

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
FOR MONTGOMERY COUNTY

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NADJA CABELLO V. : Case No. E-04252
MONTGOMERY COUNTY DHHS : OZAH No. 14-01
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A hearing in the above-entitled matter was held on
December 4, 2014, commencing at 9:33 a.m., at the Office of
Zoning and Administrative Hearings, 100 Maryland Avenue,
Rita Davidson Memorial Hearing Room, Rockville, Maryland
20850 before:

Lynn A. Robeson
Hearing Examiner

A P P E A R A N C E S

On Behalf of the Petitioner:

David A. Katz, Esq.
Gary M. Gilbert & Associates, P.C.
1100 Wayne Avenue, Suite 900
Silver Spring, Maryland 20910

Opening Statement of Ms. Windle 18
Opening Statement of Mr. Katz 23

Witnesses: Direct
Joseph Adler 27, 49
Dudley Warner 56, 119

E X H I B I T S

Exhibit No. Marked/Received
85A 111

1 the record, we do generally leave the record open for
2 submission of memoranda if the parties would like that. We
3 have a transcript here and this matter goes, we write the
4 report and recommendation to the Human Rights Commission who
5 makes the final determination in the case. I have two
6 outstanding motions. One is Ms. Windle's motion to dismiss
7 which you made early on.

8 MS. WINDLE: Yes.
9 MS. ROBESON: I didn't know if you wanted to renew
10 that. And the County's motion to exclude certain items that
11 came in after the discovery deadline. Are there any other
12 preliminary matters?

13 MR. KATZ: Ms. Robeson --
14 MS. ROBESON: Yes, you don't have to stand.
15 MR. KATZ: Okay. I can close the door.
16 MS. ROBESON: Okay.
17 MS. WINDLE: I'll get it.

18 MR. KATZ: Thank you. Just preliminary, we had
19 subpoenaed Ms. Garcia, a staff member of the Office of Human
20 Rights and that has to do solely as part of our opposition
21 to the motion to dismiss. And if you're ready to rule on
22 the motion to dismiss, we won't need her. She just asked
23 that I let her know as early as possible this morning
24 whether or not she would be needed today.

25 MS. ROBESON: Okay. Well let's take up the

P R O C E E D I N G S

1 MS. ROBESON: All right. I am going to call the
2 case of HR E-04252, Nadja Cabello versus Montgomery County
3 Department of Health and Human Services, OZAH Case Number
4 14-01. My name is Lynn Robeson, I'll be the Hearing
5 Examiner on this case. Would the parties identify
6 themselves for the record, please?

7 MS. WINDLE: Ann Windle representing Montgomery
8 County Maryland, Department of Health and Human Services and
9 the Department representative is to my left, Corrine
10 Stevens, representing Health and Human Services.

11 MS. ROBESON: Thank you.
12 MR. KATZ: I'm Daniel Katz, attorney for Ms.
13 Cabello. Ms. Cabello is seated at the table, joined also by
14 my colleagues, Nicole Diaz and Lucy Bansal (phonetic sp.).

15 MS. ROBESON: Now which one just passed the bar?
16 Well congratulations.

17 UNIDENTIFIED FEMALE PERSON: Thank you.

18 MS. ROBESON: All right. This hearing is informal
19 but it does have certain formalities. Hearsay is
20 admissible, if reliable. The order of proceeding today is
21 going to be opening statements, beginning with the County
22 and then the County's case in chief, Ms. Cabello's case in
23 chief, respondent's rebuttal, County's surrebuttal and any
24 surrebuttal and then closing statements and we will leave

1 County's motion to dismiss. Ms. Windle, I think part of
2 your motion to dismiss was that witnesses would not be
3 available. But I see that they are available. Is there any
4 part of your motion to dismiss that still applies?

5 MS. WINDLE: Yes, it does. Actually not all of
6 the witnesses that I would have wanted to talk to and
7 perhaps call are available. Many people have retired or
8 resigned. I did manage to put some people together and they
9 were kind enough to cooperate because of how they felt about
10 this case.

11 MS. ROBESON: Well, okay, go ahead.

12 MS. WINDLE: But the County certainly has been
13 prejudiced by not having available all the people. Because
14 it was such a huge delay in bringing this to hearing, we
15 have been prejudiced by not having all the people available
16 that I would have wanted to have involved.

17 MS. ROBESON: Okay. Mr. Katz?

18 MR. KATZ: As we said in our opposition, Your
19 Honor, Ms. Cabello has prosecuted her case. She filed a
20 charge, she filed a reply when the County responded, when it
21 was at the Office of Human Rights she was set to participate
22 in conciliation after there was a finding in her favor. The
23 conciliation was cancelled by the County and then the case
24 filed returned to OHR for processing. There's nothing in
25 the statute that says Ms. Cabello is responsible for

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1 processing the case and moving it up for a hearing. I mean
2 that is the responsibility of the staff members. As Ms.
3 Garcia, I can proffer that Ms. Garcia will testify that
4 about that time or shortly thereafter as a result of budget
5 cuts OHR lost literally over a majority of its employees and
6 that many cases just frankly, unfortunately, sat for years
7 on end and when Ms. Garcia was finally put in charge of
8 processing charges that were still pending and moving them
9 to hearing, she contacted Ms. Cabello to find out if in fact
10 the case had been conciliated. When Ms. Cabello informed
11 her it had not and that she wanted to move forward to a
12 hearing. As soon as the OHR contacted Ms. Cabello she
13 responded literally within 24 hours that she wanted to
14 prosecute her case.

15 MS. ROBESON: Ms. Windle, I did do some research
16 and most of the cases hold that if it's not the respondent's
17 fault or the complainant's fault that the case wasn't
18 prosecuted, I really can't hold it against them. I mean in
19 a way the County even though they're different agencies, the
20 County is the County which it's counterintuitive, but it is
21 and do you want to respond to that quickly?

22 MS. WINDLE: Yes. My response is it's Ms.
23 Cabello's case, she stands to benefit and profit from a
24 decision, potentially. It was three years in 2010 we
25 decided, the County decided not to go forward with

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1 conciliation and clearly said in an e-mail to the mediator
2 please set this for hearing. Three years.

3 MS. ROBESON: Well, what control does Ms. Cabello
4 have over budget cuts and staff?

5 MS. WINDLE: Well she doesn't, but she certainly
6 has a telephone and an e-mail and could have inquired in a
7 three year period and that's our position that the onus was
8 on her to inquire in a three year period about her case. It
9 wasn't the County's case, it was her case.

10 MS. ROBESON: Mr. Katz, what's your response to
11 that?

12 MR. KATZ: The response to that is under the
13 statute it is the responsibility of the office to prosecute
14 the case. Ms. Cabello called in that interim period to find
15 out the status of her case. She obviously, she wanted to
16 prosecute the case. There's no indication that she didn't
17 want to prosecute the case and when the Office finally got
18 back to her and said, you know, do you want to go to hearing
19 she said yes.

20 MS. ROBESON: Yes. Okay. Well --

21 MS. WINDLE: Excuse me, but I just have to, for
22 the record, we have been provided with absolutely no proof
23 that in that three year period that Ms. Cabello made any
24 inquiry. If there is such proof, we were not provided with
25 it. I understand that she had conversations in 2013. But

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1 between 2010 and 2013 I've seen no evidence that she did
2 anything to further the case.

3 MS. ROBESON: Well, I'm not sure it's her burden
4 under the case law so I am going to deny the motion to
5 dismiss. Let's move on to your motion to exclude evidence.

6 MS. WINDLE: Yes, well I think it speaks for
7 itself. We had an extended discovery period. We produced
8 an enormous amount of documents, much more than is even here
9 in evidence and then I think it was a couple of weeks after
10 discovery closed, all of a sudden we got another, I think it
11 was over 100 pages of documents produced by Ms. Cabello and
12 they're clearly things that they, they are things that have
13 now been put into the record. So there are things that they
14 wanted --

15 MS. ROBESON: Well they're not in the record yet.
16 They're here --

17 MS. WINDLE: Well, they're presented as an
18 exhibit.

19 MS. ROBESON: -- you mean as a joint exhibit?

20 MS. WINDLE: No, they're not joint exhibits --

21 MS. ROBESON: Okay.

22 MS. WINDLE: -- actually.

23 MS. ROBESON: All right. I guess before you
24 start, why are they prejudicial?

25 MS. WINDLE: Pardon?

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1 MS. ROBESON: Why is it prejudicial to you to have
2 the minutes, I've never seen these documents.

3 MS. WINDLE: I don't believe the County has argued
4 that their prejudicial, I don't think that they're, number
5 one they're not relevant and they weren't produced in a
6 timely fashion. They're not relevant because I mean they're
7 minutes to meetings, I don't know what they go to prove
8 except that Ms. Cabello was at some meetings of the Victim
9 Advisory Board and we're not contesting that she wasn't at
10 those meetings. But I don't see where they're relevant and
11 I also again they weren't timely produced.

12 MS. ROBESON: All right. Mr. Katz?

13 MR. KATZ: Your Honor --

14 MS. ROBESON: Why did you supplement your
15 responses?

16 MR. KATZ: We supplemented --

17 MS. ROBESON: I mean what's the relevance of these
18 documents?

19 MR. KATZ: The relevance of the documents is that
20 it was only after all of the depositions of the County's
21 either representatives or witnesses that we understood that
22 the minutes of the Victim Service Advisory Board may be
23 relevant and of course we're not, I mean we will argue it's
24 relevant because it goes to what was the job that Ms.
25 Cabello was actually performing, and what were the duties

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1 she was carrying out as opposed to what witnesses for the
2 County may be able say. They're also, Your Honor, they are
3 County documents, they're official business records that are
4 maintained by the County and the fact is that when we
5 realized they may be relevant to some of the County's
6 allegations, we then asked Ms. Cabello to continue searching
7 for any relevant documents as, I mean we view our discovery
8 responsibility is that discovery continues, you know, right
9 up until hearing if we locate any document which is
10 potentially --
11 MS. ROBESON: Relevant.
12 MR. KATZ: -- which is relevant and also which
13 responds to any of the County's discovery requests.
14 MS. ROBESON: Ms. Windle, you get one last shot.
15 MS. WINDLE: Well, again, we don't think they're
16 relevant and I really don't have anything else to offer.
17 MS. ROBESON: Okay. I'm going to allow the first
18 and second, you have three, I think, items and one, the
19 third one is that they're duplicates, I think.
20 MR. KATZ: I believe that goes to the OHR
21 documents, was it part of the report?
22 UNIDENTIFIED FEMALE PERSON: Yeah.
23 MR. KATZ: Yes, I mean I believe the --
24 MS. ROBESON: I'm sorry.
25 MR. KATZ: -- duplicates were documents from the

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1 OHR file which are already in the record.
2 MS. ROBESON: Well, that's what I wanted to check
3 because I don't have all of the OHR documents in the record.
4 I don't have the County's position statement. So I am going
5 to let them all come in and we will proceed with, there's a
6 summary already in the, there's a summary, I have the
7 analysis. There's a summary of the analysis, so I don't see
8 the prejudice of letting that in. So I'm going to let them
9 in and let's begin with --
10 MS. WINDLE: I'm sorry, I'm not understanding what
11 you're letting in because there was a number of, like I
12 said, there were many documents that were, meeting minutes
13 that there were other things as well. There were
14 complimentary letters, there were all kinds of, are you
15 letting everything in?
16 MS. ROBESON: The ones that you said were outside
17 of discovery, which I thought was, no. Let me find your
18 motion here. What were the ones that you provided, Mr.
19 Katz, can you tell us that? Here it is.
20 MR. KATZ: Yes. A moment, Your Honor? It's the
21 position statement of Montgomery --
22 MS. ROBESON: That's right.
23 MR. KATZ: It's Exhibit 85, which is the position
24 statement of Montgomery County and the VSAB 81, right?
25 UNIDENTIFIED FEMALE PERSON: Yes.

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1 MS. ROBESON: The Vass Bar?
2 MR. KATZ: The VSAB minutes which are Exhibit 84.
3 These? Just 84? What is presently Exhibit 84 which are a
4 series of minutes of the VSAB which is the Victim Service
5 Advisory Board meetings and Exhibit 85, which was the
6 position statement of Montgomery County to the OHR.
7 MS. ROBESON: I thought the one from the, no
8 there's a third contention --
9 MR. KATZ: Okay. I'm sorry.
10 MS. ROBESON: -- that there are duplicate exhibits
11 in here.
12 MS. WINDLE: It's not, I have to look at what's on
13 the thing.
14 MS. ROBESON: I keep going everywhere but, okay,
15 page 2 of Ms. Cabello's motion, paragraph 6. The documents
16 were previously produced by the complainants while discovery
17 was open. Nonetheless, the County objects to those
18 documents as they were not timely produced and are
19 redundant. Do you agree with that or not agree with that,
20 Mr. Katz?
21 MR. KATZ: They would only be redundant if they're
22 already in the record I think.
23 MS. ROBESON: Are they --
24 MS. WINDLE: They are in the record. That was --
25 MS. ROBESON: Okay. Well I am going to exclude

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1 them for the moment and if it turns out they're not in the
2 record, I'm going to give you time to verify, we'll renew
3 this conversation, but we don't need to have more documents
4 in the record than there already are. So with that -- yes?
5 MR. KATZ: I was just going to say, I mean we
6 don't have to stop now to do it but if we, I mean we were
7 given the docket list this morning --
8 MS. ROBESON: Yes.
9 MR. KATZ: -- by Ms. Forbes, so we can check it to
10 this list.
11 MS. ROBESON: Okay. That's fine.
12 MR. KATZ: And we can do that at a break or --
13 MS. ROBESON: Yes, that's fine. That's fine.
14 MS. WINDLE: Ms. Robeson, related to Exhibit 85,
15 and I was just having a conversation with Mr. Katz about
16 this, Exhibit 85 is simply tab 3 to a larger document that
17 the County's response to the original complaint that went to
18 the Office of Human Rights. There's a cover letter that's
19 several pages long that has a lot of material, that I have
20 copies of. The tab is just like an attachment to that and
21 then there also are a lot of exhibits that were attached and
22 frankly when the County got a copy of the Office of Human
23 Rights, their file --
24 MS. ROBESON: Yes.
25 MS. WINDLE: -- it was such a mess that I couldn't

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1 figure out, I'm not sure that I have seen or have all of the
2 things that were sent over as the original response. So,
3 but my point on 85 is it's just a piece of the response that
4 the County provided to OHR and I want to make sure that you
5 have everything.
6 MS. ROBESON: That I have everything of what?
7 Everything that was in OHR's file?
8 MS. WINDLE: Well, the complete County response.
9 I don't doubt that you have everything.
10 MS. ROBESON: I see what you're saying. I'll let
11 you introduce that if you think what Mr. Katz wants to
12 produce is incomplete, then I will let you introduce that as
13 a separate exhibit. Is that what you're asking?
14 MS. WINDLE: Well, I mean that's one way to handle
15 it. That's fine. We have the letter right here that can be
16 produced now and it can be put in as exhibit, I guess it
17 would be 94.
18 MS. ROBESON: Okay. Well we'll do that when your
19 case in chief comes. I'd like to start --
20 MS. WINDLE: Okay.
21 MS. ROBESON: -- moving forward now. Yes?
22 MR. KATZ: Just one request, Ms. Garcia asked if I
23 could give her a call to let her know.
24 MS. ROBESON: Yes. Yes. Why don't we take a five
25 minute, oh go ahead.

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1 MR. KATZ: I was just going to say it will just
2 take a minute if I can step outside and call.
3 MS. ROBESON: That would be fine. Let's just do a
4 two minute break and you can call her and we won't take a
5 five minute break and then we'll start moving. Okay?
6 MR. KATZ: Okay. Thank you.
7 (OFF THE RECORD.)
8 (ON THE RECORD.)
9 MS. ROBESON: All right. We're back on the
10 record. Any other preliminary matters? Yes, Mr. Katz?
11 MR. KATZ: Two, Your Honor. Number one, we are
12 invoking the witness rule and I would also request that the
13 County's witnesses not discuss the case prior to their
14 testimony, they're all sitting here.
15 MS. ROBESON: Okay. There are three people
16 sitting in our library.
17 MR. KATZ: Yes.
18 MS. ROBESON: Are they all County witnesses?
19 MR. KATZ: Yes.
20 MS. ROBESON: Okay. They're going to have to be
21 separated and someone is going to have to, Ms. Windle, can
22 you go instruct them they can sit in the cafeteria.
23 MS. WINDLE: Is it not sufficient to direct them
24 not to speak about the case. I mean I'm comfortable that
25 these are all professional people. I'm not worried that

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1 they will violate that if they're told.
2 MS. ROBESON: Well Mr. Katz?
3 MR. KATZ: It's a formal requirement. I don't
4 think they're bad people, it's a basic requirement that
5 witnesses not discuss their testimony prior to giving
6 testimony and also when they can be recalled. So I'm just
7 asking that they be separated.
8 MS. ROBESON: I agree, because if they talk about
9 the weather, how is anyone to know? So if they can go to
10 the cafeteria and just sit at separate tables, I think
11 that's a far better approach and then we eliminate any
12 question. All right.
13 MS. WINDLE: I will advise them.
14 MR. KATZ: Thank you.
15 MS. ROBESON: Because they're in there talking now
16 as I passed through the library --
17 MS. WINDLE: Well they've worked together for a
18 number of years.
19 MS. ROBESON: Well I'm not accusing them of --
20 MS. WINDLE: Mr. Katz.
21 MS. ROBESON: -- I'm not accusing them of
22 anything. I'm just saying it's better to make sure that
23 it's.
24 MS. WINDLE: I will advise them.
25 (OFF THE RECORD.)

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1 (ON THE RECORD.)
2 MS. ROBESON: Okay. We're back on the record.
3 Thank you, Ms. Windle. You instructed them to sit at
4 different tables?
5 MS. WINDLE: Yes, I did.
6 MS. ROBESON: Thank you. I think it's safest for
7 everyone. All right. Now, yes, Mr. Katz?
8 MR. KATZ: One other item, Your Honor. Last
9 evening, the parties were able to agree to a set of joint
10 stipulations.
11 MS. ROBESON: Okay.
12 MR. KATZ: Which if you'd like we can present.
13 MS. ROBESON: Yes. I'm going to mark this, by the
14 way you should have gotten, I don't know if you all were in
15 the room, you should have gotten an updated docket just to
16 reflect the subpoenas that were issued yesterday.
17 MR. KATZ: We did, Your Honor.
18 MS. WINDLE: Okay.
19 MS. ROBESON: Okay. So I am going to mark this as
20 67 joint stipulations. Anything else? All right.
21 MS. WINDLE: I'm sorry I have 65, is this not --
22 MS. ROBESON: What did I say, 67? 66, I
23 apologize.
24 MS. WINDLE: Would it be 66, is that right?
25 MS. ROBESON: Yes.

1 MS. WINDLE: Okay.
 2 MS. ROBESON: 66, joint stipulation. All right.
 3 With that, are the parties ready to proceed to opening
 4 statements?
 5 MS. WINDLE: Yes.
 6 MS. ROBESON: Okay. Ms. Windle?
 7 MS. WINDLE: I am going to stand it's just more --
 8 MS. ROBESON: I know.
 9 MS. WINDLE: -- more comfortable.
 10 MS. ROBESON: We don't have a podiums.
 11 MS. WINDLE: We don't have podiums. I've been
 12 looking for a portable one that I can take with me but I
 13 have to jerry rig things.

14 OPENING STATEMENT BY MS. WINDLE

15 MS. WINDLE: Okay. Nadja Cabello alleges that and
 16 I quote from her complaint, I believe that I have been
 17 discriminated against and denied pay parity based on my
 18 ancestry, Hispanic. The Montgomery County Office of Human
 19 Rights, after reviewing her complaint, the County's response
 20 and her rebuttal and without allowing the County an
 21 opportunity to respond to or even see her rebuttal found
 22 that the County had discriminated against Ms. Cabello. Now
 23 let's look at what the evidence will show.
 24 You will hear first from Joe Adler who is the
 25 director of the Office of Human Rights and as been since

1 2002, that the Management Leadership Service of which Ms.
 2 Cabello and her peers are or were members was instituted in
 3 1998 to allow flexibility to award top tier managers with
 4 pay for performance. Therefore, the notion of pay parity
 5 runs counter to pay for performance. You get paid for how
 6 well you perform. Not everybody is going to get compensated
 7 the same. That's the whole notion behind the Management
 8 Leadership Service and its compensation system and that's
 9 what you're going to have explained by Mr. Adler.
 10 The evidence will show that the compensation
 11 matrix for Management Leadership Service or MLS employees
 12 allows for a large degree of discretion in awarding
 13 employees for performance, not just for longevity as the
 14 prior system did. You're also going to hear from Corrine
 15 Stevens who supervised Ms. Cabello from 1995 through most of
 16 fiscal year 2002 that Ms. Cabello was resistant to the
 17 reorganization of services in 1995 and was slow to see her
 18 program Victims Assistance of Sexual Assault as part of a
 19 larger system of services to victims and persisted in
 20 operating her program as a standalone. The evidence will
 21 show that in fiscal year 2002, Ms. Stevens rated Ms. Cabello
 22 with successful which the regulations define as good, solid
 23 performance. And that most MLS employees and this is right
 24 out of the regulations, most MLS employees will be in this
 25 category of successful.

1 The evidence will also show that Ms. Stevens found
 2 Ms. Cabello's performance during the years she supervised
 3 her as successful, not more largely because Ms. Cabello
 4 failed to see her program in a larger organizational context
 5 and to work to that end.
 6 You will also hear from Dudley Warner, who was Ms.
 7 Cabello's supervisor during the years she is now challenging
 8 her rating and compensation. And you'll hear from him that
 9 in the fiscal years 2003 to 2006, Ms. Cabello adequately ran
 10 her program but did not take steps to integrate it with
 11 other services which was the focus of the Department of
 12 Health and Human Services and the County during those years.
 13 You will also hear how Ms. Cabello compared with her peers
 14 during those years, a white female and a white male, who
 15 both performed with significantly higher level most of those
 16 years from Ms. Cabello and who subsequently received higher
 17 ratings and more compensation. The evidence will show that
 18 Mr. Warner rated Ms. Cabello as successful fiscal year 2003
 19 through 2006 and recommended a lump sum compensation which
 20 he believed was commensurate with her performance.
 21 You will also hear from Daryl Plevy, Chief
 22 Behavioral Health and Crisis Services from 2003 through
 23 2006. Mr. Warner's supervisor and the reviewing official of
 24 Ms. Cabello's evaluations and compensation recommendations.
 25 The evidence will show that Ms. Plevy concurred with Mr.

1 Warner's recommendations to rate Ms. Cabello as successful
 2 during fiscal years 2003 through 2006 and with the
 3 recommendation to award her a 1 percent lump sum in 2003 and
 4 a 2 percent lump sum in 2004, 2005 and 2006.
 5 You will also hear, I believe, from Ms. Cabello
 6 herself, at least she's on the witness list at this point,
 7 who I believe will admit that in all the years she worked
 8 with and for Mr. Warner, he never did anything that showed
 9 racial animus. She will also admit that she did not
 10 complain about her rating and compensation until she found
 11 her and her coworker's evaluations on an unsecured drive,
 12 copied those confidential evaluations and instead of
 13 immediately alerting management took the information to the
 14 County's EEO Unit.
 15 You will also hear from her that she knew she
 16 couldn't grieve her performance rating, you can't grieve a
 17 performance rating, but you can file an EEO complaint. The
 18 evidence will show that the Montgomery County Office of
 19 Human Rights erred in at least two significant ways. First
 20 the investigator took it up on herself to compare Ms.
 21 Cabello with her peers and conclude that Ms. Cabello's
 22 performance was at least as good as theirs and that she
 23 deserved more compensation. In so doing the Montgomery
 24 County Office of Human Rights investigator did what Courts
 25 patently refuse to do, that is to sit as what has been

1 called a super personnel Department and second guess
 2 management decisions. The Courts won't do it, but MCOHR
 3 did. Second, MCOHR then jumped to the conclusion with no
 4 supporting evidence that the reason Ms. Cabello got a lower
 5 rating and lower compensation must be because she's
 6 Hispanic. The parties agreed that the applicable legal
 7 framework is McDonnell Douglas burden shifting scheme.
 8 First, the complainant must make out a prima facie case of
 9 discrimination, which the Montgomery County Office of Human
 10 Rights determined that Ms. Cabello did. Then the burden
 11 shifts to the County to show a legitimate nondiscriminatory
 12 reason for its action, in this case, Ms. Cabello's rating
 13 and compensation. Finally, the burden shifts back to Ms.
 14 Cabello to show that the legitimate reason given by the
 15 County for its evaluation and rating of her is merely
 16 pretext for the real reason that the County rated and
 17 compensated Ms. Cabello at a lower level than her
 18 counterparts because of her ancestry, in this case Hispanic.
 19 Obviously, where the parties differ is in whether
 20 the reason given by the County for Ms. Cabello's evaluations
 21 and compensation is legitimate or is a pretext. The County
 22 believes that when all the evidence is heard, the hearing
 23 authority will have to conclude that the reasons for Ms.
 24 Cabello's rating and compensation in 2003 through 2006 were
 25 valid, legitimate reasons, not discrimination. Ms. Cabello,

1 I suspect, will try mightily to show pretext, but this the
 2 County believes, that she will fail to do.
 3 And that's all we have at this point, thank you.
 4 MS. ROBESON: Thank you. Mr. Katz?
 5 MR. KATZ: Thank you. Is it okay if I sit down?
 6 MS. ROBESON: Certainly.
 7 MR. KATZ: Okay.
 8 OPENING STATEMENT BY MR. KATZ
 9 MR. KATZ: Very briefly, Your Honor. Ms. Cabello
 10 is a long term County employee, she has an excellent work
 11 record during the period of time in question, before, and
 12 since then. In 2002 she received a successful rating when
 13 she was supervised by Ms. Stevens and she received an
 14 increase to her base salary as a result of Ms. Stevens'
 15 evaluation and recommendation in fiscal year 2002. Between
 16 fiscal year 2003 and fiscal year 2006, Ms. Cabello was
 17 supervised and evaluated by Mr. Warner. He rated her as
 18 successful but in no year did he recommend and grant her an
 19 increase to her base salary. She did receive some lump sum
 20 bonuses, but not an increase to her base salary which has a
 21 long term negative effect on her income. She requested
 22 explanations and feedback from Mr. Warner in regard to what
 23 she was doing that was not to his satisfaction where she
 24 could improve and she never received any concrete feedback.
 25 Between fiscal year 2003 and 2006, her evaluations do not

1 reflect a number of the reasons that the County is going to
 2 propose today for her not receiving either higher ratings or
 3 receiving an increase to her base rate, her base salary.
 4 These reasons are not legitimate, they were not
 5 provided at the time. The reasons being given are not
 6 specific so as to provide feedback that a supervisor is
 7 responsible to give someone that he or she is supervising.
 8 The issues will come out during the testimony so
 9 that we don't have to list them in an opening statement. In
 10 addition, it is very likely that some of the reasons to be
 11 provided may be false. For example, a misunderstanding of
 12 what increases in base pay would have been available for at
 13 least fiscal year 2003.
 14 The Office of Human Rights did a very thorough
 15 investigation of this case and if I can read from their
 16 finding which is Exhibit Number 86 in the binder, and I'm
 17 quoting from the report, in the complainant's 2006
 18 performance evaluation, Mr. Warner wrote the following
 19 comment, quote, in order for her to receive a performance
 20 review at the next level, Ms. Cabello must work at a more
 21 macro level. She does excellent work as it relates to
 22 program tasks, she needs to work on issues that impact
 23 policy and how victim's issues relate and integrate with
 24 other services, unquote.
 25 The OHR went on to state that the record of the

1 evidence does not support the respondent's assertion. The
 2 complainant has demonstrated that VSAB is a program that
 3 relates and integrates with many County agencies as well as
 4 state and federal issues and program. The record of
 5 evidence lists agencies both in government and the private
 6 sector and VSAB has collaborated with in order to impact
 7 policy and coordinate victim services. VSAB is considered
 8 to be a model program for the State of Maryland.
 9 In addition, the complainant has had an impact at
 10 the federal level. VSAB has testified in Congress
 11 concerning the passage of human trafficking laws and has met
 12 with representatives from Congress to provide feedback
 13 concerning the Violence Against Women Act.
 14 Very briefly, Your Honor, this case does not
 15 involve what you might call some of the more ugly or overt
 16 forms of discrimination. It involves discrimination which
 17 in a far more, perhaps insidious sense diminishes,
 18 minimizes, ignores or undervalues the contributions and work
 19 of an individual because of characteristics that are
 20 protected under the statute. We're not asking the
 21 Commission to serve as a super personnel committee, we're
 22 simply asking the Commission to enforce County law that
 23 prohibits discrimination based on nationality or national
 24 origin. Thank you.
 25 MS. ROBESON: All right. Ms. Windle your first

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1 witness?
2 MS. WINDLE: I'll go retrieve him from the
3 cafeteria.
4 MS. ROBESON: You know if one wants to sit in the
5 library instead, if you have an order of witnesses, why
6 don't you have the one after Mr. Adler sit in the library
7 and then you don't have to hike to the cafeteria.
8 MS. WINDLE: Well okay maybe that's doable.
9 MS. ROBESON: Okay. We're off the record for a
10 few minutes. Thank you.
11 (OFF THE RECORD.)
12 (ON THE RECORD.)
13 MS. ROBESON: We're back on the record.
14 MS. WINDLE: If you can give me a moment, I need
15 to get my questions in.
16 MS. ROBESON: While you do that, Mr. Adler, can
17 you raise your right hand, please.
18 MR. ADLER: Should I stand?
19 MS. ROBESON: No.
20 MR. ADLER: Okay.
21 MS. ROBESON: Do you solemnly swear under
22 penalties of perjury that the statements you're about to
23 make are the truth, the whole truth and nothing but the
24 truth?
25 MR. ADLER: I do.

