (Being previously duly sworn, was examined  
21 and testified as follows:)

22

23 EXAMINATION

24 BY MR. FISCH:

25 Q. Again, you're still under oath, Ms. Clemons. Do you

1 understand?

2 A. Yes.

3 Q. Before we went on the record, I advised you of the  
4 subject of this continued examination, and without repeating  
5 all of the portions of the testimony we discussed with you  
6 on September 17th, the nature of my office's investigation  
7 and that inquiry was a referral from the Albany DA that  
8 Herbert Teitelbaum, Executive Director of the Commission on  
9 Public Integrity, had disclosed information concerning the  
10 Commission's investigation to Robert Hermann. You recall  
11 our earlier examination?

12 A. I do.

13 Q. And there came a time -- I'm trying to make this  
14 short so we don't have to repeat it -- in November of 2007,  
15 around the 1st, November 2nd of 2007, that Lloyd  
16 Constantine had communicated to members of the Executive  
17 Chamber, Richard Rifkin and others, a conversation he had  
18 had the day before with Robert Hermann. You're familiar  
19 with that?

20 A. I am.

21 Q. Okay. And the substance of that conversation has  
22 already been incorporated in the minutes of your examination  
23 of September 17th, so I need not repeat that.

24 Now, did there come a time where you learned of  
25 the conversation that Hermann had with Lloyd Constantine?

1 A. On two occasions. The first was, I guess, early  
2 November when -- shortly after Hermann talked to Lloyd  
3 Constantine. And the reason that I was being given that  
4 information is because as a result of, I guess, the referral  
5 being made by Public Integrity to the DA's office and the  
6 question was whether or not Darren Dopp, the former  
7 communications director, had perjured himself and whether or  
8 not attorneys from the Chamber may have coerced that  
9 testimony that Darren had given.

10 Because the attorneys in the Chamber who were  
11 being questioned in connection with it had earlier been  
12 handling all of the Troopergate matters, they could no  
13 longer handle this particular matter. And so I and Richard  
14 Rifkin were asked to work with the DA's office while they  
15 did an investigation as to whether or not Darren Dopp  
16 perjured himself.

17 So that was the first time I was given the  
18 information, but it wasn't from Lloyd. It was, I think,  
19 from Richard and possibly David Nocenti.

20 Q. Now, what Constantine had communicated to Rifkin and  
21 to others was virtually all what you've said was part of the  
22 Hermann conversation with Constantine?

23 A. Correct.

24 Q. Possible perjury by Dopp, possible complicity by  
25 people from the Chamber in the composition of Dopp's

1 affidavit to the Attorney General --

2 A. Correct.

3 Q. -- and inconsistencies between that?

4 A. That's the written statement that was provided to the  
5 Attorney General versus testimony that Darren Dopp had given  
6 to the Public Integrity Commission.

7 Q. Okay. And when Hermann communicated this to  
8 Constantine, I take it nobody in the Chamber was aware that  
9 this matter had been referred to the DA; is that correct?

10 A. Prior to that communication, no.

11 Q. And this obviously was very confidential information?

12 A. Correct.

13 Q. Did you know at that time who was present with Dopp  
14 when he composed his affidavit to the Attorney General?

15 A. At that time, no. No.

16 MR. ROSE: We're talking about November of  
17 2007?

18 MR. FISCH: Yes.

19 A. No.

20 Q. Was it well-known within the Chamber that Nocenti and  
21 Pope had been with Dopp when that affidavit was composed?

22 A. I would have to say no, because as attorneys, you  
23 sort of -- when you're doing investigations or you're  
24 preparing for them, you don't necessarily share that with  
25 everybody around you. So it was only the people who were

1 involved who needed to know. And --

2 Q. It's my -- I'm sorry.

3 A. Just to speed things up, the reason that I know now  
4 who was involved is because as a result of gathering the  
5 documents that the DA requested in connection with that  
6 investigation and then also --

7 MR. ROSE: Off the record.

8 (Discussion off the record.)

9 (An excerpt of the record was reread.)

