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STATE OF NEW YORK
OFFICE OF THE INSPECTOR GENERAL
- - - - -x
AN INVESTIGATION CONCERNING ALLEGATIONS
THAT HERBET TEITELBAUM, EXECUTIVE
DIRECTOR OF THE COMMISSION ON PUBLIC
INTEGRITY, DISCLOSED INFORMATION
CONCERNING THE COMMISSION'S
INVESTIGATIONS

January 14, 2009
10:47 a.m.

CONTINUED INTERVIEW UNDER OATH of
ROBERT HERMANN, held at the Office of the
Inspector General, State of New York, 61
Broadway, New York, New York, before
Jamie Ann Stanton, a Notary Public of the
State of New York.

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APPEARANCES:

OFFICE OF INSPECTOR GENERAL
STATE OF NEW YORK
61 Broadway
21st floor
New York, New York ZIP

BY: ARLENE OSTERER, ESQ.

E. STEWART JONES LAW FIRM, PLLC
Attorneys for Robert Hermann
28 Second Street
Troy, New York 12180

BY: E. STEWART JONES, JR., ESQ.

* * *

1 R. Hermann

2 MS. OSTERER: Today is
3 January 14, 2009. We are in the New
4 York City office of the New York State
5 Inspector General locate at 61
6 Broadway. I am Investigator Counsel
7 Arlene Osterer.

8 Would you state your
9 appearance?

10 MR. JONES: E. Stewart Jones,
11 on behalf of Bob Hermann and Bob
12 Hermann personally.

13 MS. OSTERER: This is a
14 continued examination of Robert
15 Hermann which commenced on September
16 22nd, 2008.

17 CONTINUED EXAMINATION BY

18 MS. OSTERER:

19 Q Is it correct, Mr. Hermann, you
20 are once again appearing here voluntarily?

21 A Yes.

22 Q And is it also correct that you
23 consent to a stenographic records being
24 made of this interview?

25 A Yes.

1 R. Hermann

2 Q I remind you that you are still
3 under oath.

4 A Yes.

5 MS. OSTERER: Before going on
6 the record, Mr. Hermann handed to me a
7 three-page document, which he asked be
8 made part of this record.

9 Q Is it correct, Mr. Hermann, it
10 is your CV?

11 A That's correct.

12 MS. OSTERER: May we please
13 have this marked as New York City 100,
14 please.

15 (New York City Exhibit 100
16 was marked for identification, as of
17 this date.)

18 MS. OSTERER: Mr. Jones,
19 would you like to say something?

20 MR. JONES: Yes. I had sent
21 a letter to Judge Fisch on January 7,
22 2009, which I requested that the
23 letters that we had supplemented Bob's
24 testimony with, letters dated October
25 7, October 4 and October 24, 2008, be

1 R. Hermann
2 made part of the Bob Hermann record
3 and the record of these proceedings.
4 Those records specifically related to
5 the testimony he had given on
6 September 22, and also one of those
7 letters was in direct response to a
8 request from your office for
9 information that illuminated -- the
10 letter of October 14, 2008 was in
11 response to a letter that you had sent
12 asking for material reference to the
13 letter of October 7. So I just want
14 to request orally, as I did in
15 writing, that those letters would
16 supplement and explain Bob's testimony
17 in September, and also respond to
18 requests from your office information
19 be made a part of Bob Hermann's formal
20 record.

21 MS. OSTERER: May I inquire
22 of Mr. Hermann with respect to these
23 letters. All of the evidence in this
24 case has been under oath. We wouldn't
25 be able to just make the letters part

1 R. Hermann
2 of this record, but perhaps with
3 foundation from the witness, I would
4 have no problem with that.

5 Q Mr. Hermann, have you seen the
6 three letters in question?

7 MR. JONES: I ask that they
8 be marked as exhibits, then.

9 MS. OSTERER: Absolutely.

10 (New York City Exhibits
11 101-103 were marked for
12 identification, as of this date.)

13 Q Mr. Hermann, I show you what has
14 been marked as New York City Exhibits 101,
15 102 and 103 for identification.

16 Have you seen these letters
17 previously?

18 A (Reviewing exhibits.) Yes.

19 Q Are you familiar with them?

20 A Generally, yes.

21 Q Would you like an opportunity to
22 review them?

23 A No.

24 Q Do you adopt the statements of
25 your Counsel as set forth in these three

1 R. Hermann

2 letters as accurate and truthful?

3 A I adopt -- let me. I have been
4 a lawyer for forty years, so I have to
5 respond in a lawyer-like way to you. The
6 factual statements, yes. The legal
7 argument is legal argument.

8 Q Absolutely.

9 A We are making certain
10 contentions, from Counsel, that I adopt,
11 but they are not factual -- the factual
12 statements, yes.

13 Q And you adopt the factual
14 statements as part of your testimony?

15 A Yes.

16 MS. OSTERER: Mr. Jones,
17 these three letters will be made part
18 of the record.

19 MR. JONES: Thank you very
20 much.

21 Q Mr. Hermann, have you ever had
22 occasion to work on a Saturday or a Sunday
23 at the Governor's offices located at 633
24 Third Avenue, in New York City?

25 A I don't recall.

1 R. Hermann

2 Q Have you ever had occasion to
3 work on a Saturday or a Sunday at the
4 Governor's offices located in the capital
5 building in Albany?

6 A Yes.

7 Q Do you recall approximately how
8 many times that occurred?

9 A Certainly not frequently, but it
10 occurred from time to time. I can recall
11 one instance certainly when I did, and
12 that was toward the end of 2007, when the
13 Governor had tasked me with writing the
14 annual report, the final editing of the
15 annual report to the people. He was going
16 to put out an annual report of what all
17 the agencies are doing and hand it out,
18 the state of the state. And it was due to
19 the printer in early January and I recall
20 we worked on the weekend maybe more than
21 once to do that because it was a 250-page
22 document and a lot of hands involved.

23 Q Is that the only instance that
24 you recall with precision?

25 A I'm sure there must have been

1 R. Hermann
2 other instances. I don't recall what they
3 were about, but -- I do believe there were
4 other instances.

5 Q As the director of the
6 Governor's office on regulatory reform,
7 what official business have you had with
8 the Commission of Public Integrity and
9 previously with the Ethics Commission?

10 A Oh, I don't think I had any with
11 the Ethics -- I mean, you are asking me
12 personally, or what did our agency have?

13 Q The agency, the official
14 business of your agency.

15 A Well, after Herb Teitelbaum came
16 in, which was, I guess, originally the
17 Ethics Commission, we started having
18 discussions about their needing
19 regulations that they didn't have and they
20 wanted to develop regulations and we
21 worked on those for quite a bit of time.
22 So that was, I would say, the main dealing
23 that I had with the Commission, Commission
24 as opposed to conversations with Herb.

25 Q And in connection with the

1 R. Hermann
2 official business, with whom did you deal
3 at the Commission of Public Integrity?

4 A I want to say exclusively with
5 Herb, except that I spoke to his secretary
6 many times. I don't -- I know that others
7 in my office worked with other people.
8 Amy Stern, my deputy, worked with other
9 people at the Commission on those
10 regulations, but I don't recall personally
11 working with anybody else.

12 Q Approximately when was this work
13 being done?

14 A I would say beginning of 2008,
15 maybe -- I'm not sure exactly -- end of
16 2007.

17 Q On or before November 1, 2007,
18 did you know who within the Ethics
19 Commission and, later, the Commission on
20 Public Integrity, was assigned to work on
21 what was known as Troopergate?

22 A No.

23 Q Would it be correct to say that
24 you didn't speak to anyone other than Herb
25 Teitelbaum at the Commission?

1 R. Hermann

2 A Other than his secretary, whose
3 name is Dee, I believe.

4 Q Other than his secretary.

5 Are you familiar with the term
6 guidance or policy guidance as they relate
7 to the Stat Ethics Commission or the
8 Commission of Public Integrity?

9 A No.

10 Q Have you ever seen that term,
11 used that term?

12 A Well, I've seen the term. In
13 connection with the regulatory work, the
14 term "guidance" is a common term. It's
15 kind of something that an agency wants to
16 put out to issue directives to people
17 without going through the full State
18 Administrative Procedure Act and calling
19 it a regulation, and it's a constant issue
20 that our office deals with in trying to
21 curb agencies from issuing guidances that
22 really ought to be issued as formal rules
23 for the State Administrative Procedure
24 Act. So that's what I think of as a
25 guidance. There is no such thing in New

1 R. Hermann
2 York law as a guidance except where
3 specifically authorized by statute as in
4 the Department of Environmental
5 Conservation, they are allowed to do
6 things called guidances, but most agencies
7 think they can issue guidances but
8 actually have no authority to do it, or no
9 expressed authority to do it.

