

## TABLE OF CONTENTS

	<u>Page</u>
I. SUMMARY OF INVESTIGATION AND EVIDENCE.....	1
A. Public Officers Law Violations.....	3
B. The Executive Chamber’s Frustration of the Commission’s Investigation.....	7
II. PROCEDURAL HISTORY OF COMMISSION’S INVESTIGATION.....	8
A. The Ethics Commission’s Inquiry.....	8
B. The Commission on Public Integrity Continues the Ethics Commission’s Investigation.....	10
1. Dopp’s October 11, 2007 Testimony.....	11
2. The Commission Is Forced To Litigate Over Dopp’s Diary.....	13
3. The Commission Conducts Additional Sworn Interviews.....	15
4. The ODA’s Second Report.....	15
5. The Commission Interviews Former Governor Spitzer and Attempts to Re-interview Dopp.....	17
6. Commission Enters Disposition Agreements With Baum and Howard.....	17
III. THE RECORD EVIDENCE.....	18
A. Senator Bruno’s Refusal To Provide Travel Itineraries to the Executive Chamber.....	18
B. Senator Bruno’s Early-May Helicopter Request.....	19
C. Dopp’s Proposed Press Release About Senator Bruno’s Travel.....	20
D. The May 17 Discussion About Dopp’s Proposed Press Release.....	25
E. The Executive Chamber “Monitors” Senator Bruno’s Travel.....	28
F. The Executive Chamber June 3 and 6 Communications About Senator Bruno’s Travel.....	32
G. The State Police Creates Records of Senator Bruno’s Travel.....	34
H. State Police Practice on the Release of a Public Official’s Travel Itineraries.....	42
I. The June 27 FOIL Request and July 1 <u>Times Union</u> Article.....	43
J. Dopp’s Release of Senator Bruno’s Travel Records.....	47
K. The July 1 <u>Times Union</u> Article.....	54
L. The Attorney General’s Investigation.....	57
M. Noteworthy Conflicts in the Testimony Before the Commission.....	59
IV. VIOLATIONS OF THE PUBLIC OFFICERS LAW.....	62
A. Preston Felton’s Violation of §74(3)(c).....	62
B. Darren Dopp’s and Preston Felton’s Violation of §74(3)(d).....	64
C. Richard Baum’s, Darren Dopp’s, Preston Felton’s and William Howard’s Violation of §74(3)(h).....	65
V. HEARING PROCESS AND PENALTIES FOR PUBLIC OFFICERS LAW VIOLATIONS.....	67

## **I. SUMMARY OF INVESTIGATION AND EVIDENCE**

The State Police serves a critical role in our State Government. By statute, “[i]t shall be the duty of the Superintendent of the State Police and of members of the State Police to detect and prevent crime and apprehend criminals.” (Executive Law § 223). In protecting and defending the people, the State Police must perform their mission with the highest ethical standards. Other State officers must not misuse the State Police to serve non-governmental, including political, objectives. Such misconduct erodes public confidence in the integrity and independence of the State Police.

There is reasonable cause to believe based on the record evidence that, during 2007, senior officials in the Administration of Governor Eliot Spitzer engaged in a course of conduct that violated the Public Officers Law. The evidence also supports a reasonable belief that these Spitzer Administration officials caused the State Police to serve the Governor’s and their own non-governmental interests in a manner that compromised the State Police. Finally, there is reasonable cause to believe that in doing so, these Spitzer Administration officials misused their official positions to cause the State Police to engage in conduct that was wholly unrelated to the State Police’s statutory mandate of “detect[ing] and prevent[ing] crime.”

Specifically, there is reasonable cause to believe that to advance the Governor’s and their own non-governmental interests, these Spitzer Administration officials caused the State Police (i) to gather information regarding Senator Joseph Bruno’s travel that the Police would not have gathered as part of the State Police’s official business; and (ii) to create purportedly “official” documents reflecting Senator

Bruno's confidential travel information, never before publicly released by the State Police, that they caused to be disseminated to the press.

In this Notice of Reasonable Cause ("NORC"), the Commission on Public Integrity ("CPI" or "Commission") finds that reasonable cause exists that four former State officials violated Section 74 of the Public Officers Law: Richard Baum, Secretary to Governor Spitzer; Darren Dopp, Communications Director to Governor Spitzer; William Howard, Assistant Secretary for Homeland Security and liaison to the State Police; and Preston Felton, Acting Superintendent of the New York State Police. Baum and Howard have entered into Disposition Agreements with the Commission in which they admitted to violating Section 74. Dopp and Felton are contesting these charges.

The Commission recognizes that elected officials and their staffs routinely take steps to reveal to the press negative or embarrassing information about their opponents. Such conduct, by itself, does not violate the Public Officers Law. But here, senior Spitzer Administration officials did more than seek to generate a negative news story about the Governor's political opponent. Rather, the Commission has determined that reasonable cause exists that the State Police were enlisted in an effort to gather and publicize sensitive information about Senator Bruno's travel. In doing so, Spitzer Administration officials caused the State Police to contravene longstanding State Police procedures governing the disclosure of such travel information.

The Commission's investigation sought to determine the role of each State official who participated in the alleged misuse of the State Police to gather information or to create documents detailing the activities of Senator Bruno when he traveled to New York City in May and June 2007. This investigation also sought and obtained evidence

regarding the events surrounding the Executive Chamber's release of State Police documents to the Albany Times Union for publication, and the Executive Chamber's attempt to interest three law enforcement authorities in an investigation of Senator Bruno's travel.

**A. Public Officers Law Violations**

Based on the record evidence, the Commission has determined reasonable cause exists to believe that:

- (i) Baum violated Public Officers Law §74(3)(h);
- (ii) Dopp knowingly and intentionally violated Public Officers Law §74(3)(d) and violated Public Officers Law § 74(3)(h);
- (iii) Howard violated Public Officers Law §74(3)(h); and
- (iv) Felton knowingly and intentionally violated Public Officers Law §74(3)(c) and (d) and violated Public Officers Law § 74(3)(h).

Specifically, reasonable cause exists to believe that Baum, Dopp, Howard and Felton violated the Public Officers Law as follows:

- The evidence shows that Baum, to whom Dopp reported, was aware of Dopp's efforts to have the State Police gather information and documents concerning Senator Bruno's travel. Baum received (and ignored) email communications indicating that Dopp and Howard were engaging, or were planning to engage, the State Police to help Dopp secure a negative news story, for the benefit of Governor Spitzer, about Senator Bruno's use of State aircraft, even though Executive Chamber officials had concluded that they had no evidence that Senator Bruno was violating the State's then-policy permitting the so-called "mixed-use" of State aircraft. As a

result, Baum, as he has now admitted, violated Public Officers Law §74(3)(h). Specifically, Baum has admitted “that he did not endeavor to pursue a course of conduct which would not raise suspicion among the public that he was likely to be engaged in acts in violation of his trust, when he became aware that Darren Dopp, Communications Director for the Executive Chamber, and William Howard, Assistant Secretary for Homeland Security, were gathering documents from the State Police concerning the travel of Senator Joseph Bruno and did not assure that there would be no improper use of the State Police.”

- The evidence shows that, with and through Howard, Dopp engaged the State Police to assist him in preparing a news story concerning Senator Bruno’s use of State aircraft. In doing so, Dopp initiated and directed a course of conduct that (i) caused the improper creation of documents by the State Police, that were made to appear as if they were official documents, for the purpose of providing those documents to the Times Union; and (ii) caused the improper collection of otherwise confidential information from the State Police, sometimes on a real time basis, documenting the times and locations of Senator Bruno’s activities in New York City during May and June 2007. In the process, Dopp bypassed Executive Chamber procedures concerning the release of documents under the Freedom of Information Law (Public Officers Law, Article 6 (“FOIL”)). Consequently, the Commission finds there is reasonable cause to believe Dopp knowingly and intentionally violated Public Officers Law

§74(3)(d) in that Dopp used his official position to secure unwarranted privileges from the State Police for himself and Governor Spitzer. The Commission also finds that there is reasonable cause to believe that Dopp violated Public Officers Law §74(3)(h) in that he pursued a course of conduct that would raise suspicion among the public that he was likely to be engaged in acts in violation of his trust by directing Howard to use the State Police for improper purposes.

- The evidence shows that Howard conveyed to the State Police Dopp's instructions to create documents and gather information for transmission to Dopp detailing Senator Bruno's movements in New York City during May and June 2007. Consequently, the Commission finds that there is reasonable cause to believe that Howard, as he has now admitted, violated Public Officers Law §74(3)(h). Specifically, Howard has admitted that he violated "Public Officers Law §74(3)(h), in that he did not endeavor to pursue a course of conduct which would not raise suspicion that he was likely to be engaged in acts in violation of his public trust, when he requested the State Police to gather information and create documents concerning the travel of Senator Joseph Bruno in accordance with the instructions he received from Darren Dopp, Communications Director for the Executive Chamber."
- The evidence shows that Felton permitted State Police resources to be used for a non-governmental purpose by acceding to requests to create documents and transmit confidential information about Senator Bruno's

travel that he believed, or should have known, would be provided to the media by the Executive Chamber. In the process, Felton ignored State Police procedures governing disclosure of State Police information under FOIL. Accordingly, the Commission finds that there is reasonable cause to believe that Felton knowingly and intentionally violated Public Officers Law §74(3)(c),(d) and further violated subsection (h).

In carrying out its mandate, the Commission must abide by the statutory provisions that define the Commission's authority to enforce the law. Unless an investigation conducted by the Commission adduces sufficient, reliable evidence – not surmise, conjecture, speculation or rumor – to support a determination that there is reasonable cause to believe that a person subject to the Commission's jurisdiction has violated one or more of those laws, the Commission may not issue a NORC under Executive Law §94(12)(b).

The failure to supervise subordinates, without more, does not violate the Public Officers Law. Similarly, the release of information or documents to the media about a political opponent, without knowledge that such information was confidential or improperly compiled or created (here, through the State Police), does not violate the Public Officers Law. With these standards in mind, and after full consideration of the record evidence, including thousands of documents and over 3,000 pages of sworn testimony, the Commission has determined that presently there is insufficient record evidence to support a charge that any person, other than Baum, Dopp, Howard and Felton, violated the Public Officers Law.

Following the issuance of this NORC, if warranted by additional reliable evidence, including evidence adduced in the course of a hearing on the charges set forth herein, the Commission will pursue additional Public Officers Law violations that may have been committed by any person not named in this NORC, including any individual who may have previously received or may in the future receive a “fifteen-day letter” pursuant to Executive Law §94(12)(a).

**B. The Executive Chamber’s Frustration of the Commission’s Investigation**

During its investigation of the Executive Chamber’s alleged misuse of the State Police, the Commission was forced to overcome numerous improper obstacles placed by the Executive Chamber. These obstacles substantially delayed the Commission’s investigation. Over ten months, on nineteen separate occasions, the Executive Chamber produced documents in a piecemeal fashion. In fact, the Executive Chamber routinely produced documents after having claimed to have complied with the Commission’s subpoena.

By any measure, the Executive Chamber improperly withheld from the Commission important documents. In one instance, the Executive Chamber produced a critical document closely mirroring the July 1, 2007 Times Union article describing Senator Bruno’s travel. Initially, the Executive Chamber produced this document in redacted form without notifying the Commission that the document had been redacted to eliminate information confirming that Dopp had prepared it in the week leading up to publication of the article. The Chamber also initially withheld Darren Dopp’s diary and handwritten notes concerning matters material to the Commission’s investigation.



Regrettably, the Executive Chamber produced these materials to the Commission only after court intervention.

Moreover, the Executive Chamber asserted that 109 documents were exempt from production to the Commission because of supposed privilege claims. In the end, the Chamber produced these relevant documents only after learning that the Commission had authorized staff to seek a court order to compel their production.

The Executive Chamber's piecemeal document production and its spurious claims of privilege unnecessarily and improperly delayed the Commission's investigation by many months. The Executive Chamber's actions were flatly at odds with its duty to assist this Commission's investigation and the promises of Governor Spitzer that his Administration was cooperating fully with the Commission's investigation.

## **II. PROCEDURAL HISTORY OF COMMISSION'S INVESTIGATION**

### **A. The Ethics Commission's Inquiry**

On July 23, 2007, the Office of the Attorney General (the "OAG") issued its report, finding, among other things, that the Executive Chamber had used the pretext of a FOIL request to obtain documents from the State Police concerning Senator Bruno's use of State aircraft, ground transportation and schedules. The OAG's Report determined that the Executive Chamber had obtained this information from the State Police to generate negative news stories about Senator Bruno. (OAG Report at 2-3).

On July 25, 2007, the Ethics Commission began to review the issues raised by the OAG's Report. On July 29, the Ethics Commission requested the records that the Executive Chamber had produced to the OAG and the Office of State Inspector

General (“OSIG”), which also had investigated the Executive Chamber’s misuse of the State Police.

On August 1, 2007, the Ethics Commission learned that the Executive Chamber had withheld certain documents from the OAG on the basis of claims of attorney-client privilege and the attorney work product doctrine. Although the Executive Chamber had not provided a privilege log to the OAG,<sup>1</sup> the Commission requested that the Chamber produce a privilege log to the Commission. The Executive Chamber then produced the first of what ultimately would be six privilege logs, collectively listing 109 documents that the Chamber sought to withhold – without legitimate basis – from the Commission.<sup>2</sup>

By August 15, the Ethics Commission, having reviewed the materials provided by the OAG, the OSIG and the Executive Chamber, had determined to initiate a formal investigation under Executive Law §94(12)(a).

