

STATE OF NORTH CAROLINA
OFFICE OF THE GOVERNOR
20301 MAIL SERVICE CENTER • RALEIGH, NC 27699-0301

BEVERLY EAVES PERDUE
GOVERNOR

January 6, 2010

MEMORANDUM

TO: Governor Perdue

FROM: Edwin M. Speas

A handwritten signature in black ink, appearing to read "EMS", written over the name "Edwin M. Speas".

On August 26, 2009, you asked a bipartisan panel of distinguished citizens and lawyers to serve as your special counsel to investigate Governor Easley's missing 2005 travel records. Justice Willis Whichard, Judge Ralph Walker, and Senator Robert Morgan have now completed their task. Their report of their findings is enclosed. With your permission, they have included with their report for release to the public the investigative report of this incident conducted by the Highway Patrol in May 2009.

Consistent with your commitment to make State government more transparent and accountable, Secretary Young revised the procedures for reporting and maintaining your travel records last year to assure that those records are preserved and protected for the future.

EMS:mrl

Enclosure



MEMORANDUM

Moore&VanAllen

January 5, 2010

To: The Honorable Beverly Eaves Perdue, Governor of North Carolina

From: Senator Robert B. Morgan, Judge Ralph A. Walker and Justice Willis P. Whichard

Re: **Investigation of the Missing 2005 Travel Records of Former Governor Michael F. Easley**

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By telephone calls to each of us on August 26, 2009, you requested that we, collectively, serve as special counsel to you, in your capacity as Governor of the State of North Carolina, to investigate the question of the missing 2005 travel records of your predecessor in the Office of Governor, Michael F. Easley. By letter dated September 2, 2009, addressed to the three of us, you formalized the appointments and thanked us for our service.

Your General Counsel, Edwin M. Speas, and your Secretary of Crime Control and Public Safety, Reuben Young, generously offered themselves and their staffs for any staff assistance we might need. They have been consistently responsive, cooperative and facilitative, and we are grateful both for their assistance and the spirit in which it has been given.

You indicated in your calls, and Mr. Speas and Secretary Young later confirmed, that the missing 2005 travel records were to be the sole focus of our inquiry. You also indicated, however, that if this inquiry led to other relevant information, we had free rein to pursue it. We have, in fact, limited our investigation to the missing 2005 travel records. Nothing surfaced to merit an expanded inquiry.

We commenced our work on the endeavor almost immediately. On August 31, 2009, we met with Mr. Speas and Secretary Young in Mr. Speas' office. They provided us with a briefing and an overview of our task. We learned from them that the key actors in the matter were Ms. Diane Bumgardner, who holds a clerical position with the State Highway Patrol's Executive Protection Unit ("EPU") and Captain J. A. Melvin, a patrol officer assigned to the EPU during the Easley administration. We were informed that Captain Melvin had retained legal counsel, Jack O'Hale of Smithfield and Doug Parsons of Clinton, and that we thus would have to work through them to interview him. To the best of anyone's knowledge, Ms. Bumgardner did not have counsel. This proved to be an accurate assessment; when we interviewed her, she was not represented.

We were promised any assistance Mr. Speas and Secretary Young could give us in accessing any information that might be available from law enforcement sources. The possibility that the EPU computer might still contain the missing records was discussed. It was indicated that the computer was in the hands of the Federal Bureau of Investigation ("FBI").

Mr. Speas and Secretary Young recommended that we commence by interviewing Lt. Alvin H. Batchelor, the officer in charge of record keeping for the State Highway Patrol, for the purpose of acquiring a general understanding of the Patrol's methods of keeping records on executive travel. For this purpose, we met with Lt. Batchelor on September 1, 2009.

Lt. Batchelor indicated that Captain J. A. Melvin had designed the form for recording the Governor's itineraries, that the form is designated as HP-1, and that it is the only form the Highway Patrol uses for this purpose. As to the records in question, the Patrol had interviewed Ms. Diane Bumgardner, a clerical employee in the EPU, about the missing travel records. Ms. Bumgardner had stated that, per Capt. Melvin's instructions, she had downloaded the records and given them to him. She said she had never been asked to delete anything; that she was asked to download the travel records for 2003, 2004 and 2005 onto a disk to "free up" space on the computer; and that she did this and gave the disk to Capt. Melvin.

