

Public officials, secret emails - Private emails kept exchanges clandestine in bribery, bid-rigging case October 2, 2016

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By Brendan J. Lyons, TIMES UNION

It was Aug. 14, 2013, and Gov. Andrew Cuomo was tied up in meetings all day at his New York City office. As the governor conferred with his top staff members, federal law enforcement authorities say his then-executive deputy secretary, Joseph Percoco, and a former longtime friend and adviser, Todd Howe, were secretly exploiting their political muscle in a bribery scheme that would help the energy company, Competitive Power Ventures, purchase pollution “emission reduction credits” from New York state.

Federal prosecutors say a critical element of the illicit plan — and other aspects of the men’s improper dealings, before and after this episode — included their use of private emails that were seemingly outside the reach of government computer servers and the state Freedom of Information Law.

A federal criminal complaint filed in September against Percoco and seven others, including a state university president, indicate private emails were often their preferred method of communicating.

The complaint alleges Percoco received an email that Wednesday from Howe inquiring whether Percoco could nudge the state environmental commissioner at the time, Joe Martens, to approve the energy company’s request to buy New York emission credits.

The project in Wood-bridge, N.J., relied on the company’s ability to purchase the credits, but there were a limited number available in New Jersey. New York had plenty, and sold them for less money. The problem was that New York officials saw no benefit to the deal “other than interstate cooperation,” according to the federal complaint.

Percoco was busy with a family matter, so he forwarded Howe’s email to the personal email account of Howard Glaser, then Cuomo’s director of state operations.

Glaser, who has not been accused of wrongdoing, responded to the email and agreed to assist, according to the complaint. The signature line on Glaser’s email included a boilerplate disclaimer: “Important Note: Please direct any emails or questions regarding New York State official business to {my government email address}. I will not reply to any emails dealing with state business on this account.”

But he did.

Top officials at the state Department of Environmental Conservation were allegedly pressured by Cuomo's office to approve the deal, and signed off on the reciprocation agreement with New Jersey.

Martens, who left the Cuomo administration in 2015, could not be reached for comment.

"Government employees are specifically instructed to use government issued email for government business," said [Richard Azzopardi](#), a spokesman for Cuomo.

The private emails exchanged that month, documenting the alleged influence peddling, might never have been made public without the coordinated corruption and bribery probes by U.S. Attorney Preet Bharara of Manhattan and state Attorney General Eric Schneiderman. Their separate but coordinated investigations snared multiple business executives and three politically connected operatives.

Schneiderman's investigation into the dealings of SUNY Polytechnic Institute's founding President and CEO Alain Kaloyeros, including allegations of bid-rigging, uncovered a similar reliance on private emails. Kaloyeros, who is accused of illegally steering multimillion-dollar building contracts to companies he favored, was charged separately in the federal complaint and faces three felony charges in Schneiderman's case.

In some instances, the emails provided law enforcement authorities with their most compelling evidence, and backed up what witnesses told investigators about the defendants' alleged schemes to rig bids or buy state government influence.

The emails were obtained through subpoenas and search warrants beginning in the summer of 2015, when the investigations by Bharara and Schneiderman intensified. The disclosure of the emails may revive questions about whether state officials and high-ranking members of Cuomo's administration routinely use private email accounts in their government work, something the administration has long denied.

It is also not the first time that Percoco, who was Cuomo's gatekeeper-enforcer and a central figure in the criminal case filed by Bharara's office, used private emails for political dealings that he never intended to be made public.

In August 2014, the Times Union reported that Percoco, then serving as Cuomo's campaign manager, privately contacted several former members of a statewide anti-corruption commission and encouraged them to issue public statements supporting the governor and affirming the panel's independence.

At the time, Cuomo was facing sharp criticism for abruptly shutting down his Moreland Commission to Investigate Public Corruption, amid accusations that the dismantling of the panel was done to curry favor with then-Assembly Speaker Sheldon Silver and Senate Majority Leader Dean Skelos.

Both were arrested the following year on federal corruption charges and convicted in separate trials.

The Times Union's story noted Percoco offered to provide draft statements to the commissioners he contacted, including several district attorneys, and in some cases encouraged them to communicate with him through personal email accounts rather than using their government email.

In the federal criminal case, Percoco and Howe, a lobbyist who previously was an adviser to Cuomo at the U.S. Department of Housing and Urban Development, used private email accounts that, according to a person involved in the case, are highly incriminating and on par with a wiretap in terms of their prosecutorial weight.

Their exchanges over a period of years include repeated references to payoffs as "zitti," which was a term that Howe told investigators they gleaned from the acclaimed HBO series "The Sopranos," about a New Jersey crime family. Howe has pleaded guilty to several felonies and is cooperating with federal investigators.

"It is just consciousness of guilt, the fact they wanted to use some code, no matter how dumb it was," the person said, declining to be identified because of his involvement in the case.

The person said using private emails also reveals an apparent effort to conceal their dealings. "People want to send something to somebody, and they don't want to have the trail back to the government," the person said. "Typically, what they do is take something from a government (email) account and forward to Gmail and delete the email where they forwarded it from themselves. I've seen that one hundreds of times. ... That's common."

Percoco's part in the alleged scheme spanned four years beginning in 2012. He's accused of accepting more than \$315,000 in bribes, including payments from a "low-show," \$7,500-a-month job for his wife at Competitive Power Ventures, which was pursuing a plan to build a \$900 million power plant in Orange County, as well as the New Jersey energy plant. Other payments — funneled through Howe — allegedly came from COR Development, a Syracuse builder that was awarded multiple state-funded development projects.

An attorney for Per-coco, who is a senior vice president for the Madison Square Garden Co., has said his client is innocent.

Kaloyeros, the engaging but now-suspended head of SUNY Poly, also turned to private emails for some of his alleged crimes, including transmitting confidential information about the school's impending building projects to a developer, according to the complaint filed by Schneiderman's office.

In February 2015, Kaloyeros used his personal Gmail account to send his alleged co-conspirator, prominent Capital Region developer Joseph Nicolla, an email containing specifications on a dormitory housing project that was not yet publicly announced, and before the bids were solicited. The email is listed in the felony complaint filed by Schneiderman's office, which notes

that Kaloyeros used his official SUNY email to send details of the project to members of the college's nonprofit development arm, Fuller Road Management Corp.

But when he forwarded the same email to Nicolla less than 30 minutes later, he used his Gmail account.

Kaloyeros has pleaded not guilty to the state charges a day after the complaint was unveiled; his attorney insists he will be exonerated on the federal charges as well.

Nicolla's attorney, E. Stewart Jones, said the email that is a focus of the attorney general's criminal complaint does not implicate Nicolla or his company, Columbia Development, in any wrongdoing.

"It's meaningless, it's irrelevant. And in any event, whatever Kaloyeros chose to do ... Mr. Nicolla didn't choose to do that," Jones said, noting the company turned over the email, and many other documents, in response to a law enforcement subpoena issued a year ago.

"We make full disclosure and we make full disclosure because we believe there is no evidence of any crime in any of those documents," Jones said. "The emails were surrendered voluntarily because we don't think they do anything except establish Joe Nicolla's and Columbia's innocence."

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