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STATE OF NEW YORK

OFFICE OF THE INSPECTOR GENERAL

- - - - -X

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

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STENOGRAPHIC MINUTES OF THE

EXAMINATION CONDUCTED of JOHN D. FEERICK,
held on the 2nd day of October, 2008, at
the State of New York Office of Inspector
General, 61 Broadway, New York, New York,
before Jamie Ann Stanton, a Notary Public
of the State of New York.

* * *

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2 APPEARANCES

3

4 STATE OF NEW YORK

5 OFFICE OF INSPECTOR GENERAL

6 61 Broadway

7 21st floor

8 New York, New York 10006

9 BY: JOSEPH FISCH, ESQ.

10 - and -

11 ARLENE OSTERER, ESQ.

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1 J. Feerick

2 JUDGE FISCH: My name is

3 Joseph Fisch. I am the State

4 Inspector General.

5 Today is Thursday, October

6 2nd, 2008. We are in my New York City

7 office, 61 Broadway, 21st floor, New

8 York County. Accompanying me is

9 Arlene Osterer of my office. And

10 present is Dean John Feerick.

11 EXAMINATION BY

12 JUDGE FISCH:

13 Q Dean, you are appearing

14 voluntarily in response to my telephone

15 call?

16 A Correct.

17 Q And you consent to this

18 interview being recorded stenographically?

19 A Yes.

20 Q And as I advise you, all of my

21 examinations are under oath. So will you

22 rise and be sworn.

23 A (Complying.)

24 Q Do you swear that the testimony

25 you will give will be the truth, the whole

1 J. Feerick
2 truth, nothing but the truth, so help you
3 God?

4 A Yes.

5 Q As you know, my office has been
6 referred for investigation of allegations
7 that Herbert Teitelbaum, the Executive
8 Director of the Ethics Commission, now the
9 Commission of Public Integrity, disclosed
10 confidential information concerning the
11 Commission's activities to people in the
12 Executive Chamber. That referring came to
13 us by letter dated August 6th of 2008,
14 from the DA of Albany County.

15 And, as a matter of fact, your
16 counsel, Mr. Ginsberg, requested a copy of
17 that letter in order to understand the
18 nature and scope of our investigation.
19 Before appearing here today, you had an
20 opportunity to review the notes and
21 memoranda, other documents your office
22 provided to us. Is that right?

23 A Yes. Correct.

24 Q You have been the illustrious
25 Dean of Fordham Law School for what period

1 J. Feerick

2 of time?

3 A I served as Dean of Fordham Law
4 School from 1982 to 2002. And some people
5 now refer to me as a has been.

6 Q And you are currently the
7 chairman of the Commission on Public
8 Integrity?

9 A Correct. I have chaired the
10 Commission since its inception in
11 September of 2007. And as you know,
12 merging into that Commission was the State
13 Ethics Commission which I had chaired
14 since April of 2007.

15 Q I was going to present that
16 chronology. The Commission, which I would
17 like to refer to as COPI, Commission on
18 Public Integrity, represents a merger of
19 the previous Ethics Commission and the
20 Lobby Commission, right?

21 A Correct.

22 Q And I believe you were appointed
23 chair of the original Ethics Commission
24 April 16, 2007?

25 A That's a day I will never

1 J. Feerick

2 forget.

3 Q Okay. And I believe the
4 appointment of Herbert Teitelbaum as
5 Executive Director of the Ethics
6 Commission was in June of 2007?

7 A In July.

8 Q July?

9 A I think his first day at work
10 was July 17th, 2007. And in the weeks
11 prior to that, he came up on a volunteer
12 basis a few times to meet the staff. I
13 can't remember if at that point we also
14 were searching for space, and he might
15 have learned about that. But he didn't
16 start, technically, until he became an
17 employee and therefore on the payroll on
18 July 17th.

19 Q And the Commission on Public
20 Integrity, I believe, took place sometime
21 in September of 2007. The appointment by
22 then Governor Spitzer of some thirteen
23 COPI members on the 22nd, and I think you
24 officially opened for business the day
25 before that. And then your first meeting

1 J. Feerick

2 was October 10th?

3 A That's correct. May I just

4 add --

5 Q Please.

6 A -- indicate that -- I believe
7 the first meeting date -- there was always

8 a question as to how to interpret the

9 statute as to whether it was

10 September 22nd or September 24th, but I

11 think provincial wisdom has the Commission

12 starting on September 22nd. At that time

13 not all the commissioners had been

14 appointed. And my recollection is that

15 some commissioners were appointed almost

16 as we were having our first meeting in

17 October -- that's October 10th. I also

18 have a recollection that one commissioner,

19 a designee by the speaker was not

20 appointed until after that. That's sort

21 of my recollection.

22 Q The number of commissioners is

23 thirteen?

24 A Correct. We have thirteen as of

25 some point in the fall of 2007.

1 J. Feerick

2 Q I saw some reference in the
3 press, I believe, to Spitzer announcing
4 the appointment of thirteen members on
5 September 22nd, but you are saying they
6 may not have come onboard officially until
7 October?

8 A Yeah, I don't think the speaker
9 appointed his designee to the commissioner
10 until much after that. And I think there
11 was some criticism of the Commission at
12 its first meeting because it wasn't fully
13 occupied at that point. So I don't think
14 that that would be correct, as of
15 September 22nd. And I do think that
16 Commissioners Alonso and Emery were not
17 designated until about the 10th or the 9th
18 of October.

19 Q I appreciate your being so
20 fastidious about dates, because that's
21 obviously very important.

22 A Right.

23 Q There were a number of
24 investigations commenced originally, I
25 believe, by Ethics and then continued by

1 J. Feerick
2 COPI involving allegations about members
3 of the Spitzer administration; is that
4 correct?

5 A Let's see if I have that. What
6 COPI took over, what investigations
7 existed at that point, including of the
8 Spitzer administration, so to speak, and
9 the Lobbying Commission. So any
10 investigations that were then in progress
11 came into the Commission of Public
12 Integrity. And those investigations were
13 more than the particular investigation
14 that you are focusing on here.

15 Q But the investigations that COPI
16 assumed involved allegations against
17 Spitzer appointees, a number of them?

18 A Certainly the investigation
19 having to do with what has been
20 denominated Troopergate, which involved
21 many members of the former administration,
22 all of that would have been part of what
23 came over to us.

24 Q That's what I am saying.

25 A Yes.

1 J. Feerick

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

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

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

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

13 Q But specifically, disclosures,
14 allegations that the Spitzer
15 administration had disclosed some of its
16 observations of Bruno, some of its
17 interest in Bruno, was part of the
18 investigation; am I correct?

19 A I would say so, yes.

20 Q For want of a better term, would
21 it be fair to say investigation of leaks
22 by some people in the Spitzer
23 administration?

24 A I guess the way I would describe
25 it is when the Ethics Commission, in a

1 J. Feerick
2 sense, started to review what -- let me
3 back up.

4 The week of July 23rd, I saw the
5 attorney general issue his report. And
6 the State Ethics Commission essentially
7 took a look at the -- at that file. The
8 inspector general's office made available
9 its file. And so whatever was in those
10 files would have been part of a review
11 with respect to did we have, the Ethics
12 Commission, jurisdiction, and what is it
13 that we had jurisdiction of. And so
14 that's really what took place in the early
15 period. And by the middle of August, the
16 Ethics Commission, you know, began a
17 formal investigation that led to
18 eventually the issuance of fifteen-day
19 letters that made reference to the areas
20 that we were investigating.

21 Q But one of those areas, I want
22 to just focus, because there were many
23 things, the use of the helicopter, whether
24 it was on official business or political
25 business -- I don't want to talk about

1 J. Feerick
2 that. But just the fact that there is a
3 question as to whether or not some
4 disclosures had been made on the
5 initiative of Spitzer officials or an
6 official rather than in response to a FOIL
7 request.

8 That was one of the allegations,
9 correct?

10 A Yeah. See -- yes. I would
11 define that as part of Troopergate.

12 Q Yes.

13 A The release of information to
14 the media that ended up in a July 1st or a
15 July 2nd article in the Albany Times
16 Union. So the Spitzer Administration
17 putting out whatever it did with reference
18 to information on Senator Bruno was
19 certainly part of our investigation.

20 Q And did you investigate whether
21 or not information had been supplied to
22 the press in response to a request by the
23 press of whether it had been, for want of
24 a better term, leaked to the press?

25 A You know, my recollection is

1 J. Feerick
2 that when we started, earlier in the
3 investigation, we issued a subpoena to
4 James O'Donnell of the Albany Times Union.
5 And issues arose as to the
6 appropriateness, if I can put it that way,
7 of that subpoena. And we, through our
8 staff, but with the knowledge of the
9 Commission at the time, approved a
10 stipulation that sort of left that in
11 place as that subpoena. We didn't
12 commence enforcement proceedings. We
13 didn't deal with issues that the newspaper
14 would have raised as to journalism
15 privileges and the sheer law.

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

19 A Yes. That was part of our
20 investigation.

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

23 A I would say so.

24 Q And leaks is a series matter?

25 A No question.

1 J. Feerick

2 Q I mention that because I believe
3 the Commission itself, your Commission,
4 has been troubled throughout its duration
5 about leaks to the press by commissioners?

6 A I have been troubled for a long
7 while about the subject of leaks. And
8 leaks possibly from within the Commission.
9 Leaks from the DA's office. Leaks from
10 the attorney general's office. Leaks from
11 the executive branch.

12 And one of the things I will
13 leave with you and your assistant, and I
14 have to tidy it up a little bit, is I put
15 together this past weekend a summary of
16 all the newspaper articles from about July
17 of 2007 through July of 2008, actually, it
18 probably goes into August of 2008. And I
19 think one will see that there have been a
20 lot of leaks from many different places.
21 And obviously, as Chair of a very
22 important Commission, dealing with one of
23 the state's most difficult investigations,
24 I was terribly troubled by leaks having to
25 do with our investigation. And as you

1 J. Feerick

2 take a look at the newspaper articles, you

3 will see references to sources that are

4 close to the DA, sources that are close to

5 the A.G., sources within the executive

6 branch, references to our Commission,

7 insider, a source close to the Commission.

8 It would take someone quite an effort to,

9 I would say, over a good stretch of time,

10 to get to the bottom of all those leaks.

11 And I had to live through this matter with

12 that all around me. No question. And I

13 approached it in terms of making sure that

14 all the commissioners took a public oath

15 of office. Not just write out and have

16 notarized a note of office. That was not

17 an accident. That was my way of reminding

18 every commissioner of their obligations.

19 Staff also executed confidentiality

20 statements. In addition to that, it was a

21 subject of discussion with the staff, a

22 subject of discussion by me with the

23 commissioners, and it's what I had to deal

24 with. And I must say, it troubled me

25 greatly. It still does.

1 J. Feerick

2 Q Forgetting every other entity
3 but your Commission.

4 A Yes.

5 Q Were you troubled about leaks by
6 commissioners?

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

13 Q You spoke to Teitelbaum about
14 this as well?

15 A Absolutely. I spoke to him. I
16 spoke to all the commissioners.

17 Q Was Gruenberg one of the people
18 you suspected of leaking information?

19 A The answer is no. He has been a
20 very fine commissioner.

21 Q Never mentioned to Teitelbaum
22 you suspected him as being one of the
23 people who leaked information?

24 A I have no recollection -- I have
25 had no basis for that.

1 J. Feerick

2 Q Anyone else? Any specific
3 people that you suspected?

4 A Well, I don't know, you know,
5 how appropriate it is for me to -- you
6 tell me and help me. You know, I would
7 wonder about relationships, you know, of
8 Commissioner Emery with Lloyd Constantine.
9 But you know, you are in an area where you
10 are dealing with reputations of
11 outstanding people.

12 Q I understand.

13 A But I had -- I had the concerns
14 I mentioned.

15 Q Did Gruenberg's name ever come
16 up either in discussions that you
17 initiated with Teitelbaum or where
18 Teitelbaum suggested to you that he might
19 be a source of some leaks?

20 A I don't have any recollection
21 that, you know, of that. He's been a very
22 fine commissioner. And I made it a
23 practice of meeting with commissioners
24 when I was in Albany throughout the year.
25 I do that even now, I just have lunch or I

1 J. Feerick
2 have -- mostly lunch. No, I have no -- I
3 have no -- you know, look. I am chair in
4 a Commission where you have got different
5 appointed authorities, different
6 commissioners. And people that I didn't
7 know, some people I did know. For the
8 most part, it was a new journey. And I
9 guarded myself in terms of how I conducted
10 my role as chair. And I have come to
11 appreciate my Commission and Commissioner
12 Gruenberg has been an important
13 commissioner. And Commissioner Emery has
14 been an important commissioner. And the
15 fact that I -- you know, I would have -- I
16 would wonder about things, I am just
17 sharing with you what -- me.

18 Q You formed a number of working
19 committees, subcommittees.

20 A Yes.

21 Q Was the formation of any of the
22 subcommittees in response to your concern
23 about leaks?

24 A No. I would -- no. That was
25 not a -- that was not something I focused

1 J. Feerick
2 on. What I did focus on was that it
3 should have a mix of people. It should
4 have strong people, in terms of
5 backgrounds that would enable us to
6 responsibly do our job. And it also
7 should have bipartisan representation,
8 obviously. And John Mitchell, with whom I
9 had met, struck me as somebody whom I
10 didn't know would be a very fine member of
11 the group, and he turned out to be all of
12 that.

