

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF NEW YORK
OFFICE OF THE INSPECTOR GENERAL

AN INVESTIGATION CONCERNING ALLEGATIONS
THAT HERBERT TEITELBAUM, EXECUTIVE DIRECTOR
OF THE COMMISSION ON PUBLIC INTEGRITY,
DISCLOSED INFORMATION CONCERNING THE
COMMISSION'S INVESTIGATIONS

STENOGRAPHIC MINUTES OF EXAMINATION
conducted of TERRYL BROWN CLEMONS, held on the 17th
day of September, 2008, at the offices of STATE OF NEW
YORK OFFICE OF THE INSPECTOR GENERAL, Empire State
Plaza, Agency Building 2, 16th Floor, Albany, New
York, commencing at 11:05 a.m., before Diane
Daly-Gage, a Shorthand Reporter and Notary Public in
and for the State of New York.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES:

STATE OF NEW YORK
OFFICE OF THE INSPECTOR GENERAL
Empire State Plaza
Agency Building 2, 16th Floor
Albany, New York 12223
(518) 474-1010
BY: JOSEPH FISCH, ESQ.

-and-

Sherry Amarel, Principal Investigator

NIXON PEABODY, LLP
677 Broadway, 10th Floor
Albany, New York 12207
(518) 427-2664
On behalf of Terryl Brown Clemons
BY: ANDREW C. ROSE, ESQ.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

P-R-O-C-E-E-D-I-N-G-S

MR. FISCH: Today is Wednesday, September 17th. I'm Joseph Fisch, State Inspector General. We are in my Albany office, Agency Building 2, 16th floor. Accompanying me is Sherry Amarel from my office. Present is Terryl Brown Clemons, and counsel, will you note your appearance for the record.

MR. ROSE: Yes. I'm Andrew Rose for the firm of Nixon Peabody. I'm here on behalf of Ms. Brown Clemons today.

Let me state for the record that Ms. Brown Clemons is not here under subpoena today, but rather testifying voluntarily to cooperate with the Inspector General's investigation. And for that limited purpose, certainly she is willing to waive certain privileges that may be available to her, such as attorney-client and public interest, but in all other respects reserves her rights.

MR. FISCH: I was going to say you are appearing voluntarily in response to my telephone call and you consent to the examination being recorded stenographically?

MS. BROWN CLEMONS: I do.

1 MR. FISCH: All right. I will tell you
2 all of my interviews are being conducted under
3 oath, so will you rise and be sworn, please.

4 TERRYL BROWN CLEMONS,

5 (having been first duly sworn, was examined and
6 testified as follows:)

7 EXAMINATION

8 BY MR. FISCH:

9 Q Ms. Brown, you are currently Acting Counsel for the
10 Governor?

11 A I am.

12 Q Can you tell us a little bit about your background
13 after law school?

14 A After law school I actually worked in Europe for a
15 little while. Joined the State -- I'm going to do a
16 brief background. Joined the State in 1995, worked
17 for then Attorney General Vacco. Did defensive
18 litigation, then moved to the affirmative litigation
19 side. Was Deputy Bureau Chief of the Civil Rights
20 Bureau, then became Assistant Attorney General for
21 the Division of Public Advocacy. Remained in that
22 role until December of 2006, and January 2007 I
23 moved to Albany. I joined then Governor Spitzer as
24 First Assistant Counsel. Remained in that position
25 until June 30th, I believe of this year, 2008, when

1 I became Acting Counsel to Governor Paterson.

2 Q I believe I told you by telephone, and you may have
3 known otherwise, I am conducting an investigation
4 based upon a referral from the Albany D.A. By
5 letter of August 6th the D.A. had asked my office to
6 investigate allegations that Herbert Teitelbaum, the
7 Executive Director of the Commission on Public
8 Integrity, disclosed inappropriately confidential
9 information concerning the activities of the
10 Commission? You're aware of that?

