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STATE OF NEW YORK
OFFICE OF THE INSPECTOR GENERAL

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

September 22, 2008
10:52 a.m.

EXAMINATION of ROBERT HERMANN,
held at the offices of STATE OF NEW YORK
OFFICE OF THE INSPECTOR GENERAL, 61
Broadway, New York, New York before Wayne
Hock, a Notary Public of the State of New
York.

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A P P E A R A N C E S :

STATE OF NEW YORK
OFFICE OF THE INSPECTOR GENERAL
61 Broadway
New York, New York 10006

BY: JOSEPH FISCH, ESQ.
ARLENE S. OSTERER, ESQ.

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

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

* * *

1

2 MR. FISCH: My name is Joseph
3 Fisch. I'm the state inspector
4 general.

5 We are in my Manhattan office at
6 61 Broadway, twenty-first floor, New
7 York County. Accompanying me is
8 Arlene Osterer of my staff. The
9 witness today is Robert Hermann.

10 Counsel, would you note your
11 appearance, please?

12 MR. JONES: E. Stewart Jones,
13 Junior, on behalf of Mr. Hermann.

14 MR. FISCH: Mr. Hermann, you're
15 appearing voluntarily in response to a
16 telephone call I made to Mr. Jones?

17 THE WITNESS: Yes.

18 MR. FISCH: And you consent to a
19 stenographic record being made of this
20 interview?

21 THE WITNESS: Yes.

22 MR. FISCH: Will you rise and be
23 sworn.

24 (CONTINUED ON NEXT PAGE)

25

1

2 R O B E R T H E R M A N N, having
3 been first duly sworn by a Notary Public
4 of the State of New York, upon being
5 examined, testified as follows:

6 EXAMINATION BY

7 MR. FISCH:

8 Q. Mr. Hermann, you are currently
9 director of the Governor's Office of
10 Regulatory Reform?

11 A. That is correct.

12 Q. For how long have you held that
13 position?

14 A. For about a year and a half.

15 Q. You have a lengthy record of
16 public service.

17 Could you tell us about your
18 professional background after graduating
19 from that obscure institution in New
20 Haven.

21 A. I started out in private
22 practice in Skadden Arps when it was a
23 very small law firm but the temper at the
24 time was such that I didn't feel
25 comfortable there and I decided I wanted

1 R. Hermann
2 to be in some kind of public service
3 practice and I went to the Legal Aide
4 Society where I did criminal law work for
5 three and a half years. Mostly appellate,
6 some trial work.

7 From there, I went to NYU Law
8 School where I taught full time for three
9 years running the public interest law
10 clinic.

11 From there, I went to the Puerto
12 Rican Legal Defense Fund where I was the
13 legal director for a number of years and
14 then, in that connection, I met someone
15 who ultimately became part of Bob Abrams'
16 office and essentially took me with him
17 and I became the head of their what they
18 then created was called the public
19 advocacy division, which was all of the
20 affirmative bureaus of the attorney
21 general's office, a structure that still
22 exists today.

23 I was out of the attorney
24 general's office for a year. Attorney
25 General Abrams asked me to come back to be

1 R. Hermann
2 a solicitor general. I was solicitor
3 general for a couple of years and then
4 felt that I was going to try to go make
5 some money, so I went to a firm called
6 Time Equities Incorporated and I did not
7 only legal work but real estate
8 acquisitions for them. And then I went
9 into private practice with a small firm
10 that had done a lot of public interest
11 work which was headed by Herb Teitelbaum
12 whom I had known since 1970 or 1969 or '70
13 when he was -- I had interviewed him when
14 he was applying for an associate at
15 Skadden way back then and, by the time he
16 arrived, I had left. We had been friends
17 on and off over the years.

18 I joined that firm and I stayed
19 there until 1996 when the firm broke up
20 because some of the people wanted to go
21 into a bigger firm practice and I didn't
22 want to do that and I lived up in
23 Westchester so I joined a firm called
24 Plunkett and Jaffe up there in
25 Westchester. I was there from '96 to 2002

1 R. Hermann
2 at which point I joined Thacher, Profitt
3 and Wood doing commercial litigation which
4 I did until I took this job in 2007. I
5 was there for about five years mostly in
6 the White Plains office but working
7 between its White Plains office and the
8 office which had been at the World Trade
9 Center.

10 Q. You have lectured, you have
11 published, you've been involved in
12 numerous civic and Bar association
13 activities.

14 A. Yes.

15 Q. In the attorney general's
16 office, did you know Lloyd Constantine?

17 A. Yes.

18 Q. In fact, he served under you; am
19 I correct?

20 A. He did.

21 Q. Did you have occasion to do an
22 evaluation regularly of his performance?

23 A. I assume that we had formal
24 evaluations because there was a review
25 process. I don't specifically remember

1 R. Hermann

2 doing that, but I'm sure I did.

3 Q. Does this strike a bell
4 (handing)?

5 A. I mean, the form seems generally
6 familiar to me, yes.

7 Q. How did you rate his performance
8 before you?

9 A. Well, I had recruited Lloyd in
10 part. One of the common interests we had
11 was he was at legal services, he was a
12 legal services lawyer in Brooklyn, south
13 Brooklyn, and he expressed interest, I
14 don't remember how -- I didn't know him
15 before this -- as the head of the
16 antitrust bureau, and he had no antitrust
17 background whatsoever. And I think I was
18 helpful in persuading the attorney general
19 that, while he didn't know antitrust, he
20 had the qualities of mind and temperament
21 to be a good antitrust bureau chief and
22 that's how he became an antitrust lawyer
23 and my prediction, I think, proved
24 correct.

25 Q. You regarded him as a good

1 R. Hermann

2 lawyer?

3 A. Yes.

4 Q. Attention to detail?

5 A. I don't know about attention to
6 detail. He's a good lawyer. I never
7 worked on a case with him other than an
8 appeal.

9 Q. What characteristics would you
10 say that he displayed that you regarded
11 him as a good lawyer?

12 A. He was smart, he was innovative,
13 he was aggressive. The position, in my
14 view, fundamentally required someone who
15 was innovative and aggressive because
16 attorney general's office in the what was
17 then called the antimonopolies bureau was
18 really moribund. It hadn't done much of
19 anything. And more than a craftsman, it
20 needed someone who had ideas and would go
21 out and pursue them aggressively.

22 Q. You testified but not under oath
23 before the district attorney of Albany
24 County on February 7, 2008.

25 Do you recall that?

1 R. Hermann

2 A. Yes.

3 Q. You were a public official at
4 that time; correct?

5 A. Yes.

6 Q. Did you regard your
7 responsibility as a public official to
8 cooperate with the DA's investigation?

9 A. Yes.

10 Q. To tell the truth?

11 A. Yes.

12 Q. Regardless of whether you were
13 under oath or not?

14 A. Yes.

15 Q. Regardless of whether you were
16 represented by an attorney or not?

17 A. Yes.

18 Q. You've had an opportunity to
19 review your testimony before District
20 Attorney Soares?

21 A. Yes.

22 Q. Anything in that examination
23 that you wish to correct, amend, or change
24 in any way?

25 A. I don't want to correct, amend,

1 R. Hermann
2 or change anything, but there was a lot
3 more that happened in those events which
4 at that time was blocked by the executive
5 chamber's assertion of privilege and it
6 wasn't ever finished.

7 Q. We'll get into that.

8 Now, during the year of 2007,
9 while you were a member of the -- while
10 you were a director of the Governor's
11 Office of Regulatory Reform, there were a
12 number of investigations being conducted
13 involving members of the Spitzer
14 administration; is that correct?

15 A. Yes.

16 Q. Attorneys general's?

17 A. Yes.

18 Q. The inspector general, my
19 predecessor?

20 A. Yes.

21 Q. Senate investigatory committee?

22 A. Yes.

23 Q. And the Commission on Public
24 Integrity which was originally called the
25 Ethics Commission?

1 R. Hermann

2 A. Yes.

3 Q. Were you ever a member of the
4 Ethics Commission, the Commission on
5 Public Integrity?

6 A. No.

7 Q. Did you ever serve as a
8 consultant to that commission?

9 A. The only connection I've had
10 with the commission on a formal basis is
11 that their rules -- with the new statute,
12 they needed rules and regulations and we
13 worked with their office and I talked to
14 Herb about their newly adopted rules and
15 regulations. That's what we do.

16 Q. But you're not regarded as an
17 employee of that agency?

18 A. No.

19 Q. Because of the investigation,
20 there were a number of people in the
21 governor's office who were regarded and
22 designated as liaisons with the Ethics
23 Commission?

24 A. Yes.

25 Q. Lloyd Constantine?

1 R. Hermann

2 A. Initially not. After a while,
3 yes.

4 Q. Peter Pope?

5 A. Yes.

6 Q. Richard Rifkin?

7 A. Yes.

8 Q. Sean?

9 A. Maloney.

10 Q. You were never authorized by the
11 governor, the governor's counsel, the
12 secretary to the governor, or anyone else
13 to act as liaison with the Ethics
14 Commission; were you?

15 A. No.

16 Q. During the course of the
17 investigation by the Commission on Public
18 Integrity, did you ever relate to anybody
19 in the governor's office conversations you
20 had had with Herbert Teitelbaum?

21 A. I related -- yes.

22 Q. With whom?

23 A. Principally with Lloyd
24 Constantine. Once or twice with Peter
25 Pope.

1 R. Hermann

2 Q. Do you recall when the
3 conversation with Peter Pope began?

4 A. In the mid summer of 2007.
5 Can I set the context of this a
6 little bit?

7 Q. Sure.

8 A. At that time the issue between
9 the two offices was document production
10 and there was a public dispute going on
11 about how much the governor's office had
12 to produce by way of documents and there
13 was a lot of sentiment in the executive
14 chamber people, particularly Lloyd and
15 Peter, that the document demands that the
16 commission was making were outrageous,
17 overly broad, inappropriate,
18 unprofessional, you name it. And on a
19 number of occasions both of them expressed
20 to me, knowing that I was a friend of
21 Herb's, knowing that we lived in the same
22 place in Albany, knowing that I've known
23 him for thirty-five years, the sense that
24 he was unprofessional, he was out of line,
25 he didn't know what he was doing because

1 R. Hermann
2 he had never been involved in criminal law
3 before.

4 Q. He being whom?

5 A. Herb.

6 Peter, on a number of occasions,
7 said to me essentially their document
8 demands are outrageous. My point of view
9 was always, for many reasons which I can
10 explain, you have to give them what you
11 want. It's all going to come out anyway.
12 They were fighting about e-mails, they
13 were fighting about Blackberry text
14 messages, they were fighting about private
15 phones as well as cell phones because they
16 all had two phones they hooked on their
17 belts. And I kept saying to him and to
18 Lloyd I know you don't like Herb, I know
19 you don't think he's professional -- Lloyd
20 once called him a lightweight to me and I
21 told him he was nuts, that Herb Teitelbaum
22 was not a lightweight -- I said, you're
23 going to have to produce all of this stuff
24 and you are to produce it now.

25 I checked yesterday about this.

1 R. Hermann
2 They were still fighting about this in the
3 middle of September at which point the
4 Public Integrity Commission dropped a
5 subpoena on the executive chamber after
6 they said they had completed their
7 document production which caused the
8 people there to bridle as well because
9 they took that as an insult.

10 So my role in this was -- this
11 was all public. This had all been -- I
12 wasn't learning anything privately from
13 Herb or -- what I was learning was both
14 from public sources -- this was well
15 covered in the newspapers -- and from the
16 two of them and they kept saying, you
17 know, he's out of line. I kept saying
18 you're going to lose.

19 Q. You said that Peter Pope
20 initiated these conversations with you?

21 A. I don't know who initiated. I
22 worked in the governor's office every
23 Friday in midtown here.

24 Q. I know.

25 A. And I would be there and I don't

1 R. Hermann

2 know how the conversations got

3 originated --

4 Q. This is important.

5 Who initiated the conversations?

6 A. I remember Peter -- I would talk

7 to him about other things regularly. We

8 worked on other things together. And he

9 was very bent out of shape about Herb.

