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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

February 17, 2009
2:33 p.m.

CONTINUED EXAMINATION of HERBERT
TEITELBAUM, held at the offices of State
Of New York Office Of The Inspector
General, 61 Broadway, New York, New York,
before Abner D. Berzon, a Registered
Professional Reporter, Certified Realtime
Reporter and Notary Public of 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 YORK

5 OFFICE OF THE INSPECTOR GENERAL

6 61 Broadway

7 New York, New York 10006

8

9 BY: JOSEPH FISCH, ESQ.,

10 Inspector General

11 ARLENE S. OSTERER ESQ.,

12 Assistant Inspector General

13

14

15

16 BRYAN CAVE, LLP

17 1290 Avenue of the Americas

18 New York, New York 10104

19 Attorneys for Witness

20

21 BY: AUSTIN V. CAMPRIELLO, ESQ.

22

23

24 * * *

25

1

2 MR. FISCH: Today is February
3 17th. My name is Joseph Fisch, and Arlene
4 Osterer, from my staff, is with me. We
5 are taking testimony of Mr. Herbert
6 Teitelbaum, who is represented by
7 Mr. Campriello.

8 Please identify yourself.

9 MR. CAMPRIELLO: Austin V.
10 Campriello, C-a-m-p-r-i-e-l-l-o, Bryan,
11 B-r-y-a-n, Cave, 1290 Avenue of the
12 Americas.

13 MR. FISCH: This is a
14 continuation of testimony we took of
15 Mr. Teitelbaum on October 10th, 2008 here
16 at the New York office, 61 Broadway.

17 H E R B E R T T E I T E L B A U M ,

18 having been previously duly sworn,

19 testified further as follows:

20 CONTINUED EXAMINATION

21 BY MR. FISCH:

22 Q. Mr. Teitelbaum, you're still
23 under oath.

24 A. I understand.

25 Q. And again, you consent to this

1 TEITELBAUM

2 being stenographically recorded?

3 A. Yes.

4 Q. Mr. Teitelbaum, on July 12th of
5 2008, you were interviewed by the Law
6 Journal, New York Law Journal. The title
7 is "Free With Registration, Teitelbaum
8 Defends Integrity of Spitzer
9 Investigation." Do you recall that?

10 A. Yes.

11 Q. And you made a statement here,
12 "Mr. Teitelbaum said Friday The
13 Commission and its staff had to take
14 the..." quote "...'slings and arrows'...",
15 unquote "... and innuendos and silence,
16 because State Executive Law requires
17 investigations by the agency to remain
18 confidential until charges are brought.
19 That stage was reached last week."

20 Do you recall that statement?

21 MR. CAMPRIELLO: Do you want to
22 see it in context?

23 A. Do I recall the article?

24 MR. CAMPRIELLO: Could he take a
25 look at the article, judge? Thank you.

1

TEITELBAUM

2

A. I recall the article.

3

Q. Do you recall your quote?

4

A. It's not a quote. "Slings and

5

arrows" are in quotes. The rest of it is

6

not in quotes.

7

Q. Did you refer to the Executive

8

Law?

9

A. I don't remember.

10

Q. Are you familiar with the

11

Executive Law that provide confidentiality

12

of proceedings by your agency?

13

A. Show me the Executive Law, I'll

14

tell you what it says.

15

Q. Are we going to play games?

16

You're director of this agency, you don't

17

know the Executive Law that provides --

18

I'm asking you -- that you don't know the

19

Executive Law provision?

20

MR. CAMPRIELLO: Judge, ask

21

questions; don't make statements.

22

MR. FISCH: I'm asking him:

23

Q. Are you familiar with the

24

Executive Law that provides

25

confidentiality to your proceedings?

1

TEITELBAUM

2 Have you researched it since then?

3

4 MR. CAMPRIELLO: He has no
5 obligation to research anything for you,
6 judge.

7

MR. FISCH: I know he has no...

8

Q. Have you researched it?

9

A. No.

10

Q. Are you familiar with the

11 provisions of the Public Officers Law?

12

A. Which one?

13

Q. 74, subdivision 3 c.

14

A. Do you have it in front of you?

15

Can I look at it?

16

Q. Are you familiar with it without

17

me showing it to you?

18

A. I'm familiar with it generally.

19

Q. With it generally?

20

A. Generally, but I don't like to

21

talk about specific statutes without

22

looking at the statute.

23

Q. Okay. Have you looked at the

24

statute since you became executive

25

director of The Commission?

26

A. Yes.

1 TEITELBAUM

2 Q. Have you looked at the Executive
3 Law Section 94, subdivision (12) (a) since
4 you became director?

5 A. I'm sure I looked at all of the
6 provisions (12) (a).

7 Q. And can you tell me what your
8 understanding is with regard to
9 confidentiality of proceedings before your
10 agency?

11 A. I answered that question last
12 time.

13 MR. CAMPRIELLO: In fact, judge,
14 I'm going to say something now for the
15 record.

16 MR. FISCH: Please.

17 MR. CAMPRIELLO: Back in
18 January, I think on or about the 21st,
19 when we first were trying to arrange for
20 this session, I asked you to provide me
21 with a transcript of Mr. Teitelbaum's
22 previous testimony. At that time, you
23 told me that you had, albeit rarely you
24 said, given transcripts out, but you
25 declined to give one to us.

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TEITELBAUM

MR. FISCH: Correct.

MR. CAMPRIELLO: We're not going to engage in a guessing game, we're not going to engage in playing games. I am very concerned that he is being called back here to trap him, and I'm putting that on the record --

MR. FISCH: To trap him?

MR. CAMPRIELLO: Yes.

MR. FISCH: He said he hadn't researched that since last time. I'm asking --

MR. CAMPRIELLO: I don't interrupt you, and he can't take us speaking over each other.

MR. FISCH: Go ahead.

MR. CAMPRIELLO: Fundamental fairness would argue that we should have seen that transcript before coming back in here, because he testified here over four months ago. My understanding is that, typically, your agency does these somewhat in the sense of a deposition, where people get to read it and sign it, just like in

1 TEITELBAUM
2 civil cases, where people get to look at
3 their testimony, to make sure its
4 accurate, to make sure that the nuances of
5 what they intend to do say were accurately
6 captured. You refused to give us that
7 courtesy. You refused give us what I
8 think was our due.

9 Consequently, if you're going to
10 go back over things that he testified to
11 before, he's going to say, in essence, "I
12 stand on my testimony."

13 Asked and answered. We're not
14 going to relive it.

15 MR. FISCH: The testimony was
16 that he had not researched it.

17 MR. CAMPRIELLO: No. The
18 testimony also was what he said to you
19 about confidentiality. Now, I don't have
20 perfect recall, so I can't tell you
21 exactly what he said. Had we had an
22 opportunity to look at the testimony, then
23 we would all know.

24 MR. FISCH: He'd have to look at
25 the testimony to answer the question as

1 TEITELBAUM
2 executive director as to what the
3 confidentiality provisions -- how that
4 applies to his agency?

5 MR. CAMPRIELLO: You did this
6 last time. That's my recollection, and
7 that's his recollection. You did it once;
8 you wouldn't let us see what you did last
9 time. So he's asked --

10 MR. FISCH: What did I let him
11 see? He doesn't know the statute? This
12 is the record you're making, that the
13 executive director does not know enough
14 about the statute to answer questions
15 about it? That's fine.

16 A. Wait. I didn't say that. Don't
17 mischaracterize --

18 Q. I'm asking you --

19 A. Don't --

20 Q. I'm asking --

21 A. Let me finish. Don't
22 mischaracterize my testimony, sir.

23 Q. Well, I'm asking you if you're
24 familiar with the provisions of the
25 statute.

1 TEITELBAUM

2 A. I answered you.

3 Q. Alright. What are the
4 provisions of the statute with regard to
5 confidential proceedings before your
6 agency?

7 A. If you show me the statute, I'll
8 tell you what it says.

9 Q. And without me showing you the
10 statute, you can't answer the question?

11 A. I don't paraphrase statutes.

12 Q. I'm sorry?

13 A. I said I don't paraphrase
14 statutes --

15 Q. I'm not asking you --

16 A. I haven't finished. I don't
17 paraphrase statutes in this kind of
18 context.

19 Q. Does the statute permit
20 employees sharing information about
21 matters involving investigations outside
22 the office?

23 A. If you show me the statute, I'll
24 tell you what it says.

25 Q. That's fine. You make the

1 TEITELBAUM

2 record, that's right.

3 A. You're making the record, too,
4 sir.

5 Q. Are you familiar with the
6 confidentiality statute that employees --
7 statement that the employees are required
8 to sign?

9 A. I didn't hear your question.

10 Q. Are you familiar with the
11 confidentiality statement that employees
12 of your agency are required to sign?

13 A. I don't remember what it says,
14 but I'm familiar that there is one.

15 Q. Okay. Is it fair to say that
16 your commission has a strict policy
17 prohibiting disclosure of any matters
18 before The Commission?

19 A. The Commission's policies are
20 embodied in resolutions passed by The
21 Commission. If you have a resolution
22 passed by The Commission on the matter of
23 confidentiality, I'd like to see it. I
24 don't know of any at this point.

25 Q. You can't answer the question --

1 TEITELBAUM

2 MR. CAMPRIELLO: He answered the

3 question.

4 A. I answered it, judge.

5 MR. CAMPRIELLO: You don't like

6 the answer.

7 A. You don't like the answer.

8 Q. You do not know -- are you

9 familiar with the confidentiality

10 statement that your employees signed --

11 A. I answered your question.

12 MR. CAMPRIELLO: Two minutes

13 ago. One minute ago.

14 Q. And what --

15 MR. FISCH: Read back the

16 answer.

17 (Answer read.)

18 Q. Are you bound by the same

19 confidentiality statement that the other

20 employees signed?

21 A. If I have -- do you have my

22 confidentiality statement? Do you have

23 it?

24 Q. No, I don't have it. You're not

25 familiar with it?

1 TEITELBAUM

2 A. I think I answered that
3 question.

4 Q. Okay. Can you tell me what you
5 are permitted to disclose about
6 investigations?

7 A. I answered that question last
8 time.

9 Q. I'm asking it to you again,
10 because you said generally -- you spoke
11 generally to Hermann.

12 A. I'm not going to -- I'm not
13 going to adopt your paraphrasing of my
14 prior testimony, and I've been instructed
15 by my counsel not to regurgitate answers
16 that I had given you four months ago. If
17 you want to show me the transcript, I'll
18 look at the answer and I'll tell you
19 whether there's anything that I wish to
20 change in my answer, but at this point I
21 stand by my answer that I gave you four
22 months ago.

23 Q. You referred to Hermann as a
24 back channel. Do you recall that?

25 A. I'm not going to permit -- I'm

1 TEITELBAUM
2 not going to adopt the paraphrasing of my
3 testimony. If you have the transcript,
4 you show me -- take me to the place and
5 I'll tell you whether I want to change the
6 testimony, add to it, or stand by it.

7 MR. CAMPRIELLO: And we're
8 certainly not going to do it when you take
9 it out of context.

10 Now before Mr. Teitelbaum says
11 anything, my recollection is that the word
12 "back channel" was used on several
13 occasions at different points in the
14 testimony.

15 MR. FISCH: Yes.

16 MR. CAMPRIELLO: And so I
17 think --

18 MR. FISCH: Initially --

19 MR. CAMPRIELLO: I think that
20 he --

21 MR. FISCH: Go ahead.

22 MR. CAMPRIELLO: -- should be
23 permitted to look at every time you and he
24 discussed "back channel" since your
25 question was, did you talk last time about

1 TEITELBAUM
2 back channel. He should see what he said
3 about "back channel" throughout.

4 MR. FISCH: Give it to me.

5 MS. OSTERER: Judge, according
6 to the index, the word "back channel" or
7 "channel" appears on --

8 MR. FISCH: I've got it.

9 MS. OSTERER: Okay.

10 MR. FISCH: It starts with 25.
11 Even going further back.

12 (Pause.)

13 MR. FISCH: 25 through 27.

14 MR. CAMPRIELLO: So the record
15 is going to reflect that you've given
16 Mr. Teitelbaum the transcript and he is to
17 look at pages 25 to 27?

18 MR. FISCH: That's right.

19 MR. CAMPRIELLO: Thank you.

20 Q. There's a reference later on
21 where I ask him the same question and he
22 said "I've already answered that."

23 MR. CAMPRIELLO: May we see the
24 other part where he repeated it?

25 MR. FISCH: Sure. When I asked

1 TEITELBAUM
2 him the same question, he said "I answered
3 it already." 163. Page 163 to 165.

4 Q. I've indicated that,
5 Mr. Teitelbaum, with pencil lines?

6 A. What's the question?

7 Q. The question is what did you
8 mean when you said you had referred to him
9 as a back channel?

10 MR. CAMPRIELLO: I thought he
11 said he did not refer as a back channel.

12 MR. FISCH: That's not what he
13 said. He said he did not use him to get
14 documents, and I had asked him if he ever
15 used -- referred to him as a back channel,
16 and the answer is yes, and I asked him
17 what context. That's the thing.

18 A. The answer I gave you was
19 Mr. Hermann was telling me at a point in
20 time that the executive lawyer chambers I
21 was dealing with were very negative about
22 me.

23 Q. So how is that a reference to
24 "back channel"?

25 A. How are you defining "back

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TEITELBAUM

2 channel"?

3 Q. I did not use that expression.

4 A. I understand that.

5 Q. You did.

6 A. And I've just told you what I
7 meant by it.8 Q. That Hermann was telling you
9 that the executive chamber people were not
10 happy with you; that's what you meant by
11 "back channel" --

12 A. I think --

13 Q. -- that they were very negative
14 about you?

15 A. Whatever the -- whatever the --

16 Q. That's your answer?

17 A. Whatever the transcript reflects
18 was my answer to you.

19 Q. But I don't understand it.

20 That's why I called you back.

21 MR. FISCH: Mr. Campriello, let
22 me -- you said something before, which I
23 think was very unfair. Why did I call
24 Mr. Teitelbaum back? He made a record, he
25 made an extensive record, and as a matter

1 TEITELBAUM
2 of fairness, okay, where there are
3 questions that he answered, which perhaps
4 might be harmful to him or embarrassing to
5 him, I wanted an opportunity for him to
6 reflect on that and perhaps expand it or
7 explain it or modify it. That's why he's
8 back down. I could have gone very
9 comfortably with this record, okay? As a
10 matter of -- as a courtesy to him -- and
11 that's on the record -- an opportunity to
12 reflect on this and answer questions,
13 that's why he's back, okay?