The Ethics Commission’s staff had multiple meetings with senior staff of the Executive Chamber in an effort to obtain relevant documents. On September 10, 2007, senior Executive Chamber officials represented – incorrectly, in retrospect – that the Chamber had produced all non-privileged documents responsive to the Commission’s document request. In fact, over the remainder of 2007 and into 2008, in response to repeated Commission requests, the Executive Chamber produced thousands of pages of additional responsive documents.

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<sup>1</sup> A privilege log describes generally the documents being withheld and asserts a reason for doing so.

<sup>2</sup> The Executive Chamber produced a total of six privilege logs to the Commission, all in 2007, on the following dates: August 2, revised on August 10; August 16 and 28; September 14; October 4 and 16.

On September 5, 2007, as part of the Commission's ongoing efforts to obtain relevant documents, the Commission staff met with the Office of the Albany County District Attorney ("ODA"). The ODA later produced to the Commission relevant documents that the Executive Chamber had withheld from the Commission. For example, the ODA provided the Commission with a version of Exhibit 67 containing computer-generated information (metadata) showing the identity of the document's creator (Darren Dopp), the number of occasions on which the document was accessed from Dopp's computer (eighteen) and when this document was prepared (June 25 through June 27, 2007). This metadata was not reflected in the version of Exhibit 67 that the Executive Chamber had produced to the Commission. Exhibit 67 corresponded closely to the July 1, 2007 Times Union article about Bruno's use of State aircraft.<sup>3</sup>

On September 14, 2007, after the Executive Chamber represented that the Chamber had fully complied with the Ethics Commission's document request, the Commission – over the Chamber's objection – served a subpoena on the Chamber. The Commission served this subpoena to increase the likelihood that the Chamber would produce documents requested by the Commission, and do so in a timely manner.

**B. The Commission on Public Integrity  
Continues the Ethics Commission's Investigation**

On September 22, 2007, the Commission on Public Integrity assumed the Ethics Commission's duties and responsibilities, including pending investigations. To facilitate the Public Integrity Commission's investigation of the Executive Chamber's use

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<sup>3</sup> In fact, the day after the September 5 meeting between Commission staff and the ODA, the Executive Chamber produced via facsimile to the Commission the complete document the Executive Chamber had previously produced to the ODA.

of the State Police to gather information about Senator Bruno's travel, CPI Chair John Feerick formed a working group of five Commissioners, including himself (the "Working Group"). (The Working Group includes former prosecutors and attorneys with substantial investigative experience.) Throughout this investigation, Commission staff has consulted frequently with the Working Group (often daily), and the full Commission has met, in person and by telephone, to discuss significant matters.

Between September 26 and October 4, 2007, Commission staff took sworn testimony from five employees of the State Police: Glenn Miner, the Public Information Officer; Glenn Valle, Counsel; Michael Kopy, the Commander for Troop NYC; Investigator Anthony Williams and Felton.<sup>4</sup> The next week, members of the Executive Chamber testified under oath, including Baum, Dopp and Howard.

**1. Dopp's October 11, 2007 Testimony**

During his October 11, 2007 testimony, Dopp raised the specter that Executive Chamber lawyers had urged him to sign a false declaration that was submitted to the OAG. In this sworn statement to the OAG (EX 74), Dopp stated that he "regrets any appearance of impropriety" in how the Executive Chamber "sought and obtained" documents about Senator Bruno's travel from the State Police. During his Commission testimony, Dopp stated that his expression of remorse was "disingenuous," and that

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<sup>4</sup> Shortly before the Commission began to conduct sworn interviews, the ODA issued a report on September 21, 2007 entitled "Inquiry Into the Alleged Misuse of New York State Resources by the Office of Governor Eliot Spitzer and the Division of the State Police ("ODA Report I"). The ODA Report I indicated that Baum, Dopp, Howard, Felton, Christine Anderson, Press Secretary and Director of Marketing ("Anderson"), and Spitzer were interviewed, but not under oath. The report concluded that no violation of Penal Law §195.00, defining the crime of Official Misconduct, occurred because no "unauthorized exercise of an official function" was committed by any member of the Governor's Office or the State Police. ("[T]he compiling of information on the use of State resources and turning it over to the media do not appear to be an improper exercise of official function.") (ODA Report I at 35).

Executive Chamber lawyers strongly urged him to sign the statement. Specifically, Dopp testified that during a July 22 meeting with Peter Pope, Policy Director, David Nocenti, Counsel to the Governor, and Terrence Kindlon, Dopp's attorney, Dopp "protested" signing this statement of remorse. (Dopp 56) Dopp further testified: "I mean I did it. I signed it. I am not apologizing. I can't hold back from it because I did it. But I didn't sincerely believe it at that moment or now." (Dopp 63-64) Dopp also testified that the Executive Chamber lawyers had warned him that the OAG wanted to "prosecute" him (Dopp 56-57), and that this "matter would go away" if he signed the statement. (Dopp 59) According to Dopp: "It was couched as: You are going to take a professional hit here, but this is the path to closure." (Dopp 66-67).<sup>5</sup>

On October 15, 2007, after reviewing the Dopp transcript, the Commission's Executive Director spoke by telephone with the Chair concerning Dopp's testimony and his July 22 sworn statement. Later that day, as well as the next day, the Executive Director and staff conferred with the Working Group, which concluded that the Executive Director should consult with the ODA, which might have jurisdiction over the matter of Dopp's sworn statement.

On October 17, the Executive Director and staff met with District Attorney David Soares and two Assistant District Attorneys. On October 19, after reviewing Dopp's testimony to the Commission, District Attorney Soares informed the

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<sup>5</sup> This testimony is contradicted by the testimony – months later – of Dopp's lawyer, Terrence Kindlon. (Kindlon 123-124) According to Kindlon: "[N]obody coerced Darren to give a statement, though. I mean, you know, he wasn't backed into a corner or threatened." (Kindlon 118)

Commission that the ODA would present evidence about Dopp to a grand jury.<sup>6</sup> As a result, the Commission deferred taking testimony from Executive Chamber officials with knowledge of Dopp's July 22 sworn statement to avoid the impact of any Fifth Amendment issues on the ODA's investigation. The ODA expressed appreciation for the Commission's forbearance.

While holding certain interviews in abeyance, Commission staff did take sworn testimony from other Executive Chamber employees: Paul Larrabee, former Deputy Press Secretary (October 16, 2007), Christine Anderson, Communications Director (October 17, 2007), Marlene Turner, former Chief of Staff (October 17, 2007), and Mariya Treisman, a lawyer within the Executive Chamber at that time, who had served as the Records Officer (October 18, 2007).

## **2. The Commission Is Forced To Litigate Over Dopp's Diary**

During a December 5, 2007 meeting with the ODA, as well as from press reports, the Commission learned that Dopp may have kept a diary that might contain information relevant to the Commission's investigation. On December 6, 2007, the Commission issued a subpoena to compel Dopp's production of his diary. On December 21, Dopp moved to quash the Commission's subpoena. Also on December 21, the Executive Chamber and the Commission executed a written agreement confirming that the Executive Chamber would produce various documents withheld from the Commission, including all documents that the Chamber had provided to the ODA.

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<sup>6</sup> As described, *infra*, the ODA's investigation of Dopp and the Executive Chamber lawyers concluded on March 28, 2008.

On January 3, 2008, the Court denied Dopp's motion to quash the Commission's subpoena. The day before, the Executive Chamber submitted a letter to the Court advising that the Chamber possessed additional material, *i.e.*, eight pages of Dopp's handwritten notes, that Dopp claimed were privileged. Even though the Executive Chamber had produced these documents to the ODA, the Chamber refused to produce them to the Commission absent Dopp's consent or a Court order.

On the day of the Court hearing regarding Dopp's diary, the Executive Chamber produced more than 2,000 pages of additional documents to the Commission, notwithstanding the Chamber's prior representations that its document production was complete.

The next day, on January 4, 2008, as a result of the Court proceedings, the Executive Chamber produced Dopp's diary to the Commission, and shortly thereafter, the Commission received eight pages of Dopp's handwritten notes. (PD1512-1519) These notes reflected Dopp's supposed explanations for his conduct in gathering information from the State Police about Senator Bruno's travel. The Executive Chamber did not identify these Dopp notes in any log of supposedly privileged documents that the Chamber provided to the Commission.

In early January, 2008, the Commission requested that the Executive Chamber produce the documents listed on its various privilege logs, because those documents did not appear to be privileged. On January 16, the Executive Chamber refused to produce these documents. On January 20, the Commission authorized staff to commence enforcement litigation against the Executive Chamber. Early the next week, after being informed of the Commission's authorization to litigate, the Executive

Chamber permitted Commission staff to review the documents on the Chamber's privilege log. After review, Commission staff concluded that these documents, which did not appear to be privileged or work-product, were relevant to its investigation and should be produced. Two days later, the Executive Chamber produced to the Commission all of the documents previously withheld as supposedly privileged or work product.

### **3. The Commission Conducts Additional Sworn Interviews**

Following the resolution of these disputes over relevant documents, and after being notified that the ODA's criminal investigation of Dopp would not be adversely affected, the Commission recommenced taking sworn testimony from individuals whose interviews the Commission previously had held in abeyance. On January 23 and January 25, 2008, pursuant to a subpoena, Commission staff took the sworn testimony of Terrence Kindlon, Dopp's former counsel. On February 7 and 14, 2008, the Commission took the testimony of David Nocenti, under oath. And, on March 19, 2008, the Commission took Peter Pope's testimony.<sup>7</sup>

### **4. The ODA's Second Report**

On March 28, 2008, the ODA issued its second report (ODA Report II) about the Executive Chamber's use of the State Police to obtain information about Senator Bruno's travel. In this report, the ODA disclosed that Dopp had testified to the ODA that Governor Spitzer had a greater role in releasing documents to the press

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<sup>7</sup> Based on Executive Chamber claims made to the ODA, the ODA raised concerns with the Chair in February, 2008 regarding the alleged disclosure of confidential information by the Commission's Executive Director. These claims were reviewed by all of the Commissioners who unanimously concluded that the Executive Director's handling of the investigation was entirely proper. The Chair so informed the ODA, and the ODA continued to make available to staff confidential material relevant to the Commission's investigation.



concerning Senator Bruno's use of State aircraft than Dopp had told the Commission during his October 11, 2007 testimony.

In ODA Report II, the ODA determined that while Dopp's July 22 statement did not constitute perjury, he may have committed the misdemeanor crimes of Offering a False Instrument for Filing in the Second Degree (Penal Law §175.30), and Making an Apparently Sworn False Statement in the Second Degree. (Penal Law §210.35) Instead of prosecuting Dopp, the ODA granted Dopp immunity in return for his "truthful, under oath testimony on what occurred during 'Troopergate'." (ODA Report II at 6) This Report also concluded that "Executive Chamber attorneys present on July 22 did not coerce Dopp into signing the statement or solicit perjury." (ODA Report II at 5)

After publication of ODA Report II, the ODA permitted Commission staff to review the transcript of Dopp's January 23, 2008 testimony before the ODA<sup>8</sup> and an expanded, yet unpublished version of the ODA's report. The ODA advised Commission staff that the expanded version was redacted to exclude material deemed confidential pursuant to Criminal Procedure Law provisions concerning grand jury secrecy, but contained material the ODA had obtained pursuant to a partial waiver of privilege agreement with the Executive Chamber. The ODA also permitted Commission staff to read similarly redacted versions of transcripts of interviews the ODA had conducted as part of the inquiry that led to the ODA's second report.

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<sup>8</sup> On February 4, 2008, the Commission issued a subpoena to attorney Kindlon, seeking the transcript of Dopp's testimony before the ODA, any related notes, and a copy of Kindlon's letter to the Executive Chamber requesting reinstatement of Dopp. On February 28, 2008, the Commission also served a subpoena on Dopp seeking the transcript of his interview by the ODA. Michael Koenig, Dopp's new attorney, stated in writing that he would not produce the transcript, because he did not wish to interfere with the ODA's investigation. Staff then asked the ODA to produce the transcript, which the ODA later allowed Commission staff to read.

**5. The Commission Interviews Former Governor Spitzer and Attempts To Re-interview Dopp**

After service of subpoenas dated April 8, 2008 (requiring testimony) and April 18, 2008 (requiring documents), the Commission interviewed Governor Spitzer, under oath, on May 9, 2008.

On April 23, 2008, Commission staff re-interviewed Dopp in his attorney's office to determine whether Dopp had any additional information relevant to the Commission's investigation. As a precondition to Dopp's participation in this meeting, Dopp's attorney would not permit Commission staff to ask Dopp about (i) inconsistencies in his testimony before the Commission, (ii) inconsistencies between his testimony before the Commission and his testimony before the ODA, or (iii) questions as to which Dopp had previously provided answers under oath, either before the Commission or the ODA. With these limitations on the scope of Dopp's interview, Dopp provided no additional information. Since then, Dopp has declined the Commission's repeated offers to provide any additional information.

