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IN RE: INVESTIGATION OF ALLEGATIONS
BY THE INSPECTOR GENERAL OF THE
STATE OF NEW YORK

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TESTIMONY OF RICHARD D. EMERY

61 Broadway
New York, N.Y.
November 17, 2008
10:18 A.M.

1 APPEARANCES:

2

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MR. FISCH: Today is November 17th. My name is Joseph Fisch. I am the Inspector General. We are in my New York office at 61 Broadway, New York County. Arlene Osterer, my counsel, is with me.

Commissioner Emery, of the Commission on Public Integrity, is appearing here.

Mr. Emery, you're appearing voluntarily in response to a phone call

MR. EMERY: Yes.

MR. FISCH: And I see Mr. Carter is representing you.

Mr. Carter, note your appearance.

MR. CARTER: Yes. Zachary W. Carter, of Dorsey & Whitney, for Mr. Emery.

MS. ROZOS: Elizabeth Rozos. I am an associate at Dorsey & Whitney.

MR. FISCH: Mr. Carter, we've had some informal discussions in connection with just what your

1 representation covers. You are
2 representing Mr. Emery and then whom
3 else?

4 MR. CARTER: I am representing
5 the Commission on Public Integrity and
6 its constituent commissioners in
7 connection with this review or
8 investigation by the office of the
9 Inspector General.

10 MR. FISCH: Mr. Emery, you
11 consent to Mr. Carter representing
12 you?

13 MR. EMERY: Oh, yes.

14 MR. FISCH: You have no objection
15 to this interview being recorded
16 stenographically?

17 MR. EMERY: I certainly do not.

18 MR. FISCH: As a matter of
19 policy, all my interviews are being
20 recorded under oath, so would you
21 raise your right hand?

22 MR. EMERY: Yes.

23 RICHARD EMERY, having
24 been duly sworn, was examined and
25 testified as follows:

1 EXAMINATION BY

2 MR. FISCH:

3 Q. Mr. Emery, can you tell us your
4 background after graduating from law school?

5 A. I clerked for a federal district
6 judge in Portland, Oregon.

7 I worked in a legal services
8 organization in Everett, Washington for
9 about two years.

10 And then I headed the
11 Institutional Legal Services Project in
12 Washington State for about four years. Came
13 back to New York, worked at the New York
14 Civil Liberties Union as a staff attorney
15 for ten years.

16 Then practiced of counsel. Then
17 I was a partner, and then I was counsel
18 again at Lankin, Elcovenor & Bickford. It
19 had several names during that period.

20 And then started my own law firm
21 which has, through several iterations, come
22 to be known as Emery, Celli, Brinckerhoff &
23 Abady.

24 Q. And you're currently a member of
25 the Commission of Public Integrity?

1 A. Yes.

2 Q. That was originally Ethics
3 Commission plus the Lobbying Commission?

4 A. That's correct.

5 Q. Were you appointed to the
6 original Ethics or after the merger of the
7 two commissions?

8 A. I was appointed by the Senate
9 Minority Leader after the merger of the two.

10 Q. And you are one of how many
11 commissioners?

12 A. I believe it's 13.

13 Q. You believe it's 13?

14 A. Yes.

15 Q. With Dean John Feerick as the
16 Chair?

17 A. That's correct.

18 Q. The Commission is -- your
19 Commission is divided into several working
20 groups, I believe; is that correct?

21 A. That's correct.

22 Q. And which one are you a member
23 of?

24 A. I am on a working group that
25 looks at the -- we haven't -- that working

1 group has not been active. We put out an
2 internal rules about our own ethics and
3 conflicts, I believe. That was done several
4 months ago.

5 So since that time there have
6 been no more activities of that working
7 group.

8 Q. You were furnished by the dean a
9 list of some groups. I believe yours was
10 entitled Recusal, Ethical Standards,
11 Education and Training?

12 A. That's correct.

13 Q. Education?

14 A. Yes.

15 Q. With you, Jay King and Jay
16 Brinkman?

17 A. Sounds familiar, although we
18 haven't done much in a while.

19 Q. What is your relationship with
20 the other working groups?

21 A. Within -- as an institutional
22 matter?

23 Q. In terms of being made aware of
24 what's going on.

25 A. I am made aware of what's going

1 on in the other working groups when they
2 report to the Commission at a Commission
3 meeting, or through distributions of either
4 E-mail or memoranda.

5 Q. Mr. Emery, as you know, my office
6 was asked by the District Attorney of Albany
7 County to investigate allegations that
8 Herbert Teitelbaum, Executive Director of
9 your Commission, had disclosed information
10 concerning activities of the Commission to
11 Robert Herman, a member of the
12 administration. You're familiar with that?

13 A. Yes.

14 Q. And do you know that there came a
15 time when this -- these allegations were
16 brought to the attention of the Commission?

17 A. Yes.

18 Q. What do you understand about
19 that, how the information was communicated
20 to your group, and what exactly the
21 information was?

22 A. I understand -- what I understand
23 -- well, in late February or early March --
24 I believe it was late February, the
25 Commission was convened for a phone call,

1 conference call. And at that time this
2 information was provided to us.

3 Q. In what form?

4 A. Over the telephone, John Feerick
5 produced it. I think Barry --

6 Q. Ginsberg?

7 A. -- Ginsberg went through a
8 summary of information that he had been
9 provided, either the day before or shortly
10 before the phone call by the District
11 Attorney's office, which was in the form of
12 tape recordings that had been played of Bob
13 Herman and Lloyd Constantine.

14 Q. Prior to the February playing of
15 the tapes, were you aware that this was
16 brought to the attention of Dean Feerick in
17 November, 2007?

18 A. I am not aware of that.

19 Q. Does this surprise you?

20 A. My understanding was that Dean
21 Feerick had a meeting with District Attorney
22 Soares at which this was brought to his
23 attention in February. But that's the only
24 direct -- I believe that's the only
25 knowledge. I may be missing something, but

1 I believe that's the only knowledge of when
2 Dean Feerick heard of this issue.

3 Q. Are you aware that, again, as in
4 November of 2007, Herbert Teitelbaum told
5 Dean Feerick that there were allegations
6 that he had provided information to Robert
7 Herman, and that this information was
8 brought to the attention of the District
9 Attorney by members of the Executive
10 Chamber?

11 A. As I sit here today, I have a
12 recollection that I've heard that before,
13 but I don't know where from as I sit here
14 right now.