14 MR. CAMPRIELLO: That's your --

15 MR. FISCH: Not to trap him.

16 You know, that -- that was unfair.

17 MR. CAMPRIELLO: I disagree.

18 And let me tell you why.

19 MR. FISCH: Sure.

20 MR. CAMPRIELLO: Because you
21 deserve an answer. If you wanted to be
22 fair, you would have given us that
23 transcript, instead of springing questions
24 on us like this. That's number one.

25 Number two, your investigation

1 TEITELBAUM
2 ostensibly was to determine whether on a
3 particular night Teitelbaum told Hermann a
4 certain piece of information. Hermann has
5 told the D.A., and he's told you, I assume
6 under oath, that did not happen.

7 Teitelbaum has told you that he
8 did not give that information to Hermann.
9 Hermann, I believe, has given the D.A. and
10 you and explanation. You choose to reject
11 it. There's nothing I can do about that.
12 But the fact of your rejection means that,
13 frankly, you don't have any investigation
14 as far as I can tell. And, indeed, the
15 referral to you was outside of the scope
16 of what you're supposed to be
17 investigating, according to your statute,
18 which I'm you're familiar with. Are you
19 familiar with it?

20 MR. FISCH: How is it outside
21 the scope of our --

22 MR. CAMPRIELLO: Because there's
23 no abuse. Teitelbaum could have, could
24 have told Hermann exactly what you think
25 Teitelbaum told Hermann, without violating

1 TEITELBAUM
2 any rule, regulation, obligation, as long
3 as Teitelbaum thought it was in
4 furtherance of his commission's
5 operations. Now, it just so happens that
6 Teitelbaum has told you he didn't do it,
7 and Hermann has told you he didn't do it,
8 and you don't like that, you don't accept
9 that.

10 MR. FISCH: I don't have the
11 slightest idea of what Hermann/Teitelbaum
12 told -- testified to the second time or
13 what records would indicate. Alright?

14 MR. CAMPRIELLO: I wouldn't say
15 I don't have the slightest idea, judge. I
16 may not have seen things, but I think I
17 have a pretty good idea. So if you want
18 to be fair, give us the transcript, we'll
19 go home, we'll come back, and then you ask
20 away, and if he wants to correct
21 something, or change something, or enhance
22 something, or in any way explain a nuance,
23 he'll do it.

24 MR. FISCH: I'm very happy to
25 let Mr. Teitelbaum go now and I'll rely

1 TEITELBAUM
2 upon everything he has said and what
3 Hermann has said. You want to leave it
4 that way, we'll do it that way. It's up
5 to you. It's your call.

6 MR. CAMPRIELLO: How can I say
7 that when I don't know where you're
8 going?

9 MR. FISCH: Because you said
10 it's a trap. If you feel I'm trapping
11 him, then we don't have to go any
12 further.

13 MR. CAMPRIELLO: Can we go out
14 and talk?

15 THE WITNESS: Sure.

16 MR. FISCH: Okay. .

17 MR. CAMPRIELLO: And because I
18 trust you, judge, on this score, I'm
19 leaving my papers here. I know you won't
20 look.

21 (Pause.)

22 MR. FISCH: What's your
23 pleasure?

24 MR. CAMPRIELLO: We're prepared
25 to have you ask the questions.

1

TEITELBAUM

2 think you were being set up?

3 A. At what point in time?

4 Q. At any point in time. Because

5 the investigation --

6 A. Oh, yes. Yes.

7 Q. Could you explain that.

8 A. Well, I think I -- I think I had

9 said to you that there was a perspective

10 that I had learned about on the part of

11 the executive chamber that viewed me very

12 negatively, that I was being too

13 aggressive, that I was pushing the

14 investigation too hard, that the executive

15 chamber wanted me to close down the

16 investigation before September 22nd, 2007,

17 and didn't say well -- well, they did say

18 it explicitly, they wanted me to close it

19 down.

20 As I directed the investigation

21 and insisted upon the production of

22 documents in a comprehensive and timely

23 fashion, it became clear to me that the

24 negative perspective was intensified, and

25 as we went further into the end of 2007,

1 TEITELBAUM

2 Q. And had you also learned
3 secondhand that they claimed their
4 knowledge of the fact of that
5 investigation came from Hermann?

6 A. No.

7 MR. CAMPRIELLO: At what point?
8 At what point in time?

9 MR. FISCH: I'm talking about
10 November, Mr. Campriello.

11 A. No. What I had been told was,
12 the people who had met with --

13 Q. The D.A.

14 A. -- Soares said that the source
15 of their knowledge was Constantine.

16 Q. Constantine had what, told --

17 A. That was the source of their
18 knowledge.

19 Q. And did they also tell him that
20 Constantine had said that he had learned
21 this from Hermann?

22 A. That's what the D.A. told me.

23 Q. Okay, the D.A. told you.

24 A. Yes.

25 Q. And you spoke to Hermann about

1

TEITELBAUM

2 that after?

3 A. I did.

4 Q. And can you tell us about the

5 conversation.

6 A. I can -- I don't remember -- I

7 don't remember the precise --

8 Q. In substance.

9 A. Let me finish. I don't remember

10 the precise back and forth, but I remember

11 asking Hermann if he had told --

12 Q. Constantine?

13 A. -- or anybody in the executive

14 chamber that I had told him -- I don't --

15 and I don't remember "told him about my

16 investigation" or "told him about the Dopp

17 issue," or "told him about the D.A.

18 issue." I don't remember what the second

19 part of the question was, but I asked him.

20 Q. And what did he tell you?

21 A. "No".

22 Q. And you related that to Feerick?

23 A. I did.

24 Q. Did you discuss with Hermann the

25 fact that it was his understanding that

1 TEITELBAUM

2 Rifkin was going to tell Feerick about
3 this allegation?

4 A. No.

5 Q. You never discussed with Hermann
6 that Rifkin was going to tell Feerick "we
7 learned about this information which
8 allegedly came Hermann from you?"

9 A. Did I ever learn -- let me hear
10 the question again.

11 Q. In other words, the chamber's
12 position was that they had information
13 which they should not have had, and that
14 they felt obliged ethically to tell the
15 D.A. "We have this. We didn't look for
16 it. We have it. We want you to know we
17 know of your investigation."?

18 A. Right.

19 Q. And that they also claim that
20 Constantine had learned of the
21 investigation from Hermann, okay? And
22 that Hermann was supposed to have received
23 this information from you?

24 A. I don't -- I don't know what the
25 communication was, of course --

1 TEITELBAUM

2 Q. The information --

3 A. Judge, let me finish. I don't
4 know what the communications were among
5 people in the Spitzer administration
6 concerning this subject, and I don't know,
7 and no one has ever told me, what Hermann
8 said or was alleged to have said to
9 Constantine.

10 Q. So you spoke to Hermann, he
11 denied it; right? Denied telling them
12 that he had information about the
13 investigation, that he had communicated
14 that to Constantine?

15 A. I've testified to this just now.

16 Q. Okay. And you went to --

17 A. And I don't know if I mentioned
18 Constantine in particular --

19 Q. Whatever --

20 A. -- or just people in the
21 executive chamber, the second floor. I
22 don't remember the conversation. You're
23 asking me about a conversation that took
24 place --

25 Q. November of 2007?

1 TEITELBAUM

2 A. -- almost a year and a half ago.

3 Q. A long time ago. But you went

4 to Feerick and you told him you had heard

5 these allegations and they're not true?

6 A. You mean what the D.A. had

7 relayed to me?

8 Q. Yes.

9 A. Correct.

10 Q. Did you know anything about

11 Hermann purportedly having learned about

12 this from notes in your --

13 A. Did I ever learn?

14 Q. -- he saw in your apartment?

15 A. You mean at that time?

16 Q. At that time.

17 A. No.

18 Q. And what was the first time you

19 heard about that?

20 A. My recollection is that it was

21 when The Commission heard the tapes --

22 Q. February tapes of --

23 A. Constantine --

24 Q. -- Constantine?

25 A. -- and Hermann.

1 TEITELBAUM

2 Q. -- and Hermann.

3 A. Right.

4 Q. And that was based upon members
5 of The Commission having heard those
6 tapes?

7 A. Yes, that's my recollection.

8 Q. Do you recall, Mr. Teitelbaum,
9 the D.A. calling you on a Friday night in
10 November, saying that Rifkin and others
11 wanted to meet with him and asking you
12 whether you knew why they wanted to meet?
13 In other words --

14 A. No. The answer is "no." I
15 remember a conversation with the district
16 attorney before he met with these people
17 from the executive chamber, and I don't
18 remember whether he told me who was
19 planning to meet with him, and I don't --

20 Q. Not Hermann. Rifkin. Rifkin
21 planning to meet with the D.A.

22 A. Right. And I don't remember
23 his -- the D.A. telling me who was going
24 to be meeting -- who he was going to be
25 meeting with; you know, who was going to

1 TEITELBAUM
2 be the representatives of the executive
3 chamber. I don't remember whether it was
4 in the evening, and I don't remember
5 whether it was a Friday, and I don't
6 remember whether he asked me did I know
7 what they were going to be meeting him
8 about.

9 Q. Okay.

10 A. I remember his telling me that
11 he had told them to have a lawyer.

12 Q. The following morning, Saturday,
13 did you call him and ask him whether he
14 had learned why they wanted to meet?

15 A. No. I don't remember that.

16 Q. Did you ever ask the D.A. in
17 connection with that same November
18 connection whether the D.A. had learned
19 who had disclosed information concerning
20 his investigation?

21 MR. CAMPRIELLO: Could you
22 repeat that, judge. I didn't understand
23 that.

24 MR. FISCH: Yes.

25 Q. Did you ever ask the D.A., when

1 TEITELBAUM
2 he said that they had met with him and
3 that they had information about his
4 information (sic), did you ask him whether
5 they ever identified the source of that
6 information?

7 A. What information are you
8 referring to?

9 Q. That they knew -- if they knew
10 of his investigation.

11 A. Did I ask him whether they
12 identified? No.

13 Q. Or whether they had ever
14 revealed that?

15 A. I never asked him that question,
16 that I remember. He told me. I hadn't
17 asked him. He told me.

18 Q. Sometime in February, after the
19 tapes were played for Dean Feerick and for
20 other members of The Commission, Hermann's
21 explanation was having seen something in
22 your apartment, some notes. Do you recall
23 that?

24 A. I think that I gave you
25 testimony last time about what I had heard

1 TEITELBAUM
2 from the people who had met with the
3 district attorney and had listened to the
4 tapes.

5 Q. And you mentioned crib notes?

6 A. No, I don't think --

7 Q. That you kept crib notes
8 sometimes in anticipation of a meeting or
9 a discussion or telephone call --

10 A. Well, let's separate these
11 things out.

12 Q. Let me finish my question.

13 A. Sure.

14 Q. I think you said that the
15 purpose of your crib notes is when you
16 intend to talk to somebody or meet
17 somebody, it's your assistance, your aid
18 in noting what you wish to discuss,
19 basically.

20 A. Okay. Your question is what?
21 Do I take crib notes, do I have crib
22 notes? What is the question?

23 Q. The question was, I think you
24 described the purpose of crib notes.

25 A. The purpose of crib notes is to

1 TEITELBAUM
2 help me remember points that I would like
3 to discuss, you know, and -- not every
4 time; just, you know, matters that have
5 some significance, either in telephone
6 calls or face-to-face meetings.

7 Q. And others have said that you
8 are basically not a notetaker, you like to
9 listen to conversations and contribute to
10 conversations, and -- is that basically
11 fair?

12 A. I think I gave you testimony on
13 this.

14 Q. Okay. Huh?

15 A. I think I gave you testimony on
16 this last time.

17 Q. You are aware, are you not, that
18 I asked Mr. Carter, who is representing
19 The Commission -- you know that?

20 A. I know Mr. Carter is
21 representing The Commission, yes.

22 Q. Rather than calling in a lot of
23 other members of The Commission,
24 commissioners or staff to obtain from
25 staff members a statement to the effect

1 TEITELBAUM
2 that they have not discussed any
3 Commission activities with Hermann -- do
4 you recall that? I think you wrote -- you
5 signed one as well.

6 A. I did.

7 Q. Do you recall that?

8 And Hermann has testified that
9 other than conversations with you, he's
10 discussed -- did not discuss with anyone
11 else at The Commission any of the
12 proceedings or activities of The
13 Commission? You accept that, as far as
14 you know?

15 A. Let me have it read back.

16 (Question read.)

17 A. I have no idea what Hermann's --

18 Q. My question is, do you --
19 knowing your staff and your commissioners,
20 do you have any basis to challenge the
21 accuracy of their disclaimer of any
22 conversations with Hermann about the COPI
23 activities?

24 A. I have no evidence one way or
25 the other on it.

1 TEITELBAUM

2 Q. Mr. Hermann was in possession of
3 the contents of Dopp's sworn testimony
4 before your commission on November 1st.
5 Do you have any explanation as to how he
6 might have received that?

7 A. I don't know if he did.

8 Q. I am telling you that he was in
9 possession of such information. I'm
10 asking you if you have any explanation of
11 how he might have gotten that.

12 MR. CAMPRIELLO: When you say
13 "such information," judge, the first time
14 you said, I think, "the transcript", and
15 then the second time you said --

16 MR. FISCH: Content of
17 transcripts.

18 MR. CAMPRIELLO: So in other
19 words --

20 MR. FISCH: The content --

21 MR. CAMPRIELLO: He knew or he
22 thought he knew what the content was, not
23 having the transcript?

24 MR. FISCH: Thank you.

25 A. What did he --

1

TEITELBAUM

2

MR. FISCH: Okay.

3

A. What specific information from
4 transcripts did he -- is he alleged to
5 have had?

6

Q. Testimony that members of the
7 chamber had influenced him in the
8 composition of the statement to the
9 attorney general.