13 Q There was a story on July 26th
14 of 2007, reported by the Associated Press
15 and others, "The Ethics Commission Will
16 Investigate The Spitzer Scandal." The
17 letter was provided by a state official on
18 condition of anonymity. And when told,
19 the letter of the State Ethics Committee
20 confirmed it came from the agency.

21 Does that ring a bell?

22 A I'd have to -- what I would like
23 to look at -- and I will give you the
24 document, but, if I could just look at
25 something I brought?

1 J. Feerick

2 Q Of course. Of course.

3 A It's a summary of newspaper
4 articles to see if I can pick that up.
5 What was the date of that? July 26th?

6 Q Yes. The date, Dean, was --

7 A Is that Newsday Associated
8 Press?

9 Q I will tell you in a second.
10 July 26th, 2007.

11 A The document I am going to give
12 you, I just want to --

13 Q Is there a copy for me?

14 A That's the one I mentioned I
15 would like to leave with you.

16 Q Sure.

17 A But what I want to do, what it
18 is, it's a summary of newspaper articles
19 from July 26th, '07 to -- and let me read
20 you, if I can.

21 Q This was July 26th.

22 A Yes. Let me read you what I
23 have.

24 My version of the AP story
25 appeared in Newsday July 26, '07. And the

1 J. Feerick
2 title of the article is "New York Ethics
3 Commission Will Investigate Governor's
4 Aide's Role in Tracking Top Republican."
5 And my summary says, refers to a letter
6 apparently sent to the Commission by the
7 attorney general. The Commission has made
8 no determination whether to investigate.
9 What I remember at the time was our staff
10 wondering if the attorney general's office
11 released that letter.

12 Q Let me turn now, on
13 September 4th of 2007, the Post reported
14 Spitzer fights Ethics Commission over
15 private e-mails.

16 Do you see that, Dean?

17 A Do you have a title on the
18 article?

19 Q No.

20 A That's okay.

21 Q Let me tell you what I am asking
22 about.

23 A Sure.

24 Q I have found nothing prior to
25 September 4th of '07, indicating that

1 J. Feerick
2 there was a fight, when I say a fight,
3 some contention between the Spitzer
4 administration and the Ethics Commission
5 over the furnishing of any documents.

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

12 A I believe there were meetings in
13 August that the representatives of the
14 Spitzer administration had with the staff
15 of the Commission on documents. And there
16 were issues in those meetings as to
17 documents and issues in those meetings
18 with reference to privilege. And those
19 would have been discussions in an
20 investigation with the people that you are
21 dealing with. And my understanding is
22 that there was differences in those late
23 August meetings with reference to
24 documents.

25 Q And whether privileges would be

1 J. Feerick
2 asserted; is that correct?

3 A Yes.

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

7 A Certainly with reference to
8 documents. And I think you would have had
9 witnesses beginning to testify sort of
10 toward the end of August and the beginning
11 of September, represented by counsel. And
12 all of that would have been part of the
13 mix dealing with our staff.

14 Q And that preceded the
15 September 4th article? I have found
16 nothing prior to September 4th indicating
17 that there were these discussions between
18 your staff and Spitzer administration over
19 issues like privilege and documents and
20 witnesses. Did you find anything prior to
21 September 4th?

22 A Well, see, I have -- part of the
23 reason I needed to go back is --

24 Q I am interested only in --

25 A On documents.

1 J. Feerick

2 Q Only in whether or not this was
3 reported in the press prior to
4 September 4th.

5 A Let me -- New York Times for
6 July 27th? I don't think that was on your
7 list.

8 Q Now, what do you have for
9 July 27th?

10 A It says -- I have a New York
11 Times article July 27th. And it's
12 entitled Ethics Commission begins review
13 of Spitzer's office. And I will just read
14 you what I have. "The Associated Press
15 first reported the Ethics Commission
16 inquiry on Thursday. The Commission sent
17 a letter to the attorney general's office
18 on Monday seeking transcripts for their
19 investigation, interview notes, documents,
20 tape records, correspondence and copies of
21 e-mail messages."

22 The same article appeared on
23 July 27th in Newsday. And the AP story,
24 according to the Newsday article,
25 apparently Walter Ayers of the Commission,

1 J. Feerick
2 our public spokesperson, confirms the
3 information that the press tells us that
4 they have from someone.

5 Q But was there anything in either
6 the New York Times or Newsday indicating a
7 conflict, a dispute between your agency
8 and the Spitzer people over whether
9 privilege was going to be exerted, over
10 documents or anything like that?

11 A I don't see that in The New York
12 Times -- my summary of The Times article.

13 Q Do you see it anywhere before
14 September 4th?

15 A In my summary, I don't -- I have
16 a gap between -- I don't see anything up
17 to September 3rd, in terms of my summary
18 of the newspapers.

19 Q Okay.

20 A And then I have a gap between
21 September 3rd and September 10th. So you
22 would have an article, I assume -- I have
23 a New York Post article by Mr. Dicker on
24 September 10, '07, called Spitzer aide in
25 mystery meetings. That's what it's

1 J. Feerick

2 called. And --

3 Q What I am getting at very
4 specifically --

5 A That's in that summary. The
6 September 10th article says: "A source
7 close to the Ethics Commission regarding
8 stonewalling the Commission in terms of
9 request for documents."

10 I think that's responsive to
11 your question. That's September 10th.

12 Q September 10th. By Dicker?

13 A By Dicker.

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

18 A I don't see it in what I have.
19 You know, and I will make another check of
20 my newspaper articles.

21 Q You are very thorough.

22 A I mean, this is largely my
23 document by myself in a large library.
24 Because I wanted to be sure -- and I
25 appreciate the questions, because I wanted

1 J. Feerick

2 to be sure that this office, in making
3 whatever judgements you are going to make,
4 saw the full year.

5 Q Is what?

6 A I wanted to be sure --

7 Q That whatever judgements we make
8 is?

9 A You saw the full year.

10 Q Absolutely.

11 A And I think this is very
12 important.

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

21 A All I can say is that the
22 document in front of me would suggest that
23 that's correct, but, you know, I would
24 want to make a note and see if there was
25 anything else that came to my attention, I

1 J. Feerick
2 called it to your attention.
3 Q I appreciate that.
4 A But I don't see anything else --
5 Q Prior to September?
6 A Correct.
7 Q So again, if you find nothing
8 else in the press --
9 A Right.
10 Q -- as we sit here today, the
11 issue of whether certain documents were
12 going to be withheld from the Commission
13 by Spitzer people because of some type of
14 privilege, was an internal issue and
15 confidential within the Commission; is
16 that correct?
17 A Well, internal -- yes, to this
18 extent: That if there's an issue, there's
19 a party outside the Commission that the
20 issue is with. Namely, the attorneys and
21 other representatives of Spitzer.
22 Q I understand.
23 A Yeah.
24 Q When I say Commission, the
25 people involved, it was a confidential

1 J. Feerick
2 thing, it never reported to the press what
3 you people are talking about and
4 discussing, getting certain documents,
5 getting certain witnesses, whether
6 privilege is going to be exerted of some
7 kind. That's all internal until
8 September?

9 A I would certainly consider it
10 such. I mean, obviously you have the
11 people involved within the Commission.

12 Q Absolutely. Absolutely.

13 Now, there were other
14 articles --

15 A I had no idea you would ask me
16 these questions. And I am certainly
17 pleased, to a certain extent, that --

18 Q We aim to please.

19 A -- I took the time to go through
20 it in my newspaper file.

21 Q I appreciate that you did. And
22 it will be helpful to me. There were
23 other things, but I am looking only for
24 something very specific.

25 There also were newspaper

1 J. Feerick

2 stories, Dean, about the Senate

3 Investigative Committee --

4 A That's on my list, as well. The
5 Senate, you know, is certainly part of my
6 list.

7 Q October 13th, Dopp spent some
8 nine hours Thursday on October 11, 2007
9 answering questions before the Public
10 Integrity Commission according to his
11 lawyers. That's attributed to his lawyer.

12 A What is the date of that?

13 Q I have Saturday, October 13th,
14 Albany Times Union.

15 A I don't know why I don't have
16 that one on my list.

17 Q But that's attributed to his
18 lawyer. And we know, us lawyers like to
19 talk.

20 Dean, October 22, 2007.

21 A I will never forget that day.

22 Q You remember that day.

23 A I will never forget that day.

24 That changed my life.

25 Q The Dicker story, I am referring

1 J. Feerick
2 to. "COPI Chairman Feerick, Spitzer
3 appointee, secretly authorized creation of
4 a special subcommittees made up of Spitzer
5 loyalists to handle the probe. In
6 addition, Dicker claims, that a memo
7 written by Rifkin, quoting to put an end
8 to the probe, was secretly distributed to
9 Commission members."

10 A Right.

11 Q Let me ask you this: Can you
12 imagine this coming from anybody but
13 someone within your Commission?

14 A I gave you my -- I certainly
15 felt that the two parts of the article
16 having to do with a memorandum to the
17 Commission -- we sent Commission members a
18 package that included a memorandum from
19 Richard Rifkin. And also in the package
20 was an e-mail -- no. Also sent to the
21 Commission was an e-mail communication
22 from me having to do with the creation of
23 the work -- the Commission members
24 received a package of material as to bring
25 them up to date on the work of the Ethics

1 J. Feerick
2 Commission with respect to this
3 investigation. It had a memorandum or a
4 letter from Richard Rifkin. Now -- and it
5 had a separate document that was an e-mail
6 communication to the Commission from me
7 setting up the work groups. It was that
8 document that at least raised for me a
9 serious question of a leak within the
10 Commission. The Rifkin letter, there were
11 others in the Spitzer administration who
12 had knowledge of the letter. So I
13 couldn't -- you know, I couldn't rush to
14 judgment. I am not a guy that rushes to
15 judgment. I have never done it and never
16 will. But I felt that -- and there were a
17 lot of people in the offices who put
18 together the packages to the commissioners
19 that had the Rifkin letter.

20 But the e-mail communication was
21 separate. So the answer to your
22 question -- I apologize for a long
23 answer --

24 Q No, that's all right.

25 A -- is I felt there was a leak

1 J. Feerick
2 within the Commission. And I knew
3 something was coming on the 22nd because
4 Mr. Dicker was on the telephone with the
5 Commission spokesperson that Saturday and
6 Sunday looking for confirmation. And not
7 even a public spokesperson at the time had
8 that information in its totality. I don't
9 know, there might have been bits and
10 pieces, but he really didn't have it.

11 Q Was it only the members of the
12 subcommittees and your Executive Director
13 and you who knew about this?

14 A Well, here's -- of an assistant,
15 a confidential assistant. Not me
16 personally, but the Commission does.
17 Carol Mirabelli. She sent the
18 communication. She sent the e-mail. I
19 had made inquiry of her at the time
20 because I was very upset about this. And
21 so Carol Mirabelli had knowledge of it. I
22 often wondered since our technology at the
23 time was part of the state department, the
24 New York State department, we were sort
25 of -- who else could have access to

1 J. Feerick
2 Commission communications. And, you know,
3 I just didn't know. But as far as I was
4 concerned, it was a very limited group
5 which included the commissioners, included
6 certainly Mr. Teitelbaum, it included
7 Carol Mirabelli and I can't recall who
8 else would have seen that communication
9 aside from Carol Mirabelli. She's a very
10 circumspect, careful person and somebody
11 who was with the Lobbying Commission.

12 Q Plus the commissioners who
13 composed that?

14 A Oh, yeah, every commissioner.

15 Q So that would be, I believe,
16 Levine?

17 A Well, no. The communication
18 went to all the commissioners.

19 Q Oh, I'm sorry. Okay.

20 A You see, it notified all the
21 commissioners. That's one of those
22 documents that I had given you. All the
23 commissioners knew who the work groups
24 were. Because I had this --

25 Q I know, you sent me a copy of

1 J. Feerick
2 the composition of the different work
3 groups.

4 A And the communication I am
5 referring to was sent on October 11th, at
6 5:00. Actually, Carol Mirabelli sent the
7 communication, forwarding a memorandum
8 from me. And it was that memorandum,
9 Judge, just to show it to you, that was
10 the memorandum that I gave you --

11 Q I think you were kind enough to
12 give me some documents, including that
13 one.

14 A Yeah.

15 Q How did you respond to that, in
16 terms of seeing that in the Dicker column.
17 It obviously upset you. I see it still
18 has left its mark?

19 A It's left its mark.

20 Q I know it did. I know.

21 A It changed -- it was a low
22 point. How did it affect me?

23 Q No. How did you respond in
24 terms of the dealings with the
25 commissioners?

1 J. Feerick

2 A Oh, I would have had discussions

3 with the work group. I would have had

4 discussions with Herbert Teitelbaum.

5 Certainly taken -- I didn't want to

6 unnerve the staff. I think we picked up

7 discussions of confidentiality within the

8 staff, because, you know, you have a staff

9 of sixty very fine people. And I couldn't

10 rule out that somebody on the staff might

11 have deliberately or unwittingly,

12 whatever, provided some information. So

13 we ratcheted up dealing with security in a

14 way that didn't destroy confidence of

15 people. And it was a very fragile time.

