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

-----X

February 6, 2009

12:45 P.M.

INTERVIEW UNDER OATH OF SEAN
PATRICK MALONEY, held at the Office of the
Inspector General, State of New York, 61
Broadway, New York, New York, before Denise
Rizek a Stenotype Reporter and Notary
Public within and for the State of New
York.

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

3

4 STATE OF NEW

5 OFFICE OF THE INSPECTOR GENERAL

6 61 Broadway

7 New York, New York 10006

8 BY: JOSEPH FISCH, INSPECTOR GENERAL

9 ARLENE S. OSTERER, ESQ.

10

11 BART M. SCHWARTZ, ESQ.

12 1185 Avenue of the Americas

13 New York, New York 10036-2603

14 By: BART M. SCHWARTZ, ESQ.

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1 SEAN PATRICK MALONEY
2 SEAN PATRICK MALONEY, having been
3 duly sworn by a Notary Public of
4 the State of New York, was
5 examined and testified as follows:

6 EXAMINATION BY

7 MR. FISCH:

8 Q. Please state your name
9 for the record.

10 A. Sean Patrick Maloney.

11 MR. FISCH: My name is
12 Joseph Fisch. I am the
13 inspector general of New York
14 State. We are conducting this
15 examination in my New York
16 office at 61 Broadway.

17 Present with me Arlene
18 Osterer, my counsel, and Sean
19 Maloney is here as witness.

20 And, counselor, would you note
21 your appearance.

22 MR. SCHWARTZ: Yes, Bart
23 Schwartz.

24 Q. Mr. Maloney, you are
25 appearing in response to a

1 SEAN PATRICK MALONEY

2 telephone call I made?

3 A. Yes.

4 Q. I appreciate that. And

5 you have no objection to your

6 examination being recorded?

7 A. None whatsoever.

8 Q. And you have already been

9 sworn in?

10 A. Yes, I have.

11 Q. As we advised you prior

12 to going on the record, we are

13 investigating the allegations that

14 the Executive Director of the

15 Commission of Public Integrity,

16 formerly called the Ethics

17 Commission, had inappropriately

18 disclosed confidential information

19 concerning the commission's

20 activities to Robert Hermann who

21 is a member of governor's staff.

22 You are familiar with that

23 investigation?

24 A. I am. I believe Robert

25 Herman was the head of the office

1 SEAN PATRICK MALONEY
2 of Government Office of Regulatory
3 Reform. He's not strictly
4 speaking a member of the
5 governor's staff, but a head of an
6 agency.

7 Q. Thank you. He's still in
8 that position, but I'm glad you
9 mentioned that. He was never
10 regarded part of the executive
11 chamber?

12 A. No.

13 Q. I want to zero into
14 certain areas we discussed before
15 we went on the record. During the
16 various Trooper-Gate
17 investigations involving the
18 governor and staff, you were one
19 of several people designated as
20 liaisons with the various
21 investigative agencies; is that
22 correct?

23 A. Yes.

24 Q. And the other members of
25 that group were who?

1 SEAN PATRICK MALONEY

2 A. David Nocenti, Peter
3 Pope, Lloyd Constantine and in the
4 course of the Ethics Commission
5 investigation, later the Public
6 Integrity investigation, Richard
7 Rifkin.

8 Q. Robert Hermann was never
9 designated as a liaison to deal
10 with any of the investigative
11 agencies, was he?

12 A. No.

13 Q. Did there come a time
14 during July of 2007 when Lloyd
15 Constantine related to you and
16 other members of this group
17 conversations he had had with
18 Robert Hermann?

19 A. Yes, though I don't
20 recall the specific date.

21 Q. Okay.

22 But it was early on?

23 A. Yes.

24 Q. All right.

25 A. And, Judge, if I may

1 SEAN PATRICK MALONEY

2 please...

3 Q. Please, feel free at any
4 time to expand a part of an
5 answer.

6 A. My recollection is that
7 the Ethics Commission did not
8 initiate its investigation until
9 July 26th or 27th. And so --

10 Q. Of?

11 A. 2007.

12 Q. Okay.

13 A. -- and so it seems to me
14 unlikely that it would have been
15 prior to August 1st that the
16 conversation you are referring to
17 occurred, but I don't know that
18 for a fact.

19 MR. FISCH: Off the
20 record.

21 (Whereupon, an off the
22 record discussion was held.)

23 Q. Mr. Maloney, by early
24 August of 2007 had Lloyd
25 Constantine told you about

1 SEAN PATRICK MALONEY

2 conversations he had had with

3 Robert Hermann?

4 A. Yes. He told me that he

5 had a conversation with Robert

6 Hermann.

7 Q. And did he tell you that

8 the conversation with Hermann

9 involved conversations that

10 Hermann advised Constantine he had

11 with Herbert Teitelbaum?

12 A. Yes.

13 Q. What do you recall

14 Constantine telling you about

15 those conversations?

16 A. I recall Lloyd telling me

17 that Hermann had relayed Herb

18 Teitelbaum's dissatisfaction with

19 the chamber and his interactions

20 with the chamber.

21 Q. Did this have to do with

22 the chamber's response to the

23 Ethics Commission investigation?

24 A. Yes.

25 Q. Did it have to do with

1 SEAN PATRICK MALONEY
2 the production of documents by the
3 chamber which Teitelbaum was
4 seeking?

5 A. Clearly.

6 Q. Was there any mention of
7 attorney/client privilege that
8 might have been considered or
9 discussed?

10 A. Well, I know from the
11 correspondence that that issue had
12 come up by this point and that we
13 were having a disagreement about
14 it. And so that would have been
15 implicit, though I don't recall
16 specifically him telling me about
17 that issue.

18 Q. So the dissatisfaction
19 with the production of documents
20 involved the possible assertion of
21 attorney/client privilege?

22 A. Yes, among other things.

23 Q. Among other things, what
24 other things?

25 A. Well, stepping away from

1 SEAN PATRICK MALONEY
2 the conversation with Constantine,
3 during the early phase of the
4 Ethics Commission's inquiry we
5 were surprised by the scope, the
6 date range, the call for, or the
7 unwillingness to discuss some
8 legitimate attorney/client
9 concerns that we thought any
10 lawyer would appreciate with
11 respect to certain documents
12 between, for example, the governor
13 and his counsel.

14 The scope of the request
15 we thought was far afield in some
16 instances from the matters that
17 the attorney general had looked
18 at. There were a number of issues
19 that surprised us initially about,
20 what I would describe as, an
21 extremely disorganized and
22 unfocused and what I considered
23 unprofessional initial set of
24 requests that were hard to
25 reconcile with what mission of the

1 SEAN PATRICK MALONEY
2 State Ethics Commission is and the
3 procedural posture they were at.
4 So there were a number of things
5 that came up initially where we
6 just had to disconnect with the
7 commission and so those issues
8 were implicit in my understanding
9 of Herb Teitelbaum's
10 dissatisfaction. But, please,
11 bear in mind, within twenty-four
12 hours of being contacted by the
13 Ethics Commission, we had provided
14 to them thousands of pages of
15 documents which we gathered in
16 response to the attorney general
17 and the inspector general's review
18 of it at that point.

19 And so that constellation
20 of issues was in my mind when
21 Lloyd informed me of what Hermann
22 had told him that he had learned
23 from Teitelbaum.

24 Q. Apart from the
25 disagreements between the Ethics

1 SEAN PATRICK MALONEY
2 Commission and the chamber what
3 was the reaction upon learning of
4 Robert Hermann's involvement in
5 this dispute?

