

SEAN'S EDIT
7/21/07

To: David Nocenti
From: Peter Pope and Sean Maloney
Special Counsels
Re: Multiple investigations and potential litigation
Date:

As you know, we are cooperating with two investigations of the Executive Chamber relating to allegations that the State Police, at our direction, conducted improper surveillance of Senator Joe Bruno. In addition, there has also been the possibility of additional investigations by the Albany County District Attorney's office and the State Senate's investigative committee.

The Investigations

The investigations are at different stages and proceeding at different paces.

The Attorney General Investigation

The Attorney General has taken sworn testimony of 13 witnesses, including Sup. Preston Felton, 11 members of the State Police, and Bill Howard of the Executive Chamber. The examinations have gone at a rapid pace, with five witnesses examined on a single day, and all occurring in a single week.

As to the Chamber, Bill Howard has been the only witness. He testified without counsel. He was personally contacted between approximately nine and ten the night before his examination and asked to come down from Albany to New York City. Only after he appeared and had walked into the room was he told that he would be sworn and his testimony tape recorded. As you know, Howard is now concerned that there may have been confusion over what records were being discussed (he reports he was asked questions about documents he was not shown). We have notified the Attorney General of this orally and in writing. Because we have no copy of the tapes or transcripts, we cannot tell whether the record needs to be clarified or corrected. They have declined to give us the tape.

The OAG is conducting interviews before receiving documents. Howard, for example, was examined under oath on Thursday, July 12. Only the next day did the OAG make a request for his emails. They have not requested any hard copy documents from him at all.

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July 21, 2007 11:22 am

EXHIBIT
Commission
#164 3/19/09

The OAG attorney, Linda Lacewell, has been extremely heavy handed. Glenn Valle, the State Police counsel, reports that he was warned that if he did not produce witnesses on their schedule, he would be impairing their investigation. He additionally believes that she told him that if he did not produce witnesses upon her demanded schedule, that he would "read about it in the New York Post." You and I received a similar warning when we sought a four-day postponement upon ~~my~~ being assigned to the case. Witnesses have apparently been treated discourteously; we are told that the Attorney General personally called Superintendent Felton to apologize for the way he was treated. Peter
over

We are told by people inside the office that the Attorney General wants the matter closed fast. They have indicated that they currently see neither criminal nor civil liability, but will most likely be issuing a "report." One staff member has suggested that the report could come as early as this week.

The IG investigation

The IG has repeatedly offered to work with the OAG cooperatively on the investigation, but the OAG has declined. The OAG has also, apparently, insisted on "going first." (An OAG assistant screamed at Glenn Valle when she learned that the IG was interviewing Preston Felton.)

The IG has served us with a broad, but date limited, document request. The IG's questioning has been described as far more thorough and effective than the OAG's. The IG obtains and reviews records before conducting interviews. We understand the IG interviews initially were not under oath, but because of the OAG practice, the IG has now begun swearing people in. We are in discussions with the IG about document production and the sequencing of witnesses.

The IG appears to be troubled by documents it has already reviewed and used to examine a witness, including the cryptic way in which the State Police refer to Bruno when reporting in emails on his schedule.

The DA investigation

DA Soares has told us that, at this stage, he will not be investigating the matter of alleged "surveillance." He and the Attorney General determined together that Soares would investigate allegations surrounding Senator Bruno's use of the airplane, and Cuomo would investigate allegations of the Executive Chamber conducting "surveillance" of Senator Bruno.

The Senate investigation

At present there is no evidence of a Senate investigation.

Summary of Documents

This summary of documents is based upon an expedited review conducted over the weekend. We do not have the full set of relevant materials, nor do we entirely understand the significance of what we do have. We do not have access to witness statements. One should assume that additional facts will emerge.

Not all of the documents we summarize below have been demanded or produced. Included in this summary are documents to which privileges may attach or which are outside the time periods specified in the current document requests.

March 2007

A State Police manifest reports that Senator Malcolm Smith flew round trip from New York City to Albany alone on a state aircraft on March 1, 2007. Chamber employees appear to have been unaware of these flights, and have not yet located any Chamber paperwork relating to them. We have obtained records from the State Police that lack our normal approval form. In addition, on the form that the State Police generates, there is a place where Marlene Turner normally signs. It appears to bear, instead, the signature of Senator Smith.

As recorded in an email from Glenn Minor, the State Police spokesperson, to Paul Larrabee, on March 14, Fred Dicker requested flight manifest records for "executive flights" for 2007. The State Police told Dicker that he would have to submit a written FOIL request. We understand from counsel that Minor testified that he and Larrabee spoke, and that Minor sent Larrabee the manifests for Larrabee provide to Dicker. Larrabee first created a summary sheet, and then did so.

April 2007

Monday, April 30, 2007

Marlene Turner sent an email to Richard Baum on April, 20, 2007 at 10:23 am, with a cc to Catesby Perrin, titled "Helicopter request." It read, "Helicopter request from Sen. Bruno for this Thursday and Friday. Let me know your thoughts." At 5:54 pm that evening, Turner emailed Baum again in an email titled "soon?" It asked whether they would talk soon, gave her home number in case they would not, and listed the items she wished to discuss, including "Bruno helicopter."