10 Peter was a prosecutor in Manhattan, he

11 thought he knew the ropes, he thought Herb

12 didn't know what he was doing. I don't

13 remember who started the conversations. I

14 do remember one Peter did start with me

15 which was who did I think would be a good

16 lawyer to represent the governor.

17 Q. Isn't it a fact that you came to

18 Pope and you spoke to Pope about what Herb

19 Teitelbaum wanted by way of records?

20 A. It wasn't what Herb Teitelbaum

21 wanted, it was what the commission was

22 publicly saying it wanted.

23 Q. Did anybody else from the

24 commission speak to you about the

25 investigation?

1 R. Hermann

2 A. No.

3 Q. Just Herb Teitelbaum?

4 A. Yes, but he didn't say to me I
5 want you to tell people in the executive
6 chamber to do this.

7 Look, I got into government --

8 Q. Let me just stay with the
9 context here.

10 The question is did you initiate
11 the conversations with Pope concerning
12 documents and records that the commission
13 wanted?

14 A. I believe that initially the
15 conversations were initiated by Peter and
16 I may have confirmed with Lloyd, but I
17 talked to both of them.

18 Q. Let's stay with Peter Pope.

19 A. To the best of my recollection.
20 I don't specifically recall who said the
21 first word that transitioned into that
22 discussion. I recall sitting in Peter's
23 office on a couple of occasions and having
24 a talk. And he would say, your friend
25 Teitelbaum, he did such and such.

1 R. Hermann

2 Q. Isn't it a fact that he told you
3 that, if Teitelbaum wanted something, he
4 should not be using you as an intermediary
5 but he should be going directly to him?

6 A. No, Lloyd said that to me.

7 Q. Let's start with Pope.

8 A. No, not that I recall. I mean,
9 they weren't using me as an intermediary.

10 MR. JONES: Just answer the
11 question.

12 Q. Please just answer the question.
13 I'll give you a full opportunity to
14 answer.

15 We have sworn testimony from
16 Peter Pope that it was you that came to
17 him, Herb said this and so on.

18 Does that sound so?

19 A. Herb made clear in my
20 conversations with him that what the
21 executive chamber was telling the public
22 and telling the newspapers was not
23 correct, that they obviously were not --

24 Q. That's Herb's position.

25 My question, Mr. Hermann, is

1 R. Hermann

2 very simple.

3 Isn't it a fact that you went to
4 Pope, not that he went to you, and that
5 you discussed whether it's delays or a
6 position that the government should be
7 taking in response but that you initiated
8 the conversations and, in fact, he told
9 you that you have no business being the
10 intermediary, that if Teitelbaum wants
11 anything he should speak directly to him?

12 A. That's not my recollection. I
13 think it was -- everybody was --
14 withdrawn.

15 Q. Did he ever ask you why
16 Teitelbaum was not going to Rifkin?

17 A. He was, Teitelbaum was going to
18 Rifkin. Teitelbaum was talking to Rifkin
19 all the time. He was talking to all the
20 people there all the time.

21 Q. Did you ever tell Pope that
22 Teitelbaum was not pleased with the fact
23 that Rifkin was the liaison with the
24 commission?

25 A. Yes.

1 R. Hermann

2 Q. And did you express why
3 Teitelbaum was unhappy with Rifkin as the
4 point man, one of the point men?

5 A. Herb said to me at one point
6 that he wasn't -- that Rifkin shouldn't be
7 involved because he doesn't know anything
8 about the documents; that every time he
9 talked to him, he would go back to the
10 other people and he would say that he said
11 something to me once to the effect that
12 the chamber ought to be dealing with him,
13 that he shouldn't have to pass something
14 along.

15 Q. What documents was he referring
16 to?

17 A. No, I mean that he didn't know
18 -- at that time there was a dispute about
19 documents. This was in connection with a
20 document dispute.

21 Q. Did he not tell you about
22 specific documents that they were having
23 difficulty getting?

24 A. No. I never knew anything about
25 what documents were in dispute. I knew

1 R. Hermann
2 from the newspapers that they were talking
3 about Blackberry and text messages and
4 personal cell phone records, but I never
5 discussed that with Herb. To the extent I
6 heard anything about it, it was from
7 Lloyd.

8 Q. Did Pope ever tell you, I don't
9 want Teitelbaum calling you or speaking to
10 you. If he has any questions, I want him
11 to speak to me or to Rifkin?

12 A. No, I only remember Lloyd saying
13 that.

14 Q. Before you get to Lloyd, I'm
15 talking about Pope ever telling you that
16 he did not want Teitelbaum talking to you.

17 A. I don't recall that.

18 Q. I'm sorry?

19 A. I do not recall such a
20 conversation.

21 Q. Are you denying that that --

22 A. Yeah, as far as I recall, that
23 did not happen.

24 Q. Tell me about Constantine.

25 There came a time when you had

1 R. Hermann
2 conversations with Lloyd Constantine?

3 A. Yes.

4 Q. During what period of time?

5 A. Really from the time when he
6 first got involved with representing the
7 governor or the chamber, it wasn't always
8 clear, because at some point the governor
9 got his own lawyer.

10 I went in to see Lloyd at one
11 point, who was also working there at 633
12 Third Avenue, and he was the one who had
13 been personally asked by the governor to
14 review all of the e-mails that were going
15 to be turned over by the governor, his own
16 e-mails --

17 Q. Are you talking about
18 November 1?

19 A. No, no, no, I'm talking about
20 the summer.

21 Q. Go on.

22 A. In the summer, and I said is
23 there a problem here. And he said, no,
24 I've gone through every single e-mail and
25 every single record that we have and

1 R. Hermann
2 there's no problem, meaning that he
3 believed that the governor would be
4 exonerated because he had no personal
5 involvement in this.

6 Q. You asked Constantine if there
7 was a problem?

8 A. Meaning that -- because I wanted
9 to know -- everybody wanted to know was
10 the governor involved in this personally
11 because Darren Dopp was saying that he was
12 and he personally was saying that he
13 wasn't.

14 Q. This was while investigations
15 were going on?

16 A. Yes.

17 Q. Was this a result of talking to
18 Herbert Teitelbaum?

19 A. No, it was a result of my
20 concern because I had left private
21 practice largely because I believed in
22 Eliot Spitzer and what he was trying to
23 do, not because I needed a state job.

24 Q. During the summer, how many
25 conversations did you have with Lloyd

1 R. Hermann

2 Constantine concerning activities of the

3 commission?

4 A. I couldn't tell you exactly. I

5 had several certainly.

6 Q. Five or six or more?

7 A. It could be, it could be.

8 Q. Were these conversations that

9 you initiated?

10 A. No, not always.

11 Q. Well, tell me about those that

12 you initiated.

13 A. Well, I said to Lloyd the same

14 thing I was saying to Peter Pope. He,

15 too, was very much involved in the issue

16 of producing documents. They were filing

17 papers in the state supreme court in

18 connection with the production of

19 documents. Their instinct -- if I can

20 just step back for a second, these are two

21 very combative male litigators who I would

22 describe as alpha males and they got

23 themselves really all worked up about the

24 impropriety of the breadth of this request

25 that was made to them.

1 R. Hermann

2 Q. I'm sorry, who got --

3 A. Lloyd and Peter and probably
4 everybody else there.

5 Q. How did you know that?

6 A. Because they told me that.

7 Q. They told you they were unhappy
8 with the request for documents that were
9 being made?

10 A. No.

11 Q. Did they tell you which records?

12 A. No. I shouldn't say no. If
13 they did, I don't recall any. I never saw
14 the document request, I never reviewed it,
15 I never discussed it with Herb. All I
16 knew was whatever the documents were, they
17 should turn them over. That was my whole
18 point of view. Just turn them over
19 because the delay is crippling this
20 government.

21 Q. Did you have a number of
22 conversations with Constantine where you
23 said, Herb said this, Herb said this, Herb
24 said that, Herb wants this, where you
25 referred specifically to records for which

1 R. Hermann
2 certain privileges were going to be
3 asserted by members of the administration?

4 A. I can't tell you a year later
5 whether I said Herb wants or the
6 commission wants, but I wasn't saying
7 anything that wasn't public knowledge at
8 that point anyway. It was all out there
9 that they were looking for all of these
10 records.

11 Q. Did you ever talk to him about
12 records for which the governor, the
13 governor's staff, were considering
14 exerting certain privileges?

15 A. Did I talk to Herb about that?

16 Q. Yes.

17 A. No.

18 Q. Did you talk to Constantine
19 about that?

20 A. I don't recall discussing
21 privilege with him at all.

22 Q. It's very specific where you
23 spoke to him about specific documents that
24 Teitelbaum felt the commission wanted and
25 that they felt they were not getting quick

1 R. Hermann

2 enough.

3 A. No.

4 Q. You never mentioned specific

5 witnesses?

6 A. No.

7 Q. You never mentioned specific

8 documents?

9 A. No. I didn't know any of that.

10 Q. So your answer is no?

11 A. No.

12 Q. That never happened?

13 A. Never happened.

14 Q. Did you ever tell him that

15 you're taking a position with regard to

16 this witness which you shouldn't be

17 taking?

18 A. No, because to the best of my

19 recollection, I didn't know any of the

20 witnesses. There were no witnesses at

21 that time in the summer. Oh, well, I

22 guess some people were interviewed by the

23 attorney general but I didn't know

24 anything about that.

25 Q. Did you know what records the

1 R. Hermann
2 Ethics Commission was seeking and what the
3 response of the governor's office was?

4 A. No.

5 Q. You never told them that, with
6 regard to a particular witness, that the
7 governor's office was taking a particular
8 position which Teitelbaum felt they should
9 not take?

10 A. I hesitate only because it
11 sounds like you're thinking of somebody so
12 I'm wondering who that could be. I don't
13 have any recollection of knowing anything
14 about any witnesses.

15 Q. Did you ever tell him that --
16 again, Herb says this, Herb says that, but
17 obviously coming from Teitelbaum to you
18 that the chamber, the governor's office,
19 was taking a position with regard to the
20 category of documents that they should not
21 be doing, that it was in nobody's interest
22 to do that?

23 THE WITNESS: Can I hear the
24 question back again? I didn't
25 understand the first part of it.

1 R. Hermann

2 (Whereupon the requested portion
3 was read back by the reporter)

4 A. What I said to the chamber was,
5 not that it was coming from Herb because
6 it was obviously the position of the
7 commission that it wanted all the
8 documents that it had asked for. My
9 position was simply give it to them.

10 Q. But how did you know that?

11 A. Because it was publicly being
12 reported.

13 Q. All of these conversations with
14 Constantine dealt with stuff that you
15 learned from the newspapers?

16 A. It dealt with what I knew from
17 both -- I knew what was going on from the
18 newspapers, I read a story yesterday in
19 the New York Post --

20 Q. I know about that. Forget
21 yesterday's story. Let's go back to the
22 summer of 2007.

23 A. No, what I'm saying is this is a
24 story from 2007. September 4, 2007 there
25 were still leaks going on around documents

1 R. Hermann

2 that weren't being produced.

3 Q. I'm not up to September. I'm
4 sorry, I'm talking about the summer of
5 2007, July/August, 2007, conversations
6 that Teitelbaum may have had with you --
7 that's what I'm asking -- with regard to
8 the position of the administration in
9 response to the commission's request for
10 records and for witnesses.

11 A. I said to Herb on a couple of
12 occasions that the chamber says it's
13 produced all the documents that you've
14 requested and I don't recall exactly what
15 he said but something to the effect of
16 well, the commission has publicly taken
17 the view, the position that it wants all
18 the documents and, you know, we have a
19 dispute about that.