10 That may be an overly technical
11 answer to your question, but that's --
12 that's our field, so.

13 Q Did your official business with
14 the Commission of Public Integrity have
15 anything related to guidances?

16 A I don't recall personally being
17 involved in any issue relating to
18 guidances. The only thing -- I mean --
19 I'm speculating about what you are asking
20 me about. If you are asking me about the
21 travel opinion, that's what I think -- I
22 think of as an opinion. I don't know what
23 it was called in technical terms, but it
24 didn't have anything to do with our
25 office.

1 R. Hermann

2 Q It didn't?

3 A No, we had no involvement with
4 it.

5 Q I would like to turn your
6 attention back to the fall of 2007. After
7 your conversation with Lloyd Constantine
8 on or about November 1, 2007, did you ever
9 speak to then Governor Spitzer regarding
10 any conflict of interest which either
11 Peter Pope or David Nocenti may have had?

12 A Yes.

13 Q When did that occur?

14 A The next day.

15 Q Tell me about that.

16 A I was in the office at 633. And
17 I was walking down the hallway in front of
18 his office. And he sort of pulled me into
19 his office.

20 Q The Governor?

21 A The Governor did. Saw me there,
22 pulled me into his office. Closed the
23 door and we sat down at his table -- or
24 the table in front of his desk and he
25 said, Is Herb nuts? And I said, Why? And

1 R. Hermann

2 I figured out that he had talked to Lloyd

3 and he confirmed that he had talked to

4 Lloyd. And he said, What is he doing?

5 Q Meaning Mr. Teitelbaum?

6 A Yes. I said, I don't know what

7 he's doing. What I came to talk about --

8 what I came to see Lloyd about was that

9 it's obvious to me that there's now a

10 conflict of interest among the people who

11 were handling the Troopergate

12 investigation and that needs to be

13 remedied. And I said that, you know, it

14 had to do with the writing -- it had to

15 have to do with the writing of the

16 affidavit because otherwise there was no

17 interest in the -- there would be nothing

18 interesting about it. And he said, well,

19 it's -- you know, it would be ridiculous

20 to think that Peter Pope or David Nocenti

21 would suborn perjury, and I said, well, it

22 would be ridiculous to think it, but no

23 law enforcement agency can assume that.

24 And I said something about, you know, that

25 it was a mistake for people here --

1 R. Hermann
2 meaning within the chamber -- to be
3 demonizing everybody in the Commission of
4 Public Integrity. That he knew all those
5 people. He knew John Feerick well. He
6 knew Herb well. He knew members of the
7 Commission well. They were distinguished
8 people, and to think they were all nuts
9 was not going down a sensible path. And
10 he said, okay. And that was it. I mean,
11 this is a conversation that happened a
12 long time ago, so I am not sure I remember
13 every word, but the one word I do recall
14 him saying to me is, is Herb nuts, and
15 explaining why -- I remember also saying
16 to him that as a former prosecutor,
17 someone who worked in the Manhattan
18 District Attorney's office, he would
19 understand that if there were any inquiry
20 about the -- the -- a perjury inquiry by
21 the District Attorney with regard to the
22 Dopp affidavit, how could the lawyers who
23 had prepared that affidavit be
24 representing the chamber.
25 Q Did the Governor say anything

1 R. Hermann

2 further?

3 A No. Not that I recall, I mean.

4 Q How did you know at that point
5 who had been involved with the preparation
6 of the affidavit?

7 A Well, I think it was known at
8 the time. This was November already. I
9 mean, the affidavit had gone in in July.
10 It was -- I don't know how I knew that,
11 but I knew that at that point.

12 Q What was it? Tell me what you
13 knew at that point about this affidavit.

14 A I didn't know -- I had not seen
15 the contents of it. I didn't know -- I
16 have subsequently seen it. So I didn't
17 know what aspect of it might have been
18 inconsistent with the, you know, testimony
19 later on, but if this was an inconsistency
20 and the Commissioner were discussing that
21 with the District Attorney, it could only
22 be because they thought it was perjury.
23 Arguably perjury. Possibly perjury. I
24 had not seen the affidavit at that time.

25 Q What was the basis, though, for

1 R. Hermann
2 your thinking that the attorneys who
3 prepared the affidavit may have some type
4 of exposure?

5 A Because if it were possible, if
6 the affidavit were perjurious -- and there
7 had been stories in the newspaper about
8 how it had been prepared and it had gotten
9 in late and all of that. If it had been
10 perjurious, then the secondary question
11 would arise, would the lawyers who
12 prepared that affidavit, did they have any
13 role in that?

14 Q And so this had been noted in
15 the newspapers?

16 A I'm not sure if it was noted in
17 the newspapers, or if it was just known
18 around the office. Again, I worked there
19 and all these people worked on the same
20 floor. I don't know whether I learned it
21 in the newspapers or whether I learned it
22 from people on the 39th floor.

23 Q And you had just the one
24 conversation with Governor Spitzer about
25 this?

1 R. Hermann

2 A Yes. I had another conversation
3 with him about the Troopergate matter, but
4 having nothing to do with this. It was as
5 I was preparing the report -- which I
6 described before, the report to the
7 people -- he called me in my office in
8 Albany and said, you know, am I going to
9 have to deliver the state of the state
10 with this thing hanging over my head. And
11 I said basically, not -- nothing I -- I'm
12 sorry, but there's nothing really I can do
13 about it. And I think it was just more he
14 was venting frustration. He didn't -- he
15 didn't tell me anything about the -- you
16 know, any aspect of Troopergate or -- or
17 the investigation. The purpose of the
18 call was to -- it was just sort of to
19 thank me for the writing of the report,
20 because we put in a lot of hours on it.

21 Q Do you know who Michele
22 Hirschman is?

23 A Yes.

24 Q Who is she?

25 A The Governor's lawyer.

1 R. Hermann

2 Q Have you ever spoken to her?

3 A Yes.

4 Q How many times have you spoken
5 to her?

6 A Maybe twice.

7 Q How did it come about that you
8 spoke to her?

9 A After -- after I spoke to the
10 Governor, he said maybe you should call
11 Michele Hirschman.. And I thought about it
12 and I called Michele Hirschman. And I
13 had -- I basically -- I made an
14 appointment to see her and then I
15 cancelled it and I never spoke to her
16 about it.

17 Q Did she tell you what she wanted
18 to discuss with you?

19 A No.

20 Q Did you tell her what you wanted
21 to discuss with her?

22 A No. I think -- my recollection
23 is I said I had a conversation with the
24 Governor and he asked me to call you. And
25 she was cautious and I was cautious and

1 R. Hermann

2 then I decided this is probably not a very
3 smart thing to do and I cancelled it.

4 Q Was that the extent of your
5 contact with her?

6 A Yes.

7 Q When you testified previously,
8 you mentioned that you had seen a pad, a
9 yellow pad at Herb Teitelbaum's apartment.

10 A Yes.

11 Q I wanted to know if you could
12 tell me what it was that you observed on
13 the yellow pad.

14 A I observed -- again, this goes
15 back a long way and I have already
16 testified about this, but what I observed
17 was that the -- that Herb or somebody on
18 the Commission -- because I couldn't tell
19 if this was notes of his own conversation
20 or just some notations that he was making,
21 that discussed alleged inconsistencies and
22 that the DA was interested in them or
23 interested in looking into them. That's
24 the substance of what I remember.

25 Q Was --

1 R. Hermann

2 A It had the words
3 "inconsistencies," and I think the word
4 "interested" -- I'm not sure about that,
5 but the one I remember most is
6 "inconsistencies."

7 Q Was there anything that you saw
8 on the yellow pad about how the DA came to
9 know about any alleged inconsistencies?