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Dopp reports that after the budget, he received a variety of requests to see flight manifests in connection with the Governor's travel around the state. He reports that he obtained the manifests to show the absence of the use of aircraft, showed them to reporters, and discarded them. We are attempting to clarify the dates and have requested records from the state police.

May 2007

Tuesday, May 1, 2007

The next day, Turner wrote Baum again about the helicopter. In a 5:25 pm email to Baum titled "Last chance," she wrote, "Anything change today for Bruno and helicopter flight approval?"

Thursday, May 10, 2007

Howard wrote Dopp, Nocenti and Turner an email at 4:10 pm titled "Aviation," that read, "I've given a fair and final warning to David Datalfamo verbally and have resubmitted the remaining Richmor aviation bills to Governor Pataki (Julie Pine) with a cover note from me. The package will be sent out Federal Express this date.

Friday, May 11, 2007

Dopp emailed Howard at 9:22 at night, in an email titled "DD." It read, "Can you give me a call [REDACTED]"

Seventeen minutes later, at 9:39 pm,, Howard sends Dopp an email titled "Aviation Bill." It reads:

Darren. Here's an update on the status of Governor Pataki's outstanding aviation bills. You will recall that Fred Dicker wrote about one bill for over 10,000 for a trip to Virginia with staff. That bill had been rejected by the Comptroller. In response I had forwarded the bill to Pataki and requested that it be paid by his PAC. The bill from Jet Aviation was paid by the PAC in full. After this bill was discussed however, I learned that there was another bill - this one from Richmor Aviation that totaled over 16,000 for a trip to Buffalo and Rochester and back to Albany at the end of the Administration. Despite the fact that the bill exceeded the State Finance Law's 15,000 cap, the PAC initially refused to pay this bill. After a second submission, the PAC agreed to pay only a portion for the 'political portion of the trip.'. [sic] I'm not positive but I think a remaining balance of over 10,000 remains. I resubmitted this bill tot he Pataki PAC on Thursday of this week by FedEx. I included a note requesting payment as soon as possible and indicated that I had discussed the bill and it would not be submitted for payment by the state of new york. I also indicated that this came following communication

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between me and David Catalfamo in which I said we would refer to the Ethics Commission if the bill wasn't paid.

Two minutes later, at 9:41 pm, Dopp emailed, "Do you know what the trip was for?" Howard replied at 9:48 pm. Economic development announcements in Buffalo and Rochester. It was around mid December 06."

At 10:09 pm, Fud31 emailed Dopp, in an email titled "Re: Fw: Aviation Bill." It reads, "wow...that's fascinating, and helpful. Did the comptroller miss the second trip? what was it supposed to be for? who found the bill? what's their justification? was Pataki on it and who else?"

Saturday, May 12, 2007

Dopp forwarded Fud31's email from the previous night to Howard at 8:22 am, writing, "Think he's on the hook. Can you help me with folo up?"

Howard replied at 8:32 am, explaining that the "second" bill was really the product of splitting a single bill into two in order to fall below a procurement level. Howard wrote that "They wanted me to approve cong reynolds who was on the flight for a state police flight back to buffalo I refused and then got overruled. At that point the state police plan[] developed 'sudden mechanical difficulties' and couldn't fly. Reynolds ended up flying back via Richmor and paid Richmor for his portion of the entire days flight." He wrote again at 8:35 am listing passengers, including, "An agency person with Buffalo connections I can't remember the name but I recall being surprised he was on the flight." And again at 8:38: "There was another bill we got a few weeks ago for trip to hew hampshire Entirely political and we think sent to us in error. That was sent to the PAC and haven't heard anything on it. I assume paid."

Sunday, May 13, 2007

Dopp emailed Howard at 9:36 am in an email titled "last questions." He asked: "Was it the same charter co? Jet Aviation. Teterboro.?" The reply at 9:38 was "Nope. Jet was the first one. These are from Richmor Aviation."

At 9:40, Howard wrote Dopp, "Under the law you can't go more than 50k per year with any one entity without advertising. They tried to keep these under that by switching between vendors. That said, you can't go more than 15k per contract wo posting in the Contract reporter. Than's why they split vouchers for the Richmor invoice which came in over 16k."

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Monday, May 14, 2007

Fred Dicker wrote an article in the Post titled, "PATAKI HEADS FOR AIR CRASH." The lead paragraph was, "Gov Spitzer's office is threatening to file a state Ethics Commission complaint against former Gov. Pataki unless Pataki pays the full price of yet another costly, last minute charter flight taken before he left office, The Post has learned."

Howard emailed Dopp at 7:59 am, in an email titled "POST." He wrote, "Hopefully they will now pay the bill." He told Dopp that he had pulled the invoice, and gave him additional information from it.

Terri Brennan emailed Marlene Turner and Howard at 11:10 am, reporting that Richmor Aviation had called to report that the Pataki PAC had contacted her to let her know that payment for invoices would be processed that week. Howard forwarded the email at 11:10 to Dopp.