20 Q. He told you that there was a
21 dispute between the chamber and the
22 commission on the production of documents?

23 A. Well, it was already reported
24 that there was a dispute.

25 Q. Forget what was reported.

1 R. Hermann

2 Did he tell you that, that
3 there's a dispute?

4 A. I don't recall exactly what he
5 said.

6 Q. You just said that.

7 A. That's the impression I came
8 away with. I had a clear-cut impression
9 from Herb that he did not think that all
10 the documents had been produced. I don't
11 recall the exact words. I may have said
12 something and he may have harrumphed or
13 something like that. I don't recall.
14 We're talking about fourteen months ago.

15 Q. And this dissatisfaction of
16 Herb's you communicated to Constantine?

17 A. I wasn't going back and forth
18 between Herb and Lloyd in terms of Herb
19 said this, Herb said that. My point of
20 view --

21 Q. That never happened where you
22 went to Constantine, Herb says that you
23 guys are not responding to this or Herb
24 says that there are certain witnesses that
25 you are going to be asserting certain

1 R. Hermann
2 privileges, you shouldn't be doing that,
3 Herb says that there's an issue about what
4 lawyer's going to be representing
5 witnesses, you never had those
6 conversations?

7 MR. JONES: There are about six
8 different questions in that question.

9 Q. Did you ever have conversations
10 like that with Constantine?

11 A. When you say, "like that," which
12 part of that?

13 MR. FISCH: Read it back.

14 Q. Any part of that? Witnesses?

15 A. I think that what I always said
16 was, well, the commission thinks or the
17 commissioners obviously, something like
18 that, not Herb. I don't recall
19 personalizing it to Herb. They
20 personalized it to Herb.

21 Q. Did anybody else from the
22 commission talk to you about this?

23 A. No.

24 Q. So you may have said the
25 commission?

1 R. Hermann

2 A. The commission.

3 Q. But that came from Herb?

4 A. Well, it didn't just come from
5 Herb, it came from two other sources. It
6 came from the fact that they were saying
7 that Lloyd and Peter were both saying that
8 the commission wanted additional documents
9 and they weren't going to be turning them
10 over because they were going to be
11 resisting, so I didn't have to learn
12 anything from Herb. And the commission
13 was obviously fighting with them. They
14 were telling me that they were fighting
15 with the commission.

16 Q. Who told you they were fighting?

17 A. They did.

18 Q. Who is they?

19 A. Lloyd and Peter.

20 Q. They told you that they were
21 fighting with the commission about the
22 production of records?

23 A. Yes.

24 Q. Or about production of
25 witnesses?

1 R. Hermann

2 A. Yes, that's what I previously
3 said.

4 Q. Did Constantine ever tell you to
5 stop having conversations with --

6 A. Yes, he did.

7 Q. Did he tell you that it was
8 improper?

9 A. He told me that he was
10 uncomfortable with it and he thought it
11 was wrong and he reached that conclusion
12 after consulting Richard Rifkin who said
13 he thought I should stop doing it, and I
14 did.

15 Q. Well, what was wrong? You
16 described this stuff came from the
17 newspapers.

18 A. I didn't think it was wrong.

19 I operate in essence, while I'm
20 not part of the executive chamber, my
21 office is the Governor's Office of
22 Regulatory Reform. We have a whole
23 separate reporting relationship to the
24 chamber. I was talking to them and, while
25 I wasn't formally deputized by them, they

1 R. Hermann

2 knew I was taking an interest in this in

3 trying to be a peacemaker basically.

4 Q. But they told you that, in their

5 judgment, what you were doing was wrong.

6 A. And I stopped.

7 Q. And they told you that what

8 Teitelbaum was doing was wrong in talking

9 to you about this; is that correct?

10 A. Yes, correct.

11 Q. If you felt that you were not

12 doing anything wrong, what answer, what

13 explanation did you give them?

14 A. They didn't ask for an

15 explanation, they knew what had happened.

16 Q. And you accepted their

17 admonition not to have any further

18 conversation with Teitelbaum?

19 A. I did.

20 Again, I want to remind you that

21 all conversations were not initiated by

22 me. Both Lloyd and Peter initiated

23 conversations with me on this.

24 Q. So they came to you and said,

25 don't talk to me any more?

1 R. Hermann

2 A. No, that's before they came to
3 me.

4 Sometime in September, I think
5 in mid September or something or early
6 September, I don't recall, Lloyd said this
7 to me, that I should not having, you know,
8 any involvement in this issue.

9 Q. But specifically to stop having
10 any conversations with Teitelbaum;
11 correct?

12 A. No. I don't think they told me
13 to stop talking to Herb Teitelbaum. They
14 knew he was my lifelong friend. Basically
15 they said you shouldn't have any more role
16 in this. Stay out of it.

17 Q. Did Constantine not specifically
18 direct you not to have any conversations
19 with Teitelbaum about the commission's
20 activities?

21 A. Yes.

22 Q. Specifically Teitelbaum?

23 A. Yes.

24 Q. And did he tell you that, if you
25 continue, he does not want to know about

1 R. Hermann

2 it?

3 A. Yes.

4 Q. Did he tell you that he and
5 Rifkin had discussed this and they thought
6 what you were doing was wrong?

7 A. Yes.

8 Q. And that they thought what
9 Teitelbaum was doing was wrong?

10 A. I don't recall specifically that
11 they said what Teitelbaum was doing was
12 wrong.

13 Q. If you felt you were doing the
14 right thing and not doing anything wrong,
15 what answer did you give them?

16 A. I didn't -- first of all, I only
17 spoke to Lloyd about it, I never spoke to
18 Richard Rifkin. Lloyd attributed this to
19 Richard Rifkin. I don't think I had a
20 specific response. If they had thought I
21 was doing something wrong all along, I
22 assume they wouldn't have listened to me
23 in the first place.

24 Q. Did you tell Teitelbaum, I don't
25 want to talk to you about this any more?

1 R. Hermann

2 A. No.

3 Q. Did you continue to have any
4 further conversations with Teitelbaum
5 about the activities of the commission?

6 A. No.

7 Q. So did you cease having
8 conversations with him about the
9 activities of the commission?

10 A. Yes.

11 Q. When did this take place, this
12 admonition not to --

13 A. I'm having a hard time placing
14 it. I would say around the beginning or
15 the middle of September, but I'm not sure
16 about that.

17 Q. Did it come as a result of you
18 calling Constantine on the telephone and
19 him telling you Bob, I don't want to hear
20 about this, stop, don't tell me about
21 this?

22 A. Yes.

23 Q. Was there something like that?

24 A. Something like that.

25 Q. So you reached out by telephone?

1 R. Hermann

2 A. I don't know who called whom, I
3 don't know whether it was by phone or in
4 person, but I definitely remember it.

5 Q. Do you remember calling him when
6 he was out of town?

7 A. Yes. He was always out of town.

8 Q. Well, what was it that was so
9 urgent for you to call him out of town to
10 call him about the commission?

11 A. What time are we talking about
12 here?

13 Q. The time you're talking about.

14 A. As I said, I don't know how or
15 when this conversation occurred, whether
16 in person, on the phone. If it was on the
17 phone, I don't know who initiated it.

18 Q. Did you ever call him while he
19 was out of town where he told you to stop
20 talking to Teitelbaum and not to tell him
21 about this, he doesn't want to hear about
22 it?

23 A. Again, I don't know in what
24 format the conversation was. I don't know
25 whether it happened when he was on the

1 R. Hermann
2 phone out of town. I don't know when it
3 happened. I know it did happen. I know
4 approximately when it did happen.

5 Q. Mr. Hermann, you're a man with a
6 very outstanding record of public service.
7 You have published articles on the law.
8 You have taught law.

9 You did not ask Constantine what
10 it was that you were doing that was wrong?

11 A. I don't know if the word "wrong"
12 was used.

13 Q. Improper?

14 A. He may have said he was
15 uncomfortable with it. I would have
16 thought that if Lloyd thought it was
17 wrong, he would have thought it was wrong
18 for the previous two months when it had
19 been going on, and I assume Peter Pope
20 would also have thought it was. I thought
21 the decision was based on not it being
22 wrong in that sense but that it was
23 something that made people uncomfortable
24 and they didn't want to go through with it
25 any more. Because whatever information I

1 R. Hermann
2 had was primarily from the two of them
3 and, as I say, I'm not deputized in this,
4 but I sort of worked out of the chamber
5 there to a certain extent and I was
6 certainly self-appointed in that way.

7 Q. Mr. Hermann, did they not regard
8 it as inappropriate because you were
9 revealing internal -- information
10 concerning internal investigations of the
11 commission?

12 MR. JONES: Are you asking
13 whether or not they said that to him
14 or are you asking him to interpret
15 their mind thought?

16 MR. FISCH: I'm asking him if he,
17 as a law professor, understood that
18 they were uncomfortable because they
19 felt or they told you that you were
20 revealing contents of internal
21 investigations.

22 A. No, they never said that and I
23 wasn't revealing the contents of internal
24 investigations. I didn't know the
25 contents of their internal investigations.

1 R. Hermann

2 Q. So whatever conversations you
3 had had during this period with
4 Constantine you ceased after that
5 conversation?

6 A. To the best of my recollection,
7 yes, until a subsequent conversation in or
8 about -- on or about November 1.

9 Q. Now, even though you were not a
10 member of the executive chamber, you had
11 an office there and you used it every
12 Friday so you could spend the weekends at
13 home; is that correct?

14 A. I didn't use it on Friday so I
15 could spend the weekends at home. I used
16 it on Friday because an essential part of
17 what I do and what our office does
18 involves contacts with the executive
19 chamber staff and that was the easiest
20 time to talk to them, to talk to the
21 governor, and they're all in one place.

22 Q. I didn't mean to suggest
23 anything improper, but you have family in
24 New York?

25 A. In Westchester, yes.

1 R. Hermann

2 Q. November 1, we understand you
3 were in Albany at the GORR office,
4 Governor's Office of Regulatory Reform, at
5 about 7:03 a.m. to 10:39 a.m.

6 Does that sound about right?

7 A. Which day?

8 Q. November 1.

9 Your office, the Governor's
10 Office of Regulatory Reform.

11 A. I don't know what time I was
12 there.

13 Q. You were there in the morning.

14 A. I believe I was there in the
15 morning, yes.

16 Q. And then you left, you drove on
17 the thruway?

18 A. Yes, I guess. I usually do.

19 Q. We have you entering the Albany
20 thruway at about 11:03 a.m., that was
21 plaza twenty-three, exiting 12:18 at
22 Woodbury toll and 1:05 p.m. Tappan Zee
23 Bridge.

24 Does that sound familiar to you?

25 A. Yes.

1 R. Hermann

2 Q. And that you entered the
3 governor's office at 2:33 p.m.?

4 A. I don't recall what time.

5 Q. 633 Third Avenue.

6 Now, prior to going to New York
7 on that day, you had arranged an
8 appointment with Mr. Constantine for 3:00
9 p.m.; is that correct?

10 A. I don't recall the time, but I
11 had arranged an appointment.

12 Q. Let me show you -- I think it
13 was originally scheduled for Albany I
14 think the previous day and then you had
15 correspondence with Constantine and made
16 it 3:00 the following day because of your
17 commitment to Albany on the thirty-first.

18 A. I haven't reviewed these
19 records, but it sounds generally correct.

20 Q. Take a look.

21 Does that ring a bell that the
22 appointment at 3:00 and the subject matter
23 of the appointment?

24 A. (Reviewing).

25 I remember talking to Lloyd

1 R. Hermann
2 about all of those issues listed on my
3 e-mail. I don't remember whether I talked
4 to him on that day about it.

5 Q. Prior to arriving --

6 A. In fact, I'm pretty sure I
7 didn't.

8 Q. Prior to arriving in New York,
9 did you receive a telephone call from
10 Herbert Teitelbaum?

11 A. I don't recall.

12 Q. 1:32 p.m.

13 A. I don't recall.

14 Q. Five-minute conversation.

15 A. I don't recall.

16 Herb and I spoke a lot.

17 Q. I'm talking specifically on
18 November 1.

19 A. No. I don't recall.

20 Q. Did you keep the appointment
21 with Constantine at 3:00 or did you get
22 him out of his meeting prior to that?

23 A. I don't recall whether it was
24 2:00 or 3:00. As far as I was concerned,
25 there was only one subject that I was

1 R. Hermann
2 there to talk to him about that day and it
3 wasn't one of those listed on my e-mail,
4 which probably referred to a much earlier
5 period when I was trying to get his
6 attention on something.

