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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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September 19, 2008  
12:02 p.m.

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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:

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STATE OF NEW YORK  
OFFICE OF THE INSPECTOR GENERAL  
61 Broadway  
New York, New York 10006  
BY: JOSEPH FISCH, ESQ.  
ARLENE S. OSTERER, ESQ.

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STILLMAN, FRIEDMAN & SCHECHTMAN, P.C.  
Attorneys for Witness

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425 Park Avenue  
New York, New York 10022

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BY: PAUL SCHECHTMAN, ESQ.

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2 MR. FISCH: My name is Joseph  
3 Fisch. I'm the inspector general of  
4 New York State.

5 This examination is being  
6 conducted in my New York office at 61  
7 Broadway in lower Manhattan. Arlene  
8 Osterer of my staff is present as is  
9 Meave Tooher who is represented by  
10 counsel.

11 Can you note your appearance.

12 MR. SCHECHTMAN: Paul Schechtman  
13 of the firm of Stillman, Friedman and  
14 Schechtman here in Manhattan.

15 MR. FISCH: Ms. Tooher, you're  
16 here voluntarily in return to my  
17 telephone call?

18 THE WITNESS: Yes, I am.

19 MR. FISCH: And you consent to  
20 this interview being recorded  
21 stenographically?

22 THE WITNESS: I do.

23 MR. FISCH: Will you rise as be  
24 sworn, please.

25 (CONTINUED ON NEXT PAGE)

0004

1 M. Tooher  
2 M E A V E T O O H E R, having  
3 been first duly sworn by a Notary Public  
4 of the State of New York, upon being  
5 examined, testified as follows:

6 EXAMINATION BY

7 MR. FISCH:

8 Q. In August of this year, Ms.  
9 Tooher, my office was referred an  
10 investigation by the Albany district  
11 attorney. The investigation concerns  
12 allegations that Herbert Teitelbaum, the  
13 executive director of the Office of -- the  
14 Commission on Public Integrity, had  
15 disclosed information concerning the  
16 activities of the commission to persons  
17 not authorized to receive such  
18 communications. So before we get into  
19 that, I know you had worked with the  
20 commission.

21 Can you tell us a little about

22 your background, please.

23 A. With the commission?

24 Q. From law school on, any  
25 positions you've held briefly.

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1 M. Tooher

2 A. Okay.

3 Let's see. My first position as  
4 an attorney, I was a law clerk to U.S.  
5 Magistrate Judge Ralph Smith in Albany,  
6 New York. After that, I clerked for Gus  
7 Cholakis, U.S. District Court Judge.  
8 After that, I went into private practice  
9 with the law firm of Gleason, Dunn, Walsh  
10 and O'Shea in Albany. I then worked with  
11 the Legislature, minority counsel's office  
12 in the Assembly. After that, I actually  
13 returned to clerk for Judge Cholakis  
14 again. He was dying.

15 Q. Gus Cholakis?

16 A. That's the man. Until he was  
17 forced to step down from the bench due to  
18 health issues.

19 Following that, I was in private  
20 practice on my own practice.

21 I then joined the Ethics  
22 Commission in 2000 initially as associate  
23 counsel and then as investigative counsel.  
24 I was with the commission through its  
25 transition into the Commission on Public

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1 M. Tooher

2 Integrity in September of 2007 and I had  
3 worked there up until September of this  
4 year.

5 Q. While at the new Commission on  
6 Public Integrity, you knew Herbert  
7 Teitelbaum; did you not?

8 A. I did. He came initially as the  
9 executive director of the Ethics  
10 Commission and then served with the  
11 Commission on Public Integrity.

12 Q. You worked closely with him?  
13 Did you work closely with him?

14 A. I worked with him as a counsel  
15 in the office.

16 Q. How many counsel were there at  
17 that time, roughly?

18 A. When he -- with the Ethics  
19 Commission there were five at the time  
20 that Mr. Teitelbaum came in. And then  
21 with the Commission on Public Integrity,  
22 it merged lobbying and the Ethics  
23 Commission, so there were I believe seven,  
24 seven or eight.

25 Q. Did you work more closely with

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1 M. Tooher  
2 him than with any of the other attorneys?  
3 A. Yes, I would say so because I  
4 was the investigative counsel so I didn't  
5 work so much with the other counsel.  
6 Q. The Commission on Public  
7 Integrity was one of several governmental  
8 entities engaged in investigations.  
9 Some members of the executive  
10 chamber formed Governor Spitzer's  
11 administration; correct?  
12 A. I'm not sure I understand the  
13 question.  
14 Q. There were a number of  
15 investigations going on involving members  
16 of the Governor Spitzer's administration;  
17 were there not?  
18 A. In what regard?  
19 Q. The allegations of spying on  
20 Senator Bruno, allegations concerning  
21 possible inappropriate use of state  
22 facilities, the helicopters, and so on.  
23 Is that right?  
24 A. Yes, that's my understanding as  
25 well.

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1 M. Tooher  
2 Q. And in that connection, the  
3 commission took sworn testimony; did it  
4 not?  
5 A. Yes.  
6 Q. Did there come a time that the  
7 commission reviewed both the testimony  
8 given before it by Darren Dopp and a  
9 statement he had given to Attorney General  
10 Cuomo?  
11 A. During Mr. Dopp's testimony, we  
12 reviewed that statement with him.  
13 Q. And did you -- did there appear  
14 to be discrepancies between the two  
15 statements?  
16 A. During Mr. Dopp's testimony, he  
17 testified that portions of the statement  
18 were not accurate, the statement he had  
19 given to the attorney general's office.  
20 Q. Do you remember specifically  
21 what portions?  
22 A. To the best of my recollection,  
23 the statement was a statement of  
24 accountability, if you will. We had the  
25 statement at that time and it made some

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1 M. Tooher  
2 statement concerning, you know, I regret  
3 any improprieties or language of that  
4 sort. And as I recall Mr. Dopp's  
5 testimony, it was that he didn't really

6 feel there were improprieties.