Tuesday, May 15, 2007

Brennan emailed Howard at 11:09 am that she had learned that the Richmor bills had been paid in full. Howard forwarded it to Dopp and Christine Anderson at 11:53 am.

Thursday, May 17, 2007

Howard emailed Dopp at 12:03 pm, saying that he was "Getting more but here's what I have." He set what the "Gov" could use the plane for, giving an example of a trip in which business and politics were mixed." He ended the email, "I'm getting more on the specifics of today with the passengers etc."

Seventeen minutes later at 12:20 pm, he wrote to Dopp an email titled "CV Starr," which read, "CV Starr is a global investment firm that holds 2.4 billion shares of AIG stock worth about 2.4 billion. They are located at 399 Park Avenue."

Thirty-eight minutes later he sent Dopp an email titled "Time Check." It read:

"I checked the times:

12:30 at CV Starr

3:30 at Sheraton

9 am scheduled return flight tomorrow."

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Dopp responded, "thx," at 12:59 pm. In the same email chain, Howard replied at 1:23 pm, "I have the report. Making 5 copies right now." Note, that day there was also extensive email traffic regarding the Bucky Phillips report.

Friday, May 18, 2007

Email chains show Bill Howard trying to reach Superintendent Preston Felton on Friday, May 18. The latest one was at 7:29, when Felton wrote Howard, "Do you still need the call[?]"

Phone records have not been pulled to determine where there was, at that time, phone traffic between Howard and Felton, or, subsequently, Felton and his subordinates. This exchange may not have related to this matter.

Monday, May 21, 2007

The following Monday, a fax of Senator Bruno's travel schedule titled "Trip to NYC - Thursday, May 17th & Friday, May 18th - 2007" was received by the State Police. It bears a fax slug time stamp at the bottom of 1:38 pm. The fax slug at the top bears the name "SEN BRUNO." Thus it appears that this document is an itinerary prepared by Bruno's office and previously faxed to the State Police, which was providing ground transportation to the Senator in New York City for that trip.

About an hour after the fax was received (2:23 pm), Superintendent Felton sent an email to the New York City command titled "Itinerary." The email read: "Can you send me up the information on that trip that the majority leader did last week. Itinerary for the trip asap." The response at 2:41 pm was "I faxed it up." At 3:06 pm Felton acknowledged it.

Later that day at 4:14, Felton emailed Howard: "Just received another request for ground transportation from that same individual that we had last week in NYC. Do you want us to provide it[?]" It continued, "And do you want me to do the same documentation we previosuly [sic] talked about for this trip[?]"

That evening at 7:18 pm, Howard responded: "Sup. Xcan [sic] you call me with the details. Back in the office now." At 7:33 pm, Howard emailed Dopp, "Be advised that another request has been made. I'll collect the details as we get these."

The Superintendent responded to Howard's 7:18 email at 7:36: "Don't have them yet just an inquiry on wheter he can get transport [sic]."

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Tuesday, May 22, 2007

The following morning, Tuesday, May 22 at 9:15 am, Felton directed Troop NYC to fax him up the latest itinerary "on the subject from up here (JB) for the trip that they called about yesterday."

At 11:30 am, Felton wrote to NYC an email titled "Lights and Sirens." It read: "I received an inquiry from a dignitary we handled last week with regard to why we did not use lights and siren when he became stuck in traffic. I informed that office that this is not something that we will do unless it is an actual emergency operation situation. Make sure our members know that lights and sirens are for emergency operation only. Apparently, they did not like the answer given to them by our person who was driving them when hold this. However, we will not break the law to get people through traffic."

Dopp emailed Howard at 4:06 pm, "Please call when you have a moment."

Wednesday, May 23, 2007

At 9:20 Wednesday morning, Troop NYC responded to the Superintendent's request from the previous morning for the Bruno itinerary: "Supt. Sorry about the delay. I was out yesterday. I'm awaiting the schedule from his office, as soon as I get it I will forward it to you." The Superintendent responded, "OK."

Within the hour (10:25 am), Troop NYC emailed Felton an email titled "Schedule" reporting on a conversation with Bruno's staff. It read:

As per Leslie (JB) office the schedule is as follows, (this was given to me over the phone, I was not given any other specifics regarding the schedule)

May 24, 2007 -

4:30P - arrive West 30th St Helipad and travel directly to the Sheraton Hotel (7th Ave & 52nd St.)

6:00P - Russo's Restaurant - 790 7th Ave (across street from the Shearton [sic])

7:15P - Depart West 30th Street Helipad

note: our members are instructed to only provide transportation.

Felton responded "OK" to the email. He then forwarded it within minutes (10:27 am) to Bill Howard, writing "FYI, no hardcopy on this."

Howard, from his blackberry, forwarded it to Dopp 11 minutes later at 10:38 am.

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That afternoon, at 3:10 pm, Troop NYC sent another email to Felton stating:

"Inv. Swansen was just contacted with a change of schedule:

3:50 – Arrive Wall St. Helipad

4:15 – Mtg with Mayor Bloomberg

everything else should be the same, if not will advise."

