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STATE OF NEW YORK
OFFICE OF THE INSPECTOR GENERAL

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

September 19, 2008
4:11 p.m.

EXAMINATION of ELIOT SPITZER,
held at the offices of BERNARD SPITZER,
P.E., 730 Fifth Avenue, 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.

PAUL, WEISS, RIFKIND, WHARTON
& GARRISON, LLP
Attorneys for Witness
1285 Avenue of the Americas
New York, New York 10019

BY: ANNE S. RAISH, ESQ.

* * *

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2 MR. FISCH: My name is Joseph
3 Fisch. I'm the inspector general of
4 New York State. We are at 730 Fifth
5 Avenue, the office of Eliot Spitzer.
6 Present with me is Arlene Osterer of
7 my staff and Governor, you've agreed
8 to this appearance voluntarily, of
9 course.

10 THE WITNESS: That is correct.

11 MR. FISCH: And you have no
12 problem or objection to the interview
13 being recorded stenographically?

14 THE WITNESS: None whatsoever.

15 MR. FISCH: I'm doing all the
16 interviews under oath.

17 E L I O T S P I T Z E R, having
18 been first duly sworn by a Notary Public
19 of the State of New York, upon being
20 examined, testified as follows:

21 EXAMINATION BY

22 MR. FISCH:

23 Q. As I explained to counsel, the
24 district attorney of Albany County
25 referred to my office an investigation

1 E. Spitzer
2 concerning allegations that Herbert
3 Teitelbaum, executive director of the
4 Commission on Public Integrity, originally
5 the Ethics Commission, had improperly
6 disclosed information concerning the
7 activities of the commission to persons
8 not authorized or designated to receive
9 such information. And in that connection,
10 we've taken testimony, including testimony
11 from Lloyd Constantine.

12 You know Lloyd Constantine, of
13 course?

14 A. Yes, I do.

15 Q. In the year 2007, what position
16 did he --

17 MR. FISCH: I'm sorry, counsel,
18 can you note your appearance.

19 MS. RAISH: Sure. It's Anne
20 Raish from Paul Weiss for Eliot
21 Spitzer.

22 Q. What position did Lloyd
23 Constantine occupy in 2007?

24 A. I think his precise title was
25 senior adviser to the governor.

1 E. Spitzer

2 Q. Do you recall, and we fix a date
3 on or about November 1 of 2007 at your New
4 York office, 633 Third Avenue, Lloyd
5 Constantine coming to you to relay a
6 conversation he had had with Robert
7 Hermann?

8 A. Yes, I do.

9 Q. And Robert Hermann at that time
10 was director of the Governor's Office of
11 Regulatory Reform?

12 A. That's right.

13 Q. We understand that he had an
14 office -- occasionally he used an office
15 regularly at 633 Third Avenue?

16 A. That's correct.

17 Q. At the time of this incident or
18 this conversation, there were a number of
19 investigations being conducted of members
20 of your staff; is that correct?

21 A. That is correct.

22 Q. Including an investigation by
23 the Commission of Public Integrity which
24 at that time may have been the Ethics
25 Commission?

1 E. Spitzer

2 A. I'm not sure when the title
3 changed, but that's correct.

4 Q. To make life easier, I'll refer
5 to it as the Feerick commission.

6 A. That's fine.

7 Q. Can you tell us, as best you can
8 recall, what Lloyd Constantine told you
9 about the conversation he had had with
10 Robert Hermann.

11 A. Sure.

12 The sum and substance of it was
13 -- let me preface this by saying I don't
14 remember the date or the precise location
15 of the conversation but I remember the
16 fact of the conversation very well, and
17 I'll explain why.

18 The sum and substance was Herb
19 Teitelbaum had disclosed to Bob Hermann --
20 and parenthetically I think it's well
21 understood they're good friends from -- I
22 think they had been partners together at a
23 law firm or had a longstanding social
24 relationship. The sum and substance was
25 that Bob Hermann had disclosed to Lloyd

1 E. Spitzer
2 that Herb Teitelbaum had disclosed to Bob
3 Hermann that a referral was going to be
4 made to the Albany County DA's office.