15 Q. Mr. Emery, in February, when
16 information was brought to Dean Feerick and
17 others in the form of tapes --

18 A. Yes.

19 Q. -- what did you understand the
20 content of the tapes to be?

21 A. In February --

22 Q. Yes.

23 A. During -- my only source was the
24 phone call, the conference call that I
25 alluded to earlier. I think that conference

1 call took about an hour, some 45 minutes to
2 an hour as I remember. Most of that was
3 discussion among the members of the
4 Commission.

5 Q. All the Commissioners?

6 A. There was a Commissioner or two
7 missing, I think. Bob Schiffer was
8 overseas. But other than that, I think
9 everybody was on the phone.

10 And my recollections is that a
11 combination of Dean Feerick and Barry
12 Ginsberg related a summary of tapes they
13 heard the day before, a couple days before,
14 in District Attorney Soares' office that
15 were presented to them as Bob Herman's
16 recitation of certain events and of Lloyd
17 Constantine's recitation of certain events.

18 And there was a statement that
19 Herb Teitelbaum denied having talked to Bob
20 Herman about -- that was conveyed to us.
21 Herb Teitelbaum was not on the call.

22 And what I remember, sitting here
23 today -- and it's somewhat affected by
24 subsequent events, so I can't be absolutely
25 certain that my memory is exactly accurate.

1 But what I remember is that on
2 that call Bob Herman was said to have
3 reported to the District Attorney that he
4 saw on a notepad information concerning the
5 communication between the Government
6 Integrity Commission, Herbert Teitelbaum,
7 and District Attorney Soares' office that
8 Darren Dopp was suspected of having changed
9 his testimony to us or had inconsistent
10 testimony of some sense to us, versus what
11 he had put in a document that had been
12 provided to the Attorney General's office.

13 Herman said he learned that from
14 looking at a notepad in Herb Teitelbaum's
15 apartment in Albany at some point when they
16 were socializing.

17 Q. That was Herman's version?

18 A. That was Herman's version.

19 And what was conveyed to us was
20 that Lloyd Constantine's -- Lloyd
21 Constantine had reported to the District
22 Attorney that Bob Herman had told him that
23 Teitelbaum had spoken with him about these
24 matters, although it was also conveyed to us
25 that Lloyd Constantine was not absolutely

1 certain about that, about the fact that it
2 had been -- that there had been a discussion
3 between the two, but that it was his
4 assumption that there had been a discussion
5 between the two.

6 Q. The information that was
7 communicated to you, you said was by
8 telephone?

9 A. I was on a conference call, yes.

10 Q. Okay. Was that from Dean Feerick
11 and Ginsberg?

12 A. On the call was the entire
13 Commission, other than Bob Giuffra, I
14 believe, and Barry Ginsberg and Dean
15 Feerick. I'm not sure whether Mave -- whose
16 name I --

17 Q. Toohar.

18 A. Toohar, T-o-o-h-e-r, right, was
19 on the call or not. I don't remember that.
20 I think it was only Barry Ginsberg and Dean
21 Feerick.

22 Q. I think you referred to memos.
23 Did you see a memo from John Feerick?

24 A. Prior to that, the call, I did
25 not. The call was the first I heard of

1 this.

2 Q. Did you ever see a memo from
3 Ginsberg about that incorporating notes that
4 he took while listening to two tapes?

5 A. I have not seen that, I don't
6 believe. If I have, it was certainly
7 subsequent to the call and I don't remember
8 it.

9 Q. How much detail was provided to
10 you about the Constantine type?

11 A. Well, I mean I don't know how to
12 answer that exactly. I can tell you what I
13 remember is that there was -- the central
14 point of whether Mr. Teitelbaum had talked
15 to Mr. Herman was communicated as something
16 that Mr. Constantine had said but had
17 equivocated about in some way or another.

18 That's what I remember because
19 that was sort of the essence of what we had
20 to wrestle with at that time.

21 Q. Mr. Emery, do you recall
22 Constantine referring to two time periods,
23 one time period wherein allegedly there were
24 perhaps four, five, or six conversations
25 with Herman to Constantine directly, Herb

1 says this, Herb wants this, and so on --

2 A. Um-hmm.

3 Q. -- referring to documents,
4 referring to other information that the
5 Commission was seeking from the Chairman?

6 A. I believe that that was conveyed,
7 that there were requests for documents that
8 Teitelbaum had made to Herman which were
9 conveyed to Constantine. I believe that was
10 provided to us in the call.

11 Q. Do you think there was anything
12 improper in Teitelbaum asking Herman to get
13 documents from the chamber?

14 A. Do I believe as I sit here today?

15 Q. Yes.

16 A. Or at the time?

17 Q. Both.

18 A. I actually think that it was
19 silly, but inconsequential. Was it a
20 violation technically, probably not, because
21 it's not information being provided to
22 anyone. It is something that Teitelbaum
23 could have directly asked Constantine or
24 anyone else who was dealing with this matter
25 at the Governor's office directly about it.

1 Because it wasn't information, I don't
2 think that it was -- as I sit here today, I
3 don't think it was improper.

4 Q. And what if those conversations
5 during that first period of time, including
6 reference to privileges that the Chairman
7 was considering invoking in response to
8 document requests from the Commission?

9 A. As I sit here today, I view that
10 as legal argument. I don't view that as
11 providing information in violation of
12 confidentiality.

13 Q. Do you regard the fact that
14 Teitelbaum may have asked Herman to
15 communicate this as something improper?

16 A. I view it as, as I said before,
17 not the best way to go about it but I don't
18 think it's violative of any law, as I read
19 the confidentiality obligations of all of
20 us, the staff and the like.

21 Q. Would you regard as a violation
22 of law if Teitelbaum communicated to Herman
23 the contents of sworn testimony before your
24 Commission?

25 A. I think I would.

1 Q. "Dopp had testified before your
2 Commission that the affidavit" -- I put that
3 in quotes because there is an issue about
4 sworn, this document, that Dopps had
5 testified that members of the chamber,
6 specifically Pope and Nocenti, had
7 influenced him in the drafting of that
8 affidavit.

9 A. Assuming that Teitelbaum told
10 that to Herman, Herman was part of the
11 executive, but I take it he was not part of
12 the Governor's office. He had his own
13 responsibilities and regulatory affairs.

14 Telling a person, other than the
15 people you're dealing with, something
16 outside of the substance of testimony, I
17 think I would view that as a violation of
18 confidentiality, if it occurred.