10 A No.

11 Q Was there any mention of who had
12 brought the matter to the attention of the
13 DA?

14 A No.

15 Q Any mention of anyone at the
16 Public Integrity Commission having been in
17 contact with the DA's office?

18 A No.

19 Q Was there any mention of the
20 formation of the Special Committee?

21 A What Special Committee? You
22 mean within the Public Integrity
23 Commission?

24 Q Yes.

25 A No.

1 R. Hermann

2 Q Was there any mention of leaks
3 out of the Public Integrity Commission?

4 A No. Not that I recall.

5 Q Was there any mention of John
6 Feerick?

7 A Not that I recall.

8 Q Of Loretta Lynch?

9 A No.

10 Q Howard Levine?

11 A No.

12 Q Commissioner Giuffra?

13 A No.

14 Q Was there any mention of any
15 potential witnesses before the Commission?

16 A No.

17 Q Mr. Hermann, I have these two
18 yellow pads, I don't know which size you
19 may have seen there. I am wondering if
20 you could write on there and give me a
21 better idea of what it was that you
22 observed, how it was written.

23 A Well, I don't -- first of all, I
24 don't remember whether it was legal size
25 or regular, nonlegal size. But what I

1 R. Hermann
2 observed was -- remember I was standing
3 over what I think was that pad. It was
4 opened to a page like so, flipped open to
5 a page. And it wasn't scribbled over from
6 top to bottom. It was a notation that was
7 sort of written like this right across,
8 like almost as if a reminder or --
9 somebody had sent -- it wasn't a, you
10 know, running narrative. It was, you
11 know, something that someone had written
12 on the page as a -- either recording a
13 conversation he was having or recording a
14 thought that he was having or something
15 like that. So the page wasn't full of
16 other things.

17 Q But where on the page was the
18 notation?

19 A I don't recall.

20 Q Do I understand that it was only
21 the one notation that you saw with respect
22 to this?

23 A It may be that there were some
24 other marks on the page. That's what I
25 noticed.. That's what I remembered.

1 R. Hermann

2 Q And nothing that you could
3 approximate now by writing?

4 A No.

5 MS. OSTERER: May I please
6 have this marked as New York City 104.

7 (New York City Exhibit 104
8 was marked for identification, as of
9 this date.)

10 Q Mr. Hermann, I would like you to
11 take a look at what has been marked as New
12 York City Exhibit 104, which consists of
13 two pages.

14 A (Reviewing exhibit.)

15 Q Do you recognize this?

16 A Yes.

17 Q What do you recognize it to be?

18 A It's something that I sent to
19 Lloyd. I assume the date it shows here --
20 it says July 26, 2007, that's the fax date
21 on it, a suggestion I was making.

22 I think I previously testified
23 that my whole stance in this matter was
24 that it should be addressed squarely,
25 frontally, directly. The Governor should

1 R. Hermann
2 get it behind him, should testify as
3 quickly as he possibly could, should
4 reveal all documents. And that that's
5 what -- this was my suggestion at that
6 time.

7 Q Did you write this cover sheet,
8 by the way?

9 A That's not my handwriting.

10 Q Do you know whose handwriting it
11 is, then?

12 A I don't.

13 Q But it was faxed at your
14 direction to Lloyd Constantine?

15 A I don't recall it, but I assume
16 it was. I mean, I recall writing the
17 memo. I don't recall anything about the
18 fax.

19 Q I would like to direct your
20 attention specifically to the last item
21 under the heading or subheading
22 "assumptions."

23 A Yes.

24 Q Could you read that into the
25 record, please?

1 R. Hermann

2 A It's a footnote. It refers to a
3 guidance issued by the Stat Ethics
4 Commission.

5 Q I beg your pardon, I'm not
6 referring to the footnote; I am referring
7 to the last item after "assumptions."

8 A "The Stat Ethics Commission
9 will shortly revise its guidance that
10 started this whole thing, and that
11 revision will be favorable to the
12 Governor's pro-reform position."

13 Q To what were you referring, Mr.
14 Hermann?

15 A That was -- it was obvious to me
16 that the prior opinion or guidance that
17 had been issued by Richard Rifkin was
18 being either misconstrued or abused. And
19 I believe that the Stat Ethics Commission
20 with its new leadership and new way it was
21 going, it was going to issue it. I don't
22 know how I knew that it would be favorable
23 to the Governor's pro-reform position.

24 Q Had you received any information
25 from anyone at the Stat Ethics Commission

1 R. Hermann

2 regarding this?

3 A I don't think I received any
4 information from anybody on the Commission
5 or from -- or from Herb about that. I may
6 have discussed it with him. I don't know.
7 At some point they announced that they
8 were doing it. I don't know when that
9 was, though. That they were going to
10 revise it or look at it again.

11 Q They hadn't announced that it
12 would be favorable to the Governor, did
13 they?

14 A Well, it would be a reform, in
15 any event, because the current thing
16 was -- was nothing. The current standard
17 that they were using was no standard at
18 all. A change, any change, any newly
19 issued policy would be a reform.

20 Q And this concerned the use of
21 state aircraft?

22 A Yes. Or I think other state
23 travel, too. I'm not sure. But maybe it
24 was just state aircraft. I mean, it was
25 pretty clear that a newly formed

1 R. Hermann
2 Commission which the Governor had a heavy
3 involvement in appointing members with a
4 new -- you know, with a new thrust in
5 direction on the Commission was going to
6 do something to reform this if they did
7 anything at all. They weren't going to --
8 they weren't -- they clearly weren't going
9 to go back and say the old standard is
10 fine or go back to a more permissive one.

11 Q And you say that you may have
12 discussed this with Herb Teitelbaum?

13 A I may have. I don't recall.

14 When you say "this," I may have
15 discussed the existing travel opinion with
16 him, but I didn't discuss with him what
17 they were going to do.

18 Q Did he ever raise it with you?

19 A I don't recall.

20 I also discussed it with Richard
21 Rifkin, who was the author of it.

22 Q The prior one?

23 A Yes.

24 Q Are you saying that you
25 discussed the revised one with Richard

1 R. Hermann

2 Rifkin?

3 A No.

4 Q The prior one?

5 A No. I think Richard Rifkin told
6 me that what I think is recounted here,
7 that it was originally just a telephone
8 call and somehow it had acquired the --
9 you know, the writ of law to it. And it
10 was unworkable. It was obviously
11 unworkable.

12 Q You mentioned Richard Rifkin.
13 Now, you spoke to Richard Rifkin about the
14 beginning of November 2007, is that right,
15 after you spoke to Lloyd Constantine?

16 A Yes.

17 Q What was your purpose for
18 speaking to him at that time?

19 A Well, there were a couple of
20 purposes when I spoke to Richard. You
21 know, we have to go back in the context of
22 what it was.

23 Lloyd had told me that our
24 conversations were going to be protected
25 by executive privilege. And I was very

1 R. Hermann
2 much at pains to get that clearly
3 established upfront. And then I have
4 another conversation with him on the
5 telephone, and he doesn't tell me anything
6 about we are going to blow off that
7 executive privilege. The next thing I
8 learned is that the they've been -- that
9 the chamber has talked to the District
10 Attorney and, you know, blown off the
11 executive privilege issue. I call Lloyd.
12 Lloyd says, yeah, we did that. And I
13 said, but why -- you didn't have to
14 identify me as the source of this thing.
15 He said, Yeah, Richard did that. That was
16 a mistake. So I wanted to go talk to
17 Richard to understand why whether this was
18 a mistake or why this had happened, why
19 they thought that that was a good idea on
20 executive privilege, since they were in
21 the midst of litigating, you know, in
22 court over the issue of deliberative or
23 executive privilege, whether they thought
24 that was, you know, maybe not the best
25 strategy. So I went to see him about it

1 R. Hermann
2 and I asked him why they had done it and I
3 never really got a straight answer from
4 him. And I also asked him if -- you know,
5 he said he was going to call John Feerick.
6 And I said, you know, just -- you know,
7 try to keep, if you can -- you know, I
8 don't know how I worded this -- try to
9 keep Herb out of it. He didn't do
10 anything wrong.

11 Q Did you at that time tell
12 Richard Rifkin about what you saw on the
13 yellow pad?

14 A I told -- I offered to tell
15 Richard what happened. And he said I
16 don't want to know. He didn't want to be
17 any more involved.. He didn't want to
18 know.