10 A. (Continuing) -- as a result of collecting the  
11 documents and then the DA would contact me when they wanted  
12 to interview certain witnesses and I would connect, you  
13 know, the witness' attorney to the DA and make those  
14 arrangements and gather the documents. In reviewing the  
15 documents, it became clear who was involved that weekend.

16 Q. In collecting the documents, does that include the  
17 affidavit?

18 A. Yes.

19 Q. Did you take note of the date -- what day of the week  
20 that was?

21 A. I know that it was --

22 MR. ROSE: Excuse me. Can I clarify? The  
23 date of the affidavit or the date that she  
24 noted --

25 MR. FISCH: The date of the affidavit.

1 MR. ROSE: Okay.

2 A. The date of the affidavit. I know everything  
3 transpired the weekend like July 20th, 21st.

4 Q. Do you know what day of the week?

5 A. It was on a Sunday. I know it was on a Sunday.

6 Q. Presumably, it would not be a time or place that a  
7 lot of people were around?

8 A. In counsel's office, we're always there on Sundays.

9 Q. You picked up points for that, okay. But as far as  
10 you recall now, at the time the affidavit was executed, it  
11 was not well-known in Chambers as far as you know?

12 A. As far as I know, no, it was not well-known.

13 Q. So November, Constantine communicates the  
14 conversation with Hermann. And at some time thereafter, did  
15 you speak to him, Constantine?

16 A. Yes. Just to put things into context, so after the  
17 November meeting when Richard Rifkin and I were assigned to  
18 work with the DA in connection with the investigation, the  
19 investigation's focus was on whether or not Dopp had  
20 perjured himself and whether or not he was coerced. And  
21 that was what the DA labeled Investigation D.

22 At some point, either January or February, I want  
23 to say beginning of February -- I'm not really certain --  
24 they commenced what they called Investigation D-1. And  
25 Investigation D-1 was investigating whether or not Herb

1 Teitelbaum had committed any sort of criminal violation by  
2 providing information to Bob Hermann about the Public  
3 Integrity investigation.

4           When the DA decided to commence D-1, Linda Griggs,  
5 who was the Assistant District Attorney with whom I had  
6 almost all of my interactions, contacted me to say that they  
7 were doing this investigation, that they would want  
8 witnesses from the Chamber and that they wanted to talk to  
9 Lloyd Constantine. Richard Rifkin and I communicated that  
10 to them. Richard Rifkin had an attorney or was retaining an  
11 attorney and Lloyd had decided that he would not.

12 Q.       Okay. So this was before he went to the DA?

13 A.       Correct.

14 Q.       Now, the initial contact between Hermann and  
15 Constantine was November of 2007, around November 1st. You  
16 then described the meeting with the DA and the issue of  
17 Dopp's testimony, the perjury and so on. I believe Rifkin  
18 at that meeting also disclosed to the DA that he was aware  
19 of the referral, that the Chamber was aware that the  
20 Commission on Public Integrity had referred this to the DA;  
21 correct?

22 A.       I'm not clear on --

23 Q.       November 1st, Hermann, Constantine, and then  
24 Constantine relates this to Rifkin and others?

25 A.       Correct.

1 Q. Some time thereafter, within perhaps a week or so,  
2 there's an actual meeting with the DA?

3 A. Correct.

4 Q. And at that meeting, the DA's advised that the  
5 Chamber has this information?

6 A. Right, because after -- information was communicated  
7 to Lloyd Constantine. The Chamber wasn't sure ethically  
8 what they should or should not do. They contacted Herb  
9 Lieberman who was ethics counsel --

10 Q. That's Hal?

11 A. Hal, sorry. Hal Lieberman, that's correct. And Hal  
12 advised them that they should let the DA know right away.  
13 And it is my belief that -- and this is, you know, a little  
14 hazy -- Richard Rifkin was one of the folks who went down to  
15 the DA's office to have the meeting to say, "We've been  
16 apprised of this information." So the DA was aware that  
17 Richard obviously knew.