16 I had two separate groups of people coming

17 together that had to be integrated. I

18 know the old Lobbying Commission had some

19 leak issues. And that's what David

20 Grandeau and some of the commissioners

21 told me. And the Ethics Commission had a

22 proud history of no leaks. And now -- so

23 I have two groups of people together,

24 trying to weave them together, work

25 together with the kind of mission that the

1 J. Feerick
2 Commission has. And so I asked Herb to
3 talk about it with the staff to make sure
4 everybody had signed confidentiality
5 statements. In the Commission, I spoke to
6 the work group. I would have had,
7 presumably -- and I don't want to
8 speculate, because you have enough
9 speculation. But my practice would have
10 been to talk to commissioners, but I think
11 we had a very difficult meeting in
12 December. The December meeting of the
13 Commission. I think I spent
14 two-and-a-half hours talking about leaks
15 and confidentiality. And I don't know
16 that the staff was present, including
17 Herbert Teitelbaum. Where I had it out --
18 every Commissioner. And I remember -- and
19 I will just share this with you -- some of
20 the commissioners and prosecutors saying
21 how difficult it is to deal with leaks,
22 how they hated leaks investigations, how
23 they had to protect the information when
24 they were U.S. attorneys or prosecutors,
25 and, frankly, after I was appointed, I

1 J. Feerick

2 think I have just said, who needs this
3 stuff at this age of life, I would have
4 walked away, but that's not me.

5 Q Dean, Ginsberg is a former
6 Assistant DA.

7 A Correct. He was not with us at
8 that time.

9 Q What?

10 A He was not with us at that time.

11 Q I spoke before --

12 A I don't know if I have answered
13 your question, but you certainly got my --

14 Q No. No.

15 A -- attention by that question.

16 Q I see on October 29th of 2007,
17 the New York Post, "Spitzer and aides
18 claim executive privilege to limit COPI's
19 probe." Now, that was October 29th. That
20 was the first time since September that
21 this was ever referenced. October 29,
22 2007.

23 A Right. And also according to a
24 source close to the Commission -- now,
25 these are all -- there were about twelve

1 J. Feerick
2 different expressions you will see. I
3 don't know who the source close to the
4 Commission is. It could be somebody that
5 had been with the Commission. Could be --
6 who knows? It's a world of -- I suppose
7 the only way you could get to the bottom
8 of it is if all the members of the press
9 who were the recipients of this
10 information shared it publicly.

11 Q Dean, there did come a time in
12 February of 2008 when District Attorney
13 Soares contacted you alleging that Herbert
14 Teitelbaum had provided confidential
15 information to Robert Herman of the head
16 of the governor's office of regulatory
17 reform.

18 You recall that, of course?

19 A Yeah. It was a broader
20 conversation than that, but that was part
21 of it, certainly.

22 Q Yes. And I believe you
23 indicated in your memo to the
24 commissioners, which you supplied to me,
25 you first met with him at a coffee shop,

1 J. Feerick
2 and then this was followed up some time
3 thereafter, when the DA met with you and
4 with other commissioners and played two
5 tapes: The tape of Robert Herman and a
6 tape of Lloyd Constantine.

7 You recall that, of course?

8 A I do, but can I --

9 Q Please.

10 A Let me go back to February 8,
11 2008. Commission had a meeting in Albany
12 that day. And I got a message from the
13 District Attorney, wanted to meet with me.
14 I'm not sure if I met him before. I have
15 a recollection at some point being
16 introduced to him in some other coffee
17 shop when I was having lunch, but it could
18 have been after that, I don't -- but
19 basically, it was the first time I met
20 him. And I know I gave you, your
21 assistant a sheet that I found of some
22 notes I made. Because when I came back to
23 the Commission offices, I was obviously
24 distressed by the meeting. And I think --
25 I know I wanted to get back to my family.

1 J. Feerick

2 And so I hurriedly sketched out at the

3 Commission offices -- I believe that's

4 where I did it -- the notes that you have.

5 But I said to your assistant when I met

6 with her that the notes are not complete.

7 Now let me just -- here's essentially what

8 the meeting was. The District Attorney

9 said that he had information that he had

10 not corroborated that the higher-ups, all

11 the way to the governor, were involved in

12 directing a Troopergate and that he wanted

13 to share that information and work with me

14 and our Commission with respect to that

15 information because it obviously was

16 relevant to our investigation as well.

17 And he had -- and this is the substance of

18 what he was saying to me. He had concerns

19 about dealing with our Commission because

20 of Herb, Herb Teitelbaum. And he made

21 reference to a relationship between Herb

22 and Herman, and I think probably -- my

23 note would reflect this -- I think, Lloyd

24 Constantine. And because of those

25 concerns, he had some hesitancy dealing

1 J. Feerick
2 with -- I think those are my words, in
3 substance -- our Commission. I told him
4 in no uncertain terms that Herb was
5 directing this investigation, had the
6 confidence of the Commission, had my
7 confidence. I had been involved in this
8 investigation from day one. And he
9 checked in with me regularly and I had a
10 sense of what was going on. I said, you
11 have to understand, he's directing this
12 investigation, but I would work with you,
13 Mr. District Attorney, in getting myself
14 more involved with whatever the
15 information if -- he was trying to
16 corroborate it -- he had not corroborated
17 it -- was. And he said he was going to be
18 working on it that weekend and into the
19 next week, he was going to be interviewing
20 some people and he would be back to me in
21 a week's time.

22 In the course of that meeting,
23 we had a few other discussions. And I
24 mentioned this, I think, to your assistant
25 the other day. Mr. Dicker came up in the

1 J. Feerick
2 course of the discussion. I recall the
3 District Attorney says that Mr. Dicker
4 likes to write the script, he wants others
5 to follow, but doesn't bear any
6 relationship to reality. I also said that
7 the article that appeared on
8 February 4th -- Monday, February 4th, in
9 the New York Post that our Commission was
10 going to make a decision at its meeting of
11 February 8th concerning Mr. Dopp was
12 totally inaccurate. We had no agenda item
13 that involved Mr. Dopp at that Commission
14 meeting. And so I had the sense maybe
15 that that article stimulated, maybe, the
16 District Attorney, but we didn't talk
17 about it.

18 So I also shared with him
19 that -- I was trying to build a
20 relationship of working together,
21 cooperating. Okay --

22 Q I'm sorry. I am listening to
23 you. You mentioned February 4th, I was
24 just looking for that here. I didn't see
25 it.

1 J. Feerick

2 MS. OSTERER: Dean, what was
3 the date of the article?

4 THE WITNESS: February 4th.
5 Very important article in the sequence
6 of what was going on at the time.

7 A And I said to him -- so he has
8 information that he thinks he wants to
9 share with us, but he wants to corroborate
10 it. I want to receive the information. I
11 want to work with him. I will get more
12 involved with it, but he has to understand
13 that Herb's directing our investigation.
14 And I share with him information about
15 where we're at. I recall discussing our
16 working group with him. I recall
17 discussing that David Nocenti, the
18 governor's former counsel had been in and
19 it was a tough session that week, from
20 what I had heard from the staff, and that
21 he was coming back next week.

22 Now, he had also mentioned he
23 was planning to interview next week Mr.
24 Nocenti, and I shared that information
25 with him.

1 J. Feerick

2 Q What was the Dicker article?

3 I'm sorry?

4 A The Dicker article on the 4th
5 basically says -- and I will quote from
6 what I have here: "Sources said that the
7 Commission's Executive Director, Herb
8 Teitelbaum, may ask the thirteen-member
9 Spitzer-controlled panel to approve a NORC
10 against Darren Dopp." I don't know where
11 that comes from. That wasn't happening.
12 "The sources said, the notice would charge
13 Dopp with violating the state Ethics law
14 by using state police to gather evidence
15 purportedly damaging to Joseph Bruno."
16 Quoting again from my summary of that
17 article: "'Teitelbaum told associates
18 that he wants to wrap this thing up
19 quickly, bringing the investigation to a
20 close,' a source told The Post. Soares,
21 who even Spitzer administration insiders
22 concede has sought to cover up the
23 scandal, is harshly described as docile
24 and not independent by Senate
25 Republicans." This is a summary of that

1 J. Feerick

2 article.

3 Now, we had a meeting coming up
4 that Friday, the 8th. Not to deal with
5 any NORC regarding -- against Dopp or
6 anyone else. That's not where we were in
7 our investigation.

8 Q NORC, I believe that stands for
9 Notice of Reasonable Cause.

10 A So going back -- that's what I
11 have for February 4th. And that is a very
12 key article, in my opinion, as to the
13 events of that week. And so --

14 Q So now you are at a coffee shop
15 with Soares on February 8th?

16 A Right.

17 Q And you discussed that?

18 A Yes. I discussed the article,
19 that there was nothing to it.

20 Q Did he also mention that he was
21 concerned about Teitelbaum, that he had
22 uncorroborated?

23 A Yes. That's all part of that
24 coffee shop conversation. And I am
25 relating to him our confidence in Herbert

1 J. Feerick
2 Teitelbaum. And also I am relating to him
3 information about our investigation.

4 Now, this is relevant, and you
5 will see why. I tell him that David
6 Nocenti had a very tough session -- he
7 told me he was going to bring Nocenti in
8 next week for his investigation. I
9 happened to share with him that Nocenti
10 was in this week, that week, in our
11 investigation. And it was -- you know,
12 whatever I said, it was essentially --
13 because what I heard from the staff, it
14 was a tough interview. Those were my
15 words, tough. And I said to the District
16 Attorney that Nocenti was coming back the
17 same week he was coming in. It was
18 important he knew that. I didn't want him
19 to have issues that they were tripping
20 over, you know, whatever his investigation
21 was.

22 That Monday, February 11th,
23 Elizabeth Benjamin, as well as The Post
24 reports that the Nocenti was in before our
25 Commission the previous week and had spent

1 J. Feerick
2 a number of hours and our staff that
3 morning -- I got a call from Herb, Monday
4 morning, February 11th, very upset as to
5 where that information would have gotten
6 to the Daily News and The Post. Now, I
7 don't know where they got it from.

8 Q With regard to Soares'
9 allegation about Teitelbaum on
10 February 8th --

11 A Right.

12 Q I think that was the first
13 meeting of the coffee shop?

14 A Correct.

15 Q -- did he tell you the basis for
16 his --

17 A All he said was that information
18 of what's going on in our Commission is
19 going back to the Executive Chamber and we
20 were porous and it had been going back all
21 along. That's basically -- and then he
22 makes reference to -- he really wasn't
23 focusing, as I remember the conversation,
24 so much on what I focused on, you know,
25 later, you know, what he was doing with

1 J. Feerick
2 the Grand Jury. It was sort of a -- it
3 was general. I couldn't put my hands on
4 anything specifically.

5 Q Did he make reference to a
6 meeting that he had in November of 2007,
7 where members of the Spitzer
8 administration had reported to him that
9 they had information about the Commission
10 referral -- and I know referral is a word
11 of art -- to the DA of allegations in
12 connection with Dopp?

13 A I don't have any recollection,
14 you know, of that subject being part of
15 the discussion that we had at this
16 twenty-minute session I had with him on
17 the eighth. But I was aware of that from
18 Herb Teitelbaum, because Herb Teitelbaum
19 told me that he got a call from the
20 District Attorney sometime in November.
21 And the District Attorney had made
22 reference to that subject with Herb. But
23 the District Attorney never called me. I
24 don't remember the District Attorney
25 bringing this up when I met with him on

1 J. Feerick

2 November 8th.

3 Q What did Teitelbaum tell you?

4 A He said, when this came up, that
5 essentially that it was not true. It
6 was -- I remember him saying -- he was
7 shocked by it. He also, I think, said to
8 me that he had called Herman at that time
9 and Herman said something to the effect
10 that Herb had not communicated and he
11 didn't communicate that Herb had
12 communicated information. And that was
13 it. And now this is coming to me from
14 Herb. I never hear it from the District
15 Attorney. And I don't remember the
16 District Attorney -- I remember when I met
17 the District Attorney in the coffee shop,
18 somehow my recollection is that -- I may
19 be wrong in this -- but my recollection is
20 it could have been the night that we were
21 over at his office listening to the tapes.
22 But I remember asking him about dates for
23 things. And my recollection is that he
24 sort of wasn't sure of certain dates. And
25 the reason it was relevant to me to ask

1 J. Feerick
2 the question is because I had made my own
3 notes of dates and I would be able to test
4 things. That's the best I can do with
5 your question.

6 MS. OSTERER: I was thinking
7 that perhaps the Dean could look at
8 this. It might refresh his
9 recollection.

10 THE WITNESS: Thank you.

11 JUDGE FISCH: We will take
12 five minutes.

13 [A recess was taken.]

14 A I have looked at my notes that I
15 described before of February 8th,
16 concerning my, I guess, coffee shop
17 meeting with the District Attorney. And
18 the notes certainly reflect what I
19 remember with the additions that I gave
20 you in my testimony today.

21 Q Thank you.

22 A And I thank you for that
23 opportunity. And then, of course, I
24 reflected some of that history in the
25 presentation that I made to the Commission

1 J. Feerick

2 on February 28th.

3 Q I want to get back, you said
4 that Teitelbaum had told you, had said
5 something to you that he learned there was
6 an allegation that he had leaked
7 information to --

8 A He got a call from the District
9 Attorney.

10 Q And he said that the allegation
11 was that he had leaked information to
12 Herman, correct?

13 A Right.

14 Q And Herman to Constantine or to
15 others, to somebody in the chamber, right?

16 A Yeah.

17 Q Okay.

18 A We saw two different kinds of
19 communications, as I recall. My
20 recollection, and my diary would reflect
21 that, that on November 2nd, Herb tells
22 me -- I would have had several
23 conversations with him that day. In one
24 of those conversations later in the day, I
25 believe, he tells me that he had a call

1 J. Feerick
2 from the District Attorney who said to him
3 that his investigation, his District
4 Attorney's investigation had been leaked.
5 Because he got a call, in turn, the
6 District Attorney was saying, from some
7 members of the executive branch who wanted
8 to meet with him. And he told him they
9 better have lawyers, something like that.
10 Herb tells me that. He tells me that, I
11 believe, around November 2nd, but there
12 would be a note in my diary when that was.