19 I've known Richard a very long
20 time and, you know, that would be a
21 Richard Rifkin-esque thing to say.

22 Q But he said that he was going to
23 tell John Feerick?

24 A He was going to talk to John
25 Feerick. I didn't know what he was going

1 R. Hermann
2 to talk to John Feerick about. I was
3 trying to say that this wasn't -- this
4 wasn't -- that Herb hadn't done anything
5 wrong, and he shouldn't cast it that way.
6 You know, I don't know what -- he had
7 worked -- when he had given this guidance.
8 I use that term in a nontechnical sense,
9 here, obviously. But when he had given
10 this guidance on travel, John had been the
11 head of the Commission then too, and he
12 had worked for John. They had knew each
13 other very well for a long time.

14 Q When you spoke to Richard
15 Rifkin, did you ask him not to speak to
16 John Feerick about this?

17 A No. I think what I asked him
18 was not to -- not to -- I knew I wasn't
19 going to -- what I asked him not to do is
20 to cast any aspersions on Herb, basically.
21 That he shouldn't intimate that the
22 chamber thought Herb had done anything
23 wrong, because, my point of view, he
24 hadn't done anything wrong. And I knew
25 this was now going to cause him, you know,

1 R. Hermann

2 a lot of grief.

3 Q You asked him not to speak to
4 John Feerick; to let Herb Teitelbaum speak
5 to Feerick instead?

6 A I think I asked him -- I think I
7 did ask him to let Herb Teitelbaum speak
8 to him about his own role in this thing,
9 yes, and to keep him out of it in the
10 discussion with John.

11 Q I'm sorry, I didn't understand
12 what you said.

13 A In other words, if they were
14 going to talk to John, just let Herb go to
15 John and characterize his own role as he
16 saw fit rather than Richard try thirdhand,
17 now, to try to characterize Herb's role.
18 Richard didn't know anything firsthand.
19 Richard didn't want to know anything, you
20 know, even secondhand. So I simply said
21 keep him out of this as much as you can
22 and, I guess, let Herb talk to him.

23 Q When you spoke to Rifkin, did
24 you tell him that Herb Teitelbaum was
25 going to identify himself as the source of

1 R. Hermann

2 this leak?

3 A No.

4 Q If not, then what explanation
5 was Teitelbaum going to give to Feerick?

6 A I didn't know.

7 Q Had you spoken to Teitelbaum
8 about that?

9 A Yes, I had spoken to Teitelbaum
10 about that at that point.

11 Q And what did you and he discuss?

12 A Well, he called me up after --
13 after this event. After the chamber spoke
14 to the District Attorney, he called me up
15 and said, you know, they are saying that I
16 did so and so and that you -- you know,
17 you were the source of this information.
18 And I fenced with him. Look, I didn't
19 know there were so many leaks going on at
20 that time, I didn't know whether -- since
21 I didn't know that the chamber was going
22 to talk to the DA, I didn't know whether,
23 indeed, I had been the source. I didn't
24 know whether someone was making a patsy
25 out of me or what the real -- you know,

1 R. Hermann
2 what the real story was. I was completely
3 taken by surprise. I was also in the
4 middle of a meeting when he called, and so
5 I kept putting him on hold, going in and
6 out of this thing.

7 So he asked me, you know, were
8 you the source. I said I may have been,
9 you know.

10 Q And then what did he say?

11 A He was very angry. He said,
12 what is this about? He said, where did
13 you get this from? And I said something
14 like maybe we shouldn't talk about this.
15 I'm not sure this is, you know, a good
16 thing for us to have this conversation or
17 continue this conference. And I fenced
18 with him for a while and I think
19 eventually -- eventually I said to him I
20 had seen a document.

21 Q And then what did he say?

22 A Well, he was -- you know, he was
23 very angry.

24 Q This is in the beginning of
25 November 2007, right?

1 R. Hermann

2 A This is, yeah, sometime in early
3 November, yeah.

4 Q So you tell Teitelbaum at this
5 point you saw a document, and that's how
6 you learned it?

7 A Yes. That's my best
8 recollection. It was an extremely tense,
9 unpleasant conversation. I'm not sure,
10 but that's my best recollection.

11 Q Did you and Teitelbaum discuss
12 his going to tell John Feerick rather than
13 Rifkin telling him?

14 A I don't recall.

15 Q But isn't it correct that you
16 told Rifkin that Teitelbaum was going to
17 talk to Feerick? You assured him --

18 A I'm not sure what the sequence
19 was. I don't know whether I was thinking
20 that I would say that to Herb, that he
21 ought to go talk to him or -- I don't
22 recall the sequence, but there must have
23 been some connection one way or the other.

24 Q Well, at some point did Herb
25 Teitelbaum tell you that he would speak to

1 R. Hermann

2 Feerick about this?

3 A Yes, I believe he did.

4 Q And what was your understanding

5 of what he was going to tell Feerick?

6 A I didn't know what he was going
7 to tell Feerick.

8 Q Did you ever tell --

9 A I assumed he was going to tell
10 Feerick what I had told him.

11 Q That you were the source of the
12 leak?

13 A I didn't know what he was going
14 to tell him. I wasn't really in a
15 position to ask him that.

16 Q I want to be clear about this.

17 A Yeah.

18 Q What was his understanding,
19 Teitelbaum's understanding at that point
20 of your role in this?

21 A I don't know what his
22 understanding was.

23 Q What had you told him?

24 A I just told you what I told him.
25 I told him that I saw a document and that

1 R. Hermann
2 may have been a -- that was what I said.

3 Q Did you ever offer to go and
4 speak to Feerick yourself?

5 A I don't think so. I may have.
6 I don't recall any such offer..

7 Q I would just like to understand
8 this. Your very good friend is now in
9 trouble because of something that you had
10 done.

11 Did you make any offer to square
12 this with his employer?

13 A Well, it would have been my
14 instinct to try to figure out how to make
15 it better, but the things were getting
16 very complicated very fast and I didn't
17 know if that was a smart or appropriate
18 thing to do. I may have thought about it.
19 I thought about a million things as these
20 events unfolded, but I don't think I ever
21 actually offered to do that.

22 Q Did you ever speak to --

23 A I don't know how that would
24 necessarily have made it any better, so --
25 I mean, he could have called me too.

1 R. Hermann

2 Q Who, Feerick?

3 A Yeah, I mean if he wanted to
4 hear anything from me, he could have
5 called me too.

6 Q He never did?

7 A He never did, no.

8 Again, it was very -- I have
9 known John Feerick longer than I've
10 known -- almost as long as I have known
11 Herb Teitelbaum. And, you know, things
12 were getting delicate and unclear. And,
13 you know, it's not as simple as wouldn't I
14 have tried to help out my friend. It was
15 obvious to me -- I mean, I made some notes
16 about things I wanted to tell you about
17 today. It was obvious to me from the time
18 that Lloyd called me two days after we
19 spoke and after I had spoken to the
20 Governor that they were working on
21 something and that sooner or later they
22 were going to figure out a way to throw me
23 under the bus

24 Q "They" being who?

25 A The chamber.

1 R. Hermann
2 And that what I had viewed as
3 presenting them with my conclusion about a
4 conflict of interest was going to be
5 turned into a way of assaulting Herb and
6 the Commission so that the Governor could
7 get out from under this investigation that
8 was ruining the administration. And, you
9 know, we should talk about what happened
10 during that conversation, but what
11 happened during that conversation
12 persuaded -- started to persuade me,
13 because it's not what I was thinking going
14 into it -- that I was going to be played
15 in the interest of getting my friend, Herb
16 Teitelbaum --

17 Q I'm sorry, Mr. Hermann. You
18 will have to help me with this.

19 A Okay.

20 Q Which conversation are you
21 referring to?

22 A I'm not sure of the exact date.
23 November 1 is when I talked to Lloyd.
24 November 2 is when I talked to the
25 Governor. I think that the call from

1 R. Hermann
2 Lloyd was November 3 or 4. I'm not sure.
3 Whatever those dates are, he had -- first
4 of all, he had gone out and hired outside
5 ethics counsel, supposedly, to give them
6 advice. It wasn't that hard. And the
7 person they hired was a good friend of
8 his. So they get the Ethics advice that
9 they have to disclose this to the DA.
10 They don't have to disclose to me, though,
11 that they are going to go disclose this to
12 the DA or -- or let me know anything about
13 this or weigh in on this as to why that
14 shouldn't be done.

