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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

October 31, 2008
10:51 a.m.

CONTINUED EXAMINATION of PETER
POPE, 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.

HAFETZ & NECHELES, ESQS.
Attorneys for Witness
500 Fifth Avenue
New York, New York 10110

BY: SUSAN R. NECHELES, ESQ.

* * *

1

2 MR. FISCH: Today is October 31,
3 2008. This is a continuation of Mr.
4 Pope, Peter Pope's examination which
5 was conducted before me on
6 September 18. Arlene Osterer, my
7 counsel, is with me. We're in my New
8 York office. Mr. Pope is accompanied
9 by his attorney, Ms. Necheles.

10 MS. NECHELES: Susan Necheles, N
11 E C H E L E S, Hafetz and Necheles.

12 P E T E R P O P E, having
13 been previously duly sworn by a
14 Notary Public of the State of New York,
15 upon being examined, testified
16 as follows:

17 EXAMINATION BY

18 MR. FISCH:

19 Q. Mr. Pope, you're still under
20 oath.

21 A. Yes, your Honor.

22 Q. I've asked you to review your
23 transcript to see if there's anything
24 inaccurately transcribed or if there's
25 anything you wish to comment on or

1 P. Pope

2 explain.

3 Have you had an opportunity to
4 do that?

5 A. I have had an opportunity to do
6 that and I found no inaccuracies.

7 MS. NECHELES: If I could note
8 for the record that I reviewed the
9 transcript as well. Thank you for the
10 opportunity, Judge.

11 And on page eighteen I noticed
12 that there was some discussion, some
13 testimony by Mr. Pope about a referral
14 to the DA's office and it was just a
15 little bit unclear and I just wanted
16 to clarify for the record that, in
17 fact, when we contacted the DA's
18 office, there was never any criminal
19 investigation of Mr. Pope, it was
20 really that he was a witness and they
21 wanted to speak to him.

22 MR. FISCH: I must tell you that
23 the people at the COPI, the Commission
24 on Public Integrity, are very
25 sensitive about the word "referral"

1 P. Pope
2 because it requires unanimous approval
3 by all the commissioners. I think
4 their children and grandchildren have
5 to approve it as well; I don't know.
6 When you mentioned that there was a
7 referral, it was, no, no, no, no, it
8 was not a referral. It was a
9 transmittal of some testimony.

10 Q. First of all, I want to thank
11 you for coming down. The information I
12 want to elicit from you is basically an
13 expansion of what you've already testified
14 to.

15 I want to once again turn to
16 communications that Robert Hermann had
17 with you concerning activities by the
18 Ethics Commission which later became the
19 Commission on Public Integrity.

20 Do you recall approximately when
21 the conversations commenced?

22 A. It was approximately days or a
23 week after the Cuomo report issued.
24 Richard Rifkin was the primary liaison to
25 the commission at that stage. The chamber

1 P. Pope
2 had designated him to do that because he
3 had significant expertise in the area
4 because he had been the former chair.

5 One night I got a call from Bob
6 Hermann saying, in sum and substance, that
7 Herb Teitelbaum wanted records quickly and
8 a lot of records quickly and I was I guess
9 a little puzzled by the call because I
10 didn't understand why Herb didn't call
11 Richard or didn't call me or didn't call
12 someone else in the chamber handling the
13 matter. I don't think it was a long call.
14 I think what I had expressed more than
15 anything else was bafflement. Well, of
16 course he wants records and of course he
17 wants records quickly and of course we'll
18 give him records quickly. Here's my
19 telephone number. I think the next day I
20 called Herb.

21 Q. The first contact was by
22 telephone?

23 A. That's certainly what I
24 remember.

25 Q. So he reached out to you, it was

1 P. Pope
2 not a matter of running into you and just
3 having a casual conversation, it was him
4 once again reaching out to you?

5 A. Well, the first conversation was
6 by telephone. Whether or not I was
7 returning a call he had placed to me
8 earlier in the day or not, I don't recall.
9 It certainly could have been that he had
10 left a message and then I called him. But
11 it was --

12 Q. But it was initiated by him?

13 A. Yes.

14 Q. And by telephone?

15 A. Yes.

16 Q. The distinction I'm making is
17 the obvious one. The two of you run into
18 one another and he just mentions that Herb
19 wants records fast, that's one thing. But
20 reaching out by telephone has a different,
21 in my judgment, significance.

