

EXHIBIT F

S T A T E O F N E W Y O R K
SUPREME COURT COUNTY OF ONEIDA

-----x
ALFRED P. MONTEGARI,

Plaintiff,

vs.

Index No.: EFCA2016-000874

NEW YORK STATE DEPARTMENT OF CORRECTIONS
AND COMMUNITY SUPERVISION; MARK J. MILLER;
DANIEL F. MARTUSCELLO, III; ANTHONY J. ANNUCCI;
and JOHN DOE(S) and JANE DOE(S),

Defendants.

-----x

Deposition of DANIEL F. MARTUSCELLO, III, held on
February 22, 2022, commencing at 2:20 p.m., located at
the Office of the Attorney General, 207 Genesee Street,
Utica, New York, before Lisa M. Mazzei, Registered
Professional Reporter, Florida Professional Reporter,
and Notary Public in and for the State of New York.

A P P E A R A N C E S

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Also Present: Alfred P. Montegari
Cathy Y. Sheehan
Deputy Commissioner and Counsel

1 INDEX OF TESTIMONY

2 EXAMINATION OF DANIEL F. MARTUSCELLO, III Pages

3 By Ms. Bosman: 6 194

4

5 INDEX OF EXHIBITS

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7 Marked ID'd8 Exhibit 18 115 115
9 (Letter dated 6/19/15 to
10 Al Montegari from
11 Daniel Martuscello)

10

11 CERTIFIED QUESTIONS

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4	(Any documents of any other	69	25
5	individual at DOCCS who pulled		
6	anyone over as well as records		
7	of any speeding reprimands)		
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9	(Budget bulletin regarding	116	17
10	salary increase being withheld as		
11	reflected in Exhibit 18)		
12			
13	(Copies of all recommendations	120	14
14	and/or evidence of withholding		
15	of any salary with respect to		
16	misconduct or unsatisfactory		
17	performance)		
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19	(Anyone subject to demotion	128	23
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21	misconduct during 2014 to 2017)		
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24	Mr. Montegari's position and		
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1 STIPULATIONS

2

3 IT IS HEREBY STIPULATED, by and between the
4 attorneys for the respective parties hereto, that:

5 All rights provided by the CPLR, and Part 221
6 of the Uniform Rules for the Conduct of Depositions,
7 including the right to object to any question, except as
8 to form, or to move to strike any testimony at this
9 examination is reserved; and in addition, the failure to
10 object to any question or to move to strike any
11 testimony at this examination shall not be a bar or
12 waiver to make such motion at, and is reserved to, the
13 trial of this action.

14 This deposition may be sworn to by the witness
15 being examined before a Notary Public other than the
16 Notary Public before whom this examination was begun,
17 but the failure to do so or to return the original of
18 this deposition to counsel, shall not be deemed a waiver
19 of the rights provided by Rule 3116 of the CPLR, and
20 shall be controlled thereby.

21 The filing of the original of this deposition
22 is waived, and that the witness shall read and sign the
23 original deposition transcript within 60 days upon
24 receipt.

25

1 D A N I E L F . M A R T U S C E L L O ,
2 III, called as a witness and being duly sworn, testified
3 as follows:

4 EXAMINATION BY MS. BOSMAN:

5 Q Would you state your full name for the
6 record, please?

7 A Daniel Francis Martuscello, III.

8 Q And what is your current address?

9 A 1220 Washington Avenue, Albany, New York
10 12226 is my work address.

11 Q Okay. What is your home address?

12 MR. KALIL: I'll direct him not to
13 answer that just on confidentiality.

14 Q Okay. Well, what town do you live in?

15 MS. BOSMAN: That's not
16 confidential. People's addresses are not
17 confidential.

18 MR. KALIL: It is in the DOCCS
19 context.

20 MS. BOSMAN: You can block it out in
21 the transcript.

22 MR. KALIL: There is no need for you
23 to have it.

24 MS. BOSMAN: Yeah, there is. And
25 I'll certify the question.

1 EXAMINATION BY MS. BOSMAN:

2 Q What town do you live in?

3 A North Greenbush.

4 Q How old are you?

5 A Forty-eight.

6 Q What is your date of birth?

7 A [REDACTED]

8 Q What is your educational background?

9 A I have a Bachelor of Arts degree.

10 Q What year and where?

11 A 1996, SUNY Cortland.

12 Q And where did you grow up?

13 A Rensselaer County.

14 Q What is your current employment?

15 A I work for the New York State Department
16 of Corrections and Community Supervision.

17 Q How long have you worked for them?

18 A Approximately 25 years.

19 Q Did you work for anyone before you
20 started working for New York State DOCCS?

21 A Yes.

22 Q Who did you work for and what did you do?

23 A Project Strive. I was a childcare
24 worker.

25 Q I'm sorry, a what?

1 A Childcare worker.

2 Q What year and where?

3 A 1996, in Albany.

4 Q Just for that one year, 1996?

5 A Correct.

6 Q Okay. Any other employment?

7 A Periodic in college.

8 Q Right. Out of college, though, that was
9 the childcare worker and then you went to work for
10 DOCCS?

11 A Correct.

12 Q What was your first position with DOCCS?

13 A Correction Officer Trainee.

14 Q Where did you start working?

15 A My first permanent assignment was Bedford
16 Hills.

17 Q Where were you before Bedford Hills?

18 A I was in the academy and then did
19 on-the-job-training at Coxsackie.

20 Q Anyplace else?

21 A Prior to?

22 Q Right. You said you were hired as a
23 correction officer. Your first placement or permanent
24 assignment was Bedford Hills and you took on-the-job
25 training at Coxsackie. Anyplace else?