6 A. I didn't like it.

7 Q. Because?

8 A. I thought it was in
9 improper.

10 Q. In what respect?

11 A. He had no business having
12 conversations of this nature
13 either with the Ethics Commission
14 or with a member of the governor's
15 staff. I thought it was unwise.

16 Q. Did you discuss this with
17 other members of your group
18 besides the conversations you
19 received from Constantine?

20 A. Yes.

21 Q. And what was the
22 reaction?

23 A. I would say my reaction
24 was the most forceful, but there
25 was unanimity that this was a

1 SEAN PATRICK MALONEY
2 stupid thing and it should stop.

3 Q. Was it also unanimity
4 this might constitute a violation
5 of the law for Teitelbaum to be
6 discussing these matters with
7 Robert Herman?

8 A. Yes. You know whether in
9 that first moment that was
10 foremost in my mind, I don't know.
11 I don't think I needed to read a
12 law book to know that it was
13 stupid and it shouldn't be
14 happening. But I certainly
15 subsequently came to view that it
16 was a violation of the law and
17 that it was highly improper. And
18 I felt that way, not out of any
19 concern for the people acting
20 improperly, I felt that way out of
21 a concern that it would be
22 misperceived as an attempt by the
23 chamber to do something wrong when
24 in fact it was not.

25 Q. Did you or any of your

1 SEAN PATRICK MALONEY
2 colleagues ever request Hermann's
3 assistance in dealing with Herbert
4 Teitelbaum?

5 A. No. I certainly didn't.
6 I don't know about anyone else,
7 but I'd be shocked.

8 Q. Were you and perhaps the
9 others aware that a relationship
10 of long standing had existed
11 between Teitelbaum and Hermann?

12 A. I think I subsequently
13 learned that they had a
14 professional or social connection.
15 They may have been partners at
16 Bryan Cave together or something
17 else, but I -- yes.

18 Q. Did you tell Constantine
19 that he should not be accepting
20 these communications or not having
21 these conversations with Hermann?

22 A. Yes.

23 Q. Okay.

24 Are you aware of others
25 within your group having advised

1 SEAN PATRICK MALONEY

2 Constantine along the same lines?

3 A. Yes, we all felt the same
4 way. And I should add, Lloyd felt
5 the same way.

6 Q. Okay.

7 A. We all recognized it was
8 something that was unsolicited,
9 that was unwise, and likely to be
10 misunderstood.

11 Q. And the conversation that
12 Constantine related to you was at
13 a period of time when there was
14 some dispute between the chamber
15 and the Ethics Commission
16 concerning the production of
17 documents?

18 A. Yes.

19 Q. Okay.

20 Was there anything that
21 you recall said about particular
22 witnesses, even though you may not
23 remember the names of witnesses,
24 but anything about the production
25 of witnesses from the chamber to

1 SEAN PATRICK MALONEY
2 appear before the commission?
3 A. I don't recall anything
4 specific about that.
5 Q. Okay.
6 Do you recall any other
7 conversations along these lines
8 with Constantine during this
9 period of time?
10 A. I think we might have had
11 a follow-up conversation that
12 retraced, you know, how we both
13 felt in the first conversation,
14 but nothing that was significantly
15 new or different.
16 Q. Did there come a time
17 early November, November 1st or
18 November 2nd, that Lloyd
19 Constantine told you of another
20 conversation with Herb?
21 A. Yes.
22 Q. Could you tell us about
23 that?
24 A. Sure. He told me that he
25 had learned from Hermann who had

1 SEAN PATRICK MALONEY
2 heard from Teitelbaum that what
3 was then called the Integrity
4 Commission would be making a
5 criminal referral to the district
6 attorney's office concerning
7 perjury by Daren Dopp and that
8 also somehow involved Peter Pope
9 and Dave Nocenti.

10 Q. What was your reaction
11 upon learning that?

12 A. I would say I had a twin
13 reaction. I was dumbfounded by
14 the substance. Meaning, I
15 couldn't imagine that there would
16 be a criminal referral relating
17 anything Daren Dopp had told the
18 Integrity Commission, particularly
19 since the DA had a month earlier,
20 a few weeks earlier, concluded an
21 investigation with a finding of no
22 criminal wrongdoing.

23 And my second reaction
24 was one of renewed concern that
25 this was an improper and unwise

1 SEAN PATRICK MALONEY
2 and unsolicited avenue of
3 communication. And I was
4 extremely uncomfortable that we
5 were now in possession of
6 information about a criminal
7 referral to a DA's office and that
8 the DA was at that moment
9 presumably unaware that we knew.
10 And so I was not happy about it.

11 Q. At the time of this
12 conversation do you fix the date
13 as November 2nd?

14 A. I recall it being a
15 Friday and, I think, that was
16 November 2nd. And I think it was
17 the morning after Lloyd had had
18 the conversation and I think I
19 recall him saying something like
20 he wanted to sleep on it. And
21 then I think it was early in the
22 day, you know, mid morning he
23 called us all together to talk
24 about it.

25 Q. I think you already said

1 SEAN PATRICK MALONEY
2 this, but just to expand on that,
3 by this time is it fair to say
4 that the chamber, and I'm being
5 very inclusive, felt that it was
6 over as far as the district
7 attorney was concerned?

8 A. Yes.

9 Q. Okay.

10 A. It was over. I mean he
11 had he concluded his investigation
12 and issued a report. I believe it
13 was on September 21st, I want to
14 say. So it wasn't our impression,
15 it was the DA had stated publicly
16 that he had concluded this
17 investigation and his findings
18 were his findings. And I regarded
19 his first report as, you know,
20 being what it obviously was, the
21 end of his participation in that
22 matter.

23 Q. What did you understand
24 that the Commission of Public
25 Integrity, formerly the Ethics

1 SEAN PATRICK MALONEY
2 Commission, had in fact, referred,
3 and I'm using referred in a
4 general way, to the district
5 attorney? What evidence or what
6 documents -- what had they given
7 the DA?

8 A. I don't know that I knew
9 much beyond what Lloyd had told us
10 that had it occurred.

11 Q. Did it involve sworn
12 testimony of Dopp before the
13 Ethics Commission?

14 A. Well, I believe I
15 understood that it involved a
16 perjury -- possible perjury
17 investigation or charge or
18 allegation and so I certainly
19 understood that it would relate to
20 sworn testimony. And I think I
21 may have known that it related to
22 the statement Dopp submitted to
23 the attorney general's office, but
24 I can't be sure about that.

25 Q. Is it fair to say that

1 SEAN PATRICK MALONEY
2 you and the other members of your
3 group, those who are the
4 designated liaisons with the
5 various investigative agencies,
6 would be the most informed of what
7 was going on within
8 investigations?

9 A. I'm sorry, would you
10 repeat that.

11 Q. In other words, five of
12 your were designated by the
13 chamber to deal with investigative
14 agencies and that the five of you
15 would be the ones most aware of
16 what was going on with the
17 agencies within the chamber?

18 A. Sure, that was the job.

19 Q. Okay, all right.

20 And that's why you were
21 all designated to deal with the
22 investigative agencies?

23 A. Of course. I mean, as
24 you know it's a lot of work to
25 comply with someone's request and

1 SEAN PATRICK MALONEY
2 to gather documents and to attempt
3 to get them everything they need
4 in a timely way. Sure, that's
5 what we were doing. And we
6 certainly knew as much as anybody
7 about what was going on.