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1 MS. ROBESON: Thank you.
2 MS. WINDLE: Okay. Good morning.
3 MR. ADLER: Good morning.
4 MS. WINDLE: If you could just state your full
5 name for the record.
6 MR. ADLER: Joseph Adler.
7 MS. WINDLE: And are you employed by Montgomery
8 County?
9 MR. ADLER: Yes.
10 MS. WINDLE: And what is your position?
11 MR. ADLER: Director, Office of Human Rights.
12 MS. WINDLE: And what are your general duties as
13 Director of Human Resources?
14 MR. ADLER: To oversee the entire HR function for
15 County Government, classification, training, records
16 management, collective bargaining and health and benefits.
17 MS. WINDLE: And how long have you held this
18 position?
19 MR. ADLER: 12 years.
20 MS. WINDLE: Okay. And so the starting date?
21 MR. ADLER: November 2012.
22 MS. WINDLE: What did you do before you worked for
23 Montgomery County?
24 MR. ADLER: I was an equivalent position at Prince
25 George's County, I was the Director of the Office of

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1 Personnel and Labor Relations.
2 MS. WINDLE: And how long did you hold that
3 position?
4 MR. ADLER: I was there for 8 years.
5 MS. WINDLE: Okay. And what is your education and
6 training?
7 MR. ADLER: Bachelor's Degree from City College of
8 New York, Master's Degree in Public Administration from
9 Princeton University.
10 MS. WINDLE: And are you familiar with the
11 Management Leadership Service --
12 MR. ADLER: Yes, I am.
13 MS. WINDLE: -- System and let me finish the
14 questions.
15 MR. ADLER: I'm sorry.
16 MS. WINDLE: I know that you're probably
17 anticipating but I'm going to ask it just so the record is
18 clear.
19 MR. ADLER: Sorry.
20 MS. WINDLE: And I'll try not to talk over you
21 when you're responding.
22 MR. ADLER: Okay.
23 MS. WINDLE: So let me just repeat that. Are you
24 familiar with the Management Leadership Service system?
25 MR. ADLER: Yes.

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1 MS. WINDLE: And what is it?
2 MR. ADLER: It is the County's kind of equivalent
3 of Federal Senior Executive Service. It's the top 350/375
4 managers, merit system managers in County government that
5 are banded together for the purposes of separate, separate
6 classification because they have a separate pay system from
7 general scheduled employees.
8 MS. WINDLE: Okay. You say 375 out of how many
9 employees?
10 MR. ADLER: About 10,000 employees.
11 MS. WINDLE: And when was the, I'm going to call
12 it the MLS system. When was the MLS system instituted?
13 MR. ADLER: 1998.
14 MS. WINDLE: And before the MLS system how were
15 managers at that level compensated?
16 MR. ADLER: They were part of the general schedule
17 system which meant that folks got whatever was appropriated
18 as a general wage adjustment and then they would move up the
19 step increases which were generally 3 and a half percent.
20 It was semi, it was an automatic move up unless there was
21 some really, really poor performance. There was no
22 discretion on the part of management, top level management
23 to influence that.
24 MS. WINDLE: So it was an automatic 3 and a half
25 percent?

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1 MR. ADLER: Generally it was an automatic it's
2 called a step increase or increment and as long as there is
3 a pay scale from minimum to maximum and there are steps
4 along each one.
5 MS. WINDLE: You mentioned a general wage
6 adjustment. Do MLS employees still get the general wage
7 adjustment?
8 MR. ADLER: Yes, they do, they get the general
9 wage adjustment just like general schedule employees or
10 employees in collective bargaining.
11 MS. WINDLE: Okay. Now I'm going to ask you to
12 turn to what's been marked as Joint Exhibit Number 1.
13 MR. ADLER: Okay. I have it in front of me.
14 MS. WINDLE: Could we go off the record for just a
15 minute?
16 MS. ROBESON: Yes, we're off the record.
17 (OFF THE RECORD.)
18 (ON THE RECORD.)
19 MS. ROBESON: If we could go back on the record,
20 and I'll just summarize what we said off the record. We
21 said that you don't have to lay a foundation for the joint
22 exhibits. The second issue that Ms. Windle has raised is
23 whether she can tell her witnesses of the joint stipulations
24 and that is not, well, Mr. Katz, do you want to say anything
25 on that request?

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1 MR. KATZ: Yes. I would oppose that, I mean for
2 all parties, no party should be able to tell a witness what
3 the stipulation is, because those are stipulations of fact
4 and the witness's recollection of fact or interpretation of
5 fact can affect their credibility.
6 MS. ROBESON: I agree with that. So you jointly
7 stipulated the facts, and I appreciate that but as far as
8 telling the witness what to say, not telling them what to
9 say but I am going to deny your request.
10 MS. WINDLE: Well, it really wasn't a request --
11 MR. KATZ: I'd ask that --
12 MS. WINDLE: Excuse me.
13 MR. KATZ: Your Honor, I'd ask that the witness be
14 excused for this time out.
15 MS. ROBESON: Yes, Mr. Adler, can you just step
16 out very close to the door? I do appreciate it.
17 MS. WINDLE: I'm sorry, I didn't bring this up
18 earlier, I'm just trying to get clarification so that the
19 testimony will go smoothly.
20 MS. ROBESON: No, I understand --
21 MS. WINDLE: I'm not trying to --
22 MS. ROBESON: -- and no I don't think you are and
23 I understand and certainly appreciate it because we have a
24 number of witnesses --
25 MS. WINDLE: Right.

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1 MS. ROBESON: -- that we have to get through in
2 this case.
3 MS. WINDLE: Right.
4 MS. ROBESON: But I do agree with Mr. Katz that
5 it's not proper to tell each witness what's already been
6 stipulated to because it may have an influence on
7 credibility. So what we're going to do is proceed on their
8 testimony and without any instruction ahead of time as to
9 what the County has stipulated.
10 MS. WINDLE: So they will have to go back through
11 yes I gave this rating this year, yes I recommended this
12 compensation, yes, I mean all that background?
13 MS. ROBESON: Well shouldn't they know that --
14 MS. WINDLE: Well that's --
15 MS. ROBESON: -- in preparation for this trial?
16 MS. WINDLE: Sure.
17 MS. ROBESON: So I think that we're going to go
18 forward without instructing the witness what's been
19 stipulated to. I understand what you're saying in trying to
20 shorten the testimony.
21 MS. WINDLE: Right.
22 MS. ROBESON: But I do agree on this aspect that
23 it's not a good way to approach it.
24 MS. WINDLE: Okay. That's fine.
25 MS. ROBESON: All right. Can you request, poor

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1 Mr. Adler who has been shuffled around to come back in?
2 Thank you, Mr. Adler. Hopefully, you can stay on that hot
3 seat for a little bit without further movement. Okay. Go
4 ahead, Ms. Windle.
5 MS. WINDLE: I believe I had asked you to look at
6 Joint Exhibit 91.
7 MR. ADLER: It's in front of me.
8 MS. WINDLE: And do you recognize this document?
9 MR. ADLER: Yes.
10 MS. WINDLE: And what is it?
11 MR. ADLER: It is part of the Montgomery County
12 Personnel Regulations Section 11, it deals with planning and
13 evaluation for performance, employee performance plans.
14 MS. WINDLE: Now looking at the first page of this
15 document there appears that there have been amendments over
16 the years 2005, 2006, 2007 and 2008 that there have been
17 some amendments to this section. To your knowledge, is this
18 the same basic performance planning and evaluation process
19 as was in effect in fiscal year 2003 through 2006?
20 MR. ADLER: Yes.
21 MR. KATZ: I'm going to object and just request, I
22 mean counsel basically got into the record by her question
23 that there have been amendments. That could be an issue of
24 fact.
25 MS. ROBESON: Well --

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1 MR. KATZ: I would just request that she ask the
2 witness that question.
3 MS. ROBESON: I see what you're saying. Can you
4 rephrase the question?
5 MS. WINDLE: Have there been amendments to Section
6 11?
7 MR. ADLER: Yes, several.
8 MS. WINDLE: Okay.
9 MS. ROBESON: Okay. Go ahead.
10 MS. WINDLE: Despite the amendments is this the
11 same basic performance plan and evaluation process as was in
12 effect in fiscal years 2003 through 2006?
13 MR. ADLER: Yes.
14 MS. WINDLE: Okay. And what about the rating
15 category below expectations? When was that added to the
16 regulations?
17 MR. ADLER: I believe that was in 2006, 2006/2007,
18 it was felt that there needed to be another category besides
19 does not meet and that's why it was tweaked to the MLS
20 rating system.
21 MS. WINDLE: Okay. So then the ratings at that
22 point would have been what?
23 MR. ADLER: As indicated on --
24 MS. ROBESON: I'm sorry, I couldn't hear you.
25 MR. ADLER: Yes, I'm, refresh my own memory here.

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1 That there, outstanding, highly successful, successful and
2 does not meet or exceptional, highly successful --
3 MS. WINDLE: I'm sorry, what was the first one?
4 MR. ADLER: Exceptional, highly successful,
5 successful, does not meet.
6 MS. ROBESON: Does not meet expectations?
7 MR. ADLER: Does not meet expectations, yes.
8 MS. WINDLE: But now you're saying that there's an
9 additional --
10 MR. ADLER: Yeah. Below expectations, yes.
11 MS. WINDLE: And that was not in the personnel
12 regulations in 2003 through 2006?
13 MR. ADLER: That is correct.
14 MS. WINDLE: Okay. Now I'm going to ask you to
15 turn to Joint Exhibit 90. And this is a joint exhibit that
16 has already, is in evidence. Do you recognize this
17 document?
18 MR. ADLER: Yes.
19 MS. WINDLE: What is it?
20 MR. ADLER: It is also part of the personnel
21 regulations and just deals with all the variances of
22 compensation for County employees.
23 MS. WINDLE: Okay. Now has this section been
24 amended?
25 MR. ADLER: Many times.

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1 MS. WINDLE: Asking you to turn to page 104 of
2 this.
3 MR. ADLER: Am I allowed to take the clip off?
4 MS. WINDLE: Yes, you can.
5 MR. ADLER: 104?
6 MS. WINDLE: 104.
7 MS. ROBESON: Oh, page 104.
8 MS. WINDLE: I'm sorry, 104.
9 MS. ROBESON: Exhibit 90, is that --
10 MS. WINDLE: Exhibit 90, it's page 104, it's at
11 the bottom.
12 MS. ROBESON: Okay.
13 MS. WINDLE: There's a lot of numbers on this
14 page. Okay. I'm asking you to look at on page 104, the
15 eligibility for performance based pay for MLS employees. To
16 your knowledge, is this the same matrix that was in effect
17 in fiscal years 2003 through 2006?
18 MR. ADLER: With the exception of that below
19 expectation category, yes.
20 MS. WINDLE: Okay. Actually give me just a
21 minute. I'm going to direct you to another. I'm sorry, I'm
22 having trouble finding it, here yes, if you could turn to
23 Exhibit 74. Okay. This is a joint exhibit that's already
24 been put into evidence. If you will look at the second page
25 of this, there is three pages to this exhibit, I believe.

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1 MR. ADLER: Uh-huh.
2 MS. WINDLE: Look at the second page.
3 MR. ADLER: Yes.
4 MS. WINDLE: Is this the matrix that would have
5 been in effect in 2003 to 2006?
6 MR. ADLER: Yes.
7 MS. WINDLE: Okay.
8 MS. ROBESON: 2003 to 2006, is that what you said?
9 MS. WINDLE: Yes. Actually was this the matrix
10 that would have been in effect in 2002 as well?
11 MR. ADLER: Yes.
12 MS. WINDLE: Okay. Now can you describe what the
13 MLS or the Management Leadership Service compensation
14 process is in terms of what the process is.
15 MR. ADLER: Oh well in the overall sense there is
16 a performance plan that's generally put together between
17 consultations between the employee and a manager and it
18 could be tweaked and some back and forth in terms of what
19 the performance factors will be that the employee is going
20 to be evaluated and at the end of the fiscal year there was
21 an evaluation process by management in terms of whether
22 those goals were met or not met and the purpose for it and
23 then a recommendation for salary increase or no increase is
24 made on the performance part of the pay.
25 MS. WINDLE: Now do members of the MLS system,

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1 managers in the MLS system have a right to a percentage
2 increase?
3 MR. ADLER: They have a right to the general wage
4 increase as all other County employees have. They do not
5 have a right, quote unquote, to the performance base
6 increase.
7 MS. WINDLE: Okay. And do managers have a right
8 to a lump sum?
9 MR. ADLER: A lump sum is one of the options that,
10 it's not a right, it's, it's, it's something that management
11 can decide either lump sum or a general or an across the
12 board, sorry, add to the base. I wouldn't say it's a right.
13 MS. WINDLE: Okay. Do they have to give a lump
14 sum or an increase at all?
15 MR. ADLER: Depending on, well it depends on the,
16 the rating, because the, the matrix explains what is granted
17 it's up to a certain percentage. So the expectation is up
18 to but if the, if the rating is lower then there is no
19 expectation of a pay increase for the performance piece.
20 MS. WINDLE: Now do all managers who get the same
21 rating, for instance, a successful rating, get the same
22 compensation?
23 MR. ADLER: No, it's management that makes that
24 determination, there's discretion on part of upper level
25 management as to how much they grant.

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1 MS. WINDLE: Okay. And how much --
2 MR. ADLER: How much they recommend, excuse me,
3 how much they recommend.
4 MS. WINDLE: How much discretion does a manager or
5 division chief have in determining the type and amount of
6 compensation to award an individual employee?
7 MR. ADLER: It's as explained in the matrix,
8 depending income on a rating, it's up to the sum of it goes
9 from 2 percent, 3 and a half, 4, et cetera, depending on
10 where they are on the pay band and what kind of, what kind
11 of rating they received. So that is a discretion on the
12 part of management.
13 MS. WINDLE: Okay. Now I'd like you to turn to
14 what's been marked and is in evidence at Joint Exhibit 87.
15 Okay. Do you recognize this document?
16 MR. ADLER: Yes.
17 MS. WINDLE: What is it?
18 MR. ADLER: It is a document signed by the Office
19 of Human Resources to MLS, folks that are going to rank and,
20 and, and a recommend performance based increases, if any,
21 for MLS members. So it's a handbook, it's more or less
22 walks folks through the system.
23 MS. WINDLE: Okay. And what's the date of this
24 particular handbook?
25 MR. ADLER: This one is FY06/FY07.

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1 MS. WINDLE: Okay. And have you had an
2 opportunity to look through that handbook?
3 MR. ADLER: Yes.
4 MS. WINDLE: Okay. Did a PEP Handbook go out
5 every year, to your knowledge, did a PEP Handbook go out
6 every year from 2003 to 2006 to people who were going to be
7 doing these ratings?
8 MR. ADLER: Yes.
9 MS. WINDLE: Okay. Now let me just ask, during
10 discovery in this case did you direct your staff to locate
11 the 2003 to 2006 or 2005 versions of the PEP Handbook?
12 MR. ADLER: Yes, I did.
13 MS. WINDLE: And were they able to find?
14 MR. ADLER: Could not find a copy.
15 MS. WINDLE: Does the 2006/2007 PEP Handbook
16 contain the same content, to your knowledge, contain the
17 same content that went out every year from 2003 to 2006?
18 MR. KATZ: I would object, leading the witness.
19 MS. ROBESON: She didn't, can you rephrase it? It
20 is a yes or no answer. Mr. Adler, do you know of any
21 changes in this from --
22 MR. ADLER: With the exception of the added, the
23 rating and then often, then some of the years there was no
24 money available, so the monies were different but the
25 guidelines remained the same. The core guidelines as to

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1 what the categories are and how much increase --
2 MS. ROBESON: And they remained the same as what's
3 published --
4 MR. ADLER: Yes, that's correct. Yes.
5 MS. ROBESON: -- in this FY06 to 07?
6 MR. ADLER: That's correct.
7 MS. ROBESON: Okay.
8 MS. WINDLE: Okay. Joint Exhibit 75 if you can
9 turn to that, please.
10 MR. ADLER: 75.
11 MS. WINDLE: I'm sorry, I do want to ask you just
12 a couple of questions about the handbook before we move on.
13 I don't know that you need to go back to it, you can if you
14 want, that was back to 87. Okay. If you will turn to again
15 there's a lot of numbers on these pages, different numbers,
16 it's page 11 in the handbook and that number is at the
17 bottom of the page --
18 MS. ROBESON: Page 11 of 87.
19 MS. WINDLE: Correct.
20 MS. ROBESON: Right?
21 MS. WINDLE: Yes.
22 MS. ROBESON: Just for the record.
23 MR. ADLER: Yes.
24 MS. WINDLE: Okay. Now this is calibration check
25 list for reviewing officials. Can you explain what

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1 calibration is?
2 MR. ADLER: Calibration attempts to make sure that
3 within a particular unit that the criteria that's supplied
4 is supplied consistently to each of the MLS that might be
5 evaluated. So the idea is to make sure that there is
6 consistency in how this is applied. So this is an attempt
7 on our part, HR's to make sure that the guidelines, there's
8 checklists, just so that there's additional guidance given
9 to the raters.
10 MS. WINDLE: So to what degree in that process of
11 calibration to what degree are managers at the same level
12 compared with each other?
13 MR. ADLER: They, within the same unit generally,
14 so one manager, so one rater rates all of the folks that are
15 in that particular Department and then when it goes to
16 ultimately to the Department Director, that there was some
17 consistency applied in each of the ratings. So it's within
18 units, not, it's not countywide, it tends to be within the
19 work unit.
20 MS. WINDLE: Okay.
21 MS. ROBESON: May I ask what is the definition of
22 unit?
23 MR. ADLER: It could be, generally it's both an
24 office and then the Department.
25 MS. ROBESON: I see. Okay.

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1 MR. ADLER: Or just say a work office is fine.
2 MS. WINDLE: Let me just, now I want to clarify it
3 a little bit. So would a division be?
4 MR. ADLER: Well there would be different raters
5 so consistency is for the same rater, different managers and
6 then different managers and then ultimately it goes to the
7 Department Director. The idea is to make sure that all of
8 the criteria, both the performance as well as the
9 competencies follow some guidelines, so there is consistency
10 in that particular unit in terms of how a manager appraised
11 an individual.
12 MS. WINDLE: Okay. Now I'll ask you to turn to
13 Joint Exhibit 75, please.
14 MR. ADLER: Okay. Excuse me, one second. Okay.
15 MS. WINDLE: Okay. And this has also been put
16 into evidence as a joint exhibit. Do you recognize this
17 document?
18 MR. ADLER: Yes, I do.
19 MS. WINDLE: And what is it?
20 MR. ADLER: This is a memo that was sent out by my
21 office under my signature giving compensation guidance to
22 the Departments that rank in MLS.
23 MS. WINDLE: Okay. Now if you will look at this
24 memo, this indicates certain limits to compensation and I'll
25 direct your attention to actually the fourth, fifth and

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1 sixth paragraphs.
2 MR. ADLER: Uh-huh.
3 MS. ROBESON: Well can you just ask him a question
4 rather than directing his --
5 MS. WINDLE: Well, I just wanted him to look at
6 it. I am going to ask a question.
7 MS. ROBESON: Okay.
8 MS. WINDLE: This indicates that there are limits,
9 for instance for successful --
10 MS. ROBESON: Wait. Wait.
11 MR. ADLER: Yes.
12 MS. ROBESON: Just ask him what it says, okay,
13 rather than telling him --
14 MS. WINDLE: Okay. Can you explain what these
15 three paragraphs say?
16 MR. ADLER: The paragraphs --
17 MS. ROBESON: Thank you.
18 MR. ADLER: -- the paragraphs give guidance, well
19 actually it's more than guidance, it sets the upper limits
20 of salary increases based on the either successful, highly
21 successful, exceptional, because that year like many other
22 years subsequent there was only a, and there was a limit as
23 to how much money was going to be allocated to pay for
24 performance. So each of the categories as mentioned and
25 then the upper limit of the pay increase or performance

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1 based increase would look like or can look like.
2 MS. WINDLE: And so is this the same, is this
3 lesser compensation that was allowed in the matrix, in the
4 personnel regs?
5 MR. ADLER: This, this does limit to lower than
6 what the personnel regs allow because the, the GWA which is
7 countywide, the, the regs allow up to but each year it
8 depends on appropriation being at that level. So if there
9 was insufficient funds then it gets reduced.
10 MS. WINDLE: Okay. Was it usual or unusual to
11 have limitations that were different than the matrix?
12 MR. ADLER: Usual.
13 MS. WINDLE: Usual?
14 MR. ADLER: Usual of, again it was, if there were
15 budget constraints and we've had a number of them, then the
16 upper limit would be lower than what, what is allowed.
17 MS. WINDLE: Okay.
18 MR. ADLER: And we've had a number of years where
19 that's happened, so.
20 MS. WINDLE: Now if you'll turn to Joint Exhibit
21 76. Okay. And this is in as a Joint Exhibit. Do you
22 recognize this document?
23 MR. ADLER: Yes.
24 MS. WINDLE: And what is it?
25 MR. ADLER: It is a memo sent out by my Department

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1 under my name, again giving recommendations for performance
2 based compensations for fiscal year 2004.
3 MS. WINDLE: Okay. And are there limitations for
4 this fiscal year that are different than the matrix?
5 MR. ADLER: Can I look at the memo? It appears
6 that this does mention that there is an expansion of the
7 range, but does not indicate any kind of limit.
8 MS. ROBESON: Expansion of the range in the
9 matrix?
10 MR. ADLER: Yes.
11 MS. ROBESON: So you could get an increase above
12 what the matrix says?
13 MR. ADLER: The matrix moves, the matrix is not
14 inflexible so that each, when there's a general wage
15 adjustment, sometimes the matrix is expanded so that when
16 folks are at the very top, people at the top of the matrix
17 normally are only eligible for a lump sum, they're not
18 eligible for performance based. But if the, but if the
19 matrix itself is moved then obviously the percentage is
20 allowed.
21 MS. WINDLE: Okay. In fiscal year '04 did MLS
22 employees get a, to your knowledge was there a general wage
23 adjustment available?
24 MR. ADLER: Yes, there was.
25 MS. WINDLE: Okay. Do you know how much it was?

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1 MR. ADLER: It's indicated in here, 2 percent.
2 MS. WINDLE: Okay. And actually for fiscal year
3 '03, do you know if there was a general wage adjustment and
4 what the amount was if there was any?
5 MR. ADLER: Fiscal year was, I have to go back and
6 look at the memo. Am I allowed to look at the memo?
7 MS. WINDLE: You can.
8 MR. ADLER: All right.
9 MS. ROBESON: What are you looking at?
10 MS. WINDLE: He's looking back at 75 now.
11 MR. ADLER: There was a 2 percent general wage
12 adjustment.
13 MS. WINDLE: In fiscal year '03?
14 MR. ADLER: In fiscal year, yeah.
15 MS. WINDLE: Okay. Now if you'll turn to Joint
16 Exhibit 77. And this is a joint exhibit already in
17 evidence. Do you recognize this document?
18 MR. ADLER: Yes.
19 MS. WINDLE: What is it?
20 MR. ADLER: Again guidance to the Department
21 Directors, MLS performance pay.
22 MS. WINDLE: And what if any limitation beyond the
23 matrix is provided for in this memo in terms of
24 compensation?
25 MR. ADLER: This does not seem to give any

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1 limitation.
2 MS. WINDLE: What about a general wage?
3 MR. ADLER: There was a general wage adjustment of
4 2.75 percent and it goes to everybody. And that's the base,
5 in case I didn't make that clear.
6 MS. WINDLE: I'm sorry, say that again?
7 MR. ADLER: That's the base. All the general wage
8 adjustments are always to base.
9 MS. WINDLE: To base. Okay. And now if you will
10 look at Joint Exhibit 78. Okay. And this is in as a joint
11 exhibit already in evidence. Do you recognize this
12 document?
13 MR. ADLER: Yes.
14 MS. WINDLE: Okay. And what is it?
15 MR. ADLER: The same advice, from my Department to
16 managers, Department Directors in terms of guidance and MLS
17 performance pay increases or awards.
18 MS. WINDLE: And to your knowledge, what
19 limitation, if any, was there in fiscal year '06 that's
20 beyond the matrix?
21 MR. ADLER: The, the appropriation was fully
22 funded.
23 MS. WINDLE: What does that mean?
24 MR. ADLER: No limitations.
25 MS. WINDLE: And was there a general wage

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1 adjustment that year and if so, how much?
2 MR. ADLER: A general wage adjustment of 3
3 percent.
4 MS. WINDLE: All right. Just a moment. I think
5 that's all I have for you, Mr. Adler.
6 MR. ADLER: Okay.
7 MS. ROBESON: All right. Mr. Katz?
8 MR. KATZ: Can I have a three minute break,
9 please, Your Honor?
10 MS. ROBESON: Yes.
11 MR. KATZ: Thank you.
12 MS. ROBESON: We'll be back at please be back
13 sharp at 11:00 a.m., I mean, yes, 11:00 a.m. and I'm going
14 to have, okay, be back at 11:00 a.m., please.
15 (OFF THE RECORD.)
16 (ON THE RECORD.)
17 MS. ROBESON: All right. We're back on the
18 record. Mr. Katz, you're up.
19 MR. KATZ: Thank you. Excuse me, Your Honor, I'm
20 just locating an exhibit. Mr. Adler, thank you for coming
21 today. My name is Daniel Katz, I'm Ms. Cabello's attorney.
22 Just a few questions. Let me ask, in reference to Exhibit
23 Number 87 which is the PEP Handbook, the MLS performance
24 management and performance based pay handbook for fiscal '06
25 to '07. I'm just curious the tenth page of that exhibit it

1 has at the top it's Exhibit 87, page 14 has common rating
2 errors.