7 Q. And did the commission decide to  
8 refer what might be, in its judgment,  
9 discrepancies to the district attorney for  
10 review?

11 A. There was never an actual  
12 referral.

13 Q. Referral, I understand, is a  
14 word of art because it has to have all of  
15 the commission people and the wives and  
16 children concurring in the decision.

17 But was it brought to the  
18 attention of the district attorney?

19 A. Yes.

20 Q. Who was involved in that  
21 communication?

22 A. Initially, after the testimony,  
23 Mr. Teitelbaum, myself, Joan Sullivan, who  
24 was another associate counsel, met with  
25 Howard Levine, who was a member of the

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1 M. Toohar

2 Commission on Public Integrity at that  
3 time, and reviewed with Judge Levine the  
4 testimony and the statement. And as I  
5 recall, Judge Levine was concerned that  
6 there might be a perjury issue there.

7 It was then determined that  
8 there was a working group that had been  
9 established within the commission. We  
10 have a thirteen-member commission and that  
11 could be a little difficult to make  
12 decisions and make everyday determinations  
13 so a working group had been established  
14 comprised of John Feerick, Judge Levine,  
15 Bob Guiffra, Loretta Lynch, and John  
16 Mitchell, who were all members of the  
17 commission, to address issues as they  
18 arose within what I will call the  
19 Troopergate situation. Following our  
20 discussion with Judge Levine, it was  
21 determined that the working group should  
22 look at whether or not this presented  
23 something that should be presented to the  
24 DA.

25 There was a telephone

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1 M. Toohar

2 conference, as I recall, because some of  
3 the members were in New York City and some  
4 of the members were in Albany, so some of  
5 us were in Albany, I think it was Judge  
6 Levine, John Mitchell, John Feerick, and  
7 Herb Teitelbaum, and then some of the  
8 members from New York City, they were  
9 provided copies of I think it's a  
10 thirty-five-page portion of the

11 transcript. Everybody looked at it. And  
12 the thought was to just show it to the DA  
13 and let him make a determination as to  
14 whether or not he wanted to look at it  
15 based in part upon his earlier  
16 involvement. The DA's office had also  
17 reviewed certain issues on Troopergate.

18 Q. Now, were all of the  
19 commissioners present when Dopp testified  
20 before the commission?

21 A. No.

22 Q. So what you had brought to the  
23 district attorney's attention were -- was  
24 his statement and portions -- his  
25 statement before the attorney general and

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1 M. Toohar  
2 the thirty-five or whatever pages of his  
3 testimony before the commission?

4 A. I know it was the  
5 thirty-five-pages of the testimony. I  
6 honestly don't recall if it included the  
7 statement or not.

8 If I may, the statement at that  
9 point had been published in the newspaper  
10 so they would have had that.

11 Q. So they had that.

12 Do you recall when you consulted  
13 with the DA on this issue, on this  
14 particular issue?

15 A. I don't recall the exact date.

16 Q. Let me give you some dates that  
17 we have and see if that helps.

18 We understand that, on  
19 October 17, 2007, a Wednesday, you and Mr.  
20 Teitelbaum met with the district attorney,  
21 Assistant DA Linda Griggs, and other  
22 members of the DA's office in the evening  
23 at the Albany County Judicial Center.

24 Does that ring a bell?

25 A. Yes. I don't know what the

0013

1 M. Toohar  
2 judicial center is. We met in the DA's  
3 office.

4 Q. And what was communicated to the  
5 DA by Mr. Teitelbaum and by you?

6 A. I really didn't say anything. I  
7 went down with Mr. Teitelbaum. He  
8 provided them a copy of the transcript,  
9 directed them to certain portions of the  
10 transcript, the exact language, and  
11 basically said this is what we have.

12 Q. During the various discussions  
13 about this issue with members of the  
14 working group and any of the other people  
15 from the commission, did Mr. Teitelbaum

16 take notes?

17 A. I know not at the DA's office,  
18 neither one of us took notes at the DA's  
19 office.

20 During the meeting with the  
21 commission or the working group prior to  
22 going down there, I don't think Mr.  
23 Teitelbaum ever took notes.

24 Q. We understand he was not a  
25 note-taker generally; is that correct?

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1 M. Toohar

2 A. I think that's correct.

3 Q. Let me ask you, during all the  
4 time you've been with him, do you ever  
5 recall him taking notes?

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

7 Q. And this would cover what period  
8 of time and, if you can estimate -- I'm  
9 not going to try to pin you down on the  
10 number of such occasions that he was  
11 present, meetings were had, discussions  
12 were had, he did not take notes?

13 A. No. Frequently at the meetings  
14 Mr. Teitelbaum would be an active  
15 participant in terms of the discussion.

16 Q. I'm talking about note-taking  
17 only.

18 A. Because of that I think he  
19 wouldn't be taking notes.

20 Q. When somebody else is talking?

21 A. No, I don't remember that.

22 Q. Do you ever recall him taking  
23 notes?

24 A. Ever recall him taking notes? I  
25 can't say that I do.

0015

1 M. Toohar

2 Q. So you now bring this to the  
3 attention of the district attorney.

4 And is it fair to say they tell  
5 you or Mr. Teitelbaum we'll take a look at  
6 it?

7 A. Yes.

8 Q. When was the next significant  
9 meeting or discussion with the district  
10 attorney or his staff concerning whether  
11 they were going to proceed with this  
12 matter?