**6. Commission Enters Disposition Agreements With Baum and Howard**

On June 18, 2008, Baum executed a disposition agreement and, in connection with his disposition agreement, also executed a sworn affidavit stating:

Apart from the testimony given to the Commission by me on October 5, 2007, I have no knowledge of any other person (i) participating in the gathering, creation or dissemination of information or documents, as the case may be, by the State Police in 2007 concerning Senator Bruno's travel; or (ii) having personal knowledge of the conduct set forth in said paragraph (i) above.

On June 25, 2008, after Howard executed a disposition agreement on June 18, the Commission again took testimony from Howard describing how documents came

to be created by the State Police that set forth Senator Bruno's ground itineraries for his visits to New York City in May and June 2007. The Howard testimony, described in greater detail below, outlined Dopp's role in this process.

### **III. THE RECORD EVIDENCE**

#### **A. Senator Bruno's Refusal To Provide Travel Itineraries to the Executive Chamber**

From the start of the Spitzer Administration, in the wake of the resignation and criminal conviction of former Comptroller Alan Hevesi, the issue of travel on State aircraft by senior officials was a sensitive matter, including Senator Bruno's use of State aircraft. (Baum 38; Spitzer 42-44; Dopp 12)

In January 2007, almost immediately after Governor Spitzer's inauguration, the Executive Chamber sent to Senator Bruno's office revisions to the form that he, and other State officials, would be required to complete and submit to obtain Executive Chamber approval for use of State aircraft. (Turner 11-13) This revised form required Senator Bruno to submit to the Executive Chamber detailed ground itineraries as part of a request to use the State aircraft.

Former Secretary to the Governor, Baum, testified that the Senate Majority Counsel called him to complain about this new travel form, saying: "there's no way Bruno is going to be listing his itineraries for Governor Spitzer." (Baum 56) Baum discussed Bruno's objection with Counsel to the Governor and David Nocenti, and they agreed not to require Senator Bruno to submit his itineraries prior to travel in State aircraft. (Baum 59-60)<sup>9</sup>

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<sup>9</sup> Nocenti did not recall this conversation. (Nocenti 42)

Senator Bruno had operated for twelve years under procedures, some written, promulgated by the Pataki Administration for use of State aircraft.<sup>10</sup> (EX 129; Nocenti 224) Ultimately, the only new procedure adopted by the Spitzer Administration was to add the “certification” to the form, required to be filled out when State aircraft were used, that the trip included official State business. (*Compare* EX 127 and EX 128) (Nocenti 33-35, 228; Turner 15, Baum 59-60)<sup>11</sup>

Both Baum and Dopp testified that Baum never told Dopp of his conversation with the Senate Counsel. (Baum 133, Dopp 112-113)<sup>12</sup> Former Governor Spitzer testified that he had “heard at some point the Senator was worried about a separation of powers issue, and did not want to provide some information” (Spitzer 47), but he could not recall who had told him. (Spitzer 48) Spitzer stated that to avoid a separation of powers problem, while insuring and documenting appropriate use of State aircraft, the Executive Chamber required the certification noted above. (Spitzer 179-180)

**B. Senator Bruno’s Early-May Helicopter Request**

From April 30 through May 1, 2007, Baum and Marlene Turner, Governor Spitzer’s Chief of Staff and the official within the Executive Chamber responsible for use of State aircraft, exchanged emails over approval of a request by Senator Bruno to use a

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<sup>10</sup> The written procedures that had been in place during the Pataki administration addressed the valuation of non-State trips for tax purposes, but did not specifically prohibit such use. (EX 129, §IV)

<sup>11</sup> The form asks the official to state the purpose of the requested use of the aircraft. Although consideration was given to setting reimbursement requirements in the form (EX 121), the concept was abandoned in the final version of the form and a determination made merely to require the certification. (Nocenti 35-37; EX 128)

<sup>12</sup> According to Dopp, if he had been informed of Senator Bruno’s objection to providing itineraries to the Executive Chamber prior to travel in State aircraft, Dopp “would have sensed that it would create a problem for the administration and [Dopp would have] raised the problem with the group [meaning Spitzer, Nocenti and Baum] to figure out what to do.” (Dopp 94,113)

State helicopter. (EXs 37, 38, 39)<sup>13</sup> Baum's view was that "as long as the proper forms were filled out, it's fine with me." (Baum 22) He testified that he relayed this position to Turner. (Baum 25-26, Turner 5)<sup>14</sup> Spitzer testified that his position was that the Executive Chamber would not deny use of the aircraft as long as the requestor's stated use was appropriate. (Spitzer 53)

**C. Dopp's Proposed Press Release About Senator Bruno's Travel**

In mid-May, Governor Spitzer initiated an email exchange with Baum regarding Senator Bruno. On May 15, Spitzer sent Baum an email that had no text, but the subject was: "Idea abt jb I want to discuss with u." (EX 42) Baum testified he did not recall what the Governor's "idea about jb" was. (Baum 77-78) Spitzer testified that he had no idea what this email referenced. (Spitzer 75) On May 16, Spitzer again emailed Baum, this time concerning Bruno's fund-raising activities. (EX 43) Baum responded that "... there are things he's done we can publicize." (EX 43)

Governor Spitzer responded to Baum that he wanted to "punch back" at Senator Bruno, and "he is making personal attacks and i [sic] am really [going to] go after him at some point." (*Id.*) Baum testified that this email concerned campaign finance reform, and that Senator Bruno's fund-raising practices were the "things he has done" that could be publicized. (Baum 81) Spitzer testified that the phrase "punch back" in his email referred to his irritation at remarks the media reported that Senator Bruno had

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<sup>13</sup> When asked about why he was exchanging these emails with Turner, Baum testified that Senator Bruno had been using the State helicopter frequently during the first five months of the Spitzer Administration, and so "periodically [the issue of his usage] would bubble up." (Baum 22)

<sup>14</sup> Baum testified that a May 1, 2007 email from Turner to Baum regarding a request by Senator Bruno for use of State aircraft indicating, "Eliot agrees we should okay" (EX 39), reflected that Turner had spoken to Governor Spitzer about using the revised form as a basis for approval, and that the Governor had agreed with Baum. (Baum 29)

made about Spitzer's wife, Silda. Spitzer testified that when he said in the email "I'm going to go after him at some point," he was stating his intention to "[r]eveal the hypocrisy of what he [Bruno] was saying in his personal attacks against me and my wife." (Spitzer 76)<sup>15</sup>

Howard, who was then the Executive Chamber's State Police liaison and the conduit for all of the State Police information and documents that Dopp ultimately obtained and disclosed to the Albany Times Union, described what Howard believed may have been the first time that Dopp asked him to get information about Senator Bruno's travel. (Howard 57-58) On or about May 17, Dopp contacted Howard as part of the Executive Chamber's preparations for a "leaders meeting." Howard told Dopp, "the Senate is telling us they can't do it because they have this big fundraiser in the City they are flying to tonight." (Howard 58) According to Howard, Dopp responded in an "incredulous voice," saying "[t]hey're not flying to this fundraiser; are they?" When Howard responded to Dopp that he did not know, according to Howard's testimony, Dopp then asked, "'Could [you] find out?'—you know, [find] out whether or not he [Bruno] was flying." (Howard 58) As Howard described his conversation with Dopp, Dopp did not mention any media request, and Dopp's inquiry appears to have been an idea engendered by what Howard told Dopp about "the Senate" perhaps flying to a fundraiser.

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<sup>15</sup> See, e.g., F. Dicker, "GOP Launches Blitz On Spitz – Call Him Reform 'Hypocrite'," New York Post (May 17, 2007) (reporting Senator Bruno's response to disclosure that Spitzer's wife sponsored "a ritzy, Central Park South, Democratic Party fund-raiser" for which individuals and limited liability corporations were being solicited for amounts nearly ten times Spitzer's self-imposed contribution limit) (copy produced by Governor Spitzer's lawyer in response to the Commission's request for copies of any news articles to which Spitzer testified he was reacting in EX 43).

Also in May, Dopp testified that he spoke with Attorney General Andrew Cuomo, whom he viewed as a friend, about looking into Senator Bruno's use of State aircraft. According to Dopp, Attorney General Cuomo expressed reservations about the Executive Chamber's motive for looking into Senator Bruno's use of the State aircraft and told Dopp that he perceived the Executive Chamber's review as an effort to discredit Senator Bruno. Dopp testified he told Cuomo that was not the case. (Dopp 135-136)

During mid-May, Dopp told Baum he had received a media request for documents regarding air and land travel by Senator Bruno and Governor Spitzer. Dopp told Baum that he was worried that it would look like "we had condoned improper behavior." Dopp said he wanted to "get ahead of the story" by stopping Bruno from using the State helicopter. (Baum 50-52)

On May 17, after receiving information about Senator Bruno's itinerary for a trip he had taken that day on State aircraft, Dopp proposed issuing a press statement calling into question whether Bruno had misused the State aircraft to attend a fund-raiser in New York City that day. (Dopp 92-94, EXs 30, 41) The proposed press release (EX 30) stated:

STATEMENT BY DARREN DOPP, COMMUNICATIONS  
DIRECTOR FOR THE GOVERNOR, REGARDING SENATOR  
BRUNO'S USE OF STATE AIRCRAFT

Our office has received inquiries regarding Senator Majority Leader Joe Bruno's use of state aircraft.

Our policy regarding use of the aircraft is clear: The state plane and helicopter may be used only for official state business.

The Senator makes periodic requests for use of a state helicopter and did so recently for use today. At the time he made the request, the Senator attested that he and his staff required transportation to New York City for "legislative meetings."

Based upon this claim, use of the state helicopter was granted for the Senator and three staff members to depart late this morning and return early tomorrow morning.

Today, our office learned that Senator Bruno's "legislative meetings" were to be held at C.V. Starr & Co. at 12:30 pm and the Sheraton Hotel at 3:30 pm. We have asked the Senator to verify that these meetings involve official state business.

Subsequent to receiving his reply, we will determine what action is necessary and appropriate.

While this proposed release began with a statement that there had been media inquiries to the Executive Chamber regarding Bruno's use of State aircraft, except for Dopp's own testimony, there is no record evidence of such inquiries. Pope testified that, after Nocenti designated him on July 13, 2007 as a Special Counsel in connection with the various investigations, he asked Dopp about such media inquiries, and requested that Dopp look for any documents pertaining to them and provide them to Pope. (Pope 20-21) Pope never received a response from Dopp. (Pope 21, 26, 54)<sup>16</sup>

Dopp's proposed release also incorrectly set forth the then-governing policy regarding use of State aircraft. The statement said, "[o]ur policy regarding use of the aircraft is clear: The State plane and helicopter may be used *only* for official state business." (Emphasis added) Dopp was familiar with issues regarding State aircraft usage, since questions concerning that topic arose during Dopp's tenure with the administration of Governor Cuomo and Dopp was involved in answering those questions. (Dopp 12) Under the aircraft policy that the then-Executive Director of the Ethics

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<sup>16</sup> Nor has the Commission received any documents from any source, including Dopp, documenting mid-May media inquiries. Indeed, Commission staff specifically asked Dopp's attorney in June, 2008 whether Dopp could provide anything, other than his own testimony, to corroborate that he had received media inquiries regarding Bruno's State aircraft usage in or around May, 2007. Despite repeated requests for additional evidence related to the Commission's investigation, Dopp's attorney has not provided any additional documents or information to the Commission in response.



Commission, Richard Rifkin, had articulated in 1995 (EX 130), a State official could use State aircraft for mixed purposes, *i.e.* for both State and non-State business, including political events, without reimbursing the State. *See* Commission on Public Integrity Advisory Opinion No. 07-03, note 2.<sup>17</sup>

The unwritten policy regarding the use of State aircraft in effect at the time of Dopp's proposed statement was unclear in key respects. Nocenti testified that the aircraft policy, as he understood it, lacked specificity because it permitted State aircraft to be used for a trip that mixed State and non-State business, including political business, but required that the State business "predominate." (Nocenti 215-216) According to Dopp, the prevailing policy was different. He was advised some time after May 17 by Rifkin, who was now working in the Executive Chamber, that a mixed-political/government trip on State aircraft "would only be a problem if there was absolutely no governmental [purpose] whatsoever." (Dopp 153-154)

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<sup>17</sup> Rifkin, who later became Spitzer's Ethics Officer, had advised James McGuire, Governor Pataki's Counsel during Rifkin's tenure at the Ethics Commission, that mixing political activity with State business was permitted on a trip in which State aircraft were used. This was oral advice and not a formal, written policy. Nonetheless, that was the policy in effect during the period relevant to this Commission's investigation.