1 A Before Bedford Hills?

2 Q Yes.

3 A No.

4 Q Okay. And so that was in 1996; correct?

5 A No.

6 Q Oh, I thought you said you had been
7 working for them since 1996.

8 A No.

9 Q What year were you hired?

10 A 1997.

11 Q Okay. What month?

12 A May.

13 Q All right. And then how long were you a
14 correction officer?

15 A Approximately four and a half years.

16 Q And all of that four and a half years
17 were -- most of that four and a half years was at
18 Bedford Hills?

19 A No.

20 Q Where were you beside Bedford Hills?

21 A Green Haven Correctional Facility.

22 Q What year?

23 A 1997.

24 Q And how long did you stay at Green Haven?

25 A Approximately three years.

1 Q You were a correction officer the entire
2 time you were at Green Haven?

3 A Yes.

4 Q And then where were you transferred?

5 A I worked in central office employee
6 investigations.

7 Q Central office employee investigations?

8 A Yes.

9 Q So that was in 2000?

10 A Correct.

11 Q And was that this -- were you still a
12 correction officer when you were assigned to employee
13 investigations in 2000?

14 A I was a correction officer working in the
15 capacity of an investigator.

16 Q Okay. Did you have any training to
17 become an investigator?

18 A Yes.

19 Q What training did you have?

20 A On-the-job-training in the office.

21 Q How long were you trained in the office
22 on the job?

23 A I don't recall.

24 Q Was it more than six weeks?

25 A I don't recall.

1 Q More than six months?

2 A No.

3 Q So it wasn't like a probationary
4 assignment?

5 A No.

6 Q Okay. Who was your boss at Green Haven?

7 A The superintendent of the facility was
8 Chris Artuse.

9 Q A-R-T --

10 A I don't know.

11 Q -- U-S-E?

12 A I don't know how to spell it.

13 Q But it's pronounced "AR-TUSE"?

14 A Yes, ma'am.

15 Q Was he your direct supervisor?

16 A No.

17 Q Who was your direct supervisor?

18 A Supervisors change for correction
19 officers.

20 Q Right. You had sergeants, you had
21 lieutenants, captains, that sort of thing?

22 A Correct.

23 Q Who can you remember that supervised you?

24 A William Keyser.

25 Q Was he a sergeant?

1 A Yes.

2 Q Anyone else?

3 A Al Miller.

4 Q And was he a sergeant?

5 A Yes.

6 Q Anyone else?

7 A No.

8 Q Who was the lieutenant?

9 A Steve Aubrey.

10 Q Aubrey, A-U-B-R-E-Y?

11 A I don't know.

12 Q Anyone else?

13 A I don't recall anyone else.

14 Q Okay. So when you went to central
15 office, was that a position you applied for or were you
16 recruited for that position?

17 A I applied.

18 Q Where did you learn of the position?

19 A I don't recall.

20 Q Was it a civil service position?

21 A No.

22 Q Who hired you at central office as an
23 employee investigator?

24 A Ted Pendergast.

25 Q And what was he?

1 A The coordinator.

2 Q Of what?

3 A The employee investigation unit.

4 Q Who was Ted Pendergast's supervisor?

5 A Lee Gould.

6 Q What position was Lee Gould in?

7 A The director of personnel.

8 Q So were you supervised by Ted Pendergast?

9 A Yes.

10 Q How long did you stay at that position?

11 A Approximately a year.

12 Q What position did you hold next?

13 A Personnel administrator trainee.

14 Q That sounds like a civil service

15 position.

16 A Yes, ma'am.

17 Q So you had to take an exam for that?

18 A Correct.

19 Q And were you hired off a civil service

20 list as a personnel administrative trainee?

21 A Correct.

22 Q Do you recall what position you were on

23 the list when you were hired?

24 A No.

25 Q How long did you hold the position of

1 personnel administrative trainee?

2 A Approximately two years.

3 Q You said you had some investigative
4 training that was on the job --

5 A Correct.

6 Q -- in the position you held before this?

7 A Correct.

8 Q What was the training that you had?

9 A Shadowing other investigators, meeting
10 with supervisors.

11 Q What other investigators did you shadow?

12 A I don't recall.

13 Q Was there any other -- was there any
14 formal training, like you sit in a classroom, you go
15 through a manual or a book or anything like that?

16 A Yes.

17 Q And where was that held?

18 A In the unit.

19 Q Okay. And who did that training?

20 A I don't recall who.

21 Q What was your bachelor's degree in?

22 A Sociology with a concentration in
23 criminology.

24 Q Did you conduct any investigations on
25 your own while you were in that position?

1 A No.

2 Q Did you conduct any investigations as a
3 personnel administrator?

4 A No.

5 Q Okay. So then how long did you hold that
6 position as a personnel administrator?

7 A Approximately two years.

8 Q What did you do during those two years as
9 a personnel administrator?

10 A I oversaw the Central Office Freedom of
11 Information Law Unit. And I was a central office
12 representative of personnel matters to a correctional
13 facility.

14 Q What does that mean, "to a correctional
15 facility"?

16 A One.

17 Q Which one?

18 A Mohawk.

19 Q So what did you do with relationship to
20 Mohawk Correctional Facility?

21 A Assisted them with personnel management.

22 Q Who was the superintendent at Mohawk
23 Correctional Facility when you assisted them with
24 personnel management?

25 A I don't recall.

1 Q What year was it?

2 A 2001, approximately.

3 Q Can you tell me the types of things you
4 did for Mohawk Correctional Facility when you assisted
5 in personnel management?

6 A Assisted with hiring, monitoring of
7 workers' compensation, FMLA.

8 Q Anything else?

9 A Time and attendance. That's it.

10 Q So you didn't have any responsibility for
11 any kind of discipline?

12 A No.

13 Q Who did the discipline?

14 A I don't know.

15 Q Were disciplinary matters brought to your
16 attention as a personnel administrator for Mohawk
17 Correctional Facility?

18 A No.

19 Q Did you conduct or participate in any
20 arbitration proceedings while you were the personnel
21 administrator for Mohawk Correctional Facility?

22 A No.

23 Q So then you left that position in 2002?

24 A 2003.

25 Q 2003. And what position were you in

1 next?