5 Q. Was going to be made or had been
6 made?

7 A. As I sit here today, I don't
8 know if it was pending, had been made, but
9 a referral was -- honestly, I don't
10 remember what the verb tense was -- and
11 that this disclosure, whatever this verb
12 tense, was in violation of the Ethics
13 Commission's statutory obligation to
14 maintain secret any such referral.

15 Now, as I said, the underlying
16 issue is not one for me to pass judgment
17 upon, that is the domain of others. But
18 the reason I remember it so clearly is
19 that the irony could hardly have been
20 missed. Here was the Ethics Commission's
21 chief counsel allegedly -- and again, I
22 don't want to pass judgment -- allegedly
23 violating the statutory obligation to
24 maintain secret a particular matter under
25 investigation when the allegation that had

1 E. Spitzer
2 triggered this entire hullabaloo related
3 to the disclosure of public information
4 pursuant to a media request for that
5 information and this tension struck me as
6 merely highlighting the Alice in
7 Wonderland nature of the entire underlying
8 endeavor which, to me, has been an
9 unfortunate irony that has not been
10 sufficiently noted.

11 Q. Did Lloyd Constantine describe
12 Hermann's condition when he came to him
13 with this information?

14 A. I don't remember if he described
15 Bob Hermann's condition, but there was no
16 ambiguity that Lloyd who has -- again, I
17 don't say -- I'm not an expert in this
18 matter -- has a great memory. He has as
19 close to a photographic memory as I've
20 encountered among people that I know. He
21 was very precise in his description of
22 what Bob Hermann said had been told to him
23 by Herb Teitelbaum.

24 Q. Did he tell you that Hermann was
25 in such a state of agitation that he took

1 E. Spitzer
2 him out of a meeting to describe this
3 information?

4 A. That I don't recall.

5 Q. Did he mention that Hermann was
6 shaking and shivering and that Constantine
7 said what he saw, he thought someone had
8 died. He may not have described all of
9 that to you.

10 Does anything trigger --

11 A. I don't remember the
12 atmospherics as such. I do remember the
13 core substance because at this point in
14 time -- again, without saying it was
15 November 1 -- but at that point in time
16 the Ethics Commission was deeply immersed
17 in whether or not the disclosures about
18 use of the state plane, all of which was
19 public, had been appropriate and I just
20 said this is ludicrous, how can this
21 possibly be a reality and does this not
22 symbolize all that goes on in Albany.

23 Q. You had designated some people,
24 including Lloyd Constantine, to receive
25 information from the commission or at

1 E. Spitzer

2 least to serve as liaison in forwarding

3 records or making witnesses available.

4 A. That is correct.

5 Q. Rifkin was one of them, Richard

6 Rifkin?

7 A. That is correct.

8 Q. Peter Pope?

9 A. Correct.

10 Q. Sean Maloney?

11 A. Sean Maloney, that's correct.

12 Q. But never Robert Hermann.

13 A. That is correct.

14 Q. So as far as you know, he was

15 not -- never authorized by you to be the

16 recipient of any type of dialogue with the

17 commission?

18 A. That is correct.

19 Q. Did Mr. Constantine say anything

20 about what had been referred to the DA?

21 In other words, what was the DA's --

22 A. I imagine he did.

23 Q. Did it involve the Dopp's --

24 Darren Dopp?

25 A. My recollection is that it

1 E. Spitzer
2 related to Darren's claim that he no
3 longer felt remorse for his actions, and I
4 suppose theoretically -- it sounds more
5 like a law school problem than a real
6 issue -- a question arose whether he, when
7 he signed his statement, in fact felt
8 remorse or not and whether it's perjury to
9 say you now no longer feel remorse and, if
10 I did then, is it perjury. It's beyond
11 me. It related to that quagmire of
12 issues.