10

A. Influenced Dopp?

11

Q. Huh?

12

A. Had influenced Dopp?

13

Q. Yes.

14

A. And Hermann is supposed to have
15 had that information?

16

Q. Yes.

17

A. And your question --

18

Q. And your explanation of how he
19 might have had that on November 1st?

20

A. I can't tell you how Hermann had
21 that information --

22

Q. I am telling you --

23

A. No, you asked me, do I have an
24 explanation as to how he had that
25 information? And I can't tell you how he

1 TEITELBAUM
2 got that information. I can only tell you
3 what he said to the district attorney, and
4 I presume he said the same thing to you
5 concerning looking at notes of mine. I
6 also know that the executive chamber -- I
7 can't say to a certainty, but I wager you
8 on it -- had the substance of Dopp's
9 testimony the night that it was taken.

10 MR. CAMPRIELLO: Now, let me
11 interject, because I may be able to
12 actually help you. I don't know whether
13 or not you have obtained a copy of
14 Mr. Dopp's diary.

15 MR. FISCH: Mr. Dopp's diary?

16 MR. CAMPRIELLO: Diary. If you
17 have not obtained it, you might want to,
18 because what you will find, I believe, is
19 that the same day that he testified before
20 The Commission, that evening he called and
21 spoke to Mr. Nosenti, and while I'm not
22 sure the diary is pristinely accurate with
23 respect to everything he told Mr. Nosenti,
24 I think that you would find it fruitful to
25 find out whether he told Mr. Nosenti what

1 TEITELBAUM
2 his testimony was and what the questions
3 were.

4 MR. FISCH: Okay.

5 MR. CAMPRIELLO: If you have the
6 diary, perhaps you're already there. If
7 you don't have the diary, you might want
8 to get it.

9 Q. Apart from him advising Nosenti,
10 Dopp advising Nosenti, do you have any
11 other explanation of how Hermann might
12 have been aware of Dopp's testimony?

13 A. No.

14 Q. Any idea as to how he might --

15 A. Except what he -- you know,
16 except what he testified to at the
17 district attorney.

18 Q. Well, did you -- did you write
19 on your notes, on notes the fact that --
20 the content of Dopp's testimony?

21 MR. CAMPRIELLO: Objection.

22 Now, see that's what I consider a trick
23 question.

24 MR. FISCH: How is that a trick
25 question? I said --

1

TEITELBAUM

2

A. Let me see. We're talking about

3

Bates stamp CPI 327, 328, and 329.

4

MR. CAMPRIELLO: That's good

5

enough.

6

Q. Okay. Are these your notes as

7

well, Mr. Teitelbaum? I don't know

8

whether I showed them to you last time.

9

Let me show them to you now.

10

A. I think I identified them all

11

last time. Yes.

12

Q. These as well?

13

A. Yes.

14

MR. CAMPRIELLO: Now these two

15

don't have Bates stamps?

16

THE WITNESS: These don't have

17

Bates stamps.

18

MR. CAMPRIELLO: One has -- just

19

read the top part.

20

THE WITNESS: One has crossed

21

out "this will take an extra two hours" at

22

the top, and at the bottom it says

23

"question as to whether DD would sign

24

and..." -- "... & statement." That's one

25

document. Another document says Christine

1 TEITELBAUM
2 Anderson at the top, 10/17. It's a
3 one-page document. At the bottom it says
4 "report re: Laraby's testimony to this
5 commission." Oh, this is CPI -- I'm sorry,
6 these do have Bates stamps on them.
7 CPI 331 and CPI 325. Forgive me.

8 MR. CAMPRIELLO: I'm sorry, I
9 didn't see them.

10 MR. FISCH: You see, I only had
11 identified two, so it was worth coming by
12 to identify the remaining two.

13 MR. CAMPRIELLO: We're here to
14 help.

15 THE WITNESS: I think I
16 identified them before.

17 MR. FISCH: I know how anxious
18 you are to help.

19 MR. CAMPRIELLO: And I'm sure
20 that was said in the spirit of candor and
21 not as an ironic comment.

22 MR. FISCH: In the spirit of
23 lawyers talking to one another, okay?

24 Q. Mr. Teitelbaum, this may have
25 been an additional oversight by me. Were

1 TEITELBAUM

2 these also yours?

3 A. CPI 324 and CPI 326 are mine,
4 and CPI 330 is mine.

5 Q. So those are all yours?

6 A. Yes.

7 Q. Are those what you would call
8 crib notes?

9 A. Umm...

10 Q. Any of these.

11 MR. CAMPRIELLO: Take a look at
12 them all.

13 THE WITNESS: Yes, I will.

14 A. I want to preface this by saying
15 that you're asking me to identify the
16 purpose of documents that look like they
17 were prepared more than a year ago. So,
18 with that caveat, let me answer your
19 question.

20 Q. They appear to be yours?

21 A. They are mine.

22 Q. Oh, that's all I'm asking,
23 because I thought I said --

24 A. I thought you asked me whether
25 these were crib notes.

1 TEITELBAUM

2 conversation, you know, with either staff

3 or with commission.

4 Q. This is what you earlier meant

5 by "crib notes"?

6 A. Did I use that?

7 Q. Yes.

8 A. If -- the answer is yes.

9 Q. Thank you.

10 A. 328 appears to be the same. I

11 can't say what 329 is.

12 Q. But is it --

13 A. Hold on. Hold on. I have

14 others you --

15 Q. If it was his?

16 A. Yes.

17 Q. Do you want me to go on?

18 A. Please go on. 331 does not look

19 like crib notes. 325 does not look like

20 crib notes.

21 Q. Two more.

22 A. I don't know what 326 is. I

23 mean, I don't know -- it's mine, but I

24 don't know the purpose for which it was

25 prepared. I don't know what 324 is. It's

1 TEITELBAUM
2 mine, but I don't know what the purpose of
3 it was.

4 Q. This does not have any
5 identifying number, but --

6 A. It does.

7 MR. CAMPRIELLO: It's varied.

8 A. It's CPI 330.

9 Q. Where is it? I missed that.
10 Okay, it was in written in --

11 A. I don't think these are prep
12 notes or prompt notes or crib notes.

13 Q. What about this?

14 A. This is Bates CPI 332. I don't
15 know the purpose for which 332 was
16 prepared.

17 Q. Okay.

18 A. But it's mine.

19 Q. And what about these two?

20 A. I don't know what this -- what
21 these two documents -- they're part of the
22 same, it looks like to me, although one
23 has lines in it and the other doesn't.
24 330 -- Bates stamp CPI 323 has lines and
25 Bates stamp CPI 322 does not have lines

1 TEITELBAUM

2 and it may have been -- I don't know. It
3 could have been crib notes, it could have
4 been my own -- you know, my own thoughts
5 being written down, for myself.

6 Q. Okay.

7 A. It could have been both.

8 Q. With regard to the last two
9 pages, 322 and 323, do you know when that
10 was generated, roughly?

11 A. Well, it was obviously after you
12 had notified The Commission that you were
13 undertaking an investigation, which was, I
14 think, in August.

15 Q. You got a letter from the D.A.
16 in August. I think I made my first phone
17 call to Ginsberg on August -- I believe
18 August 12th. He asked if I had any
19 objection of telling you and I said of
20 course not.

21 A. Sometime after that, obviously.

22 Q. Mr. Teitelbaum --

23 MS. OSTERER: Before we go on, I
24 had a question about that --

25 MR. FISCH: Go ahead.

1

TEITELBAUM

2

MS. OSTERER: -- document.

3

At the bottom of CPI 323 --

4

THE WITNESS: Yes.

5

MS. OSTERER: -- at the very

6

bottom of the page, in the last paragraph,

7

there's a reference in parenthesis which

8

says "See Meave's notes of 10/20," and we

9

were not furnished with any notes of

10

10/20. We were furnished with notes of

11

8/20, August 20th, and I wonder if you

12

could just take a look at this --

13

THE WITNESS: It was a mistake.

14

MS. OSTERER: -- and see if it

15

was perhaps a mistake.

16

THE WITNESS: It was a mistake.

17

MS. OSTERER: Do you need to

18

look at it or was it August 20th?

19

MR. CAMPRIELLO: Are they these

20

notes or is it the memoranda which I think

21

I gave you the last time?

22

MS. OSTERER: That's the 24th.

23

MR. CAMPRIELLO: And it refers

24

to the D.A. having decided to go forward

25

earlier.

1 TEITELBAUM

2 MS. OSTERER: But the content of
3 the August 20th notes seem more in line
4 with that handwritten paragraph, unless...

5 MR. CAMPRIELLO: I don't have it
6 in front of me.

7 MS. OSTERER: That's why I
8 needed the clarification. I know what
9 you're referring to, but...

10 MR. CAMPRIELLO: I remembered it
11 last time, there was an interest in when
12 the D.A. said he was going to go forward.

13 MS. OSTERER: I know that.

14 MR. CAMPRIELLO: We gave you the
15 typewritten -- the one that sticks in my
16 mind is the typewritten memo by Meave
17 Tooher that indicated that whatever date
18 that was, that, earlier, he had said he
19 was going to go forward.

20 MS. OSTERER: Yes, I know --
21 you're referring to the typed memo of
22 October 24th, and this is --

23 MR. CAMPRIELLO: Sounds right.

24 MS. OSTERER: -- this might be
25 different.

1

TEITELBAUM

2

MR. CAMPRIELLO: Okay.

3

4

THE WITNESS: I think that I was referring to actually Meave's notes of --

5

August 24th, were there typewritten notes

6

of August 24th?

7

MR. CAMPRIELLO: Do you have

8

it?

9

MS. OSTERER: Yes, at the end of

10

that, there is a typewritten version.

11

MR. CAMPRIELLO: Okay.

12

MS. OSTERER: But it still says

13

August 20th. ?

14

THE WITNESS: Yes, okay. I was

15

referring to August -- to the August 20th,

16

rather than the October 20th.

17

MS. OSTERER: Okay, thank you

18

CONTINUING EXAMINATION BY MR. FISCH:

19

Q. Mr. Teitelbaum, you said it was

20

not until February after The Commission

21

had listened to the tapes of Soares and

22

Hermann you heard Hermann's explanation of

23

how he had received some information.

24

A. That's my best recollection.

25

Q. Did you ever discuss that with

1 TEITELBAUM
2 wouldn't have to ask me why I was sorry."
3 So I had answered your question; the
4 question that you're asking now, I
5 answered it the last time.

6 Q. Mr. Teitelbaum, I'm saying this
7 in all honesty: I'm not sure I understand
8 that. Could you explain that for me.

9 A. Yes. I didn't have to ask
10 Hermann, in my view, to go over the
11 details of what he apparently had said in
12 an interview with the district attorney.

13 Q. About the notes?

14 A. Yeah.

15 Q. First of all, let me make it
16 clear. When I left stuff on the table,
17 there was a court reporter, stenographer
18 here, alright? Although I would trust you
19 and Mr. Campriello, I nevertheless had
20 somebody in the room at the time. Now,
21 did, in that conversation, in that
22 conversation where he said he was sorry,
23 did he ever -- did you ever tell him, did
24 you ever confirm anything about the
25 contents of notes? Did you ever say to

1 TEITELBAUM

2 him that, yes, it went to the district

3 attorney? Did you ever tell him --

4 A. I don't understand your

5 question.

6 Q. In other words, Hermann's

7 testimony, one of his examinations, was

8 that he saw some notes on your table,

9 okay?

10 A. Did he deny that with you?

11 Q. I'm sorry?

12 A. Did he deny that with you?

13 Q. He had several different

14 explanations with us. That's why I'm

15 asking you, okay? That was one thing.

16 And then at some point he said

17 he asked you about the notes and that you

18 confirmed that the matter had gone to

19 the -- that the D.A. was investigating.

20 A. I have no recollection of

21 discussing notes with him.

22 Q. Okay. Did you ever confirm with

23 him that the matter involving Dopp and the

24 testimony and -- had gone to the district

25 attorney for investigation?

1 TEITELBAUM

2 A. I have no memory of ever doing
3 that. The only thing that I remember,
4 besides "I'm sorry," is that he did offer
5 an explanation -- I think it was in the
6 gym at one time -- that the reason that he
7 felt that he needed to go to Constantine
8 was he felt he was in a conflict of some
9 sort.

10 Q. In terms of the attorneys
11 representing the governor?

12 A. I can't tell you what the
13 conflict was. I don't remember whether he
14 went into that level of specificity.

15 Q. Did you ever discuss that with
16 him, that there were attorneys
17 representing the governor who might be
18 conflicted?

19 A. I have no memory of ever doing
20 that. I don't have a memory of ever
21 discussing with him the issue of
22 representation, who was representing. I
23 have no memory of that.

24 Q. Would that have been proper?

25 A. Would what have been proper,

1

TEITELBAUM

2 judge?

3

Q. Discussing with Hermann who was
4 representing the governor and whether they
5 were in conflict.

6

A. You're asking, would it violate
7 the statute or --

8

Q. Yeah. Would it be -- would it
9 have been --

10

A. I can't tell you --

11

Q. -- proper or appropriate,
12 confidential?

13

A. You know, judge, you were nice
14 enough to make available to me the
15 district attorney's referral letter to
16 you, and in that referral letter he used
17 the word "inappropriate" --

18

Q. -- and confidential?

19

A. I don't think so.

20

MR. CAMPRIELLO: I don't think
21 so.

22

A. I don't think so.

23

MR. CAMPRIELLO: I don't think
24 so.

25

MR. FISCH: I think he said --

1 TEITELBAUM
2 colloquy. That is my view. You know, now
3 you reject that view, perhaps. So be it.

4 MR. FISCH: That's why -- that's
5 why I asked Mr. Teitelbaum about the
6 confidentiality provisions of both the
7 Executive Law and the Public Officers Law,
8 alright?

9 Q. Do you agree with Mr. Campriello
10 that it would be not inappropriate to
11 release confidential information to
12 further an investigation to somebody who
13 is not -- who has not been designated to
14 be recipient of that information?

15 A. You know, what you've been doing
16 over the past five or six months --

17 Q. What?

18 A. What you have doing over the
19 past five or six months has been
20 playing -- you've been playing with
21 people's reputations, and I am not going
22 to answer your question about what's
23 inappropriate or appropriate. That's a
24 subjective -- that's a subjective concept,
25 in my judgment. I will stack up the

1 TEITELBAUM
2 a result of the district attorney being
3 embarrassed by what we had put up on our
4 Web site concerning his exchanges with the
5 executive chamber.