3 MR. ADLER: Uh-huh.

4 MR. KATZ: Is that correct? Do you have any
5 specific knowledge as to any instruction that any of Ms.
6 Cabello's supervisors in this period, Ms. Stevens, Mr.

7 Warner, Ms. Plevy would have received in regards to
8 understanding and trying to avoid common rating errors?

9 MR. ADLER: To my knowledge that they --

10 MR. KATZ: Do you have any knowledge that apart
11 from presumably receiving the PEP Handbook, if there was any
12 discussion or instruction about how to avoid common rating
13 errors?

14 MR. ADLER: I have no knowledge.

15 MR. KATZ: Okay. Do you have any knowledge in
16 regards to what you refer to as the calibration process,
17 would it be correct to say that you don't have any knowledge
18 as to how managers were specifically trained to carry out
19 calibration in this period?

20 MR. ADLER: I have no firsthand knowledge. I
21 believe that each of our classification folks would go out
22 and talk to and train managers in terms of explaining what
23 the process is, but I, I don't have firsthand knowledge.

24 MR. KATZ: Okay. So it is correct that you don't
25 have any firsthand knowledge as to any instruction or

1 training that Mr. Warner, Ms. Plevy or Ms. Stevens received
2 in this period of time?

3 MR. ADLER: That is correct.

4 MR. KATZ: Okay. Now again in regard to the
5 calibration process if a manager said the following, quote,
6 it's difficult to compare manager against manager, you know,
7 putting their evaluations next to each other because each
8 has a different level of responsibility with different
9 complexities. Would you agree with me that that quote
10 indicates the difficulties that a manager trying to properly
11 exercise a discretion in the calibration process?

12 MR. ADLER: No.

13 MR. KATZ: No? What do you think of, do you have
14 an opinion of that quote?

15 MR. ADLER: I mean that was us basically
16 explaining that each manager has different levels of
17 responsibility and this is not one of these words like an
18 automated process. But all that will still be contained
19 within the calibration process as long as their criteria
20 applied to all of the folks at the same time, so, I actually
21 agree with that statement.

22 MR. KATZ: Okay. And you would agree that the
23 calibration process can only be successful if a manager
24 avoids what's called common rating errors?

25 MR. ADLER: Correct.

1 MR. KATZ: Okay. Now for the period of time
2 fiscal year '02 '07 is it accurate to say that you don't
3 have firsthand knowledge of the work performed by Ms.
4 Cabello?

5 MR. ADLER: That is correct.

6 MR. KATZ: Okay. Is it correct to say that for
7 that same period of time, I'm going to say for the period of
8 time instead of asking you for each year. For the period of
9 time fiscal year '02 through fiscal year '07, that you don't
10 have any personal knowledge as to what went on in any
11 evaluation that Ms. Cabello received during that period of
12 time?

13 MR. ADLER: Correct.

14 MR. KATZ: Okay. Is it correct that you have not
15 spoken with any of Ms. Cabello's supervisors during that
16 period of time, I'll say Ms. Stevens, Ms. Warner, Ms. Plevy
17 about Ms. Cabello's work?

18 MR. ADLER: Correct.

19 MR. KATZ: Okay. And is it also correct that you
20 don't have personal knowledge about what ratings Ms. Cabello
21 received in that period of time, fiscal year '02 through
22 '07?

23 MR. ADLER: Well since the, I've become aware of
24 them as a result of the lawsuit. But I have no personal
25 knowledge, that's correct.

1 MR. KATZ: Let me rephrase that. Apart from being
2 asked to find documents as a result of this lawsuit you did
3 not prior to that have any knowledge of Ms. Cabello's
4 ratings?

5 MR. ADLER: Correct.

6 MR. KATZ: Okay. I have no further questions.

7 MS. ROBESON: Thank you. Any redirect?

8 MS. WINDLE: Yes, thank you. I just want to
9 clarify, Mr. Adler. The PEP Handbook and you mentioned
10 something about training that went with that handbook. Can
11 you elaborate on that?

12 MR. ADLER: Yeah, just again I don't have
13 firsthand knowledge as to what took place in HHS, but
14 generally when these go out it's followed by training
15 session with our folks that are in classification to go out
16 and explain what the criteria are and that's generally been
17 followed. But I cannot for certain state that it was done
18 in HHS or not but generally HR tries to follow up when we
19 put these out because people have lots and lots of questions
20 to meet with the HR liaisons and meet with the managers and
21 explain what's contained in here.

22 MS. WINDLE: Okay. So in the training that's
23 provided by your classification staff, would calibration be
24 covered in that training?

25 MR. ADLER: Yes.

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1 MS. WINDLE: Would common rating errors be covered
2 in that training?
3 MR. ADLER: Yes.
4 MS. WINDLE: Okay. I don't think I have anything
5 else.
6 MS. ROBESON: Redirect, Mr. Katz? I mean re-
7 cross, I'm sorry.
8 MR. KATZ: Just to clarify, Mr. Adler, you don't
9 have any personal knowledge as to any training received by
10 either Ms. Stevens, Mr. Warner or Ms. Plevy in the period
11 fiscal year '02 through fiscal year '07 --
12 MR. ADLER: Correct.
13 MR. KATZ: -- is that accurate?
14 MR. ADLER: That's accurate.
15 MR. KATZ: Okay. No more questions.
16 MS. ROBESON: All right. You may be excused. If
17 you can, thank you, Mr. Adler. Yes?
18 MR. KATZ: One other thing, Your Honor, I would
19 just instruct since the record is open and it's possible Mr.
20 Adler could be recalled that we have a general witness
21 instruction not to discuss, to all witnesses not to discuss
22 the case until the record is closed.
23 MS. ROBESON: Yes. Mr. Adler, you understand that
24 you're not to discuss the case while the record is open.
25 This may be a multi-day trial, I don't know, with any other

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1 witness in the case?
2 MR. ADLER: I understand.
3 MS. ROBESON: Thank you. And Ms. Windle, if you
4 can bring your next witness and I believe Ms. Forbes of our
5 office is retrieving your other witness from the cafeteria
6 and bringing that witness to the library.
7 MS. WINDLE: The next witness I'm going to call is
8 Mr. Warner and could we go off the record? As you know he's
9 come from out of state and you mentioned a second day and
10 can we have some discussion at this point about that?
11 MS. ROBESON: Well, I don't see a need to go off
12 the record for that.
13 MS. WINDLE: Okay.
14 MS. ROBESON: We will do everything we can to get
15 through him today. And I'm not going to you know if for
16 some reason you need to recall him on rebuttal, I am going
17 to ask that he come back. But for the time being if he's
18 here now we'll make every --
19 MS. WINDLE: He is here now. He's here now.
20 MS. ROBESON: Okay. All right. So if you could
21 get your next witness and I think Ms. Forbes is escorting
22 your third witness from the cafeteria to the library.
23 MS. WINDLE: Okay.
24 (OFF THE RECORD.)
25 (ON THE RECORD.)

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1 MS. ROBESON: All right. Mr. Warner, please raise
2 your right hand. Do you solemnly affirm under penalties of
3 perjury that the statements you're about to make are the
4 truth, the whole truth and nothing but the truth?
5 MR. WARNER: I do.
6 MS. ROBESON: Thank you. Ms. Windle?
7 MS. WINDLE: Good morning.
8 MR. WARNER: Good morning.
9 MS. WINDLE: Could you please state your name for
10 the record?
11 MR. WARNER: Dudley Warner.
12 MS. WINDLE: And I'm sorry, I was, he's been put
13 under oath?
14 MS. ROBESON: Yes, he's been sworn.
15 MS. WINDLE: Sworn. Okay.
16 MS. ROBESON: Yes.
17 MS. WINDLE: And Mr. Warner, do you work for
18 Montgomery County?
19 MR. WARNER: I do not.
20 MS. WINDLE: Okay. Have you worked for Montgomery
21 County?
22 MR. WARNER: I have.
23 MS. WINDLE: And when was that?
24 MR. WARNER: That was from 1989 until 2012.
25 MS. WINDLE: And what happened in 2012?

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1 MR. WARNER: I retired.
2 MS. WINDLE: Okay. In 1989 what was your first
3 position?
4 MR. WARNER: It was Section Chief of the
5 Montgomery County Crisis Center.
6 MS. WINDLE: Okay. And how long did you hold that
7 position?
8 MR. WARNER: That position was until 2002, I
9 believe.
10 MS. WINDLE: And what happened in 2002?
11 MR. WARNER: In 2002 I continued to have that
12 position, but I acquired additional responsibilities as
13 well.
14 MS. WINDLE: And what were those additional
15 responsibilities?
16 MR. WARNER: Principally in relation to the
17 homeless population, I helped chair the Homeless Policy
18 Development Committee and helped prepare the County's
19 response, federal response to Housing and Urban Develop for
20 funds for homelessness.
21 MS. WINDLE: And what was your pay grade at that
22 time?
23 MR. WARNER: At that particular time?
24 MS. WINDLE: In that position.
25 MR. WARNER: That would have been --

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1 MS. ROBESON: The position after 2002?
2 MS. WINDLE: Yes.
3 MS. ROBESON: Okay.
4 MR. WARNER: At, at that point that MLS came into,
5 to play, I was an MLS 2.
6 MS. WINDLE: Okay. And when did it come into
7 play?
8 MR. WARNER: I believe about that time, about
9 2002, but I'm not positive.
10 MS. WINDLE: So you were an MLS 2.
11 MR. WARNER: Correct.
12 MS. WINDLE: What was your job title at that
13 point?
14 MR. WARNER: Senior Administrator?
15 MS. WINDLE: And how long did you hold that
16 position?
17 MR. WARNER: I, I held the position at Senior
18 Administrator until I retired in 2012.
19 MS. WINDLE: And as Senior Administrator, what
20 were you responsibilities?
21 MR. WARNER: I was responsible for broad oversight
22 of several different programs and that changed over the
23 years between 2002 and 2012. But included victims, programs
24 the Abused Persons Program, Victim Assistant Sexual Assault
25 Program, Crisis Services which included things like the

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1 assertive community treatment team. The access to
2 behavioral health services, adult behavioral health clinic,
3 and I believe that was, and, and that was primarily, those
4 were primarily my responsibility.
5 MS. WINDLE: Let me just back up a little bit.
6 MR. WARNER: Uh-huh.
7 MS. WINDLE: Can you tell me what your education
8 and training are?
9 MR. WARNER: Yes, I have a Bachelor's Degree in
10 English and I have a Master's Degree in clinical social work
11 and a Master's Degree in healthcare administration.
12 MS. WINDLE: And prior to working for Montgomery
13 County, what did you do prior to that?
14 MR. WARNER: Prior to working for Montgomery
15 County, I worked for Washington Hospital Center in that
16 system, the Med Star System and directly before I came to
17 Montgomery County I was Acting Director of Social Work at
18 the National Rehabilitation Hospital which is part of that
19 system.
20 MS. WINDLE: All right. Thank you. Now back to
21 your position as Senior Administrator. In that role, how
22 many people did you supervise?
23 MR. WARNER: I directly supervised, it changed
24 over time I was responsible during that time for up to 115
25 employees across all those programs. But I directly

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1 supervised several MLS employees and, and then some other
2 employees as well.
3 MS. WINDLE: Okay. And during that time, you say
4 it changed, but how many of those were MLS staff?
5 MR. WARNER: During which years?
6 MS. WINDLE: When you were a Senior Administrator?
7 MR. WARNER: During the entire time it, it
8 changed, but at one point it was --
9 MS. WINDLE: Okay. Let me rephrase the question.
10 Maybe it'll be easier for you to answer.
11 MR. WARNER: Sure.
12 MS. WINDLE: From 2003 to 2006 --
13 MR. WARNER: Uh-huh.
14 MS. WINDLE: -- how many MLS employees did you
15 have under you?
16 MR. WARNER: Three.
17 MS. WINDLE: And who were they?
18 MR. WARNER: Those were Nadja Cabello, Gene Morris
19 and Peggy Bradley.
20 MS. WINDLE: Okay. And what was the job position
21 of each?
22 MR. WARNER: The job position of Ms. Cabello was
23 she was the manager of Victim Assistant Sexual Assault
24 Program. And Mr. Morris was the manager of the Abused
25 Persons Program during part of that time.

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1 MS. WINDLE: Wait, what part?
2 MR. WARNER: I believe 2005 on and, and then Ms.
3 Bradley was the manager of Behavior, Behavioral Specialty
4 Services.
5 MS. WINDLE: Now as part of your responsibilities
6 as Senior Administrator, did you conduct performance
7 planning and evaluations of MLS staff?
8 MR. WARNER: I did.
9 MS. WINDLE: And can you describe what the general
10 process was at performance planning and evaluation for MLS?
11 MR. WARNER: Yes, it each year began with us doing
12 a plan for the year, that was usually done within the first
13 quarter of the fiscal year. And then the next basically
14 milestone after that was a mid-year review and that was
15 optional. Typically that was done if there was some kind of
16 an issue in terms of performance. Luckily I didn't have to
17 do any of those. And then there was an end of year review,
18 which typically was done before the end of the fiscal year.
19 Dates were provided by Human Resources about when all of
20 this was, was due. But at that time that involved, that
21 process involved asking for feedback from each employee
22 about how they felt the year had gone, looking at the
23 individual particular issues that each employee was working
24 on throughout the year and then formulating an evaluation,
25 making recommendations for pay for performance based on the

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1 PEP Handbook guidance that was provided and forwarding that
2 typically hard copy directly to the, the person that I
3 reported to.
4 MS. WINDLE: Okay. Now I'm going to ask you to
5 turn to Joint Exhibit 87.
6 MR. WARNER: Okay.
7 MS. WINDLE: This is in as a joint exhibit, do you
8 recognize this document?
9 MR. WARNER: I do. This is --
10 MS. WINDLE: And what is it?
11 MR. WARNER: -- the performance management
12 handbook that was made available to managers each year.
13 MS. WINDLE: So you got a handbook like this each
14 year?
15 MR. WARNER: I believe so, because these are,
16 these are all dated for the fiscal year that they apply to.
17 MS. WINDLE: Okay. In addition to receiving a
18 handbook, do you recall that you also received, did you
19 receive training on how to do elevations of MLS members?
20 MR. WARNER: We did receive training, I don't
21 recall the number of trainings. I do recall one training
22 that was at least, I think it was a full day. But typically
23 additional training was provided at the point that there
24 were any new aspects of the evaluation process.
25 MS. WINDLE: And what do you mean new aspects of

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1 the evaluation process?
2 MR. WARNER: Well for instance when pay for
3 performance became possible, that was, that was something
4 where training was provided.
5 MS. WINDLE: So would that have been when the MLS
6 system was instituted?
7 MR. KATZ: Objection.
8 MS. ROBESON: Basis?
9 MR. KATZ: She can ask when he received it, not
10 indicate --
11 MS. ROBESON: Okay.
12 MR. KATZ: -- when he should have received it.
13 MS. ROBESON: It's leading. Okay. Can you
14 rephrase that, Ms. Windle?
15 MS. WINDLE: I'm trying to remember what I even
16 asked.
17 MS. ROBESON: I think you were questioning when
18 the performance process was revised.
19 MR. WARNER: You were saying that when pay for
20 performance.
21 MS. ROBESON: Well you don't have to tell him what
22 he was saying, just ask it --
23 MS. WINDLE: You know what I'm going to withdraw
24 that question.
25 MS. ROBESON: Okay.

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1 MS. WINDLE: Okay. Now I'm going to ask you to
2 turn to Joint Exhibit 7.
3 MR. WARNER: Yes.
4 MS. WINDLE: Okay. Do you recognize this
5 document?
6 MR. WARNER: I do.
7 MS. WINDLE: And what is it?
8 MR. WARNER: This is a position description for
9 Ms. Cabello.
10 MS. WINDLE: And do you see a date on it? Is
11 there a date that this is noted?
12 MR. WARNER: The signature date is 2001.
13 MS. WINDLE: Now have you had an opportunity to
14 look at this position description?
15 MR. WARNER: I have.
16 MS. WINDLE: Okay. And is this an accurate
17 description of Ms. Cabello's position between years 2003 and
18 2006?
19 MR. WARNER: I don't believe so.
20 MS. WINDLE: And why not?
21 MR. WARNER: Well this, this is a, a much older
22 form than typically would have been used. Position
23 descriptions were many times only rewritten at the point
24 that a position was vacated and refilled. And this, this
25 sort of hearts back to a different time when there was less

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1 focus on having the program be part of a larger whole, part
2 of Health and Human Services and have more responsibility
3 for delivering services across the broader system in
4 Montgomery County.
5 MS. WINDLE: So as her supervisor, how was the job
6 that she was to do from 2003 to 2006, how was that different
7 than what's described here?
8 MR. WARNER: Specifically it was different because
9 as Health and Human Services continued to develop, one of
10 the, the major developmental pieces that as an organization
11 it was working with integration. So it was internally very
12 important that each program be well integrated within the
13 Department so that it not just be a collection of programs
14 but that it be a whole delivering services focused on the
15 same vision, emission and but even broader than that, it was
16 each of the managers were responsible for the service
17 delivery system for the County. So that in this particular
18 situation what we'd be looking at is how victims were served
19 and there were a number of other agencies including the
20 Police Department, the Office of the Sheriff, the State's
21 Attorney's Office and also the municipalities such as Tacoma
22 Park, Gaithersburg, who all had Victim Serving Departments
23 or parts to them. And so in order for that to all be
24 coordinated so that as a victim you wouldn't necessarily, it
25 would be seamless that you'd be, you'd be getting services

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1 from a victim services that it was required to, that there
2 be collaboration and that that be a system as opposed to
3 individual, individually functioning programs.
4 MS. WINDLE: And how were those expectations that
5 are different than what's in this 2001 position description,
6 how was that communicated to Ms. Cabello?
7 MR. WARNER: Well that was, that would have been
8 communicated to everybody in Health and Human Services in a
9 variety of different ways. It would have been communicated
10 through the director on down as to you know what, what the
11 Department's focus was, the importance of integrating both
12 internally and externally across the system in Montgomery
13 County. It would have been communicated, you know, as I
14 said at every level, at the level above me which would be at
15 the Service Chief level, typically somebody who oversaw 300
16 to 400 different staff, and at my level and it would have
17 been expected that the manager themselves would be
18 communicating this to the people below them.
19 MS. WINDLE: Okay. Now I'm going to ask you to
20 look at, I'm sorry okay I'm going to ask you to look at
21 what's Exhibit 9.
22 MR. WARNER: Uh-huh. Okay.
23 MS. WINDLE: Do you recognize that?
24 MR. WARNER: I do.
25 MS. WINDLE: And what is it?

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1 MR. WARNER: This is the performance evaluation
2 for Ms. Cabello for fiscal year 2003.
3 MS. WINDLE: Okay. And what rating did you give
4 her overall?
5 MR. WARNER: Overall rating was successful
6 performance.
7 MS. WINDLE: Okay. Now I'm going to ask you to
8 look at and I'm going to try to go through these fairly
9 quickly. Joint Exhibit 15.
10 MR. WARNER: Yes.
11 MS. WINDLE: Do you recognize that document?
12 MR. WARNER: This I do, this, this appears to be
13 each, each, for each evaluation period staff were asked to
14 put together their input into the evaluation and this
15 appears to be what Ms. Cabello had, had submitted that year.
16 MS. WINDLE: Okay. Did you review this document
17 before completing Ms. Cabello's evaluation?
18 MR. WARNER: Yes.
19 MS. WINDLE: And why did you give her an overall
20 successful rating that year?
21 MR. WARNER: I gave her, is it okay for me to
22 refer back to the --
23 MS. WINDLE: Sure.
24 MR. WARNER: And that was what number, the
25 evaluation?

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1 MS. WINDLE: Line 9.
2 MR. WARNER: Okay. First of all, overall
3 successful as its stated in the PEP Handbook is the level of
4 achievement that they expect most people to get, most
5 managers to be rated at that level. That that represents
6 solid performance. It can even include areas that are of
7 functioning above the successful level either highly
8 successful or exceptional. But in general, that's, you
9 know, that's good solid performance. And in this evaluation
10 as with all the elevations, that I wrote for Ms. Cabello and
11 the other people who I supervised, I tried to make them as
12 balanced as possible so in this besides you know these, Ms.
13 Cabello was not rated at successful across the board, there
14 were areas where she rated highly successful. In, in one
15 area, for instance, which across all of those years, she
16 rated I believe at the high successful level was in relation
17 to diversity. Her ability to first of all understand the
18 importance of having a diverse staff and being able to
19 recruit and maintain them was, was, she made a highly
20 successful effort in that regard.
21 Generally, the reason that, that Ms. Cabello
22 received a successful rating is that that everything was
23 done in an successful way again solid, but primarily it was
24 focused on making the program run. It was focused on making
25 sure that evaluations were done, it was focused on making

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1 sure that the contracts were signed and, and dated properly
2 and those kinds of things. It was less focused on the
3 larger issues that I mentioned before. And, and so that's,
4 that's why I had, had rated her at the successful level.
5 The program ran well, but it ran over the years in more
6 isolation than I would have liked it to, to run in. That it
7 was focused almost as if it was a private not for profit
8 standalone organization as opposed to a program that is
9 supposed to be integrated into a much larger whole and part
10 of a service delivery system for a County of this size.
11 MS. WINDLE: Now if you'll turn to Exhibit 22,
12 please.
13 MR. WARNER: Yes.
14 MS. WINDLE: And do you recognize this document?
15 MR. WARNER: I do. This is the, this is the
16 document that Ms. Cabello received as each of the managers
17 would receive at the end of the evaluation period
18 essentially telling them what they had been rated at and
19 what would be their pay for performance and this was written
20 by the Department Director at that time, Ms. Colvin.
21 MS. WINDLE: Okay. What did Ms. Cabello get in
22 2003 as MLS compensation?
23 MR. WARNER: As MLS compensation I believe she,
24 she got 1 percent as a lump sum.
25 MS. WINDLE: Okay. That's your recollection?

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1 MR. WARNER: That's my recollection.
2 MS. WINDLE: Okay. Do you know what dollar amount
3 that was?
4 MR. WARNER: Not right off hand, I do not.
5 MS. WINDLE: Okay. And to your recollection is 1
6 percent what you recommended that year?
7 MR. WARNER: To my recollection, it is.
8 MS. WINDLE: Okay. Now I'm going to ask you to
9 turn to what's in as Exhibit 10, please.
10 MR. WARNER: Yes. Okay.
11 MS. WINDLE: Do you recognize that document?
12 MR. WARNER: Yes, this is the performance
13 evaluation for Ms. Cabello for fiscal year '04.
14 MS. WINDLE: Okay. And what rating did you give
15 her that year overall?
16 MR. WARNER: This also successful performance.
17 MS. WINDLE: And can you talk about why you gave
18 her successful that year?
19 MR. WARNER: Well, again my, a number of my
20 comments from '03 carried over to '04. In, in these years,
21 and I can't because of the time that's elapsed, can't recall
22 precisely when this happened, but there were a number of
23 problems as we attempted to, to integrate that came up. One
24 of those was with the Police Department and that took the
25 shape of basically being that, that Ms. Cabello has being

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1 the person who oversaw Victim Services for Health and Human
2 Services was seen by the police and particularly Captain D.
3 Walker, as, as being confrontational, difficult to deal with
4 and essentially in some instances basically preventing the
5 police from being able to do their work. So this played out
6 in through one of Ms. Cabello's programs which was the
7 Victim Outreach Service, which essentially was a cadre of
8 recruited volunteers who were available to meet women who
9 had been raped, typically at the emergency department and
10 provide direct services, direct support for them in that
11 process. And at the same time, the police detectives met
12 the individual there and were very focused on attempting to
13 be able to, to get information about the perpetrator because
14 in most of the instances the perpetrator was still out there
15 and placed other people in the public at risk. So those two
16 groups often collided and the police, I think, understood
17 that support for the victims was important, Victim Services
18 many times acted as if the police were re-victimizing the
19 victim. And you know my experience having previously worked
20 in the District during the 80's and worked directly with
21 detectives in Med Star when these instances happened, was
22 that sometimes that used to happen. I, I've never seen it
23 happen in Montgomery County, there's a different level of
24 police force here in terms of education and sensitivity, and
25 but it was the direct perception of the detectives that many

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1 times the victim was essentially shielding the, the Victim
2 Service person was shielding the victim from them and
3 preventing them from getting information that they could
4 then pursue the perpetrator. And so that was a complaint by
5 the police ongoing that we had to deal with and, and was a
6 big issue.
7 MS. WINDLE: Okay. I'm going to ask you to turn
8 to Exhibit 79 now.
9 MR. WARNER: Yes.
10 MS. WINDLE: Okay. I believe that's a joint
11 exhibit, so it's in evidence. Do you recognize that
12 document?
13 MR. WARNER: I do. This is a, a memo from Captain
14 Walker who became Assistant Chief Walker over time to all
15 major crime investigators and it is basically talking about
16 putting together a protocol about how the two services will
17 work together.
18 MS. WINDLE: Okay. And what's the date on this
19 memo?
20 MR. WARNER: This is December 31, 2002.
21 MS. WINDLE: Okay. But the elevation that you
22 were just talking about on Ms. Cabello was from fiscal year
23 '04.
24 MR. WARNER: Uh-huh.
25 MS. WINDLE: The issues that might have existed in

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1 2002 that are discussed in this memo, did they persist into
2 2004?
3 MR. WARNER: My recollection is is that they did
4 and that this, this memo was an initial attempt by Chief
5 Walker to make it clear to her staff that Victim Services
6 needs to be called in these instances, but to give them the
7 latitude to manage that as they needed to, based on what
8 they were dealing with at the time.
9 MS. WINDLE: And what do you mean by that?
10 MR. WARNER: Well, specifically it says in here
11 that they need to call Victim Services which you know needed
12 to be part of the protocol but that they could do that after
13 questioning, they weren't required to do it before
14 questioning. But they were allowed to do it at any point,
15 they had the discretion to do it at any point.
16 MS. WINDLE: Do you have knowledge of when the
17 Victim Advocate Program, when would they have wanted to be
18 called in a situation like this?
19 MR. WARNER: I believe they would have wanted to
20 be called immediately. That they saw themselves as being
21 central to the process and again while very important and
22 you know to making sure that somebody who is alone sometimes
23 at a hospital having been traumatized would have someone who
24 could provide sensitive counseling. It was not the primary
25 or exclusion, it did not exclude the important part that law

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1 enforcement played in attempting to bring the person to
2 justice who committed the crime.
3 MS. WINDLE: Okay. Okay. I'm sorry, I should
4 have asked you this earlier. Can you turn to 16, please?
5 MR. WARNER: Yes. Okay.
6 MS. WINDLE: Do you recognize this document?
7 MR. WARNER: It would appear to be e-mail
8 correspondence, but I have not seen this.
9 MS. WINDLE: Okay. We're going to skip that let
10 me have you look --
11 MR. KATZ: Objection.
12 MS. ROBESON: Basis?
13 MR. KATZ: Instructing the witness we're going to
14 skip it. She can withdraw the question.
15 MS. ROBESON: All right.
16 MS. WINDLE: I withdraw the question. Okay. If
17 you could turn to Exhibit 18 for me?
18 MR. WARNER: Yes.
19 MS. WINDLE: Do you recognize this document?
20 MR. WARNER: This is another of the, of the
21 letters or the memos that in this case that Ms. Cabello
22 would have received, did receive. This is from Ms. Colvin,
23 the Director at the time saying what her evaluation overall
24 rating was and what the pay for performance compensation
25 would be.

