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STATE OF NEW YORK

OFFICE OF THE INSPECTOR GENERAL

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

STENOGRAPHIC MINUTES OF EXAMINATION conducted
of DAVID NOCENTI, held at the offices of STATE OF NEW
YORK OFFICE OF THE INSPECTOR GENERAL, 61 Broadway, New
York, New York, on Thursday, March 5, 2009, commencing
at 1:25 o'clock p.m., before Annette Forbes, a
Certified Shorthand (Stenotype) Reporter and Notary
Public within and for the State of New York.

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

HONORABLE JOSEPH FISCH
STATE INSPECTOR GENERAL
State of New York
Office of the Inspector General
61 Broadway, Suite 2100
New York, New York 10006

- and -

ARLENE S. OSTERER, ESQ, ESQ.
Investigative Counsel

ANDERSON, MOSCHETTI & TAFFANY
Attorneys for the Witness
26 Century Hill Drive
Latham, New York 12110

BY: PETER J. MOSCHETTI, JR., ESQ.

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Nocenti

City Office at 61 Broadway.

Mr. Nocenti, you have no objection to this interview that's being conducted being stenographically recorded?

THE WITNESS: Not at all.

MR. FISCH: All of my examinations are conducted under oath, and you have already be sworn.

BY MR. FISCH:

Q Mr. Nocenti, can you tell us a little bit about your background?

A I am an attorney, spent most of my career in government.

I worked in the U.S. Attorney's, Office Civil Division in Brooklyn.

I worked in the Governor's office on two occasions.

I worked in the Borough President's office and in the AG's office as well.

Q There was a period of time you served as counsel to then Governor Elliott Spitzer, is this correct?

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2 initiated by Hermann?

3 A To the best of my recollection, I
4 heard either from Lloyd Constantine or from
5 somebody else like Richard Rifkin that Lloyd had
6 had a conversation with Bob Hermann that he
7 wanted to relate to us.

8 And I think that there was no
9 discussion of what the contents of that was. He
10 wanted to, it was presented as if it had some
11 importance and so he wanted to relate it to us
12 together.

13 That's the best of my
14 recollection.

15 Q Are you talking about the November
16 1st or -- I wanted to put this in different time
17 frames.

18 A I don't remember the date.

19 It would have been after the DA's
20 report had come out in September and sometime
21 before December, so somewhere in the September
22 to December time frame 2007 is when the
23 discussion would have being initiated.

24 Q We have established that on
25 November 1st of 2007 Robert Hermann had a

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2 Q I'm not talking about the content,
3 I'm talking about the fact that he had
4 testified?

5 A It is possible that I knew that he
6 had testified. I don't know what the content
7 was.

8 Q You know now that that testimony
9 alleged that the statement was the product of
10 conversations he had had with you and Peter
11 Pope?

12 A Well, the statement that he signed
13 was the product of primarily drafting, drafts
14 that we provided to his attorney and that his
15 attorney presumably spoke with Mr. Dopp about.

16 I'm not aware of a conversation
17 between Dopp and Pope regarding that statement.

18 There were drafts that were done,
19 we sent them to Terry Kinlan, who was Darren's
20 attorney, and Terry made changes, if I recall
21 correctly, and sent them back to us and we then
22 had Terry and Darren come in so that Darren
23 could sign it.

24 But I never had a direct
25 conversation with Darren, and I don't know that

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1
2 anybody else had a direct conversation with
3 Darren regarding that statement.

4 Q The information that Constantine
5 had related to you about the referral, that
6 information from Constantine included your name
7 and Peter Pope's name as part of the referral,
8 did it not?

9 A Not that I recall.

10 The only thing that I recall was
11 that Hermann told Constantine that Teitelbaum
12 told him that the matter had been referred
13 because of inconsistencies between what Darren
14 signed and what Darren said under oath.

15 I have no idea what the actual
16 referral contained.

17 Q Did you speak to Darren Dopp the
18 day that he testified before the Commission?

19 A I do not recall speaking to Darren
20 Dopp the date of the testimony.

21 Q For the record, I showed you a
22 diary entry from Darren Dopp in which you
23 referred to the fact that he had telephoned you.

24 Does that refresh your
25 recollection or ring a bell?

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2 A Unfortunately it does not.