13 A. I didn't have a meeting with the  
14 district attorney on this as far as  
15 whether or not they were going to proceed.  
16 I became aware that they were going to  
17 proceed.

18 Q. When was that?

19 A. You know, I had discussion about  
20 this. I received a telephone call from

21 Herb Teitelbaum at home. Typically I was  
22 not supposed to be working Fridays, that  
23 was supposed to be my pass day, so I think  
24 it might have been Friday because I know  
25 he called me at home during the day but I  
0016

1 M. Tooher  
2 was switching my days around.

3 Q. November 1?

4 A. I don't think it was that far  
5 along. I think it was only a few days. I  
6 know, as I try to put it in a time  
7 reference, I know the DA was going out of  
8 town on some sort of a conference so I  
9 know it was somewhere in that same time  
10 frame and I believe Herb indicated he  
11 contacted him from out of town.

12 Q. We understand that there was a  
13 meeting on or about October 22 of 2007,  
14 you, Teitelbaum, and that the DA and  
15 another member of his staff participated  
16 by telephone. It involved Dopp's COPI,  
17 Commission on Public Integrity, testimony  
18 and a discussion on potential ways that  
19 the DA might proceed.

20 Does that ring a bell, at the  
21 Alfred E. Smith Building?

22 A. I mean, it would have been the  
23 Alfred E. Smith Building at that time. I  
24 honestly don't recall that.

25 Q. We understand that, as late as  
0017

1 M. Tooher  
2 October 25 or 26, the DA had not yet made  
3 a decision, that Teitelbaum telephoned him  
4 or the DA telephoned Teitelbaum, but there  
5 was a discussion and Teitelbaum wanted a  
6 decision saying that the commission could  
7 not proceed without knowing whether the DA  
8 was going to take this up.

9 A. I don't recall a discussion like  
10 that.

11 Q. You say you remember a telephone  
12 call from Teitelbaum on a Friday?

13 A. Yes.

14 Q. And was it during that call that  
15 he told you the DA was going to take up  
16 this matter?

17 A. Yes.

18 Q. Did he also tell you of a  
19 meeting he had with members of the  
20 chamber, the executive chamber?

21 A. We had meetings with people from  
22 the executive chamber, but I'm not sure I  
23 understand.

24 Q. In connection with members of  
25 the chamber being aware that the DA was

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1 M. Tooher

2 going to take this matter up.

3 A. I don't remember any discussion  
4 about him meeting with members of the  
5 executive chamber concerning that.

6 Q. The information we have is that  
7 the DA did not advise Mr. Teitelbaum that  
8 the DA's office was going to proceed with  
9 this matter until Thursday, November 1.

10 Does that ring a bell with you?  
11 The next day was a Friday, of course.

12 A. You know, I'm trying to tie it  
13 to Halloween because that's something that  
14 would trigger me.

15 Q. Was it after Halloween?

16 A. I honestly don't recall. The  
17 first I heard that the DA was going  
18 forward with this was, as I mentioned, a  
19 telephone call to me at my home.

20 Q. By Mr. Teitelbaum?

21 A. Mr. Teitelbaum indicated that he  
22 had heard from the DA and they were going  
23 to go forward with it. But I can't put a  
24 day on that.

25 Q. Would there be any records at

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1 M. Tooher

2 the commission indicating when Teitelbaum  
3 learned this?

4 A. I'm not aware of any.

5 Q. Because again, our investigation  
6 has ascertained that it was November 1  
7 that Teitelbaum was notified by the DA.  
8 That was a Thursday and that was the day  
9 after Halloween.

10 A. I know we spoke -- we  
11 interviewed Mr. Dopp in early October and  
12 then we met with the DA on I think you  
13 said the seventeenth or the nineteenth,  
14 somewhere around there.

15 Q. We understand that they had not  
16 been reviewing all of Dopp's testimony  
17 which is almost four hundred pages.

18 A. Correct.

19 Q. They were not reviewing it until  
20 the latter part of October, October 20 or  
21 October 21.

22 A. As I recall, we provided them  
23 initially with the thirty-five-pages.

24 Q. Yes.

25 A. And then I -- I'm sorry, I'm

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1 M. Tooher

2 just trying to remember as best I can.

3 But I believe there was a request for the  
4 full testimony. And there was also a

5 request for the testimony of other  
6 witnesses which was denied on the basis  
7 that there was nothing else in that  
8 testimony. November 1 is a possibility,  
9 but I couldn't say definitively.

10 MR. SCHECHTMAN: Judge, if I  
11 promise not to make it a practice, can  
12 I ask one question?

13 MR. FISCH: Sure.

14 MR. SCHECHTMAN: Do you recall  
15 Mr. Teitelbaum telling you that the DA  
16 was out of town when he contacted him  
17 to say he was going forward?

18 THE WITNESS: Yes.

19 MR. SCHECHTMAN: That may be one  
20 way to place the time.

21 Q. He called you when you were out  
22 of town?

23 A. No, the DA called when he was  
24 out of town. I think he was in New  
25 Orleans for some reason.

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1 M. Toohar

2 Q. The DA was in Atlanta, Georgia,  
3 maybe he returned on October 31, a  
4 Wednesday. We understand the following  
5 day is when he notified Teitelbaum.

6 A. My recollection is that Herb  
7 Teitelbaum indicated that the DA had  
8 called him from a remote location.

9 Q. Do you have any records or  
10 anything that would place an earlier time  
11 frame than November 1 as the very first  
12 knowledge communicated by the DA to  
13 Teitelbaum that the DA was proceeding?

14 A. I don't have any records.  
15 Everything I had I left at the commission.  
16 I don't think there would be records of  
17 that particular conversation just because  
18 he called me at home.