It was noted that the EPU employees were out of the Governor's Mansion at the time as it was being renovated, and that this could be a factor in the failed effort to locate the missing travel records. Capt. Melvin was quoted as saying he did not recall what had happened to the disk, but that he did not have it. He had checked his files and could not find any Governor's events on a disk. He had no idea why these particular travel records would have been eliminated. He did not believe Governor Easley was doing anything different in 2005 than at other times and had no idea why the particular times would have been deleted from the records.

Although our inquiry focused primarily on the subject of Governor Easley's flights on private planes, we reviewed the N.C. Department of Commerce records regarding his flights on its planes for the year 2005 for the sole purpose of ascertaining whether they might provide clues to records regarding his flights on private planes. We found them unrevealing in this regard.

On September 29, 2009, we interviewed Diane Bumgardner. She described for us the logistics of Governor's events outside Wake County. She indicated that the duties of the EPU are essentially the same from Governor to Governor. Previously, she stated, she was not aware of a policy regarding the retention of travel records. She indicated that she has one now.

She indicated that all these records are kept on a network drive, not her personal computer. She reiterated what she had stated to the personnel conducting the Patrol's internal investigation, namely, that Capt. Melvin was attempting to "free up" space on the computers. He told her to, and she did, "burn" a disk with the 2003, 2004 and 2005 Governor's travel records. These were for both State events and campaign events. It was her opinion that the Patrol's Technical Services Unit ("TSU") had probably asked Capt. Melvin to clear the computers. It never occurred to her that there was anything unusual about Capt. Melvin's request.

She understands that it was the hard drive that Capt. Melvin took to Governor Easley, but she does not know what happened to the disk. She indicated that she could not reconstruct anything from the records.

She simply deleted the records from the network. She did not know whether they could be retrieved from archives. It is her view that it was simply "a housekeeping thing."

She knew of no travel on the part of Governor Easley during this period about which he might have wanted to suppress information. He had just been re-elected and did virtually no campaigning in 2005. She indicated that there were three "campaign events" during that year. It was her view that her office was not required to keep such records, so there were no public records law violations.

On October 14, 2009, we interviewed Capt. J. A. Melvin. He was accompanied by one of his attorneys, Doug Parsons. He indicated that he was in charge of the EPU detail during the relevant period. He had no recollection of having asked Ms. Bumgardner to remove the records and put them on a disk. He indicated, however, that the "cleaning up" of the computer to "free up" space sounds like something he would have done.

He did recall a point at which a disk was made and given to him. To the best of his recollection it remained at the EPU detail. He was in the process of closing out that segment of his career and going into the Technical Services Unit at the time, and he indicated this could have had an effect on his capacity for recall during that time. Capt. Melvin stated that he would have had no reason to ask Ms. Bumgardner to delete files from her personal computer. He thought all of the travel records for 2003, 2004 and 2005 were on disks and at the Mansion when he left.

He also stated that it was Governor Easley's personal laptop computer that he took to him at his personal residence after Easley had left the Governor's office. The computer was purchased through Rebecca McGee, who worked for Davis (Dave) Horne, who was the Governor's Finance Chair. Capt. Melvin went by her office and picked it up. It was there, he stated, to "sync it up" to a provider.

Capt. Melvin noted that there is an Executive Protection Filing Guide, and that it contains a retention schedule which says "destroy in office after two years." The records from 2005 thus could have been destroyed at any time beginning in 2007, and this would have accorded with the policy set forth in the Filing Guide.

Capt. Melvin had no idea how travel reporting to Governor Easley's Campaign Committee was accomplished. He said the patrol personnel sent campaign mileage to Secretary Bryan Beatty of the Department of Crime Control and Public Safety. He did not know where this information went from there. It was his view that no state law or regulations required the Patrol personnel to keep these records as they did. What they did, he said, was "self-initiated to be better organized."

He knew of nothing different about their record-keeping practices during 2005 from other years, and he questioned whether Governor Easley even knew of their practices. The forms were generated from information obtained from the Governor's office and, again, were all "self-initiated." No records of any kind were involved when he delivered the personal computer to Governor Easley. It was "brand new out of the box."

Capt. Melvin wanted us to understand that he was "all business" in his dealings with the Governor. It was his job to make sure that the Governor and his party got from one point to another safely and on a timely basis. When the Governor asked him why he did not play golf or discuss NASCAR with him, he told the Governor he was his protector, not his friend.

He indicated that he has a high comfort level on technological matters, so much so that he acquired the nickname "Inspector Gadget." Rebecca McGee from Davis Horne's office thus called him in on computer matters. The truth is, he said, the Governor "was wearing him out." He understood, however, why he was asked to assist with computer matters.

