

## **New York State Commission on Public Integrity Statement by Chairman Michael G. Cherkasky**

**June 11, 2009**

Since Governor Paterson appointed me to fill the vacant position of Chairman of the New York State Commission on Public Integrity on May 13<sup>th</sup>, I have gathered all the information I could about the Commission and its Commissioners. There are three separate issues that I believe are important for me to address: (1) the Commission's structure; (2) the past actions of the Commission and its members; and (3) what we will do going forward.

Before addressing those issues, however, I will tell you a bit about my professional background, and give you a sense of where I'm coming from:

- I served for 15 years as a prosecutor in New York County under Robert Morgenthau, including almost eight years as head of the Rackets Bureau and the Investigation Division. During that time, I prosecuted organized crime, fraud and political corruption, including a two-year investigation into the employment practices of the New York State Senate Minority.
- Since leaving Mr. Morgenthau's office 16 years ago, I have run three separate companies: Kroll, one of the world's premier private investigation and integrity risk consulting firms; Marsh & McLennan, a large insurance brokerage and financial services company; and now United States Investigative Services, a large information company that provides background investigations, including top secret clearances, to the United States Government. Additionally, during the last 15 years, I have also been appointed by three different federal judges to oversee the Long Island carting industry, for ten years; the International Brotherhood of Teamsters Election Office, for three years; and the Los Angeles Police Department, for the past eight years.

I am a man with no ax to grind. My term as Chairman, a non-paying position, expires in October 2009. My circle of personal friends and professional associates does not include Governor Paterson, his Secretary Larry Schwartz, his counsel Peter Kiernan, or any other senior members of Governor Paterson's administration, Inspector General Joseph Fisch or any of the senior members of his staff, or any of the members of the Commission, although, as one would expect, my path and some of theirs have previously crossed from time to time. Nor am I influenced by being part of the past conduct of the Commission. I will tell you that former Governor Spitzer was and is my friend. But, I firmly believe that relationship is

irrelevant in this instance. In any event, proof of a relationship should not be confused with proof of a bias.

At the risk of my own reputation, and with the knowledge that better people than I have been tarred by this scandal, but also with a sense of obligation, I will do what I think Governor Paterson asked me to do -- honestly, independently and without bias do the job I was appointed to do -- be the Chairman of the New York State Commission on Public Integrity, and call them as I see them.

## **1. Structure**

My education relative to the Commission over the last four weeks has caused me, like virtually all commentators, to conclude that the Commission's structure is imperfect.

**First**, the process for selecting Commissioners gives the appearance to some of a defendant picking his prosecutor.

**Second**, the thirteen-member Commission is too large, making it unwieldy.

**Third**, the scope of the Commission's work is too broad for the resources that have been allocated to it. At the same time, its jurisdiction does not encompass important areas that clearly need ethical oversight. The Commission is charged with ensuring compliance with the Public Officers Law by roughly 250,000 Executive Branch employees and compliance with the Lobbying Act by almost 5,000 lobbyists and about 3,000 clients. The Commission has a small staff. It has only seven lawyers and four investigators with which to advise the hundreds of thousands of individuals and entities within the Commission's jurisdiction, as well as to investigate, charge and adjudicate all violations that any such individuals may have committed.

**Finally**, relying upon volunteer, unpaid Commissioners should be discussed. In such a structure, the paid staff tends to have great power, since they control the information.

All of these observations lead me to conclude, simply put, that our State can do better. Having said that, there are many good aspects of the Commission's structure, but one is particularly significant: the fixed term for each Commissioner. Under this format, intended to ensure independence, Commission members serve not at will, but until their staggered terms expire, or they are removed for cause. This is a very important best practice element that plays a part in today's drama.

In sum, while imperfect, the structure of the Commission is not so fatally flawed as to require an imprudent rush to change. This Commission by all evidence is unbiased, careful, and independent. A thoughtful, deliberative process is necessary to create the right reforms. We all want clarity— evil destroyed and good triumphant. Unfortunately, the determination of whether ethical constraints have been violated is frequently nuanced, and establishing the right organizational structure requires detailed and careful crafting that may require time. While it is understandable that good governance advocates and editorial boards opportunistically see a door crack open for reform and want to rush through the log jam that can be Albany, I can assure you, from hard fought experience, having been part of major reforms across the nation, that planning for enduring reform takes time. As difficult as it is, we must not settle for the best we can do today, but instead insist on truly getting the best there is. My experiences with the carting industry on Long Island, the Teamsters Union and LAPD have taught me that if reforms are not finally done right, we will be doomed to repeat the past.