**D. The May 17 Discussion About Dopp's Proposed Press Release<sup>18</sup>**

The proposed press statement that Dopp prepared on May 17 was never issued because Governor Spitzer, Baum, and Nocenti agreed that the existing policy permitted Senator Bruno to use the aircraft for mixed purposes, including political events, and that the Senator's itinerary for the May 17 trip at issue was insufficient to demonstrate a violation of the policy. (EXs 5, 30; Dopp 95-96, 154-155; Baum 46-49; Nocenti 76-78; Spitzer 71-72)<sup>19</sup>

Dopp was frustrated with this decision. (EX 77; Anderson 52-53) But, Governor Spitzer and Baum told Dopp to "stand down" from conducting an internal review of Bruno's use of State aircraft and only respond to a FOIL request that they believed he had received and to which he was preparing a response. (Dopp 153 and 159; Baum 66-70, 99-100) Dopp did not actually receive a written FOIL request from the Times Union for Senator Bruno's State aircraft usage records until approximately six weeks later, on June 27. (EX 66) After the May 17 meeting, Nocenti, Baum and Spitzer did not recall giving Dopp any further directions to monitor Bruno's use of the aircraft. (Nocenti 66-67, Baum 74-75, Spitzer 65-66)

Dopp testified he was authorized at the May 17 meeting to "monitor" Bruno's use of the State aircraft. (Dopp 113) Spitzer testified that he did not recall

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<sup>18</sup> The evidence shows that on the May 17 Spitzer, Baum, Nocenti and Dopp discussed Dopp's proposed press release. Baum testified that Dopp sent him the proposed press statement via email (Baum 62) and indicated he had a telephone discussion with Dopp and Spitzer about it. (Baum 68) The testimony of Spitzer, Nocenti and Dopp indicates there was a meeting about the proposed press release. (Spitzer 59; Nocenti 57; Dopp 94-95) In addition, Dopp testified that Turner may also have participated in the meeting (*Id.*). Dopp was unsure whether Spitzer participated in the group discussion or "we discussed it with Eliot later on." (Dopp 96)

<sup>19</sup> Spitzer testified it was his understanding that Dopp was responding to media inquiries. (Spitzer 64) Spitzer testified he did not recall seeing the Senator's itinerary at a May 17 meeting regarding the proposed press release. (Spitzer 69-70).

giving Dopp any direction to “monitor” Bruno’s use of the State aircraft, but said that since “there was an outstanding media inquiry about it ... this was something that continued to require some attention. Precisely what, I don’t know.” (Spitzer 65-68) Nocenti testified “[i]f you are asking me do I have any recollection of someone saying, Darren, let’s track him, let’s follow him, let’s get his itineraries and, you know, keep track of him, no. I can say that that did not occur, you know, because ... that did not occur.” (Nocenti 69) Pope testified that as Special Counsel assigned to the OAG investigation, he had no reason to believe that Dopp was authorized to monitor Bruno’s movements with respect to the aircraft and ground transportation. (Pope 83-84) Baum testified that “I and the Governor both felt it was a mistake to put out something like this. And we said: Just fulfill the FOIL in the appropriate way. Don’t do anything proactive.” (Baum 66)

Dopp testified that Spitzer was in the room for “two seconds” during the May 17 meeting and was not present when Dopp claims he was authorized “by the group” – whom Dopp identified as including Baum, Nocenti and possibly Turner, but not Spitzer – to monitor Senator Bruno’s travel. (Dopp 102,120-122, 144)

With regard to whether Governor Spitzer later learned, prior to July 1, that Dopp was monitoring Bruno, Dopp testified before the Commission that he “assumed” Baum told Spitzer around May 18 (Dopp 144):

Q. And in your discussions as to standing down on this now and continuing to monitor, was the Governor part of those discussions?

A. Like I said, he came in. And for a moment he was just like “Eh,” without knowing what’s on the schedules we really don’t know. But, the Governor was not there when the group decided: Let’s officially stand down for now and continue to monitor. No, he wasn’t standing there when that was

decided. I think Baum – Rich might have conveyed that to him that that was our discussion. But I just sort of let the matter lie at that point knowing I would be back to them at some point. Sometimes he asked a questions [sic] about where is that? Whatever happened to – other times I said, “Hey. There’s another trip,” or “There’s another inquiry, or : We’ve got to be especially careful given the scrutiny.[“]

Q. It was your understanding that the Governor was aware of the status as far as standing down and continuing to monitor?

A. Most assuredly, he said: Nah, I don’t want to go that route. And that was clear from his testimony to the D.A., the news release he was not specifically aware of, I don’t think. But he was aware of the notion that we would do something internally to review the senator’s use. I know that for a fact because I mentioned it to him.

Q. You mentioned what to him?

A. When he asked me again about what was going on with the aircraft again, I said we just decided to hold off and that was it. Hold off for now.

Q. When was the next time? When you say when he asked you again when was that?

A. In the days that followed, close to the 17<sup>th</sup>, a few days afterwards. I think the catalyst for that was Rich telling him. It might have been the 18<sup>th</sup>. Rich probably would have told him: We’re not going to do that. Instead, we are just going to watch things.

Q. Do you know that Rich told him that?

A. I assumed so, because when Eliot came back to me it was with the understanding that we had stood down.

Q. And, was it with the understandings that you were continuing to monitor the situation?

A. He didn’t say that specifically, but it was all kind of implicit. He didn’t say again – He didn’t directly do anything in particular. Put it that way.

Q. Do you recall what he said?

A. He was really quick and really kind of cryptic. It’s just like: Anything doing on the aircraft issue? And it’s like, no. I think we have conclusively concluded that with the exception of two trips for you [*i.e.*, Governor Spitzer] we should be okay. And then: Well, what about Joe? Well, we’re just going to watch it. And that was it.

Dopp places his conversations with Governor Spitzer on either May 18 or 19. (Dopp 144-146) There is no document in the record that contains any reference to the Governor or anyone else authorizing Dopp to monitor Senator Bruno's travel.

**E. The Executive Chamber "Monitors" Senator Bruno's Travel**

Dopp testified that, after the May 17 discussion regarding the proposed press release, he continued to monitor Senator Bruno's flights and ground transportation requests through William Howard (Dopp 159), the Executive Chamber's liaison for the State Police. Howard testified that he never advised his direct supervisor, Michael Balboni, Deputy Secretary for Public Safety in the Office of Homeland Security, of Dopp's requests for information about Bruno because it was a politically-sensitive issue. (Howard 166-168)

Emails between Howard and the State Police, and between Howard and Dopp, as well as emails among the State Police personnel, show that the State Police was reporting, sometimes on a real-time basis, to Dopp on Senator Bruno's use of the State aircraft and his ground itineraries. (See EXs 16-28, 29, 31-36)

Baum knew that Dopp was gathering records of Senator Bruno's travel while they were discussing the release of the proposed statement on May 17, but testified that he did not understand in detail that the records were coming from the State Police. (Baum 95)

Former Governor Spitzer testified he did not know how the Executive Chamber obtained information about Senator Bruno's travels (Spitzer 69), but that he had "a sense that I knew that Bill had somehow been involved in this issue," and that he knew

“there was some nexus because of Bill Howard’s relationship with the State Police.”  
(Spitzer 143, 144)

On May 23, 2007, Dopp advised Baum in an email entitled “SP Records” that Howard had told Dopp “records exist going way back. Itineraries showing where the individual was taken and who was in the car.” (EX 45) Dopp further told Baum that Howard had already had such records regarding the Senator’s “last two trips.” (EX 45) Dopp also stated in his email that he had “a new way to proceed re the media.”<sup>20</sup> Dopp’s May 23 email supports an inference that Baum knew that Dopp, through Howard, was in communication with the State Police concerning Senator Bruno’s travel records and that those communications were disclosed to Baum in connection with Dopp’s “new and different way to proceed re media.”

Baum did not recall receiving this email. (Baum 86) Baum testified that Dopp was keeping him apprised of his response to a supposed FOIL request.<sup>21</sup> (Baum 88) Baum also testified that, although he would not ordinarily be kept apprised of a FOIL response, he would be with respect to such requests involving a sensitive matter. (Baum 89)

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<sup>20</sup> Dopp testified that his May 23 email (EX 45) was a follow up to the direction to him to “stand down” following the May 17 meeting, but to “monitor” the situation since there were open questions. Dopp further testified that his comment to Baum in Exhibit 45 concerning “a new way to proceed re the media” was a reference to the idea Dopp discussed with Pope of referring Bruno’s helicopter usage to a prosecutor. According to Dopp, such a referral would limit any media response to a simple statement that the matter has been referred to law enforcement. (Dopp 175) Dopp testified that he also suggested to Baum and Nocenti, both of whom rejected the idea, that the Executive Chamber could refer the issue of Bruno’s State aircraft usage to the OSIG. Nevertheless, Dopp testified that he understood that he should continue to monitor Bruno’s use of the aircraft, which he did. (Dopp 179)

<sup>21</sup> When asked about his understanding of the Chamber’s responsibility in responding to FOIL requests, Baum said that FOIL required the Executive Chamber to release Executive Chamber documents. (Baum 135) Baum testified that the Bruno itineraries that Dopp eventually released were State Police documents, not Executive Chamber documents. (Baum 136)

Shortly after receiving the itineraries of Senator Bruno's travel (EX 45), Dopp testified that he shared this information with Peter Pope, who had served as the head of the criminal division under Attorney General Spitzer.<sup>22</sup> (Dopp 174) In a July 16, 2007 email to Nocenti (EX 122), Pope described two conversations he recalled with Dopp "during the events leading up to July 1."

According to Pope's July 16 email, during one of the two conversations Dopp showed him one of Bruno's flight requests and asked Pope whether he believed it might be evidence of a crime. (EX 122) Pope told Dopp that he doubted that the document could be a basis for a viable prosecution and discussed with Dopp whether "it could be a civil matter along the lines of the Hevesi case." (EX 122) Pope advised Dopp to speak to Nocenti. (EX 122)

In the second conversation with Dopp described in Pope's July 16 email, Pope states that he and Dopp reviewed together on Dopp's computer statutory provisions describing circumstances under which a State employee might be required to report certain suspicions to the OSIG. (EX 122) Again, according to the July 16 email, Pope advised Dopp to discuss the matter with Nocenti. (EX 122)

Dopp's testimony concerning the two conversations with Pope is consistent with what Pope described in EX 122, Pope's July 16 email to Nocenti. Dopp testified that, as Pope says he suggested, he followed up on both conversations with Nocenti and Baum. (Dopp 175-180, 212-215) This is consistent with Dopp's testimony that he consulted with Rifkin, Baum, Nocenti and perhaps Spitzer concerning how to handle the FOIL request and the documents in his possession. (Dopp 34-36)

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<sup>22</sup> Dopp also worked in the Attorney General's Office under Spitzer as Communications Director.

On May 23, Investigator Williams from State Police Troop NYC emailed Senator Bruno's schedule to Felton, and stated "[a]s 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)." (EX 63) Later, Williams promptly informed Felton of a change to the Senator's schedule that added a meeting with New York City Mayor Michael Bloomberg. Felton immediately forwarded this information to Howard. Howard quickly relayed this information to Dopp. (EXs 34, 63; Dopp 156)

Four former State Police Superintendents testified that the State Police did not maintain records of Bruno's ground transportation assignments and agreed that, historically, the State Police had never released the ground itineraries of a public official – even after a trip. (Bennett 14-17; Constantine 12; McMahon 13-14; Felton OAG 103-106 and Felton 83)

The testimony of Dopp and Howard does not align regarding the records that the State Police maintained concerning Senator Bruno's travel. Dopp testified that Howard told him that the State Police maintained ground itineraries and Dopp sought to have Howard obtain those records. Howard testified he was referring to flight manifests that did not include detailed ground itineraries, and that Dopp must have misunderstood which documents he was referring to when he sent the May 23 email to Baum. (EX 45) (*Compare Dopp 171-175 with Howard 169-171*)

On May 27, Spitzer emailed Dopp, Baum and Christine Anderson stating that he would like "to discuss a post session strategy re: bruno and travel generally." (EX 46) According to Baum, this email concerned Governor Spitzer's plan to travel around the State and to campaign against individual Republican Senators. (Baum 109) Dopp



testified this email concerned Spitzer's plan to travel to individual Senator's districts. (Dopp 207-209). Spitzer testified his travel comment referred to his own planned travel to explain what his Administration had achieved during the legislative session and had "[n]othing at all" to do with Senator Bruno's use of State aircraft. (Spitzer 86-87)

**F. The Executive Chamber June 3 to 6 Communications About Senator Bruno's Travel**

On the morning of June 3, 2007, following an article in the Albany Times Union about a federal investigation of Senator Bruno, Dopp and Baum exchanged emails. Dopp wrote: "I guess we know why Bruno's folks have been so jumpy of late." Baum replied, "[Y]eah no kidding." Then Dopp replied, "[t]hink a travel story would fit nicely in the mix." (EX 47) There is no email response from Baum to this last suggestion that was provided to the Commission.

Governor Spitzer was copied on these emails concerning the proposed "travel story." (EXs 173, 174) He testified, "it would seem logical" that there were subsequent conversations among senior staff in the Executive Chamber concerning this story, although he did not recall any. (Spitzer 95-96) He also claimed that the Senator's travel was not an issue that he cared about. (Spitzer 91)

Within two hours, Howard also emailed Baum saying, "Bruno got hammered pretty good by [James] Odatto in the T.U. In my gut 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." (EX 48) Baum responded, "I agree. Doubt he would resign seat but he couldn't stay as leader." (*Id.*) Howard then responded: "The impending travel stuff implies more problems – particularly in the tax area I think. I

think timing right for that move.” (*Id.*)<sup>23</sup> Again, there is no evidence of any email response from Baum.

