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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

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October 3, 2008  
3:09 p.m.

CONTINUED EXAMINATION of MEAVE  
TOOHER, held at the offices of STATE OF  
NEW YORK OFFICE OF THE INSPECTOR GENERAL,  
61 Broadway, New York, New York before  
Wayne Hock, a Notary Public of the State  
of New York.

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

STATE OF NEW YORK  
OFFICE OF THE INSPECTOR GENERAL  
61 Broadway  
New York, New York 10006

BY: JOSEPH FISCH, ESQ.  
ARLENE S. OSTERER, ESQ.

STILLMAN, FRIEDMAN & SCHECHTMAN, P.C.  
Attorneys for Witness  
425 Park Avenue  
New York, New York 10022

BY: PAUL SCHECHTMAN, ESQ.

\* \* \*

1  
2 MR. FISCH: Today is October 3,  
3 2008, Friday. We're in my New York  
4 office. My name is Joseph Fisch, I'm  
5 the inspector general. Arlene Osterer  
6 is present with me. Meave Tooher  
7 represented by Mr. Schechtman are here  
8 for another examination, a  
9 continuation of one that was conducted  
10 on September 19, 2008.

11 Ms. Tooher, first of all, I  
12 appreciate you coming again, and you  
13 are still under oath.

14 THE WITNESS: Yes, I understand.

15 M E A V E T O O H E R, having  
16 been previously duly sworn by a  
17 Notary Public of the State of  
18 New York, upon being examined,  
19 testified as follows:

20 EXAMINATION BY

21 MR. FISCH:

22 Q. You've had an opportunity to  
23 review the notes that we were able to  
24 obtain from the Commission on Public  
25 Integrity?

1 M. Tooher

2 A. Yes.

3 Q. Does that help you with regard  
4 to certain dates that we spoke about at  
5 the last examination?

6 A. Well, I can confirm that the  
7 dates on the notes should be accurate.  
8 Generally I would make contemporaneous  
9 dates with my notes. It does clarify for  
10 me some of the time frame there. I would  
11 have to confess that I don't remember  
12 precisely all of it.

13 Q. But you recall that Dopp's  
14 testimony before the commission was  
15 forwarded, not referred, initially in part  
16 and then finally the entire four hundred  
17 pages to the Albany DA?

18 A. Yes.

19 Q. And the determination by the  
20 district attorney whether to proceed,  
21 present a grand jury or not, extended over  
22 a period of time; did it not?

23 A. I would say yes. As I look at  
24 my notes, clearly that determination was  
25 continuing.

1 M. Tooher

2 Q. And there was some reference, I  
3 believe, in your notes, other notes, that  
4 he regarded the presentation at the  
5 beginning as premature and there was some  
6 issues about whether who was going to be  
7 testifying and it was not until sometime  
8 in November that a decision was made?

9 A. My recollection, and you have my  
10 memo from October 24, is that he had  
11 indicated fairly quickly that he wanted to  
12 go forward taking the matter to the grand  
13 jury and then expressed concerns back to  
14 the commission, to Mr. Teitelbaum and to  
15 myself, that he was concerned about  
16 prematurely empaneling the grand jury.

17 Q. So when finally did he decide  
18 that he was going to go forward?

19 A. I don't know that I can give you  
20 that answer as to when he made that  
21 determination. As I look at the notes and  
22 my memos, he indicated he was going to go  
23 forward. There were concerns -- my notes  
24 indicate -- I honestly have a very shady  
25 recollection of this -- that he then was

1 M. Tooher  
2 concerned that his actions would be  
3 premature and that my notes on 10/25  
4 indicate that he would be empaneling a  
5 grand jury after 11/5. My understanding  
6 was he was going to be out of town during  
7 that time frame and so he wouldn't be  
8 empaneling the grand jury until after that  
9 date.

10 Q. Do you have other references to  
11 it extending even into the following year,  
12 January?

13 A. Into the following year? I know  
14 -- I don't see them in these notes. What  
15 happened was he served Mr. Teitelbaum with  
16 a grand jury subpoena and that that was  
17 originally that he would testify sometime  
18 in December and then that got adjourned  
19 out without a date so that it went into  
20 after the first of the year.

21 Q. On the call that you made  
22 reference to in your earlier testimony  
23 that you thought was on a Friday --

24 A. Uh-huh.

25 Q. -- with Mr. Schechtman's

1 M. Tooher  
2 assistance, Mr. Teitelbaum said that the  
3 DA called from some exotic place or some  
4 faraway place and our telephone records  
5 indicate that there was a call on  
6 October 19, which was a Friday, from  
7 Teitelbaum to you at 2:13 p.m.

8 Does that strike a bell?

9 A. There's no reason to doubt that.  
10 I think that would have been the follow-up  
11 to the initial meeting. I believe the  
12 first time that we met with the DA was  
13 either the seventeenth or the eighteenth.

14 Q. The seventeenth.

15 A. And that phone call would have  
16 been a follow-up to that meeting at which  
17 time, to the best of my recollection, Herb  
18 indicated that he's going to take it.