13 Then I recall -- so that's
14 November 2nd. What I remember is Herb
15 telling me on a Monday, November 12th --
16 if that's a Monday. Let me just check my
17 calendar.

18 Q Do you have this, or do you want
19 it?

20 A It's here. On Monday,
21 November 12th, what I remember is -- and
22 this is the best I can tell you -- that
23 he, Herb, received a call from the
24 District Attorney on Friday, November 9th.
25 And the District Attorney must have

1 J. Feerick
2 conveyed to him in a conversation that day
3 that he had met with some representatives
4 of the Spitzer Administration, presumably
5 that week. And that they had shared with
6 him that they knew of his investigation
7 from a communication that Herb had with --
8 say a communication between Herb, Herman
9 and Constantine. And Herb relates that
10 communication from the District Attorney
11 on November 9th to him to me, I believe,
12 on Monday, the 12th, and, in addition to
13 reporting it, I believe he said to me
14 something to the effect that he had called
15 Bob Herman. Obviously -- it was clear to
16 me he was shocked by the District
17 Attorney's communication. There was no
18 question about that. And Herman told him
19 that he never told anyone, essentially,
20 that Herb had communicated confidential
21 information to him.

22 Q Okay.

23 A That's what I remember.

24 Q So that's the extent of it on
25 November 12th?

1 J. Feerick

2 A Correct.

3 Q Now, there comes a time in
4 February --

5 A Yes, we are back to February.

6 Q Now, between November and the
7 time that the DA meets with you in the
8 coffee shop and follows up by playing
9 tapes, nothing further with regard to
10 Teitelbaum on this issue, in terms of him
11 leaking things?

12 A Well, there's a steady drum beat
13 in press stories. I mean, you probably
14 have them, and it's probably in the
15 document I am going to give you. People
16 are constantly attacking him and they are
17 accusing him of everything under the sun.

18 Q Dean, I don't want to interrupt,
19 but there were some stories about him
20 steering the investigation away from
21 Spitzer.

22 But in terms of leaking, nothing
23 at this point, nothing else about him
24 leaking information?

25 A Let me just quickly take a look.

1 J. Feerick

2 Q Please. I am not trying to rush
3 you.

4 A This is not Herb. This is a
5 reference to me as being among the losers
6 of 2007, along with the then-inspector
7 general and others, for covering up
8 scandals. This appears in the New York
9 Post the day before Christmas. But that's
10 not Herb. That's me.

11 Q And what was that again? I
12 missed it, I'm sorry.

13 A In 2007, that the Public
14 Integrity Chairman John Feerick, Inspector
15 General Kristine Hamann and Albany DA
16 appeared more interested in covering up
17 scandals than uncovering them.

18 Q What was the date of that?

19 A December 24, 2007.

20 Back to your question -- I'm
21 just going down my -- there's articles at
22 the end of December, critical of Herb
23 Teitelbaum for leaving in the middle of
24 the investigation, according to the
25 articles, to go on vacation.

1 J. Feerick

2 Q I saw that, December 31st, he
3 got a raise and he left for vacation. Is
4 that the article?

5 A Yes. I have one in The Post on
6 December 31st. I have another one in The
7 Post on January 1st.

8 Q January 3rd?

9 A There is a reference to -- there
10 is a Newsday article on the 3rd I have.
11 And also New York Post on the 2nd,
12 criticism of Teitelbaum, you know,
13 critical of him, critical of the
14 Commission. And on January 7th, there is
15 an article that Probers Fear The Fix Is
16 In, Say Boss Biased." I don't know if you
17 have that. Mr. Dicker had an article on
18 January 7th. And that makes reference to
19 Herb. It says that two sources say that
20 Herb has provided inside information to
21 Rifkin and Herman.

22 Q What was the date of that?

23 A January 7th, a Dicker article.
24 That -- giving information that should be
25 kept in the Commission, one source said.

1 J. Feerick

2 Q I see that.

3 Between that article and meeting
4 with the DA in February, in the coffee
5 shop for twenty minutes or whatever, and
6 that's followed up some thereafter with
7 him playing two tapes, Herman and
8 Constantine, correct?

9 A That's right. I guess the only
10 other thing that took place in that period
11 between February 8th and the tapes is a
12 communication to Soares from a third
13 party, from Judge Levine that he is of the
14 same view I am, that Herb can be trusted
15 and we would like the confidential
16 information -- that the District Attorney
17 I thought was going to share with me a
18 week later after our meeting of
19 February 8th, but he never got back.

20 Q Finally, there comes a time
21 where you listen to tapes.

22 A Correct.

23 Q And that is in Soares' office.
24 And I believe, according to your memo.
25 You were kind enough to provide this memo.

1 J. Feerick

2 A I hadn't remembered I did it,
3 except I found it. Yes, the memo on
4 February -- yeah. This was prepared, and
5 my diary indicates in the early hours of
6 the morning, on February 28th.

7 Q February 28th?

8 A That's the day I had the
9 Commission meeting. It was later in the
10 morning.

11 Q So you refer to going over to
12 the DA's office around 7:30 p.m., two of
13 his assistants were there, and that
14 Mitchell, Ginsberg and Commissioner
15 Giuffra, by telephone, listened to two
16 tape recordings of Herman and Constantine.

17 A Correct.

18 Q And tell me, did you take notes
19 of that?

20 A No. What I specifically recall
21 saying to Barry Ginsberg, you know, just
22 take notes. I am trying to concentrate on
23 what's happening. And, you know, this
24 thing is coming out and I was scheduled to
25 go home. I got up to Albany very early

1 J. Feerick
2 that morning. This was a Tuesday, the
3 26th of February. And once I got a call
4 that afternoon from the District Attorney
5 before the tapes, and he sent over a
6 letter -- he told me he was sending over a
7 letter. And then I had a meeting of the
8 work group or whoever was available and we
9 said we've got to deal with this right
10 away. This is serious. And we went over.
11 And I said to Barry, we've got to deal
12 with it seriously, we have to deal with it
13 as lawyers, and you just take notes.

14 You know, and -- and we came
15 back to the Commission offices after
16 reviewing the tapes and had a discussion
17 among -- we had no communication with Herb
18 at that point. It was Barry, Giuffra,
19 myself and Mitchell. Mitchell, myself and
20 Barry in person. Giuffra on the
21 telephone. And we talked about what we
22 had heard. And we set in motion, I guess,
23 a process the next day that would involve
24 us meeting with Herb separately from the
25 work group. And I also recall reaching

1 J. Feerick
2 out that night -- I don't have that in the
3 statement I made to the Commission -- to
4 Dan French and Dan Alonso. Dan French,
5 former U.S. attorney, Dan Alonso,
6 distinguished former prosecutor, and Judge
7 Levine. That's my recollection. Let them
8 know what was happening. Making sure that
9 if anybody had any suggestions or
10 thoughts -- that's the way I operate. You
11 know, I've got twelve commissioners,
12 including myself. One is recluse to the
13 investigation. Everybody wants to be
14 involved, you know. I don't have the
15 luxury of being myself, as Paul Curran was
16 in special counsel. And then I recall
17 wrapping up the night at the Crown Plaza
18 Hotel. I didn't realize -- Barry said he
19 joined me that night. I don't remember
20 that. We just had a drink or some food
21 together.

22 Q Was Ginsberg the only one who
23 took notes?

24 A I don't know.

25 Q Did you review his notes before

1 J. Feerick
2 coming today?
3 A Yes. Well, here's what I did.
4 I couldn't make out his notes. You know,
5 I said, read me your notes. I think
6 previously he had read me the notes when I
7 thought I was going to testify way back.
8 Way back, I guess, I asked him to read me
9 the notes over the telephone, which he
10 did. I didn't look at the notes, the best
11 of my recollection, until your assistant
12 sent me the package of material that you
13 had received from the Commission. I
14 didn't even see -- I didn't know what you
15 had received, because what my instructions
16 were -- and I had the support of my
17 Commission -- whatever you want, you
18 should get. I want to cooperate, you ask
19 whatever questions you want, we will
20 answer the questions. Whatever the
21 documents are, give the documents. Even
22 though I had commissioners that had all
23 kinds of issues about the independence of
24 the Commission, about
25 deliberative privilege -- I've heard more

1 J. Feerick
2 privileges in this investigation than I
3 know existed. And at the end of the day,
4 the Commission supported me.

5 So let me think when I first saw
6 the notes. I guess Barry must have gone
7 over his notes with me yesterday. And I
8 asked him questions this morning, you
9 know, about his notes. So the answer
10 is -- I'm sorry to give you a long answer,
11 but you have to know who I am and how I
12 work. He shared his notes with me,
13 because I wasn't sure when I -- some of
14 what was in the notes, I didn't
15 understand. I couldn't make out the
16 writing. And then I wasn't sure the
17 sequence, you know, what were the notes
18 from the night before, what was the notes
19 the next day. And he went through his
20 notes with me once.

21 Q After listening to the two
22 tapes --

23 A Right.

24 Q -- and discussing it with the
25 commissioners and with Barry, you reached

1 J. Feerick
2 a conclusion that you had full confidence
3 in Teitelbaum and wrote to the DA
4 accordingly?

5 A I had full confidence in?

6 Q Teitelbaum.

7 A Absolutely.

8 Q Okay.

9 A And it was not simply based on
10 the tapes and our discussions among
11 ourselves and how we reacted to the tapes,
12 but -- and at the end of the meeting with
13 the District Attorney, to be frank with
14 you, I was very upset. I have worked with
15 Teitelbaum every day on this
16 investigation, essentially. And you have
17 to be pretty good to fool me -- not that I
18 can't be fooled. And so I had a whole
19 relationship with him. And when the
20 meeting with the District Attorney ended,
21 what he said to us, he has discharged his
22 responsibilities, so it's up to us to take
23 the matter, deal with it as we might. He
24 was out of the picture at that point, is
25 the way I -- and you would have to ask

1 J. Feerick
2 other commissioners if this is relevant.
3 That's the way I saw the meeting with the
4 District Attorney. So when this thing
5 kept coming back to us in so many
6 different forms, I didn't quite understand
7 it.

8 But the answer to your question
9 is we were unanimous in our view.

10 Q Was there nothing in the tapes
11 that led you to -- well, how did you react
12 to the tapes? You listened to two tapes.
13 And did you do an investigation?

14 A We did an investigation. And
15 let me come at it this way. There was
16 material in the tapes about the work
17 groups, right? It was totally wrong. I
18 think it was in the Herman -- you know, if
19 you tell me it was Constantine, I accept
20 that. Herman talks about the creation of
21 the work groups, the deal with Dopp. I
22 created the work groups. It was nonsense
23 what was said by Herman in that document.
24 That's his speculation. That's his view.
25 And I have been beaten up on that since

1 J. Feerick
2 October 22nd, right, the work groups?
3 That somehow was steering this
4 investigation away -- that's -- so that
5 was in the tapes. And I knew that was a
6 lot of hogwash, in Bronx English.

7 Also, Constantine -- and I am
8 giving you me. Constantine, I, frankly,
9 wasn't very happy in some of his dealings
10 with this Commission. And he seemed to
11 assume, seemed to speculate that there was
12 actual communications from Teitelbaum to
13 Herman. I saw no evidence of that in
14 those tapes. We have two people,
15 outstanding reputations, outstanding
16 lawyers, and if you are going to bring
17 those two people down, I have got to see a
18 lot more evidence than I saw on those
19 tapes. And I think that was the view of
20 my Commission.

21 Q The Constantine tape said that
22 on November 1st, he wasn't sure of the
23 date, but we fixed it as November 1st,
24 that Herman took him out of a meeting?

25 A Right.

1 J. Feerick

2 Q And they had a fifteen-minute
3 conversation. And he referred to the fact
4 that the DA was conducting an
5 investigation.

6 Did you have any questions to
7 how Herman would have known about this to
8 bring this to Constantine's attention?

9 A That night I heard the tape of
10 Herman. And Herman talked about being
11 in -- I don't know if it was dinner -- in
12 Herb's apartment --

13 Q He went to his apartment?

14 A -- and seeing some notes on a
15 pad. So Herman, in his document, was
16 basically saying that Herb didn't
17 communicate anything to me, I saw this pad
18 and I communicated that to Constantine.
19 Constantine, in his tape, was assuming
20 things. And he was not very happy with us
21 at that time.

22 Q Did you see the pad and the
23 notes?

24 A I haven't seen any pad and note.

25 Q Did you ever ask Teitelbaum to

1 J. Feerick

2 provide it to the Commission?

3 A I don't recall doing so.

4 Q Dean, how many meetings have you

5 been with Teitelbaum, roughly; ten,

6 twenty, fifty?

7 A A lot of meetings since the

8 beginning of this matter.

9 Q Have you ever seen him take
10 notes at a meeting?

11 A I don't have a recollection one
12 way or the other. You know, as you say,
13 we have a -- we've had a lot of meetings.
14 If you asked me, you know, what notes even
15 our staff took --

16 Q Have you ever seen Teitelbaum --

17 A Of course I would have seen him
18 jot things down on paper. No question
19 about it.

20 Q You have?

21 A Yeah. Absolutely.

22 Q We asked Barry Ginsberg to
23 provide whatever notes he had --

24 A On any subject?

25 Q Anything taken during the course

1 J. Feerick
2 of the Commission. He said Teitelbaum is
3 not a note taker. We had another member
4 of your staff who was very close with
5 Teitelbaum, said she never saw him take
6 notes at any meetings; he participated in
7 meetings, but never took notes.

8 A I must say, trying to think
9 about over a long period now, clearly I've
10 seen him jot things down. I am
11 generalizing.

