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

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TESTIMONY OF BARRY GINSBERG

61 Broadway  
New York, N.Y.  
November 17, 2008  
2:35 P.M.

1

2 APPEARANCES:

3

4 HON. JOSEPH FISCH, Inspector General

5 State of New York

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22 -and-

23 ELIZABETH ROZOS, ESQ.

24

25

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2

3

MR. FISCH: Today is November 17, 2008, 61 Broadway, New York, New York County; Joseph Fisch, State Inspector General; Arlene Osterer of my legal staff is present.

7

8

Barry Ginsberg is appearing here voluntarily.

9

10

Mr. Ginsberg?

11

MR. GINSBERG: Yes.

12

MR. FISCH: Do you consent to a stenographic record of the interview?

13

14

MR. GINSBERG: Yes.

15

MR. FISCH: And you're represented by Mr. Carter.

16

17

Mr. Carter, would you note your appearance again, please?

18

19

MR. CARTER: Yes. I'm Zachary W. Carter, of Dorsey & Whitney, for Mr. Ginsberg.

20

21

22

MS. ROZOS: Elizabeth Rozos, associate at Dorsey & Whitney.

23

24

MR. FISCH: Mr. Ginsberg, you know all my examinations are under

25

1 oath.

2 BARRY GINSBERG, having been duly  
3 sworn, was examined and testified as  
4 follows:

5 EXAMINATION BY:

6 MR. FISCH:

7 Q. Can you tell us your professional  
8 background and your graduation from law  
9 school? If you graduated from Harvard, you  
10 can put that on the record. Any other law  
11 school will not be recognized.

12 A. After graduating from law school,  
13 I clerked as a staff clerk on United States  
14 Court of Appeals, the 7th Circuit in  
15 Chicago. I did that, then I was an  
16 associate in litigation at a law firm in  
17 Chicago called Rubin & Proctor, which  
18 eventually merged into and became known as  
19 Ishan, Lincoln and Beal.

20 I left Ishan, Lincoln and Beal to  
21 join the Manhattan District Attorney's  
22 office as an Assistant D.A. in 1987, and  
23 worked in that D.A.'s office and as an  
24 A.D.A. from 1987 until March of 1984, left  
25 to join --

1 MR. CARTER: Did you mean '94?

2 THE WITNESS: '94, sorry. Left  
3 the D.A.'s office and joined Arthur  
4 Anderson, where I became a partner  
5 after about a year, and ran a practice  
6 in New York called Business Fraud Risk  
7 Services.

8 Thereafter, I had a brief stint  
9 as a solo practitioner, and joined an  
10 investigative firm called -- then  
11 called Decision Strategies Fairfax  
12 International, as Assistant General  
13 Counsel and Senior Director, I think  
14 my title was. And worked for a couple  
15 of other investigate firms before I  
16 re-joined the Manhattan D.A.'s office  
17 in 2003, and left the Manhattan D.A.'s  
18 office at the end of 2007. And in the  
19 first part of January 2008 became  
20 General Counsel of the Commission on  
21 Public Integrity.

22 Q. What years were you in the  
23 Manhattan D.A.?

24 A. When I first joined the office, I  
25 was assigned to the Defense Career Criminal

1 Program, and after a few years, I was  
2 re-assigned to Labor Racketeering and  
3 eventually became the Chief of Labor  
4 Racketeering at the time I left. When I  
5 re-joined the office, it was as a Senior  
6 Investigative Counsel in Rackets.

7 Q. I think the first time you and I  
8 spoke was on August 12. I telephoned you  
9 and I told you of the referral from the  
10 Albany D.A.?

11 A. I don't remember the exact date,  
12 but I remember the phone call.

13 Q. And I also said that we were  
14 looking into the matter and I wanted to  
15 speak to Teitelbaum and what I should be  
16 dealing directly with you or with him, do  
17 you remember that?

18 A. Yes.

19 Q. Whether --

20 A. I think you also asked me to  
21 apprise Dean Feerick, which I did.

22 Q. And were you asked if I had any  
23 objection to you advising Teitelbaum, and I  
24 said no.

25 A. Correct.

1           Q.    Then I think on August 20, we  
2 spoke again, and requested memos of general  
3 items reflecting the issue of the referral  
4 of Teitelbaum-Herman matter to the District  
5 Attorney, that whole issue that the D.A.  
6 asked us to look into. Do you recall that?  
7 Any memos, or notes relating to that?

8           A.    Again I don't recall the exact  
9 date. I don't doubt your recollection, but  
10 I do recall a conversation as you described.

11          Q.    And you quickly reminded me that  
12 there was no referral, does that strike a  
13 bell? That there was no referral to the  
14 D.A.?

15          A.    I don't remember saying that, but  
16 it would be consistent with what my  
17 understanding was. As you know, I wasn't at  
18 the Commission when all those events  
19 occurred, but my understanding was that's  
20 what it was.

21          Q.    You told me Feerick was out of  
22 the country, do you recall that?

23          A.    Yes.

24          Q.    And during these conversations,  
25 with regard to notes, you told me that

1 Teitelbaum was not a note taker, do you  
2 remember that?

3 A. I don't recall those words. I  
4 think -- frankly what I remember saying to  
5 Ms. Osterer was that he's not much of a note  
6 taker. I may have said the same thing.

7 Q. Do you remember specifically  
8 recalling to her that he was not a note  
9 taker?

10 A. It's not my recollection.

11 Q. Your recollection is what?

12 A. I believe -- what I recall is I  
13 said in the conversation with Ms. Osterer  
14 was that he was not much of a note taker.

15 Q. Do you recall when that issue  
16 came up when I questioned Dean Feerick and I  
17 asked him whether he ever recalled notes by  
18 Teitelbaum because of what I remember him  
19 telling me that he was not a note taker.  
20 First he said he did not, and then he said  
21 he did take notes, and I came to you when  
22 you were outside, do you remember that?

23 A. I don't know what concurred while  
24 you were questioning Dean Feerick, but I do  
25 recall your coming into the conference room

1 and talking to them.

2 Q. Do you remember them telling me  
3 there were notes, but that they were not  
4 relevant?

5 A. I remember in effect or some  
6 substance saying that there were some notes  
7 but they were not responsive to your  
8 request. I don't remember saying that they  
9 were not relevant.

10 Q. And then those notes on John  
11 Feerick's direction were made available to  
12 me?

13 A. I don't know that it was on John  
14 Feerick's direction, but the next day or the  
15 day after that, we made the notes available  
16 to you.

17 Q. Did I tell you I had spoken to  
18 Feerick before I spoke to you?

19 A. I knew you were interviewing  
20 Feerick.

21 Q. Did you know I had spoken to him,  
22 spending some time with him? Do you know I  
23 left the interview to go to you -- just a  
24 minute, Zach. Are we going to quibble over  
25 words here? You're supposed to be

1 cooperating with us.

2 MR. CARTER: No, that I will not  
3 suffer. That is a mischaracterization  
4 of what has just occurred. Common  
5 sense dictates that if you have  
6 emerged from an interview with Dean  
7 Feerick, which Mr. Ginsberg  
8 accompanied Mr. Feerick, Dean Feerick  
9 to attend, that he knew that you had  
10 spoken to Dean Feerick before you  
11 addressed your question to him. So it  
12 is not the witness that is quibbling.

13 MR. FISCH: Do you also recall  
14 from Feerick's testimony that I  
15 said -- I questioned you at length  
16 about whether there were notes by  
17 Teitelbaum based on being advised by  
18 Mr. Ginsberg that he was not a note  
19 taker. Do you remember that?

20 MR. CARTER: I remember that and  
21 what I also remember -- because you  
22 were kind enough to give me the  
23 transcript of Dean Feerick's  
24 testimony -- he said and I quote "I  
25 saw him jot things down." Not that I

1 saw him taking notes on a regular  
2 basis, not that he was an inveterate  
3 note taker, I saw him jot things down,  
4 which is completely consistent with  
5 everything Mr. Ginsberg has just  
6 said.

7 MR. FISCH: Following that, I  
8 went to see Mr. Ginsberg for those  
9 notes, okay?

10 MR. CARTER: Correct.

11 MR. FISCH: Okay.

12 BY MR. FISCH:

13 Q. When did you become involved in  
14 the investigation by the Commission or its  
15 inquiry into the allegations about  
16 Teitelbaum disclosing information?

17 A. My recollection is that it was a  
18 meeting with David Soares sometime in late  
19 February and -- which I attended. I suppose  
20 you would take that as a meeting I was  
21 involved in.

22 Q. What took place at the meetings?

23 A. What took place at the meeting?  
24 You want the details or just a summary? It  
25 was a fairly lengthy meeting.

1 Q. Did they play tapes?

2 A. There weren't tapes actually.  
3 There were recordings on a computer.

4 Q. Okay.

5 A. I went up to his office -- to  
6 D.A. Soares' office in the evening. I was  
7 accompanied by John -- or I should say I  
8 accompanied John Feerick and one of our  
9 other Commissioners, John Mitchell.

10 After some discussion with the  
11 D.A. in one room, we're -- Dean Feerick  
12 requested that another Commissioner, Bob  
13 Giuffra be able to participate by  
14 telephone.