One minute after receiving this email (3:11 pm), Felton forwarded it to Howard, stating, "note change in schedule." Howard did not forward this to Dopp until the following day at 8:22 pm, which the notation: "Missed this in the Fort Drum swirl today. Meeting with Bloomberg added to Bruno."

Dopp emailed Howard at 4:05 pm: "Need a quick call."

Dopp emailed Rich Baum at 5:43 pm in an email titled "State Police." It reads: "Bill H says the records exist going way back. Intineraries [sic] showing where the individual was taken and who was in the car. Bill has the last two trips in his possession." It continues, "Also, I think there is a new and different way to proceed re media. Will explain tomorrow."

In addition, the State Police had begun gathering cost information about the "Bell 430" a Helicopter. At 6:41 pm Wednesday May 23, the Chief Pilot of the State Police sent operating cost figures to Superintendent Felton. It is clear from email traffic the next day that Felton conveyed those figures to Bill Howard that evening.

Thursday, May 24, 2007

The following morning at 11:07 am, Felton wrote William Howard that the "number last night is actually slightly less," and promised, "They are updating all the information and will get it over to you before you return." At 12:07 the Chief Pilot emailed Felton a memorandum with updated costs, who responded, "Ok send it to him." The memorandum contained cost data for the Helicopter, as well as two airplanes.

Howard wrote Dopp an email titled "Numbers," at 8:15 pm. It read, "The numbers for that SP situation has been revised based on a recalculation of fuel costs. I'll give you the final number tomorrow am.

Friday, May 25, 2007

Friday the 25th at 4:29 pm, Felton wrote State Police aviation seeking billing information about a flight taken by the Governor. In an email titled "Govs flight," he

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asked: "That flight to JFK, what was the actual[] time he was actually on aircraft and would we usually bill for the round trip or just one way[?]"

Tuesday, May 29, 2007

Howard emailed Dopp from his blackberry an email titled, "In car." It said, "We will be ready by thursday with the files."

Thursday, May 31, 2007

Howard's calendar shows that he was out of the office that day, and returned on Friday.

Dopp wrote Howard an email at 10:17 am titled "Materials." It read: "I have first three months of year. Think I need April and May, too." At 10:58 am, Howard responded, "I will be getting these others." Dopp responded immediately, "Thx."

Felton's office faxes two documents to Bill Howard on May 31, which bear fax slugs from SP aviation and the Superintendent's office. Those dates that are visible are both May 31, 2007. The cover page is titled, "NY State Police Aviation Passenger Data Collated by aircraft, date and requesting official." One lists trips by Senator Bruno and his staff in April. The other lists trips by the Governor in April.

Sunday, June 3, 2007

Jim Odato published an article in the Albany Times Union titled "Probe centers on thoroughbreds." Its lead paragraph read: "Federal investigators are examining Senate Majority Leader Joseph L. Bruno's purchase of two thoroughbred horses from politically connected real estate operator Earle I. Mack as well as other horse deals involving Bruno's close circle of friends."

Dopp sent an email at 9:10 am to Baum and Laurence@lausp.com titled "ATU," that read: "I guess we know why Bruno's folks have been so jumpy of late." Baum responded at 9:11 am to Dopp alone, "Yeah no kidding." Dopp replied at 9:12 am, "Think a travel story would fit nicely in the mix."

William Howard emailed Baum at 11:13 am: "Bruno got hammered pretty good by Odato in the TU. In my guy, I expected charges to be filed in the spring. The story suggests that we may not be too far off. He can't survive the filing of a criminal complaint." Baum responded at 11:12 am: "I agree. Doubt he would resign seat but he couldn't stay as leader." Howard responded at 11:13 am: "The impending travel stuff implies more problems - particularly in the tax area I think. I think timing right for that move."

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Monday, June 4, 2007

The next day, efforts continued in connection with the payment for a flight by the Governor. At noon, Felton forwarded to Howard an email from the Director of Aviation for the State Police that read: "For the flight on May 2nd, the Governor flew for 0.9 hrs. The total cost for his leg would be \$799.96. Based upon \$999.85 per flight hour on the Bell 430 helicopter."

At 1:22 pm, Howard asked Felton, "Can you have someone come down and pick up the Gov's check for the flights. I will have in my office shortly." Felton responded, "I thought you guys were making payment direct to general fund."

That evening at 6:56 pm, Marlene Turner emailed Rich Baum an email titled "Helicopter requests," with a cc to David Nocenti. It asked, "Should we now be asking for an hourly description of meetings rather than just the general description of trip's purpose?"

Wednesday, June 6, 2007

Dopp wrote Howard an email at 11:19 am, reading, "Can you stop by when you have a moment?"