12 Q If Ginsberg is here, I want to
13 see them.

14 A Let me go back. I have been in
15 meetings with him having to do with all
16 kinds of things dealing with lobbying
17 matters, dealing with staff matters,
18 dealing with just a lot of different
19 things. And I could not, before you, a
20 very distinguished former member of the
21 judiciary say that he has never taken
22 notes. I've seen him jot things down.

23 Q Would it have been --

24 A But this is on every -- I'm just
25 talking generally.

1 J. Feerick

2 Q What was allegedly seen by
3 Herman were notes taken on a yellow pad
4 about the Dopp's testimony being referred
5 to the DA.

6 A I think you probably have to
7 deal with counsel on that.

8 JUDGE FISCH: I will ask him
9 about that. Let me take two minutes.
10 Let me ask him right now.

11 [A short recess was taken.]

12 Q I misspoke. I said that
13 Ginsberg said that Barry is not a note
14 taker. Ginsberg said that Herb was not a
15 note taker.

16 A Oh.

17 Q I just spoke to him about notes.
18 And Dean, I want you to know that your
19 instructions to cooperate with us and give
20 us everything we want has not been
21 complied with. Ginsberg has been playing
22 games, there's been one obstacle after
23 another, and at some point I have to say
24 whether the Commission has cooperated, the
25 answer is going to be no. Now he told me

1 J. Feerick
2 there are notes by Teitelbaum; nothing
3 that pertains to this, nothing about the
4 Dopp's testimony being referred to the DA.
5 And he is playing games. And he has been
6 doing that all along. And I am going to
7 say this, I am going to say it publicly
8 when we have to.

9 A I hope you will come to a
10 different conclusion on that, because --

11 Q With regard to you, that's a
12 different thing. I know you are the only
13 thing -- the only reason subpoenas that
14 have been prepared and were ready for
15 delivery were not served was because of
16 you, and I called you instead, because
17 you, from day one, have pledged your full
18 cooperation. And I am sure those
19 instructions were communicated to the
20 others. I do not minimize the task you
21 have of dealing with thirteen
22 commissioners, and with counsel who is
23 designed to protect the Commission and so
24 on. But I have had nothing but obstacles
25 and obstruction and game playing here.

1 J. Feerick

2 And I am saying this to you now, John.

3 A Well, let me just -- with all
4 due respect to, you know, the important
5 work of your agency. The Commission has
6 been concerned from the start of this
7 matter, concerning the role it plays as an
8 independent Commission with an ongoing and
9 current investigation and its
10 responsibilities to, you know, protect its
11 role in government. And it has certainly
12 been my understanding that Barry
13 principally, I guess, has tried to deal
14 with your office in a way that was
15 responsive, respectful. I know he has had
16 a number of conversations with your
17 counsel. And, you know, I can't -- I
18 can't go through all of the, you know,
19 background, because I've only been in the
20 loop -- you know, as you have outlined it.
21 You obviously need to do what you feel you
22 need to do.

23 Q You said that from the
24 beginning, and I have always had your
25 pledge of cooperation.

1 J. Feerick

2 A No question.

3 Q Let me get back to this.

4 A Sure.

5 Q You never asked to see and
6 Teitelbaum never offered to show you this
7 so-called yellow pad with the notes on it?

8 A That's correct.

9 Q Do you recall any other part of
10 the Constantine testimony? I mean, you
11 have Herman saying he saw it on a pad the
12 night before, and that was the basis for
13 him interpreting those notes to mean that
14 there was referral to the DA.

15 A I am just trying to think of
16 what I recall at the time, you know,
17 because that's probably where your
18 question is. I just thought that there
19 was some comments in there -- and I
20 couldn't even particularize them now, that
21 seemed gratuitous criticisms of Herb.

22 The context is important to keep
23 in mind. In the month of February before
24 Mr. Constantine gives his testimony, we
25 are having, to some extent, some difficult

1 J. Feerick
2 issues with the attorneys for the former
3 governor. They are communicating about
4 leaks in the press concerning our
5 investigation. They have sent me letters
6 demanding that I meet with them.

7 Some time around February 21st,
8 after these two weeks of sort of
9 criticisms coming to us, I agree to meet,
10 talk about leaks. As it developed, the
11 meeting was not about leaks. It was about
12 the Governor's testimony, fixing a date,
13 fixing a place, learning more about the
14 format. And I was at the meeting to deal
15 with leaks, not with that subject. It was
16 not my practice. And I let them know
17 that. I also let them know at that
18 meeting that my view of the importance of
19 our investigation being thorough, being
20 careful, being just and fair, all those
21 words. And I also said words to the
22 effect that I really have no interest in
23 the outcome. The outcome flows from a
24 fair, thorough investigation. They heard
25 all of that from me.

1 J. Feerick

2 Q I understand.

3 A And they certainly knew that Mr.
4 Teitelbaum was very aggressive. He was --
5 I used to say to him and maybe Barry and
6 others, no one liked him. No one outside
7 the Commission liked him. And Judge
8 Levine would tell me that he heard from
9 people, I guess, he knew in Albany in the
10 executive branch, how independent, how
11 aggressive he was. And that's how I saw
12 it.

13 Q Let me go over --

14 A Sure.

15 Q Dean, this was part of the
16 Constantine tape --

17 A Right.

18 Q -- that was played to the
19 commissioners and to you.

20 Constantine testified that on
21 November 1st, Herman came to New York. He
22 wasn't sure of the date. We have
23 confirmed that it is November 1st. And he
24 took him out of a meeting and he said he
25 was so agitated that when Constantine saw

1 J. Feerick
2 him, he thought somebody had died. And he
3 said the following: "It's important I
4 give you this information, tell the
5 Governor, don't tell anyone I was the
6 source."

7 Now, according to Constantine,
8 on November 1st, he was quoted as follows:
9 "The Integrity Commission has made a
10 preliminary determination that Darren Dopp
11 had either perjured himself or falsely
12 swears in connection with testifying
13 inconsistently in the two sworn bits of
14 information. An inconsistency between the
15 sworn testimony before the Ethics
16 Commission, and the sworn statement he
17 gave the Attorney General Cuomo."

18 Was that true?

19 A February 1st?

20 Q November 1st.

21 A That's news to me. The answer
22 is I am not aware of that, and I wouldn't
23 be aware of that.

24 Q You are not aware that they had
25 referred this to the DA?

1 J. Feerick

2 A Oh, I thought you meant that the
3 Commission had made a preliminary
4 determination.

5 Q A preliminary determination.

6 A Nothing to that.

7 Q But you referred this to the
8 District Attorney?

9 A You know, as -- we had a
10 consultation with the District Attorney on
11 October 17th, concerning testimony and
12 whether that was the subject within his
13 jurisdiction he had an interest in. We
14 didn't want to -- we didn't want to go
15 much beyond that. And as you know from
16 your own work, the District Attorney
17 pursued the subject.

18 Q But that you had, by
19 November 1st, you had referred this to the
20 DA for them to look at?

21 A We had --

22 Q I know referred is a word of
23 art.

24 A Yes, it is a word of art. And
25 we didn't use the word referral. It was

1 J. Feerick
2 very clearly delineated by the work group
3 that there should be a consultation -- we
4 felt an obligation to have a consultation
5 with the District Attorney. And my exact
6 words were consultation. There was no
7 determination by our Commission that Mr.
8 Dopp or anyone else had violated the law
9 or had committed perjury.

10 Q Was it provided to the DA --

11 A He provided the transcript of
12 his testimony.

13 Q -- for consideration of whether
14 there was perjury or false testimony,
15 false statement?

16 A As I say, when I called the
17 District Attorney on October 17th at about
18 noon, I basically said that there
19 was -- we asked the staff to have a
20 consultation with you concerning some
21 testimony. I would not have characterized
22 it. And you would hear from Mr.
23 Teitelbaum. And Herb went over with one
24 or two staff members. And you would have
25 to ask them about that meeting.

1 J. Feerick

2 Q But the meeting was provided to
3 the DA for his consideration of whether
4 there was a conflict between testimony
5 before you and the statement before the
6 Attorney General?

7 A And also the role of others in
8 the Executive Chamber who were involved
9 with that statement.

10 Q Okay.

11 A That was -- that was of the
12 subject matter of the testimony.

13 Q And that was given to the DA?

14 A Correct.

15 Q Was anybody aware of that,
16 outside of people in the Commission?

17 A Not to my knowledge. I'm just
18 trying to -- trying to think. Certainly
19 the work group and the staff associated
20 with that.

21 Q The Commission knew it?

22 A The work group of commissioners
23 and the staff.

24 Q And Teitelbaum?

25 A Absolutely, Teitelbaum. He

1 J. Feerick
2 conducted the interview along with Maeve
3 Tooher.

4 Q And the explanation of how
5 Herman would have known it?

6 A You'd have to ask him.

7 Q I did ask him. I am asking you
8 if only the Commission and Teitelbaum knew
9 it, how -- this was never publicly
10 disclosed?

11 A Certainly not -- not by us. I
12 mean, all I remember from Teitelbaum's
13 tape was some notes and conclusions
14 that --

15 Q The Teitelbaum tapes or the
16 Constantine tapes? You said the
17 Teitelbaum tapes.

18 A Well -- no, I'm sorry. If I
19 said that -- all I remember from Herman's
20 tape -- because I think you asked me how
21 Herman would have known.

22 Q Yes.

23 A And my answer is that what I
24 heard Herman say on tape on the night of
25 February 26th, is that, I spoke before, he

1 J. Feerick
2 had seen some notes -- and this is my
3 recollection -- and he drew some
4 conclusions.

5 Q But this was known only to
6 people within the Commission at this
7 point, correct?

8 A As far as -- I mean, all I would
9 know -- you are talking about going over
10 to the District Attorney's office?

11 Q I am talking about Constantine
12 testifying that this was brought to his
13 attention on November 1st by Herman.

14 A Right. And then Herman said --

15 Q I will get to that.

16 A Yeah, okay.

17 Q I will get to that.

18 And also that you had formed
19 this Special Committee to deal with this?

20 A Which I have commented on
21 before.

22 Q Was that publicly known?

23 A Well, let me go back. As I said
24 before, there was no committee created to
25 deal with this. There was a work group

1 J. Feerick
2 created to deal with whatever issues
3 developed with respect to Mr. Dopp, issues
4 that developed with reference to the
5 investigation. That's my memo of -- and
6 the Dopp matter came before the work
7 group, right? It wasn't created to deal
8 with Mr. Dopp or anybody in particular.

9 Q But nobody but the work group
10 knew about it?

11 A No. Mr. Dicker knew about it.

12 Q Okay. How he got it is another
13 thing we've talked about.

14 A We've spoken about that.

15 Q But it was not in the press?

16 A In Mr. Dicker's column.

17 Q The members of the Commission,
18 the identity of the commissioners?

19 A When Mr. Dicker called our
20 public spokesperson that weekend, the
21 weekend of -- it would be -- October 19th
22 and 20th. He, as I recall the
23 communication from Mr. Ayers, he
24 identified the work group but with one
25 exception: He had Mr. Emery as a member

1 J. Feerick
2 of the work group, when it was Mr.
3 Mitchell. So my question --
4 Q Was that in the papers, though?
5 A What was in the papers was --
6 Q That a Special Committee was
7 formed --
8 A No, it was more than that. Of
9 Spitzer loyalists, Spitzer appointees.
10 Q Right. But the names were not
11 mentioned?
12 A Not in the newspaper.
13 Q That's what I am asking about.
14 A Right.
15 Q Okay. Was Loretta Lynch on that
16 committee?
17 A No.
18 Q Was Levine?
19 A Yes.
20 Q You, of course?
21 A Yes.
22 Q And were they the only ones that
23 knew about this matter?
24 A Well, you had Commissioner
25 Mitchell and Commissioner Giuffra.

1 J. Feerick

2 Q And who else at this stage?

3 A And you had the staff.

4 Q That they recognized that there
5 had been newspaper leaks about witnesses
6 having testified and what they may have
7 said?

8 A Say that again?

9 Q That the Commission recognized
10 there had been leaks that had gotten into
11 the newspapers?

12 A The Commission -- I would say --
13 let me say what I recognized. You would
14 have to ask different people what they
15 recognized.

16 What I recognized was that there
17 was a lot of leaking going on with
18 reference to our investigation from
19 multiple offices in Albany. That's my
20 view. And one cannot -- one cannot pin it
21 down, because you had attorneys for
22 witnesses who -- every witness before our
23 Commission was represented by counsel.

24 Q My point, Dean, is that on
25 November 1st --

1 J. Feerick

2 A Right.

3 Q -- Herman communicated to
4 Constantine information that was
5 confidential within your Commission. How
6 he got it, we will deal with.

7 A Right.

8 Q But that's correct?

9 A What I would understand is
10 what's in the tapes.

11 Q I will get to the tapes.

12 A But that's my --

13 Q The tapes, meaning the yellow
14 pad?

15 A Well, the tapes I heard.

16 Q Constantine's tape?

17 A Constantine and Herman that
18 night.

19 Q But that included that there had
20 been a referral to the DA?

21 A It used language and it said
22 things that were not accurate.

23 Q What was not accurate?

24 A It talked about a work group --
25 and my recollection is -- my recollection

1 J. Feerick
2 is that Herman's tape talked about a work
3 group specifically created to deal with
4 Dopp. Not true.

5 Q Okay.

6 A The Herman tape -- or one of the
7 tapes talked about the Commission having
8 made a determination to refer for perjury.
9 Not true.