15 After some discussion with the  
16 D.A., eventually the D.A. consented to  
17 that. We went into another room. I don't  
18 remember if Mr. Giuffra dialed in or how  
19 that worked out logistically, but somehow he  
20 was put on the telephone. There were two  
21 others Assistant D.A.'s with Soares, Linda  
22 Griggs and Brent Madison.

23 The D.A. gave us some background  
24 from his perspective and then he played --  
25 eventually played two recordings of

1 interviews that had been conducted by Linda  
2 Griggs, one of Robert Herman and the other  
3 of Lloyd Constantine.

4 That's -- there are more details,  
5 but that's the substance of what happened.

6 Q. Did Dean ask you to take notes of  
7 the recordings?

8 A. Yes, he did.

9 Q. Are these your notes? It's on 15  
10 pages?

11 A. Can I clarify?

12 Q. Please.

13 A. These are notes that I took on  
14 February 26, 2008, starting at about 7:30 in  
15 the evening, the meeting I was just  
16 referring to.

17 The first page -- excuse me, the  
18 first two plus pages, up to where you see  
19 this line and it says 2708, are my notes of  
20 the D.A.'s introduction that I just got  
21 through. Then starting on Page 3, where I  
22 indicated on my notes of the interviewer,  
23 Mr. Herman, B.H. -- B.H., that's how I wrote  
24 it. That was conducted by Linda Griggs who  
25 I just described.

1                   And then starting on Page 7,  
2           again, there is another line 22508, L.C.  
3           interview -- interview with L.C. That's  
4           the -- my notes of the other interviewer  
5           that was played according to what he played  
6           for us, starting there on page 7.

7                   And then -- and that concludes on  
8           Page 14. There is a double line.

9                   Then Page 15 are notes of a  
10          separate conversation that was conducted,  
11          taken during a separate conversation  
12          conducted back at the Commission offices  
13          after we returned from the D.A.'s office.  
14          So Page 15 wouldn't be notes that  
15          represented anything that happened in the  
16          D.A.'s office. The others are as I  
17          described.

18                  Q.    The L.C. is your reference to  
19          Lloyd Constantine?

20                  A.    Correct.

21                  Q.    Did there come a time when you  
22          incorporated those notes into a written  
23          memorandum?

24                  A.    I did eventually prepare a  
25          memorandum.

1           Q.    Is this such memorandum dated  
2 July 31st, 2008?

3           A.    Yeah.  It would be pages CPI 264  
4 to CPI 272.  That's my memo.

5           Q.    In your notes and incorporated in  
6 your memo, July 31st, you write "around  
7 Halloween, after there had been recent news  
8 reports that the Albany County District  
9 Attorney was conducting an investigation  
10 relating to Bob Standorff's testimony, in  
11 connection with the Commission  
12 investigation, Herman and Teitelbaum had  
13 arranged to have dinner at Teitelbaum's  
14 apartment." Do you remember that in your  
15 notes?

16          A.    Part of my notes?

17          Q.    It's in the memo, but it reflects  
18 what you wrote, "around Halloween after  
19 there had been news reports".

20          A.    I have in my handwritten notes on  
21 the left-hand side on Page 5, it says,  
22 "dinner with B.H. near Halloween," so that  
23 was me trying to capture what was being said  
24 on the recorded conversation.

25          Q.    Mr. Ginsberg, this is what I was

1 referring to? (Handing)

2 A. Right, which is consistent with  
3 what I just said.

4 Q. Yes. Do you remember, I think,  
5 Nelson Franco, somebody from my office asked  
6 you what reports appeared around Halloween?

7 A. I remember Mr. Shengel called and  
8 he said that would be one of the questions.

9 Q. I believe your response was you  
10 were merely reporting what Herman said?

11 A. Correct. I was trying to  
12 summarize as best I could what was on the  
13 recording.

14 Q. I think the follow-up question  
15 was for you to search your newspaper  
16 collection, which we understand Walter Ayres  
17 has amassed and to see whether, in fact,  
18 there were any such articles?

19 A. I don't recall being told that.  
20 I recall being told I would be asked that  
21 question. But I do know that -- I don't  
22 remember exactly when. You probably have it  
23 better than me. Your investigators came to  
24 our office and were allowed to copy whatever  
25 they wanted from my file, and I believe that

1 they copied virtually the entirely clip  
2 file.

3 Q. We found nothing and that's why  
4 consistent with Mr. Carter's injunction to  
5 be thorough and fair, we wanted to see  
6 whether we have missed anything and whether  
7 you found any articles around Halloween such  
8 as referred to by Herman?

9 A. I didn't look in great detail.  
10 The articles -- the first article I'm aware  
11 of on that subject, the subject of the D.A.  
12 who was investigating Darren Dopp, was first  
13 week in November -- November 8th sticks in  
14 my head, which is around Halloween.

15 Q. Would you please check and see if  
16 there was anything around that Halloween  
17 time?

18 MR. CARTER: I'm a little puzzled  
19 at why Mr. Ginsberg -- in this age of  
20 Google and Yahoo and other  
21 extraordinarily exhaustive search  
22 engines would have -- and it would be  
23 especially equipped to find news  
24 articles that are a matter of public  
25 record. I'm just -- I don't

1 understand why Mr. Ginsberg is being  
2 asked this question.

3 MR. FISCH: Very simply,  
4 Mr. Ginsberg -- it's Mr. Ginsberg  
5 notes. He said that information came  
6 from Herman. We have, as Mr. Ginsberg  
7 pointed out, examined everything that  
8 the office in copying has collected by  
9 way of news. We found nothing. And  
10 as a matter of exhaustive fairness, I  
11 would -- wanted to make sure that I  
12 haven't missed anything.

13 MR. CARTER: Well, if it's a  
14 matter of exhaustive fairness, since  
15 the statement came from Mr. Herman,  
16 not from Mr. Ginsberg.

17 MR. FISCH: We asked Mr. Herman.

18 MR. CARTER: Then he is the  
19 person who would be the appropriate  
20 source for his statement that there  
21 was an article -- there was a  
22 contemporaneous publication.

23 MR. FISCH: Mr. Carter, if in  
24 fact we are going to get to this, the  
25 Commission's determination as to

1           whether to proceed with any type of  
2           investigation of unauthorized  
3           allegations or leaks by Teitelbaum is  
4           based in part upon Herman's  
5           testimony.

6                     And if Herman was drawing a  
7           distinction between having possession  
8           of confidential information and having  
9           public information, then I think it's  
10          fair to determine whether the  
11          Commission determine whether or not  
12          there was public information around  
13          Halloween. That's the basis for it.

14                    They have adopted Herman's  
15          explanation and I'm suggesting that  
16          there's an inaccuracy in that recital  
17          by Herman, okay. That's the reason  
18          for it. So I don't care if  
19          Mr. Ginsberg or Mr. Ayres --

20                    MR. CARTER: What would be  
21          relevant was -- and the only relevant  
22          question it would seem to me is  
23          whether or not -- and Mr. Ginsberg can  
24          feel free to answer the question,  
25          anyone attempted to verify at the

1 point that they learned what Herman  
2 had claimed about the publication of  
3 an article, whether at that time  
4 anyone had searched to determine  
5 whether or not there was an article.

6 Right now as we sit here on  
7 November 17th of 2008, that is  
8 absolutely and positively and  
9 unequivocally irrelevant to anything.

10 MR. FISCH: It's not irrelevant  
11 to my investigation. And if you're  
12 saying that you don't want  
13 Mr. Ginsberg to ask somebody to do it,  
14 I'll accept that.

15 MR. CARTER: He's not the person

16 --

17 MR. FISCH: Who do you suggest -

18 MR. CARTER: At this stage,  
19 whether or not Mr. Ginsberg can go  
20 back on his computer and punch in  
21 Google and put in appropriate search  
22 terms to find whether or not an  
23 article was in fact published in that  
24 time frame is absolutely irrelevant to  
25 this inquiry.

1           MR. FISCH: Mr. Carter, number  
2           one, it's not my Google. Everything  
3           is there. Whether it's relevant or  
4           not, with all due respect to you, it's  
5           going to be my determination, okay?

6           MR. CARTER: Let me put it this  
7           way, it's either --

8           MR. FISCH: You can object to it,  
9           but it's my determination.

10          MR. CARTER: Well, this I think  
11          you would agree with me. A, what's  
12          relevant to this inquiry is whether or  
13          not, taking your point that Herman  
14          represented something that needed to  
15          be, you say, verified -- and that's  
16          whether it was verified at the time,  
17          either it was or it was not. That's a  
18          fair question.

19          But the issue of whether or not  
20          an article actually existed in fact,  
21          either it did or it did not, or -- let  
22          me ask an intermediary question which  
23          would also be a fair question, which  
24          you, I believe, have already  
25          undertaken an examination to

1           determine.

2                   And that is whether or not in the  
3           Commission's press clip file there  
4           existed any record of an article that  
5           was published in the time frame that  
6           Herman claimed that it was published?  
7           I believe that has already been --  
8           that examination has been undertaken  
9           and apparently there is no such  
10          article in a clip file. Is that  
11          correct?

12                   MR. FISCH: Mr. Carter, as a  
13          suggestion, I want to make sure I  
14          didn't miss anything. That's the  
15          whole thing.