8 Q. Did Constantine tell you
9 that Hermann requested that he,
10 Constantine, bring this to the
11 attention of then Governor
12 Spitzer?

13 A. That sounds right. That
14 sounds familiar to me. I don't
15 have a specific recollection of
16 it.

17 Q. Did Constantine tell you
18 that Hermann requested that he not
19 be identified as the source of the
20 this information?

21 A. Same answer.

22 Q. In other words, tell
23 Elliot or whatever, don't tell
24 anybody I'm the one who told you
25 this, something along those lines

1 SEAN PATRICK MALONEY
2 and obviously not, certainly not,
3 that language?

4 A. Again, I think I would
5 repeat the same answer. That
6 sounds right, but I don't have a
7 specific recollection of it.

8 Q. Did Constantine relate
9 anything else about the
10 conversation with Hermann about
11 matters in internal -- November
12 1st, November 2nd -- anything else
13 that involved internal operations
14 about the Ethics Commission?

15 A. Yes. He mentioned that
16 they had formed some sort of
17 subcommittee or group within the
18 Ethics Commission to deal, I
19 think, with this referral or else
20 with the entire investigation
21 because they had been leaking like
22 a siv. And we had complained
23 about it. And while denying that
24 they were the source of these
25 leaks, which were identified as

1 SEAN PATRICK MALONEY
2 Public Integrity sources in the
3 press, they nonetheless took steps
4 to contain the number of people
5 within the Ethics Commission, now
6 the Public Integrity Commission,
7 working on these things.

8 And I think I learned
9 that from Lloyd who had learned it
10 from Hermann, who had learned it
11 from Teitelbaum at that time.

12 Q. When you and others
13 complained to the commission about
14 leaks, was it complained to
15 Teitelbaum?

16 A. I think we complained to
17 Teitelbaum and I think we
18 complained to John Ferrick, who
19 was the chair of the commission.
20 We may have at one point
21 complained to the entire
22 commission.

23 Q. How did you do that, did
24 you meet with the commission?

25 A. No, just by -- in

1 SEAN PATRICK MALONEY
2 writing. I think we sent a letter
3 after each news story that was
4 sourced to the commission pointing
5 out that it highly improper for
6 anyone working for the commission
7 or serving on the commission to be
8 disclosing information about an
9 investigation to the press.

10 Q. Was it clear to all of
11 you that the information which had
12 been leaked came from the
13 commission as opposed to any other
14 source?

15 A. Well, it was sourced to
16 the commission explicitly in the
17 news stories, at least some of
18 them. So while -- you know, you
19 can drive yourself crazy trying to
20 figure out where a leak comes
21 from, but it was pretty clear to
22 us that the commission was
23 leaking.

24 Q. Did Ferrick and or
25 Teitelbaum or others in the

1 SEAN PATRICK MALONEY
2 commission ever deny that they had
3 a problem with leaks?

4 A. They denied that they
5 were leaking. I don't know that
6 they denied there was a problem.
7 And I think by their actions
8 conceded as much by forming this
9 subgroup -- I mean the -- you can
10 only have so many news stories
11 that say, you know, a commission
12 source revealed to the Post X, Y,
13 and Z before they know they have a
14 problem.

15 Q. Did anyone from the
16 commission, Ferrick, Teitelbaum,
17 anyone else, say that they were
18 going to deal with the problem
19 leaks?

20 A. I recall that in addition
21 to denying that they were the
22 source of the leaks, that they,
23 you know, as you would expect,
24 made some representations to us
25 that they were going to look into

1 SEAN PATRICK MALONEY

2 it.

3 Q. Did they ever tell you
4 how they intended to prevent leaks
5 in the future?

6 A. I don't know that they
7 told us specifically. I don't
8 recall.

9 Q. Did the composition of
10 the subgroup, subcommittee, was
11 that in response to leak problems?

12 A. I don't know.

13 Q. Did Hermann tell
14 Constantine that the subcommittee
15 was formed and composed of the
16 members of --

17 A. Yes, that sounds right.
18 I recall that. I recall that it
19 was certainly a part of why they
20 did it. I also recall being told
21 that it was done just so that
22 there was a group, a smaller
23 group, that could focus on this
24 intently because of the time and
25 energy it was inquiring. And I

1 SEAN PATRICK MALONEY
2 think we also learned the members
3 of group. I think he told him who
4 was on it. I don't, as I sit
5 here, recall. But I -- you know,
6 by that point we knew who was on
7 the commission and I remember
8 thinking to myself which one of
9 these people is talking to the
10 press.

11 So I think at that point
12 we were curious and I think --
13 well, let me back up. I think
14 Constantine learned from Hermann
15 something about who was on the
16 subgroup and I think I then
17 learned it from Lloyd. But I
18 can't be sure about that. It was
19 a vague recollection.

20 Q. You all knew --

21 A. I mean, honestly that was
22 not my primary focus at that
23 point.

24 Q. You all knew who the
25 thirteen members of the commission

1 SEAN PATRICK MALONEY

2 were?

3 A. Sure, it's public.

4 Q. Until this time did you
5 know what members served on what
6 subcommittees.

7 A. No.

8 Q. And you said that names
9 were mentioned of the
10 commissioners that were in that
11 subcommittees?

12 A. I think so.

13 Q. Do you remember any of
14 those names?

15 A. Again, I'm not sure. I
16 want to say Bob Giuffra maybe, but
17 I'm not sure.

18 Q. Howard Levine?

19 A. I don't recall.

20 Q. Loretta Lynch?

21 A. I don't recall.

22 Q. So even though you may
23 not recall now the names,
24 Constantine told you that Hermann
25 had given him the names of the

1 SEAN PATRICK MALONEY

2 subs?

3 A. I have a general
4 recollection that we had some
5 sense of who was in this subgroup
6 and that's how we learned about
7 it. But that's all I remember.

8 Q. This was an internal
9 commission matter, wasn't it?

10 A. Absolutely. And honestly
11 to that point I think our
12 assumption was that the staff
13 would deal with the investigation
14 and when it had concluded its work
15 it would then present it to the
16 commissioners. And that like most
17 entities of this kind, it's not
18 the commissioners who do the staff
19 work, it's the staff who does the
20 staff work. And so all of this
21 was unknown to us. We had really
22 only interacted with the executive
23 director, Herb Teitelbaum, and
24 members of his staff.

25 And on a limited number

1 SEAN PATRICK MALONEY
2 of occasions we had directed
3 correspondence or copied
4 correspondence to the chair of the
5 commission who we felt needed to
6 be informed of one thing or
7 another. Like for, for example,
8 on the leaks where we thought it
9 was a broader issue than just
10 something for the executive
11 director. But the internal
12 workings of the commission was not
13 something I understood.

14 Q. Was it your understanding
15 that the referral, and again I'm
16 using referral with the broadest
17 way because referral has a
18 particular meaning and definition
19 within the commission, the
20 referral to be formal has to have
21 the concurrence and approval of a
22 number of commissioners --

23 A. I knew that. I recall
24 that there was some -- that we
25 knew that it was unanimous that

1 SEAN PATRICK MALONEY

2 the subgroup had --

3 Q. Unanimous among the
4 subgroup?

5 A. Yes, that some group
6 within -- that there was -- I'm
7 trying to remember, but you just
8 jogged my memory. I remember
9 learning that whatever group was
10 charged internally with sending
11 this thing over to the DA that it
12 was more than just Herb Teitelbaum
13 and it was signed off by Ferrick
14 and that there was some group,
15 subgroup, that had also signed
16 this thing or participated or
17 ascended to it. And if I may, I
18 viewed that as just very confusing
19 because I, for the life of me,
20 could not understand what the heck
21 they were doing.