According to Howard, he thought that Baum knew when Howard sent this email that information was being collected on Senator Bruno’s travel, but Howard had no conversation with Baum to confirm this. (Howard 182) Howard was not aware, however, that Baum had indicated he did not want the Senator Bruno travel issue pursued other than to respond to a FOIL request that Baum believed had been received. Howard testified he never had a conversation with Baum or Dopp about not pursuing the Bruno travel issue. (Howard 188) Baum testified he had no recollection of telling Howard about the possibility of releasing a Bruno travel story. (Baum 123)<sup>24</sup>

Although Howard’s email indicates he thought the time was right for a “move” on “the impending travel stuff,” Baum assumed that Howard had spoken to Dopp regarding not pursuing the Bruno travel issue. (Baum 124) Baum could not recall any conversation with Howard indicating that the issue of releasing the Bruno travel story was dead, nor did Baum take any steps to ensure that Howard and Dopp were on the “same wave length” on the issue of not pursuing Senator Bruno’s travel. (Baum 125-126) Baum testified that he did nothing in response to either of these emails from Dopp and

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<sup>23</sup> As it turns out, on October 12, 13 and 15, 2007, a series of news articles reported that the Senate Minority Leader was involved in an effort to prompt the Internal Revenue Service to investigate Bruno’s failure to report attributable income resulting from his use of State aircraft for non-State matters. “Gov In On Trick to Sic IRS on Bruno,” New York Post (October, 12, 2007); “State GOP Seeks Probe of IRS Plot Against Bruno,” Newsday (October 13, 2007); and “Even Dems Fear ‘Dirty Tricks’ from Spitzer,” New York Post (October 15, 2007).

<sup>24</sup> With respect to Howard’s comments concerning Bruno’s additional difficulties in the “tax area,” Baum testified that he “wouldn’t have tried to delve into what he’s doing. I have no capacity to because I didn’t have the itineraries to see what he had done with the vehicles.” (Baum 129) By the time Baum received Howard’s email, Baum had already received Dopp’s May 23, 2007 email indicating that Howard had “[i]tineraries showing where the individual was taken and who was in the car.” (EX 45)

Howard, and that he did not believe there was any need to re-engage with Dopp on the issue of a Bruno travel story. (Baum 117) Governor Spitzer testified “in May, when the initial inquiry was raised, inevitably, you’re going to start gathering information, how, when, where, from whom, I didn’t know, I don’t know, and frankly didn’t care.” (Spitzer 156)

**G. The State Police Creates Records of Senator Bruno’s Travel**

On June 6, Howard asked Felton for ground transportation itineraries for Senator Bruno’s three May trips. (Felton 86, 109, 121) Based on documents produced to the Commission, these three trips were selected from among eleven trips for which Senator Bruno had used State aircraft from January through May, 2007.<sup>25</sup>

Felton informed Howard that the State Police did not maintain ground transportation itineraries. (Felton 111) Howard told Felton to reconstruct the events and Felton did so. (Felton 110-113) Felton forwarded the information pertaining to the trips on a single sheet of paper. (EX 23; Felton 112) Later, Howard asked Felton to put the information concerning these three trips on three separate sheets of paper, one trip *per* sheet. Again, Felton complied. (Felton 114; EXs 1-3, 35)

Howard did not initially recall directing Felton to create these documents, or that he had received a request from Dopp to do so, but stated that if Dopp had asked him to do so, he would have. (Howard 200-202)

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<sup>25</sup> See SP F-0492ff (flight manifest and other documents related to trip on January 11, 2007); SP F-0493ff (flight manifest and other documents related to trip on January 18, 2007) and SP F-0490ff (related to return trip on January 19, 2007); OSIG 00164ff (flight manifest and other documents related to trip on February 8, 2007); SP F-0444ff (flight manifest and other documents related to trip on March 1, 2007); SP F-0455 (flight manifest and other documents related to trip on March 15, 2007); E – 00419 (flight manifest and other documents related to trip on April 5, 2007); E – 00412 (April 20, 2007); OSIG – 00098 (flight manifest and other documents related to trip on April 23, 2007).

Howard initially testified:

Q. Can you conceive of a reason that Superintendent Felton would provide this in a separate format absent a request from you to do so?

A. I don't know why he would have done that. I can tell you I don't recall asking for it to be put into this format. And the other thing I would say if I am following where you may be going, there was no interest on my part, no interest whatsoever in trying to make documents appear as though they are contemporaneous documents or that they are somehow publicly releasable as FOILable information. If they came in this way, they came in this way. And if I asked for them to be put on separate pieces of paper, then if that's what Preston Felton said, that's what Preston Felton said. I don't remember making the request. I don't know why they would have come to me in this form. Maybe it's easier to understand as separate pieces. But I can tell you there's no other motive for them being placed in this format. I can't conceive that I would have asked for the documents to be placed in this format or any motive. (Howard 202-203)

After agreeing to resolve this matter by admitting in writing that he violated the Public Officers Law, Howard later testified that Dopp had specifically asked if Exhibit 23 could be separated into three pages (Howard II 5, 8)<sup>26</sup> and requested that separate headings be placed on each document after a discussion with Dopp "that the headings should in some way reflect the dates or the fact of the trip". (Howard II 16) Howard testified that Dopp gave him instructions as to what the headings should convey. (Howard II 10-11)

Howard testified that he then relayed the instructions he had received from Dopp to Felton, as follows:

A. He [Dopp] had asked for me to see if I could have the document [EX 23] put together. I got the document and brought it down.

Q. And you showed him the document?

A. Yes.

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<sup>26</sup> Howard testified before the Commission on two occasions, October 9, 2007 and June 25, 2008. Reference to Howard's June 25 transcript is cited as "Howard II."

Q. Did you have any conversation regarding it?

A. He had a response – I left the document with him, and then I received another call from him to come down. I went down to his office, and he asked if the document could be separated into separate pages.

Q. How long after you initially brought him the document did you receive that phone call?

A. I was barely back in my office when I got that call.

Q. A matter of minutes?

A. Yes.

Q. How long after you got the phone call were you back in his office?

A. Within minutes. As soon as I got the call, I went down to his office.

Q. Can you estimate how long from the time you first came to him?

A. Within minutes.

Q. When you came back the second time, was anyone else in his office?

A. No.

Q. And did you have a discussion regarding this document at that time?

A. Yes. He asked if the document could be put into separate pages.

He asked if some sort of heading could be put onto it.

I did make a reference to this in the last note on the document.

Q. Go ahead.

A. In an unknown hand there is a notation which said “bond paper” on this document.

That is not something that I ever recall. It's not a word or phrase that I generally would use.

I don't remember asking – when I went back to my office and spoke to Preston Felton, I don't remember telling him that I needed this on bond paper, I just asked for separate sheets, with some sort of heading. I didn't indicate to him, I don't think, what I wanted on the heading.

Q. Just so we are clear, the comment you got back from Mr. Dopp was to make some changes in format with respect to this information; is that correct?

A. To separate it out into separate pages, put in into separate pages, each block into separate pages.

Q. By "each block," what do you mean?

A. On this document there is a May 3rd and 4th, a May 17th, and there is a May 24th. To have each one of those sections put into a separate page document.

Q. And none of the separate blocks, as you refer to them, have any sort of a heading; is that fair to say?

A. That's correct.

Q. Did you have a discussion with Mr. Dopp that you can recall regarding what sort of a heading the separate pages should have?

A. I don't remember specific language, but I remember him holding up his hand and indicating separate heading, heading up on top. I don't recall specific words that were said, that I was going to give to Preston Felton, what those documents would be titled.

Q. Anything else you recall about that conversation with Darren Dopp?

A. Not that conversation, no.

Q. What did you do after you finished that conversation with Mr. Dopp?

A. I went back down to my office and called Preston Felton, and had a conversation with him, in which I asked if we could have this put into separate pages.

Q. Did you say anything else to Mr. Felton at that time?

A. I'm sure I asked for the headings to be put on it, but I don't recall asking for the bond paper.

Q. And when you started your conversation with Mr. Felton, how did he know what document you were referring to?

A. I think this is all a very short time frame.

He didn't ask the question as to what I was referring to. He seemed to have a knowledge of what I was referring to.

Q. By his responses, you took him to understand what you were referring to?

A. Yes.

Q. With respect to this issue of the headings, did you have any discussion with Mr. Felton on that point?

A. I'm sure I had a general discussion to put a heading on it.

I don't recall giving him the exact language of what that heading would be.

Q. When you say you had a general discussion, can you recall at all what you said?

A. I don't know if Darren was specific in what he wanted in the heading.

He made this signal with his hand about putting a heading on the documents.

I'm sure I had that discussion with Preston to indicate that we would like to have each one of these separately delineated out with a heading.

I don't recall giving him the specific language of what it would be.

Q. Did you give him a concept of what the heading should be?

A. We may have had that discussion, but I don't recall the specifics.

Q. How long was this conversation with Mr. Felton?

A. I would say very brief.

Q. Did you have any conversations with anyone else regarding Exhibit 23, or this matter that you just described, where Darren Dopp requested that you put it into separate documents?

A. No. There were no conversations.

Q. I think you mentioned this. I just want to be clear.

Your conversations with Preston Felton, you are sure it was after you left Mr. Dopp's office the second time?

A. Yes.

Q. Can you place it in the time of day?

A. Not with accuracy.

MR. TEITELBAUM: Can you give us the day?

THE WITNESS: No. It has just been so long a period of time that I cannot recall.

It would be whenever this document was given to me, it would be that day.

Q. And after that, after that conversation with Superintendent Felton, did you eventually get back documents along the lines that you discussed with Darren Dopp?

A. Yes.

Q. And about how long was that after you had the conversation with Superintendent Felton?

A. I can't recall that with accuracy.

Q. Can you estimate it?

A. No. Not accurately. I want to make sure what I say is right. I can't recall.

Q. I don't want you to guess.

A. Yes.

Q. Estimates are different than guesses.



A. I know.

Q. Was it within a week?

A. It was within a week, but I just don't know the time frame.

I can't recall it.

(Howard II 7-14)

Notably, Dopp testified that he first learned from the media after July 1 that the State Police had created these documents reflecting Senator Bruno's ground travel itineraries. (Dopp 243-244)

At the time the itineraries were created, Dopp already had received the emails from Felton to Howard that had been forwarded to him containing the same information regarding Bruno's May 24 trip, and Dopp already had been given Bruno's May 17 itinerary. (Dopp 85 and 91, EX 63) Dopp testified that he did not believe such informal internal emails that contained this information to be responsive to a FOIL request. (Dopp 241-242) Thus, the only reason supported by the record for the request to create the documents is, as Dopp testified, Dopp's need to have the information in a format that appeared to make it responsive to a FOIL request (Dopp 241-24). At the time the itineraries were created, however, no such request had been received.

The ground transportation assignments for Senator Bruno's three trips in May, 2007 that were created on June 6 were based upon the recollections of the investigators believed to have been assigned to Bruno for those trips. (Williams 50-52; Kopy 29-30)<sup>27</sup> The documents were formatted to look similar to official State Police records. They were not internal memoranda reflecting a synopsis of the transportation

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<sup>27</sup>The reconstructed itinerary for the May 17 trip was inaccurate, because the wrong investigator was interviewed (Williams 54-55; *compare* EX 2 with EX 5).

assignments created after the fact, ostensibly from memory, and then provided by the State Police. (Williams 59-60, EXs 1, 2, 3)

Although Felton testified that he believed Howard was working on a FOIL request from the media (Felton 44), Felton provided these documents to Howard without conferring with Counsel for the State Police as to whether they should be released to the media under FOIL, or contained information that should be redacted. (Felton 58) In mid-May, Felton had consulted with State Police Counsel on the original request for travel materials from the Executive Chamber seeking the flight manifests, not itineraries. (Felton 50-55; Valle 13)

Both Felton and Miner testified that information on the helicopter's tail number, for example, would not be released for security reasons (Felton OAG 105; Miner 80). Moreover, Miner testified that the Records Department of the State Police (FOIL officer) would be responsible for reviewing the itineraries to determine whether to release them (Miner 19, 20 and 73-74). Lori Wagner, the State Police FOIL officer, did not review any of the documents provided to Howard. (Wagner OAG 16-18) When Captain Robert Kreppen of the Aviation Unit was called to provide aviation materials for the months of April and May, 2007, he testified that he asked, "[w]hat are we doing?" and Felton indicated he could not discuss it, and that "just to get the documents and to send them over to his office which we did." (Kreppen OAG 29-34)

Felton could not recall previously providing Senator Bruno's itinerary information to the Executive Chamber. (Felton 64). In his testimony before the OAG, Felton testified that the Pataki Administration had a policy not to release a public official's schedule after the trip and stated that the schedules were shredded (Felton OAG

103-106). Felton further testified that while the Spitzer Administration had a different outlook, Felton did not recall any change in the pre-existing policy (*Id.*). According to Felton, whether releasing a public official's itinerary posed a security issue would depend on the timing of the release and whether a security issue could arise even after a trip had occurred (Felton OAG 104-107). When Felton was asked by the OAG whether "disclosing to the media itineraries or public official's movements raise a security concern," Felton responded "if they're released before they happen, I have a great problem with them." (Felton OAG 105) The record is clear, however, that on May 23 Felton provided the information concerning Senator Bruno's May 24 trip to Howard (Felton 104), undeniably in advance of the trip itself and with the belief the information was to be transmitted to the media. (Felton 44)

#### **H. State Police Practice on the Release of a Public Official's Travel Itineraries**

Three former Superintendents of the State Police testified before the Commission on the release of ground itineraries of a public official. All agreed that these documents contain information that may raise security concerns, depending upon the circumstances, and all agree that itineraries should not be released.<sup>28</sup>

Superintendent McMahon testified that he would never recreate a document, because of the chance that it would not be "an accurate accounting" and it is not the normal course of business. He testified that a document that concerns safety and security would be considered a confidential document (McMahon10-11). When shown

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<sup>28</sup> Ethics Advisory Opinion 07-03 concerning the proper use of State aircraft, including requisite reimbursement when part of the trip involves non-State business, provides that the Commission expects information to be made available to the public regarding reimbursement related information unless doing so would jeopardize the security of the public official.