16                   MR. CARTER: You have to forgive  
17          me if it sounds like -- and, again,  
18          with all respect, it sounds like a  
19          facetious question.

20                   MR. FISCH: No, it's not. You  
21          spoke about sometimes people can think  
22          they have everything, and then all of  
23          a sudden they discover that they  
24          missed something. I want to make sure  
25          I have not missed something.

1                   MR. CARTER: Mr. Ginsberg, have  
2                   you reviewed a clip file?

3                   THE WITNESS: We have two binders  
4                   of clips which I have looked at. I  
5                   haven't gone through page by page and  
6                   conducted a due diligence.

7                   MR. CARTER: All right. We will  
8                   go through the clip file.

9                   MR. FISCH: That's what I've  
10                  done. I want to make sure I haven't  
11                  missed anything, that's all. I have  
12                  found nothing around that time, okay.

13                  MR. CARTER: And you have the  
14                  copies of the clips themselves?

15                  MR. FISCH: We looked at what  
16                  Mr. Ayres has. I think you made the  
17                  arrangements for us to meet with  
18                  Mr. Ayers, and again my people are not  
19                  perfect, okay? It's a simple thing.  
20                  Let me go on.

21 BY MR. FISCH:

22                  Q. Was any effort made after  
23                  reviewing -- listening to Herman's  
24                  recording, and after listening to  
25                  Constantine's recording, to reconcile what

1 might have been conflicts?

2 A. I'm sorry, could you repeat it?

3 Q. Was any effort made by the  
4 Commission to reconcile apparent  
5 inconsistencies or conflicts between  
6 Herman's recording that you listened to and  
7 Constantine's recording?

8 A. I'm not trying to be difficult,  
9 but I really don't understand what you're  
10 asking.

11 Q. In the memo, Herman was asked  
12 whether someone in the Executive Chamber  
13 told Herman to stop passing information. He  
14 said that had not happened. Constantine  
15 testified, and the transcript you had or the  
16 recording you had, that he became  
17 uncomfortable with a series of conversations  
18 and he told him to stop. Was any effort,  
19 made to reconcile what appeared to be  
20 conflicts?

21 A. Such as what? What do you mean  
22 by efforts?

23 Q. Constantine said, "I told him to  
24 stop." Herman said, "Nobody ever told me  
25 to stop."

1           A.    The question is did we go back  
2 and --

3           Q.    In any event --

4           A.    We questioned Mr. Teitelbaum --

5           Q.    This relates to Herman, Herman --  
6 the conflict between Herman and  
7 Teitelbaum -- Herman and Constantine.

8           MR. CARTER:  The subject matter  
9 is Teitelbaum and Teitelbaum would be  
10 a pretty important witness.

11          MR. FISCH:  The subject matter is  
12 conversations with Herman to  
13 Constantine about Teitelbaum.  But  
14 Herman said nobody ever told me to  
15 stop.  Constantine said I told him to  
16 stop and he stopped for a while.

17          MR. CARTER:  Can I talk to my  
18 attorney.

19          (A recess was taken.)

20          MR. CARTER:  Let me make a  
21 statement for the record.  This is the  
22 second interview that we've had today  
23 and there was never an occasion for my  
24 having a conference with the witness  
25 who you interviewed this morning,

1           Mr. Emery, and there is a very good  
2           reason for the difference. I just  
3           want to make sure that you didn't have  
4           a different sense of tone or approach  
5           in this afternoon's interview.

6                     Mr. Emery is a Commissioner.  
7           Mr. Ginsberg is the General Counsel of  
8           the Public Integrity Commission. He  
9           takes seriously and I take seriously  
10          his responsibility as the primary  
11          guardian of the attorney-client  
12          privilege for that organization.

13                    The underlying facts that I am  
14          advising him to go ahead and report,  
15          frankly, we want to go through those  
16          and in as excruciating detail as  
17          possible if it helps put things in  
18          perspective.

19                    He was concerned about waiving  
20          the privilege, and I assured him that  
21          I will be watching this process and  
22          monitoring it carefully to make sure  
23          that we don't do it inadvertently.

24                    But in response to your question,  
25          he'll give you a recitation of facts

1           that is what was occurring that he was  
2           participating in that did not involve  
3           him providing legal counsel to the  
4           organization. And by advising him  
5           that he should answer this and other  
6           similar questions, we are not waiving  
7           an attorney-client privilege for the  
8           organization.

9           I just want to make that very,  
10          very clear and I just don't want you  
11          to get a mis-impression that  
12          Mr. Ginsberg's hesitancy in answering  
13          your question without consulting  
14          counsel was for any other reason  
15          except that he was concerned about an  
16          inadvertent waiver of privilege.

17          MR. FISCH: He is here as a fact  
18          witness, although, it is the position  
19          of coping when dealing with the  
20          Chamber that attorney-client privilege  
21          should not be exerted because of the  
22          nature of the inquiry.

23          And I have a letter dated August  
24          14, from Herbert Teitelbaum to the  
25          Chamber -- if I can find it -- in

1           which he makes that statement.

2                     It is a letter dated August 14,  
3           2007 to Richard Rifkin with regard to  
4           records and the attorney-client  
5           privilege.

6                     Let me read the last part: "Given  
7           the nature of this matter, the Court  
8           of Appeals' observation that even in  
9           instances with the technical elements  
10          of the law are met the privilege may  
11          none the less yield the proper case,  
12          the strong public policy requires  
13          disclosure, citations omitted, seems  
14          particularly applicable.

15                    Prist, Hennesy, Super Page 69, it  
16          is in the interest of all parties that  
17          there be the fullest disclosure in  
18          this matter. To that end, we ask that  
19          the insertion of privilege be  
20          reconsidered and withdrawn. Should  
21          the parties assert that these e-mails  
22          are protected by the attorney-client  
23          privilege, please provide all relevant  
24          information by the close of business  
25          and so on. And explain why the strong

1 public policy inherent in this case  
2 will not require disclosure of these  
3 e-mails."

4 This was an official position by  
5 Mr. Teitelbaum representing the ethics  
6 Commission when attorney-client  
7 privilege was asserted or considered  
8 by the Chamber.

9 MR. CARTER: And that is  
10 comparing not apples and oranges, but  
11 apples and elephants. It turns on the  
12 circumstances of the investigation,  
13 what the scope of the investigation  
14 is, what the subject matter of the  
15 investigation is, and the  
16 communications that are sought by the  
17 investigator.

18 And the case involving the  
19 underlying substantive investigation  
20 with respect to so-called  
21 "Troopergate," and because there were  
22 persons in the Executive Chamber who  
23 happened to be lawyers who were  
24 directly involved in the transactions,  
25 that it was appropriate to take that

1 position because basically what the  
2 Court of Appeals has said is that the  
3 assertion of the privilege under  
4 circumstances in which there are  
5 compelling reasons to do so, not just  
6 convenience, not just curiosity, but  
7 compelling reasons to invite the  
8 waiver of privilege, that that's an  
9 appropriate time to seek a waiver of  
10 the privilege.

11 I have -- and I don't believe  
12 there's anything that I've done since  
13 I've been involved in this case, that  
14 I have taken the position that the  
15 Commission wants to fully cooperate  
16 with your investigation and review.  
17 And to the extent that it does not  
18 create, set a precedent that would be  
19 one, that would be difficult if not  
20 impossible to live with in terms of  
21 the Commission doing its future work  
22 in countless investigations going  
23 forward, we will do whatever we have  
24 to do to reconcile the important  
25 obligations of privilege and

1            confidentiality in performance of the  
2            Commission's responsibilities with  
3            providing you all of the information  
4            you need to fairly consider this  
5            matter and to accomplish the purposes  
6            of your office.

7                       But we are not going to -- but we  
8            take the -- we believe that the  
9            privilege is important to the  
10           operation of the Commission, and we're  
11           going to exercise due care when we  
12           waive it. And that's our position.

13 BY MR. FISCH:

14           Q.    Okay. I asked a factual  
15           question. Did they investigate any  
16           conflicts, the conflicts? That's a factual  
17           question.

18           A.    When you say "the conflict",  
19           Mr. Constantine, when he was interviewed,  
20           talked about a series of -- hopefully you  
21           will understand this if I use the phrase  
22           back channel, I think that may have been a  
23           word he used -- back channel communications  
24           that you said was ongoing involving Bob  
25           Herman to Mr. Constantine from Herb

1 Teitelbaum to the effect the gist of which  
2 you should be more forthcoming about  
3 producing documents.

4           And I believe Constantine put  
5 that time frame as ending by his  
6 recollection somewhere around the 6th or 7th  
7 or 8th of August. I think it was the end of  
8 his interview. I think he was able to pin  
9 it down to some time frame.

10           Bob Herman, on the other hand,  
11 when he was interviewed wasn't asked  
12 specifically about such back channel  
13 communications, and didn't talk about any  
14 such back channel communications. So to  
15 that extent, I don't know that the  
16 interviews are, quote, "inconsistent" in as  
17 much as Lloyd Constantine talked about  
18 things that Bob Herman didn't talk about.

19           But further in evaluating or in  
20 considering what we had heard, we thought  
21 about the time sequence and by August 6th,  
22 7th or 8th, which is when Constantine said  
23 he got so annoyed, I think that's a fair  
24 characterization, that he told Bob Herman to  
25 stop with such communications.