11 A I am aware, yes.

12 Q When did you first become aware of those
13 allegations?

14 A Of which allegations?

15 Q Allegations that the Executive Director of
16 Commission on Public Integrity had been disclosing
17 information concerning the investigation.

18 A I believe that was in November of 2007 is when I
19 became aware.

20 Q Under what circumstances?

21 A The then Counsel to the Governor, David Nocenti and
22 Special Counsel to the Governor, it was Governor
23 Spitzer, Richard Rifkin came into my office and told
24 me.

25 Q Okay. And they advise you of how they learned of

1 those allegations?

2 A I do know recall how they themselves learned of the
3 allegations.

4 Q Did they tell you they had been advised this by
5 Lloyd Constantine?

6 A Yes.

7 Q Okay. And do you want to take it from there? You
8 found out about this from Rifkin, I believe you
9 said?

10 A Richard Rifkin.

11 Q Okay.

12 A David Nocenti.

13 Q And Nocenti. And what happened after that?

14 A They advised me that Herb Teitelbaum had provided
15 information to Bob Hermann and that the information
16 was in the nature of the Public Integrity Commission
17 making a referral to the District Attorney's Office,
18 District Attorney Soares, and that the concern of
19 the referral was based upon inconsistencies and
20 statements made by Darren Dopp in his written
21 statement to the Attorney General versus his, I
22 guess, testimony to the Public Integrity Commission.

23 Q Okay. And the information was supposed to come
24 Teitelbaum to Hermann and Hermann and Constantine,
25 is that your understanding?

1 A Yes.

2 Q And then Constantine brought this to the attention
3 of Rifkin and others, essentially?

4 A That piece of it, I'm not clear on.

5 MR. ROSE: Is that your understanding or
6 do you have a specific recollection of that?

7 MS. BROWN CLEMONS: I don't have a
8 specific recollection of exactly how they got
9 the information.

10 Q Okay. Was there also a discussion of the need to
11 advise the District Attorney that people in the
12 Executive Chamber are now privy to information that
13 perhaps they should not have had?

14 A Yes. But by the time they spoke to me, that had
15 actually occurred. So they, David and Richard, had
16 this information. I know that earlier, because I
17 believe that the conversation that they had with me
18 was on a Monday or a Tuesday, but I don't know the
19 exact date, I remember being told that they had
20 become aware of this information on a Friday, that
21 they contacted outside Ethics counsel.

22 Q Hal Lieberman?

23 A Correct. And he advised them that they needed to
24 disclose that information to D.A. Soares right away
25 and that they had spent the weekend tracking down

1 D.A. Soares. And that by the time they came to my
2 office they had actually met with him and he
3 confirmed that a referral had been made that he was
4 opening this investigation. And that there was also
5 a piece of it, in addition to the possible perjury
6 piece, there was a concern that members of the
7 Chamber may have coerced Darren into making the
8 statement and because David Nocenti, Peter Pope and
9 Sean Maloney had been working on that Trooper Gate
10 matter, that they were now going to be removed from
11 this particular investigation, and I and Richard
12 Rifkin would be in charge of managing the Soares
13 investigation and the Public Integrity
14 investigation.

15 Q Was it your understanding that Hermann had disclosed
16 to Constantine, not only the referral to the D.A. by
17 the Commission on Public Integrity, but also that
18 people at the Chamber might have been complicit in
19 the composition of the Dopp statement?