Senator Bruno's travel itineraries, McMahon testified that if Bruno had "some kind of security issue" the documents would be confidential, because they show locations and places where the Senator could return (McMahon 12). According to McMahon, State Police would not release itineraries for the Governor or the Lieutenant Governor, citing security concerns, and the only way he would release such a document is pursuant to a Court order (McMahon 14-15).

Superintendent Bennett concurred, testifying that "generally, there is an absence of public disclosure by the officials themselves and, so, we would not disclose that for security reasons" (Bennett 14-17). Bennett testified further that a request for State Police records has to come to the State Police "because [State Police] are the keepers of the records" (Bennett 18).

Superintendent Constantine testified that when dealing with the security of a principal, the State Police took the position that information in a ground itinerary was "sacrosanct" (Constantine 10-11). Referring to this case, he further testified that he would "meet personally with Spitzer trying to find out what this is all about. The hair would go up on the back of your neck. You would say: 'What's this all about?'" (Constantine 11-12)

**I. The June 27 FOIL Request and July 1 Times Union Article**

On June 27 – about six weeks after Dopp, Howard and Felton began gathering State Police documents and communicating State Police information about Senator Bruno's air travel and ground itineraries – Times Union reporter James Odatto emailed a FOIL request to Dopp. (EX 66) This FOIL request asked for itineraries for Governor Spitzer and Lieutenant Governor Paterson, but not Senator Bruno.

Nevertheless, in response to this FOIL request, Dopp provided to Odatto the itineraries of Senator Bruno that he secured from the State Police. (EXs 66, 67, 126) Mariya Treisman, the Executive Chamber FOIL officer, testified that the Executive Chamber would not produce documents in the files of another State agency:

Q: And what do you do in the circumstances where, if you get a FOIL request and the Executive Chamber does not have the documents, but the documents are in another agency?

THE WITNESS: My standard response is that the Executive Chamber does not possess or maintain those documents, and therefore does not have anything that would be responsive to the request.

(Treisman 18)

Odatto did not submit a written FOIL request specifically seeking Senator Bruno's travel itineraries until July 10, 2007, twelve days *after* Dopp gave Bruno's itineraries to Odatto and nine days *after* the article containing Bruno's itineraries appeared in the Times Union under Odatto's byline. (EX 88) In an exchange of emails concerning this second FOIL request, Dopp specifically requested that Odatto provide this second FOIL for the month of June, claiming that the lawyers had asked for it. (EXs 89, 90)

The same day that Odatto submitted his initial FOIL request, June 27, Dopp emailed Nocenti asking for the New York State Penal Law citation for, and a description of the crime of "scheme to defraud the government." (EX 124) In response, Nocenti sent Dopp Penal Law sections defining the crimes of the scheme to defraud in the first and second degrees. (EX 125) Nocenti also asked other members of the Counsel's office to provide Dopp with additional information in this regard. (EX 125) Nocenti did not recall forwarding these Penal Law provisions to Dopp, did not know why

Dopp had requested the legal research and did not ask Dopp why he was asking for such information. (Nocenti 145-146)

Also, between June 25 and June 27, 2007, Dopp prepared a document with the heading, "For Background Only." (EX 67; Dopp 264-276), which states, in its entirety, the following:

The enclosed materials show that the Senate Majority Leader used state aircraft 11 times during the first five months of the year. The Governor used state aircraft 19 times during the same period. Lt. Governor Paterson accompanied the Governor on two of the Governor's trips, and used state aircraft on his own six times.\* The Assembly Speaker did not use state aircraft at all, nor did Comptroller Dinapoli, Senate Minority Leader Malcolm Smith or Assembly Minority Leader Tedisco.

With regard to the Majority Leader, the records show that he and his senior staff routinely used the state helicopter for transportation to New York City (See File A – Bruno manifests) where, on at least four occasions, they attended political events. A review of itineraries shows that the primary if not sole purpose of these trips at state taxpayer expense was to attend political events. (File B – Bruno itineraries)

For example, on May 17, the Majority Leader and senior staff traveled to the NYC for the Republican State Committee's annual fund raising dinner at the Sheraton Hotel. (File C – invites) The records show that the Majority Leader held a meeting at the office of a major campaign contributor (File D – Greenberg-related contributions) and then went to the Sheraton for the political event.

On three other trips, the Majority Leader held a single meeting, usually with Mayor Bloomberg, (who has contributed more than anyone else to his campaign) and then attended fundraisers.

This political activity would appear to conflict with restrictions in state law and policy that the state aircraft be used only for "official business." This political activity would also appear to conflict with the Majority Leader's written claim that the purpose of the trips was "legislative business meetings." (File E – Requests for use of state aircraft)

This situation may be similar to the Hevesi scandal. The former comptroller claimed there was a security threat that warranted having a staffer assigned to his wife. Upon closer examination, it was revealed that there was no threat and the staffer was acting as a companion. (The Majority Leader was quick to denounce the former Comptroller, and called on others to do so as well – File F-Bruno comments on Hevesi)

A close examination of the facts in this situation may reveal that there was little or no “legislative business” and that the Majority Leader may be guilty of both misrepresenting himself and misusing state assets.

As for the Governor’s use of state aircraft, the records show that he used the aircraft to hold meetings and events that were clearly connected to his official duties. This includes making economic development announcements, meeting with local officials, and delivering remarks to local groups. With one exception, there are no political events on the schedule on days when state aircraft was used to transport the Governor. The only possible exception is April 10, when the Governor was a speaker at an event sponsored by the Monroe County Democratic Committee. This “drop by” was part of a full day of public events and meetings with local officials in Binghamton and Rochester. (See File G – Governor’s manifests and schedules).

The Governor did attend fund raising events during the five-month period, but always used private aircraft for such purposes.

\*The Lt. Governor’s information (manifests and schedule) will be provided separately.

(Emphasis in original)

According to Dopp, this document was prepared and given to Nocenti prior to July 1 as background for Nocenti, to help him in connection with his possible discussions with law enforcement authorities concerning Bruno. (Dopp 264-265) In his testimony, Nocenti denied this and observed that the document appears to have been intended for the press. (Nocenti 118-122, 150) Nocenti also testified that he never saw

Exhibit 67 until after July 1. (Nocenti 116 - 117) Spitzer characterized Exhibit 67 as “something that a press officer would do to try to push a story.” (Spitzer 138)

The similarities between the information and opinions contained in Exhibit 67, and the July 1 Times Union article are substantial and significant. Both documents refer to Senator Bruno having denounced former Comptroller Alan Hevesi for the misuse of State resources; both compare Bruno’s situation to Hevesi’s; and both reference the number of trips Spitzer made on State aircraft during the same period. Moreover, the research Dopp requested from Nocenti on June 27 regarding the defrauding the government provision is mirrored in the article’s reference to the same crime.

**J. Dopp’s Release of Senator Bruno’s Travel Records<sup>29</sup>**

According to Dopp’s testimony, he provided Bruno’s ground transportation records to Odatto of the Times Union on June 28; after conferring with Governor Spitzer and Nocenti, both of whom, Dopp testified, stated that they believed that these records were public documents. (Dopp 199, 264) Dopp testified that he checked with Baum and Spitzer the day that Odatto’s FOIL request came in as to whether he should release the documents, having shown Spitzer the documents a few days before. (Dopp 195)

Dopp further testified before the Commission as to his end of June inquiry to Spitzer, “[a]re you okay with releasing the documents?”:

Q. You showed the Governor the documents?

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<sup>29</sup>As stated above, the release of these itineraries to the media does not constitute a Public Officers Law violation without knowledge of the confidentiality of contents or the State Police’s role in their creation and collection.



A. Yes. It wouldn't have been at that particular moment. It would have been a couple of days before it went out.

Q. Before they went out to the press –

A. Yes.

Q. – you showed him the documents?

A. He looked at them.

Q. Did you show him before the request?

A. I believe it was before the FOIL request came in, but it was a time I was confident that a reporter is coming down. And what I said to him was, "Odato's coming down. I know what he's going to ask about. Are you okay with releasing the documents?" I showed them to him. And one of the minor errors in the Soares' report was that it wasn't Nocenti [sic] who said Orenstein to me; it was Spitzer who said Orenstein to me. Spitzer looked at the documents and said, "Dan Orenstein." He then proceeded to tell me the story of how there was a new prosecutor on the case and it concluded – I'm not a lawyer and I might mangle this – but the upshot to me was that legislative business and fundraising, that one does not preclude the other legislative business. He then thought it's like we are obligated to release it since the reporters are asking for it. *His mindset and Baum's mindset at the time was to trust my judgment on these things.* And, "How? What's going to happen?" And what I said to him was, "I think we take a little bit of a whack. I think Patterson [sic] takes a little bit of a whack. We've got two trips; Patterson's got one trip. And, basically, all we have on Joe is three trips for which he has total cover. So I don't know how this story ultimately turns out. I think it's like any one of the dozen stories on this that have had occurred since I've been in public life where we all take a little bit of a whack for expensive use of taxpayers' aircraft where we mix politics and government." And the boss was, you know, a little nervous about it. And that's why in subsequent e-mails he was constantly asking, well, "How's it going to come out? How's it going to come out?" That was our expectation at that particular moment; that we would give the story to Odato who was notorious for doing this that whacked us all pretty good. That is responsive. I think I can follow through a little bit. But I learned from Odato a couple of days – after the FOIL was in, he said to me, "You'll never believe what Bruno is doing. He blew me off, wouldn't give me schedules." He was really angry with him. That's neither here nor there. This was

communications policy. But I submit to you that the scandal was produced by Joe's communications staff saying: Screw you to Odató. They wouldn't tell him what the use of the airplane was all about. They wouldn't confirm that government business had been done. So, at that moment, you would have had the story that I predicted with Spitzer taking a whack for the Monroe County trip and the California trip, Patterson taking a whack for meeting with the National Party Chair, and Bruno taking a whack for attending his party's fundraisers while also mixing together with business.

The story would have went on to say that everything under the law was fine. But that story – you'll see in my package -- has been written at least six times since I have been around in government.

Q. When you say you showed the documents to the Governor, you showed him all of the documents that ultimately went into the hands of Odató?

A. It was a big package. I showed him representative samples of each. I showed him a itinerary, your Exhibit 5. I showed him the flight request. I showed him manifests, and showed him our schedules. *And, again, his interest was – Joe was like an afterthought to him, you know. He was just concerned about how bad of a whack we were going to take.*

Q. Because of his use of the aircraft?

A. Yes. He didn't want to look like a hypocrite. And I'm like, "Boss, I think we're really covered, especially when you look at the range of people using it. They all have some government apparently. We just don't know about Joe. We think so. We think he's got the venues to point to. But without the schedules we just wouldn't know. What did he do? He then repeated what I just said to him. Yeah, without knowing the schedules how would we ultimately know? And I like, "Are you okay with releasing? It's like they're asking for it." And he said "It's all public information." And my response was, "Yeah, public *information.*" "When's it going to happen? When is he going to run the story?" "I don't know."<sup>30</sup>

(Dopp 195-199) (Italics added)

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<sup>30</sup>The testimony concerning Spitzer's lack of interest in Bruno's use of State aircraft was reiterated by Dopp when he was invited at the end of the questioning to put any remarks he wished on the record: "Eliot's main concern wasn't Bruno. It was whether he was going to get whacked or Silver was going to get whacked for their use of aircraft." (Dopp 399-400)

Dopp's testimony before the ODA on February 2, 2008 concerning the above-quoted conversation appears materially to conflict with his testimony before this Commission:

On the 25th or the 26th. I don't remember what day, it's Mr. Baum who tells me Eliot wants you to release the records.

The conversation occurred in Baum's office and no one else was present. (ODA 2/5/08 interview of Dopp at 66-67) Following his conversation with Baum, according to Dopp, he went to Spitzer to discuss the release of the records:

So, I walked from Rich's office and [sic] to see Mr. Spitzer, and I said to Eliot, boss, you're okay with the release of the plane records? He said, yeah, do it. I said, are you sure, and then he gave a very, you know, pointed, angry response that left no doubt that he wanted the records released.

(*Id.* at 69)

When asked what the response was exactly:

DOPP: He said fuck him, he's a piece of shit, shove it up his ass with a red hot poker.

Q. And when he says he, who is he referring to?

DOPP: Mr. Bruno

Q. Had the governor seen any of the records at this point?

DOPP: He had inspected the record previously.

Dopp, testifying that he considered this a directive from Spitzer, stated: "[y]ou couldn't mistake that based upon the words that were used." (ODA 2/15/08 interview of Dopp at 83)

The difference between Dopp's testimony before the Commission and his later testimony to the ODA is clear. Dopp testified to the Commission that Spitzer and

Baum trusted his judgment on matters concerning whether to provide documents to reporters and did so here when Dopp advised the documents were public and covered by a FOIL request. In contrast, Dopp told the ODA that Spitzer issued a directive to Dopp to issue the documents when he was angry about Senator Bruno.