2 A I was the acting coordinator of employee
3 investigations.

4 Q In central office?

5 A Yes.

6 Q And what did you do as the acting
7 coordinator of employee investigations?

8 A I oversaw background investigations for
9 potential correction officer trainee recruits,
10 preemployment screening.

11 Q When you say you oversaw that, does that
12 mean that you supervised people?

13 A Yes.

14 Q So you oversaw the background
15 investigations for correction officers to be?

16 A Correct.

17 Q Anything else?

18 A Statewide fingerprint project.

19 Q What does that mean?

20 A We have fingerprints where our employees
21 are fingerprinted and it's coordinated centrally.

22 Q So what did you do for it?

23 A It's a responsibility of that office to
24 ensure submission to the Division of Criminal Justice
25 Services.

1 Q So it's part of the background check?

2 A Correct.

3 Q Did you do anything else?

4 A I continued oversight of FOIL.

5 Q Anything else?

6 A Not that I recall.

7 Q What kind of investigative training did
8 you have or receive when you became the coordinator?

9 A I had previously worked on the unit,
10 understood personnel administration from my time as a
11 personnel administrator.

12 Q Did you have any training in personnel
13 administration?

14 A When I was a personnel administrator.

15 Q When you were a personnel administrator,
16 you were trained by shadowing other people; right?

17 A That's not what I said.

18 Q That was the investigators you shadowed?

19 A Correct.

20 Q So as a personnel administrative trainee,
21 what training did you have?

22 A Again, I had supervisors that I worked
23 with in terms of personnel management.

24 Q Who did your training? Let me ask you
25 that.

1 MR. KALIL: You are asking regarding
2 personnel administrator --

3 MS. BOSMAN: Yeah. Going back to
4 personnel administrator.

5 A It would have been my supervisor.

6 Q Yeah. Who was that?

7 A Marie Patterson. There were others, but
8 I can't recall the name.

9 Q And what was Marie Patterson's title?

10 A Associate personnel administrator.

11 Q And who did she work for?

12 A I don't know.

13 Q What were her credentials?

14 A I don't know.

15 Q So then in 2003, you are an acting
16 coordinator. Why are you acting? Why didn't you just
17 become the coordinator of employee investigations?

18 A Because they made me the acting.

19 Q How long were you acting?

20 A Approximately a year.

21 Q Okay. Whose position did you take? Who
22 was the prior coordinator of employee investigations?

23 A Ted Pendergast.

24 Q And he was previously your supervisor;
25 correct?

1 A Correct.

2 Q Do you know anything about his
3 credentials?

4 A No. Not that I could recall.

5 Q Okay. Did you supervise any employees
6 when you became the acting coordinator of employee
7 investigations?

8 A Yes.

9 Q Who did you supervise in 2003?

10 A I can't recall their names.

11 Q How many employees did you supervise?

12 A It was approximately 10 to 12. It
13 varied.

14 Q And what did they do that you provided
15 supervision over?

16 A Preemployment screening for correction
17 officer candidates.

18 Q So background checks?

19 A Correct.

20 Q Anything else?

21 A Nope. That was it.

22 Q So then you became no longer acting. You
23 became the coordinator; correct?

24 A No.

25 Q No? You said that you did that for a

1 year. In 2003, you were acting coordinator of employee
2 investigations.

3 A Correct.

4 Q And then you didn't become the
5 coordinator of employee investigations?

6 A No.

7 Q Who did?

8 A I don't know.

9 Q Well, somebody took your position; right?

10 A Right.

11 Q And you don't remember who that was in
12 2003?

13 A No.

14 Q What position did you take in 2004?

15 A The acting director of personnel.

16 Q Whose position did you take as the acting
17 director?

18 A Correct.

19 Q Of personnel?

20 A Correct.

21 Q In 2004?

22 A Correct.

23 Q Who was the prior acting director of
24 personnel?

25 A Terry Baxter.

1 Q Is that a man or a woman?

2 A Man.

3 Q And so in 2004, when you became the
4 acting director of personnel, where did Terry Baxter go?

5 A He left the agency.

6 Q And under retirement or a new job or
7 what?

8 A I believe he resigned to another agency.

9 Q What other agency; do you know?

10 A I don't.

11 Q How many people did you supervise as the
12 acting director of personnel?

13 A I don't recall a specific number.

14 Q This is all in Albany, though, right?
15 Central office?

16 A Direct supervision was in central office.

17 Q In Albany?

18 A Yes.

19 Q Okay. And so how long were you acting
20 director of personnel?

21 A I don't recall when I became permanent as
22 the director of personnel.

23 Q Is it more than a year?

24 A What is the question?

25 Q Were you acting more than a year?

1 A I believe so.

2 Q More than two?

3 A I don't believe so.

4 Q Was this a civil service position or an
5 employment position?

6 A Civil service.

7 Q So you were hired off a list?

8 A No.

9 Q What civil service exam did you take that
10 you were not hired off a list?

11 A What's the question?

12 Q What civil service exam did you take to
13 be the director of personnel where you were not hired
14 off a list?

15 MR. KALIL: Object to form. But you
16 can answer, if you are able.

17 A I didn't take an exam.

18 Q Okay. So it was a civil service
19 position, but it was not an examined position; is that
20 right?

21 A I did not take an exam for the position.

22 Q Who appointed you?

23 A I was appointed by Commissioner
24 Glenn Goord.

25 Q So you don't know how many employees you

1 supervised as the director of personnel?

2 A Not specifically.

3 Q Well, was it more than you supervised
4 when you were doing the background checks?

5 A Yes.

6 Q Was it more than 50 people?

7 A It would be a guess.

8 Q Okay. Does the personnel office that we
9 are talking about that you were the director of
10 encompass the entire state?

11 A Yes.

12 Q Okay. How long did you hold that
13 position?

14 A Till 2007.

15 Q What happened in 2007?

16 A I became the director of human resources.

17 Q What is the difference between the
18 director of personnel and the director of human
19 resources?

20 A Broader scope.

21 Q What is broader?

22 A I was given other responsibilities by my
23 direct supervisor.

24 Q What additional responsibilities did you
25 have and who was the direct supervisor?

1 A Gail Haponik. I was overseeing prison
2 closures.

3 Q Not a popular job, huh?

4 A Depends who you ask.

5 Q So that was in 2007, you were overseeing
6 prison closures and you were the director of HR. Did
7 you have anything other to do than overseeing prison
8 closures?