19 Q. What was the next thing that  
20 happened as far as the Commission on  
21 Public Integrity was concerned after  
22 learning that the DA was taking this?

23 A. They indicated they wanted Herb  
24 to be a witness in the grand jury and that  
25 they wanted him to give testimony on

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1 M. Toohar

2 Dopp's testimony before the commission and  
3 that was discussed with the working group  
4 and what impact that would have on us  
5 doing anything further as far as the  
6 investigation.

7 Q. Did the investigation, which had  
8 been, small R, referred to the DA, include  
9 allegations that people in the executive

10 chamber were complicit in the composition  
11 of Dopp's statement before the attorney  
12 general?

13 A. I don't know that I would use  
14 the word "complicit." I know the  
15 testimony --

16 Q. They might have influenced his  
17 statement.

18 A. Mr. Dopp's testimony was that  
19 members of the chamber staff, specifically  
20 Peter Pope, Sean Maloney, David Nocenti,  
21 had been present when he executed this  
22 statement and that they had let's say  
23 leaned on him to execute the statement.  
24 His testimony was that there was an effort  
25 to wrap this up, get it over with, and it

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1 M. Toohar

2 was his understanding, if he executed the  
3 statement, that would happen.

4 Q. Did Mr. Teitelbaum ever advise  
5 you that members of the executive chamber,  
6 Richard Rifkin, for example, Lloyd  
7 Constantine, and others, had advised the  
8 DA that they had information that the DA  
9 was proceeding and that this information  
10 came to them through the chamber from  
11 Teitelbaum?

12 A. This is in the October/November  
13 time frame?

14 Q. Well, at any time.

15 Were you aware that there were  
16 allegations that Teitelbaum had given  
17 information about activities of the  
18 commission to people at the executive  
19 chamber?

20 A. I became aware at a later time  
21 that there were allegations of that  
22 nature. In this time frame, I don't  
23 recall anything like that. I know there  
24 were concerns at the commission and I know  
25 the DA expressed those concerns of leaks.

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1 M. Toohar

2 And clearly there was information in the  
3 newspapers.

4 Q. When did you first learn of  
5 allegations that Teitelbaum had been  
6 leaking information concerning the work at  
7 the commission?

8 A. The first time I heard that  
9 concrete allegation -- and I actually can  
10 put a date on this because it relates to  
11 my personal life -- was February 27  
12 because the day before I had actually left  
13 the office early for dinner with my  
14 ex-husband and children for his birthday

15 and it was a blizzard and I went home  
16 early and the next morning when I came in  
17 Barry Ginsberg related to me that things  
18 had sort of exploded the day before.

19 Q. They had what?

20 A. Exploded; that there had been  
21 contact from the district attorney and he  
22 had gone over to the DA's office with  
23 other members of the commission and there  
24 were allegations about Herb. He didn't  
25 discuss it with me a whole lot more than

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1 M. Tooher

2 that. That was something that was handled  
3 by them.

4 Q. Kept in an inner circle?  
5 Did anybody ever tell you  
6 details about the allegations?

7 A. Yes.

8 Q. Tell us.

9 A. There was a discussion -- what I  
10 was told, and this has to be from Barry  
11 Ginsberg, was that there were allegations  
12 that Herb had been providing information  
13 to I think it was Bob Hermann.

14 Q. Yes.

15 A. Who I knew to be a friend of  
16 Herb Teitelbaum's. And Barry told me that  
17 they had gone over to the DA's office,  
18 that John Feerick was very disturbed about  
19 these allegations that they received on  
20 the 26th of February, they had went over  
21 to the office that evening and listened to  
22 tapes of interviews the DA had conducted.  
23 It was my understanding they were  
24 interviews of Hermann and Constantine --  
25 and again, I'm guessing that Barry told me

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1 M. Tooher

2 that -- and that members of the working  
3 group had gone over. I believe what  
4 happened was that Barry went, John Feerick  
5 went. I know another Albany person  
6 went -- I think it was John Mitchell but  
7 I'm not certain on that -- and that Bob  
8 Guiffra had participated by speakerphone  
9 from New York and that they had listened  
10 to whatever the tapes were and that the  
11 decision was made that there was really  
12 nothing to the allegations.

13 Q. Did Teitelbaum ever tell you  
14 about this?

15 A. I'm sure Herb and Barry  
16 discussed some of this with me but no, I  
17 never had a conversation with Herb about  
18 it. I know he was disturbed that there  
19 were allegations concerning Hermann

20 because they apparently had been friends  
21 for a long time.

22 Q. Disturbed that Hermann was the  
23 source of this information?

24 A. Correct.

25 Q. Would Teitelbaum's disclosure of  
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1 M. Tooher

2 the fact that the DA had agreed to  
3 undertake an investigation have  
4 constituted a violation? You're lead  
5 counsel.

6 MR. SCHECHTMAN: Investigative  
7 counsel.

8 A. I don't know that I can answer  
9 that.

10 Q. Would it have been at least  
11 improper?

12 A. Would Teitelbaum's disclosure?

13 Q. To Hermann of the fact that the  
14 DA was undertaking an investigation.

15 A. In my opinion?

16 Q. Yes.

17 A. Yes, I would consider that a  
18 breach of the confidentiality provisions  
19 of the commission.

20 Q. Did you ever hear allegations  
21 that he had provided information prior to  
22 that November 1 date -- we're using that  
23 as a focus point -- prior to that date,  
24 that he had provided additional  
25 information to Hermann?

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1 M. Tooher

2 A. No. I knew that he was friends  
3 with Bob Hermann because Herb had  
4 relocated up from the city and he didn't  
5 know that many people in Albany and he had  
6 mentioned Bob Hermann as someone that he  
7 knew and I think they had dinner  
8 occasionally. He might have lived in the  
9 same apartment complex. I'm not sure.