7 Q. Well, did you get him out of a
8 meeting he was in the middle of and tell
9 him it's important that I give you this
10 information?

11 A. I definitely told him, when we
12 met, that it was important that I give him
13 this information. I don't recall that I
14 took him out of a meeting because we had
15 scheduled a meeting.

16 Q. Did he ask you what's so
17 important that you took me out of a
18 meeting?

19 A. I don't think he did.

20 Q. What was your state of -- your
21 state at that time? Because he described
22 you as rather upset.

23 A. Well, I don't think I was upset.
24 I was certainly very concerned about the
25 information I was about to give him and

1 R. Hermann
2 what it meant and I felt it was very
3 important for him to get it.

4 Q. He said that he has seen you,
5 you're a brilliant lawyer who has argued
6 before the United States Supreme Court,
7 but when he saw you, he thought somebody
8 had died; that you were shaking, you were
9 sweating, you were scared.

10 Does that ring a bell?

11 A. No.

12 Q. Does that not ring a bell?

13 A. I don't shake or get scared a
14 lot. I certainly thought it was very
15 important and I did have a sense of
16 urgency about talking to him, but I would
17 not describe it as that way. I mean, he
18 didn't seem to treat what I was saying as
19 being as important as what I thought it
20 was, although subsequently he took action.

21 Q. And the urgency was because of
22 that telephone call at 1:32 p.m. from
23 Teitelbaum?

24 A. No, the urgency is what happened
25 two days earlier.

1 R. Hermann

2 Q. Earlier when?

3 A. The urgency of the meeting -- I
4 had set the meeting the previous day.

5 Q. In any event, what did you tell
6 him?

7 A. I told him that I had
8 information that I thought was important
9 with regard to the governor's
10 representation by counsel and that I had
11 come upon it from Herb. And what I said
12 to him was that it's my understanding that
13 the DA is looking into alleged
14 inconsistencies in Darren Dopp's
15 statements and that that means that,
16 although all of you now think this
17 investigation has ended which is where
18 they were, they thought the investigations
19 had all gone away, it meant that, in my
20 mind, it was simply being stalled, the
21 commission's investigation, by the fact
22 that they had a self-incrimination problem
23 with regard to calling additional
24 witnesses and that I thought it was very
25 important that the governor's legal team

1 R. Hermann
2 be conflict-free and that, if the lawyers
3 who were involved, namely David Nocenti
4 and Peter Pope, knew of this, they would
5 be the first not to want to be in a
6 conflicted situation. That's what I told
7 him, that I thought they needed to take
8 action so the governor's counsel didn't
9 have a conflict of interest because of the
10 fact that the DA had now taken an interest
11 in the alleged inconsistencies in the two
12 sworn statements that Darren Dopp had
13 made.

14 Q. When you testified before the
15 district attorney, you said, now, this
16 comes about at the time when the DA's
17 office here -- meaning Albany -- had
18 already said it wasn't going to be
19 pursuing the Dopp matter.

20 A. Correct.

21 Q. So this information was that the
22 DA now had decided it was going to pursue
23 the Dopp matter; right?

24 A. No, what I knew was that the DA
25 appeared to be interested in the alleged

1 R. Hermann
2 inconsistencies and I didn't know anything
3 about what the DA's intentions were. In
4 fact, all I knew was that everybody was
5 assuming at the time that Peter Pope had
6 told me he thought it was all over because
7 the commission was not proceeding to
8 calling the remaining witnesses it would
9 have to call, namely David Nocenti and the
10 governor. It seemed like it was all
11 winding down. My conclusion was that the
12 -- it wasn't winding down, it was stalled
13 until the DA decided what to do about
14 these two sworn statements that it had
15 discussed with the commission, apparently,
16 and that appeared to be inconsistent.

17 Q. Now, this statement before the
18 DA -- again, I want to read it again to
19 see if I have misinterpreted that -- and
20 the statement is, now, this comes about at
21 the time when the DA's office here had
22 already said it wasn't going to be
23 persuing the Dopp matter.

24 That did not mean that you just
25 learned that they are going forward with

1 R. Hermann

2 the Dopp matter?

3 A. No, I had no idea what they were
4 going to do. What I knew is that Herb
5 must have had a conversation with them.

6 Q. Did you tell Constantine that it
7 was important that you give him this
8 information?

9 A. That I tell Lloyd that it was
10 important that I give it to him?

11 Q. Yes.

12 A. Yes.

13 Q. Did you tell him that it was
14 important that he tell the governor?

15 A. I don't think I told him to tell
16 the governor.

17 Q. Did you say, tell Eliot?

18 A. No, I told him that I assumed he
19 was going to tell Eliot and I asked him,
20 if he did tell Eliot, to leave my name out
21 of it basically.

22 Q. What else did you tell him? Did
23 you tell him that the Integrity Commission
24 had made a preliminary determination that
25 Darren Dopp had either perjured himself or

1 R. Hermann
2 had falsely sworn, he testified
3 inconsistently with his statement to the
4 attorney general?
5 A. No, I told him that, from what I
6 knew, they must have made that
7 determination.
8 Q. That they what?
9 A. Must have made that
10 determination, not that I did.
11 Q. You didn't say that they had
12 made a determination?
13 A. No, I didn't know that they had.
14 I still don't know whether or not they
15 ever did.
16 Q. Did you tell him that there was
17 inconsistency during the sworn testimony
18 of Dopp before the Ethics Commission, the
19 Commission on Public Integrity, and the
20 sworn statement he gave Cuomo?
21 A. I believe that I told him that
22 they have concluded that there was an
23 inconsistency between the statement that
24 Darren Dopp had given to the attorney
25 general in the form of an affidavit and

1 R. Hermann
2 the statement that he made to the
3 commission or else why would the
4 commission be talking to him about them.
5 Those were his only two sworn statements.

6 Q. How did you know that?

7 A. It was all being reported
8 publicly, that he had made that statement
9 to the DA at the time.

10 Q. But did you tell him --

11 A. Excuse me, to the attorney
12 general, not to the district attorney.

13 Q. Did you tell him that the Ethics
14 Commission, the Public Integrity
15 Commission, the commission had
16 preliminarily determined that either
17 perjury or false statements was the -- had
18 been committed?

19 A. Can I have that again?

20 Q. Did you tell him that either the
21 Ethics Commission or Public Integrity
22 Commission had determined that Dopp's
23 statements constituted either perjury or
24 false steering?

25 A. No, I didn't tell him that the

1 R. Hermann
2 Ethic Commission had determined that
3 because I didn't know that.

4 Q. Did you tell him that the
5 commission has done a number of things
6 because of this?

7 A. A number of things because of?

8 Q. Did you tell him that they had
9 referred this to the DA because they felt
10 it was a criminal matter?

11 A. No, I said I believed that the
12 commission was in contact with the DA
13 about alleged inconsistencies of Dopp's
14 statements.

15 Q. How did you know that?

16 A. I know that because I saw it on
17 Herb Teitelbaum's notes.

18 Q. We'll get to that.

19 Did you say that they were so
20 concerned about the sensitivity of the
21 matter that they had formed a special
22 committee to deal with this?

23 A. No.

24 Q. Did you tell him that they
25 recognized there was significant leaks out

1 R. Hermann
2 of the Integrity Commission?

3 A. Did I tell Peter Pope and Lloyd
4 Constantine --

5 Q. No, this conversation on
6 November 1 was with Constantine; correct?

7 A. You said them.

8 Q. Did you tell Constantine that
9 the commission was so concerned about the
10 sensitivity of the matter that they had
11 formed a special committee to deal with
12 this?

13 A. No.

14 Q. Did you tell Constantine that
15 they recognized there was significant
16 leaks out of the commission?

17 A. I think I said -- I may have
18 said that to Lloyd because I think I had a
19 number of conversations with Herb about
20 the chamber claims that you're leaking
21 and, you know, that at that time both the
22 chamber and the commission I think were
23 looking into the question of who's leaking
24 because it was perfectly obvious that
25 leaking was going on and it was my

1 R. Hermann
2 judgment that leaking was going on from
3 the commission.
4 Q. Did you mention the composition
5 of this special committee?
6 A. No.
7 Q. Did you mention that the
8 committee consisted of Feerick, Loretta
9 Lynch, Howard Levine, and a fourth
10 commissioner who had similar background
11 and experience and would be reliable?
12 A. I don't remember knowing that.
13 Q. Did you tell that to him?
14 A. No, I don't think I did.
15 Q. You don't think you did?
16 A. You have no recollection now, as
17 you ask me, of even knowing that ever.
18 Q. And that these four
19 commissioners plus Teitelbaum, they were
20 the only ones that knew about this
21 referral?
22 A. No. I knew that there was
23 concern on the commission about leaks, I
24 knew that. I can't tell you how you knew
25 it. I mean, if you read the newspaper

1 R. Hermann
2 stories, it was pretty obvious that --
3 Q. We checked the newspaper
4 stories. All of this information was not
5 in the newspaper stories by November 1.
6 A. What I'm saying is, if you read
7 the news that was being reported about the
8 commission, it was obvious that they had
9 sources that could only have come from
10 within the commission.
11 Q. Did you mention that they knew
12 one of the leakers was Commissioner
13 Gruenberg?
14 A. No, I didn't know who
15 Commissioner Gruenberg is. I don't think
16 I've ever --
17 Q. Did you tell Constantine that
18 the commission had identified Gruenberg as
19 one of the leakers?
20 A. No.
21 Q. And that they knew there was
22 another leaker on the commission?
23 A. No.
24 Q. How long did this conversation
25 with Constantine take on November 1?

1 R. Hermann

2 A. It's hard to say. Fifteen
3 minutes maybe.

4 Q. This was heavy stuff; wasn't it?

5 A. Yes.

6 Q. Urgent?

7 A. I thought it was.

8 Q. Something that you felt should
9 be brought to the attention of somebody in
10 the chamber quickly?

11 A. Yes, and I picked Lloyd because
12 obviously he didn't have a conflict.

13 Q. After you told Constantine not
14 to reveal you as the source and after
15 Constantine told you that he would have
16 to, if asked, reveal you as a source -- do
17 you remember that?

18 A. No. I asked him not to tell the
19 governor. I asked him to use the
20 information for the purpose of resolving
21 the conflict and I also asked him at the
22 beginning of our conversation did he
23 consider our discussion to be covered
24 within the executive deliberative
25 privilege and he said yes, he did.

1 R. Hermann

2 Q. You asked him not to reveal you
3 as the source, right, when he spoke to the
4 governor?

5 A. Yes.

6 Q. Did he tell you that, if the
7 governor asked, and he expected that he
8 would, he would tell him that you were the
9 source?

10 A. No, I think what he said was
11 that --

12 Q. I'm sorry?

13 A. I think what he said was he was
14 non-committal on that. I don't think he
15 said that he would reveal me as the
16 source.

17 Q. Did you contact Teitelbaum after
18 that and tell him about what you had
19 relayed to Constantine?

20 A. No.

21 Q. Now, you started telling me how
22 you learned all this information.

23 Why don't you tell me about
24 that.

25 A. Herb and I regularly had dinner

1 R. Hermann
2 generally at his apartment. One of the
3 two of us made dinner because we lived a
4 couple of hundred yards apart in the same
5 apartment complex. And when I walked into
6 -- generally speaking, when I went to his
7 apartment at that time, the door would be
8 open and I went in and Herb has a
9 one-bedroom or had, he doesn't live there
10 any more, a one-bedroom apartment and he
11 was on the cell phone, I think, in the
12 other room, in the bedroom.