18 Q. When you were present, was there any communication  
19 with Teitelbaum?

20 MR. ROSE: In what time period?

21 MR. FISCH: At the meeting with the DA. I'm  
22 sorry.

23 MR. ROSE: Okay.

24 A. At the meeting with the DA -- were there -- I wasn't  
25 at that meeting.

1 MR. ROSE: That's what I was going to ask.

2 Were you at the meeting?

3 Q. You were not at that meeting. So what was your role  
4 at this point? You described gathering --

5 A. By the time -- sorry.

6 Q. Sorry. You described gathering the documents?

7 A. Yes.

8 Q. Okay.

9 A. So that was after -- so when I was first apprised of  
10 this, you know, information given to Lloyd Constantine, I  
11 was being apprised because I was being asked to take over  
12 that investigation, but it was after the disclosure to Lloyd  
13 Constantine and also after the disclosure to the District  
14 Attorney's office.

15 Q. And so you spoke to Constantine?

16 A. No. I didn't speak to Lloyd until in terms of -- you  
17 know.

18 Q. The DA is ready?

19 A. Right. When the DA was ready to interview Lloyd was  
20 the first time Lloyd and I ever had a conversation about,  
21 you know, "What happened, Lloyd? How did you come across  
22 this information? What was said to you?"

23 Q. And at that point, you're aware of what Constantine  
24 described as two time periods?

25 A. Yes.

1 Q. The initial one where there's no question but Hermann  
2 identified Teitelbaum as the source?

3 A. Correct, but I didn't know that -- I wasn't aware of  
4 that fact when I was first pulled into the investigation. I  
5 became aware of that fact only in connection with talking to  
6 Lloyd when he was preparing to go before the District  
7 Attorney.

8 Q. And the second time period is the November 1st time  
9 period?

10 A. Correct.

11 Q. Okay. And what were you asking Constantine about?  
12 What was the nature of your conversation?

13 A. The nature of the conversation was really kind of a  
14 witness prep.

15 MR. ROSE: Can I stop you, Judge? I'm sorry.  
16 I'm still hung up on the dates. I think you  
17 prefaced that question with saying the second time  
18 period was November.

19 MR. FISCH: No. What I said was this:

20 Q. Constantine described two periods, at least to the  
21 DA. He described a third and fourth to us. But to the DA,  
22 the first one, Teitelbaum says, "You guys should turn the  
23 records over and all of that"; all right? And then November  
24 1st when Hermann takes Constantine out of a meeting and  
25 talks about the referral to the DA. Correct?

1 A. Okay.

2 MR. ROSE: Can I just ask a question? We'll  
3 see what the answer is.

4 About when did you have this prep session  
5 with Constantine?

6 THE WITNESS: The prep session with  
7 Constantine was some time in February.

8 MR. FISCH: When he went to the DA.

9 THE WITNESS: Just before he went to the DA.

10 MR. ROSE: Okay.

11 THE WITNESS: But in that prep session, he  
12 covered the two time periods that --

13 MR. FISCH: Correct.

14 THE WITNESS: -- the Judge is referring to.  
15 But that was my -- and I think that it's  
16 important, I think, to understand that when Linda  
17 Griggs called to say, "I want to take Lloyd and  
18 Richard's testimony", and so I would coordinate,  
19 get their attorneys, do whatever.

20 BY MR. FISCH:

21 Q. Lloyd and Rifkin?

22 A. Lloyd and Richard Rifkin. She wanted to take their  
23 testimony in connection with D-1. After I had spoken to  
24 them and, you know, asked, you know, "Richard, are you  
25 planning to get an attorney? Who's your attorney? I can

1 call your attorney and connect him to Linda," da-da-da, same  
2 with Lloyd; he was going in unrepresented.

3 Now, before I coordinated the date that he would  
4 go in with Linda, Linda called to say, "I also need a waiver  
5 from you for Bob Hermann" who had already testified but sort  
6 of stopped at a particular point. I was unaware that Bob  
7 Hermann had gone in and our practice had been to, you know,  
8 work with the attorneys to get debriefings to get a sense of  
9 sort of what was going on in the investigation to the extent  
10 that we were allowed to know.