13 Q. Anything to the effect that the
14 Dopp statement was the product, according
15 to Dopp, of pressure by members of your
16 administration?

17 A. I don't know if it was the
18 pressure, the underlying issue of
19 truthfulness. They are intertwined,
20 obviously, and since then the inquiries
21 have been conducted and concluded as they
22 were concluded.

23 Q. Did Constantine say that Hermann
24 asked him, Constantine, to relay this
25 information to you, that you felt this was

1 E. Spitzer
2 important, I've got to tell Eliot?
3 A. I don't remember if it was said
4 that way. I think there was probably some
5 speculation that you then undertake if
6 Herb Teitelbaum passed this information,
7 why did he do so? Did he intend that it
8 be conveyed to whom? As far as I was
9 concerned, there was nothing we were going
10 to do, could do, should do, or under any
11 circumstances would do about it. It was
12 guys, go do your thing. We're trying to
13 govern the state, as I think my testimony
14 in the other piece of this indicated.
15 This was all ancillary, overstates it, so
16 tangential and remote from what I cared
17 about that, as I said, the irony is what
18 struck me rather than the underlying
19 merits.
20 Q. Did Constantine describe Hermann
21 as having a sense of urgency concerning
22 the communication of this information to
23 you?
24 A. I don't recall if Lloyd said
25 that Bob had a sense of urgency. I do

1 E. Spitzer
2 know that Lloyd felt that this was an
3 untenable situation and Lloyd was troubled
4 by the fact of the information flow
5 because he thought it could compromise
6 people, investigations in ways that were
7 frankly and are inevitably difficult to
8 predict. Information like that ricochets
9 and the fact of the transfer ricochets in
10 ways that can have unpredictable and
11 usually malignant results. So Lloyd was
12 troubled by it to the point with where he
13 sought some sort of ethics advice.

14 Q. Hal Lieberman?

15 A. That's correct, right.

16 Q. Did Constantine also tell you
17 that Hermann was rather adamant that he
18 not be revealed as the source of the
19 information?

20 A. I don't remember that as such.
21 Put it this way. I knew who the source
22 was, so Lloyd must have indicated that to
23 me because it would not make sense in any
24 other context. It was something that Herb
25 allegedly had told Bob Hermann at a dinner

1 E. Spitzer

2 which they were having together.

3 Q. Constantine told him there's no
4 way that I'm not going to tell him that
5 you're the source?

6 A. Right. That makes sense.

7 Q. We have information that,
8 following this, because of the discomfort
9 that Lloyd experienced, that he, as you
10 pointed out, had outside counsel engaged.
11 They decided what to do with it and went
12 to the district attorney to tell him we
13 have information we should not have
14 perhaps but we wanted to fulfill what we
15 felt was our ethical obligation by
16 bringing this to your attention.

17 A. That's correct. I knew of that
18 sequence and I remember -- I think Lloyd
19 mentioned to me that he had been in to
20 have that conversation with the DA's
21 office.

22 Q. Did you, yourself, ever speak to
23 Teitelbaum about this?

24 A. To Herb? No.

25 Q. Did you, yourself, ever talk to

1 E. Spitzer

2 Hermann about this?

3 A. I recall having a very, very
4 brief and somewhat cloaked conversation --
5 by cloaked I mean neither of us -- I
6 certainly didn't feel comfortable talking
7 about it in any way, shape, or form and I
8 also didn't feel comfortable pretending
9 not to have any knowledge that it was
10 there. So we had a brief conversation
11 where the fact of this arose in sort of
12 vague ways and basically we both kind of
13 said this is not something we're going to
14 talk about.

15 Q. What did he say?

16 A. I do not recall. It was one of
17 these -- Bob's office was down the
18 hallway. He would come into my office --
19 I had an open door and people would just
20 wander in. He would come in and talk
21 about other things. This came up and it
22 was probably a few seconds and it was this
23 was not something to talk about.