22 Q. At the time you received
23 this information from Constantine
24 were witnesses from the chamber
25 still being called by the

1 SEAN PATRICK MALONEY

2 commission?

3 A. Sure.

4 Q. Do you know whether --

5 A. We are talking about

6 November 1st?

7 Q. I'm sorry, November 1st,

8 November 2nd, yes.

9 A. Well, I think they

10 were -- they had -- as I said, I

11 think, they had adjourned a

12 scheduled appearance by the

13 governor which was very -- we

14 viewed. Logically that would be

15 the conclusion or very near the

16 end ever their work and I think we

17 understood that when they took the

18 governor's testimony there might

19 be some follow-up, obviously,

20 depending on what he said, but

21 that -- so, yes, they were still

22 seeing witnesses. But prior to

23 that point we assumed we were at

24 the end of their process.

25 Q. Did this referral to the

1 SEAN PATRICK MALONEY
2 DA affect the production or
3 appearance of any of the chamber
4 witnesses?

5 A. Sure.

6 Q. Tell us what you recall?

7 A. Well, I think they
8 suspended their work until the DA
9 decided what he was going to do or
10 at least, I think, that was our
11 understanding, that in that same
12 first conversation that
13 Constantine had learned that this
14 referral was the reason why they
15 had not taken the governor's
16 testimony. And it was the reason
17 why things had stopped and that
18 they weren't going to restart
19 until the DA had a chance to look
20 at it.

21 Q. Did Constantine say that
22 Hermann had said --

23 A. I think so, yeah.

24 Q. -- that because of this
25 referral the commission was not

1 SEAN PATRICK MALONEY

2 going to be calling other

3 witnesses yet?

4 A. I think everything

5 stopped.

6 Q. But my question --

7 A. And we were focused on

8 the governor. You know, it may

9 not surprise you that that

10 governor was eager to go in and

11 tell his story and was not happy

12 about the fact that his scheduled

13 date had been adjourned and we

14 didn't know why. And this

15 provided an explanation for why,

16 but it left open how long it would

17 take for him to be able to go in

18 and testify which he and others of

19 us thought was an important event

20 to get the thing over and done

21 with.

22 Q. So --

23 A. And I know that -- I'm

24 pretty certain that I learned that

25 in that first conversation with

1 SEAN PATRICK MALONEY

2 Lloyd.

3 Q. So prior to the
4 conversation with Constantine
5 about the referral to the DA, the
6 governor had been scheduled to
7 appear before the commission?

8 A. That's my recollection.

9 Q. Okay.

10 A. I want to say that
11 October 22nd was his date.

12 Q. Right.

13 A. And that had been put
14 off.

15 Q. And you were close to the
16 governor and the others were close
17 to the governor.

18 A. Sure.

19 Q. Was it your understanding
20 at this point that the adjournment
21 was not at the governor's request,
22 but at the commission's request?

23 A. Oh, absolutely. I
24 believe at that point we were
25 aware that they had postponed his

1 SEAN PATRICK MALONEY
2 appearance. We did not know why
3 and this conversation explained
4 the why.

5 Q. Did Hermann specifically
6 say this to Constantine, that's
7 why they're not --

8 A. I have no way of knowing
9 the answer to that question. But
10 I believe I learned it and that we
11 were putting these pieces to
12 together -- that is to say it
13 provided an explanation for
14 something we had not understood,
15 why did they delay the governor's
16 appearance. And that I learned
17 about in this November 2nd
18 conversation.

19 MR. SCHWARTZ: Off the
20 record.

21 (Whereupon, an off the
22 record discussion was held.)

23 Q. According to Constantine,
24 did Hermann say the referral to
25 the DA was the reason why the

1 SEAN PATRICK MALONEY
2 commission was not calling the
3 governor?

4 A. I'm sorry, would you
5 repeat the question.

6 Q. Yes. Prior to November
7 2nd, I believe, you testified you
8 knew the governor's appearance had
9 been delayed or postponed by the
10 commission, correct?

11 A. That's my recollection,
12 yeah.

13 Q. Okay.

14 Did Hermann tell
15 Constantine, according to what
16 Constantine told you and the
17 group, that that was the reason,
18 that meaning the referral to the
19 DA -- the referral to the DA was
20 the reason why the commission was
21 not ready to take the governor's
22 testimony or to interview the
23 governor?

24 A. Here's what I can telling
25 you --

1 SEAN PATRICK MALONEY

2 Q. Please.

3 A. -- I believe Lloyd having
4 learned this and related to us,
5 communicated to us, that this was
6 the reason that the governor's
7 testimony had been delayed.
8 Whether that was something he
9 deduced or whether it was
10 something he was explicitly told
11 by Hermann, I don't know. Nor do
12 I think we talked about it. I
13 think it made sense to us just as
14 practice matter, that, okay, this
15 is why they didn't want to take
16 the governor and this is what's
17 been going on for the last couple
18 of weeks and now we know.

19 And our focus, my focus,
20 was on what I considered a much
21 more serious issue which was
22 someone had given us information
23 we had not signed and I wanted to
24 know what our responsibilities
25 were and to execute on them

1 SEAN PATRICK MALONEY
2 immediately before someone else's
3 foolishness was laid at our door
4 step.

5 Q. I want you to expand on
6 that, but let me just briefly go
7 back. When Lloyd told you all
8 this is why the governor's
9 appearance has been postponed, was
10 that part of the conversation he
11 related from Hermann the day
12 before?

13 A. It was part of the
14 conversation in which he told us
15 what Hermann had told him.

16 Q. Okay.

17 A. And what Hermann had told
18 him that Teitelbaum had told
19 Hermann, yes, it was the same
20 conversation.

21 Q. And you said that your
22 primary focus at this point is, we
23 have this information, we
24 shouldn't have it, what do we do
25 with it.

1 SEAN PATRICK MALONEY

2 A. That's right.

3 Q. Okay.

4 And I know at some point
5 Hal Lieberman, counsel on ethics,
6 was retained --

7 A. Right.

8 Q. -- and you contacted the
9 district attorney. Tell me --

10 A. Sure, I'll tell you what
11 happened next.

12 Q. You take it in whatever
13 stages you feel is appropriate.

14 A. When Lloyd told us that
15 there had been a referral
16 involving testimony of Daren Dopp
17 and possible perjury and that it
18 somehow involved David Nocenti and
19 Peter Pope. All of us including
20 Peter Pope and David Nocenti
21 agreed that it would be better if
22 they left the room so that those
23 of us who were not named could
24 discuss what our responsibilities
25 were. When they had left I

1 SEAN PATRICK MALONEY
2 expressed my view that we should
3 immediately disclose to the
4 district attorney. That that was
5 the smartest, safest course.

6 I believe Richard and
7 Lloyd suggested that ethics
8 counsel would be a good idea to
9 help us pick through the legal
10 issues. I thought that that was a
11 good idea too as long as it could
12 be done fast. I think within a
13 matter of hours we had retained
14 Hal Lieberman, which I'm sure
15 involved leaving that room and
16 reconvening.

17 But by the end of that
18 day that Friday, within a matter
19 of hours Richard Rifkin and I
20 telephoned Dave Soares at his home
21 in Albany. We spoke to his wife
22 because the district attorney was
23 walking the dog. I believe she
24 asked us to call back in a few
25 minutes, which we did. We spoke

1 SEAN PATRICK MALONEY
2 to him. We told him what we knew.
3 And we sought his guidance about
4 what ought to happen next.