19 Q. Is there anything in your notes  
20 about a meeting on November 1 that was  
21 scheduled with the DA?

22 A. I see that in my notes.  
23 Actually, there's notes indicating a  
24 meeting will take place, I think the notes  
25 are on October 30 and that a meeting is to

1 M. Tooher  
2 take place the following Thursday, which  
3 is on November 1. I don't specifically  
4 recall that meeting, but I remember the  
5 meeting that the notes are at and I  
6 remember the discussion. Specifically the  
7 discussion was whether or not Herb should  
8 go to the meeting alone, whether or not  
9 John Feerick should go with him. And the  
10 determination was that John Feerick would  
11 not go and I would go with Herb.

12 Q. I think there was a discussion  
13 about Joan Sullivan accompanying you.

14 Are you familiar with that?

15 A. To my recollection, Joan did not  
16 go to any of the meetings with the DA.

17 Q. She did not, but there was a  
18 reference in one of the memorandum we saw,  
19 I think it might have been in John  
20 Feerick's calendar, that either you or her  
21 or both.

22 But you don't recall attending  
23 such a meeting?

24 A. I went to a number of meetings  
25 with the DA and with the assistants and I

1 M. Tooher  
2 remember the conversation about that  
3 meeting and I would have gone to that  
4 meeting. There's no reason to think that  
5 didn't occur.

6 Q. Dean Feerick's notes indicate  
7 that at that meeting the DA advised that  
8 he would know by the next day whether he  
9 was going to proceed.

10 Does that ring a bell?

11 A. It would make sense -- right.  
12 In my notes of the thirtieth it indicates  
13 that the point of the Thursday meeting was  
14 to make a determination on the perjury  
15 charges. But I don't have a specific  
16 recollection. I apologize.

17 MR. SCHECHTMAN: I don't think  
18 I'm doing anything improper by my  
19 commenting.

20 What Meave has said so me is,  
21 when she was actually meeting with the  
22 DA, it was not her practice to take  
23 notes of the meeting thinking that it  
24 was in politic in some sense or  
25 chilled the meeting if she took notes.

1 M. Tooher

2 On occasion, she would come back and  
3 take notes afterwards and indeed her  
4 notes of 10/22 are that, they're sort  
5 of ex post. So we have no notes  
6 relating to that Thursday, November 1  
7 meeting that certainly consist of  
8 Meave taking them at the time.

9 Whether there's ex post notes, we  
10 haven't seen them.

11 A. I don't recall there being  
12 notes. And for some reason, in my mind --  
13 again, I know Herb would have called me at  
14 home about the DA being out of town and I  
15 know you relayed to me he was out of town  
16 during part of that time frame.

17 Q. Did he ever advise you of a  
18 communication from the DA on November 1  
19 where the DA advised Teitelbaum that he  
20 was going forward with the grand jury  
21 investigation?

22 A. I have to say I don't recall  
23 specific communications on that date.

24 Q. Or a day thereafter, any time  
25 thereafter where November 1 was the

1 M. Tooher  
2 critical date where Teitelbaum learned  
3 that the DA was proceeding.

4 A. I have a direct recollection of  
5 a telephone call. I remember answering  
6 the phone in my upstairs bedroom and it  
7 was Herb and he was saying he's going  
8 forward, but I can't put a specific date  
9 on that.

10 Q. You mean in addition to the  
11 October 19 telephone call?

12 A. You have to understand, I got  
13 telephone calls at home a lot. So trying  
14 to put a specific date on it, I don't  
15 think I could accurately.

16 Q. We spoke last time about that  
17 section of the report which you said both  
18 Feerick and Teitelbaum were particularly  
19 interested in and that was in fixing a  
20 date when the DA was going forth. It's  
21 pages twelve and thirteen. This is from  
22 the report. I'll show it to you again.

23 A. (Reviewing).

24 Okay.

25 Q. And I questioned last time

1 M. Tooher  
2 whether the report which lists October 19  
3 is honest and accurate and complete  
4 considering the delays, the DA not going  
5 forward right away and continuing to have  
6 discussions with the people from the  
7 commission on the grand jury proceeding.  
8 It was a long question.

9 A. I don't know that I understand  
10 what the question part is.

11 Q. October 19, I question whether  
12 that is not a misleading date.

13 A. Well, I think the report says  
14 what it says. As I look at my notes,  
15 certainly more could have been included  
16 about what happened after the nineteenth.  
17 But this wasn't the focus of our report.

18 Q. But you said that it was of  
19 particular interest to Feerick and to  
20 Teitelbaum.

21 A. It was of interest to the  
22 commission. And certainly, as the report  
23 was being prepared, Herb Teitelbaum and  
24 John Feerick, you know, came to me, asked  
25 me if I had anything in particular about

1 M. Tooher

2 what happened with the DA.

3 The concern, as it was expressed  
4 to me as I understood it to be, was that,  
5 you know, this was an issue that was sort  
6 of out there, the whole DA issue with  
7 Herb. I mean, I was aware that they had  
8 gotten a phone call and that the DA had  
9 made allegations about Herb. So I know  
10 they were very sensitive about what was or  
11 was not to be included in the report. I  
12 can't remember particularly how the  
13 breakdown was, but there was some on the  
14 commission who expressed it shouldn't be  
15 included at all, it really wasn't relevant  
16 to our investigation. And then there was  
17 a feeling that, because it had delayed  
18 work on the investigation, it should be  
19 included because it would explain to the  
20 public in effect what some of the delay  
21 had been attributed to.