6 Q. Regardless of the D.A.'s motive,
7 or whatever you say --

8 A. Well, the only reason -- the
9 only reason I'm raising it --

10 Q. Yeah.

11 A. -- because the district attorney
12 made certain assertions in his referral
13 letter. One assertion was that what I did
14 was inappropriate. The district attorney
15 is not the arbiter of appropriateness or
16 inappropriateness of how I handle that
17 investigation. He had an axe to grind.
18 And with respect to confidentiality, the
19 arbiter of whether it was confidential or
20 not is The Commission. The Commission
21 interprets the Public Officers Law, and
22 The Commission implements Executive Law
23 94(12).

24 Q. That's why I asked you, as
25 executive director, to define what the

1 TEITELBAUM

2 scope was.

3 A. Well, now, let me give you a
4 specific answer to that.

5 Q. Sure.

6 A. There is no advisory opinion
7 that I know of issued by The Commission as
8 to what constitutes confidentiality, and
9 construing the laws that you cite as to
10 the meaning of "confidentiality."

11 Q. It's what?

12 A. As to the meaning of
13 "confidentiality", with respect to those
14 provisions.

15 And staff, which includes me,
16 are precluded from opining on what
17 something means -- for example,
18 "confidentiality" -- unless there's an
19 advisory opinion issued by The
20 Commission. I'm not authorized to do it.

21 Q. You said that my investigation
22 is political?

23 A. I said -- I say that it was --
24 could be unwittingly, but the district
25 attorney's referral is very suspect

1 TEITELBAUM
2 advisory opinions are issued sua sponte by
3 The Commission, and they concern the
4 application and interpretation of all of
5 the statutes and regulations that
6 constitute The Commission's business.

7 Q. Was one such advisory opinion
8 dealing with the use of state facilities,
9 like helicopters, when part of the purpose
10 for the trip was business and part may
11 have been political or personal?

12 A. You mean the aircraft opinion?

13 Q. The Bruno -- yes.

14 A. Yes.

15 Q. Did you ever discuss the
16 advisory opinion that -- and you did come
17 out with an advisory opinion, I believe?

18 A. Yes.

19 Q. Did you ever discuss that with
20 Hermann in advance of its publication?

21 A. I don't remember.

22 Q. Would that be something that
23 would be appropriate, in your words?

24 A. As I said to you, I don't -- in
25 this context, I don't apply

1 TEITELBAUM

2 appropriateness to conduct. If you're

3 asking me was that conduct legal or

4 illegal --

5 Q. Or confidential. Prior to its

6 publication, would --

7 A. I have no -- I have no basis to

8 say one way or the other. If you have an

9 opinion that was issued by The Commission

10 that would have designated a conversation

11 with anybody concerning -- well, let's

12 take the aircraft opinion -- conversation

13 that I may have had with -- and I don't

14 remember having it -- with a member of the

15 executive chamber about the use of

16 aircraft, in order to become more familiar

17 with the subject I can't tell you whether

18 that's appropriate or inappropriate or

19 legal or illegal, unless you show me --

20 unless you show me an authority.

21 Q. In the absence of advisory

22 opinions and in the absence of seeing the

23 statutes in front of you, you cannot say

24 whether disclosure, for example, of the

25 content of a testimony given before you

1 TEITELBAUM

2 was confidential or not?

3 MR. CAMPRIELLO: That wasn't
4 your question. Your question was, did you
5 ever discuss the advisory opinion with
6 Hermann in advance of its publication,
7 okay?

8 MR. FISCH: But he --

9 MR. CAMPRIELLO: That's a
10 different question that you're asking.

11 MR. FISCH: He also said, in the
12 absence of advisory opinions, he can't
13 comment on certain factual things, he
14 could not give opinions...

15 Q. ... so I'm asking you: You
16 cannot -- would the fact that somebody not
17 auth-- would the fact that Hermann knew of
18 a referral to the D.A. or transmittal --
19 because "referral" is a work of art --
20 would that be a violation of a
21 confidentiality statute?

22 MR. CAMPRIELLO: It wasn't a
23 transmittal. It was a consultation.

24 MR. FISCH: What?

25 MR. CAMPRIELLO: It wasn't a

1 TEITELBAUM
2 transmittal. It wasn't a referral. It
3 was a consultation.
4 Q. Would that confidentiality, the
5 fact that you've --
6 A. I've lost the question.
7 Q. Would the fact that your
8 commission has consulted with the district
9 attorney about the Dopp's testimony, would
10 that be a violation of your
11 confidentiality provision?
12 A. Do you think it is?
13 Q. Huh?
14 A. Do you think it is?
15 Q. I'm not the executive director.
16 A. I know, but I'm asking you. Do
17 you think it is?
18 Q. I'm asking you.
19 A. Well, you wrote in June --
20 Q. You're the witness.
21 A. Sir, you wrote an opinion in
22 June of 2008, I think it was, defining the
23 word "confidentiality."
24 Q. You're wrong, because that
25 referred to the Public Officers Law, not

1 TEITELBAUM

2 the COPI statute?

3 A. I understand that.

4 Q. Under the COPI statute --

5 A. Which COPI statute are you

6 talking about? 94(12)?

7 Q. Yes.

8 A. 94(12), is that it, Executive

9 Law?

10 Q. Yeah, Executive Law.

11 A. The Commission, as far as I

12 know, has not defined the parameters of

13 confidentiality with respect to 94(12).

14 And I don't know, by the way, whether

15 94 -- the term "confidentiality" --

16 "confidential" or "confidentiality" -- I

17 don't remember what the precise word is in

18 94(12), has any different meaning -- and

19 it may -- than the confidentiality

20 provision in the Public Officers Law that

21 you referred to.

22 Q. Okay.

23 A. Do you think it does?

24 Q. You're the witness. Not me.

25 A. Well, you're not asking me a

1 TEITELBAUM

2 fact question. You're asking me to give
3 you legal opinions.

4 Q. My God, you're the executive
5 director.

6 MR. CAMPRIELLO: And you're the
7 IG?

8 A. And you're the IG and you issued
9 an opinion.

10 Q. But I am not charged with
11 directing my staff or prohibiting my staff
12 or advising my staff on what they can
13 disclose and what they cannot disclose?

14 A. But you opined --

15 Q. I can tell you that nobody in my
16 office can disclose anything about what's
17 going on, okay?

18 A. Then, how do you explain the
19 fact that in September of 2008 the New
20 York Times and the --

21 Q. And the Times Union?

22 A. -- and the Times Union ran
23 articles with respect to Meave Tooher not
24 having been put on staff yet? Where did
25 that come from? Let me finish. How do

1 TEITELBAUM
2 you explain the fact that just a few days
3 ago the Associated Press issued something
4 which said that your investigation was
5 continuing, continuing, and that--

6 MR. CAMPRIELLO: I can tell you
7 exactly what they said, because I have the
8 two articles here in front of me.

9 MR. FISCH: I got a call, I said
10 we don't comment on that.

11 MR. CAMPRIELLO: Now, if I were
12 to say to you "I don't believe you, I
13 think you leaked," you would say to me,
14 "Mr. Campriello, that's outrageous, I did
15 not do it," and I said to you, "Prove it,"
16 you couldn't. You couldn't. And that's
17 what you're doing to Mr. Teitelbaum:
18 "Prove that you didn't leak."

19 He says he didn't leak, the guy
20 who allegedly received the leak says he
21 didn't leak, and you say, "Prove it." I'm
22 saying to you, prove it. You can't. You
23 can't.

24 A. And the people --

25 MR. CAMPRIELLO: But you can't.

1 TEITELBAUM

2 A. And the people who you're
3 relying on mainly are people who had an
4 axe to grind with me, had an axe to grind.

5 MR. FISCH: Let me --

6 A. And all of this is enabling
7 them, enabling them to do what they've
8 been doing from the outset, which is to
9 try to turn conduct which The Commission
10 said they had reasonable cause to believe
11 that there were violations of the Public
12 Officers Law, to turn the tables. And
13 it's enabling them.

14 Q. Now, let me respond. Okay?

15 A. Including -- including Dopp.
16 Including Dopp, who's using your
17 investigation to try to delay the
18 proceedings.

19 Q. Okay. Now, let me respond.

20 A. I mean, have you spoken to
21 Darren Dopp? Have you spoken to his
22 lawyer?

23 Q. Let me respond.

24 September article by Danny
25 Hakim, and by the Times Union: Never met,

1 TEITELBAUM

2 appropriate?

3 Q. Yes, I was told Mr. Carter
4 thought it was appropriate.

5 A. But I'm asking you, do you think
6 it was appropriate?

7 Q. I thought that was appropriate.

8 A. By what standard? By what
9 standard?

10 Q. Let me go on. There was also an
11 article by Dicker, alright, that was, I
12 think, published sometime in January that
13 said that something went on at The
14 Commission, I think on January 7th, that
15 they were in turmoil because they had to
16 sign statements, okay? And Carter asked
17 me about that, because he wanted to know
18 whether I had provided the information. I
19 was out of the country at the time and I
20 told him that. Okay?

21 There's been nothing from this
22 office -- alright -- alright? You say
23 prove it. There's been nothing from this
24 office that -- to any reporters, any
25 press. Associated Press called me, my

1 TEITELBAUM
2 press person called me, and I said, "We
3 don't -- we don't comment, we don't
4 comment on investigations."

5 Now, the content, if I recall,
6 the content of the Soares's letter to
7 Feerick and Feerick's response had been in
8 the newspapers before we even undertook
9 this investigation.

10 MR. CAMPRIELLO: That's not the
11 point. The point of this is, two people
12 outside of government, who spoke on the
13 condition of anonymity, because they
14 weren't authorized to talk about the probe
15 confirmed "the state inspector general is
16 still investigating Soares's claim."
17 Okay?

18 MR. FISCH: Right.

19 MR. CAMPRIELLO: Now let's
20 assume hypothetically I say "I believe you
21 told somebody that." You say, "Austin, I
22 didn't do that."

23 MR. FISCH: That's correct.

24 MR. CAMPRIELLO: And then I say
25 "Prove it." You can't.

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2 Soares's asking us to do an investigation,
3 I learned about it. When one of the --
4 when some of our people were in the D.A.'s
5 office on an unrelated matter, and there's
6 a letter that was supposed to be
7 hand-delivered to me, the press called
8 before I had even received the letter,
9 okay? And I met with the D.A., and I told
10 them that I would do this investigation on
11 one condition: That I wanted to see
12 nothing in the newspapers about that,
13 okay? And I think I put in on the record
14 either with you or before or with somebody
15 else before, okay?

16 MR. CAMPRIELLO: What I'm
17 alluding to is what occurred this
18 weekend. When I was reading to you what
19 was from an article -- well, from
20 something that appeared in the Web from
21 Web 10, which is a TV --

22 MR. FISCH: What?

23 MR. CAMPRIELLO: W 10, a TV
24 station up in the Capitol District, and it
25 continues: "And a report is expected in

1 TEITELBAUM
2 coming weeks." You know, again --
3 MR. FISCH: And what --
4 MR. CAMPRIELLO: "And a report,"
5 your report, "is expected in coming
6 weeks." Virtually the same article
7 appeared in the Troy Record on February
8 15th. And my point isn't that you
9 leaked. My point is that if I believed
10 you leaked and I was the inspector
11 general, and you told me you didn't, I
12 could say to you, "prove it", and you
13 cannot prove you didn't leak.
14 MR. FISCH: Okay.
15 Q. So you have nothing to worry
16 about.
17 A. That's not a matter -- let's not
18 be cute here. I'm going to be 66 years
19 old, I have an unblemished reputation, and
20 you're toying with it, and you're toying
21 with it based on information provided to
22 you by a district attorney who clearly has
23 an axe to grind, I mean, clearing -- you
24 know, clearing a press release about
25 Senator Bruno with the executive chamber

1 TEITELBAUM
2 before it's issued. I mean, please.
3 You're relying on Lloyd Constantine, who's
4 bosom buddies to this day with the
5 governor, who's protective of the
6 governor, who is angry at me --

7 MR. CAMPRIELLO: Which governor?

8 A. Of course Governor Spitzer, who
9 is angry at me, seething.

10 Q. You also said, I think you said,
11 or Feerick said, that Constantine is also
12 buddy buddy with a member of your
13 commission.

14 A. That's correct. I told you
15 that...

16 MR. CAMPRIELLO: Now, is it
17 appropriate for you to tell us what
18 Feerick may have said? I happen to think
19 it is, because if it furthers your
20 investigation, you can do it.

21 MR. FISCH: It's in connection
22 with questioning the witness.

23 MR. CAMPRIELLO: That's right.

24 MR. FISCH: And in connection
25 with the fairness to see that Feerick said

1 TEITELBAUM
2 so and so about you, what is your response
3 to that? Alright?

4 MR. CAMPRIELLO: And even though
5 under other circumstances that might be,
6 to use your word, "confidentiality".

7 THE WITNESS: Or
8 "inappropriate".

9 MR. CAMPRIELLO: -- or
10 "inappropriate", because under these
11 circumstances, in your judgment, it was
12 appropriate to breach the confidentiality,
13 you did it, and it was appropriate;
14 right?

15 MR. FISCH: If when this
16 investigation is concluded, and when a
17 report is issued, you can be assured it
18 will be based on rock solid evidence.

19 A. You have gone -- you have said
20 to people already that you don't believe
21 me, you have said to people already that
22 essentially you have drawn your
23 conclusion. Please. You've said to my
24 own lawyer before you ever took my
25 testimony that Hermann and I were two

1 TEITELBAUM
2 you, two days later, and I said, "You
3 know, judge, you said to me during our
4 conversations, if I heard you correctly,
5 that you had a smoking gun, and that's
6 very troubling to me, because I don't
7 think you do," and you said to me,
8 "Austin, I was kidding you." Clearly, I
9 didn't think you were kidding the first
10 time around. I wouldn't have circled back
11 and asked you. But you did say
12 subsequently "I was kidding you."

13 A. And if you --

14 MR. CAMPRIELLO: You did.

15 A. And if you have records --
16 because you've mentioned you've got
17 records -- which you think substantiates
18 whatever Constantine and that gang told
19 you, confront me with it.