3 Q Regardless of whether you did or
4 did not speak to him, are you firm that he never
5 revealed to you the content of his sworn
6 testimony before the Commission?

7 A Yes.

8 Q No doubt in your mind about that?

9 A No doubt in my mind.

10 I will say that I know that I
11 talked to him at some point where he told me
12 that it was extremely lengthy, the discussion.
13 So it is conceivable.

14 Again, I don't even know, I don't
15 know how -- so I guess from this document
16 October 11th appears to be the date of the
17 testimony. So when that conversation would have
18 occurred could have been any time.

19 But I do know, because I had a
20 rare conversation with Darren, that at some
21 point he told me that it was a very lengthy
22 testimony.

23 Q Did you know in advance that he
24 was going to testify on that particular day?

25 A I do not recall.

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2 Q As a result of the information
3 that Constantine had related, the conversation
4 from Hermann, what action did the group of you
5 take?

6 A We had a discussion about
7 essentially what we should do with this
8 information.

9 And my recollection is that we
10 decided that we needed to consult with somebody
11 who had some, to give us some ethics guidance
12 because we had information about a communication
13 from Herb Teitelbaum to Bob Hermann relating to
14 referral to the DA. So we had to decide what we
15 wanted to do with that.

16 And I think we also, to the best
17 of my recollection is that we asked Lloyd to
18 tell Bob that he should not be having
19 conversations with Herb Teitelbaum regarding the
20 substance of these investigations.

21 Q I believe Hal Lieberman was
22 engaged as your ethnics expert?

23 A There are a number of ethics
24 experts, and I know that Hal's name was one that
25 came up and Bruce Green's name was one that came

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2 up.

3 Actually sitting here I don't
4 recall whether it was Hal. Now that he is one
5 of the, quote, usual suspects in the ethics
6 world, it could easily have been him.

7 Q What was your reaction upon
8 learning from Constantine of the news he had
9 received from Herb?

10 A I was surprised that Herb
11 Teitelbaum was talking to Bob Hermann, and I was
12 surprised that Darren allegedly had said that he
13 didn't necessarily believe the statement that he
14 had signed.

15 Q The fact that the DA was now
16 pursuing an investigation, did that come as a
17 surprise?

18 A Well, I didn't actually know if
19 there was such a referral, I didn't actually
20 know if the DA had chosen to investigate.

21 So basically it was news to me as
22 to whether -- as you know, everything that's
23 sent to a DA they don't necessarily investigate.
24 So at that point I had no idea what the DA was
25 doing with that information.

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2 Q The consensus was that things were
3 over as far as the District Attorney was
4 concerned, is that correct?

5 A It was my understanding that when
6 the District Attorney issued his report and from
7 reading the report, it's fairly clear that he
8 had closed his investigation.

9 Q Did the group discuss the fact
10 that it was now privy to information which
11 should be regarded as confidential and it should
12 not have had?

13 A Yes. I mean the fact that we had
14 this information of a referral, we definitely
15 weren't quite sure what to do with it and we
16 knew that it raised some sort of potential
17 obligation to inform the DA. So we sought
18 outside guidance on that.

19 Q Such information was regarded by
20 all of you as highly confidential, was it not?

21 A As a general rule, referrals to
22 district attorneys are highly confidential.
23 Sometimes people publicly say I'm referring this
24 to the DA for investigation.

25 It was news to me, and I know that

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2 there is, the Commission of Public Integrity has
3 its own rules with respect to the
4 confidentiality of its own investigation.

5 So it was certainly viewed to be
6 confidential enough to cause us to seek outside
7 ethics guidance as to what to do with the
8 information.

9 Q What was your reaction to the fact
10 that Hermann had been made aware of this?

11 A I was surprised.

12 At some point I was told that
13 Hermann knew Teitelbaum. I don't know if I was
14 told that beforehand or after or when, but I was
15 surprised.

16 Q As far as you recall, and forgive
17 me if I am repeating myself, none of you, you,
18 Pope, Maloney, Rifkin and Constantine, none of
19 you at this time were aware of any referral to
20 the District Attorney?

21 A I can only speak for myself.

22 I didn't know and nothing that
23 anybody else said gave any reason to believe
24 that anybody else knew.

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BY MR. OSTERER:

Q As of November 1, 2007, had you been aware that the Commission on Public Integrity had any interest in your being a witness before them?