22 A. You're absolutely right, Judge.
23 And I want to make sure that I am being as
24 precise as I can be. The conversation we
25 had was by telephone. I don't remember

1 P. Pope
2 whether I was returning a call, whether he
3 had visited by office in the chambers when
4 I had not been there, but it was a call
5 that I did not initiate, a contact that I
6 did not initiate.

7 Q. That was my point.

8 Any other conversations with him
9 in connection with the Commission on
10 Public Integrity?

11 A. Sometime shortly after that I
12 had a list of lawyers and I ran names by
13 him to see what he thought of those
14 lawyers. We ended up not using any of
15 those lawyers for the chamber in any
16 capacity or for any of the individuals in
17 the chamber in any capacity. It was not a
18 conversation in which I asked him to
19 communicate any information or to gather
20 any information. He's someone who had
21 practiced in New York City a long time.

22 Q. Did he ask for some names of
23 lawyers?

24 A. No.

25 Q. And the lawyers were supposed to

1 P. Pope

2 be representing chamber people?

3 A. This again was very, very early
4 in the Public Integrity Commission process
5 and the chamber was trying to figure out
6 what the representation structure ought to
7 be and, as part of that, I put together a
8 list of lawyers for my own thinking. And
9 one day when he was in my office on
10 something else, I said, have you ever
11 heard of any of these guys; do you have
12 any opinions about them. But again, I did
13 not ask him to run any names by anybody
14 else.

15 Q. I know I asked you this before.

16 Other than the very general
17 statement that Herb Teitelbaum or Herb
18 wanted records and wanted records
19 quickly --

20 A. Yes.

21 Q. -- anything specific in terms of
22 category of documents, specific individual
23 documents? For example was this a
24 reference to Blackberry records, was it a
25 reference that you understood to cell

1 P. Pope

2 phones, anything like that?

3 A. Judge, if I have the timing
4 right, and I believe I do, this was in the
5 opening minutes virtually of the
6 investigation and the impression I had was
7 he wants everything, and not more
8 specific. It's hard documents, computer
9 documents. I don't remember whether phone
10 records were discussed. But I certainly
11 walked away with the impression that he
12 wanted everything.

13 Q. Was there anything public at
14 this time about a dispute between the
15 chamber and the commission concerning
16 production of records?

17 A. No, it was too early for any
18 disputes even to have arisen and that,
19 among other things, is why I was baffled
20 at the call.

21 Q. Any other conversations with
22 Hermann about the commission activities?

23 A. I think that last time, Judge, I
24 told you that, on occasion, I vented at
25 him and I did vent at him. I expressed my

1 P. Pope
2 low opinion of the way that the
3 investigation was being conducted I would
4 say twice or three times over the course
5 of the entire investigation. I did not
6 ask for any response. The tone of my
7 voice generally did not admit any
8 response. At least on one of those
9 occasions I said, I certainly hope you're
10 not telling any of this to Herb and he
11 said, Herb and I don't talk about this.

12 Q. What was the nature of your
13 displeasure starting from the very first
14 such conversation?

15 A. I don't remember the specifics
16 of any of the conversations, but the
17 nature of my displeasure included what we
18 had concluded were leaks to the press,
19 they were demanding waiver of privilege
20 beyond what a federal prosecutor is
21 permitted to demand in a serious case, and
22 I was, as you might imagine, very angry
23 when directed -- I use the word "directed"
24 intentionally by the Public Integrity
25 Commission to stop appearing with members

1 P. Pope
2 of the chamber. In my view, the
3 disciplinary rules are very clear. When
4 your adversary believes that you have a
5 conflict, they apprise you of it, you do
6 the analysis and you make a determination
7 as to whether or not you can stay in. In
8 many, many years as a prosecutor I have
9 had many such conversations. I don't
10 believe I have ever directed and I don't
11 believe it's lawful to direct another
12 lawyer as to the representational
13 structure. Those were the things that I
14 was angry at. I can assure you that I did
15 not have this kind of detailed and calm
16 discussion about those things and it was
17 more reduced to I don't think that these
18 guys know the proper way to do this.