1           I don't believe the Commission had  
2 even made a document request to the  
3 Chamber. I think the first written document  
4 request that I am aware of, and, again, you  
5 know I wasn't employed at the time. But  
6 from my understanding from documents that  
7 you have and other sources, we didn't make a  
8 document request until August 14, I  
9 believe.

10           So it's hard to understand how by  
11 August 6, 7 or 8 -- and I should say the  
12 Commission didn't start gathering any  
13 information until after the Attorney General  
14 issued a report, which I believe was July  
15 23rd or 24th, of 2007.

16           So we're talking about ten days,  
17 two weeks tops. And from what I understand,  
18 the effort at that time was primarily to get  
19 documents from the Inspector General's  
20 office, from the Attorney General's office,  
21 and I'm not sure whether or not there was  
22 any effort to get after our documents that  
23 we could produce to the District Attorney's  
24 office -- at some time it was, but I don't  
25 know if it had been at that time -- and to

1 make an evaluation as to whether or not this  
2 is something the Commission would go forward  
3 with investigating. And I don't think that  
4 decision was made until sometime in  
5 mid-August. So there was --

6 Q. So this was not regarded as a  
7 conflict, is that the answer?

8 A. I can't speak for the entire  
9 Commission. And they are the ones who make  
10 these decisions, not me. I'm just pointing  
11 out some of the things that were considered  
12 in that respect.

13 Q. Let's get back to around  
14 Halloween. Is there anything in your notes  
15 that leads to the statement in your typed  
16 memo?

17 A. What statement?

18 Q. This report -- I think you said  
19 you just had to wrap up Halloween or  
20 something.

21 A. It says further down on Page 5, a  
22 time reported that D.A. investigating and a  
23 time -- it's on Page 5 two-thirds of the way  
24 down. Not of the memo, but of my  
25 hand-written notes. And by this time, by

1 this time being Halloween or around  
2 Halloween, I believe the D.A. had already  
3 issued a report on the "Troopergate" matter,  
4 that was my understanding.

5 Q. Mr. Ginsberg, recognizing

6 MS. OSTERER: Excuse me, I beg  
7 your pardon. Would you please read  
8 your handwritten notes? I want to  
9 understand what you're saying that  
10 directly applies to the report.

11 MR. FISCH: What page?

12 MS. OSTERER: Five.

13 THE WITNESS: Any particular  
14 place?

15 MS. OSTERER: The part you just  
16 referenced.

17 THE WITNESS: It said at time  
18 reported that D.A. INV, which was my  
19 shorthand for investigator. I took  
20 that to mean Dopp because the  
21 "Troopergate" investigation of the  
22 D.A., he had already issued his report  
23 by that time. Again, this is me  
24 interpreting what Bob Herman was  
25 saying. That was the best that I

1           could do.

2 BY MR. FISCH:

3           Q.    What I started saying,  
4 recognizing human error and frailty, the  
5 typed memo reported to be a complete  
6 compilation of your handwritten notes?

7           A.    Actually, I think there is -- if  
8 you can show me the notes for a second, I  
9 think there is memo regarding on how to look  
10 at it.

11                    It says on Page 1, last sentence,  
12 it is not -- this is referring to the  
13 memo -- it is not meant to be a complete  
14 transcript or summary of everything the  
15 District Attorney said during the meeting or  
16 that Herman and Constantine said during the  
17 interviews. Then there is a footnote that I  
18 took notes during the meeting, but that we  
19 hadn't been afforded either transcripts or  
20 an opportunity to listen to the recordings  
21 again.

22           Q.    Let me ask about that.

23           A.    So I did the best I can.

24           Q.    You contacted the D.A. and spoke  
25 to Linda Griggs sometime in August. I had

1 already been -- had already been referred  
2 the allegation, and you wanted copies of the  
3 transcripts again?

4 A. I believe that my initial request  
5 -- well, we made our request the night we  
6 went up there in February. The D.A. said he  
7 would not provide that. I believe my  
8 subsequent request of Ms. Griggs came before  
9 we were there, and were referred to what I  
10 believe was in July.

11 Q. About a week before, something?

12 A. I couldn't tell you a time. I  
13 probably -- I might have notes somewhere,  
14 but I'm virtually certain it's before.

15 Q. Why the second request?

16 A. Why the second request? The  
17 Commission wanted to obtain it if we could.  
18 We had just issued the notice of reasonable  
19 cause. I believe at the time there was some  
20 media reports that District Attorney Soares  
21 would be releasing his file, quote, unquote,  
22 whatever that meant.

23 And we were -- almost every day  
24 getting criticized in the media by one of  
25 the people who was the subject of notice of

1 reasonable cause, and we thought it would be  
2 good if we could get a copy at that time to  
3 review the transcripts.

4 I made -- my specific request was  
5 if -- I remember it correctly, was a copy of  
6 the tapes, failing that, or in addition to  
7 that if there was a transcript, a  
8 transcript. My preference was the tapes.

9 Q. You spoke to Linda Griggs?

10 A. I did.

11 Q. What was her response?

12 A. Some days later three or four or  
13 five days later, she responded that she had  
14 spoken -- in substance what she said was  
15 that she had spoken with the D.A. She told  
16 me when I first called, she'd have to confer  
17 with the D.A., which I understood. And then  
18 her subsequent call was that she had talked  
19 to the D.A. and his response was to the  
20 effect that they had given the Commission an  
21 opportunity to hear these recordings and  
22 that if we wanted an additional opportunity,  
23 we should put our request in writing which  
24 we did not.

25 Q. Request that be put in writing

1 and an explanation of why you wanted it  
2 again?

3 A. Correct.

4 Q. Mr. Ginsberg, getting back to  
5 your notes, which you took listening to the  
6 recording of Constantine, on Page 13 there  
7 is a reference to Constantine describing  
8 another conversation with Herman about a  
9 week or so after his October 31st or  
10 November 1st conversation, in which he saw  
11 Herman, asked him why he was so upset about  
12 not disclosing his identity. Do you recall  
13 that? Take a look at the bottom of that  
14 page.

15 A. Um-hmm.

16 Q. Now, do you recall that  
17 Constantine quoted Herman as saying he  
18 should not be telling you this and Herman  
19 saying I know Herb Teitelbaum, what he is  
20 capable of doing when cornered. Do you  
21 remember that from him?

22 A. I wouldn't characterize it as a  
23 quote because I was taking notes. I was  
24 trying to write down the substance of what  
25 was said.

1           Q.    Yes.  And H.T., meaning Herb  
2    Teitelbaum, capable of claiming, did not  
3    tell me like broke into apartment.  H.T.  
4    could not tell I stole it.  Do you see that?

5           A.    Yes.

6           Q.    In your written memo, you say  
7    merely, Herman said Teitelbaum was claiming  
8    that someone broke into his apartment and  
9    stole the information.

10          A.    Um-hmm.

11          Q.    Is there any reason why you did  
12   not include in your written memo that  
13   portion of Herman's explanation that  
14   Teitelbaum was capable of saying that he did  
15   not tell me?

16          A.    I can't recall.  I can't give you  
17   a reason.

18          Q.    Or that Teitelbaum was capable of  
19   saying that he, Herman, had stolen the  
20   information, not that someone broke into the  
21   apartment and stole information?

22          A.    I don't know why I wrote it that  
23   way.

24          Q.    Do you recognize the distinction?

25          A.    They are different, sure.

1           Q.    Someone broken into his apartment  
2 as opposed to I took it.

3           A.    I said, yes.

4           Q.    Mr. Ginsberg, was this memo  
5 shared with Commissioners?

6           A.    One Commissioner.

7           Q.    Who was that?

8           A.    The Chair, by me.    Chaired by me.

9           Q.    Did you read, before you did  
10 this, did you read your notes to the Chair  
11 first?

12          A.    I don't recall doing that at that  
13 time.    You mean at the time I was writing  
14 the memo, did I read my notes to the Chair?  
15 I don't recall.

16          Q.    Were you present when other  
17 Commissioners were advised of the  
18 Constantine and Herman recordings?

19          A.    Other Commissioners?

20          Q.    Yes.

21          A.    Well, yes.

22          Q.    Who described the recording, the  
23 content of the recording?

24          A.    Well, there were two other times  
25 that I can recall.    One was the day after.

1 I believe there was a Commissioner from the  
2 work group, Loretta Lynch, who had not been  
3 available, and I believe went up to listen  
4 to the recording. I think there was some, I  
5 don't remember the details, but some filling  
6 in, as you will, of what we had learned and  
7 what we had heard.

8 And then the day after that,  
9 which I believe was February 28, that was a  
10 Commission meeting -- conference call with  
11 John Feerick, primarily. Other  
12 Commissioners and myself, to some extent,  
13 providing background, but John Feerick was  
14 the lead.

15 Q. How much of the Constantine  
16 reporting was disclosed to the other  
17 Commissioners?

18 A. I can't answer that question. I  
19 think it was fairly summarized.

20 Q. What was that?

21 A. I believe it was fairly  
22 summarized.

23 Q. Did it include that portion that  
24 was in your notes, but not in your memo that  
25 Teitelbaum was capable of saying that he did

1 not tell me that I came into possession of  
2 it and that I stole it?