20 Q. What do you have to confront?
21 I'm asking you questions --

22 A. But you don't --

23 Q. -- which you refuse to answer.

24 A. I haven't refused to answer a
25 single question.

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2 MR. CAMPRIELLO: By the way, in
3 that last one, if you have an e-mail, show
4 it to him, show it to him, so he can say,
5 "Oh, my God, I made a mistake."

6 A. Do you have an e-mail to show
7 me?

8 Q. Was your answer inaccurate?

9 MR. CAMPRIELLO: No, he stated?

10 A. My answer is accurate. No, I
11 don't remember any.

12 MR. CAMPRIELLO: I'm asking you,
13 that if this isn't a trap, if you have
14 e-mail, show it to him. That's all.

15 Q. I'm showing you a two-page
16 letter from John D. Feerick dated
17 September 14th, 2007 addressed to Richard
18 Rifkin and I'll ask you to take a look at
19 it.

20 A. Yes.

21 Q. You were cc'd on that letter; is
22 that correct? Have you ever seen the
23 letter before?

24 A. I would think so. I don't
25 remember specifically seeing it, but I

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2 would think so.

3 Q. And could you tell us what steps
4 The Commission had taken to ensure that no
5 confidential information concerning the
6 matter would be disclosed improperly to
7 the press or beyond?

8 A. Well, we locked --, for example,
9 we locked the room in we kept documents.
10 I think we had a -- you know, a lock put
11 on that room when we were at the Smith
12 building. This -- this -- this took place
13 when we were still at the Smith building.
14 So that room was locked. And there was --
15 I believe, but I can't -- I'm reluctant to
16 say this with certainty -- because I'm --
17 I'm not computer literate, but I think
18 that the computer system was set up in a
19 way so that only certain people could get
20 access to it. I can't think of others,
21 but there may have been others. And we're
22 talking about more than -- we're talking
23 about a year and a half ago, so... but
24 those are two that stand out.

25 Are you finished with this?

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2 theory that The Commission pursues has to
3 come from The Commission. It doesn't come
4 from me.

5 Q. And --

6 A. It would have been inappropriate
7 for me -- it would have been improper for
8 me, it would have been inconsistent with
9 the statute for me to have spoken for The
10 Commission before The Commission spoke.
11 And the issue of what legal theory The
12 Commission was pursuing had not been
13 determined on October 31st, 2007.

14 Besides that -- besides that --
15 it would have been strategically not a
16 very good idea to disclose to the
17 executive chamber what legal theories we
18 were pursuing, because the legal theories,
19 to some extent, would be shaped by the
20 evidence that we would be gathering.

21 Q. But does the Executive Law
22 section itself address what disclosures
23 may or may not be made?

24 A. The executive law speaks for
25 itself.

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2 Q. I just want to the clarify....

3 (Witness confers with counsel.)

4 A. Go ahead. I'm sorry.

5 Q. That's okay. I just wanted to
6 clarify whether the reference to the
7 Executive Law in the letter constitutes an
8 instance of opining about the statute,
9 which you -- which you referenced earlier?

10 A. If it were opining about the
11 statute, I had no authority to do it. I
12 don't view it as opining about the
13 statute, because the parameters of the
14 confidentiality reference in 94(12) I
15 don't believe has ever been determined by
16 The Commission. I don't believe The
17 Commission has opined on them, and because
18 The Commission itself has not opined on
19 it -- I think I've read most of the
20 opinions of the commissioners that this
21 commission, the Integrity Commission has
22 issued, as well as the opinions that were
23 issued by the Ethics Commission, and I
24 don't believe there's an opinion that sets
25 out the parameters of the meaning of the

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2 word confidential", and it would be --
3 there is a -- there is a -- I think it's a
4 regular -- it's a resolution, I think,
5 that was passed which would prohibit me
6 from doing it.

7 Q. Okay.

8 A. I can't give an informal opinion
9 unless there is an advisory opinion -- I
10 think I've got this right; I'm
11 paraphrasing so you'll have to -- you'll
12 have to take that -- take that caveat --
13 unless there's an advisory opinion where
14 The Commission has spoken on the issue.

15 Q. Since your tenure as the
16 executive director, has The Commission
17 ever provided training to its employees
18 regarding the disclosure of information?

19 A. I don't know. I don't know.
20 I'm not involved in every training session
21 that occurs. I don't know. We have a
22 training unit. I don't know the answer to
23 the question. I have not attended one.

24 Q. Would it be correct to say that
25 The Commission provide training to other

1

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2 agencies regarding ethics and the Public

3 Officers Law?

4 A. Yes.

5 Q. Do you know if that training
6 includes anything regarding the disclosure
7 of information under the Public Officers
8 Law?

9 A. I have reviewed our training
10 material, but I can't, as I sit here now,
11 tell whether the training material
12 references the confidentiality issue that
13 you are raising. And, of course, when our
14 people go out to train, they don't
15 necessarily stick with the training
16 material, so they may -- they may address
17 the issue extemporaneously.

18 Q. Has there been an advisory
19 opinion issued with respect to the
20 confidentiality provisions of the Public
21 Officers Law?

22 A. First of all, all of the
23 advisory opinions are on our Web site.
24 Sitting here now, I don't know of any.

25 Q. Okay.

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2 staff, and who on staff did it. You know,
3 I just don't know.

4 Q. Do you agree with the
5 confidentiality agreements or statements
6 as they were drafted?

7 A. I don't understand your
8 question.

9 Q. Did they contain language -- I
10 don't have them available, but did they
11 contain language about what should not be
12 disclosed by a commission employee? And
13 do --

14 MR. CAMPRIELLO: He doesn't have
15 that in front of him. How can he agree or
16 disagree?

17 MS. OSTERER: Okay.

18 A. Is this the one about the
19 communication with Hermann that --

20 Q. No, no, no. They're generic
21 forms.

22 A. You just -- I don't -- I don't
23 remember what they say. I know that they
24 exist, but I don't remember what they say.

25 Q. Are you familiar with The

1 TEITELBAUM
2 Commission's restrictions on its employees
3 with respect to the disclosure of
4 information obtained in the course of
5 employment?

6 A. What restrictions are you
7 referring to?

8 Q. Alright. Does The Commission
9 have restrictions upon disclosures which
10 may be made by its employees?

11 A. Have you asked for them? I --

12 Q. I'm asking you.

13 A. I had never seen a document that
14 sets out the details of the kind of
15 restrictions that you're talking about.

16 MR. CAMPRIELLO: I think you're
17 missing her point. She's circling back
18 and trying to get the answer to the
19 question about the confidentiality
20 statement, even though she hasn't shown
21 you the confidentiality statement.

22 THE WITNESS: I don't
23 understand.

24 MR. FISCH: You see, I'm letting
25 her ask these, because she doesn't provoke

1 TEITELBAUM

2 you as easily as I do.

3 THE WITNESS: You don't provoke
4 me. I just want you to realize that
5 you're dealing with my reputation.

6 MR. FISCH: I'll respond to that
7 in a minute.

8 THE WITNESS: And I know I'm
9 dealing with yours. So we both have to be
10 careful.

11 MR. FISCH: Uh-hum.

12 CONTINUED EXAMINATION BY MS. OSTERER:

13 Q. During your tenure as executive
14 director, have you yourself taken any
15 steps toward the prevention of leaks from
16 The Commission?

17 A. Yes.

18 Q. Can you tell us what those ARE.

19 A. Well, I gave you two.

20 Q. Okay.

21 A. And the details of the
22 investigation were kept within a certain
23 number of people, you know --

24 Q. I'm not referring specifically
25 to the Troopergate investigation.

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2 people in the office who are involved in

3 it.

4 You know, there are documents

5 that are prepared by support staff. I

6 couldn't put my finger on any support

7 staff that I could say is a person who

8 would -- who would take a document and

9 show it to somebody else. But, you know,

10 when I came into this position, there was

11 somebody else who very much wanted this

12 position and -- who's head of the Lobbying

13 Commission -- and The Commission consists

14 of people from the lobbying -- former

15 Lobbying Commission, and people from the

16 Ethics Commission, and I know that there

17 are people within the Integrity Commission

18 who came from the Lobbying Commission, who

19 have real allegiances to this other man

20 and continue to have relation-- a

21 relationship with him. That gives me

22 concern.

23 You know, you can't just fire

24 people for having lunch with the guy

25 who -- whose name appears in the newspaper

1 TEITELBAUM
2 about me and about The Commission -- on a
3 too frequent basis, and it's quite
4 negative.

5 So, you know, you try to do your
6 best.

7 Q. During the Troopergate
8 investigation, were you ever asked about
9 it by acquaintances outside of The
10 Commission?

11 A. Of course.

12 Q. Can you tell us who those were.

13 A. No. People would ask me --
14 innumerable people would ask me: "How's
15 it going?"; "I think the governor was up
16 to his eyeballs." Spitzer.

17 Everybody had an opinion about
18 this thing, and we were not shy about
19 expressing it to me. I can't give you the
20 names of all of them, but there were many.

21 Q. And how did you respond to
22 them?

23 A. I'd listen.

24 Q. Did you ever make a verbal
25 reply?

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2 A. I'm sure I made a verbal reply.

3 Q. Such as?

4 A. I can't tell you what they were.

5 Q. Did you ever say "sorry, I can't

6 discuss that with you"?

7 A. I just didn't discuss it.

8 Q. Did you discuss it with any

9 family members?

10 THE WITNESS: I think you asked

11 me this question, did I discuss what with

12 my family members.

13 Q. Anything relating to any

14 investigation of The Commission?

15 A. Yes.

16 Q. With whom?

17 A. My wife. You want to know what

18 I said to her?

19 Q. I sure do.

20 A. I told her that this

21 investigation is an excruciating

22 experience, I'm working like an animal --

23 or words to that effect -- that I miss

24 her, because I was away from her, and the

25 pressure's enormous. Those kinds of

1 TEITELBAUM

2 things.

3 Q. Did you discuss anything
4 substantive?

5 A. Like what?

6 Q. It's a very broad question.

7 A. I understand. That's why I'm
8 asking you to be specific.

9 Q. Any documents which The
10 Commission was seeking.

11 A. You mean, did I discuss with my
12 wife particular documents --

13 MR. CAMPRIELLO: I don't know
14 that we really want to get into
15 discussions with your wife.

16 MR. FISCH: I'm sorry.

17 MR. CAMPRIELLO: I don't know
18 that we really want to get into
19 discussions with his wife.

20 A. I mean, is there any evidence
21 that you have that I discussed with my
22 wife specific documents or is this just --
23 is this just an idle question to me?

24 MR. FISCH: Mr. Teitelbaum?

25 THE WITNESS: Yes, sir.

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2 MR. FISCH: Let me expand on

3 that?.

4 THE WITNESS: Yes.

5 REEXAMINATION BY MR. FISCH:

6 Q. Your wife's lower tenement --

7 East Side Tenement Commission --

8 A. Yes.

9 Q. -- I think had a public

10 relations contract with the Pat Lynch

11 firm.

12 A. Correct.

13 Q. And then Dopp joined the Pat

14 Lynch firm, I believe?

15 A. You bet.

16 Q. Correct?

17 A. Yes.

18 Q. I believe that shortly

19 thereafter, or sometime, your wife had

20 terminated that contract.

21 A. Correct.

22 Q. Did you discuss the -- that with

23 your wife?

24 A. I sure did.

25 Q. Okay. Can you tell us about

1 TEITELBAUM

2 She had indicated that she would be
3 stepping down. So the museum withdrew
4 over three --it was over \$3 million of
5 grant applications from the State
6 government.

7 MR. FISCH: Okay.

8 REEEXAMINATION BY MS. OSTERER:

9 A. Any other questions about that?

10 Q. Was there still something that
11 needed to be addressed about the Pat Lynch
12 firm?

13 MR. FISCH: Which one?

14 MS. OSTERER: About the Pat
15 Lynch firm.

16 A. Well, I can tell you about
17 that. I'd be happy.

18 MR. CAMPRIELLO: I don't know.

19 A. I'd be happy to tell you about
20 it.

21 MR. CAMPRIELLO: It will be a
22 revelation to me as well.

23 A. I'll be happy to tell you about
24 it. There was an article that
25 appeared -- a couple of them in the

1 TEITELBAUM
2 newspaper -- about the fact that I had
3 disclosed something to a woman who had --
4 and I'm now grossly paraphrasing, because
5 I don't have the articles in front of
6 me -- who was getting money from the
7 Executive Chamber, so what they tried to
8 do -- and where do you think this came
9 from?

10 (Witness speaking to someone
11 other than the questioner.)

12 THE WITNESS: You pointed out
13 that Dopp was with Pat Lynch.

14 A. They were trying to pit -- make
15 the case that I was going easy on the
16 Executive Chamber because my wife's
17 organization had applied for money. They
18 didn't use my wife's name, but that's
19 clearly where they were going. That's
20 clearly where they were going.

21 And I think that the man who --
22 you know, I think that the man who wanted
23 my job, who I was talking to you about, I
24 think that either he consults for Pat
25 Lynch or is referred business by Pat

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2 Lynch. You know.
3 MS. OSTERER: Okay. I have
4 nothing further.
5 MR. FISCH: Okay.
6 MR. CAMPRIELLO: There is one --
7 we're going to violate a cardinal rule,
8 which is when people say "I have nothing
9 further," the smart thing --
10 THE WITNESS: ... is get up and
11 walk.
12 MR. CAMPRIELLO: -- get up and
13 run as fast as you can from the room.
14 The last time we were here, you
15 seemed very interested in trying to fix
16 with precision when it was that the
17 district attorney definitively notified
18 The Commission that he was going to
19 proceed, and I know there were -- I don't
20 remember the questions, but clearly that
21 was a significant focus of your
22 examination, and I think the implication
23 that I drew was that the report says that
24 that occurred on or about October 19th and
25 that you thought, judge, that it occurred

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2 later, sometime around the beginning of
3 November. That's my recollection. If
4 it's wrong, it's wrong; the record is what
5 the record is. Again, I don't know,
6 although I don't think you did subpoena
7 the drafts of the drafts of The Commission
8 report. The drafts of The Commission
9 report, if you have them and check them --
10 or if you don't have them and decide to
11 get them -- will include drafts, or a
12 draft that has Herb's writing on it, the
13 whole report, and writing from a whole
14 bunch of other people as well, on their
15 drafts of what they thought.