19 Q. Did he ever initiate
20 conversations with you wherein he said in
21 essence that the chamber should not be
22 exerting certain privileges either with
23 regard, Mr. Pope, to witnesses or with
24 regard to documents?

25 A. Judge, the only conversation

1 P. Pope
2 that I remember with Bob even remotely
3 like that is the first conversation. Now,
4 I'm struggling to think as to whether,
5 after calling Teitelbaum back the next
6 day, I closed the loop by calling Hermann
7 that same day, but I don't think -- it's
8 possible a call from Hermann, a call to
9 Teitelbaum, a call to Hermann, we touched
10 base. But it was fairly shortly after
11 that that Lloyd gave Bob a very clear
12 direction that he was to have no
13 communications with Teitelbaum and
14 certainly no such conversations after that
15 other than my venting.

16 Q. Did he ever respond in defense
17 of the commission or defense of
18 Teitelbaum?

19 A. Not such a bad guy.
20 Judge, the tenor of these is not
21 that they were conversations --

22 Q. Inviting a response?

23 A. Yes.

24 MS. OSTERER: After Mr. Hermann
25 called you and you subsequently spoke

1 P. Pope
2 to Mr. Teitelbaum, did you mention to
3 Mr. Teitelbaum that Mr. Hermann had
4 reached out to you?

5 THE WITNESS: You know, I don't
6 remember if I specifically said that.
7 It is entirely possible that, in that
8 conversation, I said, you know, Bob
9 spoke to me and here's my telephone
10 number.

11 Once again, there was a -- it
12 was so soon in the process that the
13 communication from Bob I found
14 baffling, that there wasn't simply a
15 picking up of the telephone to talk to
16 Richard or to talk to me or to talk to
17 David Nocenti, counsel to the
18 governor. It was just odd.

19 MS. OSTERER: At any subsequent
20 point did you have a discussion with
21 Mr. Teitelbaum concerning various
22 overtures that Mr. Hermann was making
23 to you regarding this?

24 THE WITNESS: No. And indeed I
25 think last time I talked about how we

1 P. Pope
2 had official communications with Mr.
3 Teitelbaum over time in connection
4 with this. Bob was not a member of
5 the team at any stage that went over
6 to have conversations with him.

7 MS. OSTERER: And approximately
8 when was it that you were given a
9 direction not to represent various
10 individuals?

11 THE WITNESS: I don't know, but
12 I believe that there's an e-mail
13 traffic about that so you would be
14 readily able to determine it.

15 MS. OSTERER: Was that internally
16 within the executive chamber or was
17 that e-mail from the Integrity
18 Commission?

19 THE WITNESS: I believe both. I
20 think that there was an e-mail
21 exchange between Richard Rifkin and
22 Herb Teitelbaum and then there were
23 e-mail exchanges within the chamber
24 after that. So I don't remember but
25 you are going to be able to pin it

1 P. Pope

2 down precisely.

3 Q. Did Hermann ever explain to you
4 why he was making -- why he was talking to
5 you as opposed to Teitelbaum talking to
6 Rifkin? In other words, any expression of
7 Teitelbaum's displeasure with Rifkin being
8 the point man?

9 A. If I remember right, there was
10 some sense that Herb was unhappy about
11 dealing with Richard Rifkin precisely
12 because Richard had been the former
13 executive director. That didn't make
14 sense to me then, it doesn't make sense to
15 me now.

16 Q. More of a personal problem that
17 Herb had -- Herb Teitelbaum had?

18 A. I just don't know, Judge. I
19 almost inferred that it was more of a
20 status issue.

21 Q. Is the word "jealously"
22 appropriately applied here?

23 A. I think that that's on the right
24 spectrum at least of what I sensed,
25 although it might be a slightly stronger

1 P. Pope

2 word than I would use.

3 Q. There did come a time I believe
4 on November 2 when Constantine had related
5 to you and to others about a conversation
6 he had with Robert Hermann a day before.

7 Do you recall that, about the
8 referral once again to the DA of some
9 information?

10 A. I remember the meeting. I'm not
11 sure that I knew then or now precisely
12 when the conversation with Hermann had
13 taken place. And I say that because it
14 was my understanding that between that
15 conversation and the meeting Lloyd
16 Constantine had consulted with an ethics
17 lawyer, Hal Lieberman.