22 Q. Well, there's also a sentiment  
23 expressed that it should not end on  
24 October 19 but should continue with the  
25 events subsequent to October 19.

1 M. Tooher

2 A. I know you've expressed that  
3 sentiment but I don't remember anybody  
4 particularly expressing that. I didn't  
5 participate in that level of discussion  
6 about that portion.

7 Q. You said last time that it was  
8 because of the allegations against  
9 Teitelbaum.

10 A. Uh-huh.

11 Q. So how would the date relate to  
12 the allegations against Teitelbaum?

13 A. I don't know how that date would  
14 relate to the allegations against  
15 Teitelbaum. The concern was just that it  
16 showed that, in dealing with the DA, that  
17 we had acted fairly and responsibly and  
18 continued with the thoroughness of our  
19 investigation.

20 Q. Was it ever discussed that  
21 because of the allegation that Teitelbaum  
22 had communicated to Hermann and Hermann  
23 had communicated to chamber people that  
24 November 1 was that the date that the DA  
25 was going forward?

1 M. Tooher

2 Did that ever relate in your  
3 mind or memory as to why October 19 was  
4 chosen?

5 A. No. Actually, the first time  
6 that date in that fashion was articulated  
7 that way was when he spoke with you the  
8 first time. I knew that these allegations  
9 about Herb involved something about that  
10 time frame, but I really wasn't involved  
11 in that.

12 Q. Did he ever discuss the  
13 allegations with you?

14 A. Did Herb ever discuss them?

15 Q. Yes.

16 A. Not to my recollection. He was  
17 upset, I mean he was visibly upset.  
18 Herb's an expressive guy. You can tell  
19 when he was upset about something. He was  
20 upset about these allegations and he knew  
21 about the allegations but he didn't  
22 discuss them with me.

23 Q. Were you ever present when other  
24 commissioners discussed it?

25 A. I don't believe so. I know

1 M. Tooher  
2 there was a meeting about it and there was  
3 a meeting about -- there was a commission  
4 meeting by telephone, by conference call  
5 sometime the end of March or beginning of  
6 April, because I know Joan Sullivan was  
7 still there. We all participated by  
8 telephone conference call. It was a  
9 Sunday evening. And that -- one of the  
10 topics of that conference call -- it was a  
11 full commission meeting which was somewhat  
12 unusual, we didn't do a lot of full  
13 commission meetings.

14 For some reason it had been  
15 believed -- I think there was a comment in  
16 the press -- that the DA was going to  
17 release the information about Teitelbaum.  
18 And the commission called this meeting as  
19 to what the commission's response should  
20 be to that public release because there  
21 was a schism in the commission about  
22 whether or not we could respond at all  
23 because our proceedings are confidential  
24 or, because this really didn't have  
25 anything to do with our investigation, you

1 M. Tooher  
2 know, could we issue a press release and I  
3 believe Walter Ayers had prepared a press  
4 release that could be issued in response  
5 if the DA released the information. The  
6 DA didn't release the information so the  
7 press release was never released.

8 Q. What do you recall was the  
9 allegation about Teitelbaum?

10 A. Well, my recollection now is a  
11 little different in the sense that, when I  
12 was in your offices last week, you had  
13 given me some notes and a memo of Barry's,  
14 Barry Ginsberg, counsel, so I have a  
15 little more flushed out -- I wouldn't call  
16 it a recollection, understanding now than  
17 I did before. But it's not that different  
18 substantively from what I knew before  
19 which my understanding was that there was  
20 an allegation that Bob Hermann had been in  
21 Herb's apartment and looked at a notepad,  
22 a legal pad that was on his coffee table  
23 while Herb took a telephone call and that  
24 Hermann had relayed that information to  
25 Constantine, Lloyd Constantine.

1 M. Tooher

2 Q. Do you know there came a time  
3 when commission members, perhaps not all  
4 of them, but some listened to tapes of the  
5 DA interviews both of Hermann and of Lloyd  
6 Constantine?

7 A. Yes, I'm aware of that.

8 Q. Were you ever made aware of the  
9 contents of those tapes?

10 A. As I think I said to you last  
11 time, Barry had given me sort of a  
12 thumbnail sketch which basically relayed  
13 what you had said to me.

14 Q. Notes he took while the tapes  
15 were being played?

16 A. Right.

17 Q. Did you ever see his notes as  
18 compared to the written memo that he  
19 wrote?

20 A. When I was at your offices last  
21 time.

22 Q. You saw both?

23 A. Yes.

24 Q. You saw the difference?

25 A. I don't know that I would call

1 M. Tooher  
2 it a difference. One was notes and one  
3 was a much more formal memo I think it was  
4 to John Feerick.

5 MR. FISCH: Off the record.  
6 (Discussion held off the record)

7 Q. When the tapes were played, the  
8 tapes of Constantine and Hermann to  
9 Feerick and perhaps some of the other  
10 commissioners, Ginsberg took notes. And  
11 then those notes generated a typed memo.