19 Q. What about the composition of sub
20 committees that were owned by the
21 Commission, that was not publicly
22 disclosed?

23 A. I have a recollection of there
24 being press leaks of those -- of the
25 composition of those sub committees in early

1 October, middle of October. But, putting
2 that aside for a second, hypothetically what
3 you're asking me, I don't think that's
4 secret or confidential information myself.

5 Q. What about the fact that there is
6 suspicion identifying a particular
7 Commissioner as a source of leaks?

8 A. Suspicion by whom? That's the
9 real issue.

10 Q. In other words, Herman
11 communicating to Constantine that there are
12 problems with leaks within the Commission,
13 sub committees have been formed, and that
14 the composition of the sub committee was
15 influenced by the concern of leaking by
16 Commissioners?

17 A. The fact that that was Commission
18 activity -- if that constituted Commission
19 activity in some sense of the actual
20 operations of the Commission, uh -- it's a
21 close question.

22 You are asking me a very
23 difficult, thorny, legal question, actually,
24 because it's more likely to be the subject
25 of rumors or speculation. I don't think

1 rumors or speculation among the
2 Commissioners and between groups is
3 confidential. It is confidential in the way
4 that the executive law commands prohibition
5 of disclosing confidential information.

6 Q. Should Teitelbaum have disclosed
7 anything to Herman about what was going on
8 within the workings of the Commission?

9 A. In my view, he shouldn't have.
10 But whether it's a violation of law or
11 something else --

12 Q. Two parts: Number one, should he
13 have disclosed this?

14 A. I don't think he should have. I
15 don't think it was a wise thing to do if he
16 did it.

17 MR. CARTER: I'm sorry, but --

18 MR. FISCH: I asked whether
19 Teitelbaum should have disclosed.
20 Whether it's a violation of law or
21 not, just as a matter of policy, just
22 as a matter of he being confidential.
23 What's going on internally, whether
24 that -- whether Teitelbaum should have
25 disclosed that.

1 THE WITNESS: And I'm saying if
2 he did it, it's a matter of judgment.
3 But I, personally don't think it is a
4 wise judgment.

5 BY MR. FISCH:

6 Q. You are aware, are you not, that
7 the issue of leaks was a problem that
8 troubled Dean Feerick and, I guess, other
9 members of the Commission?

10 A. Yes.

11 Q. And are you aware that the dean
12 exacted statement, confidentiality
13 statements from the staff?

14 A. From the staff and from the
15 Commissioners.

16 Q. And from the Commissioners?

17 A. Yes. At some point, I don't know
18 when. I don't know if we signed anything or
19 not, but we discussed it and we all pledged
20 not to speak to the press about any
21 confidential matters.

22 Q. Weren't the Commissioners limited
23 to just a reminder of their oaths of offices
24 or posts?

25 A. That may be right. That maybe

1 what I'm confusing with what you're saying.

2 Q. Let me ask you, if -- were
3 Commissioners, themselves, not suspected of
4 being the source of leaks -- Commissioners
5 or a Commissioner, as opposed to staff?

6 A. My understanding is Commissioners
7 were suspected of being a source of leaks.

8 Q. Then should they not have been
9 directed to execute the same confidentiality
10 statements as staff?

11 A. I think that's a policy judgment
12 for John Feerick, and I defer to him.

13 Q. If you were the Chairman?

14 A. I think you have to trust your
15 Commissioners, and it would be insulting to
16 ask them to sign such statements after
17 they've already provided an oath of office
18 and had been reminded of it.

19 Q. Well, the leaks, if they came
20 from Commissioners, came after they had
21 already executed oaths of office when they
22 got their appointment?

23 A. Right.

24 Q. So it didn't work the first
25 time?

1 MR. CARTER: I know this is not a
2 formal deposition. That assumes a
3 fact not established by the record, a
4 big if.

5 BY MR. FISCH:

6 Q. The question, would that not be
7 -- okay. I'll withdraw the question.

8 Now, you were advised, Mr. Emery,
9 of the tapes of both Constantine and of
10 Herman.

11 A. Yes.

12 Q. Do you recall that Constantine
13 testified that on or around October 31st,
14 November 1st, he had this initial
15 conversation with Herman, and Herman -- in
16 New York -- took him out of a meeting and
17 provided him with information which he said
18 was important to communicate to Governor
19 Spitzer. Do you remember that?

20 A. I remember that from reviewing
21 Constantine's testimony subsequently. That
22 was not -- that information was not provided
23 in the phone call.

24 Q. Testimony before the D.A.?

25 A. Yes.

1 Q. Okay.

2 A. I say testimony, whatever it was,
3 transcript of an interview.

4 Q. Okay. Before the D.A.?

5 A. Yes.

6 Q. Do you remember the second part?
7 I have his testimony before the D.A. on
8 February 25th. Do you recall the second
9 conversation that he had with Herman and
10 where he asked Herman why he was so
11 insistent that he, Herman, not be disclosed
12 as a source of the information?

13 A. I recall that in general terms,
14 yes.

15 Q. And do you recall Herman's
16 answer, "you don't know what Teitelbaum is
17 capable of"?

18 A. Yes, I do recall that.

19 Q. Let me read from
20 Mr. Constantine's testimony before the
21 D.A.'s office.

22 "After this conversation of
23 October 31st or November 1st, 2007, I saw
24 Herman again and he said, he told me, he
25 said, you know, I said to him, look, I told

1 the Governor about this and I told him that
2 you were the source of the information and
3 Herman was very, very upset. He wasn't mad,
4 but he was Upset.

5 And I said, you now, I said
6 exactly what do you expect, Bob? I said,
7 I'm the Governor's, you know, personal
8 advisor. You know, you come to me with this
9 information, which is information that the
10 Governor needs to know, and I'm going to
11 tell him and I'm going to tell him the
12 source. I'm not going to play any games
13 about this.

14 I said, you know, we're all
15 adults. I mean, so I don't know what, you
16 know, why is this a problem for you? I
17 said, you know, is it a problem because
18 you're going to lose a friend here? I said,
19 you know, your friends shouldn't have been
20 talking to you.

21 I said and that's -- and then he
22 said something which I'll never forget:
23 "You know, I know him really well and I know
24 what he is capable of doing when he's backed
25 into a corner."

1 I said, "What is he capable of
2 doing?" He said, "He's capable of doing
3 anything to protect himself, to defend
4 himself." I said, "Like what?" He said,
5 "He's capable of claiming that he didn't
6 tell me any of this stuff, that I, you know,
7 came into it -- possession of it some other
8 way."