15 So they were in the middle of a
16 pitched battle with the Commission over
17 documents that had been running right into
18 that point. And they were angry at having
19 been subpoenaed for their records after
20 they had supposedly made a good-faith
21 offer of it. And, you know, like
22 hard-headed, tough, experienced
23 litigators, they were determined to kill
24 the guy on the other side. And I started
25 to get the sense through the questions

1 R. Hermann
2 that Lloyd was asking me during that
3 follow-up phone call, that, you know,
4 essentially I was going to be the bait --
5 or the situation was going to be used to
6 try not to remedy the conflict of interest
7 that I was concerned about -- which, by
8 the way, was remedied by retention of
9 outside counsel. But because -- but to
10 make me bait to undermine Herb and the
11 Commission that's what I started to get
12 the sense of, because there was no reason
13 for them to do it the way they did
14 otherwise.

15 You know, again, I know this has
16 come up previously. I made some notes to
17 myself on what to talk to you about, what
18 else happened during that conversation
19 that I think has been either
20 mischaracterized or that indicates that I
21 was, you know -- that I was being thrown
22 under the bus

23 Q Meaning of the conversation with
24 Rifkin?

25 A No, not with Rifkin. Not with

1 R. Hermann
2 Rifkin. Richard -- I had not spoken to
3 Richard. Before Richard reported my
4 conversation to the DA, he hadn't even
5 spoken to me. He was getting it straight
6 from Lloyd, not from me.

7 Q What, if anything, was
8 inaccurate in what he relayed?

9 A In what? Who relayed?

10 Q Rifkin to the DA.

11 A I don't know what he relayed to
12 the DA. The part that concerned me was
13 always the fact -- you know, was that they
14 could have gone to the DA and said we
15 understand you're reopening the
16 investigation, and it didn't happen. They
17 didn't have to explain to the DA how they
18 knew that and they didn't have to waive
19 executive privilege in the process of
20 doing it. The issue of disclosure of
21 confidential information is your office's
22 issue, not the DA's issue. There was no
23 reason for them to tell them that other
24 than, essentially, to make trouble.
25 That's what I thought.

1 R. Hermann
2 Richard Rifkin has been -- you
3 know, has been an ethics lawyer, a
4 government lawyer, a counsel. These
5 things don't happen entirely by mistake,
6 but I didn't talk to Richard, so he
7 doesn't know what other conversations I
8 had with Lloyd. When Lloyd testified
9 about what happened here to the DA, he
10 forgot to tell them the reason why I had
11 come to see him. The conflict of interest
12 part seems to have dropped out of his
13 recollection of the events.

14 Q Did you prepare any
15 contemporaneous notes?

16 A No. The notes I'm describing
17 that are sitting in front of me now are
18 the ones that I have written recently to
19 remind myself of the many things I want to
20 make sure I say to you before we finish.

21 Q Do you know if, in fact,
22 Teitelbaum did speak to Feerick?

23 A I don't know. I mean, he spoke
24 to Feerick about, you know, ten times a
25 day. I don't know what he spoke to him

1 R. Hermann

2 about, though, no.

3 Q I am referring to your having
4 spoken to Rifkin and you asked him not to
5 speak to Feerick, that it would be
6 preferable if Teitelbaum speak to Feerick.
7 That was what I was referring to.

8 A I don't know.

9 Q Did you ever have occasion to
10 speak to Teitelbaum about that to find
11 out?

12 A Well, I spoke to him many times
13 subsequently, but I don't think I ever
14 talked to him about that.

15 From that point forward, our
16 relationship was very different. You
17 know, we had interactions on some things
18 as we needed to. I tried to, you know, a
19 number of times to call him and explain
20 why I had done what I had done, but he
21 didn't want to hear any of it, and I
22 understand that he didn't want to hear it.

23 Q When you spoke to Richard
24 Rifkin, did you tell him that Herb
25 Teitelbaum was going to reveal himself to

1 R. Hermann
2 Feerick as the leaker of this information?

3 A No. When you say -- as the
4 leaker of this information, that covers a
5 number of different possibilities. I
6 don't -- you know, I guess I would have
7 assumed that Herb would say to him --

8 Q To Feerick?

9 A To John Feerick that I had seen
10 a document. But I don't think he was
11 planning to go say -- I don't know this,
12 but I certainly wouldn't assume that he
13 was planning to go say to John Feerick
14 that he was, you know, a leaker, and he
15 wasn't.

16 Q But there is no question that at
17 that time you had already told Teitelbaum
18 that you had seen this information on this
19 pad?

20 A Yes.

21 Q How did he react when you told
22 him that?

23 A He was angry.

24 Q Did he say anything in
25 particular?

1 R. Hermann

2 A This all blurs in my mind. I
3 have thought and rethought these
4 conversations many times, and I am not
5 sure -- you know, only the highlights
6 stand out and the rest of any recollection
7 I don't trust, so.

8 Q Has anyone from the Public
9 Integrity Commission ever contacted you
10 about this?

11 A No.

12 Q Mr. Hermann, I would like you to
13 take a look at pages 102 to 106 of your
14 prior testimony. Read that through,
15 please. (Handing.)

16 A (Complying.) Okay.

17 Q Mr. Hermann, I would like to go
18 over and try to clarify some of the points
19 that you raised during your prior
20 testimony.

21 A Okay.

22 Q How did you know --

23 MR. JONES: Can you just mark
24 that as an exhibit?

25 MS. OSTERER: Absolutely.

1 R. Hermann

2 May we have that marked as
3 New York City Exhibit 105.

4 (New York City Exhibit 105
5 was marked for identification, as of
6 this date.)

7 Q Mr. Hermann, could you please
8 explain how you knew that there had arisen
9 an issue about whether the Governor and
10 executive chamber were being represented
11 by lawyers who may have had a conflict of
12 interest?

13 A Well, I think as I previously
14 said, I saw this notation on notepad and
15 coupled it with Herb's comment a few
16 minutes later about a roadblock and saying
17 that they had hit a roadblock. And as I
18 said, I have been practicing law for forty
19 years. I have worked with criminal law.
20 I have worked with law enforcement. You
21 know, it may not be obvious to somebody
22 else, but it -- as I processed it through,
23 it became pretty obvious to me. What was
24 happening was that all of the other -- the
25 reason the Governor's office was upset

1 R. Hermann
2 about this was that all the other
3 investigations had essentially ended. And
4 they thought this one was ending. They
5 thought that the reason the Commission was
6 not moving forward to call other people to
7 testify because it had been a long gap was
8 because they were winding it down. That's
9 what Peter Pope said to me. That's what
10 he thought. That's what everybody
11 thought. That it was winding down and
12 that it was over. So what I concluded
13 from this was it's not over. The reason
14 for the stall is what's going on with the
15 DA. That's the roadblock. That's how I
16 concluded it.

17 And from that -- in other words,
18 they were scheduled -- these people, I
19 believe, at least Peter, was scheduled to
20 go before the Commission again or
21 certainly the Governor would have been
22 scheduled to go before the Commission
23 again and hadn't been there. But they
24 couldn't call the lawyers who had advised
25 on the Dopp affidavit because they would

1 R. Hermann
2 be creating a self-incrimination problem
3 for them.

4 Q How did you know that these
5 lawyers would be witnesses before the
6 Commission?

7 A Because I assumed everybody
8 would be witnesses before the Commission.
9 If they were looking at Dopp and his
10 affidavit, they would certainly call --
11 they would certainly be interested, if
12 they thought -- when I say "they," the DA
13 would want to call them if there were any
14 question of subornation of perjury.

15 Q Wasn't it possible that Dopp on
16 his own came up with something that was
17 not necessarily accurate?

18 A Well, I don't know Darren Dopp
19 at all. The first thing out of Lloyd's
20 mouth when I told him this story was
21 Darren Dopp is an idiot. And that's what
22 they thought of Darren Dopp, the executive
23 crew around the Governor. At least that's
24 what Lloyd thought of him. And I don't
25 know how it was known, but I thought it

1 R. Hermann
2 was pretty well known that he had
3 worked -- that they were negotiating an
4 affidavit, they were trying to find an
5 affidavit that would get to the Attorney
6 General during that investigation while it
7 was still before the Attorney General that
8 he would accept. And then there was this
9 flap -- and a story reported in the
10 newspapers that the AG wouldn't accept
11 just an affidavit. They wanted the people
12 to go down there. And Peter Pope
13 called -- supposedly called the Attorney
14 General an animal. And there was -- this
15 was all reported. And I didn't know this
16 from any of their mouths. But anyway, the
17 affidavit arrived too late. They didn't
18 consider the affidavit. And then there
19 was the whole thing about the jurat on the
20 affidavit being deficient. And supposedly
21 that being intentional. So there was a
22 lot of discussion about all this stuff
23 going on.