A one page document produced from State Police files bears a barely visible fax slug that reads: "NYSP SUPERINTENDENT → HOWARD" and the date June 6, 2007 at 12:56 pm. It reads in full:

May 03 and 04 – Inv John Colon

2PM – arrived West 30th Helipad w/3 staff members meetings at the Sheraton Hotel (7th ave & 52nd St)

Dinner @ Restaurant on Eastside

Back to Sheraton Hotel

May 04 – transported to Aqueduct Race track and then to Laguardia Airport

May 17 – Inv. Rommel Cartright

Arrive Wall St Helipad
Lunch @ City Hall Restaurant
Mtg @ City Hall

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Stopped at AU Bon Pain in Wall St. area
Departed around 7PM from Helipad

May 24 – Inv Robert Swansen
3:30P: Downtown Heliport
4:15P: Mtg @ City Hall
5:30P: Mtg @ Sheraton Hotel
6:15P: Dinner @ Russo's Restaurant
7:20P: Depart W 30th Helipad

At 5:11 pm that day, Felton emailed Howard three documents, which appear to be rewritten versions of this email. Each of the one-page documents was titled "Transportation Assignment for Senator Joseph Bruno," and included an account of one investigator's transportation for that date. All three bear the notation "All times approximate." The account of Investigator Colon's assignment bears additional detail with respect to Bruno's dinner on May 3:

7:00pm – Dinner at Italian Restaurant on Eastside (unknown name, located between 1st Avenue and 2nd Avenue in upper 40s)

*Twice, the report refers to Bruno and his three staff members as "subjects."

Thursday, June 7, 2007

Howard emailed Dopp at 5:09 pm, "Would like to catch up when you have the chance." At 5:33 pm, Dopp responded, "Can you come by?" At 5:38 pm, Howard responded, "yes."

June 21, 2007

Howard emailed Dopp at 11:02 pm: "Time to make campaign finance resonate [sic] I think."

June 26, 2007

Dopp emailed Howard, "Need a quick call."

Wednesday, June 27, 2007

Darren Dopp made a request of Chief of Staff Marlene Turner at 12:53 PM. By email titled "Flight Request," Dopp asked: "Could you fax me the latest flight request from Bruno? Today, I think." The flight request he was seeking seeks helicopter transportation for Senator Bruno for a round trip to New York City from Albany,

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*Good place
for a footnote
about the
confession of
the April
trip*

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departing at 11:00 am and returning at 5:00 pm. Signed by Senator Bruno, the stated purpose of the flight is "Legislative business meetings."

Turner (likely sitting in New York City that day) forwarded Dopp's note to a secretary with the following request: "Would you bring Darren Bruno's flight request for today? Thanks." Turner followed up by writing, "Should have said to just bring him a copy. Thanks again." The response from the secretary was "yes - I did - welcome!"

At 2:46 pm that day, Dopp asked Turner about flight requests from other government officials. In an email titled "Flights," he asked: "Do we have any requests from Malcolm Smith, Jim Tedisco, Tom Dinapoli or David Paterson to use state aircraft?"

A few minutes later at 2:54, Turner responded: "Paterson yes; not anyone else. I can have [a secretary] bring over copies of his flight confirmations (actually has one schedule for tomorrow for NYC to Buffalo and back for MWBE events.) His requests are by email from his staffers." The secretary, who had been cc'd on Turner's response, wrote Dopp (with a cc to Turner), "Sure - just let me know Darren and I'll bring over whatever you need."

Twenty minutes later, Dopp received an email from Jim O'Dato, which read in pertinent part:

Dear Mr. Dopp: Under provisions of the New York Freedom of Information Law, please provide me records identifying the use of the state aircraft by Gov. Eliot Spitzer, David paterson, Comptroller Thomas DiNapoli, Senate Majority Leader Joseph Bruno, Assembly Speaker Sheldon Silver, Assembly Minority Leader James Tedisco and Senate Minority Leader Malcolm Smith. . . . Please provide any and all materials relating to this request as soon as possible.

A half hour later, Dopp emailed Charles O'Byrne, Chief of Staff for the Lieutenant Governor telling him that the Chamber had been FOILed by the Times Union. Dopp wrote: "I pulled everything together and was prepared to give materials to the report when he amended his request to include DAP." Dopp asked for schedules for Patterson's trips, concluding, "Gov's skeds show meetings and events that are strictly official. Assume its the same for DAP. That is, no FR activity or politics. Pls advise."

O'Byrne responded at 5:04, needing information from Dopp about who was on the manifests, which Dopp provided to O'Byrne at 5:40 pm and forwarded to Turner at 6:19 pm.

In an email titled "Chopper," Dopp wrote to Howard at 5:27 pm, "Need quick call."

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Howard emailed Dopp at 7:02 pm an email titled "Section 73." It read, "I've read through 73 several times and having a hard time finding an applicability to the issue. I'm going to check out some other sections."

Thursday, June 28, 2007

At 9:35 am, the next morning, O'Byrne emailed Dopp to said that he was putting together the information himself, and asking whether Dopp wanted a synopsis or a copy of the actual calendar. Dopp replied at 9:41 am that he wanted the actual calendar.

At 10:59 am, Howard sent Dopp an email titled "Question" setting forth prices of private helicopters. He concluded, "Keep in mind that SP gets very uncomfortable with ever putting the Governor on charters - whether planes or choppers and would never sanction a Governor getting on a single engine chopper The position of the SP is that the more they control Gov travel the more comfort they have from a security standpoint."

Howard wrote Dopp an email titled "Confirmation," at 11:08 am, confirming from the State Police that keeping engines running during events is standard operating procedure for security reasons. Dopp responded at 11:26 am, "Thx. Makes sense."