3 A. At the time of the Commission  
4 meeting, the memo didn't exist. So I was  
5 working only from my notes, and of course my  
6 memory was considerably better.

7 Q. Do you recall when that was?

8 A. It was a day or two after we had  
9 heard the tapes. So I recall that there was  
10 some discussion about that. Exactly how it  
11 came up and what was said, I don't recall.

12 Q. A discussion about that?

13 A. About that being that Herman said  
14 to Constantine what is reflected in my  
15 notes.

16 Q. That he is capable of saying he  
17 did not tell me?

18 A. Something to that effect, but  
19 exactly what was conveyed, I don't recall.

20 Q. Also, in the Constantine  
21 recording, but not reflected either in your  
22 hand-written notes or in the memo, Herman  
23 saying that Teitelbaum was capable of saying  
24 I saw it on his desk. Do you recall that?

25 A. I don't.

1           Q.    Do you think that has  
2           significance considering the later-on with  
3           Herman saying that he saw it on his desk?

4           A.    Well, I think it was conveyed to  
5           the Commission that Herman said that he had  
6           seen some notes in Herb's apartment.  I  
7           don't know if it's material, if it's a task  
8           or a table.  I think he said table?

9           Q.    Do you see any significance to  
10          Herman telling Constantine, in response to  
11          why did you not want your identity disclosed  
12          as the source, Herman saying you don't know  
13          what he's capable of.  He's capable of  
14          saying he did not tell me that I came into  
15          possession of it some other way, but I saw  
16          it on a desk in his apartment.  And then  
17          later saying that's how I came into this  
18          information?

19          A.    You want my opinion?

20          Q.    Sure.

21          A.    I thought I was here to testify  
22          about facts.

23          Q.    I'm sorry.

24          A.    You said before I was here to  
25          testify about facts.

1           Q.   That's all right.  Your  
2  entitled.  Did you see any significance  
3  between that -- I mean, someone who is  
4  talking only about facts, he still has  
5  experience in the District Attorney's office  
6  and so on.  He is recording the conversation  
7  with Constantine.  There is some parts of  
8  the conversation that Herman, later,  
9  according to Constantine, that are omitted  
10 from the typed memo.

11                   And I'm asking you whether --  
12 why he did not include -- he said he didn't  
13 know.  I'm asking now as a follow-up to  
14 that, do you see any significance to that?

15           A.   On the placement of the note on a  
16 desk as opposed to another piece of  
17 furniture.

18           Q.   Absolutely.  The fact that he  
19 says that he didn't say, he didn't tell me I  
20 saw it on his desk in his apartment.  And  
21 then later on, his explanation is no I saw  
22 it on a desk.  Sure, sure, absolutely.

23                   MR. CARTER:  Desk as opposed to  
24 dining room table as opposed to coffee  
25 table as opposed to --

1                   MR. FISCH: I don't care.  
2                   Coffee table, desk, there is no coffee  
3                   table.

4                   MR. CARTER: That's the problem.  
5                   The way the question is phrased it  
6                   sounds as if --

7                   MR. FISCH: On some table, on  
8                   some commode, on some desk.

9                   MR. CARTER: It sounds as if you  
10                  are emphasizing the desk. That's what  
11                  was confusing the witness. It  
12                  confused me.

13 BY MR. FISCH:

14                  Q. In other words, saying he saw it  
15                  in his apartment on some receptacle as  
16                  opposed to somebody -- Herman telling him,  
17                  Teitelbaum telling him this?

18                  A. My recollection is that what  
19                  Herman said was that he had seen notes in  
20                  Herb Teitelbaum's apartment. I believe they  
21                  said a tape, but I maybe don't know that.  
22                  And that was the report to the Commission.

23                  Q. That's what I'm saying. The fact  
24                  that he had told Constantine the reason he  
25                  didn't want himself disclosed, was because

1 Teitelbaum was capable of coming up with  
2 that type of story?

3 A. As I said before, in answer to  
4 your earlier question, I believe in  
5 substance that was conveyed to the mission.

6 Q. And where that was what?

7 A. Conveyed to the Commission.  
8 That's my recollection.

9 Q. Mr. Ginsberg, when we spoke and  
10 Dean Feerick also made a point of  
11 distinguishing between a referral that was  
12 just returning, and transmitting or  
13 consultation with the D.A. all of the  
14 information?

15 A. I wasn't here for his testimony.  
16 I did not read the transcript.

17 Q. Is there a difference between a  
18 referral and just consulting with the D.A.?

19 A. Do you want my opinion?

20 Q. Whether or not it requires --

21 MR. CARTER: As I understand --  
22 What he's asking is it's not a  
23 rhetorical question. Again, he is the  
24 General Counsel of --

25 MR. FISCH: I understand that?

1           MR. CARTER:  -- of the  
2           Commission.  The extent that you are  
3           asking his legal opinion or his  
4           assessment, that gets dangerously  
5           close to asking --

6           MR. FISCH:  I am not asking him  
7           about communications.  I am not asking  
8           about communications with other  
9           Commissioners.  That may be  
10          attorney-client, whether you want to  
11          waive it or don't want to waive it.  
12          I'm asking him as Counsel to the  
13          Commission whether there is -- the  
14          significance of what a referral is.  
15          There has been sworn testimony that  
16          this is not a referral, it's just  
17          consultation.  I'm just asking what's  
18          the difference?

19          THE WITNESS:  I was not an  
20          employee of the Commission at the time  
21          the events occurred.  Whatever I know  
22          about that, I gained through  
23          conversations with other --

24          MR. FISCH:  I --

25          THE WITNESS:  Can you hear me

1 out? The issue of whether to make a  
2 referral or a consultation on some  
3 other matter has not arisen since I  
4 have been at the Commission. So I  
5 haven't had to address that.

6 MR. CARTER: Or to put it  
7 differently. He cannot be a fact  
8 witness in connection with the events  
9 that occurred before he got there.

10 BY MR. FISCH:

11 Q. I'm asking him today, if the  
12 Commission wishes to refer something to the  
13 District Attorney for consideration for of  
14 possible prosecution, does it require  
15 concurrence of a majority of the  
16 Commissioner, all Commissioners, can four  
17 Commissioners do it?

18 A. It's not a question I've had to  
19 address. If I had to face that question, I  
20 would consider it --

21 Q. It's not attorney-client --

22 MR. CARTER: He's not asserting  
23 attorney-client privilege. You're  
24 using "referral" as if --

25 MR. FISCH: You saw his

1 testimony -- Feerick's testimony.

2 MR. CARTER: I've seen Dean  
3 Feerick's testimony, and I saw you  
4 repeatedly using the term "referral"  
5 in your questioning of him when he  
6 insisted it was not a formal referral  
7 under the Executive Law --

8 MR. FISCH: It was --

9 MR. CARTER: Let me finish. It  
10 was a communication of information  
11 because, if you want a legal opinion,  
12 his legal opinion from the attorney  
13 who represents the Commission  
14 presently, that's me.

15 Referral requires two components,  
16 facts and a statement of an opinion of  
17 what can be inferred from or what  
18 response there needs to be to those  
19 facts.

20 In this case you had Mr. Dopp who  
21 declares in his testimony before the  
22 Commission that he has been  
23 "disingenuous" -- or he had been  
24 "disingenuous" in the affirmation that  
25 he had submitted to the Attorney

1           General.

2                   And when you read that testimony,  
3           it appears that Mr. Dopp is suggesting  
4           that he was "disingenuous" insofar as  
5           he had agreed to accept the  
6           responsibility for what had occurred  
7           in order for the Executive Chamber to  
8           avoid responsibility.

9                   Now, you've been prosecuting  
10          cases even longer than I have, but in  
11          my 30-some odd years of prosecution, I  
12          would find that a very, very  
13          challenging perjury prosecution on the  
14          grounds of being "disingenuous",  
15          whatever he means by that term.

16                   So consequently, this is one of  
17          those situations that is in a  
18          decidedly gray area. There is not  
19          sufficient information upon which  
20          there is a certainty that you could  
21          ground a prosecution for any definite  
22          crime, but there is enough information  
23          that you might want someone who is  
24          charged with the responsibility for  
25          prosecution to review and to determine

1           whether or not they have a different  
2           view.

3                     That's not a referral. That's a  
4           consultation.

5                     MR. FISCH: You will recall when  
6           I spoke to Mr. -- to Dean Feerick, I  
7           said I was not using the term in its  
8           legal sense. I said "referral" and I  
9           think I used the word generally.

10                    MR. CARTER: You used the term  
11           "term of art".

12                    MR. FISCH: It was not as if I  
13           was trying to trick him or anything.  
14           I used the word referral instead of  
15           transmission, or whatever. That's  
16           means referring it over to the D.A.  
17           for his consideration.

18                    Again, I don't know whether your  
19           answer is that it requires to -- what  
20           I am trying to determine is whether it  
21           requires concurrence of a majority of  
22           the 13 Commissioners, where two  
23           Commissioners can transmit this to the  
24           D.A. That's what I am trying to do.

25                    MR. CARTER: Let's put it this

1 way. Let's start from what occurred  
2 and then let's talk -- let's reason  
3 back to the abstract and hypothetical.

4 In the view of the Commission, a  
5 referral did not occur. If a formal  
6 referral were going to occur, that it  
7 would probably require the concurrence  
8 of at least a majority of the  
9 Commission, but that's not before us  
10 because that isn't what occurred.