9 A I maintained all the responsibilities of
10 the director of personnel.

11 Q Which included what?

12 A I was the commissioner's designated
13 statewide-appointed authority.

14 Q Who was the commissioner at that time?

15 A Brian Fischer.

16 Q Okay. What else did you do?

17 A Responsible to recruit and retain a
18 competent workforce to achieve the agency mission.

19 Q Anything else?

20 A All matters related to personnel
21 management.

22 Q Did you ever have to certify any kind of
23 documents to the EEOC or the federal government
24 concerning hiring practices?

25 A Not that I recall.

1 Q Did you have to make any efforts to
2 diversify the workforce when you were director of
3 personnel in HR?

4 A Ask the question again.

5 MS. BOSMAN: Can you read back the
6 question.

7 THE REPORTER: "Q Did you have
8 to make any efforts to diversify the
9 workforce when you were director of
10 personnel in HR?"

11 A We ensure that when we did recruitment
12 that we did it from diverse areas from people with
13 various backgrounds, but not specifically responsible
14 for diversity management.

15 Q Who was your diversity management person?

16 MR. KALIL: Objection. Form. You
17 can answer, if you are able.

18 A Charlie Harvey.

19 Q Charlie --

20 A Harvey.

21 Q Is that a man or a woman?

22 A It's a man.

23 Q Okay. So you didn't have to certify any
24 kind of documents to the federal government or the state
25 regarding hiring practices for the Department of

1 Correctional Services, to your recollection?

2 A What forms are you speaking of?

3 Q Well, I know that in the Department of
4 Corrections, when they have to do diversity training,
5 they have to certify how many blacks they hired, how
6 many women they hired, what efforts they did at
7 recruiting and that sort. And usually somebody who is
8 the director of personnel has to certify that stuff.
9 That's why I was asking.

10 A That did not fall under my office.

11 Q Did you have to file any kind of reports
12 regarding hiring retention?

13 MR. KALIL: With the federal
14 government?

15 Q With anyone.

16 A No.

17 Q Did anyone under your supervision have to
18 gather information for those sorts of reports?

19 A For the federal government?

20 Q For anyone.

21 A My office prepared a monthly report
22 internal to my supervisor, but not externally.

23 Q A monthly report that showed what?

24 A Activities of the unit.

25 Q Including hiring?

1 A I don't recall specifically what was
2 maintained in the report.

3 Q Do you recall generally what was
4 contained in the report?

5 A Again, the activities of the unit.

6 Q What did that include?

7 A Again, specifically, I can't speak to
8 exactly what was in the reports.

9 Q Well, what activities did you have in the
10 unit? Maybe we can ask that way.

11 A Overall personnel management.

12 Q And so who did those reports go to once
13 you did them?

14 A My supervisor.

15 Q Who was your supervisor?

16 A Glenn.

17 Q Pardon?

18 A Glenn.

19 Q I think I am still at 2007; aren't I?

20 A I am not sure.

21 Q Well, when did you become the director of
22 HR?

23 A 2007.

24 Q Yeah.

25 A So Gail Haponik.

1 Q And how long was that your supervisor?

2 A Until sometime in 2011 or '12.

3 Q Did you receive personnel evaluations?

4 A Yes.

5 Q And would those happen annually?

6 A Yes.

7 Q Were you ever criticized or critiqued
8 during your personnel evaluations on your performance?

9 A I don't understand the question.

10 Q In the personnel evaluations, sometimes
11 they tell you what areas you need to improve in and what
12 areas you have fallen short in and what areas you have
13 excelled in, that sort of thing; right?

14 A Yes.

15 Q Did you ever have any identified areas
16 that you needed to improve upon?

17 A No.

18 Q Did you ever have any areas that were
19 criticized that you had not met expected performance in?

20 A No.

21 Q So all of your personnel evaluations were
22 good?

23 A Correct.

24 Q Have you ever seen Al Montegari's
25 personnel evaluations?

1 A No.

2 Q Have you ever seen any personnel
3 evaluations of him whatsoever at any time?

4 A No.

5 Q Did you make a determination that he was
6 not entitled to a 2 percent salary increase based upon
7 his personnel evaluation?

8 A No.

9 Q You know Mr. Montegari; right?

10 A I do.

11 Q And when did you first meet him?

12 A Approximately 1997 or 1998.

13 Q And in what capacity did you meet him?

14 A We were both correction officers.

15 Q Where?

16 A At Green Haven.

17 Q Did you work the same shift or the same
18 area of the prison?

19 A I don't know.

20 Q Were you supervised by the same
21 supervisor?

22 A I don't know.

23 Q Were you friendly with Mr. Montegari?

24 A I knew him.

25 Q But that's not my question.

1 A I don't know what you mean by "friendly."

2 Q Do you have friends?

3 A Yes.

4 Q Do you socialize with your friends?

5 A Yes.

6 Q Do you see friends outside of work?

7 A Yes.

8 Q Okay. Was Al Montegari someone who you
9 would see outside of work?

10 A No.

11 Q Is he someone you would socialize with
12 outside of work?

13 A No.

14 Q Did you have any arguments with him?

15 A No.

16 Q Did you have any criticisms of his
17 performance during the time you were a correction
18 officer and he was a correction officer?

19 A No.

20 Q Did you hear anyone criticize his work
21 performance while he was a correction officer and you
22 were a correction officer?

23 A Not that I recall.

24 Q Are you aware of any circumstances under
25 which he was disciplined?

1 A Yes.

2 Q What circumstances was he disciplined?

3 A When he was working for the Office of the
4 DOCCS Inspector General.

5 Q I mean way before that. I am still back
6 when he is a correction officer and you are a correction
7 officer in 1997.

8 A So in 1997.

9 Q Yeah.

10 A No.

11 Q We know about what happened. That's why
12 we are here; right? But I am talking about when you
13 knew him when he was a correction officer and you were a
14 correction officer; you were at Green Haven and he was
15 at Green Haven; right?

16 A Right.

17 Q Did you have any disagreements,
18 arguments, any problems with his performance? Did he
19 have any problem with yours?