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1 MS. WINDLE: And what was that for 2004?
2 MR. WARNER: That was Ms. Cabello was rated as
3 successful performance and given a lump sum of 2 percent.
4 MS. WINDLE: Okay. And was that your
5 recommendation?
6 MR. WARNER: I believe it was.
7 MS. WINDLE: Okay. Okay. Now I'm going to ask
8 you to turn to Exhibit 11.
9 MR. WARNER: Yes.
10 MS. WINDLE: And do you recognize this document?
11 MR. WARNER: Yes, this is the evaluation for Ms.
12 Cabello for FY05.
13 MS. WINDLE: Okay. And what overall rating did
14 you give her?
15 MR. WARNER: Successful performance.
16 MS. WINDLE: Okay. And why?
17 MR. WARNER: Again for, for many of the, of the
18 reasons that I detailed earlier, one comment I should make
19 though is is that, you know, although Ms. Cabello was, I
20 rated her as a successful performance, she had improved
21 gradually from year to year. And as each of the people that
22 I evaluated sometimes improved year to year or sometimes
23 actually went back and there are several instances of that
24 with the people that I've supervised. But she at this point
25 there had been improvement in the narrative comments at the

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1 end --
2 MS. WINDLE: What page are you on?
3 MR. WARNER: This would be page 7, my direct
4 remarks were Ms. Cabello should focus on how VSAB, that's
5 Victim Assistant Sexual Assault Program can position itself
6 to maximize its contribution to the Victim Service Delivery
7 System. This will involve developing increasing
8 collaborative relationships with other human services as
9 well as the criminal justice programs and providers. In
10 addition, refocusing its services to sync with what is the
11 current priority for publically funded victim services would
12 be essential. So one of the things that particular last
13 phrase was that the Victim Assistant Sexual Assault Program
14 has been in operation for years prior to being part of
15 Health and Human Services it was part of the Department of
16 Addiction Victim and Mental Health Services and prior to
17 that I believe it was part of the Health Department and had
18 provided a number of services which at the time were not
19 available in the private sector. As the private sector has
20 become more developed, particularly in places like
21 Montgomery County, many of the publically funded services
22 could be provided in the private sector and an example of
23 that is adults molested as children. So back in the late
24 70's and 80's again there was not the private practice
25 contingent in Montgomery County and other places around the

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1 State to provide some of those services in a sensitive way
2 and to not just be treated as if it was a mental health
3 service. And as that changed, the Department was not just
4 with Victim Assistant Sexual Assault Program but with all of
5 its programs, constantly reevaluating what is the right mix
6 for us to provide as a public sector provider that's
7 dependent on general funds and what can be provided in the
8 private sector. And it was very difficult to work with Ms.
9 Cabello on issues like this because it was a longstanding
10 program. But for her to understand that this was a
11 transition that needed to happen it wasn't just me who was
12 saying this, our Department Director was, the County Council
13 was saying this and was really clear in terms of, of what
14 we, if the services are available in the private sector,
15 that we really can't be providing them in the public sector
16 and that with the money we have we really need to prioritize
17 and in the public sector that means particularly as it
18 relates to Victim Services, not providing the years of
19 treatment that sometimes this population had previously got,
20 but to provide access to the system and connection with
21 services in the community.
22 MS. WINDLE: Now in addition to these comments on
23 this evaluation, did you have discussions with Ms. Cabello
24 about this?
25 MR. WARNER: Absolutely.

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1 MS. WINDLE: Okay. When?
2 MR. WARNER: Well, Ms. Cabello and I met the
3 entire time that I supervised her we met approximately once
4 a week in supervision. We talked, the time was used
5 primarily, not only to, to talk about things that needed to
6 be different or what the focus was, information that was,
7 that was being communicated by higher level management, but
8 also to directly solve problems that had come up as it
9 related to contracts, human resource issues, whatever it
10 happened to be. But this was, this was at least an hour
11 every week that we, we spent talking about these things.
12 MS. WINDLE: Okay. Now if you would turn to
13 Exhibit 19, please.
14 MR. WARNER: Yes.
15 MS. WINDLE: Okay. And this is in as a joint
16 exhibit. Do you recognize this document?
17 MR. WARNER: I do. This is again a memo that Ms.
18 Cabello received. This is for fiscal year '05 I believe,
19 and this is regarding her evaluation overall rating and the
20 pay for performance.
21 MS. WINDLE: Okay. And what compensation did you
22 recommend for her?
23 MR. WARNER: Compensation of a lump sum of 2
24 percent.
25 MS. WINDLE: Okay. Now if you'll turn to Exhibit

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1 12.
2 MR. WARNER: Yes.
3 MS. WINDLE: This is in as a joint exhibit, do you
4 recognize this document?
5 MR. WARNER: I do. This is the performance
6 evaluation for Ms. Cabello for FY06.
7 MS. WINDLE: Okay. And what overall rating did
8 you give her?
9 MR. WARNER: A successful performance.
10 MS. WINDLE: And why?
11 MR. WARNER: Well again for many of the same
12 reasons as before that I've detailed. Ms. Cabello continued
13 to do and, and I believe continued to progress across each
14 of these four years. But overall the, the rating was, was
15 successful. She in one of these in fact, I rated her as
16 exceptional as one of the categories and that's again as it
17 related to diversity within her program. Looking at the
18 summary remarks that I made, I said Ms. Cabello's greatest
19 strengths are in the area of clinician and advocate for
20 crime victims. Her program emphasizes a high standard of
21 customer service orientation as well as safety for crime
22 victim clients and staff. Her teamwork, cooperation and
23 collaboration with key agencies serving crime victims have
24 improved during this year. So that's, you know, I
25 emphasized that. Ms. Cabello displayed a willingness to

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1 take on additional responsibilities such as testimony she
2 provided to the Maryland House of Delegates on HB996 anti-
3 trafficking legislation, her work with a disabled employee
4 to reintegrate him into the staff has been successful. In
5 order for her to receive a performance review at the next
6 level, meaning highly successful or exceptional performance,
7 Ms. Cabello must begin to work at a more macro level. By
8 that I mean it's a term that all social workers know and I'm
9 not sure, I think the general public would as well. But
10 instead of being micro-focused on the day to day operations
11 of the program, those are important, it doesn't mean you can
12 drop those but it means that you need to pull out and, and
13 be focused on the service delivery system, as I explained
14 earlier.
15 She does excellent work as it relates to program
16 tasks. She needs to work on issues that impact policy, how
17 victim's issues relate and integrate with other services.
18 MS. WINDLE: Okay. If you'll turn to Exhibit 20,
19 please.
20 MR. WARNER: Yes. Okay.
21 MS. WINDLE: Okay. Do you recognize this
22 document?
23 MR. WARNER: I do. This once again is a memo that
24 would have come, that came out this year for FY06 from Ms.
25 Colvin, the director at that time, telling Ms. Cabello that

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1 she received successful performance as her overall rating
2 and the pay for performance was a lump sum of 2 percent.
3 MS. WINDLE: Okay and to your recollection is that
4 what you recommended for her?
5 MR. WARNER: It is.
6 MS. WINDLE: Okay. And let me ask why the several
7 years, 2003, 2004, 2005 and 2006, you recommended a lump sum
8 for Ms. Cabello and not a percentage increase to her salary.
9 Can you tell us why?
10 MR. WARNER: Yes. The, the PEP Handbook gives
11 latitude to individual managers to come up with what we felt
12 was a fair level of compensation. We did not have contact
13 with other managers to compare so we, we did this and it was
14 obviously done in a confidential way. So each manager came
15 up with their own way of being able to do it, but then it,
16 the, the process had to go through, in my case, at least two
17 more levels. But I had for myself had decided that anything
18 at the successful level that I would be able to, to feel
19 good about giving a lump sum percentage and that above that
20 level that I would be able to provide whatever else was
21 available that particular year, sometimes it was a
22 percentage increase to the base and or a lump sum as well.
23 MS. WINDLE: Okay. Okay. Now I'm going to ask
24 you to turn to, sorry, Exhibit 42, please.
25 MR. WARNER: Yes.

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1 MS. WINDLE: Okay. Do you recognize this
2 document?
3 MR. WARNER: Yes. This is the performance
4 planning final evaluation for Ms. Bradley, Peggy Bradley for
5 FY03.
6 MS. WINDLE: Okay. And what rating did you give
7 her?
8 MR. WARNER: I gave her successful performance.
9 MS. WINDLE: And why was that?
10 MR. WARNER: For that year. Well, Ms. Bradley had
11 a number of programs and the complexity of what she was
12 doing was significantly different than, than some other
13 managers. But that particular year, as I recall, I felt
14 that she was focused just on getting the programs to run and
15 doing the, you know, all of the bureaucratic work that it
16 takes to have the programs run, but without some of the, the
17 higher level things that I talked about earlier.
18 MS. WINDLE: Okay. And please turn to 49.
19 MR. WARNER: Yes.
20 MS. WINDLE: That's in as a joint exhibit. Do you
21 recognize that?
22 MR. WARNER: I recognize what it is, not right
23 off. Okay.
24 MS. WINDLE: And what is it?
25 MR. WARNER: It's the personnel action form which

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1 would be generated after a determination was made about pay
2 for performance to say, you know, what that would be for an
3 individual. This is for Ms. Bradley and it says lump sum
4 which appears to be 1 percent.
5 MS. WINDLE: Okay. And the amount?
6 MR. WARNER: \$892.
7 MS. WINDLE: Okay. Now I'm going to try to do
8 these next three, because I'm aware of the time. Let me
9 have you look at, I'm going to have you look at 43, 44 and
10 45.
11 MR. WARNER: All at the same time?
12 MS. WINDLE: Probably that wouldn't be possible.
13 MR. WARNER: Okay. 43.
14 MS. WINDLE: Okay. 43, do you recognize that?
15 MR. WARNER: Yes, this is the FY04 performance
16 elevation, final evaluation for Peggy Bradley.
17 MS. WINDLE: Okay. And what rating did you give
18 her that year?
19 MR. WARNER: This does not have a final rating
20 listed, but I believe it would have been highly successful
21 performance.
22 MS. WINDLE: Do you recall if that was the rating
23 you gave her?
24 MR. WARNER: I, I do. Again, this was 10 years
25 ago, but I think that's what I gave her.

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1 MS. WINDLE: Okay. And before I ask, I'm going to
2 have you go on to 44 please.
3 MR. WARNER: Yes.
4 MS. WINDLE: And do you recognize that document?
5 MR. WARNER: Yes.
6 MS. WINDLE: What is it?
7 MR. WARNER: This is the FY05, the same thing for
8 Ms. Bradley.
9 MS. WINDLE: Okay. And what rating did you give
10 her that year?
11 MR. WARNER: Highly successful.
12 MS. WINDLE: Okay. And please look at 45.
13 MR. WARNER: Yes, this is the same thing again but
14 for FY06.
15 MS. WINDLE: Okay. And what rating did you give
16 her?
17 MR. WARNER: Highly successful.
18 MS. WINDLE: Okay. So for 2004, 2005, and 2006
19 you gave her a highly successful performance rating, why?
20 MR. WARNER: Well, Ms. Bradley had when I began
21 supervising her and I believe it was FY03, had a
22 particularly difficult challenge. She had two programs, at
23 least two programs that were large programs at completely
24 different sites and the two programs were programs that were
25 essentially being completely revamped during this time. One

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1 of the programs was access which when I got the program was
2 essentially the front end for addiction services for
3 Montgomery County and under Ms. Plevy what we did was we put
4 the two programs together, as many programs are doing around
5 the United States, where both addictions and mental health
6 are put together. So it became the, the front end for both
7 of those for Montgomery County. So Ms. Bradley had the
8 challenge of not only doing the bureaucratic piece of trying
9 to get those put together but working with staff doing
10 training, educating the public, educating the providers
11 about this is how the service delivery system was going to
12 increase access, that's why we called it access to, to these
13 services. The other program that she had initially was and
14 it had been in place for a number of years was the
15 Multicultural Center, it was a behavioral health center,
16 primarily focused on Vietnamese and Hispanic clients, and
17 worked with a wide variety of behavioral health issues but
18 typically toward the middle of the spectrum, not the most
19 seriously and persistently mentally ill.
20 During this time frame the County Council directed
21 us specifically to broaden the focus of this program, to
22 make it available for everybody who, for who English is not
23 a first language and to broaden it so that it would, or to,
24 to focus it so that it was focused entirely on those people
25 who were seriously and persistently mentally ill within

1 those populations. So Ms. Bradley had a professional staff
2 of therapists, psychiatrists, who all had to change
3 essentially what they had been doing for years. And she was
4 able to successfully do that and have that program become
5 the Adult Behavioral Health Clinic, which as the Department
6 had gone through previously had, I believe at one point, six
7 clinics, we had, it was the last publically funded clinic in
8 Montgomery County and, and so she did a really good job of
9 being able to, to pull that together during this time frame.

10 MS. WINDLE: Okay. Now actually I'm going to ask
11 you to look again at Exhibit 44, let's see what page, page 5
12 which is indicated at the top right corner.

13 MR. WARNER: Okay.

14 MS. WINDLE: And do you recognize this page in the
15 evaluation?

16 MR. WARNER: I do. This page, what's called page,
17 or Part 2 is in every evaluation and it essentially is a
18 section on competencies.

19 MS. WINDLE: And what does that mean?

20 MR. WARNER: Well, competencies, as I understand
21 it, are very much like strengths and weaknesses that you can
22 in rating a manager, help them, you know, be better focused
23 on what they, the things they may want to work on.

24 Competencies, however, don't take the place of achievements
25 because somebody could score in the exceptional level in all

1 of these, they could be excellent at problem solving, they
2 could be excellent at setting up a safe work environment and
3 never accomplish anything. So this was, was mainly feedback
4 for the manager to help them know where their areas, the
5 perceived areas of strength and weaknesses were.

6 MS. WINDLE: Okay. On this one, if you'll look at
7 organizational commitment and organizational systems
8 awareness --

9 MR. WARNER: Yes.

10 MS. WINDLE: -- Ms. Bradley is rated does not meet
11 expectations on those two criteria. Can you explain that
12 and explain how she would still get a highly successful?

13 MR. WARNER: Sure. The, the reason and as I
14 recall at this point, in those particular categories is, you
15 know, as I described, Ms. Bradley had worked with both of
16 the programs that, that I talked about for a long period of
17 time. She had worked well with the staff and what she had
18 been asked to do, these, these changes weren't Ms. Bradley's
19 idea necessarily, they were the Department's and the
20 County's ideas of how those changes need to be made. So in
21 these particular areas, while Ms. Bradley was able to
22 successfully deliver the programs as we had asked, I did not
23 feel that in terms of her organizational commitment and the
24 communication and persuasion skills, I felt that those
25 needed work and they needed work from the perspective of I

1 expected the managers to model what we expected from the
2 other employees. And while, while Ms. Bradley was able to
3 get the work done, I felt that her, her own individual
4 reaction to these changes was potentially going to get in
5 the way of these changes being long term and in the way of
6 her staff accepting the changes, as, as I was expecting her
7 to accept the changes. So this was basically a wakeup call
8 to let her know that, you know, this was out of whack with
9 what was expected and that although she had achieved at a
10 very high level that this part was, was something that I
11 still noticed.

12 MS. WINDLE: Now if you'll turn to Exhibit 50,
13 please.

14 MR. WARNER: Okay.

15 MS. WINDLE: Do you recognize this or know what it
16 is?

17 MR. WARNER: I know what it is. I, I have not
18 seen this. This is the personal action form for Ms. Bradley
19 for, it would have been FY04.

20 MS. WINDLE: Okay.

21 MR. WARNER: Actually it would have been FY05.

22 MS. WINDLE: Okay. That's for 2005. Then
23 actually let me have you look at Exhibit 46. That might be
24 clearer.

25 MR. WARNER: Okay.

1 MS. WINDLE: Okay. Do you recognize Number 46?

2 MR. WARNER: I do. This is the memo from Ms.
3 Colvin, the Director at the time from Ms. Plevy, the Chief
4 of Behavioral Health and Services, Behavioral Health and
5 Crisis Services, regarding Ms. Bradley's, the recommendation
6 that she be rated final rating at highly successful
7 performance and given a 2 percent increase to her base
8 salary.

9 MS. WINDLE: Okay. And for what fiscal year is
10 that?

11 MR. WARNER: This is June 14, 2005, so it would be
12 for FY05.

13 MS. WINDLE: Okay. And turn to 47, please.

14 MR. WARNER: Okay. Yes.

15 MS. WINDLE: Do you recognize this document?

16 MR. WARNER: The same thing except for FY06.

17 MS. WINDLE: Okay.

18 MR. WARNER: And in this particular memo, the
19 recommendation to the base was 3 percent.

20 MS. WINDLE: Okay.

21 MR. WARNER: Based on highly successful
22 performance.

23 MS. WINDLE: Okay. And just one more. Okay.
24 Turn to 50, please.

25 MR. WARNER: Yes.

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1 MS. WINDLE: And do you know what this is?
2 MR. WARNER: This is again a personal action form
3 for Ms. Bradley and this is for would be FY04.
4 MS. WINDLE: Okay. And do you have a recollection
5 of what percent increase you recommended for her for fiscal
6 year '04?
7 MR. WARNER: I, I believe it was 2 percent and
8 that's what this amount looks to be, 2 percent lump sum.
9 MS. WINDLE: 2 percent lump sum or 2 percent --
10 MR. WARNER: No, added to the base, I'm sorry.
11 Yes, 2 percent.
12 MS. WINDLE: 2 percent added to base?
13 MR. WARNER: That's what it looks like.
14 MS. WINDLE: Okay. Do you recollect that that's
15 what you recommended?
16 MR. WARNER: I can't say with certainty but that's
17 my, my memory.
18 MS. WINDLE: Okay. Okay. Now if you would go to,
19 while we're still on Ms. Bradley, will you look at Exhibit
20 41, please?
21 MR. WARNER: Yes.
22 MS. WINDLE: And this is in as joint exhibit, do
23 you recognize this document?
24 MR. WARNER: This is a position description, for
25 Ms. Bradley, it looks like it's from 2008.

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1 MS. WINDLE: Now have you had a chance to look at
2 this position description?
3 MR. WARNER: I, I have not.
4 MS. WINDLE: Okay. Could you take what you need
5 and look through it, please?
6 MR. WARNER: Sure. Okay.
7 MS. WINDLE: Does this position description
8 adequately describe Ms. Bradley's job, her position in the
9 years, fiscal year '03 through '06?
10 MR. WARNER: I believe it does and the, the
11 summary statement here where it says plan, monitor, and
12 oversee an array of public and contracted outpatient mental
13 health services in Montgomery County to ensure effective
14 service delivery, that outcomes are obtained, services are
15 accessible, integrated within the County and community and
16 have a system wide impact that are guided by best practices.
17 That, that sort of goes to the heart of what I was trying to
18 describe before, is what was expected.
19 MS. WINDLE: Okay. Now please turn to Number 57.
20 MR. WARNER: Yes.
21 MS. WINDLE: Do you recognize this document?
22 MR. WARNER: It appears to be the position
23 description for Mr. Morris.
24 MS. WINDLE: Okay. And have you had a chance to
25 look at this position description?

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1 MR. WARNER: Not completely no.
2 MS. WINDLE: Okay. Please look at it.
3 MR. WARNER: Okay.
4 MS. WINDLE: Let me start by asking you this.
5 When did Eugene Morris become, did he become and if so, when
6 did he become an MLS employee?
7 MR. WARNER: Mr. Morris became an MLS employee at
8 the time, at the point that he interviewed for and
9 successfully was given the job as the manager for the Abused
10 Persons Program, I believe that was 2005.
11 MS. WINDLE: Okay. Now and you've had a chance to
12 look at this now?
13 MR. WARNER: Yes.
14 MS. WINDLE: Okay. Does this position description
15 adequately describe the position that Mr. Morris had in
16 fiscal year '05 and '06?
17 MR. WARNER: I believe it does. It is brief, but
18 it, it does essentially say the position provides leadership
19 to the County's Human Service response to domestic violence,
20 partner abuse, and management of the County's Abused Persons
21 Program. So that statement captures what this is all about.
22 It's not only just providing the management of the program,
23 which is the, essentially making the trains run on time, but
24 it's also provides leadership to the County's human service
25 response to domestic violence so that is much broader, it

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1 goes across all those victim serving agencies that I
2 detailed earlier.
3 MS. WINDLE: Okay. Now if you'll look at Number
4 58 which is in as a joint exhibit.
5 MR. WARNER: Yes.
6 MS. WINDLE: Do you recognize this document?
7 MR. WARNER: I do. This is the final performance
8 evaluation for Mr. Morris for FY05.
9 MS. WINDLE: Okay. And what rating did you give
10 him?
11 MR. WARNER: Exceptional performance.
12 MS. WINDLE: Okay. And I'm going to have you look
13 at the same time at Number 59, please.
14 MR. WARNER: This is the same except for FY06.
15 MS. WINDLE: Okay. And what rating did you give
16 him?
17 MR. WARNER: Exceptional performance.
18 MS. WINDLE: Okay. Can you explain why you gave
19 Mr. Morris an exceptional rating for 2005 and 2006?
20 MR. WARNER: Yes. Mr. Morris in addition to being
21 new as a manager, was not new to domestic violence. He had
22 worked in the domestic violence, the Abused Persons Program
23 for a number of years as a supervisory therapist prior to
24 this. But Mr. Morris made and what I consider to be
25 exceptional performance, an outstanding contribution in a

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1 number of different ways. Those included one, the, a couple
2 of programs that were best national best practices that he
3 was able to implement in the State of Maryland and
4 specifically here in Montgomery County. One was the
5 Domestic Violence Fatality Review, that was a, Mr. Morris
6 was also during this time served as president one of the
7 years, but was very active in the State's advocacy group for
8 domestic violence victims and, and in his capacity in, in,
9 as the manager of the Abused Persons Program, was able to
10 implement Domestic Violence Fatality Review which gave us
11 the ability to be able to review all of the domestic
12 violence murders or near murders, and across all systems
13 that the individual had interacted with. This included the
14 police, the office of the State's Attorney, the Sheriff's
15 Office. But it also included the local hospitals, it
16 included all the victim serving agencies and, and other
17 agencies that interacted with victims. And it, it looked at
18 not just the specifics for that particular individual, but
19 the policy issues that came into play, the lapses if there
20 were any that were there that needed to be changed at that
21 level across, across the whole system in order to assure
22 that wouldn't happen again. So that's, that's a process
23 that as far as I'm aware is still in, in process throughout
24 many of the counties in, in the State of Maryland, but here
25 in Montgomery County and Mr. Morris was partially

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1 responsible for bringing that to Montgomery County.
2 He was also responsible for implementing a program
3 whereby each time a, an officer is called out when there is
4 a, a domestic violence arrest, of, of assuring that the
5 officer would complete an instrument that was tested and
6 validated, and by instrument, I mean a questionnaire with
7 the, with the victim and if the person scored above a
8 certain level, would do an exact warm connection with a
9 therapist at the Crisis Center --
10 MS. WINDLE: What's a warm connection?
11 MR. WARNER: -- on the phone. He would call, he
12 or she would call the Crisis Center, would get a therapist
13 on the line and would give his or her phone to the victim so
14 that a further assessment could be done to assure that the
15 person was going to be safe, to make them aware of how much
16 at risk they were and this, this is something that, that Mr.
17 Morris helped pilot around the State and worked integrally
18 with the retired police officer who was responsible for
19 implementing this, but, but brought it here to Montgomery
20 County.
21 So those two things, the other large area of
22 contribution was that Abused Persons Program had always
23 focused on domestic violence victims, but part of the
24 equation is also the abusers and Mr. Morris had done a lot
25 of work prior to coming to this position but after being in

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1 this position as well with the Abuser Intervention Program
2 assuring that the individuals who had perpetrated domestic
3 violence would also get counseling and services as part of
4 the equation to assure that didn't happen again.
5 MS. WINDLE: Okay. If you'd turn to 61, please.
6 MR. WARNER: Yes.
7 MS. WINDLE: That's in as a joint exhibit in
8 evidence. Do you recognize this document?
9 MR. WARNER: I do. This would be, this is the
10 memo from Ms. Colvin, the Director at that time to Mr.
11 Morris telling him that his overall rating was exceptional
12 performance and saying that the recommended pay for
13 performance that had been approved was increased to base
14 salary of 3 percent and a lump sum of 1.5 percent.
15 MS. WINDLE: Is your recollection that that's what
16 you recommended?
17 MR. WARNER: It is, to the best of my knowledge.
18 MS. WINDLE: And if you'll turn to 62, please.
19 MR. WARNER: Yes.
20 MS. WINDLE: Can you identify, do you recognize
21 this document?
22 MR. WARNER: Yes, it's essentially the same memo
23 again from, this is from Ms. Plevy, who is my direct
24 supervisor to Ms. Colvin, recommending that Mr. Morris get
25 exceptional performance and that there be an increase to

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1 base salary of 3.5 percent and a lump sum of 1.5 percent.
2 MS. WINDLE: And is your recollection that that's
3 what you recommended?
4 MR. WARNER: That's my recollection.
5 MS. WINDLE: Okay. Now tell me about the Victim
6 Service Advisory Board and how that was staffed over these
7 years, 2003 to 2006.
8 MR. WARNER: Yes. The Victim Service Advisory
9 Board is one of the Boards and Commissions that functions in
10 Montgomery County, I believe at the discretion of the County
11 Executive. And makes, is, is charged with making
12 recommendations policy level, recommendations to the
13 executive and many times also to the legislative branch in
14 Montgomery County. In this case as it relates to Victim
15 Services and at the, the point that I became responsible for
16 supervising Ms. Cabello, Ms. Cabello was staffed to the
17 Victim Service Advisory Board and the Victim Service
18 Advisory Board had over time I think begun to kind of
19 deteriorate to the point that much of what the focus was,
20 was not overarching responsibility to look at victim policy,
21 victim services across the spectrum of victim serving
22 agencies but to essentially be a support system for the
23 Victim Assistant Sexual Assault Program. It was many times
24 used as a way to help leverage additional resources during
25 the budgeting process, for additional clerical help,

1 additional therapy time, those kinds of things that that
2 individual program perceived that it needed, as opposed to
3 concerning itself primarily with, with coordinating all the
4 victim services agencies for policy perspective.

5 MS. WINDLE: And who staffed that Board from 2003
6 to 2006?

7 MR. WARNER: That would be Ms. Cabello.

8 MS. WINDLE: Okay. Did there come a time when you
9 changed who was staffing that Committee?

10 MR. WARNER: There did --

11 MS. WINDLE: Or Board?

12 MR. WARNER: Yes. And I, I changed it to Mr.

13 Morris for the reason I just described, to get it back on

14 the track of, of being, providing oversight to all the

15 victim service agencies, the conserving agencies in

16 Montgomery County and to have it be more focused on a policy

17 level instead of an individual advocacy level for a single

18 program.

19 MS. WINDLE: Okay. Did that change in staffing

20 have the effect that you wanted?

21 MR. WARNER: It did. It, it increased the, the

22 level of participation from individuals. There was a higher

23 quality of individuals who were recruited for the, for the

24 Victim Service Advisory Board and the focus became not just

25 the Victim Assistant Sexual Assault Program and the Abused

1 Persons Program which was included, and it had never really
2 gotten a lot of support from that Board, but all the victim
3 service agencies in Montgomery County that I've detailed.

4 MS. WINDLE: Okay. Let me ask you this. Were
5 there times during this period of time 2003, 2004, 2005,
6 2006, when you had special projects or things that came up
7 that you needed to assign to someone?

8 MR. WARNER: During, during the entire time that I
9 worked with Montgomery County there were special projects
10 and things that came up pretty much on a continuous basis.

11 And those ranged from committees and task forces that were
12 looking at specific issues, it ranged to QFC's which are
13 groups that do contractual work. They range from needing
14 people to do rating of employees, applicants for positions,
15 interview prospective individuals for positions and you know
16 those kinds of things were typically the things that, that
17 surfaced just on a routine basis.

