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## The Week That Was

02-09-18

### 1. The Voice

#### *Our Spin:*

NBC Network's "The Voice," held tryouts this week in Manhattan and Todd Howe was singing like Adam Levine. The problem is whether he was singing from the music or writing his own lyrics. In the meantime, singer Howe was trading his luscious digs at the Waldorf Hotel for the bed and breakfast at the Metropolitan Correctional Center in Manhattan. In a stunning turn of events at the end of the third week of trial, the prosecution arrested its own star witness. Perhaps in a nod to the Governor's bail reform proposal, Judge Valerie Caproni revoked the songster Howe's bail.

#### *The Story:*

Todd Howe, the star witness in the trial of Governor Andrew Cuomo's former top aide, was arrested Thursday night after he testified earlier in the day that he may have violated his cooperation agreement with prosecutors.

The remarkable turn in the trial of Cuomo's former top aide Joseph Percoco came in the third week of testimony in the case.

There was no immediate comment from the U.S. Attorney's Office on Howe's arrest or what charge he is facing, but he was listed Friday on the Federal Bureau of Prisons website as an inmate at the Metropolitan Correctional Center in Manhattan.

A federal law enforcement source told the *Albany Times Union* Howe had been taken into custody because he had violated the conditions of his bail. After signing his cooperation agreement in September 2016, Howe was

released on \$100,000 personal recognizance bond that was co-signed by his wife. Howe was also required to surrender his passport.

The Wall Street Journal reported Howe was taken into custody Thursday night. Howe is waiting arraignment later Friday, a source familiar with the situation told the *USA Today Network's Albany Bureau*.

On the stand Thursday, defense attorneys peppered Howe with questions over him getting a hotel room at the Waldorf Astoria when he was meeting with prosecutors in the case in 2016.

Defense attorney Daniel Gitner, representing one of Percoco's three co-defendants, questioned Howe over the fact that he called a credit card company to dispute his \$604 charge for a night at the hotel, the Associated Press reported. The lawyer asked Howe if he realized he would be in violation of his plea agreement if he lied about the cost of the room. "I sure hope not," Howe responded.

[Times Union](#)  
[LoHud](#)

### 2. SALT in New York's Wounds

#### *Our Spin:*

At a joint Legislative Budget hearing on taxes this week, Governor Cuomo's top fiscal aide, Robert Mujica, released very little new details as to what taxpayers should expect from the Governor's Executive proposal and suggested a fix for SALT may not be effective until 2019. With 30 day amendments quickly approaching, all Mujica

could promise was more explanation would be coming. Sounds promising right? Or maybe it's just "complicated."

#### *The Story:*

Governor Andrew Cuomo's Budget Director said his plan to "thwart" limits on the deductibility of state and local taxes could include a number of different items, not just a payroll tax to complement the existing income tax, but those alternatives may not all roll out this year.

Budget Director Robert Mujica told legislators at a budget hearing on Thursday that the administration's full proposal, coming on February 15 in amendments to the Democratic governor's executive budget, will not pick a single track.

A report released last month by the state's Department of Taxation and Finance listed a menu of options, including a payroll tax or a new system, similar to what is advancing in California, where taxpayers can donate their taxes to funds that support government programs, write off the contributions as charity and then get a credit for the donation against their state taxes.

"All of these pieces are not mutually exclusive. You have something on the payroll tax side ... you have something on the charitable side as well," Mujica said during the hearing. "Together we think we can mitigate the vast majority of the \$14.3 billion."

It was difficult to get real answers from the budget chief without a specific proposal on the table, but he promised lawmakers that specific answers would be forthcoming. Mujica acknowledged the work was "complicated," and said he was working on statutory changes that would "mitigate" any impacts of tax code changes — particularly eligibility for social services, pension calculations and collective bargaining.

Mujica did say that the administration plan might not take effect for this year. "If we can get something done for the 2018 tax year we will try, if not, it will have to be for the 2019 tax year," he said. He also said the bill would de-couple the state's tax code from federal law in several ways, including allowing New Yorkers to take the standard deduction at the federal level and still itemize at the state level. Mujica said these provisions would be "substantially similar" to a de-coupling bill, that has already passed the state Senate.

#### [Politico](#)

### **3. O'Albany!**

#### *Our Spin:*

This past week the Court of Appeals kicked off its 2018 February term in the Capital City by hearing a case regarding unauthorized use of the likeness of Lindsey Lohan and "Mob Wives" star Karen Gravano in a newly released video game. Could it be...Lindsey Lohan is really back?! Her rollercoaster career has led from Hollywood, to the jail cell and now back into the courtroom over First

Amendment issues. The Justices of the Court were also busy Wednesday evening attending the Court of Appeals Dinner. The Annual black-tie event was held at the Convention Center and was attended by over 400 practicing attorneys who braved snowstorm for a chance to mingle with the Justices of the Court and other titans from across the legal community. It is only fitting to leave all of our dedicated readers with a quote referenced by Court of Appeals Associate Judge Eugene M. Fahey during his keynote address that depicted Albany as an "Improbable City of Political Wizards, Fearless Ethnic, Spectacular Aristocrats, Splendid Nobodies, and Underrated Scoundrels"!

#### *The Story:*

Attorneys for actress Lindsay Lohan and reality television star Karen Gravano argued before the state's highest court Wednesday that the video game "Grand Theft Auto V" used their likenesses without permission. Their lawsuits previously were dismissed by a lower court, but this week their attorneys made oral arguments before the New York State Court of Appeals, to have the cases reinstated and brought to a trial court.

Lohan filed suit against Take-Two Interactive Software, the parent company of Rockstar Games, which made the 2013 game, claiming that the character "Lacey Jonas" uses her image and mentions her years of legal trouble. The amount of Lohan's damage claim was not specified.

Gravano, daughter of Gambino crime family underboss Sammy "The Bull" Gravano, says the game makers depict her as the character "Antonia Bottino" and use bits of her life story, including being the daughter of a mobster who later testified against his mates.

A mid-level appeals court dismissed their lawsuits in 2016, in part because the game's "unique story, characters, dialogue, and environment, combined with the player's ability to choose how to proceed in the game, render it a work of fiction and satire," and therefore did not violate Section 51 of the state's Civil Rights Law, prohibiting a person's "name, portrait, picture or voice" for advertising or trade purposes.

Attorneys for the women argued that whether the game used their likenesses is a matter of factual interpretation that deserves further litigation in a trial court, rather than dismissal. Lohan's attorney, Frank Delle Donne of Monaco & Monaco LLP, argued that the game was deliberately marketed in a way that would play up the character and misrepresented the game itself.

"The advertisement appears in a different light than it's actually used within the work itself, which is the game," he argued. The court, which seemed broadly skeptical of the appellant arguments, appeared more receptive to that point.

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