16 The only reason I mentioned this
17 is that on a draft that Herb wrote,
18 where -- you took my copy. Okay, you
19 want to do it? Go ahead.

20 THE WITNESS: I inferred from
21 the questioning last time that you were of
22 the belief, or somebody had told you that
23 I had essentially jerry-rigged this report
24 to have the October 19th date put in when
25 it really should have been some other

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2 date, and that this was my concoction.

3 MR. FISCH: You're what?

4 THE WITNESS: Concoction. That

5 I concocted it -- that I concocted

6 the --

7 MR. FISCH: Right?.

8 THE WITNESS: Is my near

9 inference, near the bull's eye?

10 MR. FISCH: No. All of the

11 notes indicate that there's no question

12 but you had an earlier meeting with the

13 D.A., 19th, 20th, twenty whatever.

14 THE WITNESS: We had the 19th,

15 the 22nd --

16 MR. FISCH: Okay, whatever. And

17 you turned over testimony, okay. There's

18 a discrepancy, it's not significant, as to

19 whether they got everything right away or

20 whether they only got Dopp's -- the first

21 35, from the pages.

22 THE WITNESS: I gave you my best

23 recollection, that it was the whole thing.

24 MR. FISCH: I understand that.

25 I understand that. And that there were

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2 discussions that continued where at one
3 point, according to the notes, internal
4 notes he regarded as premature to go
5 forward with it, and then there's a
6 question about are you going to testify,
7 will they permit Meave to testify about
8 all of these things, and the thing dragged
9 on and it was an ongoing discussion as
10 to -- listen to me.

11 THE WITNESS: I'm listening to
12 you.

13 MR. FISCH: I'm not mak--

14 THE WITNESS: No, I understand.

15 MR. FISCH: Herb, I'm not making
16 this up.

17 THE WITNESS: I understand that
18 you got this from the D.A.

19 MR. FISCH: There's an ongoing
20 discussion that it was going on and it was
21 not until January that I think the final
22 last word was these are from internal
23 memos of yours. That's why I asked --

24 THE WITNESS: Internal memos of
25 my commission?

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2 again and he came back again. He never
3 said that I wasn't going forward. He said
4 at every one of these meetings he was
5 going forward. Now, if in his mind he
6 hadn't made up his -- you know, he hadn't
7 determined whether he would go, you know,
8 forward, actually, 100 percent, until
9 November 1st, I didn't know about it,
10 okay? I didn't know about it. You know,
11 I can -- I only reported to other people
12 on the 19th what I understood him to be
13 telling me.

14 However, let me go on. I had --
15 I'm really focusing on what I had inferred
16 from your questions last time that I had
17 essentially gotten this report that The
18 Commission issued on July 24th to say that
19 it was the 19th, for some -- I mean, I
20 don't know what the motive would have
21 been, but that it was -- I'm going to show
22 you page 8 of a draft, which I found.
23 It's a draft -- I don't know -- I don't
24 know when -- when this particular draft
25 was prepared. There were many, many, many

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2 drafts.

3 MR. FISCH: Can we go off for a

4 minute and then I'll --

5 THE WITNESS: I don't want to go

6 off the record.

7 MR. CAMPRIELLO: I don't want to

8 put off --

9 MR. FISCH: Then I'll put back

10 everything you said.

11 MR. CAMPRIELLO: Let us finish.

12 MR. FISCH: This part --

13 MR. CAMPRIELLO: Let's put it

14 on.

15 MR. FISCH: Okay.

16 THE WITNESS: So I think you

17 told me when we last were together that

18 the report that was issued had many, many

19 fingerprints on it, there are -- many

20 commissioners edited this report, and when

21 I say "edited the report," I mean not

22 light touch. I mean major, major edits.

23 And of course the staff edited the

24 report. And it's hard to tell whose edits

25 were responsible for what portion of what

1 TEITELBAUM

2 sentence in the final product, because

3 there was so many hands; right?

4 But I can tell you that I had

5 wanted the specific date that the

6 district -- District Attorney Soares

7 indicated to The Commission that the ODA

8 would go forward with the Grand Jury

9 proceeding. I wanted the specific date in

10 there. But I didn't know the date, didn't

11 remember it, okay?

12 So, in editing this document,

13 obviously before July 24th, I inserted in

14 the second paragraph of page 8 of the

15 draft, after the words "soon afterwards,

16 District Attorney Soares indicated to The

17 Commission on - (CK with JF)," which meant

18 check with John Feerick, because I didn't

19 remember the date. And the date was

20 inserted of October 19th as a result of

21 somebody -- and I don't know who it was.

22 It was one of the staff people who was

23 writing the report as well -- you know,

24 the draft -- to check with John Feerick,

25 and the 19th date did not come from me.

1 TEITELBAUM

2 It came from John, because I knew that

3 John had kept a journal, and I suspected

4 that he would have had an indication in

5 his journal.

6 MR. FISCH: Okay. You want to

7 leave this with me?

8 THE WITNESS: Sure.

9 MR. CAMPRIELLO: We gave you

10 one. That's for you. We gave one to your

11 colleague.

12 MS. OSTERER: Maybe we should

13 put an exhibit sticker on it.

14 THE WITNESS: However you'd like

15 to do it.

16 MR. FISCH: This will be

17 Teitelbaum Exhibit No. 1.

18 (Teitelbaum Exhibit 1, copy of

19 page 8 from journal, marked for

20 identification, this date.)

21 THE WITNESS: Back on the

22 record. If you have any questions to ask

23 me about this, please ask them now,

24 because I'd like to get back and do the

25 work that I'm supposed --

1 TEITELBAUM

2 MS. OSTERER: Alright.

3 THE WITNESS: -- that I used to
4 be paid for.

5 (Discussion held off the
6 record.)

7 MR. FISCH: I'd like to go back
8 on the record. My wife constantly -- my
9 wife has warned me that people who may not
10 know my warped sense of humor may not
11 appreciate it. My comment to you about
12 the smoking gun --

13 MR. CAMPRIELLO: You corrected
14 it. You said it was a joke.

15 MR. FISCH: No, I said that, and
16 the same thing with the one hand washes
17 the other, it was inappropriate, I
18 apologize. That was not intended to be --
19 to be serious, okay? Let me go off the
20 record for a second.

21 (Discussion held off the
22 record.)

23 MR. FISCH: Nothing else.

24 MS. OSTERER: Just a few.

25 REEXAMINATION BY MS. OSTERER:

1 TEITELBAUM

2 Q. Calling your attention back to
3 Teitelbaum 1, the draft --

4 A. Yeah.

5 Q. -- from the notice of a
6 reasonable cause. There's reference in
7 the first paragraph to -- toward the end,
8 the last sentence in that paragraph, "The
9 office of the district attorney also was
10 advised that, while the office of the
11 district attorney considered this matter,
12 The Commission would hold in abeyance
13 taking testimony from any of the
14 individuals involved in the Dopp notarized
15 statement."

16 A. Right.

17 Q. Prior to the Dopp testimony, had
18 The Commission planned to take testimony
19 from either Pope, Nosenti, or Malone?

20 A. Not Malone. It was mainly the
21 governor that was being talked about, you
22 know, setting up the governor for
23 testimony. I don't remember -- I don't
24 remember whether there was interest in
25 taking Pope or Nosenti before October

1 TEITELBAUM

2 11th. I don't remember.

3 Q. We had seen in the

4 correspondence --

5 A. Yes.

6 Q. -- I believe it was perhaps in

7 the letter to Richard Rifkin --

8 A. Yes.

9 Q. -- probably from you --

10 A. Uh-hum.

11 Q. -- during the governor's

12 testimony without date --

13 A. Yes.

14 Q. -- we saw no reference to anyone

15 else, either Pope, Nosenti --

16 A. Right.

17 Q. -- or Malone; is that --

18 A. I mean, I'm --

19 Q. Right.

20 A. -- accepting your statement.

21 Q. I want to know --

22 A. I --

23 Q. You're --

24 A. I don't know if there is or

25 isn't. I do remember, because I don't

1 TEITELBAUM
2 gave that information to the executive
3 chamber, it would find its way into the
4 press, because you look at the -- you look
5 at the press and you see "sources close to
6 the governor," "sources close to the
7 district attorney." Yeah, "sources close
8 to The Commission is in there." You know,
9 you...

10 Q. Alright. Okay. After Dopp
11 testified and it was considered that
12 perhaps there should be testimony from the
13 attorneys who had been with him when he
14 signed the statement -- or, withdrawn. At
15 what point was it considered that there
16 would be testimony from either Pope,
17 Nosenti or Malone?

18 A. It -- I don't think that -- I
19 don't -- I don't think that we -- I mean,
20 we probably -- we may have taken -- we may
21 have had discussions about taking Malone's
22 testimony. I just don't remember them.
23 You know, Pope and Nosenti appeared in
24 documents; you know, their names appeared
25 in documents as consulting with Dopp on

1 TEITELBAUM
2 the matter that we were investigating. You
3 know, we -- we didn't start off
4 investigating Dopp's statement to the
5 Attorney General and, you know -- and...

6 THE WITNESS: I mean, you had
7 asked me last time, you know, why didn't
8 we put in more detail about the district
9 attorney, because it wasn't -- I don't
10 know who edited it out. I don't
11 remember. But that wasn't the focus of
12 what we were doing. We were doing
13 something else.

14 A. But on the basis of the
15 documents that we were seeing, we were
16 seeing consultations with Nosenti, and
17 consultations with Pope. We did not see,
18 as best I can recollect, much if any
19 consultation with Malone.

20 Now, I don't know -- I believe
21 we saw these documents before we took
22 Dopp's testimony, you know, so -- and if
23 I'm correct in that, then it would have
24 been natural for us to say that we
25 would -- you know, that we would have to

1 TEITELBAUM
2 tee them up before taking their
3 testimony. But I don't know if in fact we
4 came to that conclusion before Dopp's
5 testimony on October 11th or after Dopp's
6 testimony on October 11th. There was a
7 big push to have the governor's testimony,
8 and what we were presented with was the
9 governor wants to go last, wants to be the
10 last witness--

11 MR. FISCH: Which makes sense.

12 THE WITNESS: Well, it makes
13 sense from the governor's point of view,
14 because he wants to know what everybody
15 else said and what the questions --

16 MR. FISCH: No, it makes sense
17 from an investigative point of view, too.

18 THE WITNESS: It does.

19 A. And we said that's fine. We
20 said that's fine, you know, we wanted to
21 get the -- the staff people first. And we
22 could not satisfy -- we could not satisfy
23 that demand that -- you know, that we go
24 forward and take him and then as well that
25 he be the last witness. You know, that we

1 TEITELBAUM

2 just couldn't satisfy those wishes.

3 So it was the governor who was
4 kind of the focus of the communication
5 between myself and first Rifkin and then
6 Constantine.

7 Q. At the point where, as indicated
8 here, The Commission was going to have to
9 hold in abeyance the testimony from other
10 witnesses as well, the chamber lawyers,
11 did they themselves know, Pope, or
12 Nosenti, that this was scheduled to --

13 A. You mean that the governor was
14 scheduled?

15 Q. No, no, that they would be
16 coming before The Commission.

17 A. No, I don't believe so. No. I
18 don't think Rifkin knew. I don't think
19 so.

20 Q. And it was only --

21 A. It was a work in progress in a
22 way. You know, we would -- we were
23 getting -- the people who we took were --
24 were Laraby, you know, who was -- has
25 worked for Dopp, and then the governor's

1 TEITELBAUM
2 chief of staff, who was really, you know,
3 kind of a -- a very high level secretary,
4 executive secretary type. So we took
5 those people and, you know, you -- you --
6 it's a building block enterprise; you want
7 to see what they have to say and then we
8 go up the ladder.

9 Q. Okay.

10 Would it be correct that Pope
11 and Nosenti had not been approached
12 perhaps, even by an investigator, to find
13 out from them what they might have to add
14 to what Dopp had said?

15 A. I don't -- I don't think so. I
16 don't think so. No. And one major issue
17 with Dopp was whether he was authorized to
18 do what The Commission was concerned
19 about, you know, as regards the state
20 police, and, you know, I don't remember
21 these -- these interviews with Pope and
22 Nosenti, although I think that anybody who
23 reads them who would accuse me of trying
24 to help the governor would have to have
25 his head examined, looking in these

1 TEITELBAUM

2 transcripts.

3 The -- a major focus was whether
4 Dopp had gotten authority to monitor the
5 senator from Nosenti or from Pope or from
6 whomever. That was -- you know, by the
7 way we took Nosenti and Pope, we had
8 determined not to pursue the issue of his
9 statement to the attorney general.

10 Q. And that was into 2008?

11 A. Correct. Yes. And that was as
12 a result of testimony that we took from
13 previous lawyer, this guy Kindler.

14 MS. OSTERER: I have nothing
15 further.

16 MR. FISCH: Let me try once
17 again. I started at the beginning not
18 very successfully, but we've spent some
19 time here.

20 REEXAMINATION BY MR. FISCH:

21 Q. Could you be specific, to the
22 extent possible, of what conversations you
23 had, that you did have with Hermann,
24 concerning -- concerning the
25 investigation. You said generally, and

1 TEITELBAUM

2 you said you Meave told him that you're

3 getting a beating in the press and stuff

4 like that.

5 A. I may be repeating what I said

6 before, and I'll -- and, if I am, so be

7 it. Now we're almost a year and a half

8 away from those conversations -- you know,

9 these conversations.

10 I had so many conversations with

11 Bob Hermann --

12 Q. I know.

13 A. -- about so many things. I

14 mean, he was the only friend I had, except

15 for one other couple, an older couple who

16 live in the Albany area. So we -- and we

17 were living in the same place. So we had

18 dinners together, we saw each other in the

19 gym, and this was a long-standing

20 friendship.

21 I think I said there was nothing

22 memorable, to me, about my conversations

23 with Bob Hermann. I think he -- you

24 know -- I think you asked me last time

25 whether I had -- whether Hermann ever said

1 TEITELBAUM
2 to me about a newspaper article, about
3 the -- I think you said it -- if you
4 didn't, he's going to kill me -- something
5 about the executive chamber was
6 cooperating, and then Hermann said
7 something -- was it you? Maybe not. I
8 don't know.