12 Did you ever see both his notes  
13 and the typed memo?

14 A. Only at your offices. I had  
15 never seen those before.

16 Q. I showed those both to you?

17 A. Yes.

18 Q. Do you recall either from the  
19 notes or from my earlier examination that  
20 Constantine stated that about a week after  
21 Hermann relayed to him information about  
22 the DA proceeding with the caveat not to  
23 reveal him, Hermann, as the source, that  
24 about a week later Constantine had another  
25 conversation with Hermann? Do you recall

1 M. Tooher

2 that?

3 A. I think I read something about  
4 that in the -- I don't know if it was the  
5 notes or the memo.

6 Q. I want to show you the Ginsberg  
7 notes, just the last several lines, where  
8 LC is Lloyd Constantine "saw BH." The BH  
9 represents Bob Hermann. "LC said told  
10 governor BH source. BH upset. LC asked  
11 why a problem. Your friend should not  
12 have been telling you this. I know HT,  
13 what he's capable of doing when cornered.  
14 HT capable of claiming did not tell me, I  
15 broke into apartment. HT did not tell I  
16 stole it."

17 Do you remember that?

18 A. I remember reading that in  
19 various notes.

20 Q. In his typed memo, I just want  
21 to show you the last several lines.

22 A. (Reviewing).

23 Q. There's a reference that he's  
24 capable of saying he did not tell me or  
25 that I stole it; am I correct? I mean, it

1 M. Tooher  
2 will speak for itself, but do you see  
3 that?  
4 A. The last sentence says --  
5 Q. The last couple of sentences.  
6 A. Hermann said Teitelbaum was  
7 claiming that someone broke into his  
8 apartment and stole the information.  
9 Q. Not that he stole it, not that  
10 he's capable of saying that he,  
11 Teitelbaum, did not tell me. What I'm  
12 saying is that's in his handwritten notes  
13 but not in the typed notes.  
14 Do you know whether the  
15 commissioners, in making a determination  
16 about their continued confidence in  
17 Teitelbaum, relied upon the written  
18 Ginsberg memo as opposed to his written  
19 notes?  
20 A. I have no idea. I wasn't privy  
21 to any of those conversations.  
22 MR. FISCH: Off the record.  
23 (Discussion held off the record)  
24 Q. Do you know -- I may have asked  
25 you this before and I apologize -- whether

1 M. Tooher  
2 there was any dissent within the  
3 commission about accepting Teitelbaum's  
4 explanation?  
5 A. I wasn't party to those  
6 discussions.  
7 Q. With reference -- in your prior  
8 testimony, we discussed the discrepancy,  
9 what appeared to be discrepancies between  
10 Dopp's testimony before the commission and  
11 the statement before the attorney general.  
12 And you said that his statement before the  
13 attorney general had been reported in the  
14 press.  
15 A. Uh-huh.  
16 Q. We could not find that and we  
17 did not see that.  
18 Do you --  
19 A. I think it was on the Albany  
20 Times Union blog.  
21 Q. Do you recall when that  
22 appeared?  
23 A. When the attorney general's  
24 report came out, because there was a big  
25 fuss about that the AG hadn't questioned

1 M. Tooher  
2 Dopp or Baum and I thought my recollection  
3 was that at one point they had actually  
4 listed in the Times Union on the blog and  
5 you could click on the Capital Connection  
6 and I think it was before we even got  
7 involved in this that they printed it, or  
8 it might have been the Post, that they  
9 actually had copies of the statement  
10 because the chamber wanted it known that  
11 they gave these sworn statements.

12 Q. As far as you know, when issues  
13 arose within the commission about the  
14 chamber --

15 MR. FISCH: Withdrawn. Let me  
16 start that again.

17 Q. The commission sought records,  
18 of course, from the governor's office.

19 A. Yes.

20 Q. And there's some discussion  
21 about whether or not the chamber would  
22 exercise certain privileges.

23 A. Yes.

24 Q. And whether they did or did not,  
25 that generated some discussions.

1 M. Tooher

2 A. Numerous.

3 Q. Was any of that in the  
4 newspapers, the fact that -- I'm talking  
5 about in the summer of 2007. Was there  
6 anything in the newspapers that you  
7 recall?

8 A. Well, we didn't really start our  
9 investigation until the end. It was  
10 August some of the things you just showed  
11 me. Because the attorney general's report  
12 came out I think it was July 22.

13 Q. July.

14 A. So we didn't really start our  
15 investigation obviously not before the  
16 attorney general's report came out and  
17 then it was in the next couple of weeks.  
18 Because initially the thought was we would  
19 have the investigation completed by  
20 September 22 when the Ethics Commission  
21 ceased to exist.

22 Q. When you say, "we," you're  
23 talking about the Ethics Commission?

24 A. The Ethics Commission.

25 Q. Were they seeking documents at

1 M. Tooher

2 the beginning?

3 A. Yes.

4 Q. As early as the publication of  
5 the report?

6 A. No, it wasn't until after the  
7 report. Because the notes he just  
8 received today concern conversations  
9 between myself and the DA's office. In  
10 that regard, what we were looking for was  
11 the transcripts of the testimony before  
12 the attorney general's office. There was  
13 a whole schism between the attorney  
14 general's office and our office. They  
15 wouldn't provide us with the transcripts  
16 of their witnesses' testimony.