In Dopp's testimony to the Commission he stated – on several occasions – that the Bruno travel issue was an “afterthought.” Before the ODA, however, Dopp's description of his exchange with Spitzer was with invectives and passion. Dopp's testimony to the Commission contained none of his lengthy and detailed description: “[H]e [Spitzer] thought it's like we are obligated to release it since the reporters are asking for it.” (Dopp 196)

Governor Spitzer testified that he was aware of media requests for information about Senator Bruno's use of State aircraft at the end of June (Spitzer 105-106), but that he never saw what Dopp turned over to Odatto pursuant to FOIL. (Spitzer 109) Spitzer also testified that he had a conversation with Dopp near the end of June in which he said to Dopp: “fine, there's a FOIL, or whatever, screw it, go ahead.” (Spitzer 124) Governor Spitzer denied the accuracy of Dopp's version of this conversation as follows:

Q: Did that happen?

THE WITNESS: To the best of my recollection, it did not.

Just so it's clear, I, in my private conversations, do not always use the Queen's English. And I make no bones about that.

In my public commentary, I think you will see, if you do a complete search of the entirety of my public comments as Governor, you would not see me say anything critical, vulgar, of Bruno.

In my private conversations, occasionally I was, to use your word, passionate.

And that is my nature, and the nature of politics.

I do not in this conversation recall that, because this was not an issue about which I was passionate then, or now, or at any point in time.

There were other issues about which I was, but this was not one of them.

(Spitzer 158-159)

In sum, there are conflicts regarding Dopp's interactions and communications with Spitzer about the release of Senator Bruno's travel documents to Odatto, both between Dopp's testimony to the ODA and Spitzer's testimony to the Commission, and between Dopp's testimony to the ODA and his previous testimony to the Commission.

In addition, there is a conflict between the testimony of Nocenti and Dopp on the issue of whether Nocenti first saw the documents released to Odatto before or after publication of Odatto's July 1 article. Nocenti testified that he first saw the documents after the July 1 article. (Nocenti 114) Dopp testified that Nocenti saw the documents before he released them to Odatto. (Dopp 35-36)

Significantly, the record does not demonstrate Spitzer, Nocenti or Baum were informed before July 1, by Dopp or anyone else, that the State Police had created the key documents to be released to the media as official State Police documents, or that Bruno's movements in New York City were being "monitored" by the State Police and

reported, sometimes on a real-time basis, to Felton, then to Howard, and then Dopp, for the purpose of helping to prepare a news article.<sup>31</sup>

No one contradicts the testimony of Mariya Treisman, the FOIL officer for the Executive Chamber, regarding the lack of consultation with her before the Bruno documents were provided to Odató. She did not even learn of the June 27 FOIL request until after the July 1 article appeared. (Treisman 26-27, 33, 45, 85-86) Treisman, in her August 14, 2007 response to a second FOIL request from Odató received by Dopp on July 10, 2007, for the same types of documents Odató received on June 28, redacted the Governor's and Lt. Governor's schedules to omit similar information to that contained in Bruno's itineraries that Dopp had released on June 28. (EXs 91-92)

In her August 14, 2007 letter response to Odató's second FOIL request, Treisman stated that portions of the records were exempt from disclosure because access to this information would constitute an unwarranted invasion of personal privacy or could endanger a person's life or safety. Information such as the identity of other persons on the trip, telephone numbers, personal appointments, and flight information may be subject to redaction, according to Treisman. In her words, the decision to redact is very much a "judgment call" based on whether there are privacy or security concerns. (Treisman 73-74) She further testified that, in order to make the judgment call in this FOIL response, she telephoned the Lt. Governor's office seeking more information. (Treisman 64, 90, 92-93) At the time that Treisman responded to the July 10 FOIL request, she provided information on Spitzer and Lt. Governor, but she did not seek

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<sup>31</sup> Pope testified that he believed the Governor knew that documents had been compiled for Odató "shortly before [June] 27 [sic] when they were actually turned over." (Pope 29) The documents were actually turned over to Odató on June 28, 2007.

information from the State Police, which would have been contrary to Executive Chamber procedures . (Treisman 18) Thus, she did not provide the information requested on Bruno.

**K. The July 1 Times Union Article**

Under the headline, “State Flies Bruno to Fundraising,” the Times Union July 1 article reproduced two of the three documents created by the State Police at Howard’s request, to show Bruno’s ground transportation itineraries. (EX 85) The exception was the May 17 itinerary, for which a copy of Bruno’s original request to the State Police was printed. The document created by the State Police for the May 17-18 trip was erroneous. (*Compare EX 2 and EX 5*) Dopp testified he had removed Exhibit 2 from the group of documents to be provided to Odatto without noticing the difference, because he already had Exhibit 5 in his possession. (Dopp 241)

Baum’s immediate response to the Times Union article was set forth in a series of emails sent to Dopp that day. (EX 49) Noting Senator Bruno’s problem, Baum asked Dopp whether they should “[p]ut out a statement that taking it seriously/reviewing and deciding what action to take?” Dopp responded in the affirmative, to which Baum replied “And tomorrow? Ground him and refer to OIG?” Dopp responded, “Exactly.” (*Id.*)

Baum testified that he recommended in the email grounding Senator Bruno and referring the matter to the OSIG because the content of the article “called for action.” (Baum 151-152) Baum claimed the article “rightly perceived” Senator Bruno’s travel in “a different frame” than it had been cast to Baum previously and that, therefore, someone else needed to review it. (Baum 153)

In fact, all of the information about Senator Bruno's travel was in the hands of Howard and Dopp about five weeks before the July 1 article was published, but no one from the Executive Chamber took steps to seek an advisory opinion from the Commission, restrict Bruno's use of the State aircraft or provide the information to law enforcement authorities until after the July 1 article was published.<sup>32</sup>

Nocenti sent an email to Dopp and Baum on July 1 reflecting his opinion that a criminal referral should be to a district attorney. Baum queried back, "Even if there's a theft of state resources, the IG has no jurisdiction?" Baum had previously opined that a District Attorney referral was "too dramatic." (EX 148)<sup>33</sup>

In addition to his email communications, Baum testified that he spoke with Nocenti after publication of the Times Union article and that both believed that Senator Bruno had not done anything improper as long as Bruno was engaged in some official business during trips for which he used the aircraft. (Baum 153-155) In explaining efforts by Nocenti to refer the Bruno travel issue to a prosecutor almost immediately after publication of the article, however, Baum testified that the article made a "powerful case," so they needed someone outside to look at it. (Baum 156) Baum testified they intended to forward the Times Union materials to others to see if a crime had been committed. (Baum 160) Late in the afternoon of July 1, Baum emailed Nocenti suggesting they "call around to da/ag." (EX 149) Baum testified he did not know,

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<sup>32</sup> On August 16, 2007, the Ethics Commission issued Advisory Opinion No. 07-03 and on December 11, 2007 a second opinion, Advisory Opinion No. 07-05 was issued by this Commission setting forth the proper standards to be applied when public officials use State aircraft for both State and non-State business.

<sup>33</sup> Spitzer also received emails concerning the effects of the July 1 article. (EXs 174, 177-178)



however, whether the matter was referred to the OSIG. According to Baum, Nocenti would have handled that. (Baum 165-166)

On July 2, 2007, the day after the Times Union published Odato's article, Nocenti, having conferred with Dopp, Baum and Spitzer, contacted three separate law enforcement entities in an effort to determine if they would investigate whether Bruno had committed a crime in using the State aircraft. (Nocenti 135-139, 176-177, 334; Spitzer 167-171) Nocenti contacted Albany County District Attorney Soares; the Manhattan District Attorney's Office where he spoke with Daniel Castleman, the Chief of the Investigations Division; and Attorney General Cuomo. (Nocenti 334) The Manhattan District Attorney declined to take up the matter. The Attorney General agreed to pursue it, but only if another agency also agreed to do so. (Nocenti 187, 349)

When asked during his testimony what had changed since May 17 when Baum, Spitzer and he had determined that the facts did not indicate that Bruno had committed a crime, and July 2' when he sought to engage three prosecutors, Nocenti, like Baum, stated that the July 1 article disclosed new facts. (Nocenti 133) Yet, Dopp and Howard had all the information disclosed in the July 1 article by May 23. Indeed, as Dopp and Nocenti testified, the itineraries themselves did not disclose whether Bruno was improperly using the aircraft for solely non-State business. (Dopp 95-96, 154-155; Nocenti 76-78) Making that determination required further inquiry (Nocenti 360-361), and no further inquiry was made by the Executive Chamber before Nocenti began efforts to engage prosecutors. (Nocenti 359)

**L. The Attorney General's Investigation**

On July 5, 2007, an article by Fredric U. Dicker appeared in the New York Post accusing the Executive Chamber of engaging in a surveillance operation with respect to Senator Bruno's use of State aircraft. (EX 53) Over the next several weeks, the news media reports carried many stories concerning the accusation that the State Police had been misused and politicized by the Executive Chamber, as well as the accusation that Bruno had misused State aircraft. On or around July 5, 2007, Bruno requested the OAG to open an investigation into the Executive Chamber's misuse of the State Police. (OAG Report at Introduction) During this period, the OAG and the OSIG were conducting parallel investigations. In the case of the OAG, both Bruno's alleged misuse of the State aircraft and the Executive Chamber's alleged misuse of the State Police were subjects of investigation. The OSIG investigation focused on the alleged misuse of the State Police by the Executive Chamber. (OSIG letter of July 13, 2007)

In the days immediately before the issuance of the OAG Report on July 23, Dopp and Baum were requested to provide testimony to the OAG. (EX 133) Each testified to the Commission that he wanted to provide testimony to the OAG, but was pressed not to do so by Executive Chamber lawyers. (Baum 201; Dopp 47, 70) In an email to Spitzer on July 28, 2007, Baum wrote, in part:

When David called me into the office last Saturday to lay out the plan going forward, I said that I had nothing to fear from testifying, that I was willing to do so and that my failure to testify would make my position untenable. Everyone there pushed me very hard to go along with the path that was being laid out. I said that at minimum I needed to do a sworn statement. At that point Lloyd [Constantine, Senior Advisor] objected to my presence and I was ejected. I've lived through a week of attacks on my reputation because of that decision for the team, and, ultimately, you.

(EX 138)

Dopp did not testify before the OAG based on his attorney's advice. According to Dopp's lawyer, Terrence Kindlon, shortly after he was retained, he advised Dopp not to give testimony because, among other reasons, Kindlon did not yet understand the situation well enough to counsel him. (Kindlon 64-65)

Over the next several days, members of the Executive Chamber proposed drafts of the Baum and Dopp statements. (Nocenti 251-257)<sup>34</sup>

As noted earlier, the Dopp July 22 statement that was ultimately signed and notarized expressed regret for any appearance of impropriety created by the manner in which he sought and obtained the information from the State Police, as follows: "I now recognize that any requests for State Police records relating to [Bruno's] travels should have been handled through other channels, and I regret any appearance of impropriety that was created by the manner in which this information was sought and obtained." (EX 74)<sup>35</sup>

On July 23, a day after the Baum and Dopp statements were signed and notarized, the OAG issued its Report. It determined that there was no evidence that Senator Bruno violated any law with respect to the use of State aircraft and that the policy concerning the use of State aircraft that was being applied by the Executive Chamber was "overly permissive and porous" and "should be changed to provide stricter, clearer

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<sup>34</sup> On July 20, Dopp had been informed that his interests and those of the Executive Chamber had reached a point of divergence, requiring Dopp to seek counsel on his own behalf. (Kindlon 170-172; Nocenti 299-300; Pope 59) Executive Chamber personnel provided Dopp with suggestions for private counsel, and on July 20 Dopp retained Kindlon to represent him. (Dopp 51-53; Kindlon 40-41; Nocenti 300-305).

<sup>35</sup> When Dopp was asked whether the statement was put through prior drafts he testified: "[T]hey put it in front of me, I read it and signed it." (Dopp 55) The record evidence shows, however, that in fact the statement went through prior drafts and was edited by Dopp's lawyer, who was in contact with Dopp and reviewed the statement with him as regards its truthfulness. (Kindlon 95-96, 99, 125).

guidance concerning when state aircraft may be used in connection with official state business, and under what circumstances, if any, official use of state aircraft may be combined with political or personal use.” (OAG Report at 3)

The OAG Report did not cite any member of the Executive Chamber for any criminal violation of the law and otherwise opined that the conduct of the Acting Superintendent was not unlawful with respect to the roles of the Executive Chamber and the State Police in gathering information concerning Bruno’s use of the State aircraft and providing that information to the Times Union. (OAG Report at 40)

At the same time, the Report did indicate that Dopp, Howard and Felton committed errors in judgment and recommended disciplinary action, which the Executive Chamber thereafter took against Dopp and Howard. (PRIV00110, 00111) Former Governor Spitzer testified that Dopp and Howard were disciplined based on the content of the OAG’s Report that there were lapses in judgment: “[I]t was the failure to follow FOIL processes as would have been dictated by ordinary procedure, magnified by the reality that this involved a political environment, where people could impute improper motives to what was being done, and the issues relating to how information was gathered.” (Spitzer 244) Spitzer stated that Felton was not disciplined because he was complying with a request for information from the Executive Chamber. (Spitzer 246)

**M. Noteworthy Conflicts in the Testimony Before the Commission**

There are noteworthy conflicts in the testimony that the Commission need not resolve at this stage of its process.<sup>36</sup>

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<sup>36</sup>As discussed below, to the extent necessary to make findings of fact and recommendations, the ALJ will resolve conflicts in the hearing evidence and the Commission will then make its own findings based on the hearing record.