18 Q. Yes. They were very close.

19 A. Okay.

20 Q. And the information was that
21 Hermann said there was a referral to the
22 DA -- I'm using referral in the most
23 generic sense -- of Dopp's testimony?

24 A. I'm not even sure I knew that
25 there was specific testimony, but that --

1 P. Pope

2 Q. Information that they had
3 collected from Dopp.

4 A. I'm not even sure that I
5 understood it had been collected from
6 Dopp, but I did understand that it was
7 about Dopp's signing of a statement. The
8 subject matter is the same, Judge. I'm
9 not sure I was told the source.

10 Q. And that the statement had
11 allegedly been induced by you and by
12 Nocenti?

13 A. That's correct.

14 Q. And that this allegation was an
15 allegation that Dopp had made to the
16 commission?

17 A. I inferred that that was the
18 only person who could have made it, but
19 I'm not sure that I was told that. But
20 logically it didn't seem to me that there
21 was any other place.

22 Judge, on that point, if I
23 may --

24 Q. Please.

25 A. One of the reasons that I was

1 P. Pope
2 very distressed and angry at that moment
3 is that we in the chamber had been
4 extremely careful about advising Darren
5 Dopp of his rights when a potential
6 conflict arose arranging for him to get
7 separate counsel to represent him and that
8 separate counsel had been integrally
9 involved in the process of his making a
10 statement and indeed had rewritten very
11 important portions of it. So having taken
12 very careful ethical steps and done the
13 ethical analysis all the way along, to
14 suddenly have a spectre of being accused
15 of improper conduct made me very angry.

16 MS. OSTERER: Did you ever have
17 any discussion with Mr. Hermann about
18 your view that perhaps the Public
19 Integrity Commission's investigation
20 had been completed -- I'm talking
21 about the same time period in the fall
22 of 2007 -- whereas Mr. Hermann perhaps
23 needed to disabuse you of that notion
24 and that it had not been completed at
25 all but rather was stalled because of

1 P. Pope
2 the Albany DA's involvement?

3 THE WITNESS: I'm not sure I
4 understand the question.

5 MS. OSTERER: Did you ever
6 express to Mr. Hermann or anyone else
7 in the chamber that the Public
8 Integrity Commission was no longer
9 proceeding and that perhaps their
10 investigation had been completed
11 without calling various individuals?

12 THE WITNESS: Yes, there were
13 certainly discussions inside the
14 chamber as to what was going on.

15 MS. OSTERER: There was a delay
16 at some point?

17 THE WITNESS: There was a delay.
18 And the people who were dealing with
19 the case asked themselves, in sum and
20 substance, what in the world is going
21 on. I don't remember any such
22 conversation with Bob.

23 MS. OSTERER: Did you ever hear
24 it mentioned that Mr. Hermann was
25 bringing his information to the

1 P. Pope
2 attention of Mr. Constantine in order
3 to have it known that there was not a
4 completion of the investigation but
5 rather it was stalled because of the
6 DA's involvement?

7 THE WITNESS: No, the two
8 circumstances which I know anything
9 about Mr. Hermann transferring
10 information was that initial call that
11 I've described for you in which he
12 says Teitelbaum was looking for
13 records. There was after that a
14 direction from Lloyd Constantine to
15 stop and then there was the November 2
16 meeting we've discussed. Between that
17 time I did not understand Bob to be
18 either providing or obtaining
19 information in either direction from
20 the commission to the chamber.

21 MS. OSTERER: At the time when
22 you learned about this, perhaps
23 November 2, did it provide
24 clarification to you about the
25 commission's delay?

1

2 THE WITNESS: I remain unclear
3 as to the course of the commission's
4 inquiry and the choices they made
5 along the way.

6 MR. FISCH: Off the record.

7 (Discussion held off the record)

8 Q. Mr. Pope, is there anything you
9 wish to add to the record, any statement
10 you wish to make?

11 A. No thank you, Judge, other than
12 what my lawyer said at the outset is my
13 understanding, when we contacted the
14 district attorney's office, was at no time
15 was I anything other than a witness in
16 this matter.

17 MR. FISCH: I appreciate that. I
18 appreciate both of you accommodating
19 us.

20 (TIME NOTED: 11:18 a.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