13 And what would usually happen
14 was, before we had dinner, we would sit
15 there around the table that he has, have a
16 couple of drinks, and talk things, and
17 then made dinner. And he was on the phone
18 in the other room. I came and sat down, I
19 got a drink. And I went over to the table
20 where the snacks were and on the table was
21 a yellow pad with his handwriting on it.
22 And I'm standing over it like this and I
23 look down and I read something to the
24 effect of -- I can't tell you the exact
25 words -- that the DA is interested in

1 R. Hermann

2 alleged --

3 Q. The DA?

4 A. The DA is interested in alleged
5 inconsistencies in Dopp's statement.

6 Q. That was the sentence?

7 A. It probably wasn't the sentence.

8 The word that struck me was

9 "inconsistencies," that's the one that I
10 remember best, that it said interested in
11 inconsistencies in Dopp's statements. And
12 it was written in Herb's big scrawling
13 handwriting kind of diagonally across the
14 page. I sat down again and waited for him
15 to come out. It was open there, it was
16 exposed, I was standing above it, and he's
17 in the other room and he comes out. And
18 he says something to the effect of -- or I
19 said something to the effect of is
20 everything okay. And he seemed kind of
21 agitated or distressed --

22 Q. I'm sorry, you said what?

23 A. Is everything okay, because he
24 looked concerned when he came out. He
25 didn't want to talk about it, whatever it

1 R. Hermann
2 was he was talking on the phone about. I
3 don't know if he was talking business
4 because he customarily talked to John
5 Feerick at night or it was personal or
6 whatever it was, but he didn't look like
7 he was in a very happy frame of mind.

8 We continued to go along and at
9 some point we had dinner. I said to him
10 something to the effect of, which I had
11 said previously, is this thing ever going
12 to end, is this investigation, is this
13 whole matter ever going to end or are we
14 going to essentially have to live under
15 this cloud forever. This was at the
16 beginning phases of it. And he said
17 something to the effect of that they had
18 run into a roadblock but he couldn't
19 discuss it. That's all we had.

20 Q. That was the whole October 31 --

21 A. It was either the thirtieth or
22 the thirty-first. I believe it was the
23 thirtieth but it could have been the
24 thirty-first.

25 Q. I think you said it was the

1 R. Hermann
2 night before you came to New York and met
3 with Constantine.
4 A. I'm not sure. I believe it took
5 me a day to set up the appointment with
6 Lloyd. I don't remember whether it was
7 the next day or the day after. It was
8 either the thirtieth or the thirty-first.
9 Q. The thirty-first was Halloween.
10 I thought you said that in your prior
11 testimony.
12 A. It was.
13 Q. The only thing that was on the
14 yellow pad was -- could you repeat that
15 again.
16 A. The words I remember best are
17 "DA interested in inconsistencies,"
18 meaning the DA was interested in the
19 inconsistencies in Dopp's statements.
20 Q. And that was on the yellow pad?
21 A. Meaning that Herb had a call
22 with them, with the DA's office.
23 Q. Was that the only thing written
24 on the yellow pad?
25 A. That was scrawled across

1 R. Hermann

2 diagonally. That's the only thing I

3 remember seeing.

4 Q. This was on the cocktail table?

5 A. Yes.

6 Q. Together with the wine and the

7 glasses?

8 A. Well, I don't know if it was

9 wine. I don't remember what we drank.

10 But we always put a snack there on the

11 table.

12 Q. Was there a bowl or plate of

13 goodies for kids coming on Halloween

14 night?

15 A. I don't know that they allowed

16 trick-or-treating there. There are no

17 kids in the complex and I don't think they

18 allowed trick-or-treating there. I've

19 been there for exactly one Halloween, but

20 I don't recall seeing any kids there.

21 Q. As a good guest, did he have

22 cheese and crackers, too, on the cocktail

23 table?

24 A. Well, it was more likely hummus,

25 but we could have had something like that.

1 R. Hermann

2 Q. You had prearranged for you to
3 come to him for dinner?

4 A. Yes. What we usually did was we
5 would say let's try to have dinner on
6 Tuesday, I'll talk to you at the end of
7 the day, because his schedule was
8 unpredictable and mine was unpredictable,
9 so if it worked out, we would call at the
10 end of the day and see if that was going
11 to work.

12 Q. Do you remember what time you
13 arrived?

14 A. No. It would have been roughly
15 7:00. I don't know.

16 Q. Do you know how long you stayed?

17 A. Generally a couple of hours. I
18 don't remember specifically that night how
19 long I stayed.

20 Q. It seems that you were in your
21 GORR office until about 5:46 p.m. because
22 there were some calls at 5:30.

23 Does leaving at 5:46 sound about
24 right to you?

25 A. I have no recollection of that.

1 R. Hermann

2 Q. Did you go home to your own
3 apartment before going to him?

4 A. Yes, I would usually go to my
5 apartment, change, and then go over to
6 his.

7 Q. You said that he received a few
8 telephone calls while you were there?

9 A. I don't know if it was received
10 or made, but he was on the phone when I
11 came in.

12 Q. He had a telephone call from his
13 wife from 6:32 to 6:52.

14 Were you in the apartment at
15 that time?

16 A. I don't know, I might have been.

17 Q. He called someone in Washington,
18 D.C. from 7:11 p.m. to 7:43 p.m.

19 Were you in the apartment at
20 that time?

21 A. I probably was in the apartment
22 for the second one. I don't know.

23 Again, I don't know what time I
24 got to his house.

25 Q. How many times have you been to

1 R. Hermann

2 his apartment?

3 A. Well, fifteen, twenty times. I
4 don't know.

5 Q. This was the first time you ever
6 saw a yellow pad on his cocktail table?

7 A. I can't say that. I don't know.
8 It might have been the first time I ever
9 paid any attention to a yellow pad. I
10 don't think it was something that he
11 customarily did, left out yellow pads, but
12 I can't say it's the only time it ever
13 happened.

14 Q. You wear glasses.
15 You saw the yellow pad on his
16 cocktail table?

17 A. Uh-huh.

18 Q. Did you lean over and read it?

19 A. It was on the same table as the
20 appetizers were. So I leaned over, I'm
21 looking at them, and I'm looking at the
22 yellow pad, too.

23 Q. One sheet on which there was
24 writing?

25 A. It was a pad that was flipped

1 R. Hermann
2 over and there was one exposed page.
3 That's what I saw. I didn't see any other
4 pages; I didn't look at any other pages.

5 Q. Now, the information that you
6 related to Constantine the following day,
7 November 1, or two days later, was
8 information based upon what you had seen
9 on the pad?

10 A. And based on Herb's remark about
11 the roadblock which he probably thought
12 was inconsequential because I wouldn't
13 know what it meant. Yes, it was based on
14 two of them.

15 Q. Was the yellow pad regular size,
16 legal size, lined, unlined?

17 A. I believe it was yellow pad. I
18 don't know whether it was legal or
19 regular. I assume it was lined but I
20 don't recall.

21 Q. Did it have the district
22 attorney's name on it?

23 A. No, not that I recall.

24 Q. Did it have the names of any of
25 the members of the Commission on

1 R. Hermann
2 Integrity, Feerick?
3 A. Not that I recall.
4 Q. You said the only thing that you
5 saw was that reference to the DA.
6 A. Yes. As far as I know, that's
7 all I recall seeing, just that one thing
8 scrawled across the page.
9 Q. Feerick's name?
10 A. No.
11 Q. Levine's name?
12 A. No.
13 Q. Lynch's name?
14 A. No.
15 Q. You're saying it did not have it
16 on there?
17 A. I have no recollection of seeing
18 that. I don't think I did see that.
19 Q. Did it have any reference to
20 leaks by the Commission on Integrity?
21 A. No.
22 Q. Did the name Gruenberg appear on
23 that?
24 A. No.
25 Q. Now, when Teitelbaum came in

1 R. Hermann
2 after -- I think you testified before the
3 DA that he was in another room on the
4 phone and then he came in and then he put
5 this away or you put this away?

6 A. He picked up the notes and put
7 them away. I don't know where away was.

8 Q. Now, you said this was heavy
9 stuff; correct?

10 A. Yes.

11 Q. Why didn't you call Constantine
12 that night?

13 A. I don't recall why I called that
14 night. I thought I called him the next
15 day.

16 Q. You called him the next day?

17 A. I thought I did. Lloyd and I
18 spoke about a lot of things other than
19 this. But I spoke to him either that -- I
20 don't recall speaking to him that night.
21 I thought I spoke to him the next day.

22 Q. Then that would be November 1?

23 A. Yes.

24 MR. JONES: Or October 31.

25 A. Or October 31.

1 R. Hermann

2 Q. Well, we have your swipe card
3 arriving in New York on November 1, not on
4 October 1. We have you in Albany on
5 October 31.

6 A. I wasn't sure the events that I
7 described happened with Herb happened on
8 the thirty-first or the first.

9 Q. If it happened on the thirtieth,
10 why did you wait until November 1 before
11 you told Constantine? You said it was
12 very important.

13 A. One of the reasons I didn't say
14 anything more or ask any more questions is
15 I had to figure out what, if anything, I
16 was going to do about what I just had
17 heard and seen. And it took me a while to
18 figure this out. It took me a while to
19 figure out A, what it all meant and B,
20 what I was going to do about it, if
21 anything.

22 Q. When did you decide that you
23 were going to do something about it?

24 A. I decided the next morning that
25 I was going to do something.

1 R. Hermann

2 Q. Why didn't you call or e-mail
3 Constantine at that time?

4 A. I didn't know that I was going
5 to contact Lloyd or I didn't know who I
6 was going to contact. There were a lot of
7 things running around in my mind. I spent
8 the better part of a sleepless night
9 thinking about it.

10 Q. At 7:55 a.m. on November 1 you
11 e-mailed Constantine, "a few things before
12 we meet at a 3:00," and you listed the
13 four items on the agenda.

14 So at 7:55 a.m. there was
15 nothing urgent sufficiently in your mind
16 to say to Constantine and you made
17 reference to nothing other than the 3:00
18 meeting.

19 A. My recollection is that I called
20 Lloyd, I didn't send him an e-mail, at
21 some point that day saying that there was
22 something important that I needed to talk
23 to him about.

24 Lloyd was, in terms of anything
25 like that, was an undependable replier to

1 R. Hermann
2 e-mail. He was also an undependable
3 replier to phone calls. But the better
4 way of reaching him was trying to reach
5 his cell phone.

6 Q. Isn't it a fact that it was only
7 shortly before you spoke to Constantine on
8 November 1 that you received this
9 information and not on the yellow pad?

10 A. No.

11 Q. That's not true?

12 A. That's not true.

13 Q. Did there come a time about a
14 week later when Constantine spoke to you
15 again about this incident?

16 A. Yes.

17 Q. Was it in New York or Albany?

18 A. As I recall, he called me at
19 home, but I can be mistaken. I think he
20 called me at home.

21 Q. You were in New York on
22 November 6.

23 Do you recall talking to Mr.
24 Constantine about it on November 6 in New
25 York?

1 R. Hermann

2 A. I don't recall a specific
3 conversation on November 6. I recall
4 speaking to him about this matter
5 afterwards.

6 Q. Forgetting the date, sometime
7 after November 1 did you have a
8 conversation with him wherein he asked you
9 what was so important you not be revealed
10 as the source?

11 A. No, I don't think that was the
12 conversation because, as it turned out, he
13 had already revealed me as the source.

14 Q. He what?

15 A. He had already revealed me as
16 the source.

17 Q. I understand, I understand.

18 Did he not say what was -- in
19 words or substance, what was so important
20 that I not reveal you as the source, were
21 you worried about losing your friend
22 Teitelbaum?

23 A. I was worried about losing my
24 friend Teitelbaum. This was a tremendous
25 strain on our friendship and they were at

1 R. Hermann
2 -- he was investigating my boss and it was
3 a tremendous strain on our friendship.

4 Q. Did he tell you I've told --

5 A. But that wasn't why. I just
6 didn't want to be any more involved with
7 this toxic Troopergate thing than I had to
8 be.