Capt. Melvin reiterated that he does not remember getting a disk from Diane Bumgardner. If he received one, he said, he would have put it in the desk drawer in the basement of the Governor's Mansion where such items were kept.

When he left the detail at the Governor's Mansion on April 30, 2007, he would have left whatever records were in the Mansion there at that time. There was no investigation then. There was no reason, other than an archival one, to have a disk with these records. He would not have taken any archival material with him when he left.

Capt. Melvin reiterated that he did not recall asking anyone to delete files from a computer, but that if he did, any such records would have been left in the desk at the Mansion. So far as he knows, any such records are still there.

Capt. Melvin stated that neither the Governor nor Mrs. Easley ever asked him to do anything unethical, immoral or untruthful. He questions whether Governor Easley even knew that these forms and records existed. He stated that he had no reason to cover up anything for Governor Easley. He was there for protection, not for socializing.

Subsequent to our interview with Capt. Melvin, there was some delay in our endeavor as we awaited the results of the FBI's check of the computer on which the travel records were kept. It was thought that there was a possibility that the records would still be found on Ms. Bumgardner's office computer. The computer was in the hands of the FBI. We preferred to have any information available from it before attempting to interview Governor Easley, whom we viewed as the last of the potential interviewees who might have knowledge as to the location of the records.

Ultimately, we were advised that the FBI had turned the computer over to the SBI because the SBI was in a better position to give attention to the question of whether the travel records could be found on it. When we learned that the SBI had concluded its work without success in locating the records, we scheduled interviews on the same day with the appropriate SBI officials and with Governor Easley.

The SBI officials, Randy Myers and John Dilday, met with us on December 16, 2009. They traced the chain of custody of the computer from the FBI to them. Although such records can be deleted and still be findable, they indicated that they made an exhaustive search for the travel records and did not find them. Agent Dilday compared it to removing a card from the card catalog in a library while the book is still on the shelf. He further indicated, however, that as time goes on, and other items override entries, they are less likely to find things.

All the SBI officials could tell us is that the SBI has a copy of the drive that the FBI gave it. The FBI personnel involved would have been "well-trained to make the copy," and the SBI has the first lab to be accredited for processing such digital evidence. They thus had confidence in their conclusions.

We also met with former Governor Michael F. Easley on December 16, 2009, prior to meeting with Mr. Myers and Mr. Dilday from the SBI. At the time Governor Easley was represented by attorney Richard T. (Rick) Gammon. Mr. Gammon did not appear with the Governor. He had expressly consented, through Justice Whichard, to our interviewing the Governor in his absence. There thus was no violation of Rule 4.2 of the N.C. State Bar Rules of Professional Conduct, which prohibits communication with a represented party without the consent of the attorney.

Governor Easley indicated that he really did not know that the SHPEPU kept such records. He let us know that the EPU would not allow him, Mrs. Mary Easley or their son, Michael, to go out alone. In the beginning he did so occasionally, but they would follow him. After the national events of September 11, 2001, they "tightened up" further.

Governor Easley and his family treated the patrolmen assigned to them like family. They took the view that if they were going to be there together, they should have fun together.

The Governor did not think the "outlog" was very accurate. It would often show him as out, but fail to show it when he was back in the Mansion. He indicated that events were often changed or cancelled, particularly political events, and that as a consequence he doubted that the records were always precisely accurate.

While he had assumed that some kind of event form was kept, he never attended scheduling meetings and was unaware of the details of how these matters were handled. Like the other interviewees, Governor Easley mentioned that it was an interesting time because it was when he and

his family had moved out of the Mansion to allow its renovation. This, in his opinion, could have had something to do with what happened to the records. He reiterated that he had no knowledge of how these records were kept or who was their custodian.

He stated that if he made a trip that involved both official and political matters, either his campaign fund or the Democratic Party would pay half the expenses.

The only disk he received, and he does not recall from whom, was a disk containing his personal contact list (names, addresses, other contact information).

What he recalls was Capt. Melvin having brought him a computer without a monitor and nothing else. It was a desktop and was his old campaign computer. He had planned to take it when he left, but it said "State of North Carolina" on the back, so he left it there. It had been on the shelf with the Highway Patrol since 2005 (it was not altogether clear to us, but it was our impression that he had taken two computers with him from the Governor's Mansion, both after he left there to resume living in his private residence: one an old campaign computer, and another a new one that Capt. Melvin had brought to him.)