10 Q But you referred it because you
11 were concerned that there might have been
12 perjury?

13 A We didn't -- there was no --
14 there was -- the reason we asked the staff
15 to go over was we didn't want to raise it
16 to that level. And we discussed whether
17 anybody from the Commission should go
18 over. We didn't think that that was
19 appropriate. We just wanted to be sure,
20 in the mix of our discussion, whether
21 there was anything there that the District
22 Attorney might believe was within its
23 jurisdiction before we move ahead. That's
24 all we did.

25 Q I understand. But the referral

1 J. Feerick

2 to the DA was accurate and confidential?

3 A It's the word referral again. I
4 don't want to --

5 Q Did the providing the District
6 Attorney with the information and the --

7 A I considered that within our --
8 within our group as --

9 Q Confidential?

10 A -- information that we should
11 protect.

12 Q Confidential?

13 A Absolutely.

14 Q Okay.

15 A I mean, confidential in terms of
16 we should protect.

17 Q And --

18 A You know, that information, you
19 know, that bringing over the transcript,
20 was information we should protect.

21 Q And the communication by Herman
22 to Constantine, all that information was
23 accurate, regardless of how he got it, it
24 was accurate, that it had been given to
25 the DA?

1 J. Feerick

2 A Well, see, I think we are -- we
3 are mixing a few things up. And just,
4 to -- you know, my recollection is that
5 Herman makes -- has some judgments in
6 there that are not accurate.

7 Q Forget the judgments. Just this
8 part. Dean, the fact that it had been
9 turned over to the DA for whatever
10 purpose, that was accurate and that was
11 confidential, it was not publicly known?

12 A I'd say -- can I put it in my
13 words? I think we are -- well, as far as
14 I know, the fact that we had the
15 consultation with the DA concerning issues
16 that might be raised in the transcript,
17 that was within our small group. That
18 was, you know, within the work group and
19 the staff. And it was not publicly known,
20 as far as I knew.

21 Q Herman should not have had that
22 information; is that correct?

23 A Who?

24 Q Herman.

25 A Certainly having that

1 J. Feerick
2 information -- having whatever information
3 he had about -- I don't know what
4 information he had. But I heard him say
5 was he saw some names on a pad, and he
6 drew some conclusions from that. That's
7 what I heard him say on the tape. And so
8 I can't take that by itself and say that,
9 you know, should he have seen the pad,
10 should he have looked at the pad, what
11 conclusions he drew from the pad.

12 Q Well, let me put it this way:
13 Should he have communicated that to
14 Constantine?

15 A I have no judgment on that as we
16 sit here today. You know, he -- you know,
17 there's, I suppose, questions about what a
18 person's duty is.

19 Q He was not a liaison with the
20 governor's office between the Commission.
21 There were designated people. There was
22 Rifkin, there was Dopp, there was
23 Constantine. There were others. Herman
24 was never designated as being the
25 recipient of information from the

1 J. Feerick

2 Commission. That's correct, isn't it?

3 A As far as I know.

4 Q The identity of the members I
5 have mentioned to you was not publicly
6 known, Levine and Lynch?

7 A Well, let's go back.

8 Q Forgetting the purpose --

9 A No, if Mr. Dicker is considered
10 a member of the public, as he is, even
11 though he may not publicize it, he
12 certainly knew four of the five.

13 Q It was not published in the
14 Dicker --

15 A No. I am just saying he was a
16 member of the public. He was publicly
17 known. You are right. He didn't publish
18 it in the story.

19 Now, here is a recollection I
20 have. I can't be sure as to what -- as to
21 when I spoke to the District Attorney on
22 October 17th, noontime, if I made
23 reference to a work group of
24 commissioners, I'm not sure -- I don't
25 have a recollection one way or the other

1 J. Feerick
2 on that. It appears as though I might
3 have made some general reference to a work
4 group, in general. I have a recollection
5 that -- I am not sure what the staff would
6 have said to Mr. Soares about the work
7 group. I have a recollection that -- and
8 you would have to ask Mr. Teitelbaum
9 this -- I have separated myself from Mr.
10 Teitelbaum since your investigation
11 started insofar as this investigation
12 goes, which is not easy, given that we
13 have a very small staff and he is
14 Executive Director of our Commission. And
15 I have done that.

16 But let me go back. I have a
17 recollection that he had communications
18 with Mr. Rifkin in October.

19 Q He did. There's not a dispute
20 about that.

21 A And I have a recollection that
22 at some point when we were dealing with
23 the difficult issue of putting off the
24 testimony, we were moving ahead to try to
25 take the testimony of key witnesses at

1 J. Feerick
2 that point, and we had to put it off,
3 something had come up. And I have a
4 recollection of him at some point saying
5 to me that, in talking to Rifkin, that he
6 had to make reference -- it was helpful to
7 him to make reference that there was a
8 work group of commissioners. Now, whether
9 he -- and he would have been authorized to
10 do that, because it was a difficult time,
11 how to -- how to put off the testimony
12 without -- and try to protect what the
13 District Attorney was doing and raise into
14 question why is the testimony put off,
15 right? And I have a recollection that
16 when he was in communication with Mr.
17 Rifkin, that he would have mentioned the
18 work group -- whether it was by name,
19 whether it was by title. I don't know.
20 You would have to ask him that.

21 Q All I am getting at --

22 A It's relevant to the question.

23 Q I understand, Rifkin may have
24 known about it, didn't know about it.

25 A Right.

1 J. Feerick

2 Q I am talking only about Herman.

3 A Right.

4 Q If Herman's story is that he saw
5 a reference on a yellow pad to Dopp going
6 to the DA, there was nothing about your
7 name, Lynch's name, Levine's name on that
8 pad, and those were people of the working
9 committee --

10 A Correct.

11 Q -- that Teitelbaum knew and now
12 Herman communicated to Constantine, right?
13 If everything he got from the yellow pad,
14 there was no claim that was on the yellow
15 pad?

16 A All I remember about the yellow
17 pad at this point -- now, you are taking
18 me back a number of months -- is names:
19 Soares, Dopp. I don't remember at this
20 point -- I will accept, you know, what you
21 say, that there was no reference to the
22 work group there. And, of course, Mr.
23 Constantine, you know, what -- see, the
24 question, what does Mr. Constantine say,
25 he would have known himself, I have no

1 J. Feerick
2 doubt, probably for a long time that there
3 was a work group.

4 Q Even if Constantine knew it, he
5 said this was communicated to him by
6 Herman?

7 A Right.

8 Q Let me tell you some other parts
9 about the Constantine tape.

10 Constantine also, in his tape,
11 said that Herman was very addiment about
12 not identifying him as the source.

13 Do you remember that?

14 A I do.

15 Q And then, about a week later,
16 and it may have been November 6th, because
17 that's when Herman was in New York, and
18 that's when Constantine was in New York,
19 but regardless of the date and regardless
20 of whether it was in New York,
21 Constantine, in his tape which you
22 listened to, said he saw Herman again
23 about a week later. And he said to him,
24 you didn't want me to tell the governor.
25 Of course I was going to tell him. I am

1 J. Feerick

2 not going to play games. We are all
3 adults.

4 Do you remember that from the
5 tape?

6 A I'm trying to -- I have a vague
7 recollection of that.

8 Q And he asked him, he pressed
9 him, why the big deal, those were not his
10 words, but why was this a problem for you
11 about not identifying you? Are you
12 concerned about losing a friend? You
13 know, your friend shouldn't have been
14 talking to you.

15 Do you remember that part?

16 A Right.

17 Q And then he said something which
18 Constantine said I will never forget, and
19 this is what Constantine testified to. He
20 said, and I know Herb Teitelbaum. You
21 know I know him really well, and I know
22 what he is capable of doing when he is
23 backed into a corner.

24 Do you remember that, Dean?

25 A I remember.

1 J. Feerick

2 Q I said, meaning Constantine,
3 "What is he capable of doing?" Herman:
4 He said he is capable of doing anything to
5 protect himself to defend himself.

6 Do you remember that?

7 A Yes.

8 Q I said, Like what? "I," meaning
9 Constantine. He said, He is capable of
10 claiming that he didn't tell me any of
11 this stuff, that I, you know, came into
12 possession of it some other way.

13 Do you remember that?

14 A Yes.

15 Q I said, like what? He said,
16 like I broke into his -- into his
17 apartment and, you know, saw it on his
18 desk or, you know, somehow came into it,
19 in other words, he didn't tell it to me, I
20 stole the information.

21 Do you recall that?

22 A In a general way, at this point.

23 Q What?

24 A Generally. It's --

25 Q Now, for him to say that

1 J. Feerick
2 Teitelbaum was capable of saying that he
3 didn't tell it to him, that he came into
4 possession because he saw it on the desk,
5 what did that mean to you?

6 A Let me tell you what it all
7 meant to me and to my fellow
8 commissioners.

9 When we came back, Giuffra was
10 on the telephone, myself, Mitchell and
11 Barry, and it was fresh in our mind that
12 night we had heard it. And we didn't hear
13 any compromise of the Commission's
14 investigation. We saw suppositions by
15 Constantine. We heard what Herman said on
16 the tape. We heard what Constantine said,
17 that he assumed, and we didn't see
18 anything that was conclusive to take out
19 of the box, our Executive Director, and
20 having compromised the Commission's
21 investigation. And I think it was
22 Commissioner Giuffra who raised the
23 question whether everybody wants to kill
24 the prosecutor. And we saw -- at least
25 one reflection. We saw in some of the

1 J. Feerick
2 supposition, you know, maybe, you know, if
3 you are disposed to go where you want to
4 go, I suppose, for your reasons, not
5 enough to say to us that we shouldn't act
6 on what Herman had said, what Herbert had
7 said, two people with outstanding
8 reputations, that there was no exchange of
9 confidential information, you know, from
10 our Commission to the Executive Chamber.
11 And that's essentially where our
12 Commission came out.

13 Q The fact that he said Teitelbaum
14 is capable of saying he didn't tell it to
15 me, doesn't that suggest to you that he
16 did tell it to him, he is capable of
17 making up this story, and that he saw it
18 on his desk, he is capable of saying he
19 didn't tell it to me, that I came into
20 possession of it by seeing it on his desk?
21 In other words, he is capable of making up
22 a lie, a story?

23 A Mr. Constantine is reporting a
24 conversation with Mr. Herman.

25 Q Yes.

1 J. Feerick

2 A Mr. Herman, we heard Mr.
3 Herman's tape about the fact that there
4 was no communication of our Commission's
5 investigation to Herman. We heard Herman.
6 We heard Constantine. Constantine is now
7 in a very difficult relationship with our
8 Commission, at this particular juncture.
9 And when we took account of what Herb said
10 when we met with Herb on the 27th and what
11 we heard in the tapes, it wasn't enough
12 for us.

13 Q You said you had Herman's
14 testimony.

15 A On the tape.

16 Q But you did not have him
17 answering questions about what he meant
18 the week later, when he said he is liable
19 of coming up with this story?

20 A No, no, we didn't have that.

21 Q Did you consider calling him,
22 and asking him to explain that?

23 A There wasn't a single
24 commissioner that suggested we do so --
25 the answer is no. There wasn't a single

1 J. Feerick
2 commissioner asked whether we do so. And
3 the context of where we were, either we
4 were going to continue and finish probably
5 one of the state's most difficult
6 investigations, or we were just going
7 to -- I would have to -- and the other
8 commissioners, in my opinion -- I mean,
9 you don't have to just ask other
10 commissioners if you wanted to. I would
11 have to have something conclusive, and it
12 wasn't there, to say to Mr. Teitelbaum,
13 all right, we are going to suspend you or
14 we are going to go into some kind of leak
15 investigation. In my opinion, it would
16 have harmed this Commission. It would
17 have certainly destroyed this
18 investigation which was done carefully and
19 thoroughly. I'm not a very popular guy
20 and Herb's not a very popular guy. But
21 what the state got were two independent
22 guys and an independent Commission.
23 And -- and, you know, that's the way this
24 went. And -- and to say that Herb
25 Teitelbaum, on this record, on February

1 J. Feerick
2 27th, 26th, 28th, should be sort of pushed
3 aside and that we go into some kind of
4 broad inquiry about leaks, which, in my
5 opinion, would have been destructive.
6 However, if I thought, if the Commission
7 thought that there was something
8 substantial based on what we heard, we
9 would have had to take steps. We didn't
10 see it.

11 Q In retrospect, would you have
12 done things any differently?

13 A Absolutely not. Did the best I
14 could. And I said to your very
15 distinguished assistant, I hope no citizen
16 volunteer ever again in the history of
17 this state be put through what I had to go
18 through and what it did to me, my wife and
19 my family. I don't need any gratitude. I
20 work off public duty. But I am going to
21 have a lot to say some day when I am not
22 in this Commission about how I was dealt
23 with and how the Commission was dealt
24 with. And it's not going to be pretty.

25 Q Do you have any complaint about

1 J. Feerick

2 our -- my office?

3 A I think we've dealt with you
4 very fairly. I was troubled by your
5 statements on the record before.

6 Q Why?

7 A Because I think there were
8 different conversations we had. We had
9 conversations with your staff. We had
10 conversations with you. And I had
11 conversations with you. I'd have to go
12 back in my notes on those conversations.

13 Q You and I have always spoken the
14 same language? You have always pledged
15 cooperation. And I tell you and I will
16 say on the record, you have a wonderful
17 reputation. I said that to you.