9 Q. Did Mr. Constantine sometime,
10 perhaps a week or so later -- whether it's
11 in telephone, whether it's in person -- he
12 puts this in person -- where he told you I
13 told the governor about this and I told
14 him you were the source and you were very
15 upset about this, not mad but upset.

16 Do you recall that conversation?

17 A. No, I recall a different
18 conversation.

19 Q. Let's stay with this one before
20 you get to --

21 A. Well, I don't recognize that
22 conversation. Because by the time he
23 called me, I already knew that he had
24 already disclosed it.

25 Q. I'll try to help you.

1 R. Hermann

2 And he said, what do you expect,
3 Bob. I'm the governor's personal adviser.
4 You come to me with this information which
5 is information the governor needs to know
6 and I'm going to tell him and I'm going to
7 tell him you're the source. I'm not going
8 to play games about this. We're all
9 adults.

10 Do you remember any of that?

11 A. I don't remember that
12 conversation, but I said -- I recall him
13 saying at some point that he had to tell
14 the governor.

15 Q. I'm talking about this
16 conversation.

17 A. I don't recall that conversation
18 at all.

19 Q. Let me go on.

20 What's the problem for you. Is
21 this a problem because you're going to
22 lose a friend. Your friend should not
23 have been talking to you.

24 Do you remember any of this?

25 A. Yes, that I remember him saying,

1 R. Hermann
2 your friend should not have been talking
3 to you.
4 Q. And do you remember telling him,
5 I know Herb Teitelbaum. You know, I know
6 him really very well. I know what he's
7 capable of doing when he's backed into a
8 corner.
9 Do you remember that?
10 A. I don't remember those phrases.
11 I think what I said to Lloyd was, if
12 anybody questions anything that you've
13 done or that Herb's done or that I've
14 done, we're all sophisticated litigators,
15 we'll find a self-serving explanation for
16 whatever it is or an innocuous explanation
17 for whatever it is.
18 Q. And then Constantine said to
19 you, what is he capable of doing.
20 Do you remember that?
21 A. No. But I know that's what he
22 said.
23 Q. So you do remember him saying --
24 A. No, I don't. I know that
25 because Lloyd told me afterwards that he

1 R. Hermann

2 said that.

3 Q. And you said, he's capable of
4 doing anything to protect himself, to
5 defend himself.

6 Do you remember that?

7 A. No. I remember it in the way I
8 just told you.

9 Q. Let me go on.

10 And Constantine says, like what.
11 And you said, he's capable of claiming
12 that he didn't tell me any of this stuff.

13 A. No.

14 Q. You never had that conversation
15 with him?

16 A. No.

17 Q. That I, you know, came into
18 possession of it some other way. And then
19 he said, like what. And you said, like I
20 broke in his -- into his apartment and,
21 you know, saw it on his desk or, you know,
22 somehow came into the -- in other words,
23 he didn't tell it to me, I stole the
24 information.

25 Did you have a conversation

1 R. Hermann

2 along those lines?

3 A. I don't recall anything about
4 that.

5 Q. You never told --

6 A. Lloyd told me in July that he
7 had said this when questioned and I was
8 frankly dumbstruck that he said that.

9 Q. You were what?

10 A. Lloyd told me this past July, he
11 read it to me that this is information he
12 had given to the district attorney and I
13 was dumbstruck by it and I've searched my
14 memory. I have no recollection of such a
15 conversation.

16 Q. Do you deny saying that to
17 Constantine, under oath?

18 A. I deny having any recollection
19 of it. These conversations occurred a
20 long time ago but I don't remember ever
21 saying anything like that to him and I --

22 Q. By the way, I want you to know,
23 all the people from whom I've taken
24 testimony, nobody is happy with this.
25 Nobody is making a complaint about

1 R. Hermann
2 anybody. But people, as public officials,
3 feel they're obliged to testify
4 truthfully.

5 A. I understand.

6 Q. And he said this was a
7 conversation with you that he said he
8 would never, ever forget.

9 Let me repeat it again.

10 A. Toe meld that, too.

11 Q. Let me repeat it again. I'll
12 read you the whole thing and then you tell
13 me whether there's any part of it that
14 refreshes your recollection.

15 I've told the governor we're all
16 adults. Why is this a problem. Because
17 you're going to lose a friend. Your
18 friend shouldn't have been talking to you.
19 And then you said, "and I know Herb
20 Teitelbaum, I know him really well, I know
21 what he's capable of doing when he's
22 backed into a corner."

23 Constantine: "What is he capable
24 of doing.

25 "He's capable of doing anything

1 R. Hermann
2 to protect himself, to defend himself.
3 Constantine: "Like what.
4 You: "He's capable of claiming
5 that he didn't tell me any of this stuff,
6 that I, you know, came into possession of
7 it some other way.
8 Constantine: "Like what.
9 "Like I broke into his -- into
10 his apartment and, you know, saw it on his
11 desk or, you know, somehow came into it.
12 In other words, he didn't tell it to me, I
13 stole the information."
14 None of this refreshes your
15 recollection?
16 A. I can't say that none of that is
17 correct. It's conceivable that I said
18 some of that. I don't remember saying it
19 though at this point.
20 Q. Do you deny saying this?
21 A. I can't deny saying it. I have
22 no recollection of having said that.
23 The part that I, you know, that
24 sounds to me like it could be true, apart
25 from obviously that he told me he had

1 R. Hermann
2 spoken to the governor, is that it must
3 have come from somewhere, that part about
4 seeing it on this table or whatever it was
5 that you just read, that must have come
6 from someone. Maybe I said that.

7 Q. Maybe you did say?

8 A. Maybe I did because I don't know
9 where else he would have gotten it from.

10 Q. Do you know of any animosity
11 between the two of you?

12 A. Between Lloyd and me?

13 Q. Yes, or hostility or any reason
14 he would make up something.

15 A. Well, I think that I was, in
16 this dispute, a collateral damage in the
17 war between him and -- between Lloyd and
18 Herb. Lloyd was furious at Herb, thought
19 he was incompetent, and I think that --

20 Q. Do you think he'd go so far as
21 to make this up under oath?

22 A. No, I don't think he'd make this
23 up under oath. I'm not accusing him of
24 making things up.

25 Lloyd believes that he has a

1 R. Hermann

2 photographic memory.

3 Q. I've heard this from others.

4 A. And it is a form of vanity. And
5 I can tell you about meetings I've sat in
6 where two days later he completely
7 misremembered it and denied saying
8 something that I had heard him say to
9 another group of people. I think that
10 photographic memories are a form of vanity
11 and I think Lloyd is a believer in the
12 rightness of what he says. And one thing
13 that happened -- when Lloyd read me his
14 testimony, his interview that you're
15 reading from now, in July, the part that
16 jumped out at me was that he never
17 explained why it was that I had come to
18 him in the first place. His whole
19 interview ignores the fact that I came to
20 him about a conflict of interest problem
21 and, when I said that to him in July, he
22 said, oh, yeah. I said, why did you leave
23 that out. That was the whole point of
24 coming to see him. He said, oh, yeah.
25 That's a good example of nobody having a

1 R. Hermann

2 photographic memory.

3 Q. Mr. Hermann, let's assume that
4 your motives were altruistic and well
5 intended and so on.

6 The issue is not that. The
7 issue is why you did not want Constantine
8 to reveal you as a source.

9 A. Because I didn't want to get any
10 further involved in this.

11 Q. That's when, when he asked you
12 about that, according to him, sworn
13 testimony before me in New York County,
14 that you had that conversation with him,
15 that Teitelbaum was capable of saying he
16 did not tell this to me, that I saw it on
17 a desk in his office, which is your story
18 now.

19 A. Right, that's why I can't say
20 that I didn't say that. But I don't
21 recall saying that. And at the time --

22 Q. If you said that -- again, Mr.
23 Jones has been very patient with me, I
24 appreciate that -- for him being capable
25 of saying he did not tell that to me, is

1 R. Hermann
2 that not an affirmation that he did tell
3 you?

4 A. I'm sorry, I don't understand.

5 Q. For him to say, and you're
6 thinking that maybe you did say it, that
7 Teitelbaum is saying, when he's backed
8 into a corner, that he didn't tell me
9 this, that I came to it by seeing it on a
10 desk, isn't that an affirmation that he
11 did say it?

12 MR. JONES: Well, that's a
13 hypothetical.

14 A. I didn't understand the
15 question.

16 MR. FISCH: We'll let it go. I
17 provoked Mr. Jones by commenting on
18 his patience.

19 A. What I remember of that
20 conversation is my telling Lloyd that
21 people who are backed into a corner do
22 what they need to do to protect
23 themselves. I consider Herb Teitelbaum a
24 tough guy. I consider Lloyd a tough guy.
25 I consider Peter Pope a tough guy. They

1 R. Hermann
2 see things through their own prospective
3 and through their own eyes which is why I
4 got in the middle of this in the first
5 place because they couldn't see the forest
6 for the trees. All of them were banging
7 heads and determined to win and that's why
8 I got involved in this in order to try to
9 get them to remember what this was really
10 all about, that this wasn't a litigation
11 they had to win.

12 Q. Did there come a time sometime
13 thereafter where Constantine calls you up
14 and says, look, just tell me what
15 happened.

16 Do you remember that?

17 A. Yes, in July.

18 Q. What did you tell him? It was
19 not in July -- you mean July of this year?

20 A. Yes.

21 Q. What did you tell him?

22 A. I told him what I just told you.
23 I said that it had been based on the two
24 things that I just told you about and I
25 said, I was very careful not to tell you

1 R. Hermann
2 what the source of my information was and
3 you never asked me what it was. He was in
4 such a hurry to run out of the room that
5 he never probed me about this. All I
6 remember him saying was that Dopp was an
7 idiot. I distinctly recall him saying,
8 when I told him this, Dopp is an idiot,
9 meaning of course he testified
10 differently.

11 Q. Did you tell him that
12 Teitelbaum, in fact, told you about the
13 referral to the DA?

14 A. No, I did not tell him that. I
15 was very careful about what I said. I
16 thought about it a lot.

17 Q. Did you tell him that Teitelbaum
18 confirmed that this had gone to the DA?

19 A. No. All I told him was about
20 the roadblock and the -- well, Teitelbaum
21 had obviously gone to the DA.

22 Q. I'm talking about your
23 conversation with him.

24 MR. JONES: Which conversation
25 are we talking about?

1 R. Hermann

2 MR. FISCH: He said there was
3 another conversation.

4 MR. JONES: This July?

5 MR. FISCH: Which your client
6 mentioned was July of this year where
7 Constantine called him up and says,
8 tell me what happened.

9 Q. And it's his testimony that, in
10 this conversation, you confirmed that you
11 saw these notes and that Teitelbaum had
12 told you about the referral.

13 A. No, no, no. I said that
14 Teitelbaum had said they had run into a
15 roadblock and that's how I put the pieces
16 together, exactly as I told you.

17 Q. Do you know Richard Rifkin?

18 A. I do.

19 Q. Do you have any ill will,
20 animosity with Mr. Rifkin?

21 A. No.

22 Q. Do you know John Feerick?

23 A. Yes.

24 Q. Any animosity, ill will with
25 John Feerick?

1 R. Hermann

2 A. No.

3 Q. Did you have a conversation with
4 Richard Rifkin about the allegations that
5 Teitelbaum had leaked information to you?

6 A. Yes.

7 Q. Tell me about it.

8 A. I went to see Richard after I
9 learned that the chamber and the person
10 and Richard had spoken to the district
11 attorney a few days later to confirm
12 basically what I had said and that I had
13 been identified as the source and I went
14 to Richard to say why did you identify me
15 as the source. He didn't need to do that
16 basically.

17 Q. Did you talk to Rifkin in
18 connection with Teitelbaum, that
19 Teitelbaum was afraid he might lose his
20 job because of this?