11 What occurred instead was a  
12 consultation, and at least in the view  
13 of the Chairman and the Commissioners  
14 with whom he consulted. A concurrence  
15 of all of the Commission was not  
16 required to simply transmit this  
17 neutral, factual information to the  
18 District Attorney without a  
19 recommendation as to what to do with  
20 it.

21 MR. FISCH: Referral would  
22 include a recommendation. You can ask  
23 the D.A. to take a look at it.

24 MR. CARTER: I'm not going to --  
25 there's a very good reason why the

1           founding fathers determined --

2           MR. FISCH: We are going back  
3           now.

4           MR. CARTER: We are way back  
5           now -- that under most circumstances,  
6           that cases should be decided on the  
7           basis of actual cases and  
8           controversies. Because once we get  
9           into the zone of hypotheticals, you  
10          can always get it a bit wrong, and  
11          it's important here to get it right.

12          I am not going to speculate  
13          without a factual context what would  
14          be required under the various  
15          scenarios.

16          All I'm -- I'm going to stick to  
17          the facts here. The facts here are  
18          already a matter of record, Dopp's  
19          affidavit just opposed against his  
20          sworn testimony, and those facts kind  
21          of speak for themselves.

22          Whether or not, when you look at  
23          those together, they provide -- just  
24          on the basis of those two things, an  
25          evidentiary basis for bringing charges

1           -- criminal charges against Mr. Dopp  
2           is not something that was readily  
3           apparent at the time. And certainly  
4           did not provide a basis upon which the  
5           Commission will need that it would --  
6           that it would provide the basis for a  
7           referral.

8                        So they instead took an  
9           intermediary course and brought these  
10          neutral facts to the attention of the  
11          District Attorney?

12 BY MR. FISCH:

13           Q.    Were you present when the  
14          portions of the transcript were provided to  
15          D.A. Soares?

16           A.    I wasn't with the Commission at  
17          the time.

18           Q.    You came when again, I'm sorry.  
19          2007 when?

20           A.    January, 2008. That occurred back  
21          in October of 2007.

22                       MR. CARTER: It looks like it's a  
23          little bit like that situation of the  
24          Titanic going down and the captain  
25          asked the Ensign, would you come up

1           and take the helm for a little while?

2                   (Discussion off the record.)

3 BY MR. FISCH:

4           Q.    Are minutes kept at Commission  
5 meetings?

6           A.    Yes.

7           Q.    I think we -- I don't think we've  
8 ever seen any copies of any minutes, have  
9 we?

10           MS. OSTERER:  Yes, we have.  With  
11 respect to the conference call on  
12 February 28th '08, we have some  
13 minutes of yours.  Are those the only  
14 minutes that exist?

15           THE WITNESS:  I'll double check,  
16 but I'm pretty sure that's right.

17           MS. OSTERER:  With respect to the  
18 conference call on the 28th,  
19 Mr. Ginsberg will check.

20 BY MR. FISCH:

21           Q.    The testimony of Dopp was taken  
22 before you joined the Commission.  I think  
23 that was taken in -- was it July 20th?

24           MS. OSTERER:  October?

25           MR. FISCH:  October, 2007?

1 THE WITNESS: Correct.

2 BY MR. FISCH:

3 Q. I take it you would agree that  
4 disclosure of sworn testimony before the  
5 commission is confidential?

6 A. If we were faced with that  
7 question --

8 Q. Sorry?

9 A. If we were faced with that  
10 question, I would consider it. I think this  
11 goes to what Mr. Carter was saying before  
12 about the facts and circumstances.

13 Q. Could it be disclosed to Herman?

14 A. If I were asked to give an  
15 opinion by one of the Commissioners if there  
16 was a question of the Commission, it  
17 wouldn't be a shoot from the hip. It would  
18 be considered based on research, discussion  
19 with other staff members, which I haven't  
20 had the opportunity to do.

21 MR. FISCH: Now, Mr. Carter, what  
22 I want to get into now, my next  
23 question involves a legal opinion by  
24 counsel for the Commission.

25 MR. CARTER: What's the question?

1           MR. FISCH: It does not involve  
2           attorney-client. It involves a  
3           client's attorney.

4           Q.    Would, if it occurred, disclosure  
5           by title to Herman of the sworn testimony of  
6           the contents of the sworn testimony of  
7           Dopp's before the Commission, constitute a  
8           violation of the of the U.S. Statute?

9           A.    Again, I don't -- I'm not in the  
10          practice of giving shoot from the hips in  
11          order to give answers to questions like  
12          that.

13          Q.    That shooting from the hip?  
14          Disclosure of sworn testimony before the  
15          Commission, disclosing it to somebody -- to  
16          Herman who had no -- was not -- had no  
17          official position?

18          MR. CARTER: You may have been  
19          inadvertent, but your last question  
20          omitted the mention of Herman.

21          MR. FISCH: To Herman. I'm sorry.  
22          Teitelbaum to Herman, sworn testimony  
23          by Dopp before the Commission, is that  
24          a violation of the statute? Not  
25          inadvertent, direct.

1           A.    Can you give me more facts and  
2    circumstances?

3           Q.    What more facts do you need?  The  
4    testimony is taken under oath, the  
5    Commission, of Dopps, he swears under oath,  
6    testifies under oath, all right?  Dopps and  
7    Teitelbaum -- Teitelbaum refers that to  
8    Herman.  Is that a violation of your  
9    statute?  Herman is not a member of the  
10   Chamber with whom he is -- he has been  
11   authorized, designated to be the liaison or  
12   to deal with the Commission on any of its  
13   investigations.

14          A.    I don't think that I'm here to  
15    give you my legal opinions.  I am here to  
16    answer factual questions and answer them as  
17    best I can.

18          Q.    The fact is you're Counsel to the  
19    Commission, okay?  And I don't think the  
20    attorney-client deliberative process, I  
21    don't think any of that permits you to avoid  
22    answering.  If you want to cooperate, you  
23    want to cooperate with the Commission.  It's  
24    a very simple thing.

25                MR. CARTER:  No, it is not a very

1           simple thing the way you are putting  
2           it unless your question is just to  
3           satisfy curiosity --

4           MR. FISCH: He needs to satisfy  
5           the report that we're going to  
6           ultimately be writing, okay?

7           MR. CARTER: The very reason  
8           you're asking the question is because  
9           of its significance coming from  
10          General Counsel with respect to what  
11          opinion he may hold as to whether or  
12          not the conduct that is alleged here  
13          would constitute a violation of the  
14          Executive Law and to the extent that  
15          he has repeatedly said that he is not  
16          prepared to give a shoot from the hip  
17          opinion on a matter that requires some  
18          research from a a careful lawyer, I  
19          think is a valid answer.

20          And I don't believe that my  
21          client should be penalized because he  
22          is a careful lawyer. I wouldn't  
23          answer that question either.

24          THE WITNESS: The other thing I  
25          would say, for the Commission --

1 speaking for the Commission. The  
2 Commission makes the decisions in the  
3 individuals cases, not General  
4 Counsel.

5 MR. FISCH: Could I ask  
6 Mr. Ginsberg to research that for me  
7 and come back with a response, with a  
8 legal opinion as to whether that  
9 constitutes a violation of the  
10 statute? Take as much time as you  
11 want.

12 MR. CARTER: Actually, no. And  
13 here's the reason why you can't. It's  
14 the same reason why you can't ask him  
15 to go to his computer and Google  
16 whether or not --

17 MR. FISCH: Mr. Carter, that's  
18 not what I asked him to do. Don't  
19 misstate that. I didn't ask him to do  
20 that.

21 MR. CARTER: You asked him to do  
22 the legal research necessary to  
23 determine whether or not in his  
24 opinion, certain conduct would  
25 constitute a violation of the

1 Executive Law. Whatever he finds out  
2 on November 17th of 2008 is absolutely  
3 irrelevant to your inquiry.

4 Now, the only question is what  
5 advice was sought or given - the only  
6 conceivable relevant question would be  
7 what advice was sought and given at  
8 the time, and that's covered by the  
9 privilege.

10 MR. FISCH: I'm not asking  
11 whether he was asked by the  
12 Commissioners to give advice and  
13 whether or not that constitutes a  
14 violation. I'm not asking him that.  
15 That's number one.

16 Number two: There is a history of  
17 the Executive Director asking that the  
18 attorney-client be waived for public  
19 policy reasons.

20 MR. CARTER: But not under all  
21 circumstances. I read the letter. I  
22 know the letter. I also know the  
23 law. That is not a comparison of life  
24 circumstances. It's just not and  
25 that's my position.

1                   MR. FISCH:  So once again you've  
2                   asked us -- withdrawn.

3  BY MR. FISCH:

4                   Q.  Are you familiar with Section 55  
5                   of the Executive Law?

6                   A.  55?

7                   Q.  I'm sorry?

8                   A.  I just said 55.  I believe that's  
9                   one of the sections that governs the  
10                  Attorney General.

11                  Q.  The referral to the Inspector  
12                  General of allegation of misconduct?

13                  A.  I know that there is such a  
14                  statute.  And if you tell me it's Section  
15                  55, I'll accept that.