17 Initially I came down to New  
18 York and went to the attorney general's  
19 office with two of my investigators and we  
20 went through some of the transcripts and  
21 they had given other transcripts to the  
22 DA's office, but they wouldn't allow us  
23 copies of the transcripts. We had to go  
24 look at them and leave them but we could  
25 take notes. So that was in August.

1 M. Tooher

2 Q. Was Dopp's testimony before your  
3 commission the first time that there was a  
4 charge, an allegation that Nocenti and  
5 Pope and possibly Maloney had attempted to  
6 influence his statement?

7 A. Yes.

8 Q. Prior to that testimony, there  
9 was nothing, as far as you know, that was  
10 ever disclosed about that or alleged about  
11 that?

12 A. I was not aware of anything  
13 about that prior to that day's testimony.

14 Q. With regard to who was going to  
15 represent the governor when he ultimately  
16 came, do you recall when those discussions  
17 began and who had been reported to  
18 represent him, who had been chosen to  
19 represent him?

20 A. My understanding is that Peter  
21 Pope and David Nocenti were going to  
22 represent the governor. That was fairly  
23 early on. I mean, I can't remember  
24 precisely how I gained that knowledge.  
25 One, David Nocenti was his counsel and I

1 M. Tooher  
2 knew Peter Pope had a background as a  
3 prosecutor. And Herb must have told me  
4 that.

5 Q. Herb must have what?

6 A. Told me that, also.

7 Q. Was it known among other members  
8 of the commission, if you know?

9 A. I don't know.

10 Q. But Herb would have been made  
11 privy to that information?

12 A. Yes.

13 Q. Anything that you recall in the  
14 newspapers that Pope and/or Nocenti were  
15 going to represent the governor?

16 A. You know, there was so much in  
17 the newspapers. Every day there was  
18 something in the newspapers. I tried to  
19 ignore them mainly. I know that there are  
20 two big fat binders at the commission of  
21 all the press releases from that time  
22 frame.

23 Q. Press releases?

24 A. Or press clippings. Walter  
25 Ayers, who was the PIO at the commission,

1 M. Tooher  
2 would gather the clippings and he would  
3 put them in my basket. My file has a  
4 press clippings file and it got out of  
5 control. It was ridiculous, I couldn't  
6 bother reading them. But there were  
7 issues of leaks. And I know there was a  
8 leak about the chamber very early on  
9 because there was a letter that Richard  
10 Rifkin had sent to the commission on  
11 behalf of the chamber and that got leaked  
12 to the press. So there was a concern of  
13 leaks at the commission. But I can't  
14 specifically recall the issue of Pope or  
15 Nocenti representing the governor being in  
16 the press.

17 Q. As far as you know, is it A Y R  
18 E S?

19 A. A Y E R S.

20 Q. He maintained clips of  
21 everything that involved the commission,  
22 all the leaks and all the stories?

23 A. Walter was responsible for  
24 gathering the clips on the commission  
25 regularly. We were trying to piece

1 M. Tooher  
2 together what happened here and, quite  
3 frankly, some of the stuff we read in the  
4 press we didn't know. I asked Walter to  
5 gather all the clips in one occasion so  
6 that, when we needed to, we could go  
7 through and see if there was anything we  
8 needed to know in there.

9 Q. The concern about the leaks, was  
10 that a factor in the formation of  
11 subcommittees?

12 A. Yes, absolutely. There was very  
13 much a concern that -- the commission's  
14 investigations are always confidential and  
15 here obviously there was a serious  
16 allegation involving the governor and  
17 clearly there was information going to the  
18 press. So that was certainly one of the  
19 of the factors that went into forming the  
20 working group.

21 Q. The group which consisted of  
22 Feerick, Loretta Lynch, Howard Levine, I  
23 think Guiffra?

24 A. And John Mitchell.

25 Q. Was that the subcommittee that

1 M. Tooher  
2 was supposed to be dealing with the  
3 Troopergate matters and all the matters as  
4 opposed to all the other commissioners?

5 MR. FISCH: Let me rephrase that.  
6 That was rather awkwardly put.

7 Q. That subcommittee, was that  
8 formed partially because of the leaks?

9 A. Yes, that was one of the factors  
10 for forming that working group.

11 Q. How do you know that?

12 A. Because we talked about it at a  
13 meeting early on and I was actually just  
14 looking at my notes today on one of the  
15 meetings, and this is something that's  
16 actually different from what was in my  
17 initial testimony. In my notes it says  
18 Herb asks for working group. And as, I  
19 think as I remember it, we needed to  
20 address issues as they came up. Initially  
21 I think I told you the Ethics Commission  
22 was a much smaller group, you know, there  
23 were only five. When you're dealing with  
24 five commissioners, it's relatively easy.  
25 When you get to thirteen, it gets a bit

1 M. Tooher  
2 unwieldy and we were finding that we  
3 needed to make decisions on things like  
4 this fairly regularly and fairly quickly.