On the subject of a FOIL request, Dopp testified that he approached Howard in May for travel records from the State Police that were subject to FOIL. (Dopp 83-84, 111, 115-116) Howard testified before the Commission, however, that he was unaware of a FOIL request and first learned of one in late June, when it was actually received from Odat. (Howard 102, 117) Howard testified that he believed that he was gathering information pursuant to an internal review of the use of the aircraft. (Howard 129)

The second conflict is whether Dopp was authorized to “monitor” Senator Bruno’s flights. Dopp testified that Baum and Nocenti understood after May 17, and Dopp “assumed” that Governor Spitzer learned about May 18, that Dopp would be monitoring Bruno’s use of the State aircraft. But Baum testified that Dopp was told at that meeting to respond only to the FOIL request. (Baum 117-118, 156; Dopp 94-96, 102-103, 145) Nocenti testified that at the May 17, 2007 meeting no one told Dopp to track Bruno’s activities or get his itineraries and otherwise did not recall Dopp being told to monitor Bruno’s activities. (Nocenti 69, 81) Dopp testified that Spitzer was not present when the group decided to stand down but monitor. According to Dopp, Spitzer was told in a “quick” conversation only that “we’re just going to watch it.” (Dopp 144-146) Spitzer does not recall using the term “monitor,” but did testify that Bruno’s use of the aircraft was something “to keep an eye on.” (Spitzer 65-68) Special Counsel Pope, had no knowledge that Dopp was authorized to monitor Bruno. (Pope 83-84)

Third, with respect to what was communicated concerning whether the three created documents were subject to FOIL, Felton testified that he told Howard that the documents were not subject to FOIL and were not State Police records. (Felton 112-

113, 117, 123-124) Felton did not offer this testimony before the OAG. Howard disputed Felton's testimony to the Commission. Howard testified that he told Dopp that the itineraries were synopses of Bruno's trips, and that these were not the actual documents utilized by the State Police in transporting Bruno. (Howard 220, 228) Dopp testified that he asked Howard, "what do you have that would be responsive to a FOIL request for the use of the aircraft for the Governor and Joe." (Dopp 82-84) Dopp testified that he felt secure when Howard gave him the documents, having gotten them from Felton, that they were clearly public documents. (Dopp 245)

Fourth, Howard testified that Dopp instructed him to create the information concerning Senator Bruno's trips in the format in which they were eventually published in the Times Union. (Howard II 9-12) Dopp testified that he did not learn until after July 1 from news media reports that the State Police had created these documents. (Dopp 243-244)

Fifth, Dopp testified that Exhibit 67, the "For Background Only" document, was a memorandum he "earlier" prepared for Nocenti in connection with Nocenti's concern that the matter might be referred to another agency for consideration. (Dopp 257-267) Nocenti disputes this and testified that the document did not appear to be intended for him, but appeared to be for the press. (Nocenti 149-154) Spitzer testified that the document appeared to be the type of document that would go to the press in helping to prepare an article (Spitzer 133-136). As noted, there are striking parallels between Exhibit 67 and the Times Union article, Exhibit 85.

Sixth, Dopp testified that he showed the package of documents to Nocenti before they were delivered to Odatto. (Dopp 35-36) Nocenti denies seeing Odatto's June

27, 2007 FOIL request, or the documents produced to Odatto in response thereto before the July 1 Times Union article. (Nocenti 114, EX 66) Nocenti went on to testify, however, that it was quite possible that he had a discussion with Dopp about providing the information to Odatto prior to the actual release of the documents. (Nocenti 145) Dopp also testified that he showed the documents to Spitzer for a final review before releasing them to Odatto (Dopp 274-275) and testified before the Albany County District Attorney that Spitzer directed him to release the documents. Dopp's testimony before the Commission is at odds with his testimony to the ODA. In his testimony before the Commission, Dopp does not indicate Spitzer ordered the documents' release, but instead states Spitzer said the documents had to be released because according to Dopp they were public documents. According to Dopp, Spitzer and Baum relied on Dopp's judgment that the documents were public documents subject to disclosure. (Dopp 196) Spitzer testified he never saw the documents provided to the Times Union prior to his sworn testimony before the Commission on May 9, 2008. (Spitzer 109)

#### **IV. VIOLATIONS OF THE PUBLIC OFFICERS LAW<sup>37</sup>**

##### **A. Preston Felton's Violation of §74(3)(c)**

Public Officers Law §74(3)(c) provides:

No officer or employee of a state agency, member of the legislature or legislative employee should disclose confidential

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<sup>37</sup> The notice of reasonable cause incorporates by reference the transcripts of all sworn interviews conducted by the Commission in the course of its investigation and all documents of an evidentiary nature to which the notice of reasonable cause refers, whether or not such documents were marked as exhibits during interviews conducted by the Commission. This document and all documents incorporated by reference herein are publicly available at [www.nyintegrity.org](http://www.nyintegrity.org). Confidential information that has not already been publicly released and that is not material to this NORC (e.g., personal and home telephone numbers, certain locations and email addresses) has been redacted from the documents that are publicly available. Transcripts of interviews conducted by other agencies that the Commission obtained or to which it had access are not incorporated by reference, whether or not certain pages of such transcripts are referred to in the notice of reasonable cause.

information acquired by him in the course of his official duties nor use such information to further his personal interests.

Based on the record evidence, the State Police has historically treated information concerning the travel itineraries of senior State officials to be confidential, because of potential security concerns. The Records Access Officer for the State Police testified that security issues are always a concern in the release of documents, and she would identify and withhold information that could endanger the life or safety of any person. Accordingly, there is reasonable cause to believe that Felton, the former Acting Superintendent of the State Police, did not adhere to the State Police policy of maintaining the confidentiality of itineraries of senior State officials.

Clearly, Felton obtained these materials in the course of his official duties. Felton testified that he consulted with State Police Counsel Glenn Valle regarding the initial request for the release of the aviation documents, which he believed were available under FOIL, but did not return to Valle to determine whether it was permissible to release additional documents, particularly the ground itineraries and schedules which are deemed especially sensitive. Felton was aware that under the prior administration, itineraries and schedules were not turned over as part of a FOIL request due to security concerns. When Captain Kreppen of the aviation unit was called to provide aviation materials for the months of April and May 2007, he testified that he asked: “[w]hat are we doing?” In response, Felton stated that Kreppen should just “get the documents and to [sic] send them over to his office.”

Accordingly, the Commission has determined, based on the record evidence, that there is reasonable cause to believe that Felton knowingly and intentionally



violated Public Officers Law §74(3)(c) as he was in a position to know that the itineraries he obtained for public release contained confidential information.

**B. Darren Dopp's and Preston Felton's Violation of §74(3)(d)**

Public Officers Law §74(3)(d) provides:

No officer or employee of a state agency, member of the legislature or legislative employee should use or attempt to use his official position to secure unwarranted privileges or exemptions for himself or others.

**Darren Dopp:** The Commission has determined, based on the record evidence, that there is reasonable cause to believe that Dopp knowingly and intentionally violated Public Officers Law §74(3)(d) when he used or attempted to use his official position as Communications Director for the Executive Chamber to secure unwarranted privileges or exemptions for Governor Spitzer and himself when he engaged the State Police to assist him in preparing a negative news story concerning Bruno's use of State aircraft. There is reasonable cause to believe that Dopp initiated and directed a course of conduct that (i) caused the improper creation of documents by the State Police that were made to appear as if they were official documents and, thereafter, Dopp provided those documents to the Times Union for reproduction in a news article – that he assisted in preparing – published on July 1, 2007; and (ii) caused the improper collection of information from the State Police, sometimes on a real time basis, concerning the times and locations of Bruno's activities while in New York City during May and June, 2007. In the process, Dopp bypassed Executive Chamber procedures concerning the release of documents under FOIL.

**Preston Felton:** The Commission has determined, based on the record evidence, that there is reasonable cause to believe that Felton knowingly and intentionally violated Public Officers Law §74(3)(d) when he used or attempted to use his official position as Acting Superintendent of the State Police to secure unwarranted privileges or exemptions for himself or others (*i.e.*, Howard, Dopp and Spitzer) by permitting State Police resources to be used for a non-governmental purpose by acceding to requests to create documents and transmit information, some of which the State Police had never before released to the public, that he believed would be provided to the media by the Executive Chamber. In the process, Felton bypassed State Police procedures governing disclosure of State Police information under FOIL.

**C. Richard Baum's, Darren Dopp's, Preston Felton's and William Howard's Violation of §74(3)(h)**

Public Officers Law §74(3)(h) provides:

An officer or employee of a state agency, member of the legislature or legislative employee should endeavor to pursue a course of conduct which will not raise suspicion among the public that he is likely to be engaged in acts that are in violation of his trust.

**Richard Baum:** The Commission has determined, based upon the record evidence, that there is reasonable cause to believe that, as the Executive Chamber official to whom Dopp directly reported, Baum had sufficient notice regarding Dopp's efforts to have the State Police gather information and documents concerning Senator Bruno to have caused Baum to take steps to prevent any improper use of State Police resources. For example, Baum received email communications from Dopp and Howard indicating that they were engaging, or were planning to engage, State Police personnel and other

resources for the purpose of helping the Executive Chamber prepare a negative news story about Senator Bruno's use of State aircraft. Thus, there is reasonable cause to believe that, as a result of his failure to act, Baum violated Public Officers Law §74(3)(h), and Baum has entered into a Disposition Agreement with the Commission in which he has admitted to this violation.

**Darren Dopp:** The Commission has determined, based on the record evidence, that there is reasonable cause to believe that Dopp engaged the State Police to assist him in preparing a negative news story concerning Senator Bruno's use of State aircraft, and that in doing so, Dopp initiated and directed a course of conduct that (i) caused the improper creation of documents by the State Police that were made to appear as if they were official documents and, thereafter, Dopp provided those documents to the Albany Times Union for reproduction in a news article – that he assisted in preparing – published on July 1, 2007; and (ii) caused the improper collection of information from the State Police, sometimes on a real time basis, concerning the times and locations of Bruno's activities while in New York City during May and June, 2007. In the process, Dopp bypassed Executive Chamber procedures concerning the release of documents under FOIL. Consequently, the Commission finds reasonable cause to believe Dopp violated Public Officers Law §74(3)(h).

**Preston Felton:** The Commission has determined, based on the record evidence, that there is reasonable cause to believe Felton, the Acting State Police Superintendent, violated Public Officers Law §74(3)(h), by permitting State Police resources to be used for a non-governmental purpose by acceding to requests to create documents and transmit information, some of which the State Police had never before

released to the public, that he believed would be provided to the media by the Executive Chamber. In the process, Felton bypassed State Police procedures governing disclosure of State Police information under FOIL.

**William Howard:** The Commission has determined, based on the record evidence, that there is reasonable cause to believe that William Howard's conduct in carrying out Dopp's instructions with respect to the State Police violated Public Officers Law §74(3)(h) in that he conveyed to the State Police instructions to create documents and transmit to Dopp, information, sometimes on a real-time basis, detailing Bruno's movements. Howard has entered into a Disposition Agreement with the Commission in which he has admitted to this violation.

## **V. HEARING PROCESS AND PENALTIES FOR PUBLIC OFFICERS LAW VIOLATIONS**

After the Commission issues a NORC, the matter then proceeds to a public evidentiary hearing before an Administrative Law Judge ("ALJ"). It is the ALJ's role to resolve any evidentiary conflicts. The ALJ can make this determination after having the opportunity to receive the evidence, observe the demeanor of witnesses, assess credibility, and then issue findings of fact and recommendations to the Commission for its determination.

The Commission may accept or reject, in whole or in part, the ALJ's proposed findings and recommendations. A finding by the Commission of a Public Officers Law violation, made after an evidentiary hearing is conducted, and findings and

recommendations are made by an ALJ, must be sustained if supported by substantial evidence

As required by law, a copy of this notice is retained by the Commission for public inspection. Please be advised that pursuant to Executive Law §94(13), for each violation, an individual who, following a hearing, is found to have knowingly and intentionally violated the provisions of Public Officers Law §74(3)(c) or (d) shall be subject to a civil penalty in an amount not to exceed ten thousand dollars (\$10,000).

Dated: July 24, 2008

NEW YORK STATE COMMISSION ON PUBLIC INTEGRITY<sup>38</sup>

All concur:

John D. Feerick,  
Chair

Daniel R. Alonso  
Virginia M. Apuzzo  
John M. Brickman  
Richard D. Emery  
Daniel J. French  
Robert J. Giuffra, Jr.  
David L. Gruenberg  
James P. King  
Howard A. Levine  
Loretta E. Lynch  
John T. Mitchell  
Members

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<sup>38</sup>Commissioner Andrew G. Celli, Jr., has recused himself from this matter and has not participated.