10 Q. Now, Teitelbaum, as executive  
11 director, was authorized to deal with  
12 certain designated people in the executive  
13 chamber, was he not, in connection with  
14 furthering the investigation, arranging  
15 for witnesses, arranging for documents,  
16 and so on?

17 A. The way you word it is a little  
18 difficult. I assumed he was authorized by  
19 the commission. He was authorized to  
20 conduct the investigation. There weren't  
21 really specific people he was authorized  
22 to deal with in the chamber. The chamber  
23 put forward people for us.

24 Q. I understand that.

25 Do you know who those people

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1 M. Tooher

2 were?

3 A. Primarily Richard Rifkin.

4 Q. Never Herb, never Robert

5 Hermann?

6 A. No.

7 Q. Were there issues, during the  
8 course of the commission's investigation,  
9 of members in the chamber exercising  
10 executive privilege assertions?

11 A. There was discussions about  
12 that, there were a number of privilege  
13 discussions. I don't believe they ever  
14 actually asserted executive privilege.  
15 They did assert attorney-client privilege  
16 on certain documents.

17 Q. After the allegations, listening  
18 to the tape, the commission made a  
19 determination that, in its judgment,  
20 collective judgment, there's nothing to  
21 this and they expressed in a letter to the  
22 DA complete confidence in Teitelbaum.

23 Do you remember that?

24 A. That was my understanding of  
25 that.

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1 M. Tooher

2 Q. Did you see any change in  
3 Teitelbaum's duties after those  
4 allegations?

5 A. No.

6 Q. Continued to operate with the  
7 same authority?

8 A. I was never aware of any change  
9 in duties.

10 Q. Did Ginsberg or any of the  
11 commissioners ever discuss with you the  
12 contents of the Constantine tape?

13 A. Yes.

14 Q. What do you recall Constantine  
15 had testified to?

16 A. Barry discussed with me, Barry  
17 Ginsberg, that the contents of the tape  
18 were something about Hermann had been at  
19 Herb's apartment and Herb got a telephone  
20 call and he went to take the telephone  
21 call and Hermann looked at notes on his  
22 coffee table.

23 Q. Notes by Teitelbaum whom you've  
24 never seen taking notes?

25 A. Correct.

0031

1 M. Tooher

2 Q. That was Hermann's version?

3 A. I don't know whose version that

4 was. That was what was relayed to me by  
5 Barry.

6 Q. Do you remember any other part  
7 of Constantine's version?

8 A. My understanding -- I'm a little  
9 hazy on this because I wasn't really  
10 involved in this stuff -- was that Hermann  
11 relayed that to Constantine, but it was  
12 never discussed with me, you know, real  
13 specifically what were the contents.

14 Q. Were you present when the  
15 commission discussed these allegations  
16 with Teitelbaum?

17 A. I don't believe so. I know  
18 there were a number of meetings, telephone  
19 meetings that were going on in this time  
20 frame. We were regularly having telephone  
21 conference meetings. In fact, I think I  
22 remember they discussed this as part of a  
23 bigger meeting. And when they went to  
24 discuss it, because we had been discussing  
25 other issues, Herb and I were asked to

0032

1 M. Tooher  
2 leave the room and the conference call  
3 continued.

4 Q. I want to ask you something  
5 about office supplies.

6 A. Okay.

7 Q. I take it there were pads that  
8 were available for staff people for  
9 note-taking, writing, and so on?

10 A. Sure.

11 Q. Do you recall, was it the whole  
12 gamut; yellow pads, white pads, large  
13 pads, small pads, lined?

14 A. Yes.

15 Q. No, no, there's a method to my  
16 madness.

17 Do you recall specifically  
18 yellow pads being available?

19 A. Yes, I do. I think there were  
20 yellow pads and white pads, actually.

21 Q. Did Teitelbaum have a laptop  
22 computer?

23 A. Yes, he did. But he had given  
24 it to one of the attorneys in the office  
25 to use.

0033

1 M. Tooher

2 Q. He had a Blackberry?

3 A. Yes.

4 Q. A separate cell phone, do you  
5 know, or was the Blackberry his means of  
6 communication?

7 A. He had a personal cell phone and  
8 a Blackberry.

9 MS. OSTERER: Was there a time  
10 when he did not have a personal cell  
11 phone and then later obtained one?

12 THE WITNESS: I don't think so.  
13 I think he -- I think he had a  
14 personal cell phone when he started,  
15 as most people do, and then I think  
16 the Blackberry came as part of his  
17 accoutrements to the office.

18 MS. OSTERER: Did you ever have  
19 his personal cell phone number?

20 THE WITNESS: I don't think so.  
21 No, I had his Blackberry number.

22 When he was traveling, he went  
23 away over the Christmas holidays, at  
24 one point he was in South America and  
25 we couldn't reach him on his

0034

1 M. Toohar  
2 Blackberry. I had his wife's cell  
3 phone number because that phone worked  
4 down there.

5 Q. There is a time when John  
6 Feerick submitted a memo which  
7 incorporated, among other things,  
8 listening to the tape of Constantine and  
9 Hermann and speaking to Teitelbaum about  
10 that.

11 Did you ever see that memo?

12 A. I don't recall seeing that memo.

13 Q. Part of your report at pages  
14 twelve to thirteen, I'm going to show that  
15 to you, describes a meeting on October 17  
16 with the DA and two assistant DAs and then  
17 the statement on October 19, after  
18 reviewing Dopp's testimony to the  
19 commission, District Attorney Soares  
20 informs the commission that the ODA,  
21 Office of District Attorney, presented  
22 evidence about Dopp to the grand jury. As  
23 a result, the commission deferred taking  
24 testimony from executive chamber officials  
25 with knowledge of Dopp's July 22 sworn

0035

1 M. Toohar  
2 statement to avoid the impact of any Fifth  
3 Amendment issues on the ODA's  
4 investigation. The ODA expressed  
5 appreciation for the commission's  
6 forbearance.