20 A That was my understanding, yes.

21 Q And that all of this came from Hermann?

22 A Correct.

23 Q Was anything said about Hermann's condition
24 physically when he conveyed this to Mr. Constantine?

25 A At that meeting, no.

1 Q Okay. You know what I'm getting at, I think?

2 A Hum-hum.

3 MR. ROSE: Well, I don't. So let's hear
4 what it is.

5 MR. FISCH: You don't have to know
6 everything.

7 MR. ROSE: Yes, I do.

8 BY MR. FISCH:

9 Q All right. So there's a meeting with the D.A.
10 You're not present at that?

11 A I'm not.

12 Q Okay. Were you made aware, because now you're a key
13 player in terms of the Chambers...

14 A Interaction liaison with the D.A.'s Office, yes.

15 Q Okay. I mean Nocenti is isolated; correct?

16 A Correct.

17 Q So you're at least Acting Counsel or you're First
18 Counsel?

19 A I'm First Assistant.

20 Q Okay. What else did the Chamber do at that point?

21 MR. ROSE: Excuse me, Judge. What else
22 did the Chamber do or what else did the witness
23 do?

24 Q Well, are you aware of what else was done by people
25 at the Chamber, Executive Chamber?

1 MR. ROSE: Any particular people or just
2 anybody?

3 Q Anybody in the Executive Chamber?

4 A No.

5 Q Or you?

6 A No.

7 Q Did you do anything else?

8 A I mean after that I became the liaison. So to the
9 extent that D.A. Soares wanted witnesses, wanted
10 documents, any of that, you know, met with us from
11 time to time, I would handle that, Richard and I.
12 So we were the ones that got all of the documents.

13 To the extent that anyone went in and they were
14 unrepresented, we would coordinate, you know,
15 getting them to the D.A.'s Office. To the extent
16 that somebody was called initially and then got
17 counsel, we would, you know, put -- and it was
18 primarily Linda Gibbs.

19 MS. AMAREL: Griggs.

20 A Griggs. Gibbs is New York City. She was the lead
21 D.A., Assistant D.A. on the case. So most of my
22 interactions were with her.

23 Q Okay. Did you speak to Hermann about this?

24 A No, no.

25 Q At any time?

1 A I guess you have to be more specific.

2 Q From November of 2007 until today, September 17th,
3 have you spoken to Hermann about this?

4 A I would say during -- initially, no. At some point
5 when I was called upon -- coordinating the witnesses
6 and what we did was we provided the D.A.'s Office
7 with limited waivers.

8 Q With what?

9 A Limited waiver agreements so that folks could come
10 in and sort of testify fairly freely and not run up
11 into the attorney-client privilege or other
12 privileges, so we waived that. So each time they
13 would get -- call a witness, we would execute a
14 waiver agreement.

15 Q You were about to say something, then you saw the
16 expression on my face that I was ready to jump in
17 with another question. So continue your answer.

18 A Okay. So Hermann came to my attention because
19 apparently he had gone in and was interviewed by the
20 D.A. and had not alerted myself or Richard Rifkin to
21 that. And so his testimony, he only could testify
22 so far and then he raised the attorney-client
23 privilege. And so Linda calls me to say, by the
24 way, this occurred. So that was my first sort of
25 interaction with Hermann. Because then I reached

1 out to Hermann to say, I understand you went in.
2 Are you represented? Should I talk to your
3 attorney? I understand that they might want a
4 waiver. And that's when I spoke to E. Stewart
5 Jones.

6 Q Other than speaking to him in connection with the
7 waiver, did you talk to him about the substance of
8 the allegations?

9 A No.

10 Q At any time?

11 A No.

12 Q Okay.

13 A And just for clarity. He did call me maybe three
14 weeks ago after you called him to just say, I just
15 want to let you know I'm going into the IG's Office.
16 But we never had anything substantive.

17 Q He called to tell you what?

18 A That he had been called to...

19 Q Come before me?

20 A Correct.

21 Q Okay. Did you have any other role that you played
22 in connection with this very narrow -- I'll rephrase
23 that.

24 Did you have any other role, did you play
25 any other role in connection with any aspect of the

1 investigation of the Hermann to Constantine
2 information? Do you want me to rephrase that?

3 MR. ROSE: If this were a deposition I
4 guess I'd object to form because I'm not
5 certain I know what it means.

6 Q All right. The D.A. started taking testimony of
7 witnesses in connection with this allegation; is
8 that correct?

9 A In connection with the referral.

10 Q In connection with the referral and the connection
11 with the allegations that Teitelbaum had provided
12 information?