9 I said, "Like what?" He said,
10 "Like I broke into his apartment, and, you
11 know, saw it on his desk," or, you know,
12 somehow came into the -- in other words, he
13 didn't tell it to me. I stole the
14 information.

15 Do you recall that?

16 A. Yes, I do.

17 Q. And what did that -- did that
18 suggest anything to you in connection with
19 the veracity of Herman's statement that he
20 saw this on a desk in Teitelbaum's
21 apartment?

22 A. Well, it made me think that
23 Herman might be covering up for what he did.

24 Q. I'm not sure I understand that.

25 A. Well, Herman seems to be

1 suggesting that that's something Teitelbaum
2 would say, and it seems to me that the
3 logical conclusion from that is that Herman,
4 if he had seen it on a pad, would be
5 planting the seeds for -- for him -- for
6 that having occurred, for him having gone in
7 and seen it unbeknownst to Teitelbaum.

8 I view that as corroborative of
9 Teitelbaum's denial and made me very
10 suspicious of Herman.

11 Q. Do you recall what Herman said he
12 saw on this yellow pad?

13 A. The only knowledge I have of that
14 is from the phone call based on the
15 recitation of Barry Ginsberg hearing the
16 Herman tape, as I remember.

17 And, again, it's sort of colored
18 by conversation subsequent. But trying to
19 focus exactly on that, as I understand it,
20 what he said he saw on the -- was
21 information about the Dopp referral or the
22 Dopp communication, Teitelbaum, that
23 Teitelbaum gave to the DA.

24 And I don't remember clearly
25 about the working group, but something -- I

1 have this vague recollection of something
2 about the working group on the pad as well.

3 Q. This is not his testimony.

4 A. I don't know, you tell me.

5 Q. His testimony suggests -- you.

6 A. I may be conflating things.

7 Q. The testimony was that he saw the
8 reference of the D.A. in Dopp's, virtually
9 nothing else.

10 A. That sounds to me like what was
11 conveyed in the call. The working group
12 business somehow is coming later or
13 something like that. I don't know why I'm
14 thinking that's evolved.

15 Q. Now, you had all of this
16 information when you signed on to Feerick's
17 letter saying that the Commissioners hold
18 confidence in title?

19 A. When you say all of the
20 information --

21 Q. The information I just read to
22 you, the second part of the Constantine
23 testimony.

24 A. No, did not have that.

25 Q. You think you should have before

1 you agreed to endorse Teitelbaum?

2 A. I would like to have had all of
3 the information that is included in the
4 interview with Constantine, although I'm not
5 sure it would have made any difference, and
6 I can explain that if you want me to.

7 Q. By letter dated February --

8 MR. CARTER: Do you want him to
9 finish?

10 MR. FISCH: I'm sorry?

11 MR. CARTER: Do you want him to
12 finish?

13 MR. FISCH: Oh, I'm sorry. Did I
14 interrupt you? I apologize.

15 THE WITNESS: No, I just said I
16 can explain that if you want me to.

17 MR. FISCH: Please, please.

18 THE WITNESS: I think that in
19 late February all of the
20 Commissioners, certainly I, my
21 perception of the other Commissioners
22 was consistent with my own, that the
23 investigation of Bruno's use of the
24 aircraft had gone on much too long,
25 and what had happened in response to

1 that in the Governor's office, that it
2 was -- I for one was extremely upset
3 about the fact that we had notified
4 the District Attorney's office of the
5 inconsistencies in Dopp's testimony
6 because I thought that had delayed and
7 waylaid our investigation which was
8 long overdue to be completed. And so
9 -- and I had expressed that.

10 So late February, when this came
11 up, and the information that was
12 conveyed to us and that could have
13 been even further conveyed to us if we
14 had been given a transcript of the
15 Constantine interview, which
16 apparently the District Attorney
17 refused to give Barry Ginsberg or
18 Commissioner Feerick, Dean Feerick --
19 if I had known all of that
20 information, in some sense the
21 question which Mr. Constantine raises
22 about his own understanding of what
23 Herman told him, as well as Herman's
24 unequivocal statement conveyed to us,
25 as far as I know, that he saw this on

1 a pad, and Herb Teitelbaum's denial
2 that he had any conversations with
3 Herman, and given where we were in our
4 delayed investigation and how typical
5 it is for investigations like this to
6 be undercut by attacks of an
7 aggressive investigator, which I view
8 Herb as being, Herb Teitelbaum, I
9 think I would have made the same
10 decision had I known everything that
11 Lloyd had said. I might -- Lloyd
12 Constantine had said.

13 Because to, at that point, stop
14 the investigation further, longer, and
15 to investigate Herb when there was
16 nothing really about this matter that,
17 in my view, made it seem as if Herb
18 wasn't aggressively getting the facts
19 out, as I had a lot experience with
20 him aggressively obtaining all of the
21 relevant evidence over that period and
22 aggressively attempting to go get
23 documents and aggressively trying to
24 get all the information which
25 culminated in our ultimate report, I

1 was not willing to short-circuit the
2 investigation any further at that
3 point by allowing what I viewed to be
4 equivocal accusations to create
5 collateral disputes that would take
6 our eye off the ball with getting this
7 investigation done.

8 That was my view and I have a
9 sense that that was other
10 Commissioner's views.

11 BY MR. FISCH:

12 Q. Does this not boil down into two
13 parts -- and I don't want to be simplistic.

14 A. Yes.

15 Q. Number one, did Teitelbaum do
16 anything wrong, and secondly, if so, what do
17 we do about it?

18 A. Right.

19 Q. And what we do about it is I
20 think what you're addressing. You're doing
21 an investigation that is much more
22 significant and important, and you don't
23 want to be detracted or distracted by this.
24 Am I overstating this?

25 A. I think that's true. And I think

1 that like the Dopp information communicated
2 to Soares, both things, that and any
3 questions about whether Teitelbaum did
4 anything wrong or not should have waited
5 until the end of our investigation. We
6 should deal with him at that time which is
7 what I had recommended.

8 Q. Did you ever express to Feerick
9 or any other Commissioners an unhappiness
10 about the fact that some of this information
11 had not been disclosed?