18 MS. WINDLE: Okay. And if you had those kinds of
19 things come up, would you ask Mr. Morris to do things like
20 that and if so, what was the reaction?

21 MR. WARNER: Well, I typically as a manager, I
22 would, I would always besides trying to do some of those
23 things myself, would ask other people to take that on as
24 part of their workload as well. And Mr. Morris was somebody
25 who would volunteer for those kinds of things, would and was

1 expert in some of those areas to be able to, to work on
2 things like outcome measurement and things like that. Ms.
3 Bradley as well would do that and Ms. Cabello was much less
4 predisposed to be willing to do that, based on what she
5 perceived to be a very full plate in terms of her
6 responsibilities.

7 MS. WINDLE: Okay. Now in I believe it 2006, Ms.
8 Cabello filed a complaint with the Office of Human Rights.
9 Were you made aware of that at the time?

10 MR. KATZ: Objection. Leading.

11 MR. WARNER: My understanding is --

12 MS. ROBESON: Just a second until we rule on the
13 objection. All right. I'm sorry what was your --

14 MR. KATZ: The objection is its leading. She
15 testified that she stated that Ms. Cabello filed a complaint
16 in 2006.

17 MS. ROBESON: Can you rephrase?

18 MS. WINDLE: Did Ms. Cabello file an Office of
19 Human Rights complaint in 2006?

20 MR. WARNER: I believed it was '07.

21 MS. WINDLE: Okay. 2006 or 2007?

22 MR. WARNER: '07.

23 MS. WINDLE: Okay. When she filed that complaint,
24 what if anything were you asked to do in relation to that
25 complaint at the time?

1 MR. WARNER: Human Resources made me aware that
2 this had occurred and let me know that there would be
3 interrogatories that would be coming that I would need to
4 respond to.

5 MS. WINDLE: Okay. And so did there come a time
6 when you were asked to do that, and if so, what did you do?

7 MR. WARNER: There was. I can't recall exactly
8 what month I received those, but there, I received them,
9 there was a time frame that I had to have them back by and
10 I, I did complete them to the best of my ability and
11 returned them to Human Resources.

12 MS. WINDLE: Okay. Now in the compensation matrix
13 for management leadership service, there are certain ranges
14 of compensation that you can consider, I believe. And to
15 your knowledge are there limitations where you can't, as a
16 manager, you cannot award an MLS employee if there is a
17 certain level of salary?

18 MR. WARNER: My understanding is that if somebody
19 is above the 90 percent mark in terms of their, their band
20 where they are in the salary range, that that creates a
21 limit in terms of what can be awarded.

22 MS. WINDLE: Okay. Now when you responded, when
23 you provided your response to the Office of Human Rights, is
24 that right?

25 MR. WARNER: That's correct.

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1 MS. WINDLE: When you provided your information to
2 them, is your recollection that you indicated --
3 MR. KATZ: Objection. It's a leading question.
4 MS. ROBESON: Can you --
5 MS. WINDLE: What did you indicate to the Office
6 of Human Rights in terms of any limitations?
7 MR. KATZ: Objection. It's still leading.
8 MS. ROBESON: Can you just describe what occurred
9 after you received these or can you describe what occurred?
10 MR. WARNER: Sure. Yes. At the point that I
11 returned my responses to Office of Human Rights, then my
12 understanding was that they were to make a response for the
13 County through their EEO group and that a determination
14 would be, initial determination would be made as to whether
15 or not there were facts to substantiate the allegations.
16 MS. WINDLE: Okay. Give me a moment, please.
17 Okay. Can we go off the record?
18 MS. ROBESON: Well, what do you want to discuss?
19 MS. WINDLE: Well, I --
20 MR. KATZ: Then we cannot have a discussion.
21 MS. WINDLE: Can't do it.
22 MS. ROBESON: No, I agree. We're going to
23 continue.
24 MS. WINDLE: Well, I can't finish this because --
25 MR. KATZ: I'm not going to object, if she wants

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1 to address the bench we should ask the witness to leave.
2 MS. WINDLE: Well that's what I was trying to do,
3 Mr. Katz.
4 MS. ROBESON: Okay. Mister, can you please --
5 MR. WARNER: Sure.
6 MS. ROBESON: -- step outside the door for one
7 moment?
8 MR. WARNER: Absolutely.
9 MS. ROBESON: Don't go far.
10 MR. WARNER: Okay.
11 MS. ROBESON: Thank you.
12 MS. WINDLE: The document that I said was not
13 complete from the Office of Human Rights and part of it was
14 put in by Mr. Katz, as I believe it was 85, but it's not the
15 whole, it's just Tab 3, it's not the cover memo.
16 MS. ROBESON: Okay.
17 MS. WINDLE: And you had indicated that I could
18 put that in.
19 MS. ROBESON: And that was, yes.
20 MS. WINDLE: I believe that what I'm trying to ask
21 Mr. Warner is in that document that's not currently in.
22 MS. ROBESON: Well, do you have an objection, Mr.
23 Katz?
24 MR. KATZ: I'd like to look at the document.
25 MS. WINDLE: You looked at the document.

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1 MS. ROBESON: Why don't we take a five minute
2 break, I'd like to --
3 MS. ROBESON: I showed it to you this morning.
4 MS. ROBESON: -- just a second. Why don't we
5 take, have you seen the full document?
6 MR. KATZ: It was handed to me right before the
7 hearing I haven't had a chance to review it.
8 MS. ROBESON: Okay. Then we're going to take a
9 five minute break and I'm trying, can you please be timely
10 coming back because I'm trying to get through Mr. Warner
11 today. We are going to take a lunch after his direct. So
12 if you could all be timely coming back I'll take a break
13 until 12:35 p.m. and Mr. Katz can take a look at the
14 document. All right.
15 MS. WINDLE: Fine.
16 (OFF THE RECORD.)
17 (ON THE RECORD.)
18 MS. ROBESON: All right. We're back on the
19 record. If Mr. Warner could stay outside for the moment.
20 If anyone saw me discussing something with Ms. Windle, she
21 asked for a staple remover and --
22 MR. KATZ: That's fine, Your Honor.
23 MS. ROBESON: -- we're short of staff.
24 MS. WINDLE: Is that okay with you, Mr. Katz?
25 MS. ROBESON: We are short staffed today. So

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1 anyway we're here about this additional exhibit. Mr. Katz,
2 have you had the opportunity to look at it?
3 MR. KATZ: Yes, we have.
4 MS. ROBESON: And do you have any objection to it
5 coming in?
6 MR. KATZ: The one issue, Your Honor, is that it
7 references a number of attachments at the back. It has a
8 listing of 13 attachments. By our count there are six or
9 seven that we haven't seen.
10 MS. ROBESON: Ms. Windle?
11 MS. WINDLE: Well that was the concern that I was
12 trying to express this morning is that I have not seen when
13 they produced the file from Office of Human Rights as to
14 what supposedly they had in their file and they had looked
15 at. I didn't find a complete packet with all those
16 attachments in their file and certainly the whole packet
17 needs to be, I think, presented. But if they don't have it,
18 I don't know where it is.
19 MS. ROBESON: Well who submitted it to OHR?
20 MS. WINDLE: Pardon?
21 MS. ROBESON: Who submitted it the Office of --
22 MS. WINDLE: Well we did a number of years ago and
23 I thought that it was all in the Office of Human Rights, I
24 mean it should in the Office of Human Rights' file.
25 MS. ROBESON: No, I agree with you it should be,

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1 but all right, and HHS doesn't have a copy of it?
2 MS. WINDLE: I don't know. I was thinking that it
3 had all been provided to you.
4 MS. ROBESON: No.
5 MS. WINDLE: It has not?
6 MS. ROBESON: No. All I have is the complaint and
7 the analysis.
8 MS. WINDLE: Okay. This is what I was trying to
9 determine what all you have.
10 MS. ROBESON: I mean --
11 MS. WINDLE: And I'm certainly willing to look for
12 the attachments and to talk to, well I guess Office of Human
13 Rights is going to be here so maybe they can speak to that
14 themselves.
15 MS. ROBESON: What do you mean they're going to be
16 here.
17 MS. WINDLE: Ms. Garcia.
18 UNIDENTIFIED PERSON: No.
19 MS. ROBESON: No, she's not.
20 MS. WINDLE: Oh she is not going.
21 MS. ROBESON: No, she's not. So I have the
22 complaint, I have the determination by the Director and I
23 have the certification for public hearing and I have the
24 referral. That's all I have. So I guess my question is if
25 we exclude it, we've got so the best you can provide at this

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1 point is a copy without all of the attachments.
2 MS. WINDLE: Correct. The response and then
3 what's already in --
4 MS. ROBESON: From Mr. Katz.
5 MS. WINDLE: From Mr. Katz, that I agreed to is
6 just one of the attachments, it's a tab. I don't know why
7 it's called a tab, but in any event, yes, I don't know why
8 those attachments have not been presented.
9 MS. ROBESON: But you agree that what Mr. Katz
10 wanted in is one of the attachments?
11 MS. WINDLE: Yes.
12 MS. ROBESON: Okay.
13 MS. WINDLE: I don't have a problem with that.
14 MS. ROBESON: Okay.
15 MS. WINDLE: It's just not complete.
16 MS. ROBESON: So Mr. Katz, do you still object to
17 having the more complete but not completely complete
18 statement in the record?
19 MR. KATZ: No.
20 MS. ROBESON: All right.
21 MR. KATZ: One request?
22 MS. ROBESON: Yes?
23 MR. KATZ: Since it looks like we're going past
24 today is okay, number one, no we don't object to the adding
25 into, I would actually make --

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1 MS. ROBESON: It has to be a new exhibit.
2 MR. KATZ: I would propose making it a new
3 exhibit.
4 MS. ROBESON: I'm sorry? What do you want to do?
5 MR. KATZ: It can either be a new exhibit or we
6 can add it to Exhibit 85.
7 MS. WINDLE: That's fine.
8 MS. ROBESON: Okay.
9 MR. KATZ: Which is the --
10 MS. ROBESON: So add it to Exhibit 85 is going to
11 be --
12 MR. KATZ: 85A.
13 MS. ROBESON: -- 85A, County's version of its
14 response.
15 MR. KATZ: Okay.
16 MS. WINDLE: Well then we will look for the other
17 documents, if I can --
18 MS. ROBESON: Yes.
19 MS. WINDLE: -- determine if OHR has them and if
20 they don't then we will --
21 MS. ROBESON: Correct.
22 MS. WINDLE: -- try to find what was originally
23 sent to them. And I don't have a problem with that.
24 MS. ROBESON: Okay.
25 MR. KATZ: I mean I can, if the other, if I could

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1 just put on the record which attachments I believe we have
2 not seen.
3 MS. ROBESON: Okay.
4 MR. KATZ: If that might be of assistance, because
5 they may be available otherwise.
6 MS. ROBESON: Independent of being --
7 MR. KATZ: Yes.
8 MS. ROBESON: -- attached.
9 MR. KATZ: Yes.
10 MS. ROBESON: Okay. Go ahead.
11 MR. KATZ: Number 1, organizational chart
12 Montgomery County Department of Health and Human Services.
13 Attachment number 2, chart Behavioral Health and Crisis
14 Service. Number 4, 2001 Montgomery County personnel regs,
15 Section EEO5 policy. Attachment 11, the 2001 Montgomery
16 County personnel regs Appendix F. Attachment 12, release of
17 information form. And as far as Attachment 13, we were
18 provided in discovery documents which we had asked for Ms.
19 Cabello's personnel file, we were provided with documents so
20 we just don't know if it's --
21 MS. ROBESON: They're the same?
22 MR. KATZ: -- it's the same.
23 MS. ROBESON: Okay.
24 MR. KATZ: Well actually probably since what is
25 now 85A is dated May of 2007 --

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1 MS. WINDLE: Right, it's not going to be the same.
2 MS. ROBESON: It's not going to be the same.
3 MR. KATZ: It's not going to be the same, I would
4 just be concerned that it's the same going backwards from
5 May of 2007.
6 MS. WINDLE: Well that's why it's important that
7 the Office of Human Rights produce what they or --
8 MR. KATZ: Well --
9 MS. ROBESON: Well, but you generated the record.
10 I mean --
11 MS. WINDLE: Originally we did, yes.
12 MS. ROBESON: I mean HHS generated the record and
13 our personnel department, Human Resources, may also have
14 that record.
15 MS. WINDLE: It's possible.
16 MS. ROBESON: So I think there's more avenues, I
17 understand what you're saying about human rights, but
18 they're not the custody and control of those records is with
19 probably Human Resources, I don't know.
20 MS. WINDLE: Well I just have to say for the
21 record that I don't know how the Office of Human Rights
22 could come up with a determination against the County and
23 not have the documents that we gave them.
24 MS. ROBESON: Well you can make that argument but
25 you know we don't know what was in the record.

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1 MS. WINDLE: Right.
2 MS. ROBESON: So I assume, anyway that's an
3 argument you can make later.
4 MS. WINDLE: So can we put this in then as --
5 MS. ROBESON: We're going to have 85A in the
6 record.
7 (Hearing Exhibit No. 85A was
8 marked for identification.)
9 MS. ROBESON: Now Mr. Katz, you said something
10 about were you talking about dates for the next hearing?
11 Were you getting ready to talk about that or not? You said
12 since it looks like we're going one more day.
13 MR. KATZ: I forget the end of my sentence.
14 MS. ROBESON: Okay.
15 MR. KATZ: I wasn't thinking about dates, but --
16 MS. ROBESON: Okay. What I'd like to --
17 MR. KATZ: -- I forget, oh I know what I was
18 saying. I'm sorry. I'm sorry Your Honor.
19 MS. ROBESON: Go ahead.
20 MR. KATZ: What I was saying was since it looks
21 like we're going another day I would like to ask the County
22 to do whatever it can to produce the attachments we don't
23 have. That's what I was saying.
24 MS. ROBESON: Okay. So do you have a problem with
25 doing whatever you can to --

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1 MS. WINDLE: No.
2 MS. ROBESON: -- find, I don't know what your
3 schedule retention policy is for OHR under the Freedom of
4 Maryland Public Information Act, but there should be some
5 policy that you have and then it should be in the custody
6 and control of OHR.
7 MS. WINDLE: It should be.
8 MS. ROBESON: I'm just saying.
9 MS. WINDLE: Well we'll find out.
10 MS. ROBESON: So do what you can. All right. Are
11 we ready to have --
12 MS. WINDLE: So do you want a copy --
13 MS. ROBESON: I would like, if he's going to refer
14 to it --
15 MR. KATZ: Yes.
16 MS. ROBESON: -- since I got the staple remover,
17 yes.
18 MR. KATZ: I was just going to say I mean it's our
19 position the issue of the document retention does not start
20 from today or start from last fall when we sort of started
21 this process up and served discovery. It really goes back
22 to when Ms. Cabello filed the charge --
23 MS. ROBESON: When she filed --
24 MR. KATZ: -- in February of 2007.
25 MS. ROBESON: I understand.

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1 MS. WINDLE: We will look for it, but --
2 MS. ROBESON: Okay. Well that's not an issue I
3 want to argue until we look for it. Okay. So are we ready
4 to have Mr. Warner return?
5 MS. WINDLE: Maybe just a moment. So this is 85A
6 is that?
7 MS. ROBESON: Yes.
8 MR. KATZ: I'm sorry I may have misspoke.
9 MS. WINDLE: It's 85.
10 MR. KATZ: 85.
11 MS. ROBESON: If you're looking for it, I'm going
12 to place it in my set of binders so that's where it will be
13 rather than in the file.
14 MS. WINDLE: Okay.
15 MS. ROBESON: All right. Why don't you have him
16 come back in? Mr. Warner in the case I am remiss, again,
17 you are instructed not to discuss your testimony with any
18 other witness in this case while the record is open. We may
19 go to one more day. So your attorney will tell you when the
20 record closes, but I want to make sure I get that in before
21 I'm remiss again. All right.
22 MR. WARNER: I understand.
23 MS. ROBESON: All right. Continue, Ms. Windle.
24 MS. WINDLE: Thank you. Okay. If you will look
25 at what has been marked now as Exhibit 85A.

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1 MR. WARNER: Yes.
2 MS. WINDLE: Have you seen this document before?
3 Do you recognize it? What is it?
4 MR. WARNER: I, I do. This is the response from I
5 think it's Office of Human Resources regarding initial
6 response regarding the complaint made by Ms. Cabello.
7 MS. WINDLE: To your knowledge, who prepared this?
8 MR. WARNER: This is from Esther Greene. It's to
9 Esther Greene, I guess. So it, it went out over Ms.
10 Washington's signature, but --
11 MS. WINDLE: Do you have knowledge of who prepared
12 this document?
13 MR. WARNER: It was one of the people in Human
14 Resources that, that I had dealt with before, I can't recall
15 her name right off the top of my head.
16 MS. WINDLE: Okay. Now if you will turn to page 5
17 of 8.
18 MR. WARNER: Yes.
19 MS. WINDLE: Okay. Number 13, if you will please
20 read 13, and I have a question for you.
21 MR. WARNER: Read all of 13?
22 MS. WINDLE: Well, actually --
23 MS. ROBESON: You know what, let's not read it
24 because we can all read it. So do you need a moment to
25 review it?

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1 MR. WARNER: I could, yes, it would just take a me
2 a couple of seconds.
3 MS. ROBESON: Okay. Why don't you take a minute
4 and then you can continue with your question.
5 MR. WARNER: Okay.
6 MS. ROBESON: All right. Go ahead.
7 MS. WINDLE: Okay. On 13 the response, the second
8 paragraph to the response, what I'm trying to get to is --
9 MR. KATZ: Objection.
10 MS. WINDLE: -- did you provide --
11 MR. KATZ: There has to be a question.
12 MS. WINDLE: Did you --
13 MS. ROBESON: No, stop. You can't say what I'm
14 trying to get to. And can you just ask him to describe it?
15 MS. WINDLE: Well, I was going to have him read
16 it, but --
17 MR. KATZ: Objection.
18 MS. WINDLE: -- you said he couldn't read it.
19 MS. ROBESON: Ms. Windle, you can't lead. What do
20 you want to ask him about it?
21 MS. WINDLE: I want to ask him if he prepared and
22 provided the information that's in the second paragraph.
23 MS. ROBESON: Well you don't need to read it for
24 that, do you? Go ahead.
25 MS. WINDLE: He hasn't read it.

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1 MS. ROBESON: He just did.
2 MS. WINDLE: Right.
3 MS. ROBESON: Right.
4 MR. WARNER: Is that the question?
5 MS. WINDLE: Yes. Did you provide the
6 information?
7 MR. WARNER: I did not.
8 MS. WINDLE: Okay. Do you have any idea who did?
9 MR. WARNER: It would have been the person in
10 Human Resources who was responsible for the response. Human
11 Resources would be the ones who each year would tell us what
12 pay band a person is in, but that would not be something
13 that an individual manager would determine or have access
14 to.
15 MS. WINDLE: Okay. Now after you provided
16 information to the Office of Human Resources for this
17 response, were you asked for any additional information
18 after you had originally provided whatever you provided?
19 MR. WARNER: I was not.
20 MS. WINDLE: What if anything were you told about
21 a rebuttal that had been filed by Ms. Cabello?
22 MR. WARNER: I, I wasn't made aware that there was
23 a rebuttal until much later.
24 MS. WINDLE: Now did Ms. Cabello in these years
25 2003 to 2006 when you did her evaluation, did she ever, when

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1 did she, if ever, come to you and express any concerns about
2 her evaluation?
3 MR. WARNER: Ms. Cabello and I, as with all the
4 people I managed, we talked about the evaluations. Ms.
5 Cabello never expressed concerned about the level of
6 compensation or about the rating itself.
7 MS. WINDLE: Okay. Did there ever come a time
8 with Ms. Plevy told you that Ms. Cabello would talk to her
9 about dissatisfaction of her ratings?
10 MR. WARNER: Not to my knowledge.
11 MS. WINDLE: Okay. Just a minute. Okay. Mr.
12 Warner, do you have an opinion about this complaint and if
13 so will you please share it?
14 MR. WARNER: Well, my, my opinion is that I was, I
15 was amazed to find out this had been filed. I was, I
16 couldn't believe it I was hurt both personally and
17 professionally by this. I had worked closely with Ms.
18 Cabello during this whole time. In the aftermath of this,
19 she and I continued to work together up until when I
20 retired. I continued to treat her the same as I always had,
21 as I did the other managers I had worked with. Each year I
22 gave them each a holiday gift, the same thing, and continued
23 that throughout the whole process. I can't help but say
24 that I don't honestly believe that Ms. Cabello thinks that
25 she was discriminated against. I don't see how that would

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1 have been possible, given the circumstances and that, that I
 2 do think this very much is about money. I do not believe
 3 it's about discrimination.
 4 MS. WINDLE: Okay. I don't have anything else.
 5 MS. ROBESON: Okay. How long do you expect cross-
 6 examination to go? That's a tough question.
 7 MR. KATZ: I'm only a third of the equation.
 8 MS. ROBESON: Yes, I know.
 9 MR. KATZ: It'll be over an hour. Well over an
 10 hour.
 11 MS. ROBESON: Let's take lunch so please be back
 12 at 2:00 p.m. Do you have a time deadline you have to make?
 13 I'm getting some things confused.
 14 MR. WARNER: I, I would yes, I have a flight this
 15 evening. If I can leave by 6:30 p.m. I would be able to
 16 adequately make that flight.
 17 MS. ROBESON: Okay. So why don't, let's take a 45
 18 minute lunch. And so we'll go from 1:00 p.m. to 1:45 p.m.,
 19 if you can please be prompt in coming back, we will try to
 20 err on the conservative side.
 21 MR. WARNER: I appreciate it.
 22 MS. ROBESON: All right.
 23 MR. WARNER: Thank you.
 24 MS. ROBESON: All right. Thank you.
 25 (OFF THE RECORD.)

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1 (ON THE RECORD.)
 2 MS. ROBESON: Okay. Why don't you have Mr. Warner
 3 come back? Good afternoon, Mr. Warner.
 4 MR. WARNER: Good afternoon.
 5 MS. ROBESON: You're still under oath. Mr. Katz?
 6 MR. KATZ: Thank you. Mr. Warner, you can close
 7 up the exhibit notebook or at least move it out of your way
 8 for right now.
 9 MR. WARNER: Okay. Sit it here. I should say,
 10 but keep it handy. Good afternoon, we've met before, my
 11 name is Daniel Katz, I'm one of Ms. Cabello's attorneys.
 12 Now you would agree that it's correct that the evaluative
 13 process in manager 2 and manager 3 engage in both is both a
 14 retrospective and a perspective process, and it has purposes
 15 of both sort of looking backwards as to what's been done and
 16 looking forward as to, you know, what should be done in the
 17 future. You would agree with that?
 18 MR. KATZ: Primarily focused on what has happened
 19 during that particular year.
 20 MR. WARNER: And you don't think it has a
 21 prospective purpose for planning for the future?
 22 MR. KATZ: I think that's, that's a component of
 23 it, but the primary focus of it is to appraise the person's
 24 work for that particular year.
 25 MR. WARNER: Okay. You wouldn't say that the --

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1 MS. WINDLE: Objection. Asked and answered.
 2 MR. KATZ: You wouldn't say that the --
 3 MS. ROBESON: Just a second. Just a second.
 4 MR. KATZ: Yes, I'm sorry.
 5 MS. ROBESON: Where are you going with your next
 6 question? Are you going to repeat the question you just
 7 asked?
 8 MR. KATZ: No, I'm going to refer to a deposition
 9 statement.
 10 MS. ROBESON: Okay.
 11 MR. KATZ: So you remember being deposed in this
 12 matter, correct, in my office?
 13 MR. WARNER: I do.
 14 MR. KATZ: In your deposition I asked a similar
 15 question about a retrospective purpose and prospective
 16 purpose and you said both were right and looking at page 56
 17 of your deposition you said the focus was improvement.
 18 Wouldn't that mean that the focus is looking forward?
 19 MR. WARNER: That's not what I mean by that, no.
 20 The focus is to do an appraisal, that the whole purpose is
 21 to do an appraisal of the person's performance during that
 22 year and as part of that process you also want to provide
 23 feedback which can be helpful going forward.
 24 MR. KATZ: Okay. And in doing the appraisal, the
 25 evaluation would include anything that you would consider

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1 important in the employee's performance in the past year,
 2 correct?
 3 MR. WARNER: Yes.
 4 MR. KATZ: Okay. And you performed Ms. Cabello's
 5 evaluations for fiscal years 2003 through 2006, correct?
 6 MR. WARNER: That's correct.
 7 MR. KATZ: Okay. And it's correct that you made
 8 recommendations regarding any potential salary increase for
 9 Ms. Cabello during this period, those recommendations going
 10 to Ms. Plevy?
 11 MR. WARNER: I, I did make recommendations, yes.
 12 MR. KATZ: Okay. And isn't it correct that Ms.
 13 Plevy never disagreed with a recommendation you made
 14 regarding Ms. Cabello's salary?
 15 MR. WARNER: As I had explained in the deposition
 16 it wasn't a one-time only conversation. I had conversations
 17 with my direct supervisor in this case, Ms. Plevy, when we
 18 met which was many times every week throughout the year
 19 about the people who reported to me and about the, the
 20 programs that I was responsible for. So the, at the point
 21 that the evaluation was done, those conversations had
 22 already occurred.
 23 MR. KATZ: So is it correct the answer to my
 24 question is yes, she never rejected your recommendation?
 25 MR. WARNER: What I was trying to convey is, is

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1 that it wasn't a recommendation and then she could accept or
2 not, that that was one possibility. But the recommendation
3 that I made was sculpted over time through my communication
4 with my supervisor. It was a more complicated process.
5 MR. KATZ: Okay. Was there ever a time between
6 fiscal year 2003 and fiscal year 2006 that Ms. Plevy
7 rejected a recommendation you made regarding Ms. Cabello's
8 salary?
9 MR. WARNER: At the point, again to reiterate, at
10 the point that I made a recommendation in writing, a
11 discussion, a verbal discussion had occurred multiple times
12 about where the person was in terms of --
13 MS. ROBESON: Well, wait. When you're answering,
14 can you just answer the question and you have an attorney
15 here who gets to explain more. So what I heard, or she'll
16 get a chance to ask you further questions to explain. So
17 what I heard the question as being is did you ever, did she
18 ever overturn one of your salary recommendations, is that
19 the gist of the question, Mr. Katz?
20 MR. KATZ: Yes.
21 MS. ROBESON: Did Ms. Plevy ever overturn any of
22 your salary recommendations?
23 MR. WARNER: Once I had put them in writing, she
24 did not.
25 MR. KATZ: Did you ever make a recommendation to

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1 Ms. Plevy in regard to Ms. Cabello's salary that Ms. Cabello
2 rejected?
3 MS. WINDLE: Object, asked and answered.
4 MS. ROBESON: I'm not sure. I have to, I'm going
5 to let him re-ask that question because I wasn't clear on
6 the answer of his other question. So I'm going to let him
7 ask that question. Go ahead, Mr. Katz.
8 MR. KATZ: Could I just have the question, well
9 I'll just repeat.
10 MS. ROBESON: No, we can have the Court Reporter -
11 -
12 MR. KATZ: Can you read it back, please?
13 COURT REPORTER: One moment.
14 MS. ROBESON: The last question from Mr. Katz.
15 COURT REPORTER: Did you ever make the
16 recommendation to Miss, is it Clevy or Plevy?
17 MR. KATZ: Plevy.
18 COURT REPORTER: Did you ever make a
19 recommendation to Ms. Plevy in regard to Ms. Cabello's
20 salary that Ms. Cabello rejected?
21 MR. KATZ: That should have said that Ms. Plevy
22 rejected.
23 MS. ROBESON: Okay.
24 MR. WARNER: And my response was, is that I don't
25 believe Ms. Plevy ever rejected a recommendation that I made