24 I mean, on the 39th floor, this
25 was a subject of discussion frequently,

1 R. Hermann
2 long time. I wasn't just sticking my head
3 in people's doors. You know, I believed
4 that the Governor was innocent in this
5 thing, that memo shows, that's what he
6 said, that he was innocent. Lloyd told me
7 that he had read all of the suppressed
8 e-mails while they were still fighting
9 about them and there was nothing in them.
10 So I wasn't just sticking my head in
11 people's doors and asking questions.
12 That's not how it happened.

13 On one of these occasions about
14 the document dispute, Peter grabbed me in
15 the hallway and pulled me into his office
16 and said, Do you know what your friend
17 did? And that's how the discussions were
18 happening. You know, this was a very big
19 topic. On this topic, the entire fate of
20 the administration would, you know, turn.

21 Q Going back to your testimony.

22 A Yeah, sure.

23 Q How did you know that the Public
24 Integrity Commission couldn't assume that
25 David Nocenti and Peter Pope were

1 R. Hermann

2 blame-free?

3 A How could they? They didn't --
4 you know, they can't assume facts; they
5 are supposed to investigate facts. The
6 things I remember saying to the
7 Governor -- which I started to recount to
8 you before -- was that you know and I know
9 that it's ridiculous that these guys would
10 suborn perjury, but no responsible law
11 enforcement official can say, oh, I know
12 David Nocenti and he would never do that..
13 I happen to think that, but, you know, an
14 investigative office can't do that.

15 Q How did you know that the Public
16 Integrity Commission could not call them
17 as witnesses because they didn't know what
18 they would say, they might be setting them
19 up with a self-incrimination problem?

20 A Well, I didn't know that as a
21 matter of fact. I knew it as a matter of
22 legal theorizing based on my experience.

23 In other words, if, indeed,
24 Peter Pope had suborned perjury as some
25 subsequently charged, you know, in the

1 R. Hermann
2 newspaper reporting, if he suborned
3 perjury, then he would face a choice in
4 going before the Public Integrity
5 Commission, either waive your
6 self-incrimination, every right to
7 privilege against self-incrimination and
8 testify or don't testify and get fired.

9 And I assumed that they, you
10 know, being a proper law enforcement
11 agency and I know this isn't always done
12 in the state courts, but it is done in the
13 federal courts, you know, would have been
14 sensitive to that and just put things on
15 hold for a while rather than present them
16 with that choice. Because most of the
17 members of the Commission, I realized, you
18 know, came out of federal -- or a lot of
19 them came out of that federal law
20 enforcement experience, where I think
21 there's more sensitivity to that issue of
22 perjury traps and self-incrimination of
23 investigative agencies.

24 Q Did Herb Teitelbaum ever raise
25 with you these various issues concerning

1 R. Hermann
2 David Nocenti and Peter Pope?

3 A No. I mean, I'm sure he
4 mentioned their names at some point or
5 other, but not in this connection.

6 Q Mr. Hermann, I am going to show
7 you once again NYC 101, and ask you to
8 take a look on page two, the second and
9 third paragraphs.

10 A (Complying.) Okay.

11 Q Would you agree that the letter
12 contains contradictory statements about
13 the timing of the November 8th call with
14 Constantine?

15 A I think it's not precise. I
16 think it's mixing up two conversations,
17 the letter, as written. But -- there
18 were -- in other words, I had a
19 conversation with Lloyd on November 1. I
20 had a conversation with the Governor on --
21 again, I am assuming these are the right
22 dates -- November 2. A conversation with
23 Lloyd on November 3. Then I heard -- then
24 I heard about what had happened in the
25 DA's office with the call from Herb. Then

1 R. Hermann

2 I called Lloyd afterwards.

3 You know, when it says, "When
4 that second conversation between
5 Constantine and Herb occurred in early
6 November," that's referring to November 3,
7 I believe.

8 Q Not November 8?

9 A No. 3. And that's -- again, I
10 said I would like to talk about that, that
11 conversation.

12 Q The reference --

13 A It referenced a second
14 conversation. There were three
15 conversations with Lloyd. The second was
16 on November 3.

17 Q In paragraph two, at the end of
18 the paragraph where it says, "Hermann then
19 called Constantine," on what date did that
20 call occur?

21 A I believe it was the same day or
22 next day after Herb had called me. I
23 probably called him right away. I don't
24 know whether I reached him right away. He
25 wasn't always easy to reach. But roughly.

1 R. Hermann

2 Q So you think that phone call
3 happened somewhere around November 3 and
4 not November 8?

5 A No. I was asked --

6 MR. JONES: What phone call?

7 Q Could you go through the
8 sequence again for me --

9 A Yeah.

10 Q -- as stated in the letter. And
11 explain to me when those calls occurred.

12 A I had a call from Lloyd after
13 our in-person meeting on November 1. I
14 believe that call occurred on November
15 3rd. And that was the point at which he
16 asked me a number of things which, you
17 know, I would like to go through from
18 beginning to end as best I remember. But
19 also told me that they had hired outside
20 counsel, and did not tell me that they
21 were going to pass along to the DA what I
22 had told them as well as that I was the
23 source.

24 Then when I learned that that
25 had happened, I had another phone call

1 R. Hermann
2 with Lloyd. That's what I am saying..
3 That was probably November 8th or 9th or
4 something. Maybe that's -- maybe the
5 letter is somewhat ambiguous about that,
6 but that's -- the second conversation is
7 November 3rd.

8 Q Has it ever occurred that
9 someone called you in your Albany office
10 and you weren't there and then the call
11 was forwarded to your New York City or to
12 your cell phone?

13 A Yes.

14 Q Either or both?

15 A Probably both. I don't really
16 recall. Generally speaking, that would
17 only happen if it was somebody I knew
18 well, because, you know, I don't have
19 people just routinely forward calls to me.

20 Q Has it ever happened that a
21 phone call from Herb Teitelbaum was
22 forwarded to you in that way?

23 A I don't recall.

24 Q Are you familiar with the term
25 "trunk line"?

1 R. Hermann

2 A I am familiar with the term.

3 I'm not sure exactly what it means

4 anymore, but I am familiar with the term.

5 Q In essence, the call might go to

6 a common number and then might be

7 rerouted?

8 A Right.

9 Q Staying with the October 7

10 letter, Exhibit 101.

11 A Yes.

12 Q In footnote two on page three --

13 A Yes.

14 Q -- there is information about a

15 series of phone calls and phone numbers.

16 There is a reference to number

17 (518)474-3827.

18 Do you see that?

19 A Yes.

20 Q And it says that this one had

21 been with the New York State Parks

22 Department, which was the number then, but

23 apparently is no longer with Parks.

24 What is the basis for your

25 statement with respect to that number and

1 R. Hermann

2 whose number it was?

3 A I looked it up. It was on the
4 Internet.

5 Q It was on the Internet?

6 A There was a time when that was
7 a -- a New York State Parks Department
8 phone number. You know, that's -- that's
9 how I would look up a number. I would put
10 the number in and up it pops and it was
11 then, I called it, it's not there anymore.

12 Q When you say it was then, it was
13 then at the time it was posted on their
14 website?

15 A Yes. No, it was at a certain
16 point in time when, you know -- if you go
17 on the Internet, it gives you a listing of
18 everything, whether it was then or
19 current. There was a time, and apparently
20 at this time, that it was their number.
21 And the other reason I think it have the
22 Parks Department is because I also spoke
23 that day to both Kevin Healey and, I
24 believe, Peter Paden from the Columbia
25 Land Trust. And what I was working on at

1 R. Hermann
2 the time involved all three of them: It
3 involved Parks, it involved Kevin Healey,
4 and it involved Peter Paden.

5 Q Can you spell Paden for me,
6 please?

7 A P-a-d-e-n. And that was -- we
8 had been asked by the chamber -- actually
9 by the division of the budget to look into
10 how the State acquired parkland and
11 whether it could do it more effectively.
12 I worked with Parks. I worked with AG and
13 Markets and I worked with DEC on it. And
14 because Peter was the head of Columbia
15 Land Trust, which did just that, acquired
16 land for and from the state, and Kevin
17 Healey is an environmental lawyer I know
18 who also works on these issues -- I mean,
19 works on environmental issues.
20 Somebody -- I know it's not his specialty
21 so much, but that's what I was looking at.
22 I was calling people I knew to get their
23 notions about the efficiency with which
24 the State acquires parkland.