12 A. Yes.

13 Q. Tell us about that.

14 A. When the NORC, the N-O-R-C in
15 capital letters, was issued I think around
16 late July, Lloyd Constantine called me and
17 complained about, I think it was Footnote 7
18 in the NORC, which had to do with a
19 characterization in the NORC that the
20 Governor's office had not -- or had made it
21 very difficult to obtain documents, that the
22 delay in issuing the NORC had, in some
23 sense, been the responsibility of their
24 repeated failures to produce documents. He
25 complained to me about that, the substance

1 of that footnote.

2 And I said, well, it seems to me
3 that there's not much dispute about that,
4 that, you know, you provided documents in
5 traunches and you, you know, you asserted
6 lots of privileges and there were a lot of
7 obstacles to this. And we went back and
8 forth about that. We're good friends and so
9 we talked about this a little bit.

10 And he said, but -- and, you
11 know, you understand that -- I don't
12 remember exactly how he brought it up, but
13 he certainly brought up the allegations
14 about Herb Teitelbaum communicating with
15 Herman.

16 And I said, well that's -- we
17 looked at that quickly in February, but it
18 seemed like a very superficial claim at that
19 point. It was hotly disputed, and we didn't
20 want to further delay -- you were the one
21 arguing that things shouldn't be delayed --
22 we didn't want to further delay going
23 forward with the investigation.

24 He said, "Do you know what I told
25 the District Attorney?" And I said, "No,

1 other than" -- I repeated to him what I
2 remembered about February.

3 He said, "Well, you should know
4 what my testimony was." I said, "Well, tell
5 me what my testimony was." And I think it
6 was the next day he read it to me over the
7 telephone. And he subsequently e-mailed it
8 to me under a promise that I would not
9 provide it to anyone else.

10 Q. This was the testimony that the
11 D.A. had read to Dean Feerick and Ginsberg
12 and so on?

13 A. That's what I believed it to be,
14 yes. And when I read it, I felt that it was
15 important to do our own internal
16 investigation of whether these allegations
17 were true, notwithstanding the fact that the
18 testimony that Lloyd provided to Soares is
19 equivocal.

20 It has -- it's not, you know, he
21 wasn't there. He said very frankly, as he
22 must, that he wasn't present at any
23 conversations between Herman and
24 Teitelbaum. And he frankly admits that he
25 assumed that Teitelbaum spoke to Herman but

1 that -- in recollection -- and that was
2 because of the context of the earlier
3 conversations which were unequivocal in
4 August -- in late July and August of '07.

5 And he says I -- my understanding
6 is that he wasn't absolutely sure that
7 Herman told him that in the October 31st or
8 November 1st conversation that Teitelbaum
9 had spoken with Herman. So -- but I thought
10 it warranted investigation given the detail
11 and expansiveness of what Lloyd had
12 testified -- had told Soares. When I heard
13 it and when I read it, I recommended that we
14 put it on an agenda for a meeting in early
15 August and John Feerick did that. It was on
16 an agenda for our meeting in early August.

17 Q. With what result?

18 A. The Commission, as a whole,
19 discussed it extensively. I conveyed to the
20 Commission the essence of what was -- why I
21 thought it was important to go into this.

22 Do you want to know the reason
23 why I thought it was important to go into
24 this?

25 Q. Yes.

1 A. The reason I thought it was very
2 important to go into this was -- well, I
3 have to go back one step, I'm sorry for
4 this.

5 Q. Yes.

6 A. I was on the transition group for
7 Elliot Spitzer when he took -- you know, in
8 late '06, as were many, many people. I
9 think Zach was on it. There were lots and
10 lots of people on this transition. I was in
11 one group that had to do with ethics and
12 lobbying, the whole issue of consolidating
13 governmental entities. I don't remember
14 what it was called.

15 And I had written a paper, or was
16 part of group that wrote a paper and I had
17 advocated vehemently that the Lobbying
18 Commission, Board of Elections, and the
19 Ethics Commission should be put into one
20 place because it's the only way you could
21 have reasonable regulations of campaign
22 finance, lobbying, ethics issues which are
23 all bundled up in one another.

24 And when legislation passed
25 allowing for the combination of the Lobbying

1 and Ethics Commission, I was extremely
2 pleased. It was a partial -- it was a
3 compromise solution, but I thought it was a
4 good thing. I had a lot invested in my own
5 mind, and the success and importance of
6 the -- of what is now known as the
7 Commission on Public Integrity. I was very
8 happy to be appointed to it and I think it's
9 a very important institution. But like any
10 institution like this, it has to stand on
11 its own integrity.

12 So when this issue came up last
13 summer, the summer of 08', I felt, given the
14 fact that there was a transcript of Lloyd's
15 comments that was in Soares' possession --
16 and I think Soares, at that point, had
17 already announced that he was going to
18 provide all his documents under the Freedom
19 of Information Law. I thought it was
20 inevitable that that transcript was going to
21 be made public.

22 And consequently for that reason,
23 pragmatic reason, political reason, for the
24 good of the Commission, and also because I
25 believed that the transcript was -- Lloyd's

1 comments, was troubling and detailed and
2 significant, though equivocal and ambiguous,
3 that it was necessary to investigate it.
4 So, I argued that it should be investigated.

5 And that's what happened at that
6 meeting. At the meeting, I argued that for
7 our own well-being, it should be
8 investigated, that we should get an outside
9 person to investigate it. Or do it somehow,
10 in some credible manner or something. And I
11 was overruled. The rest of the
12 Commissioners did not agree with me.

13 MR. CARTER: Just one point of
14 clarification. Getting back to the
15 conversation that Mr. Emery had with
16 Mr. Constantine I believe the day
17 following the publication of the NORC,
18 in which Mr. Emery has gone on at
19 length and elaborating on
20 Mr. Constantine's complaint that the
21 Footnote 7 apparently -- or the report
22 unfairly.

23 MR. FISCH: He never asked.

24 MR. CARTER: Trust me, I read
25 everything. Unfairly characterized

1 the failure or failures of cooperation
2 of the Executive Chamber.

3 But as you'll note from reading
4 Footnote 7, there's no reference to
5 that subject matter in Footnote 7. It
6 focuses like a laser beam on the issue
7 of the allegations with respect to
8 someone, not identifying as Teitelbaum
9 in Footnote 7 leaking information, and
10 that the -- and the conclusion of the
11 Commission expressing continued
12 confidence in the executive --
13 Executive Director.

14 I only bring that up for point
15 blank clarification since it is so
16 important to your office's
17 investigation to analyze motive and
18 credibility since it is so clear from
19 Mr. Emery's recollection that at least
20 part of his conversation with
21 Constantine was his railing against
22 the Commission for having criticized
23 the Executive Chamber with respect to
24 the punitive failures of the Executive
25 Chamber to cooperate throughout this

1 investigation.