21 A. That he was afraid?

22 Q. Did you say that to Rifkin, that
23 you did not want Rifkin to tell Feerick,
24 that Teitelbaum would tell Rifkin, that
25 would admit he was the source of the

1 R. Hermann

2 information?

3 A. I don't recall such a
4 conversation.

5 Q. Did you have any conversation
6 with Rifkin where you asked him not to
7 relay this information about Teitelbaum?

8 A. To?

9 Q. To Teitelbaum's boss, John
10 Feerick.

11 A. I may have, yes. It's a long
12 time ago. I don't recall. But something
13 about that sounds familiar.

14 Q. Did you tell him that Teitelbaum
15 -- that you and Teitelbaum had spoken and
16 he was very upset learning that you had
17 revealed him or identified him as the
18 source?

19 A. I probably did.

20 Q. You've had conversations with
21 Teitelbaum about this?

22 A. Yes.

23 Q. Many?

24 A. Well, I had conversations --
25 what's the this?

1 R. Hermann

2 MR. JONES: About Teitelbaum

3 being upset.

4 Q. About Teitelbaum being upset
5 about you revealing him as the source of
6 this information which set off a whole
7 series of events with the chamber people
8 telling the DA.

9 You're familiar with what
10 happened; aren't you?

11 A. Yes.

12 Q. They came to the DA, they said
13 we have information we should not have, we
14 didn't want it, we should not have it, it
15 came from you and you got it from
16 Teitelbaum, that's basically what they
17 told the DA?

18 A. That's what I understand they
19 told the DA.

20 Q. And then you and Teitelbaum
21 spoke about this because he was not
22 particularly happy when the DA confronted
23 him.

24 A. Right.

25 Q. Am I correct?

1 R. Hermann

2 A. Yes.

3 Q. Tell me about the conversations
4 between you and Teitelbaum.

5 A. Well, Herb Teitelbaum called me
6 after the -- can I take a break?

7 MR. FISCH: Sure.

8 (Whereupon a break was taken)

9 MR. FISCH: Can you please read
10 back the last Q and A.

11 (Whereupon the requested portion
12 was read back by the reporter)

13 A. Well, the first I had any idea
14 that there had been a contact with the
15 DA's office was when Herb called me
16 approximately a week after my conversation
17 with Lloyd and said -- he called me and I
18 was on my way to Schenectady with two or
19 three people from my office to meet with a
20 local economic development official, so
21 when I got the call in the car, we were
22 late to a meeting. I kept going back and
23 forth. The cell service was lousy and I
24 kept going back and forth, but I finally
25 connected with him that day. And I didn't

1 R. Hermann
2 want to -- we were already late for a
3 meeting and I kept jumping in and out of
4 the meeting because the cell -- it was in
5 an interior conference room. But finally
6 we connected.

7 And he said, you know, are you
8 the source of information that we were in
9 conversations in -- that we were talking
10 to the DA's office about inconsistencies
11 in Dopp's statements. Something to that
12 effect; I can't tell you exactly what he
13 said. Initially I denied it. I denied it
14 because it all came out of the blue to me.
15 If you want to know my reasons for doing
16 it, I'd be happy to tell you. But
17 initially I denied it.

18 Q. You told Teitelbaum that you
19 were not the source?

20 A. Right, he wanted to know whether
21 I was the source of information that lead
22 to this contact by the chamber to the DA's
23 office.

24 Q. He told you that people from the
25 chamber had revealed -- had said you were

1 R. Hermann
2 the source but you denied it to
3 Teitelbaum?

4 A. Yes. The DA's office must have
5 said it. I don't know whether the DA's
6 office told him that or the chamber told
7 him that. He asked the question
8 straightforward, was I the source of it.

9 Q. Did he ask you whether you had
10 any ideas as to who might have been the
11 source?

12 A. No.
13 Let me just say that I denied it
14 at first because at least two reasons.
15 Number one, because I wasn't sure I had
16 been the source because everybody was
17 leaking all over the place at that time
18 and I didn't know whether that meant that
19 I had been identified as the source or I
20 hadn't been or by whom and so I wasn't
21 sure I was. And secondly, because any of
22 it would have involved -- this is why I
23 went in to see Lloyd and asked him about
24 executive privilege because I assumed the
25 next thing would be about conversations

1 R. Hermann
2 that I couldn't tell him about. So
3 initially I denied it. And the third
4 thing was I was taken aback so my first
5 instinct was did he really want to know
6 this or not.

7 Q. To this day is that your
8 position with Teitelbaum, has that always
9 been your position with Teitelbaum?

10 A. No.

11 Q. Did there come a time when you
12 told him?

13 A. I can't tell you exactly what
14 the words were, but I thought that he
15 understood at that point and assumed at
16 that point that I was the source. And I
17 simply wasn't sure whether he really
18 wanted to know that information and
19 whether it was in his interest -- we had a
20 long conversation about this, we talked
21 about a lot of things, and I came away
22 from it thinking that he understood that I
23 was the source despite my denial.

24 Q. Was it prior to your
25 conversations with Rifkin that you had

1 R. Hermann
2 this conversation with Teitelbaum, were
3 you --

4 A. It must have been because that
5 was the first I knew of it.

6 Q. Well, we have your telephone
7 call to Rifkin which confirms his sworn
8 testimony and his notes that, on
9 November 8, you called him -- I'm sorry,
10 there was a call, and did you visit him as
11 well, Rifkin?

12 A. Yes.
13 What had happened in between
14 those events is, after I spoke to Herb, I
15 spoke to Lloyd and I was driving down on
16 the thruway I believe at the time -- I
17 can't tell you the exact sequence but I
18 remember being on the phone with Lloyd,
19 I'm driving down on the thruway that day
20 or the next day -- it must have been the
21 next day -- and I said, what happened.
22 You weren't supposed to reveal me as the
23 source of this information.

24 Q. You said that to?

25 A. To Lloyd.

1 R. Hermann

2 And he said, Rifkin did it.

3 That was a mistake. So obviously Lloyd
4 understood what our understanding was in
5 the first place and he said, I would not
6 have done that.

7 Q. So there came a time where you
8 met with Rifkin.

9 A. Yes.

10 Q. Did you tell Rifkin that
11 Teitelbaum was going to bring this to
12 Feerick's attention, that he feared for
13 his job and it was going to reveal that he
14 was the source?

15 A. I do not recall saying about
16 Herb fearing for his job. I think what
17 Herb said was he was going to bring this
18 to Feerick's attention. I probably told
19 that to Richard.

20 Q. Did you ask Rifkin that he not
21 tell Feerick but allow Teitelbaum to tell
22 Feerick?

23 A. I don't recall any such
24 conversation. But again, I should
25 emphasize that these were very stressful

1 R. Hermann

2 times --

3 Q. He being who?

4 A. I said these were stressful
5 times and I was having a lot of
6 conversations with a lot of people that I
7 reviewed in my mind that tends to compress
8 and again, this goes back quite a while.
9 I don't have any recollection of saying
10 that to Richard.

11 Q. Our information is you met with
12 him, told him don't tell Feerick,
13 Teitelbaum's going to tell Feerick, and
14 then you called at about 4:08 p.m. that
15 same day and told him that Teitelbaum had
16 agreed that he was going to reveal he was
17 the leak of the information?

18 A. No.

19 Q. You never called and told him
20 that Teitelbaum agreed that he was going
21 to tell Feerick?

22 A. That he was going to talk to
23 Feerick, he said.

24 Q. About what?

25 A. I don't know, that he was going

1 R. Hermann

2 to tell John Feerick what had happened,

3 not that he was a leak.

4 Q. That he was a source of the

5 information?

6 A. No.

7 Q. Well, Rifkin had received

8 information that Teitelbaum was the source

9 through you; correct?

10 A. Yes.

11 Q. Did you tell Rifkin let

12 Teitelbaum tell Feerick, don't you do it?

13 A. I don't recall saying that, but

14 I might have. I simply don't recall.

15 Q. And if you said that --

16 A. Yeah.

17 Q. -- does it ring a bell that you

18 later called to say that you discussed

19 this with Teitelbaum and that he agreed

20 that he was going to tell Feerick?

21 A. I don't recall the sequence of

22 phone calls. I think I did tell Richard

23 at one point that Herb was going to tell

24 John Feerick, but it was not my

25 understanding that he was going to tell

1 R. Hermann
2 John Feerick that he had told me anything
3 improper, he simply was going to tell him
4 what happened.

5 Q. Did anybody from the Feerick
6 commission -- John Feerick, Barry
7 Ginsberg, the counsel, any of the
8 commissioners -- ever talk to you about
9 the allegations that they had received
10 involving Teitelbaum?

11 A. No.

12 Q. The information that you saw on
13 the pad, did you regard that as
14 confidential information?

15 A. Well, I went out and did some
16 research before --

17 Q. I'm sorry?

18 A. I went out and did some research
19 before I acted under Section 97 of the
20 Executive Law. Because I said to myself
21 what is this here. There is not case law
22 as to what's confidential information for
23 the Public Integrity Commission and
24 there's no --

25 Q. Did you think that was

1 R. Hermann
2 information that you should have had?
3 A. No, I don't think it is
4 information I should have had, but I got
5 it inadvertently.
6 Q. Did you think it might prejudice
7 an investigation by revealing this to the
8 chamber?
9 A. No.
10 Q. Did you feel that, by telling
11 Constantine, you were betraying your
12 friend, Teitelbaum?
13 A. No.
14 Q. Even though you got the
15 information in his apartment?
16 A. I felt that, as a part of the
17 governor's administration, that I got this
18 information and that it affected not at
19 all any of the pending proceedings. All
20 it would affect was the issue of whether
21 the governor and the executive chamber
22 were represented by lawyers who did or
23 didn't have a conflict of interest. And
24 it was pretty clear to me that one had
25 developed and that's the only reason I

1 R. Hermann

2 spoke up. And that they were unaware of

3 it and that unfortunately I was aware of

4 it.

5 Can I elaborate a little bit on

6 that?

7 Q. Absolutely. Anything you wish

8 to add.

9 A. What I wish to add about that is

10 that the conflict of interest issue, as

11 someone who is a government lawyer,

12 weighed upon me. I tried to figure out

13 some other explanation for what this was

14 because I knew that this was fraught with

15 peril to do what I did. But here you have

16 two lawyers representing the governor who

17 I believe are honorable people and who,

18 because of the Dopp testimony, were now in

19 a position where they were potential

20 witnesses before the commission, likely

21 witnesses before the commission, that the

22 commission could not then call because

23 they would be setting themselves up in a

24 self-incrimination problem because they

25 can't refuse to testify before the

1 R. Hermann
2 Commission can't assume that, as you know,
3 that David Nocenti and Peter Pope had, you
4 know, are blame-free. They have to assume
5 that they can't call them because they
6 don't know what they're going to say. And
7 that was what the concern was. I mean,
8 the governor thought that they were nuts.
9 And I said they're not impugning his
10 integrity, Peter's or -- they're just
11 proceeding very cautiously. That's one of
12 the things I tried to get across to Lloyd
13 and Peter which is that these are not
14 incompetent people you're dealing with.
15 You're dealing with a commission of
16 distinguished lawyers and a lawyer whom
17 I've known for thirty-five years who's a
18 very good careful lawyer and that, you
19 know, this is a problem. This is
20 obviously why they're not proceeding, not
21 because they decided to drop the
22 investigation midstream, which is what
23 everybody thought at the time. I don't
24 know if you asked Peter Pope about that,
25 but he was walking around the executive

1 R. Hermann
2 chamber saying it's all over. And he had
3 a conflict and he went out and got himself
4 his own lawyer after this.

5 That was my motivation. And I
6 have to say, I don't think it was the
7 wrong motivation. I regret having gotten
8 involved in this at all, but that was my
9 motivation and it accomplished the
10 intended purpose, what I did.

11 Q. I want to get back briefly to
12 ask you about this, but I want to give you
13 another opportunity.

14 On November 1, on the way in
15 from Albany for a 3:00 meeting with
16 Constantine and before entering the
17 governor's office at 633 Third Avenue at
18 2:33, is it a fact you got a phone call
19 from Teitelbaum at 1:32 p.m.?