13 A That happened later on in the process. Because as I
14 stated earlier, this was in November that I had the
15 initial conversation that I then began to be the
16 point person for the Executive Chamber. D.A.
17 Soares' focus really wasn't on the disclosure of the
18 information.

19 Q I understand.

20 A It was on...

21 Q Possible perjury or false statements?

22 A Right. So most of the interaction I had was related
23 to getting witnesses for that matter. At some point
24 he then began his investigation into, you know, the
25 disclosure of information. And I want to say that

1 was probably February.

2 Q Of this year?

3 A Yes.

4 Q Okay. Did you then enter that picture?

5 MR. ROSE: And again, what's the question?

6 I'm not sure I know what the question is.

7 Q We are now in February of 2008 when the D.A. is
8 beginning to focus or focusing on the allegations of
9 the disclosures by Teitelbaum to Hermann; correct?

10 A Yes.

11 Q And he's taking testimony. Were you involved in any
12 aspect of that?

13 A The same as for the other coordinating; getting
14 witnesses there. And I think you should know that
15 they weren't -- while there were two separate
16 investigations, there was an Investigation D and an
17 Investigation D-1, some of the witnesses were the
18 same. So he might actually ask -- have questions
19 about D and questions about D-1 in the same hearing.

20 Q In connection with D-1, did you play any role in
21 connection with the testimony or making testimony
22 available or anything like that?

23 A I would say the same as, you know, getting the
24 witnesses there. I guess I'm not sure what you
25 mean.

1 Q Did there come a time when the D.A. advised you that
2 he wanted to refer Constantine's testimony to the
3 Ethics Commission?

4 A I don't recall that.

5 Q Have you ever needed Constantine's permission to
6 refer that testimony to the Ethics Commission?

7 MR. ROSE: Just so I understand, Judge,
8 the question is whether she recalls if the D.A.
9 told her that he wanted to refer Constantine's
10 testimony to the Ethics Commission; is that
11 right?

12 MR. FISCH: Yes.

13 MR. ROSE: Okay.

14 BY MR. FISCH:

15 Q Ms. Clemons, let me show you two letters, one
16 February 25th, 2008 to Linda Griggs, another one
17 February 28th, 2008 to Linda Griggs, both signed by
18 you. Okay. See if this helps you.

19 A Okay.

20 Q Remember now?

21 A Yes.

22 Q Okay.

23 A But I think that was, if my memory serves me
24 correctly, Feerick and other members of the Public
25 Integrity Commission were actually in their office

1 and they were having a meeting. So when you said
2 "referral," I didn't think of it that way. They
3 were having a meeting and they were having a
4 discussion and they called and said is it okay if
5 they share that information.

6 Q Okay.

7 A But I didn't think of that as a referral.

8 Q And you reached out to Constantine to get his
9 permission?

10 A I would assume I did.

11 Q Okay. And in addition to providing or authorizing
12 the referral of his transcript of his testimony to
13 the Commission on Public Integrity, did you also
14 yourself review his testimony?

15 A I believe that I did.

16 Q Is there any doubt in your mind?

17 A I don't specifically remember it, but I would
18 imagine that as an attorney...

19 MR. ROSE: Well, don't try to speculate.

20 If you have some basis for a recollection,
21 sure. Say so.

22 A I believe I did.

23 Q As a matter of fact, didn't you speak to Constantine
24 about his testimony?

25 A Before his testimony.

1 Q Now, after reviewing his testimony did you not speak
2 to him on more than one occasion about his
3 testimony?

4 A In the context of?

5 Q It's a very simple question. Did you or did you not
6 speak to him about his testimony?

7 MR. ROSE: This is after he gave it?

8 Q After you read his testimony did you speak to
9 Constantine about his testimony?

10 MR. ROSE: Well, first of all, Ms. Brown
11 Clemons hasn't confirmed that she read his
12 testimony. She thinks she did. And so now you
13 want to know --

14 MR. FISCH: I asked her if she has any
15 doubt. And that's why to refresh her
16 recollection I asked her, isn't it a fact that
17 you spoke to him about his testimony.