16                  Q.  Okay.  You wrote to us, spoke  
17                  about us being conflicted because of my  
18                  predecessors not investigating secretaries  
19                  of the company.  Do you remember that  
20                  letter?

21                  A.  I don't remember saying that we  
22                  were conflicted.  I do remember -- I think I  
23                  know what your talking about.  And I believe  
24                  it was September 16th.

25                  Q.  Would it also be, Mr. Carter,

1 outside of Mr. Ginsberg's role here in  
2 explaining why the -- whether such  
3 information, allegation of disclosure by the  
4 Executive Director of information to a  
5 non-authorized person, whether allegations  
6 should have been reported to the Inspector  
7 General.

8 A. Should have been reported to the  
9 Inspector General?

10 Q. Uh-huh. Section 55 requires that  
11 such allegations be reported to the  
12 Inspector General and it never was.

13 MR. CARTER: Well, you say, you  
14 just stated that for the record. I  
15 assume you're quoting accurately from  
16 the statute and so your question is  
17 what to Mr. Ginsberg and for what  
18 conceivable purpose?

19 MR. FISCH: I'm asking whether he,  
20 again, as counsel, allegation received  
21 that Teitelbaum disclosed confidential  
22 information concerning confidential  
23 matters, whether that allegation  
24 should have been referred to the  
25 Attorney General. That was my

1 question.

2 MR. CARTER: By whom?

3 MR. FISCH: By the Commission.

4 The Commission which received that  
5 allegation, received it from the  
6 District Attorney and received it the  
7 Chamber. Should it not have been  
8 referred to the Inspector General?

9 MR. CARTER: Under what  
10 circumstances?

11 MR. FISCH: The circumstance that  
12 they received an allegation involving  
13 their Executive Director who is a  
14 state employee, and the jurisdiction  
15 of this Commission is to investigate  
16 allegations of that nature.

17 MR. CARTER: Allegations that  
18 they considered credible.

19 MR. FISCH: Whether they quibble  
20 is not -- that is after the  
21 investigation is conducted whether  
22 it's credible or not. Whether  
23 something is credible and accurately  
24 received, allegations which are  
25 unfounded, unsubstantiated, and we say

1           so. We say nothing. We get beyond  
2           this stuff all the time, but whether  
3           it's for investigation purpose --  
4           rather than investigating itself, or  
5           not investigating itself. Whether  
6           that is something that should have  
7           been brought to the Inspector General.

8           THE WITNESS: Ultimately it was.

9           MR. FISCH: Sorry.

10          THE WITNESS: Ultimately it was  
11          or else we wouldn't be sitting here.

12          MR. FISCH: No, it was not  
13          Soares. By the Commissions, not by  
14          Soares, by the Commission, okay. Do  
15          you want to answer that?

16          MR. CARTER: You're asking him to  
17          render a legal opinion?

18          MR. FISCH: I asked him as  
19          counsel for the Commission.

20          MR. CARTER: Is that a matter  
21          that you considered --

22          THE WITNESS: The short answer is  
23          subsequently.

24          MR. CARTER: Subsequently.

25          BY MR. FISCH:

1 Q. Received what subsequently?

2 A. No. He asked me is the question  
3 that he just raised something we consider, I  
4 consider? The answer is subsequently.

5 MR. CARTER: He said the answer  
6 is subsequently. That is not at the  
7 time, but subsequently. I asked him  
8 whether or not that is an issue that  
9 you considered, and his answer was  
10 subsequently.

11 BY MR. FISCH:

12 Q. The information came in 2008.  
13 But, you know, subsequent to what?  
14 Subsequent to our investigation? We  
15 received it in February. We didn't get  
16 involved until August.

17 A. We received it in February. We  
18 received information in the form of two  
19 tapes recorders. Neither of which said that  
20 Mr. Teitelbaum had disclosed information to  
21 Herman. Herman didn't say that, and  
22 Constantine didn't say that.

23 Q. So you are saying you were not  
24 required -- that you resolved the issue.  
25 That it's not credible, and therefore was

1 not referred to us?

2 A. We didn't receive any information  
3 -- we didn't receive information that  
4 Mr. Teitelbaum had disclosed information to  
5 Mr. Herman. We had two recordings. That's  
6 what the D.A. gave to us. The substance of  
7 what you're saying, Mr. Herman says he got  
8 the information in which you indicated.

9 Mr. Constantine, when asked, did  
10 Herman say that Teitelbaum told him this  
11 stuff, couldn't say yes, he said that was  
12 his belief.

13 Q. Assumption?

14 A. Assumption. He never said that  
15 Herman said that.

16 Q. Should that cause an  
17 investigation?

18 A. The Commission conducted an  
19 investigation?

20 Q. The Commission conducted an  
21 investigation?

22 A. To Mr. Teitelbaum.

23 Q. You spoke to Teitelbaum?

24 A. Uh-huh.

25 Q. You spoke to Teitelbaum?

1           A.    Not alone, but yes.

2           Q.    Who spoke to Teitelbaum?

3           A.    It was me, John Feerick, I  
4 believe there would be -- but I couldn't  
5 describe --

6           Q.    And what did Teitelbaum say?

7           A.    He said never disclose  
8 information to Mr. Herman. He could not  
9 recall anything along the lines that Herman  
10 was describing. That was the substance of  
11 what he said.

12          Q.    Did you call Herman as part of an  
13 investigation? You called Teitelbaum and  
14 you got his explanation. Did you ever call  
15 Herman?

16          A.    We had Mr. Herman's testimony  
17 over at the D.A.

18          Q.    No?

19          A.    No, we did not call.

20          Q.    Did you ever call Constantine?

21          A.    No.

22          Q.    Did you call Pope?

23          A.    Pope was interviewed, but I don't  
24 believe he was interviewed on this subject.  
25 He was interviewed by our office, but not on

1 this subject.

2 Q. Did you get any other information  
3 that came from the D.A. in connection with  
4 this? Any other people you interviewed but  
5 not recorded?

6 A. I am pretty sure the sheriff  
7 was.

8 MS. OSTERER: I just wanted to go  
9 back to your earlier statement about  
10 Lloyd Constantine having read  
11 conversations that occurred with Bob  
12 Herman around August 6th and 8th?

13 MR. CARTER: He said it ended by  
14 the 6th or 8th.

15 BY MS. OSTERER:

16 Q. Correct. And earlier today you  
17 mentioned that the Commission had not yet  
18 made a request but made a request for  
19 documentation until --

20 A. I believe the first written  
21 document request of the Chair I'm aware of  
22 was August 14th. I think there was some  
23 back and forth thing about the privilege  
24 issues?

25 Q. Yes. I want you to understand

1 references and the notices of reasonable  
2 cause which relate to a time period prior to  
3 August 14th.

4 At Page 8th of the -- there is a  
5 reference to what occurred prior to August  
6 14th.

7 A. Is it from your record to require  
8 to --

9 Q. Yes, and it continues on the  
10 prior page. Evidently the Commission had  
11 been -- I am sorry, subsequent page. The  
12 commission had made a request for  
13 documentation which had been furnished  
14 earlier to the Attorney General's office and  
15 the Inspector General's office. Is that  
16 correct?

17 A. Again, I wasn't there at the  
18 time, but my understanding is those requests  
19 were made to the Attorney General and  
20 Inspector General. I could be wrong about  
21 it, but that's what I feel.

22 Q. Well, perhaps, you're not the  
23 appropriate witness --

24 A. I certainly have no first-hand  
25 knowledge.

1           Q.    According to the documents you  
2           furnished to us most recently, regarding the  
3           correspondence between the Commission and  
4           the Executive Chamber regarding the  
5           production of documents, it would appear  
6           that there was a dispute between the  
7           Commission and the Chamber prior to the  
8           14th?

9           A.    I thought there were some issues  
10          referred to in the notes about  
11          attorney-client privilege and work product  
12          claims

13          Q.    Is that certain records were  
14          being withheld because of the  
15          attorney-client privilege being asserted?

16          A.    Yes, I think.  As I recall, and  
17          what this says, is that -- this being that  
18          there was a request for a privilege log that  
19          the Chamber produced a privilege log that  
20          the OAG, the Office of Attorney General has  
21          not requested.

22                   MR. CARTER:  In any event, the  
23                   report is referring to what the Ethics  
24                   Commission learned that the Chamber  
25                   had withheld from the Office of the

1 Attorney General and the office first  
2 time.

3 MS. OSTERER: According to the  
4 correspondence we were furnished  
5 between Mr. Teitelbaum and Mr. Rifkin,  
6 it would appear that they were dealing  
7 with one another directly regarding  
8 the production of these documents?

9 MR. CARTER: As of what date?

10 MS. OSTERER: As of -- commencing  
11 July 27th, 2007.

12 MR. CARTER: Still not much  
13 before the August time frame?

14 THE WITNESS: A week. But again,  
15 I wasn't there.

16 MR. CARTER: But the real issue,  
17 I would urge in terms of Constantine's  
18 transcribed interview were  
19 conversations about document  
20 productions that were contested and in  
21 dispute. And that's what started  
22 later being the contention, the  
23 resistance.

24 Here we're talking about the  
25 Commission coming up to speed, relying

1 to a large -- by securing the  
2 production of documents that had  
3 already been previously produced to  
4 another agency, specifically the  
5 Office of the Attorney General, and  
6 it's only later that the disputes  
7 begin to heat up with respect to  
8 resistance to providing documents.