7 Do you remember that?

8 A. Yes.

9 Q. The district attorney challenges  
10 the accuracy of that and it's their  
11 testimony in their records that it was not  
12 until November 1 that the decision to go  
13 forward with the investigation proceeded.

14 A. I mean, I can't speak  
15 specifically to the dates. I don't  
16 recall. However, I know we met with the  
17 district attorney and the nineteenth  
18 sounds correct. I think we interviewed  
19 Dopp on the twelfth.

20 Q. You met with them on October 17.  
21 You met with them again October 22. You  
22 have October 19 which precedes one of your  
23 meetings as having received information  
24 that they're proceeding. You're not  
25 responsible for that, if errors take

0036

1 M. Tooher  
2 place.

3 A. Obviously I participated on some  
4 level in the writing of the report.

5 Q. That's why I asked if there is  
6 any records confirming when this went  
7 forward because we've spoken to the  
8 district attorney, he's checked his  
9 records, and everything that we've  
10 ascertained so far makes November 1 the  
11 date that he made a decision and notified  
12 Teitelbaum and it would correspond with  
13 you talking about a telephone call with  
14 him on a Friday and so on.

15 Is there anything that exists in  
16 commission files that would indicate  
17 otherwise?

18 A. Can I have a moment with Paul?  
19 MR. FISCH: Sure.

20 (Whereupon a break was taken)

21 Q. Ms. Tooher, you've had an  
22 opportunity to reflect upon this.

23 Is there some additional insight  
24 that you can provide or some information  
25 concerning the dates?

0037

1 M. Tooher

2 A. I can't give you specifics on  
3 the dates, but I can tell you that there  
4 was a memo that I prepared I think it  
5 might to be to the working group although  
6 it could have gone directly to Herb,  
7 concerning the potential for Mr.  
8 Teitelbaum being called as a witness to  
9 the grand jury and that we had been  
10 advised of that by the DA at that point.  
11 And I think that memo is the end of  
12 October, somewhere around the  
13 twenty-fourth or the twenty-sixth.

14 Q. There were discussions, from  
15 what we understand, that if the DA agreed  
16 to proceed, how it would proceed and what  
17 steps it would take and so on so that  
18 would not be in conflict to what you just

19 testified to.

20 A. There was a specific phone call  
21 to me from Linda Griggs indicating that  
22 Herb Teitelbaum was to be a witness in the  
23 grand jury. I, in fact, offered to  
24 testify instead of Herb because there was  
25 some concern involving the executive

0038

1 M. Tooher  
2 director in this kind of activity. I said  
3 I was present during the interview and  
4 they said no, they wanted Herb.

5 Q. Now, the excerpt of your report,  
6 and I believe you told me off the record  
7 that it was issued sometime in July of  
8 2008?

9 A. Correct.

10 Q. Pages twelve to thirteen which  
11 contain the date, according to the report,  
12 that the DA informed the commission that  
13 his office would present evidence about  
14 Dopp to a grand jury is October 19.

15 Now, what role did Mr.  
16 Teitelbaum play in writing this portion of  
17 the report?

18 A. You know, the report, as  
19 anything like this, goes through many  
20 computations and permutation.

21 Q. Of course.

22 A. That portion of the report, at  
23 this juncture I was not involved in  
24 working on that portion of the report.  
25 Mr. Teitelbaum and John Feerick were very

0039

1 M. Tooher  
2 concerned because of allegations that had  
3 arisen.

4 Q. About Teitelbaum?

5 A. About Teitelbaum from the DA's  
6 office, that this portion of the report be  
7 handled very carefully and specifically.

8 Q. Did Feerick yield to Mr.  
9 Teitelbaum to fix those dates?

10 A. I can't answer that. I have no  
11 idea what happened as far as the actual  
12 literal writing. I know that members of  
13 the working group were involved in the  
14 report.

15 Q. But the fixing of the date in  
16 the report was related to the allegations  
17 involving Teitelbaum?

18 A. I couldn't say that.

19 Q. I thought you said that in a  
20 different way.

21 Tell me what was the connection  
22 -- because they were very much interested  
23 in this because of the allegations of

24 Teitelbaum.

25 A. The allegations that were raised

0040

1 M. Tooher

2 were certainly serious in terms of the  
3 possibility that Herb had been  
4 communicating with someone that he  
5 shouldn't have been and that was an issue  
6 that John Feerick and Herb Teitelbaum were  
7 very concerned about. I know at a certain  
8 point in time they wanted to know, you  
9 know, if I had any notes, any memos,  
10 things that could nail down time frames  
11 and discussions.

12 Q. Did you?

13 A. I went through whatever I had  
14 and gave them to John Feerick.

15 Q. Did that include nailing down  
16 the date?

17 A. I know we had a number of  
18 discussions about when we met with the DA  
19 and how things progressed.

20 Q. Were you pressed on the report  
21 reflecting that it was sometime prior to  
22 November 1?

23 A. No. I was -- I don't know that  
24 I would say pressed but I was certainly  
25 asked for anything I had that documented

0041

1 M. Tooher

2 any of the meetings with the district  
3 attorney's office. In fact, John Feerick  
4 has sort of an incredible memory and he  
5 would say was it such and such a date and  
6 I would say I can't remember, I'd have to  
7 look at my notes and he would say, well,  
8 my recollection is, and invariably his  
9 recollection was right.