9 Q. Maybe about production of
10 documents, whether they were --

11 A. Yeah, something like that. And
12 then I commented -- you said I commented,
13 or asked me if I commented. I don't
14 remember. I don't think so. But, could I
15 have said -- and this is just hypothetical
16 now. I want to be clear about that "don't
17 read everything -- don't believe
18 everything you read in the newspaper." I
19 don't think so. But I wouldn't have
20 remembered -- I wouldn't have remembered
21 it. I would not have remembered it. I
22 mean, I don't know what Hermann told you.
23 I don't know if Her-- you know, Hermann --
24 Hermann -- Hermann's got his own interests
25 that he needs to protect, apparently.

1 TEITELBAUM

2 I mean, why would I do it? Why
3 would I go to war with these people and do
4 that?

5 And, by the way, if I thought
6 that going to Hermann -- if I thought
7 going to Hermann to get documents, to get
8 documents, because they were not
9 forthcoming, that would be okay, as far as
10 I'm concerned, because it would have been
11 consistent with the goal of my
12 investigation, which is to get a complete
13 record.

14 And if I had to use Hermann to
15 do it, I would have done it, I would have
16 done it. But --

17 Q. But --

18 A. But the reason I didn't do it is
19 because Hermann had no influence on these
20 people. I knew who when was running the
21 show there. I knew who was calling the
22 shots.

23 Q. So you did not use him to get
24 documents?

25 A. No.

1 TEITELBAUM

2 Q. Okay.

3 A. But I would have. I would have,
4 if I felt I needed to do it. I knew where
5 this was going. I knew it ultimately
6 would have to be a confrontation.

7 MR. CAMPRIELLO: Okay. Did you
8 also discuss with Hermann complaints that
9 The Commission had about leaks coming --
10 that the chamber had, about the leaks
11 coming from The Commission?

12 A. I don't remember whether I ever
13 discussed that with him. I don't
14 remember. I just don't remember, one way
15 or the other.

16 Q. You see, I'm --

17 A. I just don't remember. You
18 know --

19 Q. Mr. Teitelbaum, I'm not trying
20 to be unfair to you, but isn't it the type
21 of stuff that is really internal, if
22 there's a battle with the -- between the
23 agency, your agency and the chamber, and
24 the fact that this is -- there is a
25 dispute, it's nobody's business, is it;

1 TEITELBAUM
2 it's not Hermann's business?
3 A. And I really don't remember --
4 I -- I don't remember one way or the
5 other. You know, if I said to you it
6 didn't happen, it would mean I remember --
7 I don't remember. Did I -- did I -- did I
8 say to him that they were complaining
9 about leaks? I mean, I -- I just don't
10 remember.

11 You know, you've been
12 investigating a long time, I've been
13 investigating long time, private practice,
14 as a civil rights lawyer. As long as
15 you're not trampling on people's rights,
16 as long as you're not trampling on
17 people's rights and what you're doing is
18 consistent with your mandate, you make
19 decisions going -- you know, going down
20 the road of the investigation as to who to
21 talk to, what to say, in order to get what
22 you need, in order to get what you need to
23 do your investigation. Nobody has said,
24 except the newspapers -- and they don't
25 know -- that we compromised our

1 TEITELBAUM
2 investigation. Nobody says that. Nobody
3 has given an instance where we interfered
4 with somebody's investigation. District
5 attorney never said we interfered with his
6 investigation.

7 I mean, when you think about it,
8 his problem, since he claimed that he had
9 to look at the Dopp -- you know, the
10 Dopp --

11 Q. Transcript?

12 A. Not the transcript. The -- you
13 know, the statement to the -- he would
14 have had to have spoken to the same people
15 who approached him. Within days he would
16 have had to speak to them. He would have
17 had to have spoken to Pope, Malone, and
18 Nosenti. They would have found out
19 lickity-split about this stuff. He
20 couldn't have looked into it. And I don't
21 know whether he did or not, but I assume
22 he spoke to these people.

23 Q. One or two finals, and then --
24 I'm just trying to get into the -- get
25 from the general to the specific in

1 TEITELBAUM
2 terms -- you ever tell him that Rifkin
3 should not be involved because he doesn't
4 know anything about documents?

5 A. You know, that's the same genre
6 as the statement that I would assert that
7 somebody would break into my house, you
8 know -- remember, there was apparently
9 somebody had testified that Hermann said
10 that you put Teitelbaum in a corner, he
11 could do anything, he could say that we
12 broke into his apartment.

13 Do I have this right?

14 Q. Also, that he's capable of
15 saying "he did not tell me the
16 information."

17 A. Right. I mean, it's bizarre.
18 It is bizarre, particularly because he has
19 told the D.A. that I didn't tell him the
20 information, and I have no reason to
21 believe he didn't tell you that. So it
22 would be bizarre.

23 So, to say that I said that
24 Rifkin doesn't know anything about
25 documents, I mean, Rifkin's practicing law

1 TEITELBAUM

2 a long time.

3 Q. You said that people complained
4 that you didn't know what you were doing
5 and you've been doing things for a long
6 time.

7 A. Different. And the difference
8 is is they had a political motive. I have
9 no political motive. You know, I
10 didn't -- I didn't care whether The
11 Commission issued a notice of reasonable
12 cause or didn't issue a notice of
13 reasonable cause. I didn't care. Made no
14 difference to me.

15 I said all along that, you know,
16 Commission's going to make its decision,
17 all we have to do is present the evidence
18 to The Commission. You know.

19 I mean, if -- you know, I don't
20 know if Hermann said that to somebody, but
21 maybe he thought that. I don't know.

22 Q. Okay.

23 MS. OSTERER: One last
24 question.

25 THE WITNESS: Yes.

1 TEITELBAUM

2 A. I don't know if it was decided.

3 I want to be clear about that. I don't

4 know when it was decided --

5 Q. Okay.

6 A. -- that -- whether we decided
7 to take them before Dopp or after Dopp. I
8 just don't remember.

9 Q. But according to the draft that
10 you presented --

11 A. Yes.

12 Q. -- the testimony from them was
13 going to have to be held in abeyance while
14 the D.A.'s office considered the matter.

15 A. Right.

16 Q. Okay?

17 A. This is on the 17th, I think.

18 Q. Okay. Between October 17th and
19 November 1st --

20 A. Uh-hum.

21 Q. -- did you ever tell that to
22 Bob Hermann?

23 A. Tell him what?

24 Q. That, you know, Pope and Nosenti
25 are now going to have to be witnesses, but

1 TEITELBAUM
2 they can't be witnesses now until the D.A.
3 decides what he's going to do?

4 A. I don't remember doing that at
5 all. I don't think between -- I can't say
6 with any degree of certainty that between
7 the 17th and November 1st we had reached a
8 judgment on that, you know, whether we
9 would take Pope and Nosenti.

10 Q. At all? Or before the D.A.
11 makes a decision?

12 A. I don't think -- you know, I
13 can't say with certainty that we decided
14 that we would take them at all. I know
15 that we reached the conclusion to take
16 Nosenti before we reach the conclusion
17 that we would take Pope.

18 Q. Okay.

19 A. But I don't know when.

20 Q. Alright. And when you decided
21 that with respect to Nosenti, did Nosenti
22 know that?

23 A. No.

24 Q. Okay. Alright. So same answer
25 that you gave before, Pope and Nosenti

1 TEITELBAUM

2 Q. Okay. So -- and then you meet
3 with him sometime in October with the
4 Dopp's testimony; right?

5 A. We meet with him in October,
6 sure.

7 Q. Okay. So, at this time, people
8 were not aware of the fact that now there
9 may indeed be something that the D.A. is
10 looking into that he had originally had
11 said was -- we had nothing? You know what
12 I'm saying? September, he said he had
13 nothing, now you referred something that
14 may be a something; correct?

15 A. We didn't refer, but go ahead.
16 I mean, we --

17 Q. The transmittal of the
18 information...

19 MR. CAMPRIELLO: The
20 consultation.

21 A. We had a consultation.

22 MR. CAMPRIELLO: Consultation.

23 Q. Consultation. Understand.

24 A. And we didn't take a position --

25 Q. No, no, no.

1 TEITELBAUM

2 A. We didn't take a position.

3 Q. But you wanted him to take a
4 look at it?

5 A. Well, we thought it was
6 appropriate that we should do that.

7 Q. Okay. And didn't any of the
8 commissioners feel there might have been a
9 false statement? Didn't Levine feel that
10 there might have been a false statement or
11 some perjury involved?

12 A. Levine -- you know, Levine
13 expressed himself that way when he first,
14 you know, saw the transcript, but, you
15 know, people say something and --

16 Q. I understand.

17 A. -- and they may think about it
18 some more. But, you know...

19 Q. The D.A. was looking into it?

20 A. This is before the D.A. got the
21 transcript.

22 Q. Then you gave it to the D.A.
23 to -- consultation?

24 A. "Here. Do with it what you
25 please."

1 TEITELBAUM

2 Q. To look into it?

3 So do you have any basis to
4 believe that by November 1st the people
5 designated as chamber representatives --

6 A. There were no designated chamber
7 representatives, to me. They didn't
8 designate anybody.

9 Q. The ones you were dealing -- who
10 were you were dealing with --

11 A. Okay.

12 Q. -- Constantine, Rifkin,
13 Nosenti --

14 A. Not Nosenti. Pope.

15 Q. Pope?

16 A. Pope, but very little. It was
17 mainly Rifkin.

18 Q. Malone?

19 A. Only once or twice did I ever
20 communicate with him.

21 Q. So the ones you identified.

22 A. Yeah.

23 Q. Any reason for them to have been
24 aware on November 1st that there is now a
25 potential criminal investigation?

1 TEITELBAUM

2 A. Yeah, I think so.

3 Q. Huh?

4 A. I think so.

5 Q. On what basis?

6 A. In my interview of Dopp, you
7 know, in May -- on October 11th, when we
8 saw his notation, which said
9 "disingenuous" in the margin of the draft
10 of the statement, and then began to drill
11 down, any lawyer with any experience would
12 have known that there was trouble here. I
13 mean, you ask somebody, "Well, did you
14 actually swear to the statement?" And he
15 said, "Yes, by the way..." -- and, you
16 know, the questions that we were asking,
17 which was obvious where we were going...

18 MR. CAMPRIELLO: Also, judge, by
19 the way, if -- if Hermann is telling the
20 truth, and if around Halloween Hermann saw
21 what he claims he saw, and if Hermann
22 reported that to any one of these people,
23 then that would have been a basis for them
24 to conclude that there was an
25 investigation. If --

1 TEITELBAUM

2 A. Let me just take it a little
3 further, because I want to answer your
4 question as best I can.

5 MR. FISCH: Now, what you're
6 saying, Mr. Campriello, that would have
7 come from Hermann?

8 MR. CAMPRIELLO: Right, I'm
9 sorry, yeah.

10 MR. FISCH: Correct.

11 MR. CAMPRIELLO: I thought you
12 said is there any reason for them to have
13 thought this had happened?

14 MR. FISCH: Other than at coming
15 from Hermann.

16 MR. CAMPRIELLO: Well, then --
17 that's alright.

18 Q. Other than coming from
19 Hermann --

20 A. That's what I'm answering.

21 Q. Any basis for those people to
22 know what's going on?

23 A. That's what I'm answering.

24 MR. CAMPRIELLO: Right.

25 A. He was represented by an

1 TEITELBAUM
2 experienced criminal defense lawyer at his
3 testimony.

4 MR. CAMPRIELLO: Who is "he"?

5 THE WITNESS: Dopp.

6 A. And, you know, he's taking notes
7 during your interrogation of Dopp. So
8 it's a nine and a half hour interrogation,
9 I didn't stay the whole nine and a half
10 hours. I left. I think it was about 45
11 minutes left, that Meave and Jones
12 Sullivan handled.

13 Dopp speaks to Nosenti,
14 according to his --

15 Q. Diary you said?

16 A. -- diary that night, because
17 he's so upset --

18 Q. The night of his testimony
19 before you?

20 A. Correct. Correct.

21 Q. Go ahead.

22 A. -- and the diary indicates that
23 he discusses with him his testimony. I
24 mean, it would be extraordinary that he
25 would not have discussed the portion of

1 TEITELBAUM
2 the testimony concerning the statement.

3 Q. And implicating Nosenti? He
4 would have testified that he implicated
5 Nosenti in --

6 A. I don't know if he would have
7 said that. I don't know -- I don't know
8 what the particulars are, but he and
9 Nosenti, I understand, are quite close.
10 And if you look at the diary, you'll see
11 references to conversations between Dopp
12 and Nosenti, you know, going forward,
13 after October 11th. Even after Dopp is
14 out of the government, Nosenti is
15 communicating with him and telling him
16 what's going on about Troopergate.

17 MS. OSTERER: Could I have
18 that -- a copy of that diary?

19 MR. CAMPRIELLO: You -- I can
20 give you right now two pages.

21 MR. FISCH: If what?

22 MR. CAMPRIELLO: I can give you
23 photocopies of two pages. I don't have
24 the whole diary. I assume The Commission
25 has it.

1 TEITELBAUM

2 MR. FISCH: As you say, to take
3 things out of context, I would want to see
4 the whole thing.

5 A. This is October 11th. This is
6 the date.

7 MR. CAMPRIELLO: This is --

8 A. But --

9 Q. October 11th, but he --

10 A. He testified October 11th.

11 Q. He testified before you, October
12 11th?

13 A. This is the date he testified.

14 Q. Okay.

15 MR. CAMPRIELLO: I don't even
16 know if this is -- I guess this is
17 complete --

18 A. Before you read this, before you
19 read this, judge, there were two segments
20 of Dopp's diary that you need to know
21 about. The first segment predated his
22 testimony to us, predated October 11th,
23 and that was the subject of litigation in
24 State Supreme Court in Albany at the end
25 of December and in January where people

1 TEITELBAUM
2 were resisting giving us the diary. How
3 did we find out that there was a diary?
4 We didn't know there was a diary. We
5 found out that the district attorney had a
6 diary from an article that appeared in
7 Daily News, the Liz Benjamin column.

8 So we went after the diary, we
9 got the diary, and then some additional
10 notes that we didn't know about that
11 looked like Dopp was being prepped to give
12 answers to us or to somebody -- maybe the
13 district attorney.