20 A Not that I am aware of.

21 Q How long did you work with him at
22 Green Haven?

23 A I was there until sometime in 2000.

24 Q So approximately three years?

25 A I don't know specifically how long. I

1 don't know if I was there the whole time.

2 Q Okay. But a good guess would be about
3 three years, approximately?

4 A I was there for three years.

5 Q And he was there at the same time?

6 A He was there. I don't know if he was
7 there for the entire duration.

8 Q I see. Okay. Did you work with him at
9 anytime after that?

10 A Not that I could recall.

11 Q Okay. All right. So then we are up to
12 2007 and then you are doing the director of human
13 resources and you held that position for how long?

14 A Until 2012.

15 Q And then in 2012, what happened?

16 A I was appointed as the deputy
17 commissioner for administration.

18 Q What does that mean? What do you do as
19 the deputy commissioner for administration?

20 A I was a member of the commissioner's
21 executive team and I oversaw various units within
22 administrative services.

23 Q What units?

24 A Personnel, budget and finance,
25 nutritional services, support operations, facilities

1 planning, and the training academy.

2 Q Did you have any kind of training or any
3 kind of educational training between 2007 and 2012?

4 A I attended various trainings
5 periodically.

6 Q What trainings did you take?

7 A I attended the state academy for public
8 administrators course.

9 Q When was that and where was that?

10 A It was in Albany. I don't know where.

11 Q How long did the course take?

12 A I believe it was eight weeks broken out
13 across the year.

14 Q Was it, like, in person, in a classroom
15 setting?

16 A Correct.

17 Q So you had other people you went to
18 school with?

19 A Correct.

20 Q Who were the other people you attended
21 with?

22 A I don't know.

23 Q You don't remember any of them?

24 A No.

25 Q Do you remember how many people were

1 there?

2 A Not specifically.

3 Q More than a dozen?

4 A Yes.

5 Q Did you get a certificate once you
6 completed the program?

7 A I don't recall.

8 Q And what was the topic areas that you
9 were trained in for the certificate for state
10 administration course?

11 A It was a variety of topics dealing with
12 state government.

13 Q Who were the instructors?

14 A People from the SAPA.

15 Q SAPA?

16 A State Association of Public
17 Administrators.

18 Q So that was between 2007 and 2012;
19 correct?

20 A I believe so.

21 Q And so then you were appointed deputy
22 commissioner for administration by whom?

23 A Brian Fisher.

24 Q When did you first meet Brian Fisher?

25 A I don't recall.

1 Q What position did he hold at the time?

2 A Commissioner.

3 Q So in 2012, he was the commissioner, he
4 appoints you deputy commissioner and you did that for
5 how long?

6 A Until 2017.

7 Q And what did you do in 2017?

8 A My current position.

9 Q And what is your current position?

10 A I am the acting executive deputy
11 commissioner.

12 Q What is your salary?

13 A Approximately 200,000.

14 Q And since 2017, you have still been
15 acting?

16 A Yes.

17 Q Why are you acting?

18 A Because I haven't been appointed the
19 position.

20 Q Why haven't you been appointed to the
21 position?

22 A Because my commissioner is acting.

23 Q Who is that; Annucci?

24 A Anthony Annucci.

25 Q So because your commissioner is acting,

1 he doesn't have the authority to appoint you as the
2 executive deputy commissioner?

3 MR. KALIL: Object to form. If you
4 are able to answer it, you can.

5 A He was appointed as executive deputy
6 commissioner, at which time he made acting commissioner.

7 Q Right. My question was, did Mr. Annucci
8 or does Mr. Annucci have the authority to appoint you as
9 the executive deputy commissioner?

10 A He is the executive deputy commissioner.

11 Q That's not what I asked you. I asked you
12 if he had the authority to appoint you as the executive
13 deputy commissioner.

14 A Yes, he has the authority.

15 Q Okay. Yeah. He explained that. He's
16 been acting forever, too. It's -- everybody is acting;
17 right?

18 A Right.

19 Q Yeah. It's like Broadway. So in 2017,
20 you became acting executive deputy commissioner and what
21 are your responsibilities?

22 A Principal adviser to the commissioner. I
23 supervise and assist other executive team members.

24 Q What other executive team members?

25 A Everyone on the executive team.

1 Q Who is what?

2 A Currently?

3 Q Or in 2017, sure. If you can remember.

4 Can you remember 2017?

5 A So it would have been the deputy
6 commissioner for correctional facilities, who I believe
7 at the time was James O'Gorman, Deputy Commissioner.

8 And Chief Medical Officer would have been

9 Carl Koenigsmann. Deputy Commissioner and Counsel, I
10 don't recall who that was at the time. Deputy

11 Commissioner for Program Services, Jeff McKoy.

12 Deputy Commissioner for Accreditation, Osbourne McKay.

13 Associate Commissioner, Jason Effman.

14 Q What's the difference between a deputy
15 commissioner and an associate commissioner?

16 A One is a deputy and one is an associate.

17 Q What is the difference in terms of
18 authority?

19 A It's typically one has a broader scope.

20 Q Who is broader?

21 A Deputy.

22 Q Jason's last name is what?

23 A Effman.

24 Q Spell it, please.

25 A E-F-F-M-A-N.

1 Q Anyone else on the executive team?

2 A Yeah. Assistant Commissioner and
3 Executive Assistant to the Commissioner, Charles Kelly.
4 Deputy Commissioner and Chief of Investigations,
5 Steve Maher.

6 Q Spell that, please.

7 A I'm not sure of the spelling. It's
8 either M-A-H-E-R or A-R.

9 Q And he was the deputy what?

10 A Commissioner and Chief of Investigations.

11 Q Anyone else?

12 A I think that's it.

13 Q Okay. So that's in 2017 and that's what
14 you are doing today; correct?

15 A Correct.

16 Q So during the 25 years or so that you
17 have worked for the Department of Corrections, have you
18 ever been disciplined?

19 A No.

20 Q Pardon?

21 A No.

22 Q Have you ever had charges brought against
23 you?

24 A No.

25 Q Have you ever investigated a disciplinary

1 matter?