10 Q. Even though Teitelbaum was not  
11 in the habit of taking notes during the  
12 meetings, did he ever submit memos to  
13 file?

14 A. Yes.

15 Q. Did he ever submit a memo to the  
16 file indicating when the DA advised him  
17 that the DA was proceeding on this matter?

18 A. Not that I recall.

19 Q. Would that not be something that  
20 should have been recorded?

21 A. I think he would have asked me  
22 to do a memo to the file on that. If  
23 there were a concrete memo to the file  
24 saying that --

25 Q. Did he ever ask you to do it?

0042

1 M. Tooher

2 A. He asked me to do memos all the

3 time.

4 Q. But did he ever ask you to say  
5 that, I was notified by the DA he's going  
6 to proceed, put a memo to the file?

7 A. I think the memo that I'm  
8 speaking of in terms of the grand jury and  
9 Herb being asked, I think that's the memo  
10 that would reflect that. I haven't seen  
11 that memo in a long time.

12 Q. Are they necessarily the same?

13 A. No, they're not necessarily the  
14 same.

15 Q. In other words, whether the fact  
16 that Teitelbaum would be a witness before  
17 the grand jury does not mean that a  
18 determination has already been made.

19 A. It does in my mind.

20 Q. I'm sorry?

21 A. It does in my mind.

22 Q. But there were discussions prior  
23 to the decision as to how one would  
24 proceed, what the charges might be, the  
25 subjects might be --

0043

1 M. Tooher

2 A. There were discussions with the  
3 DA's office in that regard?

4 Q. Well, the DA had such  
5 discussions by way of preparation.

6 A. Not with us.

7 Q. So you're saying that the issue  
8 about Teitelbaum being a witness before  
9 the grand jury, that would be the basis  
10 for this date in the report?

11 A. In my mind, the determination  
12 that Herb was going to be a witness flowed  
13 from the determination that the DA was  
14 going forward. You wouldn't convene a  
15 grand jury unless you were going forward  
16 with looking at this.

17 MR. SCHECHTMAN: We'll find out.  
18 The memo would be helpful.

19 MR. FISCH: Off the record.  
20 (Discussion held off the record)

21 MS. OSTERER: Did Mr. Teitelbaum  
22 use e-mail to you on occasion?

23 THE WITNESS: Sure.

24 MS. OSTERER: Frequently?

25 THE WITNESS: Yes.

0044

1 M. Tooher

2 MS. OSTERER: About what sort of  
3 topics?

4 THE WITNESS: Everything under  
5 the sun.

6 MS. OSTERER: For instance?

7 THE WITNESS: It wouldn't be

8 unusual for Herb to e-mail me about,  
9 you know, could you do a memo on this,  
10 have you thought about this, ideas he  
11 had in the course of the evening.

12 MS. OSTERER: Did he ever mention  
13 when is that DA going to make a  
14 decision about this?

15 THE WITNESS: An e-mail? Not to  
16 my recollection.

17 MS. OSTERER: What about verbally  
18 to you?

19 THE WITNESS: See, my  
20 recollection is different than what  
21 you're relaying to me. My  
22 recollection is that the DA made a  
23 decision fairly quickly and then the  
24 question just became what are we going  
25 to do. If the DA's going forward, we

0045

1 M. Tooher  
2 should step back certainly from people  
3 who are witnesses in the DA's  
4 investigation. I don't recall it  
5 being a two-week process for the DA to  
6 come around to that.

7 Q. Once again, they did not have  
8 the close to four hundred pages of Dopp's  
9 testimony before October 20 and 21, which  
10 is after that October 19 date in the  
11 report.

12 A. And, you know, I do have a  
13 recollection of bringing the beast down.

14 Q. Would you agree that if they  
15 haven't reviewed the testimony yet --

16 A. Well, they had the  
17 thirty-five-pages right up front and  
18 really, I don't know if you've reviewed  
19 the testimony, but that thirty-five-pages  
20 is the only thing that has to do with, you  
21 know, any potential perjury allegations.

22 Q. You don't think a DA should be  
23 looking at everything to make sure that  
24 there's not something in fifty pages later  
25 on or before that --

0046

1 M. Tooher

2 A. Oh, I certainly take no issue  
3 with that and we eventually provided the  
4 entire transcript.

5 Q. Because they wanted to make sure  
6 they were solid with those  
7 thirty-five-pages or whatever; right?

8 A. I don't know that they relayed  
9 that so much as they said we'd like the  
10 whole transcript. We talked about it,  
11 you, know, because we had the  
12 confidentiality issues at the commission.

13 So there was always a concern of how do we  
14 provide this, what's the context, does it  
15 cause a problem with any of  
16 confidentiality issues.

17 Q. Did they ever say, before we  
18 decide, we want to read the whole thing?

19 A. Did?

20 Q. The DA's office.

21 A. I don't recall that.

22 MS. OSTERER: Did Mr. Teitelbaum  
23 ever send you text messages?

24 THE WITNESS: Yes.

25 MS. OSTERER: You previously

0047

1 M. Tooher

2 referred to the working group, and I'd  
3 like to know approximately when that  
4 group was formed.

5 THE WITNESS: This started in  
6 August when the Ethics Commission was  
7 still in place.

8 MS. OSTERER: 2007?

9 THE WITNESS: 2007. And it was  
10 -- there were certain recusals on the  
11 commission. Chip Loewenson recused  
12 because he had a personal relationship  
13 with Eliot Spitzer, so we had Susan  
14 Shepherd, Bob Guiffra, and John  
15 Feerick. Originally it was hoped that  
16 this would be completed by the time  
17 the commission changed on  
18 September 27. That obviously didn't  
19 happen. So when the commission came  
20 into being, it was going to have  
21 thirteen members and we didn't know  
22 who, if anyone, from the old  
23 commission would be carried over. All  
24 members weren't appointed at once, so  
25 it was really a question of how to

0048

1 M. Tooher

2 handle this. And very early on, I  
3 think at one of the first meetings of  
4 the commission, John Feerick  
5 established working groups for a  
6 couple of different things and this  
7 was one of those working groups. So  
8 it might have been at the initial  
9 meeting of the commission.