25 Q According to the footnote, the

1 R. Hermann

2 phone number at the Columbia Land Trust

3 was yet another number; is that right?

4 A Yes.

5 Q So it's still unclear, then, who

6 the caller was for the (518)474-3827?

7 A Oh, I don't know who it was. I

8 mean, it's conceivable it was Carol Ashe,

9 but I don't know -- who is the head of the

10 agency, but I've worked through -- I mean,

11 I have spoken to other people there. I

12 don't recall their names at the moment.

13 But that's what made me think, do I know

14 sitting here today that that is a Parks

15 Department number, no, I don't.

16 Q But the basis for what it states

17 here, how it had previously been a Parks

18 number was based upon what you had seen on

19 the Internet?

20 A Yes.

21 Q I have no further questions.

22 Mr. Hermann, is there anything

23 else that you would like to state at this

24 time?

25 A There is. And, as I said, I

1 R. Hermann
2 have written up notes of about a few
3 points I wanted to make of a general
4 nature. And then I made some more
5 specific notes about the call with Lloyd
6 that you have asked me about and asked me
7 about last time, to sort of try to put
8 that in context.

9 Now, I can give you these and
10 you can question me about them, or I can
11 essentially read them to you as they are
12 written here. Maybe I should --

13 Q I would prefer that you just
14 talk to me.

15 A Okay. I guess the first point
16 is that I have different degrees of
17 recollection of my conversations with Herb
18 as opposed to everybody else. The ones
19 with Herb were very personal. They were
20 awkward. And, you know, this was a very
21 troubling and stressful series of events
22 to me. And I have gone over in my head
23 many times the things that I said and
24 didn't say to Herb. And it -- you know,
25 it tends to run together.

1 R. Hermann

2 It was a stressful time because
3 I had turned my life upside down to work
4 for a Governor in whom I believed, in
5 coming out of the twenty years of private
6 practice, and he was being investigated by
7 my close friend. And I had, you know,
8 played a role in getting Herb into
9 government in the first place, which he
10 had never been in his entire career. So
11 it was awkward and tense and unpleasant.
12 And the conversations with Herb were often
13 awkward and tense and unpleasant. And
14 most of these happened fourteen to
15 eighteen months ago. So I don't want to
16 claim to remember them all with any, you
17 know, degree of accuracy. I remember
18 significant points. I remember certain
19 things, but I certainly don't want to
20 claim that my memory is sharp about that.

21 On the other hand, my memory of
22 conversations with Peter and Lloyd is
23 pretty sharp, because even before I
24 started to feel that I was maybe, you
25 know, collateral damage in this matter, I

1 R. Hermann
2 always felt I had to be tactical with
3 them, because that's who they are, too.
4 And this was a very difficult situation
5 for all of us, because they had done the
6 same sort of thing that I had done. They
7 had left other careers -- well, in Lloyd's
8 case, he did. Lloyd had given up a very
9 lucrative practice of law to take a
10 position within the administration that he
11 didn't want. He was -- you know, he was
12 determined to see Eliot Spitzer be the
13 first Jewish president. And this thing
14 was -- you know, was an arrow through the
15 heart to them. So I understood that early
16 on. And, you know, Peter had a certain
17 reputation for toughness, if you will, to
18 put euphemistically. And so I was always
19 tactical with them.

20 So they both had very strong --
21 you know, strong identification with the
22 Governor that I understood, you know, from
23 the beginning and that's the way I also
24 understood that when I talked to them
25 about certain things, that I needed to be

1 R. Hermann

2 tactical with them.

3 I don't know if you are still
4 interested in the document aspect of this
5 thing, but -- but in terms of what
6 happened, I think the letter that we
7 submitted and the information shows that
8 this thing was public very early on,
9 within nine or ten days, there were
10 already newspaper articles about the
11 private e-mails. I already had -- I mean,
12 I have to say the first thing that tipped
13 off my information was the very day the
14 investigation was announced, the Governor
15 said he was going to cooperate and do
16 everything, but he might be asserting
17 executive privilege. And I'm thinking
18 this is -- this is not a good sign, you
19 know, stating on the day the investigation
20 is announced, you are going to be
21 asserting the executive privilege.

22 And the dispute surfaced, as I
23 said, publicly within a week and I recall
24 talking to Lloyd about it. And I said to
25 you before, he told me that he had

1 R. Hermann
2 reviewed them all, and there was nothing
3 in them.

4 It was, you know, clear to me
5 that on legal grounds, on political
6 grounds, on governmental grounds, that
7 they were going to have to turn these
8 things over. And that's what I tried to
9 get them to do, was to get them to turn
10 over them. And both Peter and Lloyd were
11 very angry about this and personalized it
12 with Herb and considered him an amateur,
13 considered him incompetent, and I
14 considered that one of my jobs was to
15 convince them that they were wrongly
16 demonizing him, that I knew him well, that
17 he was not an incompetent, that he was not
18 a fool, and that they were not going to
19 run over him, as was their plan, that they
20 were going to, you know, just stonewall
21 him.

22 And I said things such as I
23 understand that Herb's position is, or I
24 understand the Commission's position is.
25 They weren't really interested in the

1 R. Hermann
2 nuances or the details of this. Both of
3 them wanted to vent. Both of them were
4 very angry at Herb. And both of them had
5 a lot of skin in the game, so to speak.

6 I don't think I ever said to
7 them outright -- it's conceivable, but I
8 don't think I ever said to them outright,
9 Herb thinks this -- I talked to Herb and
10 Herb thinks this. You know, I was very
11 careful about that stuff.

12 Another point I guess I want to
13 make is that while I have regrets about
14 having gotten involved in this in the
15 first place, those regrets are of a
16 personal nature and not of a, you know,
17 professional or legal nature. That, you
18 know, maybe I can be faulted for, in
19 hindsight, for not telling Herb what I had
20 seen and not telling Lloyd how I had
21 gotten my information, but, you know, when
22 I left Herb's apartment, I didn't know
23 what I was going to do with that
24 information. And I thought about it and
25 thought about it a lot. And I didn't

1 R. Hermann
2 reveal it because I was uncomfortable by
3 having seen something inadvertently that I
4 wasn't meant to see. But playing it close
5 to the best for your colleagues isn't
6 unethical or illegal as far as I know. I
7 was focused on one thing. I was a cabinet
8 member lawyer for the Governor. I had
9 peripheral involvement only in the
10 Troopergate matter, but I had a lot of
11 other -- you know, but I had an executive
12 privilege relationship with the Governor.
13 And I felt that I was under an obligation
14 to report this conflict of interest. And
15 nothing has convinced me since that I was
16 wrong about that. And I knew that if I --
17 if I got into the, you know, what I saw
18 and all of that with Lloyd, it was going
19 to create a distraction and delay. And I
20 was -- you know, I didn't know for sure
21 that, you know, about the conflict, but I
22 pieced it together, I believed there was
23 and clearly now there was. It needed to
24 be addressed, the conflict of interest
25 issue and it was addressed. I don't want

1 R. Hermann
2 to lose sight of that, the fact that these
3 two guys, frankly, should never have been
4 advising the Governor. The executive --
5 the Governor had his own lawyer, as we
6 mentioned before, but they shouldn't have
7 been involved in this thing. Knowing that
8 they had played a role in drafting this
9 affidavit, they shouldn't have been
10 involved.

11 And so, you know, the -- you
12 know, clearly my conduct gave some people
13 the impression that I was a conduit. And
14 the person who started that all was the
15 District Attorney, who, as you probably
16 have delved into this, the Commission was
17 not only fighting with the executive
18 chamber, they were fighting even harder
19 with the District Attorney who had -- who
20 was publicly -- or publicly through
21 anonymous sources vilifying the
22 Commissioner all the time. But the idea
23 that I was a conduit here really doesn't
24 make any sense when you think about it. I
25 was a member of the Governor's cabinet. I

1 R. Hermann
2 was on the 39th floor with those folks
3 talking about things like documents and
4 all that. Anything that Herb could have
5 said to Lloyd, he could have said to me
6 and vice versa. And that seems to me, you
7 know, to be lost sight of. What was wrong
8 with talking to me? I'm a government
9 lawyer and I represent -- you know, and I
10 have a privileged relationship with the
11 Governor.. Why would Herb need an
12 intermediary?