2 The question as to why he, at
3 this particular point, would bring
4 this matter to the attention of
5 Mr. Emery is something that you can
6 fairly take into account.

7 THE WITNESS: It's interesting.
8 There is some footnote, is there not?
9 It's not Footnote 7.

10 MR. FISCH: Here it is. It's on
11 page 15.

12 THE WITNESS: Yes, that's 7, but
13 there's some other footnote about the
14 problems in obtaining information and
15 the delays.

16 MR. CARTER: Most of that is
17 actually in the text.

18 THE WITNESS: Then maybe it's in
19 the text. My recollection is that
20 that's what Lloyd was complaining to
21 me about initially, and then he did
22 get to Footnote 7 in the discussion.
23 And then what I was saying before
24 occurred.

25 BY MR. FISCH:

1 Q. Mr. Emery, was it because you
2 understood there's going to be a release by
3 the D.A of transcripts that you called for
4 this meeting?

5 A. No, it was a combination of
6 several things. It was because I -- it was
7 in part because of that, yes. But I felt
8 that now was the right time since the NORC
9 had been issued, the investigation was
10 complete, to take a look at this issue and
11 these allegations, even though the
12 allegations were equivocal and ambiguous.

13 Q. Let me see if I understand. You
14 felt that the allegations required
15 investigation?

16 A. Yes.

17 Q. But the question was when that
18 investigation should be commenced?

19 A. That's correct.

20 Q. At the beginning, your sense was
21 that we have more important matters to do,
22 the investigation, and so on. So you were
23 comfortable to put it on the back burner
24 until you finished what your -- what you
25 got is the more significant work; is that

1 fair?

2 A. Yes. I don't want to go quite as
3 far as that characterization. I was
4 comfortable not investigating Herb at the
5 time of the phone call because --

6 Q. The February phone call about the
7 D.A. testimony?

8 A. That's correct, the late February
9 phone call. Because he had denied the
10 conversations, because Herman had explained
11 how he got the information from the pad, and
12 because it was conveyed on the phone call,
13 as is correct from the transcript of
14 Mr. Constantine's interview that there were
15 questions about what Mr. Constantine knew,
16 and because it was fairly typical to attack
17 the prosecutor in a prosecution, namely,
18 attack the investigator here, Herb
19 Teitelbaum.

20 And my understanding was that
21 D.A. Soares had -- well, that's
22 interesting. Yes. The D.A. Soares had
23 delayed a long time and that he was in a
24 political pickle of his own with respect to
25 the initial report he'd issued exonerating

1 the governor and where he was.

2 So there were all kinds of very
3 messy political and practical and compelling
4 integrity reasons to move forward with our
5 investigation and not indulge in a lot of
6 our own naval gazing at that point.

7 And so I felt comfortable saying
8 that we should not do anything based on the
9 phone call -- the information I got in the
10 phone call.

11 Q. So, again, why did that change
12 later on?

13 A. Well, first of all, the timing.
14 The investigation was done. Second of all,
15 it was pretty clear to me that this
16 information would have eventually been made
17 public and cast -- the press spins things.
18 There was an awful lot of bad press about
19 the Integrity Commissions delay and leaks,
20 and all these issues. I felt that we would
21 be subjected unfairly to a lot of press
22 criticism if we didn't take measures to
23 investigate this ourselves.

24 And I felt that the details of
25 Lloyd's transcript required a full vetting

1 by the Commission itself to make sure that
2 Herb had not done what he said he hadn't
3 done.

4 Q. Do you think, even though going
5 back to the very first time when this
6 information came to you in February, that as
7 a minimal, the Commission should have called
8 in Herman? That the Commission, as a
9 minimal, you should have asked
10 Mr. Teitelbaum, let's see that yellow pad
11 that was supposed to have been the source of
12 information?

13 A. In hindsight that may have been a
14 better thing to do. But sitting at that
15 moment in time with what we knew at that
16 time and where the allegations were coming
17 from, and Soares' delay and Soares'
18 political compromised situation, and all the
19 factors I mentioned before, I think we did
20 the right thing.

21 Q. Even though a formal
22 investigation had not been commenced, has
23 anybody to this date spoken to Teitelbaum
24 about this, asked about the yellow pad, can
25 we see the yellow pad? Has anybody spoken

1 to Herman about this?

2 A. I don't know the answer. To my
3 knowledge, no.

4 Q. Do you think it should have been
5 done?

6 A. Well, I think once the District
7 Attorney -- let me put it clear.

8 When I asked -- when I asked Dean
9 Feerick to put it on the agenda, and then
10 had the meeting with the group, I thought
11 that we should take those actions which you
12 described, among any others that were
13 appropriate that an independent investigator
14 would undertake.

15 The other Commissioners didn't
16 agree with me. They made many good
17 arguments. I thought about it carefully and
18 I didn't think that I should push the issue
19 further and that I could understand their
20 points of view and I was willing to go along
21 with the group.

22 MR. CARTER: Just a point, again,
23 a point of verification. Again, I
24 know this isn't a formal deposition,
25 but in terms of a question that

1 assumes a fact in evidence that's
2 actually in dispute.

3 MR. FISCH: Which is --

4 MR. CARTER: With respect to the
5 yellow pad, the words "yellow pad"
6 come from Herman as far as I
7 understand it.

8 MR. FISCH: Notes, notes.

9 MR. CARTER: Except that in terms
10 of the position that this information
11 was obtained from a yellow pad, that
12 comes from Herman's mouth, that was
13 communicated to -- in his interview.
14 Herb Teitelbaum does not take the
15 position that that was necessarily how
16 this information came to him. He
17 doesn't know.

18 MR. FISCH: Is it his position
19 that he told him?

20 MR. CARTER: No, of course not.
21 His position is that he doesn't have,
22 as I understand it, a recollection of
23 notes of any particular form, of any
24 particular place, at any particular
25 time. I believe it acknowledges the

1 possibility that that could be the
2 source. But he has no recollection of
3 it because the evening on which -- the
4 occasion on which there was a dinner
5 between the two, was no specific --
6 was of no specific moment to him. It
7 was significant to Herman because he
8 claims to have seen this writing on a
9 pad but had no significance to him at
10 all, just another night.