10 MS. OSTERER: With respect to the  
11 notice of reasonable cause, there is a  
12 section in there concerning  
13 notification by the commission to the  
14 district attorney's office regarding  
15 Mr. Dopp; is that correct?

16 THE WITNESS: I haven't looked  
17 at it in a while. Okay.

18 MS. OSTERER: Do you know who may  
19 have written this section of the  
20 report?

21 THE WITNESS: I don't think you  
22 can say one person wrote any of this.  
23 It was sort of a working process. The  
24 majority of the report was drafted at  
25 least by Joan Sullivan and then it

0049

1 M. Toohar  
2 would go through various permutations.  
3 I honestly don't -- can't tell you who  
4 would have done that.

5 MS. OSTERER: Can you tell us  
6 whether there was any particular  
7 interest in this section on the part  
8 of anyone at the commission?

9 THE WITNESS: I know that  
10 handling of the district attorney  
11 issue was a very sensitive one for  
12 both Herb Teitelbaum and John Feerick  
13 and I think they were concerned that  
14 that be addressed as carefully and  
15 precisely in the report because of the  
16 earlier allegations.

17 MS. OSTERER: Could you  
18 particularize the allegations you're  
19 referring to?

20 THE WITNESS: The allegations  
21 that Herb had communicated with Bob  
22 Hermann concerning confidential  
23 information.

24 MS. OSTERER: How do you know  
25 that?

0050

1 M. Toohar

2 THE WITNESS: How do I know that  
3 that was a concern?

4 MS. OSTERER: Yes.

5 THE WITNESS: It was very  
6 clearly, while we were working on the  
7 report, John Feerick approached me and  
8 asked me did I have any notes, did I  
9 have anything that reflected dates.  
10 When we were discussing the report, I  
11 know in the working group, I don't  
12 recall with the full commission, but  
13 there was concern that the DA was  
14 going to release that information  
15 publicly and they wanted to make sure  
16 that, if he did so even after the  
17 report, that it had already been  
18 addressed in the report so that the  
19 commission wouldn't be subject to  
20 criticism as not having addressed this  
21 issue.

22 MS. OSTERER: Addressed the

23 allegations?  
24 THE WITNESS: No, addressed the  
25 timing of how things occurred with the

0051

1 M. Tooher

2 DA's office.

3 Q. Did you and Ginsberg, not  
4 Teitelbaum, go to the DA's office to  
5 review the Dopp transcript at some point?

6 A. Yes.

7 Q. Was that -- can you fix a date  
8 when that happened?

9 A. I went to the DA's office to  
10 review transcripts a couple of times.  
11 Initially they didn't want to share  
12 transcripts with us and then after report  
13 D came out, they were more willing to  
14 share transcripts with us. And actually  
15 Joan Sullivan and I went over to review  
16 transcripts at the DA's office on one  
17 occasion and then Barry and I went over a  
18 second time. We were preparing the final  
19 drafts of the report and there were  
20 certain quotes in the report that we  
21 wanted to just ensure we had the exact  
22 quotation correct.

23 Q. Anything else you wish to add  
24 that we may have neglected?

25 A. I mean, you seem to be focused

0052

1 M. Tooher

2 on the early October/November time frame  
3 and the only thing that I can offer to you  
4 as assistance in that time frame is we  
5 were scheduling a number of witness  
6 interviews. Initially we thought this  
7 would be done quickly. And when the Dopp  
8 issue came up in terms of the potential  
9 perjury issue, there was a concern about  
10 whether to continue with interviews and  
11 who would need to be interviewed. And my  
12 understanding was that that relayed to  
13 Richard Rifkin, that there was an issue as  
14 to whether Peter Pope and David Nocenti  
15 could represent Governor Spitzer and there  
16 was an issue as to whether or not  
17 interviewing certain witnesses created  
18 potential Fifth Amendment issues or  
19 perjury trap issues. That should be  
20 reflected I think in that same memo which  
21 again will set in time when there were  
22 communications with the chamber. My  
23 recollection is that not that it was  
24 specifically relayed that there was the  
25 Dopp DA issue but that there were going to

0053

1

2 be modifications to witness schedules and  
3 the potential that Peter Pope and David  
4 Nocenti could not represent the governor.  
5 So I think there should be -- that might  
6 help you in terms of time and things that  
7 are reflected in writing in the file.

8 Q. Anything else?

9 A. No.

10 MR. FISCH: I want to thank you  
11 for coming. If you think of anything,  
12 just give me a buzz.

13 (TIME NOTED: 1:24 p.m.)

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CERTIFICATION BY REPORTER

I, Wayne Hock, a Notary Public of the  
State of New York, do hereby certify:

That the testimony in the within  
proceeding was held before me at the  
aforesaid time and place;

That said witness was duly sworn  
before the commencement of the testimony,  
and that the testimony was taken  
stenographically by me, then transcribed  
under my supervision, and that the within  
transcript is a true record of the  
testimony of said witness.

I further certify that I am not  
related to any of the parties to this  
action by blood or marriage, that I am not  
interested directly or indirectly in the  
matter in controversy, nor am I in the  
employ of any of the counsel.

IN WITNESS WHEREOF, I have hereunto  
set my hand this                      day of  
, 2008.

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