13 So the notion of an
14 intermediary, I think -- and I'm sorry if I
15 repeat what's in the letter -- doesn't
16 make sense because every other aspect of
17 this series of events tells you that these
18 two sides were in a pitched battle, that
19 they were at each other's throats, and
20 that there were constant leaks -- the
21 easier way to give out information is give
22 it to the newspaper. I hope that our
23 submissions persuaded you and I hope the
24 events of the last twenty-four hours
25 persuaded you, that there are constant

1 R. Hermann
2 leaks in this matter. And that's the lot
3 easier way to get information out than a
4 conduit. Herb obviously had no motivation
5 to have a conduit, nor did the chamber.
6 They were -- they were -- is there any
7 other example of a conduit? What was the
8 point, here? And it seems to me -- I
9 mentioned before -- that if the outside
10 ethics counsel had really thought there
11 were an issue of this sort of, you know,
12 disclosure of unauthorized information, he
13 wouldn't have said go to the DA. He would
14 have said go to the AG. They didn't.

15 I can't help but -- and maybe
16 this is just self pity by thinking that it
17 would be wrong and unfair for me to be
18 criticized in this thing. I don't think
19 there's any question that my motivation
20 here, my purpose here was to get the
21 documents produced and to get -- and to
22 clean up the issue of who is representing
23 the Governor. And that did, indeed,
24 happen. The documents were produced,
25 although after a great battle with Public

1 R. Hermann
2 Integrity Commission for which Lloyd and
3 others were roundly criticized for having
4 tried to suppress them. So I didn't
5 withhold any documents. I didn't write
6 any misleading affidavits. I didn't
7 ignore potential conflict of interest. I
8 didn't advise witnesses how to write
9 misleading affidavits to law enforcement
10 or how not to cooperate with them.

11 There are five chamber lawyers
12 who are, to one extent or another,
13 either were involved in those things or
14 were said to have been involved in those
15 things. And what I did, I don't think,
16 harmed anybody. It didn't impact the
17 investigation. It didn't hurt Darren Dopp
18 or his case. It certainly didn't benefit
19 me. I went out and looked at the law.
20 The law on the -- the executive law.
21 There was no clear guidance as to what was
22 confidential and what wasn't. What there
23 is was a pretty clear statement in a
24 related context about reporting conflicts
25 of interest and I thought that was my

1 R. Hermann
2 responsibility and I thought I could do it
3 without basically hurting anybody or
4 anything. And I don't see how that could
5 be abuse of my public position.

6 The last thing, I guess, I want
7 to talk about, and it's a more detailed
8 conversation, is about the follow-up phone
9 call from Lloyd which we say was on
10 November 3rd. If I could take a deep
11 breath before we do?

12 I don't know how long that phone
13 call was, but there were certain things
14 that were on my mind as this conversation
15 proceeded. I can't tell you when I
16 started to think different things during
17 the conversation, but as it proceeded, I
18 was thinking a few things.

19 First of all, I started to get
20 uneasy about it because I knew Lloyd was
21 going to hire ethics counsel, but he hired
22 a friend of his as an ethics counsel.
23 That made me wonder why. It was also
24 obvious to me that what Lloyd was focusing
25 on was his hostility to Herb rather than

1 R. Hermann
2 the issue that I thought I had brought to
3 him, and that I was being questioned. At
4 one point he asked me, you know, whether I
5 was worried about destroying my friendship
6 with Herb, which I thought was kind of an
7 obnoxious question because what he was
8 basically suggesting was that wasn't worth
9 very much anyway. And I started to think
10 that the point of these questions was
11 coming from, you know, or justified by the
12 outside ethics counsel and that the point
13 was to use it to discredit Herb and thus
14 help the Governor rather than to deal with
15 what I thought I was talking to him about.

16 So these are the things that you
17 asked me about before or that Judge Fisch
18 asked me about before.

19 Lloyd asked if Herb was sending
20 through me a signal to the chamber about
21 the conflict issue. And that told me that
22 he thought that what I had told him was
23 based on a conversation. And all I had at
24 the time, as I recall, was that it was
25 pointless to speculate about Herb's

1 R. Hermann
2 intentions. Which is true. And I
3 remember that actually the night after I
4 saw these notes, I had speculated about
5 that, you know, was he leaving this thing
6 out for me to see. For some reason I
7 decided that that wasn't the case, but it
8 was pointless to speculate about his
9 intention.

10 Then Lloyd says he pressed me to
11 know how Herb would defend himself, which
12 I also thought was a strange and somewhat
13 obnoxious question. And according to
14 Lloyd, I said that maybe Herb would claim
15 that without his knowing it, I must have
16 read some document of his or stolen some
17 document from him. The stolen part, I
18 don't know quite how he had it, because
19 obviously that could not have happened.

20 I don't have the transcript, but
21 I believe that what I said was I don't
22 recall saying those things, but if I did,
23 I did say it, you know, it's certainly
24 possible that I did say it. If I did, it
25 would have been something I said

1 R. Hermann
2 facetiously, because that's the kind of
3 relationship I had with Lloyd and that's
4 how, I think, both of us speak. Something
5 on the order of, oh, knowing Herb, he'll
6 just claim that I probably read or stole
7 some notes of his. Which, as you recall,
8 was probably on my mind because, indeed, I
9 had seen some notes of his. But thinking
10 about what Lloyd took away from that
11 conversation, he didn't treat that as
12 real. He must have treated it as
13 facetiously, because long afterwards, he
14 told the DA that he didn't interpret what
15 I had said to him as Herb sending him a
16 message. So he obviously didn't think
17 that. And he also never asked me
18 questions. He never asked me as a
19 follow-up whether, you know, there was any
20 truth to that, was there any basis for
21 that, have I seen any documents. He
22 didn't ask me that. And I guess the other
23 thing is if there is any suggestion that
24 there was fabrication, that this was
25 somehow involved in a fabrication to

1 R. Hermann
2 create a story afterwards, why would I say
3 that Herb might claim I had read or I had
4 stolen some of his documents? Obviously
5 if the story were to make any sense, Herb
6 would have to claim he had no idea how I
7 had seen the documents. He wouldn't be
8 saying I must have seen the documents. It
9 doesn't make any sense.

10 And I guess the final thing that
11 I would say about that conversation is
12 that while I was getting uneasy about
13 that, about where Lloyd was headed with
14 this thing, because of the way he was
15 asking these questions, I didn't really
16 think -- there was no reason that I had at
17 that point to think that anyone was going
18 to need any story because I had no idea
19 that Lloyd and the chamber had decided
20 that, A, they were going to go to the
21 District Attorney with this and, B, that
22 they were going to tell them that I was
23 involved in it, and, C, that they were
24 going to waive executive privilege. He
25 had told me that they were not going to do

1 R. Hermann
2 that. He didn't tell me anything
3 otherwise on this call. He didn't tell me
4 anything about their plans on this call.
5 So why was I fabricating anything? I
6 assumed he was going to do what he said he
7 was going to do.

8 Q Anything further?

9 A Can I just confer with Stewart
10 before we close?

11 MR. JONES: We will just step
12 outside.

13 [Discussion held off the
14 record.]

15 MR. JONES: We are done,
16 here.

17 MS. OSTERER: I will ask one
18 more question, I guess.

19 MR. JONES: Okay.

20 Q Since you testified here in
21 September, have you had occasion to speak
22 to Herb Teitelbaum?

23

24 [Continued on the next page.]

25

1

2 A No. I will tell you that I
3 don't think I have spoken to Herb now in
4 at least six months, the casualty of all
5 of this.

6 MS. OSTERER: Off the record.

7

8 [TIME NOTED: 12:38 p.m.]

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E X H I B I T S

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Exhibit 101	October 7, 2008 letter	127
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Exhibit 103	October 24, 2008 letter	127
Exhibit 104	two-page document to Lloyd Constantine from Robert Hermann, "From Lemons to Lemonade"	145
Exhibit 105	pages 102-106 or prior deposition testimony	169

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CERTIFICATION

I, JAMIE ANN STANTON, a
Notary Public, do here hereby certify that
the foregoing witness, ROBERT HERMANN, 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

* * *