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1 in writing.
2 MS. ROBESON: Did she ever overrule, did she ever
3 object to an oral recommendation you made? Any type of
4 recommendation, not just writing, any recommendation you
5 made?
6 MR. WARNER: Until it became a written
7 recommendation, it wasn't really a recommendation it was a
8 discussion between the two of us about where the person
9 would fall in terms of their evaluation.
10 MS. ROBESON: Okay. Did she ever disagree, I'm
11 not going to answer, I think his --
12 MR. KATZ: Well, did you ever make a, I actually
13 think this can be, I'm going to suggest this be answered yes
14 or no. Did you ever make a recommendation to Ms. Plevy
15 about Ms. Cabello's salary that Ms. Plevy rejected?
16 MS. ROBESON: Regardless of whether it was in
17 writing.
18 MR. WARNER: Not to my knowledge.
19 MR. KATZ: If I understand your prior testimony,
20 you address a number of times what you considered conflict
21 between members of the Police Department and Ms. Cabello and
22 her program. Is that accurate, you saw that there was a
23 conflict there at some point?
24 MR. WARNER: I did.
25 MR. KATZ: Okay. Now let me just ask you as a

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1 general question. Do you think that it may be not unusual
2 for individuals who serve as victim advocates of victims of
3 violence and the Police Department to both want to assist
4 the victim yet come at sort of view their assistance coming
5 at it from different angles?
6 MR. WARNER: In, in my experience that people have
7 different perspectives, but that the level of, of animosity
8 is not at this level usually, no.
9 MR. KATZ: And what level are you referring to?
10 MR. WARNER: The level that I described early in
11 my earlier testimony today in which the police actually felt
12 that the staff was, Ms. Cabello's staff was preventing them
13 from doing their work.
14 MR. KATZ: Okay. Now it's correct that this
15 conflict with the police affected your ratings of Ms.
16 Cabello, yes?
17 MR. WARNER: It did.
18 MR. KATZ: Okay. Now I would like you to look at
19 Exhibit 79 that Ms. Windle also showed you, it's the
20 memorandum from Assistant Chief Walker.
21 MR. WARNER: Yes.
22 MR. KATZ: Now you've reviewed this memorandum?
23 MR. WARNER: That's correct.
24 MR. KATZ: Okay. Isn't it accurate that in this
25 memorandum Chief Walker is actually instructing the police

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1 in a manner which was consistent with the procedure that was
2 advocated by Ms. Cabello's program VSAB?
3 MR. WARNER: That's not correct.
4 MR. KATZ: Okay. Okay. Now you remember when you
5 were deposed in my office that was under oath, correct?
6 MR. WARNER: That's correct.
7 MR. KATZ: Okay. And you told the truth at that
8 time?
9 MR. WARNER: I'm trying to tell the truth
10 completely both times.
11 MR. KATZ: Okay. Well, I'm going to read from
12 your deposition transcript, which is Exhibit Number 2, at
13 page 76. Question. Isn't the instruction that Chief Walker
14 is giving consistent with VSAB wanted to happen? This is
15 your answer. Quote, this part, particular part of the memo
16 which does include the whole memo, does do what VSAB had
17 wanted. So I'll ask and isn't it accurate that Chief Walker
18 in this memorandum is instructing the police to act in a
19 manner in which VSAB wanted the police to act?
20 MR. WARNER: Not entirely, no, it's not.
21 MR. KATZ: Is Chief Walker instructing the police
22 to act in a manner inconsistent with how VSAB wanted the
23 police to act?
24 MR. WARNER: My understanding is is that Chief
25 Walker was attempting to strike a balance between what she

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1 could and her detectives could deal with and what she knew
2 was, was needed for victims. And so what you have here is,
3 is an attempt to balance that out.
4 MR. KATZ: And isn't it accurate to say she
5 balanced it out in a manner that was consistent with the
6 goals of the VSAB, victim services volunteers?
7 MR. WARNER: I don't believe it's, it's wholly
8 accurate to state it that way, no.
9 MR. KATZ: Why not?
10 MR. WARNER: Because I believe based on what I saw
11 at the time, that VSAB would have rather had full access for
12 every victim that came through that service and that, and
13 that Ms. Cabello's philosophy was that the victim service
14 that was provided was a higher priority than the law
15 enforcement services that were being rendered.
16 MR. KATZ: So you're reading into Chief Walker's
17 memo, intentions and purposes other than what she wrote in
18 the memo, isn't that accurate?
19 MR. WARNER: That's not accurate.
20 MR. KATZ: Well what your answer, where do you
21 find that in this memorandum?
22 MR. WARNER: Well this memorandum came about as a
23 result of multiple conversations with Chief Walker, some of
24 which I was party to. So I know that it was an attempt in
25 writing to give guidance to the detectives who responded to

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1 this population and I know what the purpose of it was. And
2 the purpose was to not prevent them from being able to do
3 the investigatory work that they needed to do but at the
4 same time, to say that the victim services for these victims
5 were important and that they needed to have access to them.
6 MR. KATZ: Okay. This is a memorandum addressed
7 to all Major Crimes investigators, correct?
8 MR. WARNER: Yes.
9 MR. KATZ: Okay. And you can't come up with any
10 reason why if Assistant Chief Walker wanted to say what you
11 just said, she wouldn't put it a memorandum to her own
12 investigators? Aren't you like essentially trying to read
13 into this memorandum what's not there?
14 MR. WARNER: I'm not. I have background
15 information about it and the way my experience is the way
16 that particularly with somebody who is as politically astute
17 and sensitive as Chief Walker is, that this was her taking a
18 whole bunch of different things and trying to come out with
19 as much of a balance as possible. I'm not trying to read
20 into it, I know that was her purpose in this particular
21 situation.
22 MR. KATZ: But this isn't a memorandum going to a
23 very large audience, it's not a memorandum going to VSAB it
24 is going to Ms. Stevens when she was at the HHS. This is a
25 memorandum going to the police. She didn't need to be

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1 political with her own Police Department, did she?
2 MR. WARNER: Well, absolutely. Because --
3 MR. KATZ: Why?
4 MR. WARNER: -- because --
5 MR. KATZ: Why?
6 MR. WARNER: -- everybody, everybody who is astute
7 in dealing in a political environment has to balance a
8 number of things simultaneously and what she was balancing
9 was the support for her own people, as well as understanding
10 that they too needed to be part of a larger system of victim
11 serving agencies. So she was in no way undermining their
12 ability to be able to do the investigatory work that I spoke
13 of earlier. What she was saying is, is that she also wanted
14 victim services to be included.
15 MR. KATZ: This is a very important issue, yes?
16 MR. WARNER: It is an important issue.
17 MR. KATZ: Right. It was an important issue, it
18 was so important that isn't it accurate that you cannot
19 remember today a single specific conversation you had with
20 Nadja Cabello about this police issue? Isn't it accurate
21 you can't remember any day that you had a discussion with
22 her, where that discussion happened and who said what?
23 Isn't that accurate?
24 MR. WARNER: What's accurate is is that in this
25 case 12 years have elapsed since this happened and I don't

1 have recall of conversations about anything verbatim that I
2 had in terms of dates, times and content in general at, from
3 that time period. That, that I do remember things that I've
4 said and things that issues that I've worked with but no I
5 can't reconstruct conversations verbatim from 12 years ago.

6 MR. KATZ: Okay. And isn't it accurate that you
7 never documented to Nadja Cabello via memorandum or an e-
8 mail your concerns in regard to this relationship or
9 conflict with the Police Department? Isn't that accurate?

10 MR. WARNER: It's not accurate that I didn't
11 document to her on her evaluations, the statements that I
12 read earlier today speak to that. But my style was not to,
13 to make issues like this into a disciplinary issue. You
14 know, Ms. Cabello as well as the other staff I worked with
15 are professional staff and I talked with them about this. I
16 did not make them, make these into memoranda or letters
17 counseling letters that said that, that, you know, where
18 change need to occur.

19 MR. KATZ: Isn't it correct that apart from the
20 Walker memorandum, Exhibit 79, there is no documentation
21 from anyone connected to the County about this conflict?

22 MR. WARNER: I, I don't know what other
23 documentation may or may not exist. I, I don't have any
24 documentation other than the evaluations that I did for each
25 of those years which spoke to the issues with the Police

1 Department.

2 MR. KATZ: Okay. Isn't it correct that you never
3 wrote an e-mail to Ms. Plevy about this conflict that you
4 say Ms. Cabello had with the Police Department?

5 MR. WARNER: Well since I, I met with Ms. Plevy on
6 a regular basis and Ms. Plevy got hundreds of e-mails a day,
7 I didn't e-mail her with issues like this. I talked with
8 her directly about them, the same as I did with Ms. Cabello
9 and the other people that I worked with.

10 MR. KATZ: And isn't it correct that there's not a
11 single notation of a phone call from you to Ms. Plevy that
12 addresses this so-called conflict?

13 MR. WARNER: I didn't keep notations of phone
14 calls for anybody that I talked to during the 23 years I
15 worked at the County.

16 MR. KATZ: Did you ever write an e-mail about an
17 important issue?

18 MR. WARNER: Most important issues I talked to
19 people directly about. The kinds of things that I reserved
20 e-mail for was response to other e-mails, things that
21 required something in writing regarding contracts or those
22 kinds of things but in terms of people's work, no I didn't,
23 didn't e-mail about it, I talked to them about it.

24 MR. KATZ: Okay. So it's your testimony that the
25 only written, well, let me preface it by saying. We'll look

1 at Ms. Cabello's evaluations in a little bit, but is it
2 correct to say that it's your testimony that the only
3 written reference you made to the issues with the Police
4 Department are those which show up in her evaluations?

5 MR. WARNER: Those are the only written things
6 about that that I recall.

7 MR. KATZ: Okay. Well, you've now had, this is
8 the second time we're talking about this. We did at the
9 deposition, which was probably about six weeks ago or so and
10 now today. So in that period of time you haven't recalled
11 any other written documentation either?

12 MR. WARNER: I haven't, again this was 12 years
13 ago. I, I don't have complete recall of everything that I
14 did 12 years ago and this was one of many things that I did
15 in, in my work.

16 MR. KATZ: Okay. Now you're aware of what the
17 Victim Service Advisory Board is, yes?

18 MR. WARNER: That's correct.

19 MR. KATZ: Okay. Can you just state what it is
20 briefly?

21 MR. WARNER: I previously stated in my testimony
22 today that the Victim Service Advisory Board is one of the
23 Boards and Commissions in Montgomery County that as I
24 understand serves under the County Executive's Office and
25 that its responsibility is to provide guidance and

1 recommendations from a policy perspective to the County
2 Executive, sometimes also called upon by the County Council
3 regarding the particular issue that they were dealing with
4 and in this case it was victim services.

5 MR. KATZ: All right. It's correct then in
6 2002/2003, Ms. Cabello as the head of VSAB was staffed to
7 the Victim Service Advisory Board?

8 MR. WARNER: That's my understanding of the time
9 frame.

10 MR. KATZ: Okay. Now do you think it would have
11 been helpful if there had been some kind of dialogue between
12 the Police Department and the Victim Service Advisory Board
13 concerning the conflict that was happening with VSAB and the
14 police, given the Board's oversight and all?

15 MR. WARNER: Well, as, as I mentioned during those
16 years, I don't think there was a lot of oversight going on.
17 I think you know that issue, I, I can't recall if that issue
18 surfaced at a board meeting, but they were not as a Board
19 acting in the capacity that they had the potential to.

20 MR. KATZ: Do you think it would have helped if
21 Assistant Chief Walker and the Board had had a dialogue
22 about this issue? Could it have helped move this conflict
23 along?

24 MR. WARNER: Well I don't know that they didn't, I
25 don't, don't recall whether or not there was a conversation

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1 about that. I know that Chief Walker at some point either
2 she or, or her staff had addressed the Board but no I don't,
3 I don't know, I don't remember whether or not, when that
4 was.
5 MR. KATZ: Okay. Well I'm going to ask you to
6 look at Exhibit 84, the first page of Exhibit 84 --
7 MR. WARNER: Uh-huh.
8 MR. KATZ: -- it says Victim Service Advisory
9 Board, VSAB minutes from January 23, 2003. Now if you look
10 down the page to the first full paragraph in bold it says
11 Montgomery County Police, unbold, Deidre Walker, Assistant
12 Chief of Police. This is Assistant Chief of Police Walker
13 who you've been referring to, yes?
14 MR. WARNER: That's correct.
15 MR. KATZ: Okay. The minutes of this meeting say
16 Dee gave a brief history of her life and career path in
17 Montgomery County. She expressed her support for the Board
18 which she feels can only improve relations between the
19 police and victim services. She feels a renewed and
20 invigorated commitment from the police and victim services
21 to work together and she's strongly encourages dialogue.
22 She is open to being contacted and she gives her contact
23 information. Two sentences down it refers to the memo she
24 wrote of December 31, 2002, the memo we've been looking at.
25 MR. WARNER: Uh-huh.

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1 MR. KATZ: She says it's the beginning of
2 improvement to victim services in the future, copies of the
3 memo were distributed. Now this is, it's correct this is
4 the time period when Ms. Cabello was staffed to the Board,
5 correct?
6 MR. WARNER: That's right.
7 MR. KATZ: Okay. So it's pretty safe to say that
8 Ms. Cabello helped play a role in having Chief Walker come
9 and have a discussion with the VSAB, the Board that oversaw,
10 you know, part of the victim services, correct?
11 MR. WARNER: I, I don't know. I don't know what,
12 whether or not Ms. Cabello was responsible for that or
13 whether the Board had initiated that themselves.
14 MR. KATZ: Well --
15 MR. WARNER: Or whether, whether Chief Walker had
16 initiated it.
17 MR. KATZ: Okay. Regardless of who initiated it,
18 isn't this the kind of action which would have an indication
19 of working on improving relations and that there was not
20 such tension that a dialog wasn't happening. Isn't that
21 accurate?
22 MR. WARNER: Can you say that again? I didn't
23 understand.
24 MR. KATZ: Okay. The fact that Chief Walker came
25 and presumably invited to the Board since she's not a member

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1 of the Board, to speak about the coordination of services
2 between the police and victim services, doesn't that
3 indicate a forward movement from whatever tension might have
4 existed at the time she wrote the memo a month earlier?
5 MR. WARNER: Well what it, what it indicates to me
6 is that Chief Walker was following through, Chief Walker
7 was, was, as I mentioned before, very sensitive and
8 politically aware and was, was at this point looks like
9 making sure that everybody knew that this had been written
10 and that her intent was to, to deal with this issue. What
11 she wasn't doing in front of the Board and which I wouldn't
12 expect her to do because it wouldn't be something you'd do
13 publically, is to talk about the issues we've talked about
14 today.
15 MR. KATZ: But why do you think those issues, on
16 what basis can you say those issues even existed after the
17 point of this meeting if there's nothing that documents them
18 at all?
19 MR. WARNER: Well, there are number of issues that
20 have existed during my entire career that you can't go back
21 and find documentation for. So yeah, those issues did exist
22 and Chief Walker was publically saying that this was what
23 she was committing in terms of her resources to deal with,
24 with the problem.
25 MR. KATZ: And this is a Board which you said was,

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1 which actually you were criticizing as just being concerned
2 with VSAB, engaging in a dialogue with Chief Walker about
3 these issues exactly at the time that Chief Walker is giving
4 instructions to the police. And doesn't this indicate that
5 you know there's a lot more dialogue and coordination going
6 forward than what you've been testifying to?
7 MR. WARNER: No, it does not. It indicates that
8 Chief Walker took the initiative to do this, that she took
9 the initiative to write the memo herself, she took the
10 initiative, evidently, to come to the Board and to talk with
11 them from her perspective. It would not have been something
12 she would do to surface the kind of behavior that was going
13 on with the victim services, Victim Outreach Program. She
14 was doing her best to put, this was, this is somebody who is
15 an Assistant Chief, she is an appointed official and is
16 politically aware and astute. So you know she would not,
17 this wasn't an evaluation, this was her saying to people who
18 are interested in victim services that this is the Police
19 Department is sensitive to this and this is one of the
20 things that they're doing in order to work with it.
21 MR. KATZ: And this is right after she wrote a
22 memorandum which at least in part instructed the police to
23 do what the victim services folks wanted the police to do as
24 far as coordination, correct?
25 MR. WARNER: This, this happened after the memo

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1 evidently and makes sense because she would be talking about
2 the memo that she wrote. It couldn't have happened --
3 MR. KATZ: Yes.
4 MR. WARNER: -- it wouldn't have happened before
5 she wrote the memo.
6 MR. KATZ: We don't know that do we? She might
7 have been invited before she wrote the memo. We can't know
8 that, do we?
9 MR. WARNER: Well we don't, we don't know when she
10 was invited, we know she wouldn't have referenced the memo
11 at that point.
12 MR. KATZ: Is there any basis for you saying that
13 Walker initiated coming to the VSAB --
14 MR. WARNER: I didn't.
15 MR. KATZ: -- or are you just speculating.
16 MR. WARNER: I said I don't know. I said that's
17 one of the possibilities.
18 MR. KATZ: Okay. You mentioned in your earlier
19 testimony a QSC, what is that?
20 MR. WARNER: I think it's quality service
21 something, I can't remember it's an acronym for I believe
22 what it was was a, a committee that would look at proposals,
23 responses, RFP's, responses to RFP's.
24 MR. KATZ: Okay. And you mentioned that in the
25 context of your earlier testimony.

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1 MR. WARNER: I mentioned it as one example of
2 things that, you know, ongoing kinds of departmental work
3 that, that all managers were asked to do. It wasn't in, in
4 any way supposed to be an extra, it's just a part of what,
5 particularly anybody at an MLS, MLS service was MLS was
6 supposed to do whatever is required and you know we did not
7 get additional hours, we didn't just have 40 hours to do it.
8 MR. KATZ: Okay. And you mentioned in the context
9 of your opinion that Ms. Cabello didn't volunteer for work
10 or wasn't as available as you wanted her to be. Is that
11 accurate?
12 MR. WARNER: I mentioned that of the three people
13 that I oversaw, Ms. Cabello was the least of the three
14 willing to do those kinds of things, to volunteer for
15 additional work past what her, what her assigned work was.
16 MR. KATZ: Okay. Do you remember we discussed
17 this during your deposition?
18 MR. WARNER: Is that a question?
19 MR. KATZ: It's saying, yes.
20 MR. WARNER: Yes, I, I don't recall exactly the --
21 MR. KATZ: Okay.
22 MR. WARNER: -- the question.
23 MR. KATZ: Okay. I mean actually at page, for
24 reference, 106 of your deposition --
25 MS. ROBESON: What exhibit is that?

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1 MR. KATZ: It is exhibit --
2 MS. WINDLE: 2.
3 MS. ROBESON: Okay. Thank you.
4 MR. KATZ: I'm sorry, did somebody answer?
5 MS. ROBESON: 2.
6 MR. KATZ: 2. Okay.
7 MS. ROBESON: Ms. Windle said 2.
8 MR. KATZ: Thank you.
9 MR. WARNER: Do we have a 2?
10 MS. WINDLE: Well he needs to give you.
11 MS. ROBESON: Keep going, I didn't meant to --
12 UNIDENTIFIED PERSON: 1 through 6 are already in
13 the record.
14 MR. WARNER: Okay. Thank you.
15 MR. KATZ: I actually asked you at the bottom of
16 105, can you remember any specific projects you had asked
17 Ms. Cabello to take on apart from the day to day workings of
18 the agency. And you had a long answer, explaining that if
19 you want to look it's at page 106 of your deposition, and
20 you said at one point quote, there are various things I
21 asked Nadja to do, she didn't do. Then I asked you a
22 specific question at page 107 of your deposition, line 10,
23 can you give any specific examples of what you're talking
24 about. You answered I'm thinking about it, I'm not thinking
25 of any right off the bat. And so isn't it accurate to say

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1 that having engaged you had raised this, that you felt Ms.
2 Cabello either didn't volunteer or wasn't as available, yet
3 the examples aren't there. You didn't have the examples,
4 you couldn't remember examples at your deposition and
5 they're not documented anywhere that you ever said to Ms.
6 Cabello I need you to take on X and you're not taking it on.
7 Isn't that accurate?
8 MR. WARNER: What's accurate is that I did not
9 document times that I asked Ms. Cabello to do things and she
10 didn't. What's accurate is that besides my opinion that
11 other people that I worked with including Ms. Plevy, had the
12 opinion that Ms. Cabello was not a go to person. That if we
13 had work that needed to be done and typically we didn't have
14 a lot of time to do it, trying to persuade someone to do it
15 would have taken part of that time, so we over time went to
16 people who would volunteer to do the work and who we knew
17 would do it timely and correctly.
18 MR. KATZ: Okay. At what point did you develop
19 this attitude or understanding?
20 MR. WARNER: Well --
21 MR. KATZ: What date?
22 MR. WARNER: I don't have a date, that wouldn't be
23 possible to, to form an opinion on a date.
24 MR. KATZ: Well, you can't form an opinion on a
25 date, so I'm asking you for specifics, what did you ask Ms.

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1 Cabello to do and when that she didn't do? A very specific
2 question.
3 MS. WINDLE: Objection. Asked and answered. He
4 said he didn't know.
5 MS. ROBESON: Well, I would like him to, I think
6 he said what is accurate. But I would like you to answer
7 either do you have knowledge of the date on the timeline or
8 do you have examples of what lead you to form this opinion?
9 Can you be specific as to what lead you to form this
10 position, this belief?
11 MR. WARNER: What, what lead me to and I can't
12 speak for anybody else but me but what, what lead me to have
13 that belief is that Ms. Cabello often presented as I
14 mentioned earlier in my testimony today that her plate was
15 full. That she was dealing with things like individual
16 employees and the basics of running a program and did not
17 have any additional room to, to do these kinds of tasks that
18 I've described.
19 MS. ROBESON: And what kind of tasks were these
20 that you described?
21 MR. WARNER: These were the kinds of, of tasks
22 that MLS employees were all expected to, to just pick up.
23 The things that are outside, the things that, that wind up
24 being all of their duties as assigned in a job description.
25 So all of the things that helps support a department that

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1 are different than just running a particular program. So in
2 a department like --
3 MS. ROBESON: Okay. I don't want to intervene too
4 much --
5 MR. WARNER: Okay.
6 MS. ROBESON: -- so you can follow up.
7 MR. KATZ: Thank you. So it's accurate that you
8 can't remember one specific example?
9 MR. WARNER: It's, it's accurate that after 12
10 years, no I don't have specific recall of a time that I
11 asked Nadja to do something and didn't. What I can say is
12 that characteristic of that kind of response Ms. Cabello
13 when we had to stay for the, for the Victim Service Advisory
14 Board in the evenings, that was something that was expected
15 that we would all pick up and, and add a number of, of
16 things that we did in the evening to support the
17 Department's work and Ms. Cabello would routinely want to
18 leave and go home during part of the day and then come back
19 for the evening. That's not the way that other employees
20 who are MLS level would respond. They, we all had evening
21 meetings and things, additional projects that we were
22 supporting outside of the regular 9:00 a.m. to 5:00 p.m.
23 business day.
24 MR. KATZ: Did Ms. Cabello miss any of the VSAB
25 meetings she was supposed to attend?

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1 MR. WARNER: No, that's not what I said. I said
2 that she --
3 MR. KATZ: That was my question.
4 MR. WARNER: Yes, no.
5 MR. KATZ: Okay. Now how often did the VSAB meet?
6 MR. WARNER: Once a month except for I believe the
7 month of August.
8 MR. KATZ: Okay. Now over the period of time for
9 the four evaluations that you performed, on how many dates,
10 which would have been like 11 meetings a year, on how many
11 of those dates did Ms. Cabello apparently from what you're
12 saying, go home early and then come back?
13 MR. WARNER: To my knowledge, most, most of the
14 meetings that's what happened.
15 MR. KATZ: What time did she leave your office to
16 go home?
17 MR. WARNER: I don't know. I don't know but she -
18 -
19 MR. KATZ: You don't know, correct?
20 MR. WARNER: I do not know.
21 MR. KATZ: Okay. And what time would she come
22 back for the VSAB meeting?
23 MR. WARNER: I don't know that either.
24 MR. KATZ: Okay. Isn't it correct that she would
25 have to be back well before the meeting started to help

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1 setup the meeting and setup the materials?
2 MR. WARNER: Well that typically would take about
3 15 minutes. So there wasn't a need to come back way in
4 advance of the meeting for just that meeting, no.
5 MR. KATZ: Okay. But you didn't setup the
6 materials for the meeting, correct?
7 MR. WARNER: I did not.
8 MR. KATZ: Okay.
9 MR. WARNER: But I --
10 MR. KATZ: Now when did you counsel Ms. Cabello
11 regarding your concern that she was leaving work when she
12 shouldn't leave work to go home?
13 MR. WARNER: Again, I didn't counsel her from a
14 disciplinary perspective. That was what Ms. Cabello said
15 she needed to do in order to be able to function and be
16 there for the evening meeting, so --
17 MR. KATZ: When did you say anything to Ms.
18 Cabello to express your concern or disapproval about this
19 issue?
20 MR. WARNER: During, during the time that I worked
21 with Ms. Cabello I, I believe I did let her know that that's
22 not what other MLS employees did. That's not what I did and
23 that's not what the other people who I supervise did.
24 MR. KATZ: When did that occur?
25 MR. WARNER: I don't know the dates and times.

1 MR. KATZ: Okay. And you don't recall if that was
 2 once during four years, twice during four years? You don't
 3 recall? You have no record of it either, do you?
 4 MR. WARNER: Well I do not have a record of it.
 5 What I do have is that I attempted to model what I expected
 6 from the people that I worked with. So that I would make it
 7 very clear that the meetings sometimes two and three
 8 meetings a week at least on the average of I would say four
 9 a month were evening meetings that I covered and I would let
 10 our staff know that and that that was part of my work day.
 11 MR. KATZ: What meeting at night did you ask Ms.
 12 Cabello to cover that she didn't cover?
 13 MR. WARNER: I didn't say that there were any.
 14 MR. KATZ: Okay. So we're still at what specific
 15 tasks, so is it correct to say you can't remember any
 16 specific tasks or meetings to cover you asked Ms. Cabello to
 17 do that she didn't do, that's accurate, correct?
 18 MR. WARNER: It's accurate to say that I did not
 19 get to a place with Ms. Cabello where I gave her a direct
 20 requirement to do something that she chose not to do. That
 21 would have been a disciplinary matter.
 22 MR. KATZ: Okay.
 23 MR. WARNER: So we did not ever have that.
 24 MR. KATZ: Okay. But this attitude or
 25 understanding you had, it's reflected in her evaluations,

1 correct?
 2 MR. WARNER: What's reflected in her evaluations
 3 is that she was a solid performer, that there were parts of
 4 her performance which were above successful, that over time
 5 that gradually improved to include all the things that I
 6 said earlier today, wider ability to see things from a macro
 7 perspective and I did not in any way, there, there aren't
 8 any negative aspects to Ms. Cabello's evaluations. I
 9 didn't, we didn't have any disciplinary issues, we didn't
 10 have any impasses where I asked her specifically to do
 11 something and she told me flat out no.
 12 MR. KATZ: Okay. But this, what you're saying is
 13 your understanding that Ms. Cabello should have been doing
 14 something else, but you can't say what it is right now, but
 15 that something else is part of being at the macro level, is
 16 that accurate?
 17 MR. WARNER: No, it's not accurate to, to make it
 18 sound as if what I'm saying isn't important. What I said is
 19 that, is that Ms. Cabello like every other MLS employee was
 20 expected by definition to provide a level of leadership
 21 across the Department and across the, the service delivery
 22 system that they worked in and to work outside the normal
 23 9:00 a.m. to 5:00 p.m. hours in order to accomplish that.
 24 That was what was expected of MLS and I'm guessing currently
 25 still is.