## **2. Current Difficulties**

That brings us to the current Commissioners, the Inspector General's report, and Governor Paterson's request that all the Commissioners step down.

Before I touch on some of the recent controversy surrounding the Commission, it needs to be said that the life's work of the former Chairman of the Commission, Dean John Feerick, has been integrity. He literally wrote the book on government integrity in New York. There is not a more honest, unbiased, principled individual in this State. John was not merely an unpaid volunteer. To avoid any appearance of a conflict, when he accepted the position as Chairman, John gave up numerous lucrative paid positions and activities. Moreover, while he traveled from his home in Westchester County almost every week to spend at least a day at the Commission's Albany offices, often staying overnight to maximize his time in Albany, John rarely requested reimbursement for his out of pocket expenses.

The other Commissioners all were outstanding public servants even before they became members of the Commission. They are men and women of similarly impeccable, unimpeachable integrity who have fought for justice throughout their careers. Their combined professional experience includes approximately 85 years as prosecutors, 35 years as judges, 65 years as legislators and holders of other public offices and 365 years as members of the Bar, with awards and accolades to attest to their professional achievements and high character.

Further, this is a Commission that is unbiased. It has neither political, monetary nor relational issues that would improperly influence the Commission in doing its

work. An argument has been made that, because a majority of the Commissioners were appointed by former Governor Spitzer, their actions were biased in some way. I have discussed above that the appointment process is not the best practice in my view. But a relationship, particularly one that is fully disclosed, does not justify the conclusion of a lack of objectivity. A charge of bias is easy to make but difficult to defend against. How does one prove the negative? One can only understand the merits of the matter by reviewing the facts.

While the Commission has been subject to almost constant attack in its relatively brief existence, the controversy intensified on May 13<sup>th</sup> when the New York State Inspector General issued his report of the results of his investigation concerning a disclosure of Commission information by its former Executive Director, Herbert Teitelbaum, and what the IG perceived as the Commissioners' failure to investigate the allegation against Mr. Teitelbaum adequately. Immediately after the IG's report was published, Governor Paterson requested that the Commissioners all resign, which they have not done.

I initially was briefed about and read portions of the IG's report on the day that it was issued, the same day I was appointed. I was surprised that the Commission could allow what was recounted in the IG's report to have occurred. On being told that the Governor wanted the Commissioners to resign, I understood his desire for a fresh start. But, on reflection, I have learned over the years that things are not always the way they initially appear.

While this statement is not in anyway a presentation of findings of a formal review, I have now reviewed as much of the available information as possible and have come to a series of conclusions.

First, the Commissioners acted in an unbiased and objective manner in reaching their decisions in the "Troopergate" matter. There simply is no evidence that John Feerick and the other Commissioners were anything but neutral and fair. They based their decisions on the evidence and applied the law to the facts without fear or favor. In fact, of all the agencies to have investigated the "Troopergate" matter, they are the only group -- not the IG, not the DA, not the Attorney General-- to have charged anyone with violating the law. Further, all the decisions were unanimous, this by a Commission that represents a broad spectrum of political views, appointed by seven different people, Democrats and Republicans.

The entire record of the Commission's lengthy and thorough Troopergate investigation, all of the transcripts and all of the documents, has been publicly available on the Commission's website for about ten months. No one has examined that vast record and pointed out any important evidence the Commissioners overlooked or sought to show why any additional charges would

have been justified based on the evidence the Commission had. People may think they know what happened, but the Commission quite properly based its decisions only on the record evidence.

Second, only Herbert Teitelbaum and his close friend in former Governor Spitzer's cabinet to whom Mr. Teitelbaum allegedly provided certain information can know for sure what happened between them. Having said that, I personally agree with the IG's report to the extent that I believe it likely that Mr. Teitelbaum did provide certain information to his friend. Mr. Teitelbaum has left the Commission's employment. While I believe that some of Mr. Teitelbaum's actions may well have been improper, the information that he is said to have provided was of a *de minimus* nature. The information-- the fact that the Commission had consulted with the District Attorney about a possible perjury committed by an individual formerly in the Governor's employment -- was simply not significant. It does not appear to have given the former Governor or his staff any particular advantage. It does not appear to have had any material impact on any investigation. It also does not appear to have been provided by Mr. Teitelbaum for any sinister motive.