2 A No.

3 Q During the time that you were director of
4 the human resources, did you have any involvement in any
5 arbitration proceedings?

6 A Not that I recall.

7 Q When you -- and during the time that you
8 were with personnel, you didn't have any arbitration
9 proceedings; correct?

10 A Not that I recall.

11 Q Have you ever drafted disciplinary
12 charges for anyone?

13 A No.

14 Q Did you say -- I'm sorry?

15 A No.

16 Q You said, "No"?

17 A Yeah.

18 Q Have you ever been consulted by anyone
19 drafting disciplinary charges?

20 A Yes.

21 Q Who?

22 A The director of labor relations,
23 John Shipley.

24 Q And what kind of guidance was
25 John Shipley looking for from you?

1 A At a period when I was the deputy
2 commissioner for administration, I took oversight of
3 labor relations.

4 Q So what kind of guidance was John Shipley
5 looking for from you with respect to disciplinary
6 charges?

7 A It wasn't necessarily guidance. It would
8 be briefing me on disciplinary matters subject to
9 employees of the agency.

10 Q So he wasn't consulting with you in order
11 to draft disciplinary charges?

12 A Correct.

13 Q He was briefing you on what kind of
14 actions the agency was taking with respect to employees.
15 Is that fair to say?

16 A That's correct.

17 Q Did he ask for your advice or input with
18 respect to any disciplinary matter during the time that
19 he consulted with you?

20 A Yes.

21 Q What kind of input was he asking for?

22 A We would talk time to time about whether
23 to suspend or not suspend individuals.

24 Q And what would be the considerations for
25 determining whether to suspend or not suspend

1 individuals?

2 A It was case-specific.

3 Q I understand that. What were the
4 considerations when you would look at a case and decide
5 whether or not you would suspend or not suspend someone?

6 A Well, the collective bargaining agreement
7 provides some broad criteria to substantiate suspension
8 for union members, but it's not restricted to just that.

9 Q Right. So John Shipley would know that,
10 yeah?

11 A Correct.

12 Q So what was he looking for from you, is
13 what I'm trying to understand?

14 A He was keeping me aware of disciplinary
15 cases going on within the agency.

16 Q So when John Shipley would ask you with
17 regard to suspension or not suspension of someone, is he
18 looking for your advice and guidance?

19 A There would be occasion we would talk
20 about the case.

21 Q And were there occasions in which he
22 wanted someone suspended where you said no?

23 MR. KALIL: Object to form. You can
24 answer, if you are able.

25 A I don't recall specifically.

1 Q Did you have the authority to bar a
2 suspension if you didn't agree with it?

3 A Yes.

4 Q Did you ever bar a suspension that you
5 didn't agree with?

6 A I believe so.

7 Q What suspension did you bar that you
8 didn't agree with?

9 A I don't recall specifically.

10 Q Do you recall the position of the
11 individual that you interceded for?

12 A No.

13 Q Was that person a correction officer?

14 A I don't recall.

15 Q Would John Shipley be bringing correction
16 officer cases to your attention?

17 A Yes.

18 Q So you would have discussions statewide
19 about correction officers who were suspended or not?

20 A On occasion.

21 Q Did you ever request that somebody be
22 suspended that Mr. Shipley did not want to suspend?

23 A Not that I recall.

24 Q What considerations did you have when you
25 interceded on behalf of someone regarding their

1 suspension?

2 MR. KALIL: Objection to form. You
3 can answer, if you are able.

4 A Again, I don't recall the specifics.

5 Q Generally. I don't need specifics.

6 A I don't know.

7 Q Well, what are the considerations or the
8 factors that are taken into consideration when you
9 determine whether or not to suspend someone?

10 A Again, typically, that's the decision of
11 Mr. Shipley.

12 Q Right. But we have already established
13 that Mr. Shipley is having these discussions and
14 briefing you and looking for your input with regard to
15 whether or not somebody should be suspended or not
16 suspended. So my question is, is what are the valid
17 considerations that you would take in account?

18 A Again, I don't have a list to tell you.
19 It would be case-specific.

20 Q What are the factors you look at to
21 determine whether or not someone should be suspended?

22 A I look at the totality of the incident
23 and consultation with Mr. Shipley and others.

24 Q What about the employee's background?

25 A Not necessarily.

1 Q What about the employee's personnel
2 evaluations?

3 A Not necessarily.

4 Q What about the employee's disciplinary
5 history?

6 A That may come up occasionally.

7 Q Wouldn't that be a valid consideration to
8 determine whether or not to suspend someone? Wouldn't
9 you have to know what their disciplinary history is?

10 A Not necessarily.

11 Q Did you have any discussions with anyone
12 about whether or not to suspend my client,
13 Mr. Montegari?

14 A Yes.

15 Q Who?

16 A As I recall, Deputy Commissioner and
17 Chief of Investigations Steve Maher, John Shipley and
18 Commissioner Annucci.

19 Q Okay. Let's talk about Mr. Maher. What
20 kind of conversations did you have with him about
21 whether or not to suspend Mr. Montegari?

22 A They conducted the investigation that
23 substantiated the case against Mr. Montegari.

24 Q They conducted an investigation that
25 substantiated allegations against Mr. Montegari?

1 A Correct.

2 Q Based on whose opinion?

3 A The investigation.

4 Q Okay. But the investigation was deemed
5 to be inaccurate; correct?

6 MR. KALIL: Objection. Form.

7 A I don't know that to be true.

8 Q Didn't you read the report of the
9 arbitrator?

10 A I don't recall.

11 Q Really? You have been served with a
12 complaint in this matter?

13 A Yes.

14 Q Did you read it?

15 A I don't recall if I read it in its
16 entirety.

17 Q Okay. Did you read portions of it?

18 A I recall being served.

19 Q Did you read portions of the complaint,
20 was my question.

21 A I don't recall.

22 Q Do you recall the basis upon which you
23 were named as a defendant in this action?

24 A No.

25 Q Have you reviewed any documents before

1 coming here to testify today?