5 He suggested and we
6 agreed that we come in and see him
7 early the next week in Albany. I
8 think we had agreed to do it on
9 Monday and I think it was
10 subsequently moved to Tuesday or
11 Wednesday just for scheduling
12 reasons. And that's what
13 happened. And on that date, I
14 forget what it was, either the
15 Tuesday or Wednesday the following
16 week, Richard Rifkin, Hal
17 Lieberman, and I went down to the
18 district attorney's office and had
19 a meeting.

20 Q. With regard to the Friday
21 night post walking the dog
22 conversation, what did you tell
23 the DA? Was it you who spoke to
24 him or was it Rifkin --

25 A. We were all on the phone.

1 SEAN PATRICK MALONEY

2 Q. -- conference call?

3 A. I think Richard was in
4 Albany, I was in New York, and the
5 DA was at home. So we were all on
6 the telephone. And we had told
7 him that we had learned in an
8 unsolicited way that he had
9 received a referral from the
10 Public Integrity Commission, that
11 it involved Daren Dopp. That it
12 had something to do with Peter
13 Pope and David Nocenti. And that
14 we wanted him to know that we knew
15 and that we were prepared, as we
16 had in his initial investigation,
17 to cooperate in anyway we could.

18 He expressed his
19 appreciation for the phone call.
20 I believe he said something to the
21 effect that he had received very
22 good cooperation from the chamber
23 during his initial investigation
24 and he had no reason to suspect he
25 would not on this. And that was

1 SEAN PATRICK MALONEY
2 about it. It was a brief
3 conversation. We had agreed to
4 meet earlier the next week. I
5 think at that point we'd come down
6 and see him on Monday morning.

7 Q. Did he ask you or did you
8 volunteer how you had received the
9 information?

10 A. I don't think he asked
11 and I don't think we volunteered.
12 But we were prepared to disclose
13 it, though we thought that raised
14 ethical questions that were worth
15 considering, and that was why we
16 had retained Hal Lieberman and I
17 believe we satisfied ourselves by
18 the time we met with the DA that
19 we should disclose everything we
20 knew and everything, you know,
21 that had happened. You know, how
22 we -- you know, how we learned it,
23 which we did in that initial
24 meeting.

25 Q. You want to go off the

1 SEAN PATRICK MALONEY

2 record for a minute?

3 A. Sure, go off the record.

4 (Whereupon, an off the
5 record discussion was held.)

6 Q. We're going to put on the
7 record what you said you were all
8 considering in terms of
9 obligations and so on.

10 A. Right. What I would say
11 is that I thought there were a
12 number of interlocking difficult
13 ethical issues that needed to be
14 addressed. The first was what to
15 do with information that we had
16 received that we had not sought.
17 We agreed the answer to that
18 question was to disclose it
19 immediately to the DA. The next
20 question was whether we also had
21 an obligation to tell the DA how
22 we learned it. We concluded we
23 did and we disclosed it.

24 Knowing that the DA would
25 relay that to the Public Integrity

1 SEAN PATRICK MALONEY
2 Commission and it's executive
3 director or that they would learn
4 of it, to me raised a third
5 difficult ethical issue. Which
6 was, whether having disclosed an
7 improper conduct on the part of
8 the executive director, Herb
9 Teitelbaum, to the DA and our
10 disclosing it to the DA becoming
11 known to Herb Teitelbaum to me
12 created a conflict because now we
13 had essentially revealed
14 misconduct by a person who was
15 sitting in judgement of our
16 actions, the chamber's actions, in
17 the course of an ongoing
18 investigation.

19 Rifkin who, happily for
20 me, is one of the States leading
21 ethics experts together with Hal
22 Lieberman, counsel we retained for
23 this purpose to help us understand
24 these issues, we all agreed that
25 the commission needed to be

1 SEAN PATRICK MALONEY
2 apprised of what its executive
3 director had done. We reached a
4 compromise of sorts which I would
5 say was a professional courtesy as
6 much as anything -- where Richard
7 Rifkin called Herb Teitelbaum and
8 told Herb Teitelbaum that we
9 thought that the chair, John
10 Ferrick and the commission by
11 extension, should know what had
12 taken place, but that we were
13 comfortable if he wanted to
14 disclose it himself to the chair.
15 And that's where we left it.

16 And we learned
17 subsequently that -- well, I
18 learned from Richard Rifkin that
19 Herb Teitelbaum had told Richard
20 Rifkin that he had disclosed it to
21 the chair.

22 Q. Did you understand it was
23 Teitelbaum who spoke to Rifkin or
24 that it was Robert Hermann was had
25 spoken to Rifkin and said that

1 SEAN PATRICK MALONEY
2 Teitelbaum would disclose this to
3 Ferrick?

4 A. Oh, I don't know that
5 Hermann was involved in this.
6 That would be news to me. I think
7 at this point Rifkin, who had been
8 dealing with -- who was our point
9 of contact with the Public
10 Integrity Commission, I think --
11 my understanding was that Rifkin
12 called Teitelbaum and told him
13 that we had told the DA that
14 through Bob Hermann he had
15 revealed to us the existence of
16 the criminal referral. I recall
17 Rifkin relaying that Teitelbaum
18 was not very happy to learn that
19 we had done so. And I believe
20 either in the same conversation or
21 in one that followed closely
22 Rifkin informed him that we
23 thought this was an issue that
24 should be shared with the larger
25 commission or at least with the

1 SEAN PATRICK MALONEY
2 chair because it appeared to us
3 there was a potential for a
4 serious conflict.

5 MR. FISCH: Let's go off
6 the record for a minute.

7 (Whereupon, an off the
8 record discussion was held.)

9 Q. Was it your understanding
10 that you all agreed that Ferrick
11 should be made aware of what you
12 understood Teitelbaum had done by
13 way of disclosing this
14 information?

15 A. Yes. I thought that was
16 very important.

17 Q. And that Rifkin was going
18 to either communicate this
19 information directly to Ferrick or
20 was going be assured the
21 Teitelbaum would himself reveal
22 this information to Ferrick,
23 correct?

24 A. That's correct. I recall
25 Richard saying to me we'll let

1 SEAN PATRICK MALONEY

2 Herb tell Ferrick.

3 Q. Okay.

4 A. And I remember thinking
5 that's probably a good way to do
6 it as a professional courtesy
7 given that this would be a
8 difficult conversation internally
9 for the Public Integrity
10 Commission. I thought having done
11 so we were discharging our
12 responsibilities. In other words,
13 I thought Ferrick had a right to
14 know what his staff was doing
15 because he would want to have that
16 information as the chair of the
17 commission.

18 Q. Would any of you had been
19 satisfied with Teitelbaum going to
20 Ferrick and denying that he was
21 the source of this information
22 that Hermann had related?

23 A. Oh, absolutely not. I
24 mean, if I understand your
25 question, I think this is a

1 SEAN PATRICK MALONEY
2 hypothetical, but had I learned
3 that Teitelbaum had denied being
4 the source, I think we would have
5 gone directly to Ferrick to set
6 the record straight.

7 Q. Okay.

8 A. It would have concerned
9 me greatly for the same reason,
10 which is this person was sitting
11 in judgement of the governor of
12 New York and his staff and it
13 seemed to me he should be free of
14 conflicts.

15 Q. Did there ever come a
16 time when you advised that Hermann
17 had some explanation of his
18 receipt of this information in
19 some manner other than direct
20 communication from Teitelbaum?