5 Typically when we would do an  
6 investigation, I wouldn't bring it to the  
7 commission until it was pretty solid. But  
8 when we had something that was very high  
9 profile or sensitive, like we did in the  
10 Hevesi matter, the commission was very  
11 hands-on. Because of the individuals that  
12 this involved, it was also felt important  
13 that the commission be very hands-on. But  
14 we had a new commission, the appointments  
15 were in process, and so there needed to be  
16 an efficient way to address these issues  
17 and their release in the press.

18 So between those factors, there  
19 were concerns. You have new commissioners  
20 that just may not understand the need for  
21 confidentiality. I remember when we had  
22 the Ethics Commission, at one point we got  
23 a new commissioner on it and she spoke to  
24 the press directly at one point just  
25 because she didn't know.

1 M. Tooher

2 Q. Susan Shepherd?

3 A. Yes.

4 And it was simply an instance of  
5 not knowing some of the limitations in  
6 this kind of a commission, and I think  
7 there was some of that concern; that as  
8 people were coming onboard and we're in  
9 the midst of this sensitive investigation,  
10 there's that issue and then there's the  
11 issue of just needing to get decisions  
12 made.

13 Q. Was it Feerick -- was Dean  
14 Feerick the one that composed the  
15 subgroups?

16 A. As far as I know, yes.

17 Q. Was Commissioner Gruenberg one  
18 of the people suspected of being a leaker?

19 A. Not to my knowledge.

20 Q. Anybody in particular that you  
21 remember being discussed as a source of  
22 the leaks to the press?

23 THE WITNESS: Can I talk to you  
24 for a minute?

25 MR. SCHECHTMAN: Sure.

1 M. Tooher

2 (Whereupon a break was taken)

3 A. There was an expression of  
4 concern that Richard Emery might be one of  
5 the leaks.

6 MS. OSTERER: We had made mention  
7 of the memo from Barry Ginsberg to  
8 John Feerick about the tapes that had  
9 been played I think it's in the  
10 packet.

11 THE WITNESS: Yes.

12 MS. OSTERER: That's dated  
13 July 31, 2008.

14 THE WITNESS: The memo is?

15 MS. OSTERER: The memo is.

16 And I wanted to know whether the  
17 commissioners had been provided with  
18 something in writing at around the  
19 time of February, 2008 when the issue  
20 had arisen that Dean Feerick had been  
21 notified by the DA that there was  
22 allegation about Mr. Teitelbaum.

23 THE WITNESS: I wasn't aware of  
24 any memo until I saw that, so I don't  
25 know.

1 M. Tooher

2 MS. OSTERER: Any communications  
3 at all about conveying this  
4 information to the commissioners?

5 THE WITNESS: I know they had a  
6 meeting and discussed it, but I don't  
7 know anything more.

8 Q. Did you ever see this  
9 (referring)?

10 A. (Reviewing).

11 These look to be Herb's notes.

12 Q. I've just handed you a number of  
13 pages of notes that was faxed to me a few  
14 minutes ago which we just received from  
15 the commission.

16 The first part appear to be  
17 notes I think you might have identified as  
18 Teitelbaum's?

19 A. I think they're all Herb's  
20 notes.

21 Q. These are all --

22 A. Yes. I don't know what the  
23 first part of that is. I've never seen it  
24 before. Some of the others look to be  
25 notes that he may have made while we were

1 M. Tooher

2 actually questioning witnesses.

3 Q. What is this designed to relay  
4 to the commission?

5 A. I have no idea. This is the  
6 first time I've seen it.

7 Q. Do you want to take a look at  
8 that? You referred to a concern about the  
9 DA going public.

10 A. Uh-huh. Yes.

11 Q. Ms. Tooher, the second page, the  
12 last paragraph on the second page reads as  
13 follows: "My relationship with the  
14 executive chamber soured in August, '07  
15 when at meeting with exec chamber reps,"  
16 paren, "Constantine, Pope, Rifkin," paren,  
17 "I closed down conversation. See Meave's  
18 notes on 10/20."

19 What is that all about?

20 A. I don't think it was it's my  
21 notes of 10/20, I think it's a memo. And  
22 I'm not sure of the date. There's some  
23 confusion here between the August, '07 and  
24 the 10/20 date.

25 We had a couple of meetings,

1 M. Tooher  
2 Herb and I had a couple of meetings with  
3 Richard Rifkin, Peter Pope, and Lloyd  
4 Constantine concerning the investigation  
5 and handing over of documents and things  
6 like that. And at one point, I think it  
7 was in the second meeting, both Peter Pope  
8 and Richard Rifkin were fairly adamant  
9 that there was no violation here and that  
10 the commission should find there was no  
11 violation and shouldn't continue an  
12 investigation in this matter. At that  
13 juncture Herb said I'm absolutely not to  
14 discuss that with you and ended the  
15 meeting.

16 Q. I wanted you to see a Ginsberg  
17 memo. Part of it is highlighted.

18 A. (Reviewing).

19 Q. I think the only question we had  
20 is a part -- I forget on what page, it may  
21 be the next page that's highlighted --  
22 there's a reference to newspaper stories  
23 around Halloween.