9 And that was the subject  
10 matter -- at least as I read  
11 Constantine's testimony that was being  
12 repeatedly brought to Constantine's  
13 attention by Herman.

14 MS. OSTERER: Then you're not the  
15 fact witness because neither am I.

16 MR. CARTER: He's not a fact  
17 witness either.

18 MS. OSTERER: But he did make the  
19 earlier statement that what occurred  
20 earlier during the time frame  
21 Mr. Constantine is talking about, it  
22 really had no bearing on what the  
23 Commission was doing because it hadn't  
24 made a request until August 14.

25 THE WITNESS: Maybe I didn't say

1           that as clearly as I could have.

2                     Constantine posits in his  
3           testimony -- says in his testimony  
4           August 6th, 7th or 8th that he had  
5           been -- to use in the time phrase --  
6           hocked so much by Bob Herman about  
7           Herb Teitelbaum telling Bob Herman to  
8           tell Constantine to get on the with  
9           it, produce, produce, produce, that it  
10          happened so often, so many times, that  
11          by August 6th, 7th, or 8th, he said  
12          stop already, stop.

13                    That's basically what Constantine  
14          said. What I was saying is the time  
15          frame, to me, based on what I know,  
16          that could have happened so much with  
17          such frequency around August 6th, 7th  
18          or 8th.

19                    MS. OSTERER: But you weren't  
20          working there at the time?

21                    THE WITNESS: No.

22                    MR. CARTER: Off the record  
23          (Discussion off the record.)

24 BY MS. OSTERER:

25 Q. When you, among others, met with

1 Mr. Teitelbaum regarding the allegations  
2 made by Mr. Soares, did you share your  
3 handwritten notes with him?

4 A. No.

5 Q. Did you read the notes to him?

6 A. No.

7 Q. Did you relate -- what did you  
8 relate to him about the allegations, if  
9 anything?

10 A. Well, first, I mean -- I think we  
11 conducted the questioning first in a general  
12 way, you know, did you ever say anything in  
13 substance about Herman, about Dopp being  
14 under investigation by the D.A. He said,  
15 no, and then I think we pressed him a little  
16 bit more.

17 Did he recall a dinner with Bob  
18 Herman, you know, and it went like that. So  
19 I used my notes to frame questions or areas  
20 of inquiry, but I didn't show him my photos  
21 or what I used.

22 Q. And he denied the allegations?

23 A. He said he had never told Bob  
24 Herman that the D.A. was investigating Dopp.

25 Q. Did he say whether there was a

1 consultation with the District Attorney?

2 A. Oh, yes, but not -- there was no  
3 dispute from what I understand within the  
4 Commission --

5 MR. CARTER: I'm sorry.

6 Consultation about what?

7 BY MS. OSTERER:

8 Q. Did Mr. Teitelbaum state that he  
9 had discussed the consultation with D.A.  
10 Soares regarding Darren Dopp with Bob  
11 Herman?

12 A. No.

13 Q. Did he deny that?

14 A. Yes.

15 Q. He didn't say he couldn't recall  
16 it. He denied it?

17 A. He said nothing like that ever  
18 happened. That's not a quote, but the gist  
19 of what he conveyed was that something like  
20 him telling Bob Herman the D.A. is  
21 investigating Darren Dopp didn't happen.

22 Q. Did you discuss with him any  
23 allegations regarding the earlier time  
24 period from July or August of 2007?

25 A. Like what?

1           Q.    To the effect that he may have  
2 discussed the Commission's investigation  
3 with Bob Herman?

4           A.    I think we questioned that, yes.

5           Q.    So it is not limited to the  
6 consultation with --

7           A.    Well, we questioned him about  
8 what Herman said and we also questioned him  
9 about what Constantine said. Not relaying  
10 what they said, but, again, using that as a  
11 basis for questions.

12                         So he did have conversations with  
13 Bob Herman between July and August telling  
14 him to tell the Chamber to be more  
15 forthcoming with document production, the  
16 answer is no.

17           Q.    Did you ask him whether he had  
18 such discussions with Bob Herman, but  
19 without specifically asking Bob Herman to  
20 relay that to the Chamber?

21           A.    I think the gist of what I recall  
22 is that he did not communicate that in sum  
23 or substance of Bob Herman. He was talking  
24 to Lloyd Constantine about document  
25 production. He wasn't talking with Herman

1 about document production.

2 Q. That's what he said?

3 A. Yes, again, substance of what I  
4 recall him saying.

5 Q. Did Mr. Teitelbaum ask you or any  
6 other individual there any questions about  
7 this, or he just answered your questions?

8 A. Well, he wanted to know what he  
9 was accused of having done, and in  
10 questioning, I think he began to understand  
11 what he was accused of having done.

12 Q. And could you describe his  
13 demeanor during the interview?

14 A. Well, it wasn't news to him  
15 because I believe -- I didn't know it until  
16 then, but back in November, before I was on  
17 board, something similar had come to his  
18 attention through the D.A.

19 So he had heard that kind of  
20 allegation before. He was not -- I would  
21 say he was upset. He was upset in the sense  
22 of being wrongly accused of something that  
23 he didn't do.

24 Q. For approximately how long a  
25 period of time did you speak with him?

1           A.    I'm not good on times so it would  
2    be a guess.  But half hour, probably a good  
3    guess, but it might be longer, but it's a  
4    guess.  I didn't keep track of the time.

5  BY MR. FISCH:

6           Q.    Did you ask him about Herman's  
7    version of the source of the notes and  
8    yellow pad?

9           A.    We did.

10          Q.    What did he say?

11          A.    He had no recollection of such  
12    notes.  He had no recollection of such -- I  
13    mean, the gist of what he said was, did he  
14    have dinner with Bob Herman, all the time.  
15    Not infrequently.  That would not have been  
16    an uncommon thing.

17                    But with respect to these notes,  
18    couldn't shed any light on it.  Couldn't  
19    conjure up what those might be.  I think  
20    there were specific notes that he might have  
21    had, anything like that.

22          Q.    Did he indicate that he had notes  
23    he took sometime that he kept in his home?

24          A.    I don't remember if that was  
25    discussed or not.

1 BY MS. OSTERER:

2 Q. I am going to show you a copy of  
3 what you have indicated are your handwritten  
4 notes. I wonder if you would be kind enough  
5 to read them for us?

6 A. It says 22708, BG notes,  
7 confidential. These initials are -- J.F, is  
8 John Feerick; J.M. is John Mitchell; H.T. is  
9 Herb Teitelbaum; R.G. is Robert Giuffra,  
10 phone -- it says that he was on the phone.  
11 L.L. is Loretta Lynch also on the phone.  
12 she was on the phone. And again this is the  
13 substance of what Mr. Teitelbaum said.  
14 H.T., no substance with Bob Herman, no  
15 signals to Bob Herman.

16 Then it says, "Brief judge. JF did."  
17 I believe that's a reference to Judge Levine  
18 who's one of our Commissioners, and that  
19 Dean Feerick had already. I think Judge  
20 Levine was out of the country and I believe  
21 John Feerick indicated that he had spoken  
22 with him and brought him up to speed.

23 Q. And that was related to  
24 Mr. Teitelbaum?

25 A. No, no. I think what happened

1 was we talked to Mr. Teitelbaum. We sent  
2 him out of the room and then we continued  
3 the conversation by ourselves.

4 Q. So it was just the first two  
5 lines that indicated a discussion with  
6 Mr. Teitelbaum?

7 A. Right. I think that's correct.

8 BY MR. FISCH:

9 Q. Was part of the conversation of  
10 the discussion among the Commissioners  
11 twofold:

12 Number 1, whether the allegations  
13 were credible? Number 2, if credible, what  
14 did they do with Teitelbaum who is now  
15 directing a major investigation and this is  
16 of lesser importance and consequence; and  
17 that the result of any type of action  
18 against Teitelbaum would impede the  
19 advancement of the major Troopergate  
20 investigation?

21 A. I don't recall the conversation  
22 being that way. I think there was a focus  
23 on whether or not this was credible or  
24 whether there was an issue that the  
25 Commissioner had to deal with with respect

1 to Teitelbaum. The conclusion of the  
2 Commissioners was, no, and that was pretty  
3 much the end of it.

4 Q. Were you present during all the  
5 Commission discussions of the Teitelbaum  
6 allegations?

7 A. There was a conference call and I  
8 believe I told him --

9 Q. I'm sorry?

10 A. I believe I was on until the end,  
11 but it was possible -- John Feerick  
12 sometimes asks staff to exit so the  
13 Commissioners can talk among themselves.  
14 That may have happened. It wouldn't  
15 surprise me if it did.

16 BY MS. OSTERER:

17 Q. Do I understand that you were not  
18 physically present with Dean Feerick?

19 A. No, we were all on separate phone  
20 lines and separate places. In fact, I  
21 think one or more of the Commissioners were  
22 out of the country.

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

25 MR. CARTER: No.

1 MR. FISCH: Okay. Thank you.

2 (Time noted: 4:18 p.m.)

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C E R T I F I C A T E

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

\_\_\_\_\_

WILLIAM VORSTEG, R.P.R.