Further, it is clear that the Commission, and most particularly its Chairman John Feerick, seriously considered the allegation against Mr. Teitelbaum. But the Commissioners, unlike the IG, believed Herbert Teitelbaum, who denied the allegation when the Commissioners questioned him. From all the evidence I have seen, the Commission's conclusion was honestly and fairly reached. The IG and I might not agree with that conclusion, but it was not and is not an unreasonable conclusion. Also, the Commission reasonably believed at the time that the allegation against Mr. Teitelbaum was raised by the former Governor's staff as a tactic to discredit and distract the Commission from investigating the former Governor and his staff. The Commission understandably decided that being distracted by the possibility of an immaterial allegation against the Commission's Executive Director by the very people the Commission was investigating would not serve the interests of the people of New York State.

Finally, I must add that while I agree with certain aspects of the IG's report, I would caution about its tone, and the use of resources necessarily devoted to such a lengthy report. We have so many real problems to fix, in ethical governance and other areas, that we should require a greater use of discretion before we incur time and money on such an insignificant project. And when reports are issued that impact the reputations of our citizens, care must be exercised not to exaggerate. An exaggeration by a doctor can change a simple illness into a worry about a life-threatening disease, and an exaggeration by an investigator can change an accidental trip into a vicious assault. Investigators, like prosecutors, must understand that the desire to go after big game to garner big headlines may be as

unethical as the offenses they are pursuing. Will a person similar to John Feerick take the risk of serving our State in the future? One can only hope so.<sup>1</sup>

I believe that the lengthy report of the IG did not adequately take into consideration that reasonable and honest individuals can have reasonable and honest differences when determining the merits of a particular matter, especially matters that turn on close issues of materiality and credibility, such as those presented here. It is, therefore, understandable that the Governor, relying on the IG's report and frustrated by the seemingly continuous ethical problems in our State, called for the resignation of the twelve other Commission members. After my full review, I respectfully submit, however, that the Governor's request should be withdrawn.

There are three main reasons. First, after my review, I believe the Commissioners acted in an unbiased, non-partisan manner and arrived at conclusions that are supported by the facts if you accept the Commissioners' view of the credibility of witnesses and the circumstances the Commission faced. Second, the Commission was structured to be impervious to political pressure. That is why Commissioners serve fixed, staggered terms. It would be overthrowing a best practice and set a damaging precedent if the Commissioners were to resign under political pressure. Third, the Commissioners have important work remaining, which they are highly qualified to do. For the good of the State, the Commission should be left intact until and if a replacement is agreed upon.

### 3. Work of the Commission

In the face of the controversy surrounding the Commission, its staff has continued the Commission's work in the public interest unabated. Here is a summary of some of what staff has done during just the first half of 2009:

**Financial Disclosure:** Each year, the Commission receives and reviews about 26,000 annual statements of financial disclosure, about 22,000 of which are required to be filed by May 15<sup>th</sup>. (The academic filers from CUNY and SUNY are required to file by November 15<sup>th</sup>.) By the May deadline this year, the Commission had timely received 86% of all FDS filings due. Of those 18,920 filings, 93% were filed electronically. This is an increase in both timely filings and electronic filings of 4% compared with the previous year. One key to

---

<sup>1</sup> I have not referred to the IG's criticism of the General Counsel of the Commission because of all the charges by the IG that was, in my opinion, the weakest. In fact, in my opinion this criticism is completely untenable. From all evidence I reviewed, the General Counsel was properly doing his job as a lawyer for the Commission and his duty as a public servant. He was not improperly impeding an investigation, but was acting with honesty and integrity.

improved compliance was sending required filers their USER ID and password letters via email, instead of using standard form letters. This also saved money and reduced the impact on the environment.

**Training and Education:** As of the end of May, almost 3,000 individuals had received training from the Commission this year. The vast majority of participants rate our training as “excellent” or “very good.” The Commission has made our training and educational services available upon request at no charge to the more than 250,000 Executive Branch employees, about 5,000 registered lobbyists and about 3,000 lobbying clients within the Commission’s jurisdiction. In January, we implemented an online “Ethics Overview” program, while continuing to offer our traditional Instructor-led classes in both an internet-based and teleconferenced-based formats. This has allowed the Commission to continue to offer training to a wide audience at a reduced cost.