24 Can you read that aloud, if you  
25 don't mind.

1 M. Tooher

2 A. It's on page four, it's the  
3 first full paragraph. "Around Halloween,  
4 after there had been recent news reports  
5 that the Albany County district attorney  
6 was conducting an investigation relating  
7 to Darren Dopp's testimony in connection  
8 with the commission investigation, Hermann  
9 and Teitelbaum had arranged to have dinner  
10 at Teitelbaum's apartment."

11 Q. Just that part.

12 Are you aware of any newspaper  
13 reports at that time? I'm not. We have  
14 looked for them and have not seen any.

15 A. I mean, yes, but what the  
16 reports were around that time -- I  
17 remember, when we had initial discussions  
18 with the district attorney -- and I  
19 apologize, I can't put these in a time  
20 frame for you -- that it became very clear  
21 that someone from the DA's office or  
22 someone with informing the DA's office had  
23 was speaking with the press. The meetings  
24 we had with the chamber, there was a  
25 letter from the chamber that became public

1 M. Tooher  
2 at one point. And the DA's office had  
3 gotten a very similar letter and the  
4 surmise, from our prospective, was that it  
5 must be the DA's office leaking. I don't  
6 know what was in the press.

7 Q. We will go to Ayers.

8 A. There should be something around  
9 Halloween. The press would have been the  
10 Times Union. I don't know -- I'm not  
11 telling you how to do your job, but it  
12 might not have been in the paper format of  
13 the press, it might have been in the  
14 blogs, Liz Benjamin's blog, the Albany  
15 Times Union, and the New York Post. Those  
16 were our biggest fans.

17 MS. OSTERER: Ms. Tooher, I'd  
18 like to direct you to your prior  
19 testimony at page fifty-two.

20 Perhaps you could just read to  
21 yourself from line six or seven down  
22 to about line nineteen.

23 Do you know if Richard Rifkin  
24 had been apprised that there could be  
25 conflicted attorneys within the

1 M. Tooher

2 executive chamber?

3 THE WITNESS: Yes, he was.

4 MS. OSTERER: Approximately when  
5 was that?

6 THE WITNESS: It would have been  
7 around this same October, late  
8 October, possibly early November but I  
9 think late October. Because the  
10 concern was that we knew the governor  
11 wanted to be interviewed as quickly as  
12 possible, he wanted this done as  
13 quickly as possible, and Richard made  
14 it clear that he wanted Peter Pope and  
15 David Nocenti represent him. And once  
16 we realized that they were witnesses  
17 that we needed to talk to -- because  
18 prior to that time we hadn't been  
19 certain and that there was this  
20 potential grand jury/district attorney  
21 proceeding, because there was also the  
22 issue that they may have crossed the  
23 line in getting Dopp to provide this  
24 statement in a forceful manner -- that  
25 they couldn't represent the governor,

1 M. Tooher  
2 that that wasn't going to happen. So  
3 we wanted to let Richard know that  
4 this -- that the governor could not  
5 have basically what he represented to  
6 be the attorneys of his choice  
7 represent him and that there was a  
8 conflict.

9 MS. OSTERER: Who would have  
10 communicated that to him?

11 THE WITNESS: Herb communicated  
12 that to him. I believe I was in the  
13 room when he called him.

14 Q. When was that determination made  
15 by the commission, that they could not  
16 represent the governor?

17 A. Around the same time that all of  
18 this is going on with the DA's office, the  
19 October/November time frame.

20 Q. And that was basically an  
21 internal determination?

22 A. I don't understand.

23 Q. A determination that it would  
24 not be proper for the governor to be  
25 represented by either Pope or Nocenti.

1 M. Tooher

2 A. Correct.

3 MS. OSTERER: I don't have any  
4 further questions. I just wanted the  
5 record to reflect that the documents  
6 we've been receiving from the  
7 commission have been designated with  
8 notations CPI together with a number  
9 and the documents that we had shown to  
10 Ms. Tooher earlier, the ones she had  
11 identified as containing Herb  
12 Teitelbaum's handwriting, were  
13 designated CPI-324 through 332. We'd  
14 like to confirm -- it's 321  
15 through 332.

16 Q. Anything, Ms. Tooher, you wish  
17 to add?

18 MR. SCHECHTMAN: We do, Judge.

19 If I could expedite it, you were  
20 kind enough to ask Meave if she would  
21 look at her testimony and see if there  
22 was anything in there that required  
23 clarification. She's referred to one  
24 matter today in terms of the formation  
25 of the working groups.

1 M. Tooher  
2 There's a second. And the  
3 easiest way to do it is to just read  
4 your question and her answer. It's at  
5 page twenty-seven and twenty-eight of  
6 the prior transcript. The question  
7 reads: "Did you ever hear allegations  
8 that he had provided information  
9 prior" -- he being Teitelbaum --  
10 "prior to that November 1 date --  
11 we're using that as a focus point --  
12 prior to that date, that he had  
13 provided additional information to  
14 Hermann." And the answer, which goes  
15 to page twenty-eight, begins "no."

16 That answer is accurate in that  
17 Meave never heard allegations. But in  
18 reviewing the transcript, it did  
19 trigger a recollection which I think  
20 is important just to clarify the  
21 record. So with that as background.