18 MR. ROSE: Okay. Well, I'll object to the
19 form of the question. But if you can answer
20 it, go ahead.

21 A Is the question did I speak to him about the details
22 of his testimony after reading the transcript?

23 Q That's right.

24 A No.

25 Q Did you ever tell him that we've got your testimony

1 and you think this is what happened. You just made
2 an assumption, suggesting to him that he may have
3 been wrong in his testimony?

4 MR. ROSE: Objection to the form, but go
5 ahead.

6 A I did not.

7 Q Let me ask again. Do you have any doubt that you
8 spoke to him about his testimony?

9 A After reading his testimony and having -- reading
10 his testimony and having a discussion with Lloyd
11 Constantine about his testimony, no.

12 Q When you say "discussion," any talk to him about not
13 only that you've read it, but about the contents of
14 his testimony with regard -- I'll make it very
15 specific. He testified, as you know, that Hermann
16 gave him certain information which came from
17 Teitelbaum on more than one occasion. Did you ever
18 speak to him about that?

19 MR. ROSE: After she read his testimony?

20 MR. FISCH: After she read it. She
21 couldn't speak to him about it before.

22 MR. ROSE: Okay.

23 BY MR. FISCH:

24 Q After you read his testimony did you ever in the
25 Chamber, while you were in the Chamber where you had

1 occasion to see him, ever say, "I read your
2 testimony. We have your testimony." And then speak
3 to him about the content of his testimony?

4 A No.

5 Q Never?

6 A No.

7 Q You never told him that you just made an assumption
8 that Teitelbaum told it to Hermann?

9 A After reading his testimony, no.

10 Q Had you ever been present when Steve Krantz had a
11 conversation like that with Constantine?

12 A After reading the testimony, no.

13 Q I'll make it very clear. We have sworn testimony
14 that you and Krantz on a number of occasions spoke
15 to him about his testimony with the inference that
16 he made a mistake in his testimony. I cannot be
17 clearer than that. Okay?

18 MR. ROSE: Then there's no question
19 pending.

20 Q If you want to think about that and talk to counsel,
21 I'll leave the two of you alone.

22 MR. ROSE: Judge, I don't think we need to
23 be alone. I think Ms. Brown Clemons has
24 answered the question.

25 MR. FISCH: That's the only reason that I

1 called you down.

2 MR. ROSE: Okay.

3 MR. FISCH: Okay.

4 MR. ROSE: Well, there's no question.

5 BY MR. FISCH:

6 Q Is your answer that you never spoke to him and told
7 him that you just make an assumption, in words or
8 substance, that you made an assumption that
9 Teitelbaum told it to Hermann?

10 MR. ROSE: I think Ms. Brown Clemons has
11 answered the question.

12 MR. FISCH: I'll ask it again then because
13 she seems to be in doubt where I'm coming from.

14 MR. ROSE: Well, I certainly don't get
15 that impression, but if you understand the
16 question, feel free to answer the question.

17 A I understand the question. I believe I answered the
18 question. And your question was whether or not
19 after reading his testimony I had conversations,
20 after reading Lloyd Constantine's testimony that I--

21 Q On more than one occasion where you had
22 conversation--

23 MR. ROSE: Let the witness answer the
24 question.

25 Q I'll rephrase the question.

1 After you've read his testimony did you
2 ever tell him, "we've got your testimony, your
3 transcript"?

4 A I did, because he actually asked me to get his
5 transcript.

6 Q Okay. And you told him you had it. Did you also
7 tell him that you've read his transcript?

8 A I don't recall having a conversation with him where
9 I told him I read his transcript.

10 Q Okay. Without telling him that you've read the
11 transcript, did you ever tell him that, in words or
12 substance, that you made an assumption that
13 Teitelbaum told it to Hermann?