18 A And you know I feel that way
19 about you. I mean, your reputation with
20 me is based on, essentially, a single
21 communication, where I spoke to Paul
22 Curran about you in the spring of 2007 and
23 he said to me he thought someone like you
24 would be an outstanding Executive Director
25 of our Commission. He called me up and he

1 J. Feerick
2 said that to me. And he described you as
3 fair and straightforward. But you were
4 somebody who was residing in New York
5 City. And I said that I need somebody to
6 be the Executive Director who essentially
7 was going to have to move to Albany. And
8 Herb for a whole year left his wife in the
9 city and he moved to Albany to take on a
10 very difficult public service. And I
11 lived with him in all the days of this
12 Commission and I trusted him and I trust
13 him today with everything that I read in
14 the paper and everything you've asked me
15 and everything you sort of suggested based
16 on the facts.

17 You know, am I perfect? May I
18 be wrong? Sure. I'm like anybody else,
19 but that's where I am.

20 Q Dean, do you think any of my
21 questions have been unfair?

22 A No. You have a job to do --

23 Q I know I have a job to do, but
24 the question is: Do you think I have been
25 doing it unfairly? Do you think any of

1 J. Feerick
2 these questions were not appropriate
3 questions?

4 A No. No. I wouldn't -- look.
5 Both of us have been described as very
6 straightforward. That's a reputation that
7 I know you have. I would like to think I
8 have it. I'm too involved to -- you know,
9 I don't want to be a lawyer in my own
10 case, you know, and say your questions
11 were appropriate or not appropriate.
12 Throw at me whatever you want to throw at
13 me. You know what I mean.

14 Q I just want to tell you this,
15 and I said this to one of the other
16 witnesses. Nobody came here happy, happy
17 with what they had to say on the record.
18 All right? They felt they had an
19 obligation. They felt as public
20 officials, it involved friends, it
21 involved people they may have worked for,
22 people they respected. But certain things
23 in that government went wrong, and they
24 felt obliged to report it. Just as people
25 from the second floor went to the DA

1 J. Feerick
2 immediately after receiving this
3 information from Herman saying we have
4 information we should not have and we want
5 you, the DA, to know this. We didn't look
6 for it, we didn't want it, it came our
7 way.

8 A Right, but -- but -- there's --
9 it is rather interesting -- probably not
10 the right word -- that the District
11 Attorney did nothing with this information
12 that came to his attention in November.
13 He took no action. He had no
14 communication with our Commission. And he
15 stayed with it. When we left his office
16 on the night of February 26th, he said to
17 me, Commissioner Giuffra, Commissioner
18 Mitchell and Barry Ginsberg, I've done my
19 duty, now I leave it to you to decide what
20 you think is appropriate, words to that
21 effect.

22 Q Dean, did you know that a few
23 days before District Attorney Soares
24 provided this information to us and the
25 transcript of the tapes --

1 J. Feerick

2 A Help me with the date on that.

3 Q August of 2008.

4 A Right.

5 Q A few days before that, Ginsberg
6 called the DA's office and asked for
7 another opportunity to review the
8 Constantine tapes and transcript.

9 Did you know that?

10 A I did.

11 Q Why?

12 A Two reasons, basically, as best
13 I recall. It depends on what the date of
14 the call was. We were getting a lot of
15 press inquiries. There was a lot of
16 commentary that the District Attorney was
17 going to release a lot of records, and we
18 would have to deal with the tapes. And
19 some of the commissioners said we should
20 see if there are transcripts, because we
21 are going to have to deal with this as an
22 issue. Once the District Attorney
23 releases -- I don't have the date when he
24 released his report. Chances are that was
25 sometime in August. You would have to

1 J. Feerick
2 help me on that. I know we issued -- not
3 his report. When he issued the testimony
4 that he issued. We issued our report in
5 something like July 24th -- don't hold me
6 to that. He, sometime in August, I think,
7 issued transcripts and whatever he issued
8 at that time. And there was a distinct
9 possibility that we would have to address
10 these issues in the press and therefore we
11 wanted access to whatever we could get
12 access to.

13 That -- that was -- I think that
14 was why Barry made the call. But, you
15 know, I'm sure he would be able to tell
16 you, you know, if you needed to know that
17 precisely. But that's my recollection.

18 Q He doesn't want to tell us. He
19 doesn't want to appear.

20 A No, but the reason I am here by
21 myself and he is not here, so that you can
22 feel free to examine him if you feel it
23 relevant or, for that matter, obviously
24 you would do that, any member of the
25 Commission. I am here by myself.

1 J. Feerick

2 Q I know that.

3 You mentioned the public report
4 was July or August of 2008.

5 A You mean Soares report?

6 Q Your report.

7 A I think there is a date.

8 Q I think I have it somewhere.

9 A July 24th.

10 Q Now, you have had an opportunity
11 to review all of the notes before coming
12 here.

13 A Which notes?

14 Q All of your notes, your diary
15 notes --

16 A I essentially reviewed my notes
17 when your assistant came to see me.

18 Whatever that date was, she wanted me to

19 go through the writing. That was my

20 review on the notes. And when your

21 assistant called me at your request

22 earlier this week to say words to the

23 effect that you wanted me to take a look

24 at the Commission documents --

25 Q Sure.

1 J. Feerick

2 A -- I had not been aware of what
3 documents were turned over because I said
4 to Barry on behalf of the Commission it
5 was important to give you what you wanted.
6 And I did review that either yesterday --
7 probably yesterday.

8 Q Okay.

9 A Because she sent me the e-mail
10 with the documents.

11 Q The notes by Maeve, by you?

12 A I looked at Maeve's notes.

13 Q Sullivan?

14 A I wasn't sure whose notes were
15 who. Let's see, you sent me
16 September 29th.

17 Q We tried to type up some of
18 them, because you were kind enough to help
19 decipher.

20 A The one thing I noticed and I
21 will share this with you, I was just
22 curious -- I had not seen these notes
23 before. And I was curious about my notes
24 for certain dates and notes here. And I
25 saw that it had a lot of symmetry. So we

1 J. Feerick

2 are at the same --

3 Q Dean, what date do you
4 understand did the DA definitively agree
5 to pursue the Dopp matter?

6 A I can't give you a date. And I
7 will tell you why. This thing had so many
8 colors to it, that I -- you know, so many
9 dimensions to it. What I can say to you
10 is -- and I mentioned this when I met with
11 your assistant, I think, because when she
12 was going through my notes -- I understood
13 from Herb Teitelbaum that on the 19th of
14 November -- 19th of October, the District
15 Attorney was -- my note is incomplete.
16 But I guess I was going through something
17 with reference to a Grand Jury with
18 reference to some aspect of this matter.
19 And the following Monday, I get a
20 report -- that's Monday the -- let me see
21 if I have the right date. That's -- that
22 must be the 22nd. The District Attorney
23 was going ahead with a Grand Jury at that
24 point. And then they were in discussions
25 with Teitelbaum about assisting that

1 J. Feerick
2 process in some appropriate way. And from
3 time to time, in November, I think
4 initially I thought there might be a
5 convening of a Grand Jury in November --
6 this is my -- my recollection. That
7 didn't take place. Then the next thing I
8 heard there was maybe going to be a
9 convening of a Grand Jury in December.
10 That didn't take place. And then the next
11 thing I heard, I think it was on January
12 7, 2008, Herb had just come back and I
13 heard that day it was off for a few
14 months. It was off for a few months, and
15 there was no reason for us to -- to not do
16 whatever we decided we should be doing
17 with witnesses and the like.

18 So -- so I have tried to respond
19 to the question.

20 Q I understand.

21 A I'm not sure I ever understood
22 there was a definitive date.

23 Q There was a reference to a
24 meeting I think on November 1st with the
25 DA about that, and I think he said he was

1 J. Feerick
2 going to give the answer the next day
3 or --
4 A What he was going to do.
5 Q -- that day.
6 A My diary note I think
7 indicates -- my diary note -- I don't know
8 directly. I am just getting this from our
9 Executive Director. My diary note
10 indicated that there would be an answer
11 the next day.
12 Q And that things were stalled --
13 A We are up in the air with our
14 investigation. What do we do? We are a
15 group of people that care about the rights
16 of people and everybody. And we are up in
17 the -- and I am frustrated because the
18 world out there wants to see the
19 investigation moved along. You know, the
20 world that gets press from all the press.
21 And here I am, as Chair of the Commission,
22 that it's my word and my diary, has our
23 investigation -- not all aspects of it,
24 you know, we'd collect documents and go
25 after documents. It's stalled.

1 J. Feerick

2 Q When the report was written --

3 A Right.

4 Q -- I take it the allegations

5 against Teitelbaum were of concern?

6 A The allegations against

7 Teitelbaum was a constant subject all the

8 way along because we kept getting press

9 inquiries that indicated the District

10 Attorney -- press accounts were all over

11 the lot, the press.

12 Now, someday I could -- I will

13 do a -- if I live long enough, I will be

14 able to give you my theories about which

15 press had linkages to which offices.

16 Q You will what?

17 A Which press reporters had

18 linkages to different offices. It just

19 seemed like, you know, there was a lot of

20 information out there. Sometimes some

21 press was ahead of others with

22 information. And it's the world, and we

23 need a free press. And the press is very

24 important, obviously. And I am second to

25 no one on that.

1 J. Feerick
2 Okay, now, back to your
3 question. All the way along, there were
4 press inquiries saying the District
5 Attorney is going to maybe go to a Grand
6 Jury on this. The District Attorney is
7 going to issue a statement at the time he
8 issues his report. So it was a constant.
9 It was a constant. You know, and sort of
10 the irony is when we left his office on
11 the night of February 26th, he had said
12 that in effect that he was finished with
13 that matter and it was up to us. It
14 stayed -- it stayed out there. And as the
15 Chair of the Commission, I would get these
16 calls from our public -- he said, you
17 know, how do we deal with this, how do we
18 deal with this. I said, we have no
19 comment. I am not a talker. I am not a
20 leaker. And I do the best I can when I am
21 dealing with a lot of people to protect
22 the confidentiality of what we're about.
23 You know that. I know that.
24 Q John, I just want to tell you,
25 the story that appeared in the New York

1 J. Feerick

2 Times with what we are doing --

3 A I saw two stories. One in The
4 Times, one in The post, The Post
5 editorial.

6 Q I never met, spoke to The Times
7 Union guy in my life. The New York Times
8 guy called, has been calling, and I kept
9 saying we don't talk about what we are
10 doing. He went with the story, he said,
11 because the Times Union had sought through
12 a freedom of information law the testimony
13 that -- all the testimony and never got
14 the testimony of Herman and Constantine.
15 And when they made the official request,
16 the response was that they are exempt from
17 turning it over, whether it being used for
18 an investigation or judicial -- that's
19 when they contacted us, that's when I said
20 no comment.

21 A I seen, some of us were curious
22 about expression in The Times that people
23 briefed on this investigation had such and
24 such. Look, I --

25 Q There was a letter, I know,

1 J. Feerick

2 Soares had written a letter at one
3 point -- oh, when we got the letter before
4 that, we had calls from the press before
5 the letter was hand delivered to me in
6 August.

7 A You know, I know how careful you
8 are.

9 Q Let me tell you, no
10 investigation -- no investigation is
11 assisted when it appears in the
12 newspapers.

13 A It's very difficult. The New
14 York Times for September 20th. The title
15 of the article is: "State said to be
16 checking if Spitzer aides got leads from
17 Ethics panel," September 20, 2008, New
18 York Times. This is my summary:
19 IG investigates allegations -- this is the
20 article -- that Commission improperly
21 leaked information to Spitzer, quotes,
22 "people briefed on the investigation,"
23 close quotes, said on Friday. And then it
24 goes on. "HT kept administration briefed
25 on Commission investigations."

1 J. Feerick

2 The latest inquiry was prompted
3 by Soares, quote, "who has complained for
4 months that HT was improperly tipping off
5 Spitzer administration officials to
6 developments in the Commission's
7 investigation."

8 Now, let's leave it, because you
9 have covered it -- let's leave
10 November 1st for a second. What
11 developments? It says -- it's sort of
12 like a continuum. That's what the article
13 says. So --

14 Q Before I met with Soares, in
15 connection with the August 6th letter, I
16 was told we had a letter. Our people were
17 in his office in connection with a
18 completely unrelated referral, were handed
19 letter. And before I saw the letter,
20 press called me. Okay?

21 Let me get something I need.

22 [A recess was taken.]

23 Q Dean, did you play any role in
24 the writing of the report?

25 A I'm sure I did.

1 J. Feerick

2 Q Or any section of the report?

3 A I would have sent over, you
4 know, comments and would have seen drafts
5 and things like that. Sure. I read --
6 you know, I read what -- and make comments
7 and suggestions.

8 Q We understand that it was
9 November 1st that the DA definitively told
10 Teitelbaum that he was proceeding with
11 Dopp. There were, as you pointed out,
12 meetings with his staff. There was a
13 transmittal -- I hesitate to avoid using
14 the word referral.

15 A A consultation. And that was --

16 Q And let me --

17 A Yeah.

18 Q There was a transmittal of some
19 of the Dopp's testimony, some
20 forty-somewhat pages.

21 A You would have received the
22 whole transcript.

23 Q That did not come until
24 October 20th or 21st.

25 A Okay.

1 J. Feerick

2 Q I am sure you will agree, no DA
3 is going to proceed on the basis of forty
4 pages out of four hundred pages.

5 A I think you would certainly want
6 to -- you know, I agree with that.

7 Q Because forty pages may sound --

8 A No, you would want to read all
9 the testimony of a particular subject.

10 Q Forty pages may sound like
11 dynamite, and you want to make sure that
12 later on --

13 A Right. No question.

14 Q So they didn't get the 398 of
15 your COPI transcript until October 20th or
16 21st.

17 A Right.

18 Q We have information that on
19 October 25th or 26th Teitelbaum talks to
20 Soares and wants an answer whether he is
21 going to proceed or not and take the Dopp
22 matter. And you refer to the November 1st
23 meeting --

24 A I would have thought -- you
25 would have to ask him about that, but I

1 J. Feerick
2 would have thought that would have been --
3 I don't know. I can't be precise. All I
4 know that according to my diaries, on
5 November 1st, that there was some
6 communication with the District Attorney
7 and he would have an answer tomorrow.

