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May 18, 2009

VIA HAND DELIVERY

Michael G. Cherkasky, Chair  
New York State Commission on Public Integrity  
540 Broadway  
Albany, New York 12207

Dear Mike:

From the time the New York State Commission on Public Integrity was launched and aggressively pressed its so-called "Troopergate" investigation, I, as Executive Director, have been a lightning rod for controversy. This happened not because the Commission or I compromised our search for the truth, but rather because we did not. I am proud that throughout this long period of unfounded attacks on the Commission and me from different quarters pursuing their political self-interests, we persevered and did our job honorably.

In February, when John Feerick, your predecessor, informed me he was resigning as Chair of the Commission on Public Integrity, I told him that I too was considering ending my tenure to pursue other interests. In further conversation, John and several Commissioners convinced me that the simultaneous loss of a Chair and an Executive Director would be destabilizing to the Commission and its staff. I decided to remain in the position and await the appointment of a new Chair. With a new Chair now in place, I have decided to tender my resignation effective the close of business on June 24, 2009, immediately upon my return from a long overdue vacation.

I leave you with a situation much improved since I assumed the Executive Directorship almost two years ago first of the Ethics Commission and then this Commission. There is now a more smoothly functioning, highly professional

Commission in the place of two – the Lobbying Commission and the Ethics Commission - which were often in contention. There are excellent new staff members. The Commission's independence from other state agencies and the Executive Chamber is established. Substantial opinions, regulations and guidelines on ethics and lobbying questions have been issued. Legislative proposals intended to strengthen the Commission's ability to deter wrongdoing by public officials are submitted. The Commission's ethics training program for Executive Branch officials and employees is now significantly upgraded and expanded. While managing all of these changes, I also directed the Troopergate investigation resulting in well documented charges against four high ranking members of the Spitzer administration, two of whom already have admitted violating the law.

I have had the pleasure of working with a very excellent staff and many distinguished and committed Commissioners who deserve recognition for their tireless efforts to meet the many extraordinary challenges we have confronted. They have done so without compensation or one *iota* of political partisanship or self-aggrandizement. To ensure their independence from political pressure, the law that established the Commission provides that Commissioners, like judges, sit for a fixed term rather than at the pleasure of elected officials, such as the Governor. The Governor's recent demand that the Commissioners and I resign is an example of the very kind of pressure the Commission's enabling legislation sought to stem. For the sake of its continued independence and reputation, I urge the Commissioners to continue their principled stand in opposition to the Governor's call for their wholesale resignation.

In early August, 2008, the Albany County District Attorney asked the Inspector General to review allegations, which I unequivocally deny, that I provided confidential information to Spitzer's office during the course of our investigation. This was a bizarre accusation given that it was Governor Spitzer's office that originally made this complaint. Had I given his office confidential information, it would have been both the beneficiary and complainant. Further, as the Commission noted in its response to the Inspector General's Report, the timing and motives behind the District Attorney's referral on the basis of such a "flimsy claim" were suspect. It came soon after the Commission posted on its website evidence that the District Attorney sought the Executive Chamber's permission to issue a press release concerning his own supposedly independent Troopergate investigation. Because the accusation was originally created by an administration that was the target of our investigation, any fair-minded person would have viewed it with the greatest of skepticism. In spite of the source and misbegotten nature of the accusation, the Commission properly devoted time and energy to reviewing it. I appreciate the Commission's careful review. And I am grateful for the subsequent review by the Commission's *pro bono* counsel, Zachery Carter, who served with distinction as a United States Attorney and Federal Magistrate-Judge. In all, three former

judges, one from the State's highest court, three former United States Attorneys and other respected attorneys found the accusations either unsubstantiated, insubstantial or both.

By far the most important vindication of me and the Commission lies in the Report the Commission issued on Troopergate. Known as a Notice of Reasonable Cause (NORC), and issued by the Commission on July 24, 2008, it fairly accuses Spitzer's high ranking officials of violating the law and exposes the Spitzer administration's efforts to stonewall our investigation. That document speaks for itself. Of the five different Troopergate investigations undertaken, including those of the Inspector General and the Albany County District Attorney, the Commission's was the only investigation to put all witnesses under oath, including the Governor and his lieutenants, subpoena documents, and charged officials with violations.

I first saw the Commission's Response to the Inspector General's Report when it was publically issued last week. In it, the Commissioners disclose that the Inspector General:

- Based his report on speculation and rank hearsay
- Ignored significant, undisputed facts that contradict the claim he was making
- Overstepped his statutorily defined jurisdiction

The shocking fact is, as he told my attorney, the Inspector General reached his opinion before speaking with me or anyone else with direct knowledge. He simply buried facts that undercut his foregone determination. Later, as you can see in the transcript of his second interview with me, the Inspector General tried to explain away his remarks to my attorney as examples of his style of humor. However, it is hardly humorous when an investigator refuses to allow the facts to interfere with his preordained conclusion. Just as an example, while the Inspector General accuses me of providing confidential information to Spitzer's lieutenants, the fact is, as the Commission noted, Governor Spitzer's administration and I were "actively at odds" during the Troopergate investigation. Indeed, so intransigent was the Executive Chamber, that at my urging, the Commission threatened and engaged in litigation in order to secure important documents the Chamber was trying to withhold. Far from assisting the Spitzer Administration in any way, I was advocating against its unlawful withholding of evidence in court and in full view of the public. Since this fact, as others, did not support his conclusion, the Inspector General ignored it.

If all of this were not enough, the Inspector General is not subject to any burden of proof nor bound by procedures which safeguard due process. As the Commission noted in its Response, he even "departed" from those few procedures that did apply to him. For instance, he refused to keep the Commission meaningfully apprised of the progress of his

Michael G. Cherkasky

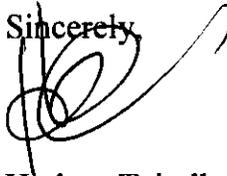
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investigation though he was required by law to do so. Thus unrestrained, he felt free to reach a conclusion based upon surmise and the accounts of clearly biased Spitzer lieutenants.

Calling something an "apparent violation" is just another way of saying "I have insufficient proof." It is reckless, unprofessional and dangerous for the Inspector General to initiate an investigation based on a claim of "inappropriate conduct" and to then make a finding of an "apparent violation." If allowed to continue unchecked, these sorts of witch hunts are destined to result in unwarranted attacks on reputations.

The Commission must continue to do its critical work. To that end, I want to take myself out as a source of continued distraction. As promised, I will remain available to assist in making the transition a smooth one. I hope that my resignation will help refocus energies so that the people's business can be effectively addressed.

Sincerely,

A handwritten signature in black ink, appearing to be 'H. Teitelbaum', with a large, sweeping flourish extending to the right.

Herbert Teitelbaum  
Executive Director