14 After we had our consultation
15 with the district attorney and he goes off
16 and starts -- I don't know if he took
17 sworn testimony after that -- you know,
18 the first report was not based on sworn
19 testimony. I don't know what he did in
20 his investigation that ended up in his
21 second report, but it -- but he goes
22 forward and he does that.

23 He then issues his report and he
24 puts all -- he puts most, he says, of his
25 investigative material in disks. So I

1 TEITELBAUM
2 have somebody on my staff look at what he
3 had and we got a portion -- it was
4 expurgated, a portion of Dopp's testimony,
5 not -- I'm sorry a portion of his diary --

6 MR. CAMPRIELLO: Diary?

7 A. That's the second tranche. And
8 if you look -- and we have it. If you
9 look at that diary, it has frequently his
10 communicating with Nosenti. He has
11 Nosenti going to his house, he has Nosenti
12 calling him from a family retreat where
13 Nosenti is telling him that -- and this is
14 after Dopp's out of the government, Andrew
15 Cuomo was thinking of resurrecting
16 Troopergate because --

17 Q. Let me zero in on this. Are
18 there diary entries the day or subsequent
19 to his testimony before you --

20 A. I just gave it to you.

21 Q. Listen to me.

22 -- which indicate that he told
23 Nosenti what he had testified?

24 A. Yes. Let me -- I'm now reading
25 from the diary entry--

1 TEITELBAUM

2 MR. CAMPRIELLO: Could I have a
3 copy, too?

4 A. And if you look --

5 MR. CAMPRIELLO: At the second
6 page.

7 A. -- second page at the bottom,
8 where I star -- put an asterisk, it says
9 "TK..." -- that's his lawyer, Terry
10 Kindler -- "... says I did great, but
11 Teitelbaum's comment about my being
12 ordered to stand down bothers me so much
13 that I called David N, who says that 'it's
14 just a prosecutor's trick.'"

15 Q. So how does this translate into
16 telling him the content of the testimony?

17 A. Well, it seems to me -- I mean,
18 you'd have to be --

19 Q. "Stand down", what does that
20 mean?

21 A. During the -- during his
22 testimony, there was -- he -- there was --
23 there was testimony that we had that he
24 was told to stand down and not pursue the
25 Bruno business, you know, kind of -- not

1

TEITELBAUM

2 track Bruno's movements. Following me?

3 Q. No.

4 A. Okay. Troopergate had to --

5 from our perspective, had to do with

6 whether the state police was being used

7 for political purposes to track Senator

8 Bruno's movements. There was testimony in

9 the record that we had from a number of

10 people who say that Dopp in mid May of

11 2007 was told to stand down, not do that.

12 Dopp denied it, that he was told

13 to stand down.

14 So this (indicating) is

15 referencing a portion of the testimony

16 dealing with the stand-down. But it is

17 inconceivable to me that Dopp would not

18 have discussed with Nosenti a portion of

19 our interview with him dealing -- I mean,

20 it would -- it was so -- I mean, he --

21 Q. How was --

22 A. He references it here on page 1,

23 not in regard to Nosenti, but he says, you

24 know, "In perhaps the most dramatic

25 moment, I say 'You're stripping me of the

1 TEITELBAUM
2 one thing I have left, loyalty.'
3 Teitelbaum says he's not asking me to be
4 disloyal, just to say whether I agreed
5 with it." My response is "Not then and not
6 now," in quotes.

7 That had to do with the content
8 of the statement that he gave to the
9 attorney general. It's inconceivable to me
10 that he hadn't discussed this with
11 Nosenti. He and Nosenti were very close.

12 Q. Again, I'm sure --

13 A. Is there something -- is it --
14 you know, something very -- does it say in
15 this -- in this entry "I told David
16 Nosenti that Teitelbaum asked me about the
17 attorney general statement" specifically?

18 It doesn't say that, but it references
19 here the Attorney General's statement. It
20 says he spoke to Nosenti that evening --

21 Q. Is there anything that's --
22 again, Mr. Teitelbaum, I'm trying to --

23 A. I understand.

24 Q. -- to follow up what you're
25 implying. Is there anything that in the

1

TEITELBAUM

2 diary that he told Nosenti that he told
3 you what he testified that he had named
4 Nosenti as one of the people who
5 influenced him in the statement?

6 A. It -- it doesn't say that in the
7 document I gave you. It doesn't say that
8 specifically.

9 Q. Is there anything -- other than
10 saying it's illogical for him not to have
11 told that --

12 A. No, it's not that it's --

13 Q. Let me finish. Other than that,
14 is there anything in here that supports
15 that conclusion of yours that he must have
16 told him, because it would be illogical
17 not to?

18 A. Because -- well, the fact that
19 he had discussed his testimony with him as
20 reflected in the document I gave you, I
21 think is a pretty strong test that he
22 discussed not one sliver of the testimony
23 but his testimony beyond the specific of
24 what's referred to as, you know, "a
25 prosecutor's trick."

1 TEITELBAUM

2 Then in subsequent entries, he
3 talks about a conversation with Nosenti
4 where Nosenti talks -- talks -- tells him
5 about Troopergate and the attorney
6 general.

7 I -- I believe that a -- that a
8 fair person looking into this, as an
9 investigator, and not a prosecutor, would
10 have to conclude that there is a
11 reasonable, reasonable cause to believe
12 that there was communication between Dopp
13 and Nosenti, and maybe others -- I have no
14 idea -- about his testimony.

15 Q. And is it any less logical,
16 considering that they were friends, that
17 he would tell him "I never named you" or
18 that he would not tell him "hey, I named
19 you as the guy who influenced my
20 'disingenuous' statement"?

21 A. Well, if you look at the
22 testimony, if you look at the testimony,
23 he is, according to my recollection,
24 according to -- he is less aggressive, far
25 less aggressive about Nosenti's

1 TEITELBAUM

2 involvement than he is about Pope and

3 Malone.

4 Q. Okay. Anything in the diary

5 indicating that he had mentioned Pope and

6 Malone?

7 A. No.

8 Q. Okay. Okay.

9 REEXAMINATION BY MS. OSTERER:

10 Q. There's a reference to his

11 having notes, "Teitelbaum seizes my

12 notes."

13 A. Yes.

14 Q. Did you have those as well in

15 addition to the diary?

16 A. We didn't have the diary.

17 Q. No, I mean now. I'm looking.

18 A. Oh, sure.

19 MR. CAMPRIELLO: When you say

20 "we", you mean the Commission, not

21 Teitelbaum and Campriello?

22 MS. OSTERER: I'm sorry, yes,

23 certainly.

24 A. I mean, does The Commission have

25 those notes?

1

TEITELBAUM

2

MR. FISCH: I have one copy you

3

gave me.

4

A. Does the commission have those?

5

Q. Yes.

6

A. We have those notes that -- I

7

asked for the notes when I took his

8

testimony. He was referring to --

9

MR. CAMPRIELLO: No, but do they

10

still have that? If they want them, did

11

they get them from The Commission?

12

THE WITNESS: I would think so.

13

I would think that The Commission has it.

14

Q. It seems to me --

15

A. It was marked for

16

identification.

17

Q. Okay, because they seem to be

18

the notes referring to this pressure about

19

signing it?

20

A. He --

21

Q. No.

22

A. The notes don't refer --

23

Q. Okay.

24

A. The document is a draft. There

25

was several drafts of the statement. This

1 TEITELBAUM

2 was a draft of the statement and in the
3 margin Dopp had written the word
4 "disingenuous."

5 Q. Okay, so that's what's referred
6 to as his notes?

7 A. Correct.

8 Q. Okay.

9 REEXAMINATION BY MR. FISCH:

10 Q. Let me get back again. Is there
11 anything you have, besides what you've
12 just given me now about the Dopp's diary,
13 that would indicate that Malone Nosenti,
14 Rifkin, Constantine -- whom else did I --

15 MS. OSTERER: Pope.

16 Q. -- that any of them, on
17 November 1st, were aware of the content of
18 the Dopp testimony?

19 A. That would indicate that they
20 were aware of it?

21 Q. The content of the testimony.

22 A. I don't know if they were aware
23 of it.

24 Q. No, I'm saying, do you have any
25 indication that would demonstrate that

1 TEITELBAUM
2 they did know the content of his testimony
3 on November 1st?

4 A. As I sit here now, I think I've
5 given you what I know.

6 MR. CAMPRIELLO: We think -- we
7 think that the excerpt we showed you
8 supports the inference --

9 MR. FISCH: I understand.

10 MR. CAMPRIELLO: -- that they
11 knew.

12 MR. FISCH: I understand.

13 MR. CAMPRIELLO: But it clearly
14 doesn't say it.

15 MR. FISCH: I understand it.

16 MR. CAMPRIELLO: And you can
17 draw a different inference, as you
18 articulated.

19 MR. FISCH: Okay.

20 Q. And I'm trying to be helpful to
21 you, because the information is that on
22 November 1st Hermann had information
23 concerning the content and communicated
24 that --

25 A. The content --

1 TEITELBAUM

2 Q. Let me finish.

3 A. The content of his testimony?

4 Q. The content of the Dopp

5 testimony, okay.

6 MR. CAMPRIELLO: We already did

7 this earlier. When the judge says

8 "content," he doesn't mean a transcript,

9 he doesn't mean all of it. He means

10 what --

11 MR. FISCH: A mama loshon.

12 MR. CAMPRIELLO: I'm sorry?

13 THE WITNESS: Mama loshon.

14 MR. CAMPRIELLO: He means what

15 Hermann told the D.A. Hermann saw on notes

16 in your apartment.

17 Q. So I'm trying to see --

18 A. Yeah.

19 Q. -- is there any way other than

20 -- how could Hermann have had it?

21 A. How could Hermann have --

22 Q. -- have had it? That's what

23 this is all about.

24 MR. CAMPRIELLO: Wait. And I

25 think --

1 TEITELBAUM

2 A. You know, it's --

3 Q. No, no, no --

4 A. -- the same thing proving a

5 negative.

6 Q. That's why I said to you --

7 A. I can't prove the negative.

8 There is so much evidence.

9 Q. I'm not asking you to prove the

10 evidence. I'm asking you just the

11 opposite. I'm trying to see, how can you

12 demonstrate?

13 A. How would I know? How would I

14 know?

15 MR. CAMPRIELLO: We've done

16 that. We've done that.

17 A. How would I know these people

18 were after me? How would I know --

19 MR. CAMPRIELLO: Folks --

20 A. You think they're giving me --

21 MR. CAMPRIELLO: Hup! Hup! Hup!

22 A. Finit.

23 MR. FISCH: Okay, I thank you

24 all. Anything you want to add? I think

25 you've made your statement, but anything

1 TEITELBAUM

2 else you wish to add?

3 THE WITNESS: Is there anything
4 I wish to add?

5 MR. CAMPRIELLO: No.

6 MR. FISCH: And if there's
7 anything additional you wish to provide,
8 please provide it, we welcome it.

9 MR. CAMPRIELLO: And any time
10 you want to give us a copy of the
11 transcript, we welcome getting it. And if
12 there are errors or omissions or nuances,
13 we would like to clarify.

14 THE WITNESS: You know, you
15 should give me a copy. The way we operate
16 at the Commission, we take testimony,
17 somebody can come in and look at it and
18 take -- take notes. I mean, it's only
19 fair. It's only fair.

20 MR. FISCH: Off the record.

21 (Discussion held off the
22 record.)

23 THE WITNESS: On the record.

24 MR. CAMPRIELLO: We had a
25 conversation off the record, and during

1 TEITELBAUM
2 that conversation Mr. Teitelbaum said some
3 things and Ms. Osterer suggested that
4 perhaps it was appropriate to put it on
5 the record.

6 THE WITNESS: With respect to
7 conversation that I'm being told occurred
8 between Bob Hermann and Lloyd Constantine
9 on November 1st, and an inquiry as to
10 whether I had disclosed information to Bob
11 Hermann on November 1st concerning the
12 district attorney and his interest in the
13 Dopp matter, what I had said to those of
14 us sitting around the table is that that
15 weekend -- and I think on November 1st --
16 I was driving down to New York City to be
17 with my mother, who was now 95 years old,
18 who was in the hospital having fallen in
19 October and fractured her pelvis and
20 practically could not walk and was not
21 getting better, and I had arranged to
22 escort her to St. Louis, Missouri, where
23 my brother is a professor of medicine, to
24 have her go into Barnes Jewish Hospital so
25 that he could oversee her medical care,

1 TEITELBAUM
2 and what I had mentioned was that my job,
3 and Bob Hermann, and the investigation,
4 was the furthest thing from my mind then.

5 CONTINUED REEXAMINATION BY MR. FISCH:

6 Q. I think if Ms. Osterer will
7 permit me, she wasn't limiting it --
8 Mr. Teitelbaum, while you spoke about
9 November 1st, she was not intending to
10 limit it to November 1st. At any time
11 prior to November 1st, when you had dinner
12 at his apartment --

13 A. I've already given testimony
14 about that.

15 Q. -- did you ever say anything to
16 him at that time about any of those
17 occasions about the matter having been
18 consultation, that you had a consultation
19 with the D.A. about the Dopp's testimony?

20 A. I've given you testimony on this
21 ad nauseam. I'm not going to do it
22 again. I'm just not going to do it
23 again. I've given you the answer again
24 and again and again.

25 Q. Okay.

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TEITELBAUM

A. You know, I stand -- I stand by
my testimony.

Q. Okay.

A. I can't --

MR. CAMPRIELLO: Okay.

A. I can't -- I can't do better
than that.

Q. Thank you.

MR. CAMPRIELLO: When the
questioner gets up, that's time to leave.

THE WITNESS: Okay.

(Time noted: 6:13 p.m.)

HERBERT TEITELBAUM

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

_____.

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C E R T I F I C A T I O N

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6

I, ABNER D. BERZON, a Registered

7

Professional Reporter, Certified Realtime

8

Reporter and Notary Public, do hereby

9

certify that the foregoing witness,

10

HERBERT TEITELBAUM, was duly sworn on the

11

date indicated, and that the foregoing is

12

a true and accurate transcription of my

13

stenographic notes.

14

I further certify that I am not

15

employed by nor related to any party to

16

this action.

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ABNER D. BERZON, RPR, CRR

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4 Teitelbaum

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