22 THE WITNESS: When I looked at  
23 this transcript, you also gave me  
24 Barry's notes. And in Barry's notes,  
25 there's a reference to Lloyd

1 M. Tooher  
2 Constantine's testimony where he  
3 indicates that Hermann had come to him  
4 in I think it was July or August and  
5 talked to him about Herb providing  
6 information to him.

7 I recall, and I can't say  
8 distinctly what that is, but I do  
9 recall Herb saying to me that he was  
10 speaking to Bob Hermann with the  
11 understanding that Hermann, you know,  
12 would bring information to the  
13 chamber. And my understanding at that  
14 time was he was trying to encourage  
15 the chamber to get us documents so he  
16 was trying to use Hermann as another  
17 way to encourage the chamber to get us  
18 documents.

19 Q. So Teitelbaum told you, during  
20 July and August, that he was going to use  
21 Hermann to -- as an intermediary with the  
22 chamber to get documents from the chamber?

23 A. I think that's a stronger  
24 characterization of what he said to me  
25 that I'm intending to relay. What he said

1 M. Tooher  
2 to me was something along the lines of,  
3 you know, I have back door channels to try  
4 and move this along.

5 Q. Did he mention Hermann by name?

6 A. Yes.

7 Q. Was this at a time when the  
8 chamber was considering the exercise of  
9 privileges?

10 A. I don't think at that point we  
11 had discussed privilege yet. That was  
12 very early.

13 Q. Were there certain specific  
14 documents that Teitelbaum felt the chamber  
15 was not sufficiently responsive to?

16 A. There weren't particular  
17 documents. I don't know what you know of  
18 the record. We literally received  
19 thousands of pages of documents over the  
20 course of about nine months. And based on  
21 some of the documents we were getting, we  
22 always knew that they weren't providing  
23 all the documents and that was sort of a  
24 continuing --

25 Q. I'm experiencing the same thing.

1 M. Tooher

2 MR. SCHECHTMAN: Been there, done  
3 that.

4 A. So there were always gaps and we  
5 knew we needed more records.

6 Q. Did he indicate why he needed  
7 back channels?

8 A. You know, I guess the only thing  
9 I can say is it's Herb's personality to,  
10 you know, try and massage things and make  
11 them work and I think that it was just he  
12 felt it would be helpful to kind of nudge  
13 from another direction.

14 Q. Did he ever indicate his  
15 dissatisfaction with Rifkin as the point  
16 man?

17 A. Well, there was dissatisfaction  
18 with the way documents were coming in all  
19 the time.

20 Q. Nothing specifically about  
21 Rifkin?

22 A. You know, I know early on he was  
23 talking to Lloyd as well, Lloyd  
24 Constantine, and he expressed feeling more  
25 comfortable talking to Constantine because

1 M. Tooher  
2 he came from a litigation background and  
3 Herb felt they had a more direct  
4 communication manner.

5 Q. Did Teitelbaum share this with  
6 anybody else?

7 A. I don't know. I know he shared  
8 it with me.

9 Q. How did you respond to that?

10 A. Which?

11 Q. Telling you that he's using back  
12 channels, he has back channels, that  
13 Hermann is going to be -- this person he's  
14 going to be contacting to meet as an  
15 intermediary?

16 A. He told me after the fact that  
17 he had spoken with him, it wasn't an I'm  
18 going to be contacting.

19 Q. Was it after there had been a  
20 complaint that he should not have been  
21 using Hermann?

22 A. No, no, this was very early on  
23 and I said you shouldn't be talking to  
24 anybody about the investigation.

25 Q. You don't recall --

1

2 MR. FISCH: Strike that.

3 Q. Did he ever indicate that at any  
4 point that Hermann had told him that the  
5 chamber did not want Teitelbaum going to  
6 Hermann?

7 A. No. The first time I saw that  
8 again was in Barry's notes. And what  
9 actually triggered it for me was there's  
10 comments that Lloyd Constantine went and  
11 talked to I think it was Hal Lieberman who  
12 I was dealing with on another matter at  
13 the same time, so that's why it sort of  
14 stuck in my head that I was talking to  
15 Lieberman at the same time.

16 MR. FISCH: Thank you again. My  
17 apologies for this taking so long but,  
18 as I stated on the record, we got  
19 information as we were conducting this  
20 interview. I appreciate your patience  
21 with us.

22 (TIME NOTED: 4:21 p.m.)

23

24

25

1

2

## CERTIFICATION BY REPORTER

3

4

I, Wayne Hock, a Notary Public of the

5

State of New York, do hereby certify:

6

That the testimony in the within

7

proceeding was held before me at the

8

aforesaid time and place;

9

That said witness was duly sworn

10

before the commencement of the testimony,

11

and that the testimony was taken

12

stenographically by me, then transcribed

13

under my supervision, and that the within

14

transcript is a true record of the

15

testimony of said witness.

16

I further certify that I am not

17

related to any of the parties to this

18

action by blood or marriage, that I am not

19

interested directly or indirectly in the

20

matter in controversy, nor am I in the

21

employ of any of the counsel.

22

IN WITNESS WHEREOF, I have hereunto

23

set my hand this                      day of

24

, 2008.

25

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