21 A. I'm not sure I understand
22 your question.

23 Q. In other words, it was
24 your understanding Teitelbaum
25 tells Hermann about the referral

1 SEAN PATRICK MALONEY

2 and everything else and that's

3 what Hermann relates to

4 Constantine?

5 A. Sure.

6 Q. Okay.

7 Did you ever hear of any

8 other explanation of how Hermann

9 came into this, obviously, very

10 confidential information?

11 A. No.

12 Q. Other than directly from

13 Teitelbaum?

14 A. No.

15 Q. Did you ever hear an

16 explanation that he was in

17 Teitelbaum's apartment and saw

18 some notes on a yellow pad and

19 from this deduced all of the

20 information which he communicated

21 to Constantine?

22 A. No.

23 MR. SCHWARTZ: On more

24 than one occasion.

25 MR. FISCH: I'm sorry.

1 SEAN PATRICK MALONEY

2 MR. SCHWARTZ: On more
3 than one occasion.

4 A. No, absolutely not. I
5 never heard anything like that.

6 Q. What's your reaction to
7 an explanation along these lines,
8 Teitelbaum and I, we have
9 apartments in the same complex.
10 We have dinner together. I came
11 into his apartment one time and he
12 is in another room. I see a pad
13 with some notes on it and it
14 mentions Dopp, it mentions the DA,
15 and from that I deduced all of
16 this information which I then
17 communicated to Constantine.

18 A. I wouldn't want to
19 characterize it.

20 Q. You would not what?

21 A. I would not want to
22 characterize it. It's nothing
23 I've ever heard before. It's not
24 the explanation I understand or
25 what I learned to be. It's not

1 SEAN PATRICK MALONEY

2 what I learned from Lloyd

3 Constantine.

4 Q. Okay.

5 I want to get back a
6 little bit to the referral by the
7 commission to the DA of possible
8 perjury by Dopp and as it involved
9 Pope and Nocenti. Now, what was
10 the connection that you understood
11 that might have tied in Nocenti
12 and Pope with possible perjury by
13 Dopp?

14 A. Well, I'm not sure I
15 understand it. It didn't make
16 sense to me.

17 Q. Did it have to do with
18 their presence when Dopp executed
19 his affidavit for the attorney
20 general?

21 A. Well, I certainly
22 subsequently learned that that was
23 the focus of the referral and of
24 the DA's renewed investigation.
25 At that movement I knew it

1 SEAN PATRICK MALONEY
2 involved Daren's testimony and
3 issues of perjury. I thought it
4 was extremely strange that David
5 Nocenti or Peter Pope would be
6 linked up with that in anyway
7 since I had worked close with them
8 and knew them to be people of
9 extraordinary integrity and I
10 didn't understand it.

11 Q. I want to back track, you
12 just said at that time you
13 understood it involved Dopp's
14 testimony right, correct?

15 A. I believe.

16 Q. At the time of November
17 2nd --

18 A. My best recollection is
19 that when I first learned of the
20 referral from Lloyd, at that time
21 that it involved Daren and issues
22 of perjury which meant, yes, his
23 testimony.

24 Q. Before the commission?

25 A. I don't know that I knew.

1 SEAN PATRICK MALONEY
2 I think that I may have -- we may
3 have known or Lloyd may have told
4 us that it centered on the
5 statements submitted to the
6 attorney general's office. But I
7 think we were puzzled and unclear
8 about what Daren could have
9 possibly lied about.

10 Q. Okay.

11 Now, you said there came
12 a time when you understood this
13 had to do with an affidavit he
14 executed in the presence of
15 Nocenti and Pope.

16 A. Yes, it had to do with
17 the statements that he swore to
18 that were submitted to the
19 attorney general's office on July
20 22nd.

21 Q. Okay.

22 A. I'm sorry, excuse me,
23 statement. There was a statement
24 from Richard Baum as well, but it
25 was one statement from Daren Dopp.

1 SEAN PATRICK MALONEY

2 Q. There was an issue
3 whether it qualified as an
4 affidavit because of the jurats.
5 I believe, that was a legal issue.

6 A. There was a focus on
7 that, yes.

8 Q. Do you know when that
9 statement was executed by Dopp?

10 A. Yes.

11 Q. Tell us what you know
12 about that?

13 A. It was signed on the
14 evening of July 22, 2007.

15 Q. And was that a weekend?

16 A. Yes, it was a Sunday
17 night.

18 Q. And where did it take
19 place?

20 A. It took place in David
21 Nocenti's office in Albany.

22 Q. And who was present when
23 that statement was made?

24 A. When the statement was
25 made?

1 SEAN PATRICK MALONEY

2 Q. Yes, when the statement
3 was executed and signed by Dopp.

4 A. Well, certainly Daren and
5 his attorney were there. Well,
6 let me just say, let me preface
7 this by saying Daren and his
8 attorney came in to execute the
9 statement which they had revised
10 and finalized and approved. They
11 came into a meeting in David
12 Nocenti's office and David and
13 Peter and I were there. I was
14 working on other things at the
15 same time and left the meeting on
16 at least one occasion, maybe more
17 than one occasion. So if the
18 question you are asking is who was
19 actually in the room when he
20 signed the statement, I guess my
21 answer is I'm not really sure. I
22 don't know whether I was there or
23 not. I certainly could have been.
24 I don't have a clear recollection
25 of it, but I participated in the

1 SEAN PATRICK MALONEY
2 meeting in which it was executed
3 just to be clear.

4 Q. So at some point Dopp,
5 his attorney, Nocenti, Pope, and
6 you -- occasionally you left the
7 room?

8 A. That's right.

9 Q. Okay.

10 This was on a weekend.
11 Were any other people from the
12 chamber around at that time?

13 A. Yes, I believe Rich Baum
14 came in that night too for the
15 same purpose. I believe he was in
16 his office. I think I may have
17 gone and spoken to Rich while this
18 meeting was going on about
19 something else, you know, about
20 his statement. I remember Rich
21 being there, but Rich did not
22 participate in this meeting. I
23 think that it -- you know, it's
24 not uncommon to have people
25 working on the weekend in the

1 SEAN PATRICK MALONEY
2 governor's office, but no one else
3 participated in this meeting.

4 Q. Was Robert Hermann there?

5 A. No, not that I know of.

6 Q. By November 1st was it
7 well known who was present when
8 the statement was made?

9 A. Judge, I don't know if it
10 was well known. If by that you
11 mean it was publically reported, I
12 think the answer is, no, it was
13 not.

14 Q. Okay.

15 A. I think there was
16 subsequently a lot of attention
17 paid to that. But as of November
18 1st I don't think anybody knew
19 beyond those of us who were there.

20 Q. When you first learned --

21 A. Excuse me.

22 Q. Go ahead, please.

23 A. With the exception of
24 Lloyd Constantine who would have
25 been included in our conversation,

1 SEAN PATRICK MALONEY

2 but was not present at the
3 meeting.

4 Q. When you all discussed on
5 November 2nd the information which
6 Constantine had referred to you,
7 was there any discussion of
8 whether or not the governor should
9 be apprised of this?

10 A. I don't recall.

11 Q. Did you ever talk to the
12 governor about this?

13 A. Yes.

14 Q. Okay.

15 And in what period of
16 time and in what context?

17 A. It was sometime after
18 this. It was in the context of
19 doing something else with him.
20 And I think he asked me sort of
21 out of the blue, you know, what is
22 going on? What is this all about?
23 And I told him I didn't know and
24 that it was a mystery to me what
25 Daren could have lied about to the

1 SEAN PATRICK MALONEY
2 Public Integrity Commission or
3 what could have been untruthful in
4 his statement to the attorney
5 general. That It didn't make any
6 sense to me. It was a quick
7 conversation.