1 MR. KATZ: And it's your position that Ms. Cabello
 2 didn't work outside of the 9:00 a.m. to 5:00 p.m.?
 3 MR. WARNER: That's not what I said. What I, what
 4 I said was is that Ms. Cabello's focus, consistently,
 5 although less so as we moved through the years, was on
 6 running the program, on the basics of running the program.
 7 Important, but that can be done at a lesser level than at an
 8 MLS level. We had a couple of programs, the ones that I
 9 detailed earlier today, the Access Team and Adult Behavioral
 10 Health Program, which although overseeing by an MLS
 11 employee, on a day to day basis at one point had supervisory
 12 therapists that were running them at a much lesser level
 13 than an MLS employee. And so that, what it just, I guess I
 14 would leave my statement at that.
 15 MR. KATZ: Do you know what meetings Ms. Cabello
 16 did attend in the evening?
 17 MR. WARNER: Do I know which ones she did?
 18 MR. KATZ: Yes.
 19 MR. WARNER: The, the one that she told me about
 20 primarily was the Victim Service Advisory Board. That's
 21 the, the main meeting that I'm aware of.
 22 MR. KATZ: Okay. So after this discussion nothing
 23 jogs your memory on any specific thing you asked her to do
 24 she didn't do, is that accurate?
 25 MR. WARNER: It's, it, as I mentioned, if there

1 was a specific thing that I asked her to do that she didn't
 2 do it would have become a disciplinary issue. It wouldn't,
 3 it wouldn't just be a, something should be marked down in
 4 elevation. I'm talking about the overall prevailing
 5 attitude of being focused primarily on running the program
 6 and feeling that that was filled up her plate.
 7 MR. KATZ: I'm going to ask you to look at the
 8 evaluations of Ms. Cabello, her 2003 evaluation is Exhibit
 9 9. Let me know when you have it in front of you.
 10 MR. WARNER: Yeah, I've got 1 through 6 here.
 11 Yes.
 12 MR. KATZ: Okay. It's accurate that you evaluated
 13 Ms. Cabello with successful performance this year, correct?
 14 MR. WARNER: That's right.
 15 MR. KATZ: Okay. Is there any reference to the
 16 dispute with the Police Department in this evaluation?
 17 MR. WARNER: There is not a direct reference to
 18 that, but that there would not be typically in any
 19 evaluation that I would write. I would not put things on
 20 people's evaluations that were negatively focused like that.
 21 MR. KATZ: Just there's no reference to the police
 22 issue?
 23 MR. WARNER: In this particular evaluation --
 24 MR. KATZ: Yes.
 25 MR. WARNER: -- there isn't a reference to it.

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1 MR. KATZ: Okay. Now is there any reference to
2 Ms. Cabello not being available as you expected and managed
3 her to be in this evaluation?
4 MR. WARNER: No. The evaluation shows that she
5 was successful or highly successful in many of the
6 categories.
7 MR. KATZ: Okay.
8 MR. WARNER: And was positive and upbeat. It was
9 a solid performance.
10 MR. KATZ: Is there any reference in this
11 evaluation of Ms. Cabello's work with the Victim Service
12 Advisory Board?
13 MR. WARNER: I don't see a reference to it.
14 MR. KATZ: Okay. Could you please turn to Exhibit
15 Number 10 which is the 2004 evaluation?
16 MR. WARNER: Yes.
17 MR. KATZ: Now it's accurate you again ranked Ms.
18 Cabello successful in this year, yes?
19 MR. WARNER: That's correct.
20 MR. KATZ: Okay. Is there any reference to any
21 dispute with the Police Department and her program in this
22 evaluation?
23 MR. WARNER: The reference I'd call your attention
24 to is at the back which would be page 6 in this evaluation
25 and in which I state Ms. Cabello has made progress in

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1 advocating her program in a manner that can be regarded as
2 collegial by other departments and also provide victim
3 services. So that was my way of saying that in the past
4 that had not been the case but that she's made progress in
5 that direction of being collegial. She's better able to
6 view the Victim Services System of Montgomery County as a
7 whole.
8 MR. KATZ: Those are positive comments, aren't
9 they?
10 MR. WARNER: They're positive in terms of where we
11 started from, very much so. They're, they denote or connote
12 movement in a positive direction. Which I think if the, all
13 of the evaluations are looked at, one to four, there is it
14 shows that there is positive movement in the, in the
15 evaluation process.
16 MR. KATZ: Okay. So the first, the 2003
17 evaluation we looked at there's no reference to it. And
18 then the next evaluation there are positive comments.
19 MR. WARNER: Well the comments --
20 MR. KATZ: That seems positive, doesn't it?
21 MR. WARNER: The comment that I, that I made was
22 that things were moving in a positive direction. Not that
23 things were where they needed to be, but they were moving in
24 a positive direction.
25 MR. KATZ: Well things are never really where they

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1 need to be, are they, in social services?
2 MR. WARNER: That's --
3 MR. KATZ: Isn't there always room for
4 improvement? MR. WARNER: Well but that's, there's
5 always room for improvement, but not everybody starts at the
6 place that we started at and again there was a solid
7 evaluation. It was a successful evaluation which were
8 instructed the majority of people are supposed to receive.
9 MR. KATZ: Now is there any criticism of Ms.
10 Cabello's work with the VSAB, the Board, in this evaluation?
11 MR. WARNER: There is not.
12 MR. KATZ: Okay. Actually isn't there a positive
13 reference?
14 MR. WARNER: I had mentioned that she, a Hispanic
15 female and a Middle Eastern male were added to the Board.
16 And that a recommendation is also pending for an African
17 American male survivor of homicide to be part of the Board.
18 MR. KATZ: So is that accurate to say she expanded
19 the Board and expanded it in a diverse manner?
20 MR. WARNER: She expanded it in a diverse manner
21 but many of the people she added were not able to, to
22 approach or understand the, the level of policy direction
23 that this, this Board needed. They were recruited with the
24 focus being that this was going to be primarily an advocacy
25 group for Victim Assistant Sexual Assault Program.

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1 MR. KATZ: Is there any piece of paper, e-mail,
2 evaluation, VSAB Board minutes that state what you just
3 said?
4 MR. WARNER: There --
5 MR. KATZ: Anywhere?
6 MR. WARNER: I, I don't know if there exists
7 anything anywhere. I didn't write anything that would be a
8 comment like that, no.
9 MR. KATZ: Okay. And your comment like that
10 doesn't show up in any of Ms. Cabello's evaluations, does
11 it?
12 MR. WARNER: It does not show up, no as a written
13 comment. Typically I wouldn't put a comment like that in
14 somebody's evaluation.
15 MR. KATZ: And you never said it to Ms. Cabello
16 either, did you?
17 MR. WARNER: I did say to Ms. Cabello.
18 MR. KATZ: When?
19 MR. WARNER: I, it at various times as we were
20 talking about the Board and that the Board was not focused
21 the way that it needed to be.
22 MR. KATZ: Do you have any documentation that you
23 had a conversation like that with Ms. Cabello?
24 MR. WARNER: No, but I typically would not have
25 made documentation that I would have a conversation with

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1 somebody.

2 MR. KATZ: Did you write any e-mail to anyone

3 including your supervisor, Ms. Plevy, that you thought there

4 was a problem with the VSAB?

5 MR. WARNER: I believe and again I don't have

6 total recall of this because of the time, but I believe that

7 we, I did have conversations with Ms. Plevy about that and

8 was then able to get the go ahead for us to be able to, to

9 move Mr. Morris to that position.

10 MR. KATZ: Okay. But none of this shows up in Ms.

11 Cabello's evaluations at all, correct?

12 MR. WARNER: It, it, I don't see it in here, no.

13 MR. KATZ: Okay. Could you please turn to 2005

14 evaluation which is Exhibit Number 11?

15 MR. WARNER: Okay.

16 MR. KATZ: Now fiscal year 2005 you again rated

17 Ms. Cabello as successful, correct?

18 MR. WARNER: That's correct.

19 MR. KATZ: Okay. Isn't it correct that there's no

20 reference to problems with the Police Department in this

21 evaluation?

22 MR. WARNER: Here's what I wrote under my

23 narrative comments, this would be page 6 at the bottom. Ms.

24 Cabello's greatest strengths as a clinician and advocate for

25 crime victims, that underscores what I've said all day and

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1 in my deposition. Her program emphasizes a high standard

2 for customer service orientation as well as safety for crime

3 victim clients and staff. In order to maximizes her

4 effectiveness across systems, she'll need to work in a

5 manner that is increasingly collaborative and values the

6 contribution of the criminal justice system.

7 MR. KATZ: Any indication that she doesn't value

8 the contribution of the criminal justice system?

9 MR. WARNER: That was the gist of what I was

10 getting at with this comment. That, that overall there

11 needed to be more of a, and for them to feel that as well,

12 that their contribution was valued equally with the victim

13 service's contribution.

14 MR. KATZ: Turn to the next page.

15 MR. WARNER: Also, I'd like to, if I could

16 continue to answer on page 7 of that same evaluation.

17 MR. KATZ: Yes.

18 MR. WARNER: I said Ms. Cabello should focus on

19 how VSAB, Victim Assistant Sexual Assault Program can

20 position itself to maximize its contribution to the victim

21 service delivery system. This will involve developing

22 increasingly collaborative relationships with other human

23 services as well as criminal justice programs and providers.

24 In addition, refocusing its services to sync with what is

25 the current priority for public funded victim services will

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1 be essential. That's what I spoke to earlier today.

2 MR. KATZ: Let's look at the list above what you

3 just read.

4 MR. WARNER: Yes.

5 MR. KATZ: We can just, one of the bullet points

6 references Ms. Cabello meeting quarterly, Police Captain

7 Nancy Demme with Major Crimes, the quarterly crime victim

8 case reviews in an effort to maintain ongoing collaboration

9 between the two departments. Next bullet point,

10 participated in monthly meetings with Chief Mangers, Latino

11 Police Liaison meeting. Next bullet point,

12 participated in two training sponsored by the police and it

13 explains those two trainings. It indicates, doesn't it that

14 Ms. Cabello was working with the police in various

15 capacities on an ongoing basis if you list it in your

16 yearend accomplishments in summary.

17 MR. WARNER: I didn't, I didn't make this list.

18 This list was submitted in whole by Ms. Cabello and was put

19 directly into her evaluation as we would every year. So

20 these were her lists and they --

21 MR. KATZ: They are accurate, aren't they?

22 MR. WARNER: To my knowledge, they're accurate --

23 MR. KATZ: Okay.

24 MR. WARNER: -- because the meetings occurred

25 doesn't mean they were successful. And this was, this

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1 represented what Ms. Cabello did, it doesn't represent her

2 effectiveness in doing it.

3 MR. KATZ: She's participating --

4 MR. WARNER: This is a list of meetings attended.

5 MR. KATZ: -- in trainings with the police,

6 ongoing effort to coordinate delivery of services to victims

7 in the County. Isn't any effort like that an ongoing effort

8 that from the social services point of view is something

9 that you continually work on? Isn't that accurate?

10 MR. WARNER: It, it's not accurate to say that

11 that going to meetings equals a successful relationship with

12 anybody. This is a list --

13 MR. KATZ: Okay. Did you sit down and talk --

14 MR. WARNER: -- of meetings attended.

15 MR. KATZ: My apologies. Did you sit down and

16 talk to Ms. Cabello about what's happening at this meeting

17 with the police, what we are doing here, how is it going

18 forward, what's happening with this meeting, how is it going

19 forward? Did you do that with Ms. Cabello?

20 MR. WARNER: We met, met on a regular basis for

21 supervision, yes, so that I would have talked with her about

22 these things.

23 MR. KATZ: Okay. You're saying that going to a

24 meeting doesn't mean its successful. So I'm asking you if

25 you engaged in dialogue with Ms. Cabello to know which of

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1 these meetings were in your opinion, successful, not
2 successful, or where the progress is.
3 MR. WARNER: The way that I judge that was in my,
4 the relationships that I had with the police, with Chief
5 Walker, with Captain Demme, both of whom I worked with
6 closely and, and I took feedback from Ms. Cabello but the
7 best way to find out if things are going well isn't from the
8 person who is doing the work, but the people that they're
9 attempting to work with.
10 MR. KATZ: Yes, but nothing here indicates things
11 aren't going well does it?
12 MR. WARNER: Well this is a list by Ms. Cabello of
13 things that she did. This is --
14 MR. KATZ: Okay. The last one --
15 MR. WARNER: -- none of these relate to
16 accomplishments. These are meetings attended.
17 MR. KATZ: What wasn't accomplished?
18 MR. WARNER: Well --
19 MR. KATZ: What I want to know, you're saying it
20 doesn't relate to accomplishments. So I'm asking you very
21 specifically, I want to know in regard to the meeting Ms.
22 Cabello had on a quarterly basis, Police Captain Nancy
23 Demme, Major Crimes, I want to know what was not
24 accomplished this year. In this year, 2005.
25 MR. WARNER: Well the, you can't, I can't, let me

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1 put it that way, I can't say what was accomplished or not
2 accomplished by attending a meeting. What I'm saying is
3 that a meeting is not an achievement.
4 MR. KATZ: Right. And you're also saying that you
5 met with her on a weekly basis, you didn't document any of
6 your criticism. You met with her on a weekly basis, you had
7 a supervisory meeting with her and you're saying there's a
8 difference between attending a meeting and accomplishing
9 something. So I'm asking you, assuming on the basis that
10 you met with Ms. Cabello approximately 50 times in this
11 period, what was accomplished and what wasn't accomplished
12 in these efforts?
13 MR. WARNER: Well, and I summarized that in the
14 two statements that I read below.
15 MR. KATZ: Yes, I'm asking you to be a little more
16 specific.
17 MR. WARNER: Well I'm not sure that I can at this
18 time.
19 MR. KATZ: Okay. Now the last bullet point,
20 organizes successful outreach campaign in April as part of
21 the National Sexual Assault Awareness Month in April
22 indicates she worked in this outreach at the bottom with you
23 say DHHS in which she's a part, the Sheriff's Office and
24 State's Attorney's Office, and the police. Doesn't that
25 indicate someone who sees it as a priority to coordinate her

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1 efforts outside of just the confines of her program?
2 MR. WARNER: Well, she, she apparently at this
3 particular date, did, did work on this, the extent to which
4 it was seen as successful by the other partners, I don't
5 know. This was again what Ms. Cabello said she did during
6 this year.
7 MR. KATZ: Okay. And
8 MR. WARNER: I never got any positive feedback
9 from any of the law enforcement partners that I had about
10 how this went.
11 MR. KATZ: Okay. You didn't get any negative
12 feedback either?
13 MR. WARNER: I did not.
14 MR. KATZ: Okay. Did you ask for any feedback?
15 MR. WARNER: I had --
16 MR. KATZ: Did you ask the Sheriff's Department?
17 MR. WARNER: -- I had ongoing relationships with
18 the police and asked, and the door was open both ways for us
19 to be able to provide information back and forth about what
20 was and wasn't working.
21 MR. KATZ: Okay. You never heard a criticism of
22 her work on this outreach in relation to the National Sexual
23 Assault Awareness Month?
24 MR. WARNER: I don't remember a specific, a, a
25 criticism about this specific outreach.

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1 MR. KATZ: Okay. Which isn't it accurate that
2 part of the activity occurred on, according to this
3 Saturday, April 9th. Not a usual work day is it? The last
4 line.
5 MR. WARNER: Yeah, I see that, I don't, I don't
6 know whether Ms. Cabello was there that day or not. But,
7 but if she was, then yeah that was a Saturday.
8 MR. KATZ: Okay. Now I'm going to ask you to turn
9 to Exhibit 17. Now is it correct that this is a list of
10 projects, accomplishments that you requested Ms. Cabello to
11 submit in preparation for her evaluation?
12 MR. WARNER: To put this in perspective each --
13 MR. KATZ: Well actually answer my question,
14 please. Isn't it accurate that as part of the evaluative
15 process Ms. Cabello and I think you said before other people
16 you evaluated submitted to you a list or some type of
17 explanation of projects, accomplishments in a year.
18 MR. WARNER: That was request from each, for each
19 person, yes.
20 MR. KATZ: Okay. And she submitted it to you at
21 your request. Okay. Now this document, isn't it accurate
22 to say that this document indicates work significantly
23 outside of the small confine, what you would consider the
24 confines of VSAB, her project? So that for example, on the
25 first page it references working with MCASA, if I'm correct,

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1 that's the Maryland Coalition Against Sexual Abuse and the
2 State of Maryland with a research studies on rape and sexual
3 assault victims. Now wouldn't you say that's sort of
4 looking at a macro or policy level if you're working
5 statewide on research? Doesn't that represent macro work?
6 MR. WARNER: I would say that it is in that
7 direction, it could.
8 MR. KATZ: Is it?
9 MR. WARNER: It depends on the extent of, of,
10 these were, these were Ms. Cabello's perception of what she
11 did. These --
12 MR. KATZ: Are you saying it's wrong?
13 MR. WARNER: I'm saying that I don't know how
14 significant it was in this particular context?
15 MR. KATZ: Did you ask her?
16 MR. WARNER: I talked with Ms. Cabello every week.
17 MR. KATZ: I want to know if you asked her
18 specifically about what she did with MCASA and the State of
19 Maryland regarding research on sexual assault victims?
20 MS. WINDLE: I'm going to object to this. If
21 there is an example of serving as a super personnel
22 department we're right in the middle of it, everything Mr.
23 Warner has done in terms of supervision is being picked
24 apart and it's inappropriate. I understand there's an issue
25 here of trying to establish pretext, but I think we're

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1 beyond that.
2 MR. KATZ: I'm going to now object to if she wants
3 to make more of an objection, we should ask the witness to
4 leave the room.
5 MS. ROBESON: Yes.
6 MS. WINDLE: That's my objection.
7 MS. ROBESON: Okay. Do you have a response?
8 MR. KATZ: Yes, my response is we're reviewing the
9 documents, the evaluations that the witness gave the
10 complainant each year and the documentation that's connected
11 with it.
12 MS. ROBESON: Yes.
13 MR. KATZ: This is a documentation upon which --
14 MS. ROBESON: I think it's fair game. You know
15 whether we're because pretext is an issue, and he's not
16 saying that you did the wrong thing. He's asking, Mr. Katz
17 is asking what's his basis for doing certain things and I
18 think that is relevant to pretext. So I'm going to let him
19 continue on this line.
20 MS. WINDLE: Okay. I wanted to state my
21 objection.
22 MS. ROBESON: I understand.
23 MR. KATZ: Okay. There's a bullet point further
24 down, I believe this is repetitive, not quarterly with
25 Police Captain Demme from Major Crimes regarding quarterly

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1 crime victim case reviews. Now is it accurate to say you
2 never had a specific discussion with Ms. Cabello about her
3 work with Captain Demme regarding the crime victim case
4 reviews?
5 MR. WARNER: No, it's not accurate.
6 MR. KATZ: Okay. What discussion did you have
7 with her?
8 MR. WARNER: I don't recall specifically but I
9 know that Ms. Cabello felt that that police were not
10 referring as many people as they should.
11 MR. KATZ: Okay. So I want to know, she met
12 quarterly with them, ongoing dialogue, yes?
13 MR. WARNER: Uh-huh. Yes.
14 MR. KATZ: Okay. And there's nothing specific you
15 can remember about that now beyond what you just said?
16 MR. WARNER: Well what I just said was, was that
17 this was in, in this process and in many of the processes it
18 became, it became a situation in which I had to intervene
19 because Ms. Cabello presented her side of a situation like
20 this in a way that was antagonistic and created a situation
21 with the police where they felt they were being accused of
22 doing something wrong.
23 MR. KATZ: Were you in these meetings with Ms.
24 Cabello and Captain Demme?
25 MR. WARNER: I was not in the, the particular

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1 meeting referred to here.
2 MR. KATZ: No, actually it's the four meetings.
3 MR. WARNER: I am not, I was not in those
4 meetings.
5 MR. KATZ: Okay.
6 MR. WARNER: But I know the focus based on what
7 Ms. Cabello told me was that she felt that they were not
8 referring people as they should.
9 MR. KATZ: Okay. And apparently Ms. Cabello was
10 able to have an ongoing dialogue with Captain Demme, isn't
11 that correct?
12 MR. WARNER: Right, and that's because of the work
13 we did with the person she directly reported to, which is
14 Assistant Chief Walker.
15 MR. KATZ: When Assistant Chief Walker leave, do
16 you remember?
17 MR. WARNER: I do not.
18 MR. KATZ: Okay. Then the bullet point fourth
19 from the bottom, open and staff two VSAB court offices in
20 Rockville and Silver Spring. Now isn't it accurate that
21 that represents staffing an office in the two district
22 courthouses to work with victims, that's accurate, right?
23 MR. WARNER: Well it's accurate that two offices
24 which were essentially 8 by 10 at the most, that office
25 space was, was found and that a part-time person was there.

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1 It was not a fully-fledged program, it was an outreach where
2 we're talking about an individual in an almost telephone
3 booth size office.
4 MR. KATZ: Do you think that the victim who is
5 being served by a VSAB volunteer cares if the office is 8 by
6 10 or 10 by 12? Do you think it's important to the victim
7 that somebody is at the courthouse and she has to show up
8 and have, you know, the perpetrator at the other table in
9 the courtroom?
10 MR. WARNER: That wasn't my point, was that it
11 wasn't a big office. My point is that this wasn't a complex
12 program as for instance, Ms. Bradley's programs that
13 functioned at two separate locations and were staffed by
14 professional staff. The level of complexity and being able
15 to manage an operation like that was much different. So I
16 was speaking at it from that perspective.
17 MR. KATZ: I'm not asking you about Ms. Bradley's
18 program. Nor am I in any way criticizing Ms. Bradley's
19 excellent work. Okay. What I am asking you about is this
20 that was accomplished that served the victims of crime in
21 two courthouses in our County. Now let's turn the page, the
22 sixth bullet point down. Excuse me, the fifth one. Again
23 indicating Ms. Cabello's participating in monthly meetings
24 with Chief Majors, a Latino police liaison. Again, doesn't
25 that indicate ongoing effort by Ms. Cabello to relate to the

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1 Police Departments?
2 MR. WARNER: It indicated that she was, that she
3 attended those meetings. I don't have --
4 MR. KATZ: Does it indicate --
5 MR. WARNER: -- any information about anything
6 that was accomplished by her attending those meetings.
7 There's nothing that came forward that, that I found as a
8 result of her attending those meetings.
9 MR. KATZ: And you didn't ask her?
10 MR. WARNER: I talked with her, as I mentioned, on
11 a weekly basis.
12 MR. KATZ: Okay. So what do you think she should
13 have accomplished by going to those monthly meetings that
14 she didn't?
15 MR. WARNER: Well what, what I'm saying is that
16 this is a, as many of these are, it's a list of meetings
17 that she attended as opposed to achievements. So an
18 achievement being that a policy has been drafted that, that
19 would affect a particular population in a different way in
20 terms of giving access to services, something like that. As
21 opposed to attended a meeting.
22 MR. KATZ: Okay. Well don't you think it's an
23 achievement if a County program places a volunteer in a
24 courthouse to work with a crime victim who has to go into
25 court to get a protective order?

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1 MS. WINDLE: Objection. He's already asked this -
2 -
3 MR. KATZ: Don't you consider that an achievement?
4 MS. WINDLE: Objection.
5 MS. ROBESON: Sustained.
6 MR. KATZ: Okay. The next bullet point down,
7 indicating meeting with police, service providers at Shady
8 Grove Hospital, MCASA, regarding coordination of medical
9 exams for rape victims. Doesn't that indicate someone how
10 is going out, talking with the police and talking with other
11 health service providers to serve crime victims?
12 MR. WARNER: It indicates that that she attended a
13 meeting and I don't have complete recall about this process.
14 Although at the time Ms. Cabello was focused on the rape
15 victims being seen by another provider other than her staff.
16 That was the focus.
17 MR. KATZ: I'm sorry, is there any indication that
18 what you just said has to do with this bullet point?
19 MR. WARNER: I don't understand the question.
20 MR. KATZ: Yes. I mean the bullet point says this
21 involves coordinating timely medical exams for rape victims.
22 MR. WARNER: Right, and so --
23 MR. KATZ: According to the CDC timeline.
24 MR. WARNER: So perhaps I didn't describe as, as
25 well as I should have the, the process involved. Which was

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1 new at the time for Montgomery County having a sexual
2 assault nurse examiner on site in the emergency department
3 at Shady Grove. That being the primary site for sexual
4 assault victims to be taken to with the idea that they would
5 have the expertise to be able to provide that evaluation and
6 there to be a chain of evidence established which could be
7 used in court for prosecution.
8 MR. KATZ: Okay.
9 MR. WARNER: And Ms. Cabello, at least initially
10 in, in working with this was focused more on how this might
11 impact the people who are then coming to her service for
12 follow up services.
13 MR. KATZ: Where does it say that?
14 MR. WARNER: That, it doesn't say it here this is
15 her language, this isn't my language.
16 MR. KATZ: Okay. Did you ever --
17 MR. WARNER: We did talk, we did talk about it.
18 MR. KATZ: Okay. Is it documented anywhere in any
19 of her evaluations?
20 MR. WARNER: No, it's not.
21 MR. KATZ: Okay. Now moving down the page fourth
22 from the bottom, working in a manager's committee, victim's
23 task force in April, Sexual Assault Awareness Month. And
24 that's clearly something which involves work with
25 individuals outside of VSAB, doesn't it?

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1 MR. WARNER: It, it sounds like this is, this is
2 something which is a yearly event and so Ms. Cabello
3 participated in it this year.
4 MR. KATZ: It's a national event, correct?
5 MR. WARNER: It appears to be, yes.
6 MR. KATZ: Okay. So it means that the program in
7 this County is participating in a national effort, that's
8 accurate, right?
9 MR. WARNER: Well it's accurate that she
10 participated in this and I don't know to, you know what,
11 what her level of participation was.
12 MR. KATZ: Okay. I could go up two bullet points.
13 She coordinated with Ann Linda while subpoena responses
14 received by VSAB. I'm just noting that, we're not going to
15 have a question about it.
16 MS. ROBESON: Okay.
17 MR. KATZ: Please turn to Exhibit Number 12, Ms.
18 Cabello's 2006 evaluation.
19 MR. WARNER: Yes.
20 MR. KATZ: Okay. You evaluated her as successful
21 performance again, correct?
22 MR. WARNER: That's correct.
23 MR. KATZ: Okay. Now isn't it correct that
24 there's no reference in this evaluation to any problems with
25 the Police Department?