A half hour later at 11:27 am, Dopp responded to Howard's email with a question: "Is there a landing fee charged by the NYC chopper pads? Think they are privately run, no?" Howard answered, "They are privately run. I asked the same question. SP thought yes but didn't have the answer handy. I asked them to get for us. I think it applies to both heliports and even PA airports." Howard then emailed Superintendent Felton, "Now formally being asked the question on heliports landing fees." Felton responded at 11:31 am, "Will check." At 12:27 pm, Howard emailed Dopp, confirming that the helicopter facilities are privately owned, and that providing the fee schedules.

Dopp emailed Howard at 6:44 pm, "Only if you're feelin ok - gimme a call at [REDACTED]"

Friday, June 29, 2007

The next morning at 8:04 am, on behalf of the Chamber, Superintendent Felton emailed a Gary Berwick, a former ESD member, to see whether a security assessment had ever been done for Bruno. "Check with [ESD] and see if we ever did security assessments for [S]enator [B]runo. Also get a description and list of all complaint [sic] or threats on him in last ten years." He concluded, "Advise [B]ill [H]oward of your finding."

Odato that day began asking specific questions about a trip of the Lieutenant Governor. His press secretary Maritere Arce wrote the Governor's Press Secretary

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Christine Anderson an email titled "Odato from TU." It read, "Wants to know if dap's stop during DC trip to meet with Howard Dean constitutes inap[ro]p[ri]ate use of government aircraft. Haven't called him back yet. Your thoughts?"

At 12:29 pm, Anderson responded, "I assume David was in DC for official meetings? Can you pull together his schedules that day and we'll help pull the rel[e]vant rules that apply to aircraft use."

Shortly afterwards, Dopp emailed Odato:

Jim,

We're learning things that encourage us to be much more cautious in our response. This is all we want to say now:

'We will review this matter carefully before commenting.'

dd

At 3:10 pm, O'Byrne emailed Dopp about a conversation he had had with Odato. He reported to Dopp that he told Odato that he was "bothered" about the prospective coverage of the Lieutenant Governor because they had worked closely on a story Odato did about member items ("In fact, I did JO a bunch of favors on that story.") It appears that Odato told O'Byrne that including the Lieutenant Governor in the story "balances" it.

At 3:50 pm Howard wrote Dopp an email titled "Have More Info from SP." It read: "At office. [REDACTED]"

Sunday, July 1, 2007

The headline of Sunday's Times Union was "State flies Bruno to fundraisers: Taxpayers finance trips of Senate Majority leader to New York City political events," by Jim Odato. The lead paragraph read: "Three times this year, Senate Majority leader Joseph L. Bruno has used taxpayer-funded state aircraft to fly to political fundraisers in Manhattan while certifying he was on official state business, according to documents obtained by the Times Union." The article included a discussion of the state Code of Ethics, the penal code, and Comptroller Hevesi's resignation and guilty plea.

At 6:19 am, Dopp wrote an email to Richard Baum, Secretary to the Governor, and Laurence [REDACTED] "When asked about the Enron revelations, Uncle Charles, a leading authority on accounting ethics, said: 'Well it's not good.'"

The response from Laurence [REDACTED] was, "Haven't seen paper yet. How does ir [sic] look?" Dopp replies, "Gotta see to believe. Think we need to move quickly

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to refer it to proper authorities." Laurence emails back, "How dope [sic] confessor article look?"

Baum responded at 7:50 am, "Wow. He's got a problem. What do you think? Put out a statement that taking it seriously/reviewing and deciding what action to take?" Dopp wrote back, "Yep." Baum then emailed, "And tomorrow? Ground him and refer to IG?" Initially, Dopp responded, "Exactly." But he then emailed, "The only twist is the SP thing. Think its worth noting that there's never been a threat assessment." Baum wrote back, "That line about death threats and the atu will be taught in classes for years to come."

Dopp sent an email from his home email address to his office email address at 8:44 am, setting forth on the record and off the record strategies. He then had email exchanges with Fred Dicker and Elizabeth Benjamin. He told Dicker that no determination had been made on a referral of the matter to the IG. Dopp also wrote Dicker: "Think TU has inside source. Odatto implied there's a lot more to come." To Benjamin, he wrote about Bruno's certification, "That may be false statement. Violation of law."

In an email to Counsel to the Governor David Nocenti at 3:13 pm, Dopp asks whether the office can refer the matter to the IG. There is an exchange where Nocenti says that the IG lacks authority, Dopp says that Peter Pope and Richard Rifkin want it referred, and Nocenti ask why not Morgenthau.

At 3:40 pm, Dopp emails Nocenti: "Rich thinks a DA referral is too dramatic. Prefers AG." Nocenti sends an email discussing the relative merits of referrals to the IG, the AG, and DA's, concluding that we may not need to do anything, because DA's are bound to ask promptly anyway.

At 8:11 pm, Paul Larrabee emails Dopp that Rick Karlin is working "on Bruno Day II," and is looking for a "source based quote" regarding referral. Larrabee asks "Your note from this am did not provide ths [sic] for attribution-does this still hold?"