8 Q. During the conversation
9 with the governor did Robert
10 Hermann's name come up?

11 A. No, I don't think so.

12 Q. Did you get the
13 impression that this was the first
14 time he had heard about this?

15 A. You mean from me?

16 Q. Well, from you it was --

17 A. It was the first time he
18 and I talked about it. No, he was
19 aware of the referral. But this
20 was again some days later.

21 Q. Okay.

22 EXAMINATION CONDUCTED BY

23 MS. OSTERER:

24 Q. As of November 1, 2007
25 were Peter Pope and David Nocenti

1 SEAN PATRICK MALONEY
2 scheduled to be witnesses before
3 the Public Integrity Commission?
4 A. No -- excuse me, before
5 the Public Integrity Commission --
6 I'm sorry, I don't recall. I
7 don't recall. I think -- I
8 believe that date was the first
9 time we had any inkling that
10 someone would question our
11 actions. And more importantly,
12 David and Peter's as part of the
13 overall examination what was going
14 on of these events. Up until that
15 point we were focused on the
16 underlying Trooper-Gate conduct
17 that had nothing to do with the
18 lawyers in the chamber, except
19 that David and Peter had had some
20 incidental conversations with
21 Daren Dopp about whether use of
22 State aircraft for political
23 purposes was or was not permitted.
24 And I believe that at one
25 point they were called by the

1 SEAN PATRICK MALONEY
2 Integrity Commission on their
3 knowledge of the underlying
4 Trooper-Gate events. So as I sit
5 here, I can't remember whether on
6 November 1st the Public Integrity
7 Commission wanted to see them or
8 not. I just don't know. I don't
9 recall.

10 Q. Would you recall whether
11 any appearances by them had been
12 adjourned as the governor's
13 appearance had?

14 A. Again, that sounds right
15 to me. I just haven't gone back
16 and, you know, refreshed my
17 recollection that way. That
18 sounds right to me, but I don't
19 know. What I remember is that
20 Daren Dopp had had -- when he was
21 considering what to do with
22 information about Joe Bruno
23 (phonetic spelling) had gone and
24 talked to Dave Nocenti and had
25 gone to talk to Peter Pope.

1 SEAN PATRICK MALONEY
2 That's a matter of public record,
3 that's been looked at. There were
4 a couple of conversations he had
5 prior to July 2007 with them so
6 they had some underlying knowledge
7 about Trooper-Gate events.

8 Whereas I, for example, did not.

9 And so, you know, I don't know
10 whether they were scheduled to
11 testify at that point or whether
12 that came later.

13 Q. Also as November 1st was
14 there a sense among the executive
15 chamber attorneys working on this
16 matter that the commission's
17 investigation was over?

18 A. Sure. In a sense that
19 we -- I think we viewed the
20 governor's testimony as a very
21 end-stage event. So by mid
22 October we thought we were near
23 the end and we were waiting to
24 have the governor go in. I recall
25 that being adjourned, not knowing

1 SEAN PATRICK MALONEY

2 why it was. And then learning on
3 November 2nd that the whole thing
4 was going to be slowed down while
5 this referral was worked out by
6 the DA.

7 Q. Also as of November 1st
8 had you be aware of any article in
9 the New York Post that may have
10 made mention of a committee or
11 group within the commission?

12 A. I remember that story. I
13 don't remember when it came out.

14 Q. But as of the time Lloyd
15 Constantine related what he said
16 had been learned from Bob Hermann
17 that was when you learned of the
18 subcommittee working on this
19 matter?

20 A. That's my recollection
21 and I know it was reported in the
22 Post at some point. You know,
23 there's been some time since these
24 events to took place. And, you
25 know, it's my recollection that I

1 SEAN PATRICK MALONEY
2 learned about it in that meeting.
3 I could be confusing that, but
4 that's my recollection.

5 MR. SCHWARTZ: That's
6 your best recollection now?

7 THE WITNESS: Yeah.

8 Q. I'd like to turn your
9 attention back to the earlier time
10 period around August of 2007.
11 With respect to any documents that
12 may have been produced at that
13 time to the Public Integrity
14 Commission or any assertion of
15 attorney/client privilege. Do you
16 recall that haven't been reported in
17 the press?

18 A. As I sit here I really
19 don't know. So much was reported
20 in the press on these issues. I
21 just don't know what the exact
22 chronology was.

23 Q. Did you yourself ever
24 speak to Bob Hermann about the
25 Public Integrity Commission's

1 SEAN PATRICK MALONEY
2 investigation?
3 A. No.
4 Q. Is there anything
5 Mr. Maloney, you wish to add?
6 A. No.
7 MR. FISCH: Okay, I
8 appreciate you coming down.
9 Thank you.
10 MR. SCHWARTZ: Thank you.
11 Off the record.
12 (Whereupon, an off the
13 record discussion was held.)
14 EXAMINATION CONDUCTED BY
15 MR. FISCH:
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1 SEAN PATRICK MALONEY

2 Q. I just want to briefly go
3 back to a statement that was
4 executed in Albany in Nocenti's
5 office. The statement that was
6 made at that time was regarded as
7 something of confidential and
8 sensitive, was it not?

9 A. I'm sorry my attention
10 was directed elsewhere my.

11 Q. The fact that it was
12 being made and that Dopp was
13 making such a statement was not
14 well known, it was done on a
15 weekend, it was confidential
16 clearly.

17 A. Here's the way I would
18 put it, there was a report coming
19 out the next day and to what
20 extent Dopp and Baum testified
21 would be part of that report and
22 part of the attention paid to that
23 report. And it was our
24 understanding that the attorney
25 general had taken the statements

1 SEAN PATRICK MALONEY
2 and would either use them or not
3 use them, but that all of that
4 would become known the next day.

5 So the meeting was
6 clearly a sensitive meeting and
7 the statement was what it was. We
8 were not meeting on a weekend to
9 keep it quite. We were meeting on
10 a weekend because the attorney
11 general was ready to issue a
12 report the next day. And there
13 was no extra ordinary efforts made
14 to sort of keep those activities
15 in secrecy beyond it was a
16 sensitive issue involving the
17 conduct of a colleague. And he
18 was represented by counsel and we
19 were all, I think, sensitive to
20 that.

21 But there was no
22 expectation that the statement or
23 the execution of the statement
24 would be say a private matter.

25 Q. Was the statement that

1 SEAN PATRICK MALONEY
2 was executed on that weekend, July
3 22nd, I think you said, was that
4 ever made public by the attorney
5 general in his report?

6 A. I don't believe the
7 attorney general used the
8 statements in his report.

9 Q. Okay.

10 Was the presence of the
11 other people in the room ever made
12 public?

13 A. Well, eventually, sure.
14 But not in the attorney general's
15 reports.

16 Q. Okay.

17 A. Following November 1st it
18 sure was. And it may have even
19 been reported in the press prior
20 to that, although I don't think
21 so. I think that -- but in July,
22 certainly not. It was not in
23 anyone's focus. Their focus was
24 in the underlying Trooper-Gate
25 conduct.

1 SEAN PATRICK MALONEY

2 Q. By November 2nd was it
3 known just who was present when
4 the statement was made?

5 A. I don't think so.

6 Q. Okay.

7 A. I think it was
8 subsequently the subject of press
9 stories and of course the DA's
10 inquiry and others. But as I sit
11 here I don't think so.