20 A. If that's what the records show,
21 then I did. I don't know.

22 Q. Do you recall it?

23 A. No, I don't recall.

24 Was it a lengthy phone call?

25 Q. Was it not that telephone

1 R. Hermann
2 conversation that provoked you to get
3 Constantine out of the meeting and to talk
4 to him?

5 A. Absolutely not. I had set up
6 the meeting in advance from Albany, told
7 him it was important. I wouldn't have
8 told him that I would come down and talk
9 to him about something urgent that turned
10 out to be the IOLA board and civil legal
11 services. That's important to me but it's
12 not something I would have told him was
13 urgent. I set this up the previous night.

14 Q. You have had very lengthy
15 telephone conversations with Constantine
16 over the years.

17 A. Not so lengthy. He doesn't talk
18 on the phone all that long.

19 We did a lot of business on
20 things other than this.

21 Q. Whatever.

22 But if this information on
23 October 31 or maybe even October 30 was so
24 vital, why didn't you call him either that
25 night? You've called him late at night.

1 R. Hermann
2 Why didn't you call him the next morning?
3 You've called him early in the morning?

4 MR. JONES: You've asked that
5 question several times, Judge.

6 MR. FISCH: I know. This is the
7 last time.

8 MR. JONES: I don't think his
9 answer is going to change.

10 A. I thought it was important to
11 see him in person. I can't tell you
12 exactly why, but I did.

13 MS. OSTERER: I believe you
14 testified that, when you first spoke
15 to Lloyd Constantine about this, you
16 prefaced it by asking whether the
17 conversation would fall within the
18 executive deliberative privilege.

19 THE WITNESS: Uh-huh.

20 MS. OSTERER: Was that the only
21 time you had asked him that question
22 in your dealings with him?

23 THE WITNESS: I think so, yeah.

24 MS. OSTERER: Was this the first
25 time that you had a conversation with

1 R. Hermann
2 him that you thought might fall within
3 the privilege?

4 THE WITNESS: Well, as you
5 probably know, the executive or the
6 deliberative privilege is something of
7 uncertain contours under state law.
8 And our office, because it operates as
9 an extension of the chamber, always
10 has taken the position that memos
11 going back and forth are within the
12 executive privilege. So I wanted to
13 be clear that that was his
14 understanding before we went ahead and
15 spoke so that, whatever he did, he
16 wouldn't have to -- whatever he chose
17 to do with the information, he
18 wouldn't have to attribute it to me.
19 He wouldn't have to explain where he
20 got it from because there was a
21 privilege over it. That was why. And
22 historically our offices have regarded
23 our communications as within the
24 deliberative privilege. I never
25 talked to Lloyd about it so I wanted

1 R. Hermann

2 to be sure he did.

3 MS. OSTERER: Did you ask him

4 that before you mentioned what the

5 topic of discussion was to be?

6 THE WITNESS: Yes.

7 MS. OSTERER: Did he inquire what

8 it was to be?

9 THE WITNESS: Not that I recall.

10 MS. OSTERER: Was he surprised by

11 the question?

12 THE WITNESS: No, I don't think.

13 As someone who's doing investigative

14 work, he didn't seem to be surprised.

15 He seemed to brush it off; yeah, sure,

16 something like that.

17 MS. OSTERER: Did you feel at a

18 later time that he had violated that

19 privilege?

20 THE WITNESS: Yes.

21 MS. OSTERER: Did you discuss

22 that with him?

23 THE WITNESS: No.

24 MS. OSTERER: I'd like to go back

25 to the evening which you say may have

1 R. Hermann
2 been October 30 or 31 when you went --

3 THE WITNESS: Let me say about
4 the attorney-client thing. Obviously
5 one party can choose to break it but
6 my understanding from the conversation
7 was that he wasn't going to do that.

8 MS. OSTERER: You just said
9 attorney-client.

10 Did you misspeak?

11 THE WITNESS: I misspoke, yes.

12 MS. OSTERER: Getting back to
13 your arrival at Mr. Teitelbaum's
14 apartment, you mentioned that the door
15 was opened?

16 THE WITNESS: He would leave it
17 ajar, not wide open. If he had gone
18 on the phone, rather than be
19 disturbed, he would have opened it.
20 He did that a few times.

21 MS. OSTERER: So when you entered
22 the apartment, he didn't know you were
23 present?

24 THE WITNESS: Yes, he knew I was
25 present. He might have waved or

1 R. Hermann

2 something.

3 MS. OSTERER: Where within the
4 apartment was he standing?

5 THE WITNESS: In his bedroom.

6 MS. OSTERER: From his bedroom he
7 could see the apartment door?

8 THE WITNESS: I think I probably
9 said hello when I came in so that's
10 how he knew I was there. I wouldn't
11 have just snuck into his apartment, I
12 would have said hi or something like
13 that. It's a small apartment.

14 MS. OSTERER: You mentioned, I
15 believe, early on you checked
16 something yesterday with respect to
17 the document production in the summer
18 of 2007.

19 THE WITNESS: I was looking to
20 confirm my sense of the public dispute
21 about documents and records and there
22 was an article in the New York Post on
23 September 4, 2007, again unnamed
24 sources, saying Spitzer is withholding
25 certain documents, it's being -- and

1 R. Hermann
2 they were records of personal phone
3 calls and Blackberry records and text
4 messages and it was one of a series of
5 -- I was trying to remember when did
6 this dispute end. It obviously didn't
7 end then. And the commission issued a
8 subpoena in mid September because it
9 certainly wasn't satisfied even at
10 that point that it had all the
11 documents. So it went on. The
12 document dispute went on for quite a
13 while. That's why I went to look,
14 just to confirm my sense of time, and
15 also confirm my sense that information
16 was leaking all over the place since
17 obviously this story was based on
18 leaks.

19 MS. OSTERER: Are you still on
20 speaking terms with Mr. Teitelbaum?

21 THE WITNESS: Barely. Not
22 often. We talked about a lot of
23 things. It's a complex relationship,
24 I think, and obviously a much battered
25 relationship. We've talked about a

1 R. Hermann
2 lot of things since then. I remember
3 calling him afterwards to get my
4 vacuum cleaner back that I had lent
5 him. That took several phone calls.
6 We were working on regulations for
7 them. I remember calling him a couple
8 of times about investment advice
9 because the person I had put my
10 retirement money with was at his
11 suggestion. Herb is a very successful
12 investor. And I kept asking what are
13 you doing, is this the right thing.
14 And then it turned about that the firm
15 he was using was clearing through
16 Lehman Brothers and that concerned me
17 because Lehman Brothers was going down
18 and I didn't get an answer from him on
19 that.

20 MS. OSTERER: So you're speaking
21 to him currently?

22 THE WITNESS: No, I'm not
23 speaking to him currently but I've
24 tried a few times to talk to him. I
25 would like to hold out some prospect

1 R. Hermann
2 of having -- I've tried to sort of
3 normalize things even within the
4 difficulty of having this friendship.
5 But I don't speak to him very often.

6 I texted him once about an event
7 honoring his wife who's retiring as
8 the founder and president of the Lower
9 East Side Tenement Museum and she's
10 being honored on her retirement and I
11 basically said I got an invitation,
12 can I go, and he never answered me.
13 There were a series of things like
14 that where we spoke -- where I tried
15 to speak, almost always initiated by
16 me, occasionally he may have called
17 me. No, the relationship is pretty
18 battered at this point.

19 Q. I just want to go back briefly.

20 There came a time when
21 Constantine said we don't think it's
22 proper for you to have any further
23 conversations with Teitelbaum and you
24 ceased having conversations with
25 Teitelbaum; correct?

1 R. Hermann

2 A. Yes. Not entirely, obviously.

3 Q. But in connection with COPI, in
4 connection with the investigations and the
5 commission?

6 A. Yes.

7 Q. So whatever information you
8 conveyed to Constantine on November 1 was
9 based upon that line you saw on the yellow
10 pad?

11 A. And Herb's reference to a
12 roadblock.

13 Q. I'm sorry?

14 A. As Herb saying, when he came
15 back in and when I asked him isn't this
16 thing going to ever end, he said, we've
17 run into a roadblock but I can't discuss
18 it.

19 Q. I think you said that
20 conversation took fifteen minutes.

21 A. My conversation with Lloyd?

22 Q. November 1, yes.

23 A. Oh, you're asking me my
24 conversation with Lloyd?

25 Q. Yes.

1 R. Hermann

2 A. So I'm misunderstanding.

3 Q. If all you had to tell him was
4 about when will this ever end, we've got a
5 roadblock --

6 A. I didn't discuss that with
7 Lloyd. I thought you were asking what I
8 discussed with Herb.

9 Q. How long was your conversation
10 on November 1 with Constantine?

11 A. About fifteen minutes. Maybe
12 ten minutes. He was impatient.

13 Q. But all you saw was a line about
14 the DA may be pursuing this and Herb said
15 they had a roadblock and that took fifteen
16 minutes?

17 A. Well, I'm sure we discussed
18 other things, too, in connection with
19 those. I treated it as a pretty weighty
20 matter, as I said, in taking it to him and
21 I said something like, I know you're going
22 to have to do something with this but
23 don't get me involved. It could have been
24 ten minutes, it could have been seven
25 minutes.

1 R. Hermann

2 Q. Once again, it did not include
3 composition or formation of a
4 subcommittee?

5 A. No.

6 Q. And the name of Feerick and the
7 fact that there were leaks and the fact
8 that Gruenberg was one of the leakers?

9 A. I don't recall ever knowing who
10 Gruenberg is until you just told me.

11 Q. I'm not saying that he was a
12 leaker. I'm saying that the commission
13 believed him to be a leaker.

14 A. You never had that conversation
15 on November 1?

16 A. No, I did not have that
17 conversation, as far as I can recall, on
18 November 1. I may have heard afterwards,
19 after that conversation, that both sides
20 were trying to stop the leaks and that we
21 were trying to control these things, but I
22 don't know what they did to do that.

23 Q. I'm interested only in the
24 conversation.

25 A. No. As best as I recall, no.

1 R. Hermann

2 Q. Mr. Hermann, anything else you
3 wish to add?

4 A. Give me two seconds to talk
5 to --

6 MR. FISCH: Sure.
7 (Whereupon a break was taken)

8 Q. Anything you wish.

9 A. Just to reiterate one thing that
10 I've undoubtedly said but I really want
11 you to understand, which is this was very
12 stressful for me, this whole period, and
13 obviously still is. And I replayed lots
14 of conversations and events in my mind
15 getting together and that I think I have
16 clear recollections of some things, not so
17 clear recollections of other things
18 because there were so many conversations,
19 and that reviewing it over and over in
20 your mind tends to compress things
21 together. I can't segregate one
22 conversation from another; I've had lots
23 of ongoing conversations with people.

24 Unquestionably my memory of this
25 is altered by the fact that I obsessed and

1
2 stressed about this a great deal.

3 MR. FISCH: Clearly there's
4 certain things that standing out in
5 our mind, that people remember certain
6 events, and also certain language.
7 The record will speak for itself.

8 (TIME NOTED: 12:59 p.m.)

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CERTIFICATION BY REPORTER

3

4

I, Wayne Hock, a Notary Public of the

5

State of New York, do hereby certify:

6

That the testimony in the within

7

proceeding was held before me at the

8

aforesaid time and place;

9

That said witness was duly sworn

10

before the commencement of the testimony,

11

and that the testimony was taken

12

stenographically by me, then transcribed

13

under my supervision, and that the within

14

transcript is a true record of the

15

testimony of said witness.

16

I further certify that I am not

17

related to any of the parties to this

18

action by blood or marriage, that I am not

19

interested directly or indirectly in the

20

matter in controversy, nor am I in the

21

employ of any of the counsel.

22

IN WITNESS WHEREOF, I have hereunto

23

set my hand this day of

24

, 2008.

25