14 MR. ROSE: Again, after reading the
15 transcript; correct? I want to make sure we
16 got the time frame correct.

17 A Is this after reading the transcript?

18 Q I've said it several times. After reading --

19 MR. ROSE: Well, why don't you just assume
20 that these are after reading his transcript.

21 Q After reading his transcript.

22 A After reading his transcript, no.

23 Q You never said that to him?

24 A No.

25 Q Were you ever present with Steve Krantz where Steve

1 Krantz had a conversation like that with
2 Constantine, "we've read your transcript or we have
3 your transcript and don't you think that you just
4 made an assumption that Teitelbaum told this to
5 Hermann"?

6 MR. ROSE: And again, I think that
7 question has been asked and answered.

8 A But I will answer it again. After reading the
9 transcript I did not have any such conversation with
10 Lloyd Constantine.

11 Q Okay. Were you ever present when Krantz had a
12 conversation with him?

13 A After reading the transcript, no.

14 Q Okay. Were you notified that he had appeared in my
15 office?

16 A Lloyd Constantine?

17 Q Yes.

18 A I was notified he was going to appear.

19 Q I'm sorry?

20 A That he was going to appear. Because you requested
21 documents that the Chamber had. And those sorts of
22 requests go to the Counsel's office.

23 Q Did you ever speak to him after that, after his
24 appearance before me?

25 A I don't recall. I don't recall if I talked to him

1 after that.

2 Q Did you ever, again, just where you asked him how he
3 made out or how did it go?

4 MR. ROSE: Object to the form. I don't
5 know that the witness has said that she asked
6 him that.

7 Q You don't recall whether you ever spoke to him after
8 he appeared before me?

9 A I do not recall that. No.

10 Q You recall in Constantine's testimony that he had
11 conversations with Hermann after the very first time
12 that Hermann gave him this information, that there
13 was subsequent conversations that Constantine had
14 with Hermann?

15 MR. ROSE: This is a question based upon
16 what her recollection is of the testimony; is
17 that right, Judge?

18 Q After reading his testimony, I think you've said you
19 read the testimony, I can't be referring to anything
20 before he testified.

21 In his testimony, to refresh your
22 recollection, Constantine testified on November 1st
23 Hermann came to him with a state of agitation and
24 gave him this information. Some time thereafter he
25 spoke to Hermann again and Hermann said something

1 else about that he saw some notes on a pad, yellow
2 pad in Teitelbaum's home the night before. Do you
3 remember that?

4 A From Constantine's testimony, no.

5 Q Okay. Ms. Clemons, you have not spoken, I believe,
6 you said to Teitelbaum about this at any time; is
7 that correct?

8 A To Teitelbaum?

9 Q Yes.

10 A No.

11 Q Okay. You, of course, were not present when Hermann
12 had a conversation with Teitelbaum November 1st; is
13 that correct?

14 A No.

15 Q And therefore, you could not be in a position to
16 interpret anything that Hermann said to Constantine?

17 MR. ROSE: Object to the form.

18 You can answer the question.

19 A No.

20 Q I cannot direct you not to talk about your testimony
21 to anyone else, but I am on the record requesting
22 that you not share your testimony with anyone else
23 because that might interfere with my investigation.
24 Do you understand?

25 A Yes.

1 MR. FISCH: Okay. I have nothing else.
2 Thank you.

3 MR. ROSE: Okay.

4 (Whereupon, the proceedings in the
5 above-entitled matter were concluded at
6 11:31 a.m.)

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

I, Diane Daly-Gage, Shorthand Reporter and
Notary Public in and for the State of New York,
do hereby certify that the foregoing record
taken by me at the place and date noted in the
heading hereof is a true and accurate
transcript of same to the best of my ability
and belief.

Diane Daly-Gage

Dated: September 17, 2008