12 Q. Okay.

13 A. I would have to check.

14 MS. OSTERER: I just have
15 a few questions.

16 EXAMINATION CONDUCTED BY

17 MS. OSTERER:

18 Q. Again, going back to the
19 summer of 2007 on or about August
20 1st -- late July, early August
21 2007, to what extent had the
22 executive chamber raised any
23 evidentiary privilege argument
24 with respect to documents to be
25 furnished to the Public Integrity

1 SEAN PATRICK MALONEY

2 Commission?

3 A. I'm sorry, I'm going to
4 need you to give me the date
5 again.

6 Q. Shall we say on or after
7 July 23, 2007 to August 8, 2007.

8 A. And I'm sorry, the
9 question?

10 Q. Had the executive chamber
11 raised any evidentiary privilege
12 arguments with respect to document
13 requests or documents to be
14 furnished to the Public Integrity
15 Commission?

16 A. Sure.

17 Q. And what privilege or
18 privileges were those?

19 A. Attorney/client
20 privilege.

21 Q. And was that raised with
22 respect to particular documents?

23 A. Yes.

24 Q. And were privileged logs
25 presented to the Public Integrity

1 SEAN PATRICK MALONEY

2 Commission?

3 A. Yes.

4 Q. During that time period?

5 A. Yes.

6 Q. And what reaction, if
7 any, was made by the Public
8 Integrity Commission with respect
9 to the raising of attorney/client
10 privilege?

11 A. I believe the executive
12 director took the position that no
13 attorney/client privilege should
14 apply period, full stop.

15 Q. And it was raised during
16 that time period, the executive
17 director's position?

18 A. I don't know. I believe
19 that it must have been -- well, I
20 think by the -- I don't recall.
21 We produced a privileged log which
22 I think was our good faith effort.
23 I don't think it was our good
24 faith effort to disclose what
25 documents precisely and what

1 SEAN PATRICK MALONEY
2 privilege precisely, meaning
3 attorney/client versus say work
4 product and by extension the
5 absence of an executive privilege
6 exertion.

7 It was our effort to show
8 him and the commission that it was
9 a legitimate, well founded, legal
10 basis for having a concern about
11 waiving an attorney/client
12 communication and that we could
13 not do so lightly. That we had to
14 considered these issues, if for no
15 other reason because we were
16 setting precedent for the governor
17 of New York and his staff. And we
18 endeavored to work cooperatively
19 with him to reach some
20 understanding of what made sense
21 and what didn't. I know we spent
22 a lot of time on it internally
23 with lawyers looking at the
24 documents to make darn sure that
25 anything we claimed privilege on

1 SEAN PATRICK MALONEY
2 was indeed attorney/client
3 communication. But I remember
4 their position was absolute and
5 inflexible that there should be no
6 privilege period. When precisely
7 that became their view, I
8 presume -- I remember it being
9 their position all along.

10 I think it hardened as
11 the investigations went forward.
12 In other words, they were unhappy,
13 dissatisfied, with our -- with the
14 normal manner which we handled
15 that which would be the privileged
16 log. I seem to recall though that
17 these issues became more severe
18 once they made the criminal
19 referral to the DA's office and by
20 implication called into question
21 the actions of the chamber
22 attorneys, not just the chamber
23 employees who had been involved in
24 the under lying Trooper-Gate
25 matter.

1 SEAN PATRICK MALONEY

2 And at that point I
3 believe the chamber simply waived
4 or at least in some limited
5 fashion waived the privileges.

6 Q. Was attorney/client
7 privilege raised by the executive
8 chamber with respect to documents
9 that were sought or being
10 furnished prior to the
11 commission's August 14, 2007
12 request for documentation?

13 A. Well, certainly because
14 there should be a privilege log
15 which we produced August 3rd.

16 EXAMINATION CONDUCTED BY

17 MR. FISCH:

18 Q. While everybody in this
19 room knows who Sean Maloney is and
20 what position he occupied in the
21 Spitzer administration, I
22 neglected to elicit it some of the
23 basic information when we began.
24 Mr. Maloney, you served in the
25 administration of Elliot Spitzer?

1 SEAN PATRICK MALONEY

2 A. That's correct.

3 Q. When did you join his
4 administration?

5 A. I believe my first day
6 was January 9, 2007. My position
7 was first deputy secretary to the
8 governor.

9 Q. All right.

10 And you remained for how
11 long.

12 A. Well, I stayed on when
13 Governor Spitzer resigned. I
14 continued in that position for
15 Governor Paterson until the end of
16 2008 and I believe my last day was
17 December 31st of 2008?

18 Q. And what were your duties
19 in that position?

20 A. To be a senior advisor to
21 the governor; to assist the
22 GOVERNOR with all of his strategic
23 and policy priorities; to manage
24 the executive chambers staff. My
25 duties increased under Governor

1 SEAN PATRICK MALONEY
2 Patterson to also manage the
3 public service agencies, the
4 thirteen entities that handle
5 homeland security, emergency
6 response, public safety, the state
7 police. I also oversaw the
8 communications functions, the
9 appointments office, the
10 intergovernmental office, the
11 scheduling office, as well as the
12 correspondence and operational
13 side of the chamber, meaning, the
14 payroll and human resources issues
15 and all those sorts of things.

16 Q. And prior to joining the
17 administration on Nixon's
18 birthday, can you tell us a little
19 about your back ground?

20 A. I was a candidate for
21 attorney general in 2006 before
22 joining the administration which
23 is how I came to know Governor
24 Spitzer. Prior to that I was an
25 attorney at Wilkie Farr &

1 SEAN PATRICK MALONEY
2 Gallagher here in New York. Prior
3 to that I was the chief operating
4 officer at a company called
5 Kidodex Incorporated which did
6 derivatives risk management
7 technology. Prior to that I was
8 on the White House staff. I was
9 an assistant to the president's
10 staff secretary for President
11 Clinton for three years from 1997
12 to 2000. Prior to that I was an
13 attorney at for Wilkie Farr.
14 Prior to that I was in law school,
15 college, high school and under
16 tender care of my parents?

17 Q. What are you presently
18 doing?

19 A. I'm a partner at Kirkland
20 & Ellis which is a law firm here
21 in the city.

22 MR. FISCH: Off the
23 record.

24 (Whereupon, an off the
25 record discussion was held.)

1 SEAN PATRICK MALONEY
2 (Whereupon, the
3 proceedings were concluded
4 3:00 p.m.)

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STATE OF NEW YORK)

Ss:

COUNTY OF NEW YORK)

I, SEAN PATRICK MALONEY, the
witness herein, having read the foregoing
testimony of the pages of this deposition
do hereby certify it to be a true and
correct transcript, subject to the
corrections, if any, shown on the attached
page.

oOo

SEAN PATRICK MALONEY

Subscribed and sworn to before me
this _____ day of _____, 2009
_____.

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C E R T I F I C A T E

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I, DENISE RIZEK, a Shorthand
Reporter and Notary Public within and for
the State of New York, do hereby certify:

That the foregoing proceedings
were taken down by me in shorthand and
thereafter transcribed under my direction
and supervision, and that the within
transcript is a true record of such
proceedings.

I further certify that I am not
related to any of the parties to this
action by blood or marriage, and that I am
in no way interested in the outcome of this
matter.

IN WITNESS WHEREOF, I have
hereunto set my hand this ____ day of
_____, 2009.

DENISE RIZEK