2 A Yes.

3 Q What did you review?

4 A I reviewed documents for which I signed
5 and/or letters associated with the documents I signed.

6 Q Anything else?

7 A No.

8 Q What documents did you sign?

9 A I can't name them specifically.

10 Q How many documents did you review?

11 A Approximately three.

12 Q Anything else?

13 A No.

14 Q So in preparation for this deposition
15 today, you reviewed three documents approximately?

16 A That I recall, approximately three.

17 Q And when did you review them?

18 A Last week.

19 Q And all three of those you signed?

20 MR. KALIL: That's not what he said.

21 MS. BOSMAN: That's not what I'm
22 asking.

23 A I don't recall specifically how many I
24 signed.

25 Q Okay. So Steve Maher brought it to your

1 attention about whether or not to suspend Al Montegari;
2 right?

3 A No.

4 Q No? Had he already made that decision?

5 A No.

6 Q Who made the decision to suspend him?

7 A The commissioner.

8 Q Was that based on a conversation with
9 you?

10 A Not just me.

11 Q Was it based in part on a conversation
12 with you?

13 A Yes.

14 Q Okay. And what did you tell Mr. Annucci
15 and what did he say?

16 MR. KALIL: Sorry. I thought you
17 were referring to Steve Maher.

18 Q No. I am talking about Mr. Annucci now.

19 A What was the question again?

20 MS. BOSMAN: Can you read back the
21 question.

22 THE REPORTER: "Q Okay. And
23 what did you tell Mr. Annucci and what
24 did he say?"

25 A I don't recall specifically that I was

1 the one briefing Mr. Annucci, but I would have been
2 present for the discussion.

3 Q Right. You indicated earlier in response
4 to my earlier question that you had a conversation with
5 Mr. Annucci about Mr. Montegari. Yes?

6 A I was involved in a conversation.

7 Q Well, is that having a conversation or
8 not? When you say "involved in a conversation," you
9 mean you sat there silently or you said something during
10 this conversation about my client with Mr. Annucci?

11 A I don't recall specifically about what
12 specifically I said, but I was involved in the
13 conversation that I would likely speak at.

14 Q Okay. So going forward, when you say
15 "specifically," all right, it doesn't matter in terms of
16 your responses to my questions whether it's specific
17 recall or general recall. I am not asking you for
18 specifics. You can give me whatever you remember. If
19 you don't remember, that's a perfectly valid answer. So
20 when you answer by saying, "I don't recall
21 specifically," that just begs another question,
22 "What do you recall generally."

23 Okay. So if you could tell me what you
24 recall generally about that conversation and what you
25 said and who else said anything at that meeting?

1 A Yeah. Again, I recall that
2 Deputy Chief -- Deputy Commissioner and Chief Maher,
3 John Shipley and myself would have briefed the
4 Commissioner regarding the findings and the
5 substantiating investigation by OSI and discussed
6 suspension under Section 75 of the Civil Service Law.

7 Q Okay. So am I correct that you and
8 Mr. Shipley had a meeting or a conversation before you
9 met with Mr. Annucci?

10 A I don't recall that.

11 Q How about you and Maher and Shipley? Did
12 the three of you have a conversation before you met with
13 Mr. Annucci?

14 A Yes.

15 Q So when the three of you met, what was
16 the discussion? What was said and who said what?

17 A Again, I don't recall who said what, but
18 it was regarding the substantiated case against
19 Mr. Montegari.

20 Q As you sit here today, do you know that
21 the arbitrator found that the case was not
22 substantiated?

23 A I am aware of the arbiter's findings.

24 Q Okay. So is it your position that you
25 don't agree with the arbitrator?

1 A I don't understand the question.

2 Q What were the arbitrator's findings, as
3 you understand them to be?

4 A My understanding was that they didn't
5 find Mr. Montegari conducted or believe there was enough
6 evidence to substantiate the traffic stop, but that
7 there was for excessive speeding.

8 Q Right. And that excessive speed was
9 something that was discovered as a result of the
10 investigation on the allegation by someone who said that
11 he pulled them over; right?

12 A That's my understanding.

13 Q During that investigation, you also
14 determined that there were several other employees who
15 were speeding during the relevant time period that you
16 looked at Mr. Montegari's records; right?

17 MR. KALIL: Objection. He didn't
18 say he made any determinations.

19 A Yeah. I didn't conduct an investigation.

20 Q Pardon?

21 A I did not conduct the investigation.

22 Q Yeah, that's what your lawyer just said.
23 But what I am asking you about whether or not you
24 discovered during the course of that investigation or
25 were advised that someone discovered during the course

1 of that investigation that there were other individuals
2 who were speeding besides Mr. Montegari?

3 A I was not, that I recall.

4 Q Did you review the documents, the
5 investigation documents themselves?

6 A I did not review the complete
7 investigative file, as I recall.

8 Q Okay. Was it provided to you?

9 A I don't recall.

10 Q Was it available to you?

11 A The case summary would have been
12 available to me.

13 Q But not the investigative file itself?

14 A Not in the general course. I mean -- I
15 don't understand the question, I guess.

16 Q Okay. Well, apparently, somebody had an
17 investigative file and you said it was substantiated and
18 the arbitrator said it wasn't. And then you said, well,
19 it was speeding. Well, but that wasn't what instigated
20 the whole investigation in the first place; was it?

21 A I am not sure your characterization of
22 what I said was accurate.

23 Q Okay. Correct me, please.

24 A So what was the question?

25 Q What was inaccurate about what I said?

1 A I don't think I draw any conclusions on
2 what the arbiter said in that they did or did not
3 substantiate. The investigation was substantiated by
4 OSI and it went forward to discipline and the arbiter
5 made a ruling. What was your question now?

6 Q Whether or not the investigative file was
7 available to you.

8 A Available to me?

9 Q Yeah.

10 A It could have been made available to me.

11 Q Okay. But you didn't request it?

12 A No.

13 Q Okay. And what did you know about
14 Al Montegari at that point in time?

15 A I don't understand the question.

16 Q Where was he working?

17 A He was working for the DOCCS Inspector
18 General.

19 Q How long had he been working there?

20 A I don't know.

21 Q What was he doing for them?

22 A He was acting in the capacity of deputy
23 chief over the sex crimes unit or he was actually deputy
24 inspector general at the time.