**Program:** The Commission is charged with enforcing the Lobbying Act, which covers lobbyists and their clients, who collectively spend nearly \$174 million annually on lobbying and lobbying activities. As required by law, the Commission’s Program Unit reviews each filing, electronic or paper, to ensure its accuracy and completeness. This is a massive undertaking. In 2008, Program Staff reviewed and processed more than 43,000 electronic and paper filings. As of May, 2009, the Program Unit had reviewed and processed approximately 15,000 filings this year. The Commission also has oversight authority under Executive Law §166, which requires regulatory agencies to keep records of appearances and to make those records available to the public. The Program Unit reviews and maintains approximately 2,000 notice of appearance forms submitted each quarter. (There were approximately 7,500 records filed with the Commission and reviewed by staff for the 2008 calendar year.). The Commission uses these forms to track lobbying-related activity at the agency level. Finally, Filings Examiners review reports from all clients and lobbyists, comparing Lobbyist Bimonthly Report filings with Client Semi-Annual Report filings to ensure that compensation has been reported completely and properly. As a result of discrepancy letters sent by Commission staff, many amendments are filed that must also be reviewed and processed.

**Investigations:** The Investigations Unit receives and evaluates complaints and investigates possible violations of the applicable parts of the Public Officers Law, Lobbying Act, and Civil Service Law that may have been committed by employees of the Executive Branch, the State and City University of New York systems, and public benefit corporations. The Investigations Unit also conducts the lobbying filing compliance audit program. Both of these functions are mandated by law. The Unit has opened 23 new Public Officers Law investigations in 2009, one has been closed with a finding of no violation and the remaining 22

are pending investigation. In the process of adopting these as investigations, the Unit reviewed and responded to 64 credible complaints and referrals. It has achieved its goal of responding to all complaints or referrals in two weeks or less. The Commission's compliance auditors are the everyday face of the Commission to the lobbyists and clients who file with us. Our three auditors have completed 231 of the 277 audits commenced in the five month period that ended on May 31<sup>st</sup>. In this process, they examined 158 Lobbyist filings and 119 Client filings, with four audits sufficiently serious to be referred for further investigation. The auditors are on track to achieve the Commission's goal of auditing eight percent annually of the approximately 8,000 lobbyists and clients that file with the Commission.

Earlier this year, the Commission announced that it had reached its largest Public Officers Law settlement ever – \$25,000 – with a former State employee who admitted she had violated the post-employment restrictions imposed on all State officers and employees.

**Legal:** The Legal Unit provides legal advice to senior Commission staff and Commission members, current and former Executive Branch employees, lobbyists, lobby clients, Ethics Officers and other officials of Executive Branch agencies and members of the general public. Commission lawyers work with the Investigations Unit to investigate and, if warranted, adjudicate alleged or possible violations of the Public Officers Law, the Lobbying Act, and Civil Service Law §107. In addition, Commission lawyers regularly lead Commission educational programs, providing continuing legal education regarding the Public Officers Law and Lobbying Act. Commission lawyers work with Commissioners to prepare Advisory Opinions and legislative proposals. So far in 2009, Commission lawyers have completed a comprehensive review and revision of all of the Commission's regulations and prepared fifty-eight informal opinions, achieving the Unit's goal of generally responding to informal opinion requests in one month or less. In addition, the Commission has issued three formal Advisory Opinions. Commission lawyers have responded to 104 requests for approval of Outside Activities, to 199 financial disclosure exemption requests and to 49 financial disclosure extension requests. The Commission has issued 57 hearing notices. Of these, Commission lawyers have conducted 12 hearings and settled 39 matters prior to a hearing.

The Commission has begun a search for a new Executive Director. It is obviously difficult to hire the quality we require with the uncertainty that hangs over the enterprise, but we remain optimistic about finding a qualified candidate.

In sum, this Commission has important work that it is doing and will continue to do. The staff is persevering with a high degree of professionalism. The

Commissioners, despite relentless bad publicity, are committed to doing what they swore an oath to do – enforce the law fairly and appropriately in the interests of justice.

The Commission has scheduled a public meeting on Friday June 12 starting at 1:30 p.m. following a non-public session, as required by law, that starts at 11:30 a.m. During the public meeting, members of the audience who are present will be afforded an opportunity to ask questions of the Commissioners. While the members of the Commission will answer all questions to the best of their abilities, as I am sure you can understand, the Commission will not publicly discuss matters that, by law, may not be disclosed publicly, such as pending or potential investigative or litigation matters and personnel issues.