11 BY MR. FISCH:

12 Q. You are, of course, not aware of
13 a third conversation that Constantine had
14 with Herman?

15 A. Not specifically. Let me just
16 finish one thing about my last answer.

17 Q. Please. Please.

18 A. That is that I --

19 Q. Mr. Emery, you have free reign.

20 A. I understand. I just want to be
21 clear because you asked me and I didn't
22 complete the answer exactly.

23 MR. CARTER: I interrupted it.

24 THE WITNESS: No. So after the
25 Commission agreed and I went along

1 with that agreement to not do anything
2 in early August, relatively soon
3 thereafter, it became clear that it
4 was referred to you at some point.
5 And then there was no more issue of
6 looking into this. So I felt at that
7 point, the point was to cooperate with
8 you as appropriate.

9 BY MR. FISCH:

10 Q. Was another factor about not
11 investigating this in August the sense that
12 the D.A. brought this to your attention and
13 said, that's it, I have nothing else to do
14 with it. It's now in your hands. Do what
15 you want with it or do nothing if you don't
16 want to?

17 In other words, that the D.A. had
18 expressed his sense that he's done as much
19 as he feels he has to do and now it's in
20 your lap?

21 In other words, a sense that it's
22 not going to go any further at this stage in
23 August? Forget what happens later on.

24 A. No, I felt sure that this was
25 going to go further.

1 Q. You did?

2 A. Yeah. I didn't know whether the
3 D.A. was going to do it. It didn't seem
4 likely that the D.A. was going to do it, but
5 I felt there was no doubt that these
6 transcripts were going to be made public at
7 some point.

8 Q. Okay. You asked about our
9 investigation. I'll tell you exactly what
10 happened. We received a letter from the
11 D.A., I think it was August 6th or August
12 9th, asking us to go forward with this, to
13 investigate these allegations.

14 Before I had even seen the
15 letter, I had press inquiries of the facts
16 that this was referred to me.

17 So I met sometime thereafter with
18 the D.A. and said I would consider it and
19 finally we decided to do it.

20 About that time, or shortly
21 before I had committed myself to doing an
22 investigation, Ginsberg called and asked for
23 another shot at the tapes, and was advised
24 by the D.A. through Linda Griggs, we
25 understand, that if you want it, I want a

1 request in writing and I want to -- you to
2 explain why you want it now.

3 Okay. So that was the history
4 of -- then that letter was never followed
5 and we got into this.

6 A. Uh-huh. Um-hmm.

7 Q. Let me ask you this: Should
8 Teitelbaum have disclosed the fact that this
9 matter had been referred to the D.A. by the
10 Commissioner, was that sufficiently
11 confidential?

12 A. This matter, which matter?

13 Q. A conflict between Dopps' sworn
14 testimony and the statement to Cuomo.
15 Should that had been referred -- I am using
16 "referred" in the generic sense because I
17 know that has great sensitivity. A referral
18 has to have the approval of all the
19 Commissioners, their wives, and their
20 daughters and all of their relatives and
21 in-laws and so on.

22 But the fact that it had been
23 communicated, transmitted to the D.A.,
24 should that have been disclosed?

25 A. In my view, yes.

1 Q. You said, yes?

2 A. Yes. In my view it should have
3 been disclosed.

4 Q. To Herman?

5 A. No, it should have been disclosed
6 to the Commissioners. I thought you were
7 asking whether it should have been disclosed
8 to the Commissioners.

9 Q. Of course, yes.

10 A. Okay.

11 Q. Two parts. I'm glad you picked
12 it up. All right. A formal referral
13 requires, I think, all the Commissioners
14 being on board?

15 A. I don't know that, but I would
16 probably agree as matter of policy, yes.

17 Q. So it was communicated to the
18 D.A. -- transcript of Dopp's testimony was
19 provided to the D.A. for his review?

20 A. Um-hmm.

21 Q. And then there is a dispute as to
22 when he decided he is going forward. That
23 is another issue.

24 A. Yes.

25 Q. Should that transmittal of Dopp's

1 testimony to the D.A. have been disclosed by
2 Teitelbaum to Herman?

3 MR. CARTER: If it occurred.

4 MR. FISCH: What?

5 MR. CARTER: If it occurred.

6 THE WITNESS: If that occurred.

7 MR. FISCH: If it occurred?

8 THE WITNESS: Right. No.

9 BY MR. FISCH:

10 Q. Would you regard that as a
11 violation of the statute?

12 A. If that occurred, I would.

13 Q. Are you aware --

14 A. Technical and probably
15 minimalistic, but a violation nonetheless.

16 Q. You made the distinction as an
17 illustrious distinguished lawyer, of course,
18 and I understand why you did.

19 I just -- if you would permit me
20 a war story. When I was with the State
21 Investigation Commission, and when we
22 investigated misconduct, the subject often
23 said if there's something criminal, it
24 should go to the D.A. All right?

25 And the Clanish Phillips of the

1 New York Times once wrote, should
2 noncriminality be the only standard for a
3 public official?

4 So whether this was illegal, or
5 not illegal, was it proper? Okay.

6 If it occurred, the disclosure to
7 Herman that this matter had been given to
8 the D.A. for examination and the possibility
9 of prosecution -- I think you answered that
10 already.

11 A. Yes. You understand the reason I
12 say technical and minimalistic is because I
13 don't think it would have been improper for
14 Teitelbaum to go to Lloyd Constantine or the
15 Governor and say I have communicated with
16 the District Attorney's office that there
17 are inconsistencies between what Dopp's
18 says -- what Dopp told us and what he told
19 Cuomo through the statement. I think that
20 would be perfectly proper. Prosecutors deal
21 with their people they are investigating in
22 that way all the time.

23 Herman was just slightly beyond
24 that group of people on the second floor,
25 and that's why I say, yes. That's why I

1 answer your question, yes, although it was a
2 technical violation.

3 Q. When the initial
4 communications -- reported alleged
5 communications 4, 5, 6 to Constantine where
6 there's no question but that her -- identify
7 her the source --

8 A. Yes.

9 Q. -- the answer was call me, call
10 Rifkin.

11 A. Yes.

12 Q. And that was both when Herman
13 spoke to Pope, reach her by telephone, Pope.
14 What Herman wants and what Teitelbaum wants,
15 the answer was you have my telephone number,
16 let him call me. Okay?