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1 MR. WARNER: What I said in terms of my comments
2 at the end of the evaluation, this is page 8, I said Ms.
3 Cabello's greatest strengths are in the area of clinician
4 and advocate for crime victims, her program emphasizes a
5 high standard for customer service orientation as well as
6 safety for crime victims, client and staff. Her teamwork,
7 cooperation and collaboration with key agencies serving
8 crime victims has improved during this year. Ms. Cabello
9 displayed a willingness to take on additional
10 responsibilities, such as testimony she provided the
11 Maryland House of Delegates on House Bill 996, anti-
12 trafficking legislation. Her work with the disabled
13 employed to reintegrate him into the staff has been
14 successful. In order for her to receive a performance
15 review at the next level, meaning highly successful or
16 exceptional performance in this case, Ms. Cabello must begin
17 to work at a more macro level. She does excellent work as
18 it relates to program tasks. She needs to work on issues
19 that impact policy, and how victim's issues relate and
20 integrate with other services.
21 MR. KATZ: Isn't it accurate to say that providing
22 testimony to the Maryland House of Delegates on pending
23 legislation impacts policy?
24 MR. WARNER: I think it, it can, yes. That's
25 something that, that --

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1 MR. KATZ: It either does or it doesn't.
2 MR. WARNER: Well, it could impact in a negative
3 way but you know I think, I think in this situation Ms.
4 Cabello this is something that Ms. Cabello did as an
5 achievement.
6 MR. KATZ: Okay. And it's something that impacts
7 policy? I mean that's an example of macro work, isn't it?
8 MR. WARNER: That is a beginning example, yes.
9 MR. KATZ: Okay. What's the next example?
10 MR. WARNER: Well I don't see any other examples.
11 MR. KATZ: Well you say it's a beginning level,
12 you said previously --
13 MR. WARNER: Well I'm saying that's a one-time
14 only thing. That's a one-time only issue. That's not an
15 ongoing relationship that gives you the ability to be able
16 to work on policy issues consistently at the County level.
17 MR. KATZ: Had any of the other managers that you
18 supervise testify before the Maryland Legislature that year?
19 MR. WARNER: They didn't, there weren't any bills
20 that related to what they did.
21 MR. KATZ: So the answer is no?
22 MR. WARNER: The answer is no. I believe I
23 testified that year though.
24 MR. KATZ: Okay. Isn't it accurate to say that
25 some of the, let me ask you to turn to the following page 9.

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1 MR. WARNER: Page 9 in that evaluation?
2 MR. KATZ: Yes.
3 MR. WARNER: Okay. Yes.
4 MR. KATZ: That's, it has the listing, the bullet
5 points activities during the year. I mean it's said that
6 there's nothing in the evaluation that represents anything
7 negative with the police. Now isn't it accurate to say that
8 similar to the evaluation the year before bullet point two
9 which indicate that Ms. Cabello has an ongoing working
10 relationship with the police at various levels?
11 MR. WARNER: The beginning of what you said, as
12 you lead into the question wasn't accurate. You said that
13 there's nothing in the evaluation that says that there was
14 any problem with the police and what I said is that there's
15 been improvement during this year. That her teamwork,
16 cooperation and collaboration with key agencies serving
17 crime victims has improved during the year. That if things
18 were fine, I wouldn't have needed to say that it had
19 improved. So no, it's not accurate to say what you said.
20 What was the second part of your question?
21 MR. KATZ: Let's go back to the first part. Isn't
22 it accurate to say in social services the attitude is always
23 looking to improve what we are doing to serve people better?
24 MR. WARNER: Well, we would like to be able to
25 serve them well in the present not just plan for serving

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1 them well in the future. So no that's not completely
2 accurate.

3 MR. KATZ: Okay. And the bullet points on the
4 next page, I believe it's number 7. Expanded collaboration
5 with MCPS, Montgomery County Police, excuse me, that's the
6 Public Schools.

7 MR. WARNER: Uh-huh.

8 MR. KATZ: I withdraw that. The next down, two
9 down, again met quarterly with Police Department Major
10 Crimes and Family Services, quarterly victim case reviews.
11 Now this is at least two and maybe even more years running
12 these quarterly meetings. Doesn't that indicate a positive
13 level of collaboration between her program and the Police
14 Department regarding crime victim case reviews?

15 MR. WARNER: Well they were, this was at a nitty
16 gritty individual level so this was going over individual
17 case situations. But no there was ongoing disagreement
18 about how things should be handled and Ms. Cabello's style
19 was that, that many times she would come away from meetings
20 like this and there would be concerns about the, the way
21 that things had been presented.

22 MR. KATZ: Things had been presented by whom?

23 MR. WARNER: By her.

24 MR. KATZ: Is there any indication anywhere of
25 what you just said? Any documentation?

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1 MR. WARNER: Well the, the documentation is as
2 I've said consistently is that the relationship with victim
3 serving agencies needed to improve and in this year I said
4 that it had improved but that implies that it continues, it
5 needs to continue to improve. But again, this is, this is
6 solid performance, it's successful.

7 MR. KATZ: And at the bottom it again indicates,
8 one, two, three, the fourth bullet up from the bottom,
9 participation in the National Sexual Assault Awareness
10 Month.

11 MR. WARNER: Right. Each, each year --

12 MR. KATZ: And yes --

13 MR. WARNER: -- each year both Sexual Assault
14 Program and the Abused Persons Program, there were national
15 programs that during a month's time period when both of
16 those programs would, would be required to or be allowed to
17 participate in these kinds of things. So this is something
18 that on an ongoing basis both of those managers would be
19 expected to participate in.

20 MR. KATZ: Okay. Isn't it accurate that there is
21 nothing in this evaluation that refers to Ms. Cabello not
22 being available, the way you would want a manger to be
23 available?

24 MR. WARNER: I don't see anything that
25 specifically says that Ms. Cabello continues at this time to

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1 be focused primarily on running her program. Things like
2 the fact that and I mentioned it here that she spent an
3 inordinate amount of time working with the disabled employee
4 and the --

5 MR. KATZ: Where are you referencing?

6 MR. WARNER: Well in this particular evaluation it
7 mentions that one of the things that she did was her work
8 with the disabled employee to reintegrate him into the staff
9 has been successful. But having come from being the Acting
10 Director for Social Work at the National Rehab Hospital, I
11 can tell you that Ms. Cabello's initial response to having a
12 disabled, in this case quadriplegic employee, was not good.
13 Ms. Cabello's first response to that was that this was going
14 to be a lot of time that she was going to have to deal with
15 him. And so during this year I spent a lot of time working
16 directly with her about how we're going to treat an employee
17 like this, how we're going to accommodate him, how we'd have
18 a responsibility to do that and how we're going to integrate
19 him into the work force.

20 MR. KATZ: Okay. What it actually says is the
21 following and this is on the bottom right it says R22 at the
22 top right it's page 4 of the evaluation.

23 MR. WARNER: Yes.

24 MR. KATZ: Ms. Cabello welcomed back the VSAB
25 staff person who was absent from the program for about two

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1 years due to a serious disability. Ms. Cabello met with
2 Ricky Wright, Disability Manager for the County on several
3 occasions to plan for the return of the employee together
4 with the building manager, she ensured that all physical
5 accommodations to the building, doors and elevators were
6 done correctly. She advocated for the employee to receive
7 an evacuation chair which was provided. Ms. Cabello and
8 several staff attended training on how to use the evacuation
9 chair et cetera. Now, reading that as someone who wasn't
10 there --

11 MR. WARNER: Uh-huh.

12 MR. KATZ: -- don't you think it's pretty hard to
13 say that that indicates anything negative?

14 MR. WARNER: It is. This is a list of things that
15 Ms. Cabello said that she did during the year and Ms.
16 Cabello did do these things to the best of my knowledge.
17 But she did them at the point that I had to explain to her
18 that we were going to accommodate this individual. I met
19 with some of these same people and was very involved in the
20 process, much more involved than I should have had to have
21 been at my level with an individual employee in planning for
22 this. But yes, the, the person did come back. We were
23 successful in being able to bring him back into the work
24 force. There were problems in the long term, but in the
25 short term it, it went well.

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1 MR. KATZ: It further says Ms. Cabello worked with
2 the employee software consultant to Drag and Speak software
3 was installed. She works with the employee to continually
4 remove any physical or other barrier present to him at the
5 work place, et cetera.
6 MR. WARNER: Right.
7 MR. KATZ: There's nothing negative here, is
8 there?
9 MR. WARNER: There isn't. There isn't.
10 MR. KATZ: Okay.
11 MR. WARNER: But that --
12 MR. KATZ: And isn't it accurate to say what
13 you're now saying about is basically really Ms. Cabello did
14 this all grudgingly I just didn't write it in her
15 evaluation. That's what you're saying, right?
16 MR. WARNER: What I'm saying is, is that Ms.
17 Cabello didn't respond the way I would have wanted somebody
18 at her level to respond to an individual who I knew the
19 challenges they were going to face having worked with that
20 population for a number of years and feeling very strongly
21 that he had a right and we had a responsibility to do
22 everything we could to, to have him be part of our
23 organization and yes, Ms. Cabello was able to do these
24 things. She did them with my help and my insistence. But I
25 understand would not, I, I, I had not worked that closely

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1 and supervised somebody that closely around any particular
2 issue that I can recall.
3 MR. KATZ: But what you're just saying isn't
4 documented anywhere, isn't that accurate?
5 MR. WARNER: It, I did not make it a disciplinary
6 issue because she did not tell me no she wouldn't do it.
7 But I, I was involved at a very micro level about this
8 situation, which she's claiming is an achievement and it, in
9 terms of actually producing something, it was. The person,
10 the person I think felt welcomed back, we did the things
11 that we needed to do, morally, ethically, legally to make
12 sure that happened.
13 MS. ROBESON: At the bottom of number 6, this is
14 on page 4, there's a rating item 6, it says rating
15 exceptional. Do you write that in or who writes that in?
16 MR. WARNER: No. At the bottom there, there is
17 the, I put that in but this would be highly successful, not
18 exceptional. It would be to the left of the --
19 MS. ROBESON: Okay. Highly successful.
20 MR. KATZ: Could you look at Exhibit 85A, which I
21 don't know if it's in the binder or it's loose, it was --
22 MS. ROBESON: It's loose.
23 MR. KATZ: It's loose. Ms. Windle can you help
24 him find it?
25 MS. WINDLE: I gave it to you.

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1 MR. WARNER: Is this it over here?
2 MS. WINDLE: Yes.
3 MR. WARNER: Okay.
4 MR. KATZ: Okay. And you remember Ms. Windle
5 asked you a couple of questions about this?
6 MR. WARNER: I do.
7 MR. KATZ: Now is it accurate, I'm just trying to
8 remember what you said, that you helped answer questions or
9 interrogatories that the County sent after Ms. Cabello filed
10 her discrimination complaint?
11 MR. WARNER: That's my understanding is that I was
12 asked to respond to a number of questions and to send that
13 information back to Office of Human Resources.
14 MR. KATZ: Okay. And you did that?
15 MR. WARNER: I did that.
16 MR. KATZ: Okay. And you answered them honestly,
17 yes?
18 MR. WARNER: Of course.
19 MR. KATZ: Okay. Do you remember what the
20 questions were?
21 MR. WARNER: Not, no, not exactly. They were
22 questions about, they may have been questions about how many
23 you know people from different backgrounds that are in our
24 program. You know I'm not sure. But again that was in
25 2007.

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1 MR. KATZ: Okay. Did they ask you questions about
2 the evaluations you did of Ms. Cabello or any of the others
3 whom you supervised?
4 MR. WARNER: I don't remember specifically what
5 the questions were that they asked. I remember completing
6 them and having them in by the, the correct date.
7 MR. KATZ: Did they ask you what you thought, did
8 you answer questions that go to either Ms. Cabello's
9 strengths in your opinion, or her weaknesses in your
10 opinion? Do you remember answering questions like that?
11 MR. WARNER: I don't have a memory of that.
12 MR. KATZ: Okay. When you were working on these
13 responses to these questions, did you speak with Ms. Windle
14 at all as part of that process?
15 MR. WARNER: I think I probably did.
16 MS. WINDLE: I'm going to object, that would be
17 attorney client privilege if any such --
18 MS. ROBESON: Yes, sustained.
19 MS. WINDLE: -- discussion happened.
20 MR. KATZ: I'm just asking if it did or not.
21 MS. WINDLE: Well, I object to that.
22 MS. ROBESON: What's the relevance of that?
23 MR. KATZ: Because the documents which are now in
24 evidence 85 and I want to pull up 85 for a minute, contained
25 the County's position in response to Ms. Cabello's complaint

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1 so I'm just trying to ascertain the witness's role in
2 developing that position.
3 MS. ROBESON: I see. I'll let it in. But not as
4 to the substance of what they said.
5 MR. KATZ: I know. Mr. Warner, can you turn to
6 Exhibit 85, which is in the notebook?
7 MR. WARNER: Okay.
8 MR. KATZ: Now between Exhibit 85A and 85, and I
9 think I'm stating this correctly, there were explanations
10 about the rating process, the process by which you evaluated
11 Ms. Cabello and the other ones you supervised. Did you
12 provide whomever you were responding to that information?
13 MR. WARNER: I, I haven't seen these since they
14 were written, so I, I don't know what it says specifically.
15 MR. KATZ: Could you just take a minute to look at
16 it?
17 MR. WARNER: Yes. So this one that says Tab 3 at
18 the top?
19 MR. KATZ: What is that?
20 MR. WARNER: It's an exhibit --
21 MR. KATZ: Yes.
22 MR. WARNER: Yeah okay.
23 MR. KATZ: 85 and 85A somewhat go together.
24 MR. WARNER: Okay.
25 MR. KATZ: So that's why I'm asking you together.

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1 MR. WARNER: Okay.
2 MR. KATZ: Okay. Reviewing these, does it refresh
3 your memory as to what questions you were asked by the
4 County and how you responded?
5 MR. WARNER: It's, it's not broken out into
6 questions. So some of the content that I provided it looks
7 like it was put into various paragraphs.
8 MR. KATZ: Okay. Are you looking at Exhibit 85?
9 MR. WARNER: Correct.
10 MR. KATZ: Okay. Could you just say which
11 paragraphs?
12 MR. WARNER: Well, I mean I think it was disbursed
13 throughout here.
14 MR. KATZ: Okay.
15 MR. WARNER: So I mean I, I can go through
16 paragraph by paragraph, I can't tell, I'm only guessing at
17 you know what parts I provided, since I don't, don't have
18 recall from that length of time.
19 MR. KATZ: To the extent you can recall, if you
20 could just point out where you contributed to the content of
21 these pages.
22 MR. WARNER: Okay. Okay. In the second paragraph
23 I believe that I was asked how Ms. Cabello came upon this
24 information and I was the one who explained that she had
25 gone onto a drive which existed and should have been, the

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1 intent to have made it secure but it wasn't and she went
2 onto it and looked at all of her peers evaluations and
3 apparently went through them and used that as the basis for
4 her complaint. So I explained that after I had found out
5 how it had happened, because I had never heard of anything
6 like that before, that kind of a violation. The, I may have
7 although I think Human Resources in the, the paragraph on
8 page 2, I may have put in some of this, but I think
9 primarily that was from Human Resources. I put in probably
10 what our current position is and what the name of the
11 program and that acronym is. I'm guessing that I also wrote
12 part of this, although I can't be sure, the second paragraph
13 about the MLS employee is responsible for not only providing
14 leadership, but must plan direct, execute a wide variety of
15 County functions and services and what they're held
16 accountable, MLS employees are held accountable to. I am
17 responsible for saying who I supervised in the third
18 paragraph on page 2. I would have also said what the
19 process was in terms of me meeting with people at the end of
20 the year. I would have been the one to say that I denied
21 that some of the allegations such that I had forged her
22 signature on an evaluation could possibly be correct.
23 MS. ROBESON: Wait. You're saying that you're the
24 one, it could be correct that you're the one that denied
25 that, that's what you're saying, right?

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1 MR. WARNER: Right. Yes.
2 MS. ROBESON: Okay. Just checking.
3 MR. WARNER: Sorry, yeah.
4 MS. ROBESON: No, no, no. I just want --
5 MR. KATZ: Triple negatives.
6 MS. ROBESON: Yes, I was, yes, go ahead.
7 MR. WARNER: Yeah, okay, it came back to a
8 negative.
9 MS. ROBESON: Yes.
10 MR. WARNER: That, that all the same procedures
11 were used for everybody would have come from me. That's
12 basically the, this, this response doesn't cover, I'm sure,
13 what all the questions were that were, were asked of me.
14 MR. KATZ: Do you remember any other questions
15 that were asked of you?
16 MR. WARNER: I do not right off. Each of, each of
17 the allegations, well actually I'm remembering that each of
18 the allegations that would be listed I had to respond to.
19 And so one allegation was that, that I had forged Ms.
20 Cabello's signature onto one of the documents that I
21 responded to negatively. The, and so each allegation that
22 she made in her original complaint was responded to.
23 MR. KATZ: Would that include like the substantive
24 allegation of I was discriminated against?
25 MR. WARNER: I don't know if that was a specific,

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1 each, each phrase that was a listed complaint I would have,
2 had, had to respond to.
3 MR. KATZ: Okay. Do you remember if you had to
4 respond to a question that asked for lack of a better
5 phrase, that went to her weaknesses or deficiencies as an
6 employee?
7 MR. WARNER: I, I do not remember specifically.
8 MR. KATZ: Okay. May I have a moment, Your Honor?
9 MS. ROBESON: Yes. Why don't we take a five
10 minute break? How much longer do you think you're going to
11 be, because it's 3:30 p.m. now? Because I have to see how
12 long the court reporter can stay and how long our staff can
13 stay.
14 MR. KATZ: I am almost or am done with the cross.
15 That's' what I want to check.
16 MS. ROBESON: Okay. Why don't we do this? Let's
17 take a five minute break, okay. Mr. Warner, you're not
18 discuss the case with any other witness and we'll be back at
19 3:35 p.m.
20 MR. KATZ: Thank you.
21 MR. WARNER: Thanks.
22 (OFF THE RECORD.)
23 (ON THE RECORD.)
24 MS. ROBESON: All right. We're back on the
25 record. Mr. Katz?

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1 MR. KATZ: We've completed our cross of Mr.
2 Warner.
3 MS. ROBESON: Okay. Redirect?
4 MS. WINDLE: I don't have any redirect.
5 MS. ROBESON: Okay. I'm not arguing. So that's
6 good. All right. Mr. Warner, you may be excused.
7 MR. WARNER: Thank you.
8 MS. WINDLE: Could I, I want to make clear that
9 Mr. Warner who now lives in Maine is going to home now and
10 he does not have plans to return.
11 MS. ROBESON: Well, you know if something comes up
12 in this case, I can't say definitively that he won't be
13 required to come back. We do have service of the subpoena
14 on him. I will do everything in my power not to make him
15 come back.
16 MS. WINDLE: Well --
17 MS. ROBESON: Okay.
18 MR. WARNER: I would appreciate it.
19 MS. ROBESON: So rest safely in Maine.
20 MR. WARNER: Thank you.
21 MR. KATZ: One thing before Mr. Warner leaves, the
22 instruction continues that since the record is open Mr.
23 Warner should not discuss this case with anyone else.
24 MS. ROBESON: Yes.
25 MR. WARNER: Understood.

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1 MS. ROBESON: And Ms. Windle are you going to at
2 the end of the hearing I'll set a date when to close the
3 record. Normally we wait for 10 days after the actual
4 hearing because that's when we get the transcript in. So we
5 let the transcript into the record and then it closes. So
6 you'll inform Mr. Warner of the date that the record closes,
7 at the end of the hearing?
8 MS. WINDLE: Yes.
9 MS. ROBESON: You'll take on the responsibility --
10 MS. WINDLE: Yes.
11 MS. ROBESON: -- of, okay.
12 MS. WINDLE: Yes, but can I just clarify, we will
13 be doing closing briefs?
14 MS. ROBESON: You may, yes.
15 MS. WINDLE: Well, the County definitely wants to
16 do that. But that would be after the record closes?
17 MS. ROBESON: No, we keep the record open --
18 MS. WINDLE: Until the briefs are submitted.
19 MS. ROBESON: -- until the briefs are submitted.
20 MS. WINDLE: Well that's what I, okay, so that
21 would be longer.
22 MS. ROBESON: When I say record, we can adjourn
23 the hearing but the record can stay open in order to accept
24 the briefs and the transcript.
25 MS. WINDLE: Right.

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1 MS. ROBESON: The record is not just the hearing.
2 MS. WINDLE: No, I understand that, but my is then
3 if we're given however many days --
4 MS. ROBESON: He's still under the rule.
5 MS. WINDLE: -- to do a brief, until the briefs
6 are submitted the record is open and he is still bound until
7 that time.
8 MS. ROBESON: Yes.
9 MS. WINDLE: Okay.
10 MS. ROBESON: Okay. Do you understand?
11 MR. WARNER: Okay. Understood. YES.
12 MS. ROBESON: Okay.
13 MR. KATZ: Thank you, Mr. Warner.
14 MR. WARNER: Thank you.
15 MR. KATZ: One question, Your Honor?
16 MS. ROBESON: Yes?
17 MR. KATZ: Do we get to review the transcript
18 before final briefs?
19 MS. ROBESON: That's something we can consider. I
20 have discretion to close the record when I want to. If you
21 would prefer to keep it open until our contract with the
22 court reporter says 10 days is their contract with us and
23 usually it does not come until the 10th day. So if you wish
24 to have the transcript in front of you then we can leave the
25 record open for a month and just give you each two weeks to

1 submit something in writing after the last hearing.
 2 MR. KATZ: I believe that would be our request, I
 3 don't know the County's position.
 4 MS. ROBESON: Yeah, that's fine. That's fine.
 5 MS. WINDLE: Yes, I would --
 6 MS. ROBESON: Well let me put it this way, we
 7 don't have to decide that now because we're not finished
 8 the case, you may have additional requests. My point is
 9 that the record, I have discretion to close the record when
 10 I feel it's appropriate and I will certainly hear from both
 11 parties as to when they would like the record closed. All
 12 right. And yes, you will have an opportunity for legal
 13 memorandum at some point. All right. So we do, the issue
 14 is just the lag time in getting the transcript. Okay.
 15 MS. WINDLE: I just need to say goodbye to Mr.
 16 Warner.
 17 MS. ROBESON: Yes. We're off the record.
 18 (OFF THE RECORD.)
 19 (ON THE RECORD.)
 20 MS. ROBESON: All right. We're back on the
 21 record. So Ms. Windle, you're next witness. What I'd like
 22 to do is go until 5 o'clock today. So we can, if we can get
 23 direct on, that's great. If we can't, we'll move it to
 24 another day. Have the parties had any opportunity to pick a
 25 second day?

1 MS. WINDLE: No, and actually if we have that, are
 2 we on or off the record.
 3 MS. ROBESON: We're on.
 4 MS. WINDLE: Okay.
 5 MS. ROBESON: But we can discuss it.
 6 MS. WINDLE: Yes, actually I'd like to talk to Ms.
 7 Stevens for a minute. Can we go off the record?
 8 MS. ROBESON: Okay. Okay.
 9 MS. WINDLE: Well my thought is this. It's a
 10 quarter till 4:00 p.m. now.
 11 MS. ROBESON: Yes.
 12 MS. WINDLE: And we've got Ms. Plevy would be
 13 next. Given that we've got direct and cross and knowing how
 14 that's gone, I don't think Ms. Plevy's will be as long as
 15 Mr. Warner's but it's certainly going to go past 5 o'clock,
 16 I would certainly anticipate. That's an hour and 15
 17 minutes. My preference would be to do that fresh because
 18 we're going to have to, I mean we're not going to be done
 19 today. That would be my preference.
 20 MS. ROBESON: Well my concern is dragging out the
 21 number of days everybody has to come back. How many
 22 witnesses do you have Mr. Katz? You have Ms. Cabello --
 23 MR. KATZ: Ms. Cabello. I anticipate she'll be
 24 the only witness.
 25 MS. ROBESON: Right.

1 MR. KATZ: I mean I've got to think about it, but
 2 at this point she will be the only witness.
 3 MS. ROBESON: And then how many more do you have,
 4 you just have Ms. Plevy?
 5 MS. WINDLE: I have Ms. Plevy and I know she's
 6 concerned about you know she's works for the State and has
 7 things going, but --
 8 MS. ROBESON: And is Ms. Stevens going to testify?
 9 MS. WINDLE: Yes. Yes, she'll be last.
 10 MS. ROBESON: So you'll have two --
 11 MS. WINDLE: But she's going to be here anyway.
 12 MS. ROBESON: Okay. So you'll have two witnesses
 13 and you'll have one?
 14 MR. KATZ: Yes.
 15 MS. ROBESON: Okay. Do you have any objection
 16 adjourning now or continuing the case now and having Ms.
 17 Plevy come on at the next day?
 18 MR. KATZ: No.
 19 MS. ROBESON: Okay. Then why don't we talk about
 20 days. I think Ellen from our office, Ellen Forbes --
 21 MR. KATZ: Yes.
 22 MS. ROBESON: -- sent you a list of dates. Can
 23 you confer and say by 4 o'clock or are you going to need
 24 more time?
 25 MR. KATZ: No, we won't need more time. Can we

1 have an instruction to Ms. Plevy that she not talk about the
 2 case?
 3 MS. ROBESON: Yes, in fact, do you want to have
 4 her come in --
 5 MS. WINDLE: Yes, I would like that.
 6 MS. ROBESON: -- just for a moment --
 7 MS. WINDLE: Yes.
 8 MS. ROBESON: -- and I'll instruct her.
 9 MS. WINDLE: Yes, I mean really the date, she is a
 10 primary issue with the date, so I would like to involve her
 11 in our discussion.
 12 MS. ROBESON: Okay. Only dates though.
 13 MS. WINDLE: Yes.
 14 MS. ROBESON: Anticipating the --
 15 MR. KATZ: The dates she gave us --
 16 MS. ROBESON: Do you have them?
 17 Let's go off the record.
 18 MR. KATZ: Yes.
 19 MS. ROBESON: And when Plevy comes we'll go back
 20 on for a moment.
 21 (OFF THE RECORD.)
 22 (ON THE RECORD.)
 23 MS. ROBESON: Okay. We're going to go back on the
 24 record. What I would like to do Ms. Plevy has come in the
 25 room. Ms. Plevy, I want you to understand that you may not

1 discuss your testimony in this case while the record is open
2 with any other witness. All right.

3 MS. PLEVY: Uh-huh.

4 MS. ROBESON: Ms. Windle is going to tell you,
5 inform you when the record closes. But until then you
6 cannot discuss your testimony with anyone else.

7 MS. PLEVY: Okay.

8 MS. ROBESON: All right. Now what I am going to
9 do is let you go, we're going to go back off the record for
10 15 minutes and you all, I sent dates out, I'm going to let
11 you talk amongst yourselves as to an available date. All
12 right.

13 MS. PLEVY: Yeah, but can I mention something? I
14 work for the Behavioral Health Administration and I have
15 worked for the State and we're implementing a really large
16 contract, which our go out date is January 1, 2015. So all
17 of those dates received, they ramp up to that launch so I
18 can give a date, but there's a possibility that I'd be
19 called into work.

20 MS. ROBESON: Well if you give a date, you have to
21 come. So I'm going to let you consider that in your
22 discussions. If you need additional dates in January, then
23 you can contact Ms. Forbes and she'll give you what else is
24 on our calendar. Okay?

25 MS. PLEVY: All right. Well that's safer because

1 I don't control my time.

2 MS. ROBESON: Okay. Well I'm going to let you
3 guys take a minute. Let's come back at like 4:15 p.m. and
4 you guys can check with Ms. Forbes if you need other dates
5 and take a minute and discuss it.

6 MR. KATZ: Okay. Thank you.

7 MS. ROBESON: We're off the record.

8 (OFF THE RECORD.)

9 (ON THE RECORD.)

10 MS. ROBESON: Okay. We're back on the record.
11 And I understand the parties have a date.

12 MR. KATZ: January 20th.

13 MS. ROBESON: January 20th. Okay. We are going
14 to continue this case until January 20, 2015 at 9:30 a.m. in
15 this room. All right. Thank you very much.

16 MR. KATZ: Thank you.

17 MS. WINDLE: Thank you.

18 (Whereupon, at 3:59 p.m., the hearing was
19 concluded.)

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C E R T I F I C A T E

1
2 DEPOSITION SERVICES, INC., hereby certifies that
3 the attached pages represent an accurate transcript of the
4 electronic sound recording of the proceedings before the
5 Office of Zoning and Administrative Hearings for Montgomery
6 County in the matter of:

7 Nadja Cabello versus Montgomery County DHHS

8 Case No: E-04252

9 OZAH No. 14-01

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By:

Diane Wilson, Transcriber

**Cabello v.
Montgomery County**

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