July 2, 2007

The Chamber receives related FOIL requests from NY1 News and the New York Republican State Committee. There are numerous emails with reporters, and the Governor appears on NY1.

Dopp is quoted in newspapers as saying: "We signed off on the use of the helicopter with the assurance that it was for legislative business."¹

¹ Danny Hakim, *Spitzer to Seek Review of Bruno's State-Paid Travel*, N.Y. TIMES, July 2, 2007.

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In response to an email from Dopp to Nocenti and Baum about the need to release a statement and do a news conference at 1:30, Nocenti emails Baum and Dopp at 12:30 pm:

Castleman says "requesting" documents is unusual; people usually 'refer' things to them. He needs to talk to Morgenthau.

Cuomo is willing to do 'whatever we want,' but would MUCH prefer not to be the only person requesting - i.e., if Morgenthau doesn't 'request,' Cuomo won't want to either.

Waiting to hear back from Soares.

I know that is not helpful, but that is where it is.

At 3:14, Troop NYC emailed Superintendent Felton that Troop NYC provided only one transport for Senator Bruno during June. Felton forwarded this to Howard at 3:24 pm. Howard forwarded it to Dopp at 3:57 pm with the added note: "I have other material I'm bringing down."

At 3:40 pm, Dopp emailed a formal statement issued under his name to Elizabeth Benjamin, a reporter at the Daily News. It included the sentence, "In response to these media accounts, we are forwarding documents regarding use of state aircraft to appropriate authorities for their review." Under the statement, Dopp wrote that that sentence "refers to Soares, who requested the info, and Cuomo, who is also interested in reviewing. We'll also provide to Legislative Ethics Commission [sic], which, pursuant to the Ethics agreement earlier this year, was supposed to have been bolstered by new appointments."

Dopp asked Paul Larrabee to take a copy of the FOIL packet to DA Soares's office. Dopp reports that he did so at the direction of counsel. Larrabee reports that Dopp explained the packet to him, and sent him to the DA's office, where Larrabee delivered the packet and explained its contents to a DA investigator. We have not yet identified the date or time of these events.

Christine Anderson emailed an AP reporter at 4:20 pm after reading a story that the Governor had "asked" the AG and Albany County DA to review records. She wrote: "I just saw your wire story and have one point of clarification. The DA and AG asked us for the documents. We did not refer or make the request." When the reporter responded that he "could have sworn" that "you guys" had "passed this along to the DA and AG," Anderson forwarded the message to Dopp at 5:13 pm. She wrote: "see below. . . . I'm letting him know that we were informed earlier today that both were investigating and we are not sure why there has been confusion."

when does Larrabee visit Soares' office?

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At 4:29 PM, Troop NYC emailed to Felton additional material on whether or not Senator Bruno attended a meeting at City Hall, which Felton forwarded to Howard at 4:32 with the message "Did not attend that meeting."

At 4:46 pm, Anderson sent an email to Dopp titled "pls call." It read: "Soares' spokeswoman Heather Orth says they haven't requested documents."

July 3, 2007

Dicker emailed a FOIL request to Dopp at 11:30 am. There is email traffic with Dicker throughout the day.

Dopp had an email exchange with Elizabeth Benjamin of the Daily News, in which Dopp pointed out internal inconsistencies in an accusation that Bruno levels concerning a threat from the Governor. She responded at 3:54 pm: "You're asking me to explain to you the thinking of a 78 year old guy who is devoid of logic? Um. No can do."

Dicker emailed Dopp at 4:17 pm asking what records are kept of where the Governor and Lieutenant Governor drive. He wrote, "I would like to see the same record . . . showing all the stops throughout each day. Otherwise this looks like selective surveillance." Dopp responds in a lengthy email that includes: "To call this surveillance is a stretch. You saw the document. It's a log. Nothing more, nothing less." He says later in the email, "I'm told that the logs were kept in part to protect the SP who were driving him."

July 5, 2007

Dicker wrote an article in the New York Post titled: "Gov's Trooper Snoop Job on Bruno." The lead paragraph was, "Gov. Spitzer targeted state Senate Majority Leader Joseph Bruno for an unprecedented State Police surveillance program that led to allegations Bruno improperly used a state helicopter for political purposes, an investigation for The Post has found."

Dopp was quoted in a variety of newspapers as follows:

- "I never called up the state police and said, 'Spy on somebody,'" Dopp said.²
- "I know [Secretary to the Governor Richard] Baum never would have. The inspector general is going to figure that out. If it's so, you'll have some

² Elizabeth Benjamin, *It Has Never Been this Bad*, N.Y. DAILY NEWS, July 5, 2007.

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ramifications. Mr. Spitzer won't protect me under those circumstances -- or anybody else."³

- "We had called and said, 'follow your standard procedure,'" explained Dopp. Itineraries, he said, had "always been done," but after April, "they started retaining them."⁴
- "That's not spying," said Darren Dopp. "That's so minimal of record keeping as to call it espionage."⁵
- Dopp insisted in an interview with the Post last week that Cuomo and Soares acted on their own.⁶

A secretary from the press office sent around a draft statement at 10:38 am to Baum, Nocenti, and Howard. Laurence@[REDACTED] was cc'd. The draft statement read:

"A story suggesting that the State Police were asked to do anything other than follow standard operating procedure is grossly inaccurate and wrong.