8 Q Yes.

9 A And the time period was a
10 difficult time period for us, because we
11 were stalled. And we needed to get a --
12 you know, some kind of an indication that
13 we could act on. And we were acting on
14 it. We were cancelling out witnesses. It
15 was -- it had stalled us.

16 Q Can you please, Dean, turn to
17 pages 12 and 13 of your report.

18 A (Complying.) Okay. Got you.

19 Q On page 12, the last paragraph,
20 you talk about the October 15th, after
21 reviewing Dopp transcript, the
22 Commission's Executive Director spoke by
23 telephone with the Chair concerning Dopp's
24 testimony and his July 22nd sworn
25 statement. It goes on to say that

1 J. Feerick
2 conference with the working group which
3 concluded the Executive Director should
4 consult with the ODA, that's office of the
5 District Attorney. Then the next
6 paragraph, a reference to the meeting on
7 October 17th with Executive Director and
8 staff with the DA. And then October 19th,
9 after reviewing Dopp's testimony to the
10 Commission, District Attorney Soares
11 informed the Commission that the ODA would
12 present evidence about Dopp to a Grand
13 Jury.

14 What was the basis for that
15 statement if you did not know until
16 November that the DA was taking this case?

17 A What I recall, and I think I
18 made reference to that, and what my diary
19 indicates, is that I received a
20 communication that day from Herb
21 Teitelbaum concerning a communication he
22 would have had with the District Attorney,
23 where the District Attorney would have
24 indicated he was moving ahead with a Grand
25 Jury. But you would have to ask Herb

1 J. Feerick
2 Teitelbaum about that. That's my
3 recollection of what Herb told me. And
4 even though I didn't -- my diary didn't
5 finish the sentence, that's what I
6 remember.

7 Q Was Teitelbaum responsible for
8 writing that section of the report?

9 A I think -- my recollection is
10 there were a lot of people involved. The
11 staff was involved, Maeve was involved.
12 Joan -- I don't know about Joan. No, I
13 don't think Joan was with us at that
14 point. A lot of people involved.

15 Q Maeve said that you and
16 Teitelbaum were particularly interested in
17 that section because of the allegations
18 against Teitelbaum?

19 A I was particularly interested in
20 the history that was -- I remember a
21 conversation with Maeve some earlier time,
22 where she had the consultation the week of
23 the 24th. I said, no, my diary indicated
24 the consultation was the week of the 17th.
25 If you put that question to her -- I --

1 J. Feerick
2 her notes weren't -- I had my diary. And
3 I have a recollection of a conversation
4 with her where she had the consultation
5 not the week it had actually took place.
6 And I couldn't believe that -- I mean, I
7 am not a hundred percent. I couldn't
8 believe that my diary wasn't correct as to
9 the 17th.

10 Q But Dean, if your own notes
11 reflect that November 1st, he is going to
12 let you know the next day, why did you put
13 down October 19th?

14 A Now, what I have said, we are
15 getting different communications. And to
16 answer your question about a definitive
17 date, the communications, he is going to,
18 on the 19th, which I have from Herb, he is
19 moving ahead with a Grand Jury. Then
20 there is another communication on Monday,
21 that the staff had on speaker phone, not
22 District Attorney, staff to staff, and I
23 am hearing that from Herb on Monday,
24 that's the 22nd. So you really have to
25 put -- so all of that is part of this

1 J. Feerick

2 history.

3 Q But was there any suggestion
4 that although that may be accurate, it is
5 not complete and, in fact, may be
6 misleading, because it's not until
7 November that you learn the DA is going to
8 take the case?

9 A Not so.

10 Q Okay.

11 A My belief was -- as I sit here
12 today, my belief was that he was very
13 interested in this matter on October 17th.
14 That's what was communicated to me by
15 Herb. You'd have to ask Maeve whatever
16 her recollection of the meeting was. And
17 on Friday, there was a communication that
18 Herb had with the District Attorney that
19 he was moving ahead with a Grand Jury.
20 Same thing on Monday, the 22nd, and
21 whatever else is there.

22 So November 1st, as I say -- you
23 asked me the question before, definitive
24 date. There were different dates. This
25 matter was evolving. We are going to do a

1 J. Feerick
2 Grand Jury. I am interested. I am going
3 to do a Grand Jury this month. I am going
4 to do a Grand Jury next month. And then
5 it's off for several months. That's --
6 that's --

7 Q Why wasn't all of that history
8 put in a final report which is issued July
9 or August 2008? You're leaving it for
10 October 19th, which is not accurate?

11 A This is as best -- this is, I
12 think, a fair accounting and an accurate
13 accounting of what happened. And one
14 could amplify it, I suppose, in a lot of
15 different ways.

16 Q Were the accusations against
17 Teitelbaum a factor in the selection of
18 that date?

19 A Absolutely not. I would never
20 allow that. So we make reference to --
21 sort of pick it up. You have that date in
22 October. You are back into December.
23 There's a lot happening in November.
24 Subpoena to Teitelbaum. Questions that
25 the District Attorney will ask him when he

1 J. Feerick
2 testifies before a Grand Jury. So in
3 November, you know, they are preparing him
4 to testify before a Grand Jury that's
5 either been convened or about to be
6 convened. And it's a matter of judgment,
7 I suppose. We did the best we could in
8 writing this report, this Commission and
9 this staff. And we put out, unprecedented
10 at the time, easily accessible, three
11 thousand pages of testimony and exhibits
12 upon which this Commission made its
13 judgments. And it's for others to judge.
14 You know, there have been all kinds of
15 commentary. This hasn't been pretty. And
16 it's not been pretty how that citizen
17 volunteer has been dealt with. But I
18 don't say that, because people just
19 interpret that you are whining. I don't
20 whine.

21 Q Anything you wish to add?

22 A Yeah.

23 Q Please, John.

24 A I plan to ask that we have --
25 you know, your comments before troubled

1 J. Feerick
2 me, to be frank, because I really don't
3 think -- you know the comments I am
4 referring to, about our Commissioner,
5 about our relationship with -- I'm not
6 talking about me. You know, the
7 investigation. We've done the best --

8 Q No, which comments, John?

9 A You had some comments about
10 criticizing our Commission for, you know,
11 its dealings with your office.

12 Q About what? Oh, about the lack
13 of cooperation?

14 A Yeah.

15 Q I could show you letters from
16 Ginsberg. That's why -- John, that's why
17 I went to you.

18 A Yeah. I sort of want to, you
19 know, maybe send you something more on
20 that from our perspective.

21 Q Please. Please. Anything you
22 wish to say. Part of the letter that was
23 nasty where he refers to the fact that my
24 predecessor did not investigate the
25 secretary to the governor. This is a new

1 J. Feerick
2 inspector general. This is a new
3 administration. This is a new secretary
4 to the governor.
5 A I understand. Right.
6 Q And that was gratuitous and that
7 was nasty.
8 A That would have reflected views
9 of commissioners. Not just -- that's not
10 Barry just sort of --
11 Q I don't care who.
12 A No, but my point is that I think
13 I really want to -- you know, there is a
14 transcript here. Who knows who looks at
15 this transcript. That's for you, and
16 that's not for me to deal with. I just
17 want to make sure this record is
18 completely from the Commission standpoint.
19 Q Anything you want to say.
20 A I just want to follow up. I
21 just need to follow up with some subject.
22 That's all I want to say.
23 MS. OSTERER: I just need to
24 speak with you outside.
25 JUDGE FISCH: Just give me

1 J. Feerick

2 one minute.

3 [A short recess was taken.]

4 Q Dean, before you add anything at
5 all you wish to say --

6 A I would just send you something
7 in addition, basically.

8 Q Whatever you wish to say.

9 There is something that Arlene
10 Osterer directed my attention to.

11 There was an interoffice memo
12 which appears to have been authored by
13 Ginsberg.

14 MS. OSTERER: Dean, it was
15 included in the e-mail I sent you the
16 other day.

17 THE WITNESS: Which is this?

18 MS. OSTERER: We are not sure
19 what it is. But in the packet that I
20 forwarded to you the other day, dated
21 September 19th, 2008, among the
22 materials that Mr. Ginsberg had
23 forwarded to us, there appears to be
24 what is designated as an interoffice
25 memo. I don't know if you have it

1 J. Feerick

2 with you today?

3 THE WITNESS: Yeah, I would
4 have everything you sent me. Looked
5 at that yesterday. Yeah. If you
6 could show me.

7 MS. OSTERER: I will find
8 where it is.

9 JUDGE FISCH: It's page 4.

10 THE WITNESS: Right.

11 Q On page 4, there is a statement.
12 It's the first full paragraph. "Around
13 Halloween, there had been recent news
14 reports that the Albany County DA was
15 conducting an investigation relating to
16 Dopp, Darren Dopp's testimony in
17 connection with the Commission
18 investigation."

19 I don't recall seeing any
20 newspaper stories about that. You have
21 done a very thorough job. Can you check
22 and see whether around Halloween there
23 were such reports?

24 A This is Barry's -- let's see
25 what this is. Barry -- my recollection is

1 J. Feerick
2 that what Barry did was that he put
3 together, I guess, a summary of the tapes
4 as he remembered them. You know, the
5 night that we went over.

6 Q You didn't go over until
7 February.

8 A Right.

9 Q But he said that around October,
10 around Halloween, there were stories, and
11 there were no stories.

12 A You need to ask him -- but I
13 will give you -- you need to ask Barry.
14 But this is -- as I understand it, this is
15 a summary of the interviews. See, take a
16 look at the first paragraph. "Based upon
17 my notes as well as subsequent" --
18 participated in the meeting. Okay. So he
19 is putting together a summary of those
20 interviews of the meeting with the
21 District Attorney on February 26th, the
22 first paragraph. And that's his summary.
23 So whether that's accurate or not, I don't
24 know.

25 Q But he spoke about newspaper

1 J. Feerick

2 accounts.

3 A I really think the answer would
4 be in the actual tapes.

5 Q The actual what?

6 A Tapes.

7 Q What tapes?

8 A See, the night of February 26th,
9 we listened to two tapes: Herman and
10 Constantine.

11 Q But that was February 2008. He
12 is talking about around Halloween of 2007.

13 A But he is referring to the tapes
14 that relate to --

15 Q But the tapes didn't exist at
16 that point.

17 A No. No. The tapes talk about
18 the end of November. The Herman and
19 Constantine tapes of February 26th, what's
20 in those tapes makes reference to the end
21 of November.

22 Q By Herman. Maybe by Herman --

23 A No, by Constantine, too.
24 Because those are the questions you asked
25 me. I don't know -- in other words,

1 J. Feerick
2 Judge, let me just say again. My
3 understanding of what this is, is an
4 effort by Barry to put in a document that
5 we heard that night, February 26th. And
6 what we heard was on the tapes.

7 Q I understand.

8 A The tapes would be the best
9 evidence of this. He may have gotten it
10 wrong.

11 Q Well, he may have gotten it
12 right, but Herman may have been wrong in
13 what he said?

14 A I don't know.

15 Q That's the point. There is
16 nothing -- anyway.

17 Dean, your appearing here, I
18 appreciate that. We had another interview
19 that I had to cancel, so I appreciate you
20 making yourself available.

21 Anything you wish to add,
22 please, by all means.

23 A As I said, I will follow up on
24 just that one subject that I am sensitive
25 on, on behalf of our Commission, our

1 J. Feerick
2 effort to try and cooperate and deal
3 appropriately, you know, with your
4 investigation. In the context in which we
5 exist and function, different people might
6 have different views, might see it
7 differently. But I just want to be sure
8 that you have whatever I can provide on
9 that. On behalf of the Commission, you
10 have me. You know --

11 Q I know you. Dean, I think it
12 was last week Ginsberg said, oh, they
13 discovered they have another New York City
14 office they didn't tell us about and
15 telephones from that and it was a terrible
16 oversight. Now he tells me that there are
17 notes from Teitelbaum and they are not
18 relevant. I said I will make the
19 determination of whether they are
20 relevant.

21 A And, you know, as I said, in
22 many ways, I am sure that a lot of people
23 would say, well, you should have had
24 counsel with you, I mean, Commission
25 counsel. I said no, I don't want

1
2 Commission counsel because I don't want
3 the IG to, if he decides he wants to have
4 our General Counsel as a fact witness, I
5 don't want him to have been somehow part
6 of this. You know, I just didn't think
7 that was fair to your investigation. And
8 I acted on our mutual friend.

9 Q I appreciate that.

10 THE WITNESS: Off the record?

11 JUDGE FISCH: Sure.

12 [Discussion held off the
13 record.]

14

15 [TIME NOTED: 2:30 p.m.]

16

17 _____

18 JOHN D. FEERICK

19

20

21 _____
22 Subscribed and sworn to
23 before me this _____,
24 day of _____,
25 2008.

24 _____
Notary Public

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CERTIFICATION

I, JAMIE ANN STANTON, a
Notary Public, do here hereby certify that
the foregoing witness, JOHN D. FEERICK,
was duly sworn on the date indicated, and
that the foregoing is a true and accurate
transcription of my stenographic notes.

I further certify that I am
not employed by nor related to any parties
to this action.

JAMIE ANN STANTON

* * *