A I really don't -- I would have to think about that.

Q Or, conversely, do you recall when you did become aware that they wanted you to be a witness?

A I believe it was in 2007 and towards the end of 2007, but whether it was before or after November 1st, I actually don't recall.

Q Would you recall if it was before or after you heard what Lloyd Constantine had to say about his conversation with Bob Hermann?

A I have great difficulty placing that particular meeting really in the context of the whole range of issues.

I knew that the -- I obviously knew that sometime after July of '07 the Public Integrity Commission had started an investigation.

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2 So as to who they would want to
3 talk to, since I had had conversations and I
4 was, I guess it was conceivably possible they
5 might want to talk to me, but when I was
6 actually informed that they wanted to talk to
7 me, I just can't place it as a date.

8 There was a lot going on in my
9 regular job, putting aside the investigatory
10 stuff, I just have difficulty with that.

11 Q Were you aware though in the fall
12 of 2007 that Governor Spitzer was to be a
13 witness before the Commission?

14 A It would have been late in 2007.
15 So, again, where it fits in the November time
16 frame, again, there may be things, I don't
17 recall.

18 Q Would you have made any notation
19 that you might still have that would indicate
20 when you were notified that they wanted you to
21 appear as a witness?

22 A Can we go off the record?

23 MR. FISCH: Sure.

24 (Discussion off the record.)

25 MR. OSTERER: Back on the

1 Nocenti

2 record.

3 Q We had a brief colloquy off the
4 record and, in essence, Mr. Nocenti, is it
5 correct that you don't have recall at the
6 present time about when you had first heard that
7 you might be a witness before the Public
8 Integrity Commission.

9 A I don't remember any specific. I
10 think it was the time frame of late 2007. I
11 can't put a date or a month on it.

12 Q At the time when you heard what
13 Lloyd Constantine related about his conversation
14 with Bob Hermann about the referral to the
15 District Attorney concerning Darren Dopp, was
16 there anything that made you think at the time
17 Lloyd Constantine related what he did, that you
18 might then have to be called as a witness before
19 the Public Integrity Commission?

20 A I do not recall.

21 BY MR. FISCH:

22 Q Was there any discussion as a
23 result of Constantine's relating this
24 information from Hermann that you should no
25 longer be representing the Governor?

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2 A Not that I recall.

3 Q Did your duties in relation to
4 being counsel or special counsel to the Governor
5 change in any way?

6 A No.

7 Q Did you ever discuss with the
8 Governor, at either your initiation or his, this
9 information that Constantine had relayed?

10 A I don't recall a conversation with
11 the Governor on it.

12 I don't know, I mean Lloyd was a
13 special advisor to the Governor, so he may have
14 had a conversation. I don't know. I don't
15 recall having a conversation with the Governor
16 about this.

17 Q Do you know Robert Hermann? Did
18 you know him at the time?

19 A I mean I had met him, knew him to
20 say hello to him. Our paths crossed because of
21 his position as the head of the Governor's
22 Office of Regulatory Review or Reform or
23 whatever it's called.

24 Q Did he ever discuss with you any
25 information concerning the commission's

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2 activities?

3 A No.

4 Q Mr. Nocenti, is there anything
5 that you wish to add?

6 A No.

7 MR. FISCH: Did you have
8 anything else?

9 MR. OSTERER: No.

10 MR. FISCH: Again, thank you
11 both for coming. Appreciate it.

12 THE WITNESS: Thank you.
13 Appreciate it.

14 (Whereupon, at 1:55 o'clock
15 p.m., the Examination was
16 concluded.)

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C E R T I F I C A T E

STATE OF NEW YORK)

) ss.

COUNTY OF NEW YORK)

I, ANNETTE FORBES, a Shorthand
(Stenotype) Reporter and Notary Public
of the State of New York, do hereby
certify that the foregoing Examination
of the witness, DAVID NOCENTI, taken
at the time and place aforesaid, is a
true and correct transcription of my
shorthand notes.

I further certify that I am
neither counsel for nor related to any
party to said action, nor in any wise
interested in the result or outcome
thereof.

IN WITNESS WHEREOF, I have
hereunto set my hand this 10th day of
March, 2009.

ANNETTE FORBES, CSR, RPR