11 In the debriefing with Bob Hermann's attorney,  
12 because I had to reach out to him to find out like about the  
13 waiver and what they were doing and da-da-da, and by the  
14 way, "What happened," he gave me a brief description of what  
15 Bob Hermann told the DA, which was different from the story  
16 that I had heard in November when I was first told about the  
17 referral.

18 And because there was a difference in stories and  
19 I knew that Lloyd was going in unrepresented, I didn't know  
20 what my obligations were, if any, to Lloyd.

21 So I then reached out, Steve and I, to Hal  
22 Lieberman again and said, "What are we obligated to do?  
23 There are conflicting stories. I have somebody who's going  
24 in unrepresented and am I obligated to tell him this? Am I  
25 prohibited from telling him this? What do I do?"

1           And he basically said, "There's no obligation. As  
2 a matter of fact, you can't say anything."

3           And so I just lay that groundwork, because when we  
4 did prep Lloyd, we were amazingly careful about asking him  
5 questions and not wanting to sort of disclose, you know, any  
6 information that we had gotten from Bob Hermann's attorney.

7           And so the questions were really, and this is not  
8 verbatim, but kind of "How did you come across the  
9 information? What were the circumstances?"

10 Q.       Are you sure Hermann said that Teitelbaum told him  
11 this?

12 A.       I don't know that I asked him specifically that,  
13 because he was clear -- there was no question from what  
14 Lloyd said that Herb Teitelbaum had given Bob Hermann this  
15 information. And I may have asked or Steve may have asked,  
16 because we were kind of doing -- Steve Krantz -- a tag team,  
17 you know, whether Hermann ever explained how he came across  
18 the information, and I don't recall the answer.

19           But I think that he was under the impression --  
20 that Constantine seemed to be under the impression that  
21 Teitelbaum told Hermann. And part of the reason that he  
22 came to that conclusion was based upon what had transpired  
23 in the summer. And so he just, I guess, assumed that he got  
24 the information the same way. And that is a long way of --  
25 but just to give you the background of what was going on

1 during that time.

2 Q. What was your reaction when you heard Hermann's  
3 story? You have a smile on your face.

4 A. Well, I was surprised by the story.

5 Q. Were you persuaded?

6 MR. ROSE: You're getting this from his  
7 lawyer, right?

8 A. Yeah, I would say that, because it was secondhand  
9 and, you know, I didn't know his lawyer and I didn't -- you  
10 know, really just give me a general background.

11 Just put it this way: If Bob Hermann had provided  
12 me with the information that his attorney gave to me, I  
13 probably would have had more questions. And without being  
14 able to ask Bob Hermann more questions, I had questions  
15 about --

16 Q. About the veracity of that explanation?

17 A. Yes.

18 Q. Okay. Was there ever any follow-up by you, anybody  
19 in counsel's office or anybody in the Chamber, with Hermann  
20 about that?

21 A. No, because one, he was represented by counsel and,  
22 secondly, I don't know that they ever -- I don't recall  
23 Linda ever coming back and pinning down the day when they  
24 were gonna meet with him again and needing the waiver.

25 And I think part of -- you know, you'll see

1 from -- Lloyd went in the end of February. March 10th,  
2 there's news about the former governor and a few days later,  
3 he resigns and so that changed the entire landscape of the,  
4 I guess, desire to pursue certain investigations by the DA.  
5 And so I don't think to them it was as important as it had  
6 been.

7 Q. Did Hermann ever volunteer anything to you even  
8 though not solicited by you?

9 A. No.

10 MR. FISCH: Off the record.

11 (Discussion off the record.)

12 MR. FISCH: I want to thank you for coming  
13 and, on the record, congratulations on your  
14 well-deserved appointment.

15 THE WITNESS: Thank you.

16 (Whereupon, at 3:04 p.m., the proceedings in  
17 the above-entitled matter were concluded.)

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C E R T I F I C A T I O N

I, **THERESA L. KLOS**, Shorthand Reporter and Notary  
Public within and for the State of New York, do hereby  
CERTIFY that the foregoing record taken by me at the time  
and place noted in the heading hereof is a true and accurate  
transcript of same, to the best of my ability and belief.

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THERESA L. KLOS

Dated: December 18, 2008.

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