17 Are you aware that following
18 November 1st when this information was
19 communicated by Herman to Constantine that
20 Constantine then, concerned with information
21 that they felt they should not have had,
22 discussed this with other members of the
23 Chamber and they went to the District
24 Attorney and said we have this information,
25 we didn't ask for it, we didn't want it, but

1 we have it. Are you familiar about that
2 happening?

3 A. I am familiar with it from Lloyd
4 Constantine's interview.

5 Q. Okay. And Herman Teitelbaum was
6 identified as the source of the information?

7 MR. CARTER: There was one other
8 point that should have been made
9 earlier and we need to get some
10 clarification on that. Because you
11 talked about the alleged conversations
12 between Herb Teitelbaum and Herman,
13 not concerning the communication with
14 respect to the Dopp transcript
15 inconsistencies, but about the
16 failures of cooperation of the
17 Executive Chair.

18 And just for point of
19 clarification, it's useful I think for
20 the Commission to know whether or not
21 you would consider it improper,
22 unlawful, inappropriate or anything
23 else except a positive thing for
24 Teitelbaum, if this occurred, to put
25 it in legal terms, covetch to a friend

1 with access to the Executive Chair
2 that he, as the Executive Director of
3 the Commission, was not receiving
4 cooperation with respect to production
5 of documents and other information,
6 and that if he could share that with
7 the Executive Floor, it would be
8 greatly appreciated. Would you
9 consider that inappropriate, unlawful
10 or anything else-

11 MR. FISCH: I'm not making a
12 judgment of this, but I would also say
13 to you that -- and what Mr. Emery
14 said, he may have said it is silly or
15 foolish or stupid, they were
16 designated the end resource. You had
17 Rifkin, you had a Constantine, you had
18 others there who were the people who
19 was supposed to.

20 Now, in answer to your question,
21 without answering your question, part
22 of it depends upon the content of
23 those communications. If it had to do
24 with internal investigations, which is
25 what I have sworn testimony about,

1 okay, then the answer is yes, I think
2 it's improper, without getting
3 unlawful and so on. It depends upon
4 the content of those communications,
5 all right?

6 And if it's -- I don't want to
7 make judgments.

8 MR. CARTER: I understand.

9 MR. FISCH: But there are people
10 who -- there are people who were
11 supposed to be the recipients of these
12 requests, who were designated to be
13 the recipients of these requests.

14 MR. CARTER: I could not agree
15 with you more. So let's look at it in
16 the context of the NORC that was
17 issued. The very people who should
18 have been responsive to these
19 demands -- because the Commission, as
20 you can -- had the right to demand it,
21 not just request it. They weren't
22 being cooperative with the Commission,
23 with its Executive Director. And so
24 the suggestion, if it occurred, that
25 someone operating in good faith sought

1 another avenue to persuade the
2 Executive Chamber to come to its
3 senses and become cooperative, I find
4 surprising.

5 It wouldn't be the first time I
6 was representing an institution in
7 connection with an investigation that
8 it turned out that they deserved a
9 medal in sort of approbation or
10 reprobation.

11 MR. FISCH: Let me go off the
12 record for a second.

13 (Discussion off the record.)

14 BY MR. FISCH:

15 Q. Mr. Emery, are you aware that the
16 District Attorney of Albany County agreed to
17 go forward with prosecuting -- or
18 considering prosecution of the inconsistency
19 between the sworn testimony he had from Dopp
20 and the affidavit, when he considered
21 presenting that to a grand jury?

22 A. Not specifically aware. My
23 impression is that it was sometime in
24 December, but I'm not sure, December of
25 '07. I've heard that there was a grand jury

1 convened in that time period or around that
2 time period.

3 MR. FISCH: Anything else?

4 (Discussion off the record.)

5 BY MR. FISCH:

6 Q. Mr. Emery, for a formal referral
7 to the District Attorney for consideration
8 of prosecution, is it your understanding
9 that it requires the concurrence of the
10 entire Commission or at least a majority of
11 the Commission?

12 A. I don't know the answer. I just
13 don't know the answer.

14 Q. Were you made aware that this had
15 been communicated, the testimony of
16 Constantine and Herman and interviews of
17 other people, had been -- I'm sorry.
18 Withdrawn. Withdrawn.

19 Were you aware that the Dopp's
20 testimony and the Cuomo statement had been
21 transmitted to the District Attorney for
22 consideration?

23 A. I became aware of it by reading
24 the newspaper.

25 Q. On when?

1 A. By reading the newspaper.

2 Q. And that was --

3 A. In November, it apparently had
4 leaked out of Soares' office as far as I
5 could tell. And I was upset by learning it
6 that way.

7 BY MS. OSTERER:

8 Q. Mr. Emery, I show you a copy of
9 John Feerick's letter dated February 28,
10 2008, addressed to District Attorney Soares.
11 As you can see, it indicates that he has the
12 full --

13 A. The highest confidence in
14 Mr. Teitelbaum's ability?

15 Q. Yes, and that the Commissioners
16 concur with sending the letter?

17 A. It doesn't say the Commissioners
18 concur, but I think it's true -- I think
19 it's a correct statement that the
20 Commissioners did concur.

21 Q. At what point? Was it during the
22 conference call?

23 A. That there was -- an expression
24 of concurrence?

25 Q. Yes.

1 A. Yes.

2 Q. Would it be correct to say that
3 this letter was read to the Commission at
4 that time?

5 A. This letter -- I don't remember
6 whether John Feerick told us the exact text
7 of the letter he was going to write to the
8 District Attorney. He certainly indicated
9 that he was going to write back, write to
10 the District Attorney that we were going to
11 push ahead with Herb Teitelbaum leading the
12 investigation of the Governor's office and
13 the use of airplanes.

14 Q. Was it correct that Commissioner
15 Celli was participating in the conference
16 call?

17 A. No. My partner Andrew Celli who
18 is also on the Commission, had recused
19 himself from this entire matter. And
20 anything I said about the Commission, it
21 should be clear that he was not part of any
22 of this.

23 MR. FISCH: Anything you wish to
24 add?

25 THE WITNESS: No, Thank you.

1 MR. CARTER: Thank you very much

2 (Time noted: 11:47 A.M.)

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C E R T I F I C A T E

I, WILLIAM VORSTEG, a
Registered Professional reporter, and
Notary Public of the State of New
York, do hereby certify that this is a
true and accurate transcript of the
testimony of RICHARD D. EMERY, taken
by me on November 17, 2008 I further
certify that I have no interest in
these proceedings and am not related
by blood or marriage to any of the
parties herein.

WILLIAM VORSTEG, R.P.R.