There were no issues as to personal travel in 2005 that he was aware of. The issue first came to his attention in October 2008 when the New & Observer called wanting to know if McQueen Campbell had been paid for the flights the Governor took with him. At that time the Governor tried to reach Davis Horne, who was his campaign treasurer. (Ms. Bumgardner, as noted above, had referred to Horne as the Governor's Finance Chair. We noted the discrepancy, but did not consider it substantively significant to our inquiry.) Davis' wife was in the hospital at the time having a C-Section delivery, and he was unable to reach him. He reached McQueen Campbell, and Campbell indicated that he had been reimbursed for every flight. They were not specific about the dates of these flights. The Governor learned later (while attending the ACC Basketball Tournament in 2009) that Campbell's records had been subpoenaed.

He came back to the fact that 2005 was "a crazy year," one in which they were in and out of the Governor's Mansion in terms of their living arrangements and trying to get a budget passed in terms of statecraft.

It was his view that if anything is amiss, it is simply a mistake on someone's part. To his knowledge, he has no records regarding his 2005 travels. He was somewhat surprised that they had become an issue in that the private flights usually occur in election years. 2005 was not an election year; and while he did some campaigning in 2006, it was an election with no Presidential, U.S. Senate, or Governor's race, and therefore a less demanding one. 2005 was an off-year entirely, so there was not much reason for him to do anything in the way of travel on private flights.

CONCLUSIONS

In executing the task assigned to us, we looked as thoroughly as we knew how, but did not find the records. Nor did we find substantial and credible evidence of intentional wrongdoing on anyone's part in their disappearance or destruction. We found Governor Easley's statement that he was not aware that such records were kept credible and supported by the statements of the other personnel involved. While it is, of course, possible that it is not true, we can point to nothing that would enable someone to prove it false.

We found Ms. Bumgardner to be a very credible witness. We believed her story to the effect that she burned a disk with the travel records and gave it to Capt. Melvin. While we found minor inconsistencies in Melvin's statements to us and those he made in the Patrol's internal investigation, we could not point to any significant evidence that would prove, or tend to prove, his statements to be false. Suspicions about this matter will inevitably linger, but serious action, criminal or otherwise, cannot rest on mere suspicion.

As to the computer, we satisfied ourselves, to the extent possible, that the chain of custody went from the EPU at the Governor's Mansion to the FBI, and then to the SBI. The SBI, which made the ultimate determination, indicated that it had been unable to obtain the records. We have no basis for proving that to be incorrect, or even so suspecting. The SBI appears to have fulfilled its duties in the matter with the utmost ability and integrity.

There is little, if any, doubt that these records were deleted from the EPU computer and placed on a disk. What happened to that disk appears indeterminable, but, as indicated, we have found no evidence, direct or circumstantial, that would establish or even point toward an intentional hiding or destruction of the records. The more likely conclusion is that the records, when disposed of, were not yet a subject of controversy and thus were not regarded as particularly significant, and that their misplacement was a product of carelessness rather than malicious intent. But again, nothing produced by our extensive inquiry permits a firm and indisputable conclusion.

We reviewed the internal report of the Highway Patrol, and it does not identify the whereabouts of the records. With your permission, we are releasing it to the public as a part of this report.

In sum, while we found minor inconsistencies in the stories about the records, we did not find the records themselves or any clear indication of wrongdoing in their disappearance or destruction.

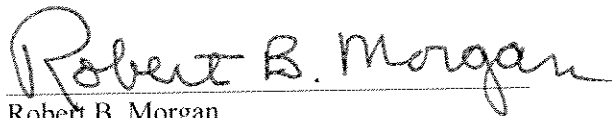
To the best of our knowledge, we have exhausted the possibilities but failed to produce definitive answers and bring closure to the matter.


January 5, 2010
Page 8

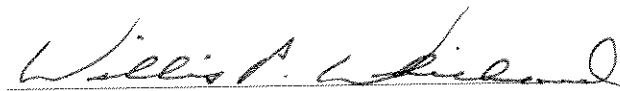
We are grateful for the confidence you placed in us by requesting that we perform this service for you and the people of North Carolina, and we appreciate your service and assistance, and your staff's, to us and to them.

SIGNATURES FOLLOW ON NEXT PAGE

This the 5th day of January, 2010.


Robert B. Morgan


Ralph A. Walker


Willis P. Whichard