There has never been special surveillance of Majority Leader Bruno. Logs are obviously kept for security assignments, including the Majority Leader and Governor. These logs are a record of the use of a state vehicle.

In this particular instance, the logs were based on scheduling information provided to the State Police by Senator Bruno's office.

We are confident that proper procedures were followed at all times. However, since a concern has been raised, we are asking the State Inspector General to review the matter.

Nocenti replied at 10:41 am, "I have a few comments, but am in a meeting now. I'll call in about 30 minutes."

Dopp circulated another draft at 11:28 am with a note, "Pls make final comments asap." The third and fourth paragraphs were rewritten to read:

"When they have been asked to drive the Majority Leader, the State Police work from schedules supplied by the Majority Leader's office. No special records are kept beyond a simple accounting of a state police vehicle's use.

³ *Id.*

⁴ Rich Karlin, *Bruno: I'm Watched*, ALB. TIMES UNION, July 5, 2007.

⁵ Capital News 9 Staff, *Bruno Calls for Spitzer Probe*, July 5, 2007.

⁶ Frederic U. Dicker, *Gov Aides Fished for Bruno Busters*, N.Y. POST, July 9, 2007. (Reported on July 9, but was apparently given the previous week.)



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A similar procedure is followed when the State Police are driving the Governor and others."

Baum responded to Dopp's draft by email at 11:30 am: "Good. Any point in saying no one has requested that sp change sop?" Bill Howard responded to Dopp's draft by email at 11:33 am: "I am good with this. SP is good as well." Nocenti, Baum, Laurance@[REDACTED] and Howard were on both of these emails.

The statement as issued included Baum's suggestion:

Statement by Darren Dopp responding to New York Post Article

A story suggesting that the State Police were asked to do anything other than follow standard operating procedure is grossly inaccurate and false.

There has never been any surveillance of Majority Leader Bruno by the State Police.

When they have been asked to drive the Majority Leader, the State Police work from schedules supplied by the Majority Leader's office. No special records are kept beyond a simple accounting of a state police vehicle's use.

A similar procedure is followed when the State Police are driving the Governor and others.

We are confident that proper procedures were followed at all times. However, since a concern has been raised, we are asking the State Inspector General to review the matter.

July 6, 2009

Danny Hakim and Nick Confessore wrote an article in the New York Times published on July 6, 2007, that contained the following paragraphs:

Darren Dopp, the governor's communication director, called the Post report "grossly inaccurate." He said state officials generally gave State Police detail itineraries when they were using state transportation. The troopers did not retain all the itineraries Mr. Bruno's office supplied, he said, so . . . the troopers reconstructed some of them after The Times Union filed a Freedom of Information Act Request to the Spitzer administration for the records.

The State Police have been reluctant in the past to disclose information relating to the security of public officials, Lt. Glenn Minor, a spokesman for the State Police, and agency within the executive branch, said the police provided the

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reconstructed itineraries because the governor's office asked them to. "We did it as a request from the governor's office," Lieutenant Miner said.

He said the agency did not maintain special travel records about any state officials. The agency, he added, generally relies on schedules provided by the officials themselves to plan transportation, including flights on state aircraft, which must be approved by the governor, and ground escorts by state troopers. Those schedules are not considered agency records, Lieutenant Miner said, and there is no internal rule governing how long they are retained.

The State Police provided both a travel itinerary supplied by Mr. Bruno's office and synopses of Mr. Bruno's travel on days for which the agency no longer had those schedules, based on the recollections of the troopers who had accompanied him.

(bold added)

July 9, 2007

On July 9, 2007, the Governor made the following statements:

- "Let me be very, very clear," Spitzer said. "State Police have done what they have done on their own, done it pursuant to procedure. This has nothing to do with us. I leave it to the State Police to do what they do."⁷
- "We have never asked the state police to do anything that wasn't standard operating procedure, nor would we," he said. "They are the pros. They do what they do pursuant to their own rules."⁸
- "I've seen stuff printed about surveillance.... Let me be very, very clear, the State Police have done what they've done on their own, done it pursuant to procedure, done it pursuant to the senator's request for their accompaniment at various times," Spitzer said after touring a day care center here.⁹
- He added, "I was not even aware of it. People in my office were not aware of it."¹⁰
- "We responded to a FOIL request and have done nothing more," Spitzer said, referring to the Times Union's request for records.¹¹

⁷ Frederic U. Dicker & Kenneth Lovett, *AG Eyes Cop Files in 'Spy'tzer Probe*, N.Y. POST, July 10, 2007.

⁸ Jay Gallagher, *Spitzer Says He Didn't Put State Police on Bruno's Trail*, WESTCHESTER JOURNAL NEWS, July 10, 2007.

⁹ James Madore, *Spitzer Denies Role in Probe*, NEWSDAY, July 10, 2007.

¹⁰ *Id.*

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¹¹ *Id.*

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