24 Q. Did he ever attempt to disclaim
25 Teitelbaum as the source?

1 E. Spitzer

2 A. Oh, gosh. I don't remember. I
3 have no recollection of our being that
4 specific about any aspect of it. That's
5 sort of a second layer issue that
6 presupposes that you know what the
7 underlying substance is, you discussed it,
8 and then you're asking what is the source.
9 I don't think we got to that level of
10 detail. I have no recollection of that.

11 Q. Is it basically that you just
12 ran into him in the course of both of you
13 having offices nearby and that --

14 A. At the time I was the governor,
15 I guess there's enough formalities that
16 you don't just bump in and didn't have
17 haphazard conversations. I think he was
18 in my office. It may have been -- the
19 issue that he and I discussed most, and
20 we'd have to go back to the time and now
21 it doesn't matter, was the funding of
22 legal aide and how the IOLA funds were
23 going to be -- and this is Bob to his
24 great credit, and Lloyd, but really I
25 think it was Bob, it was Bob who focused

1 E. Spitzer
2 on the fact that we could get those funds,
3 the client -- the escrow, not only escrow,
4 but those funds, which are rather
5 voluminous, accrue interest and that
6 interest, by statute, goes to fund IOLA.
7 Bob focused on the fact that the banks
8 were keeping those funds at the lowest
9 possible interest rate, which is to their
10 benefit; they make their delta between
11 that and what they lend it out at. We got
12 the banks to increase that interest rate
13 very substantially which is why legal aide
14 is getting almost a tenfold increase in
15 state funding. That was wonderful. That
16 was the issue Bob and I would talk about
17 most of the time, where we were going.
18 Banks threatened some lawsuits but then
19 they came around. At the end of the day
20 they didn't want the bad PR. This is when
21 banks were solvent and had money.

22 Q. Did Constantine say -- do you
23 recall anything else about the
24 conversation he said he had with Hermann?
25 I'll give you some specifics.

1 E. Spitzer

2 Did he ever say that Hermann had
3 advised him that a subcommittee had been
4 formed by the Ethics Commission because
5 they were concerned about leaks or
6 anything along those lines?

7 A. I knew that -- I was told that
8 there was a subgroup of the Ethics
9 Commission that had been formed to handle
10 the inquiry because they were concerned
11 about leaks. I never knew the
12 constituency of that commission and I
13 don't know from whom I heard that. I
14 don't remember whether it was Lloyd or
15 Dave Nocenti. Because there were a number
16 of people who had interactions with the
17 Ethics Commission. Frankly we were
18 worried, troubled, deeply troubled by
19 leaks that were emanating from the
20 commission. We raised it with them with
21 regularity and I think, as a consequence,
22 we were told at some point that there was
23 this subgroup. Again, I don't know who
24 was on it or from whom I heard it, but I
25 knew of its existence.

1

2 Q. As I indicated, our focus is
3 very narrow and that's the allegations of
4 Teitelbaum to Hermann and then whatever
5 Hermann did with it, Constantine or
6 anything else.

7 Is there anything else that you
8 could add to our inquiry?

9 A. No, no. Not to minimize it, the
10 inquiry, I obviously want to thank you for
11 your service but I wish Albany could get
12 back to doing the things that matter.

13 MR. FISCH: I want to thank you
14 for making yourself available and
15 cooperating with us, Governor.

16 (TIME NOTED: 4:28 p.m.)

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CERTIFICATION BY REPORTER

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I, Wayne Hock, a Notary Public of the

5

State of New York, do hereby certify:

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That the testimony in the within

7

proceeding was held before me at the

8

aforesaid time and place;

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That said witness was duly sworn

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before the commencement of the testimony,

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and that the testimony was taken

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stenographically by me, then transcribed

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under my supervision, and that the within

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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

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interested directly or indirectly in the

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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