25 Q So he was a deputy inspector general in

1 the sex crimes unit; correct?

2 A Correct.

3 Q And part of his obligations or
4 responsibilities involved looking into allegations of
5 sex assault or sex crimes in the facilities in the state
6 of New York; right?

7 A Correct.

8 Q And he had made complaints about that; is
9 that correct?

10 A Not to my knowledge.

11 Q You didn't know that he had made
12 complaints that he had inadequate staffing for that
13 office?

14 A Not to my knowledge.

15 Q Did you know that he made complaints
16 about the -- what do they call it, the location pay, for
17 individuals who were given location pay?

18 A No. Not to my knowledge.

19 Q Did you know of him making any complaints
20 at all about anything?

21 A No.

22 Q Had you ever had any conversations with
23 Mr. Montegari prior to this little meeting you had with
24 Shipley and Maher?

25 A Conversations generally?

1 Q Yeah.

2 A Yes.

3 Q Tell me where and when.

4 A In his normal course of duties, we would
5 have been discussing cases.

6 Q What cases did he discuss with you?

7 A I don't recall specifically.

8 Q Did he discuss with you cases of
9 allegations of sexual assault or sexual misconduct
10 within correctional facilities in the state of New York?

11 A Yes.

12 Q Did he provide you with information
13 concerning individuals who are alleged to have committed
14 wrongdoing?

15 A Yes.

16 Q And what was the purpose of you getting
17 that information from him? Why would he bring that to
18 you?

19 A We had -- we did have a case where we did
20 an involuntary reassignment of a correction officer due
21 to the nature and volume of complaints.

22 Q Okay. Anything else?

23 A There could be a time with Director
24 Shipley and my office where we would discuss misconduct
25 cases against staff with members of the DOCCS' IG.

1 Q So when you say an "involuntary
2 transfer," is that something that was a decision that
3 was made by you?

4 A No.

5 Q Who made that decision?

6 A The commissioner.

7 Q Who made the recommendation?

8 A A committee.

9 Q What committee?

10 A It was a committee of executive staff
11 along with Mr. Montegari.

12 Q Who was on that committee?

13 A Other deputy commissioners.

14 Q Such as whom?

15 A Deputy commissioner for correctional
16 facilities. Deputy commissioner for -- deputy
17 commissioner and counsel, deputy commissioner in chief.
18 There may have been others.

19 Q So you would have a meeting with all
20 those people to consider just one case or several cases
21 at a time?

22 A In this case, it was to consider this
23 involuntary reassignment and make a recommendation to
24 the commissioner.

25 Q So it was just one person?

1 A There may have been others that were
2 discussed, but one was recommended for transfer.

3 Q Did you have regular meetings with
4 Mr. Montegari concerning complaints of sexual
5 misconduct?

6 A No.

7 Q No? So it wasn't like every Wednesday we
8 sit down and talk about the --

9 A No.

10 Q -- personnel matters or anything like
11 that?

12 A No.

13 Q Did you have regular meetings with
14 Mr. Shipley or Mr. Maher in that regard?

15 A They were more ad hoc. Not regularly.

16 Q Did you receive a complaint or were you
17 aware of complaints from Clinton Correctional Facility
18 involving Joyce Miller?

19 A No.

20 Q No one told you that that complaint had
21 been made?

22 A When?

23 Q Prior to the escape.

24 A No.

25 Q You didn't know that?

1 A No.

2 Q During the time that that complaint was
3 made, there was an investigation that was done at DOCCS
4 regarding that escape; right?

5 A No.

6 Q You guys didn't investigate how those
7 inmates escaped?

8 A No.

9 Q There was no sex crimes unit
10 investigation regarding the complaints that came in
11 about Joyce Miller?

12 A No.

13 Q You weren't aware that Mr. Montegari had
14 a complaint come through his office in that regard?

15 A No.

16 Q Joyce Mitchell. I'm sorry. I meant
17 Joyce Mitchell. Did you know who I was talking about,
18 Joyce Mitchell?

19 A Oh, Joyce Mitchell. You said
20 Joyce Miller.

21 Q Yes. I'm sorry. I misspoke. So let's go
22 back over those questions. Do you know who I am talking
23 about now.?

24 A I know who Joyce Mitchell is, yes.

25 Q Did you know there was a complaint

1 regarding her that came into the sex crimes?

2 A Prior to the escape?

3 Q Prior to the escape, yes.

4 A No.

5 Q You didn't know that?

6 A No.

7 Q Is this the first time you are hearing
8 about that?

9 A No.

10 Q When did you hear about it?

11 A During the escape.

12 Q During the escape you learned that there
13 was a complaint?

14 A Yes.

15 Q How did you learn there was a complaint?

16 A As part of the ongoing efforts to
17 apprehend and determine if there was any staff
18 involvement.

19 Q Who told you about it?

20 A I don't recall.

21 Q Was it somebody from Al's office?

22 A I don't recall.

23 Q Who would have access to that information
24 other than Al?

25 A The deputy commissioner in chief.

1 Q Who is that?

2 A Steve Maher.

3 Q Do you think maybe Mr. Maher told you
4 about it?

5 A I don't recall.

6 Q Was there ever any determination made
7 that there was any responsibility or fault at the
8 department of corrections with respect to failing to
9 investigate the complaint against Joyce Mitchell?

10 A Say that again.

11 MS. BOSMAN: Can you read back the
12 question.

13 THE REPORTER: "Q Was there ever
14 any determination made that there was any
15 responsibility or fault at the department
16 of corrections with respect to failing to
17 investigate the complaint against Joyce
18 Mitchell?"

19 A As I recall, it was referenced in the
20 state IG investigation report. I know that that
21 investigation of Ms. Mitchell was referenced in the
22 report.

23 Q Okay. All right. Let's take a look --
24 these exhibits have been previously marked.

25 A Okay.

1 Q Did you talk to Mr. Annucci about his
2 deposition?

3 A No, I did not.

4 Q Did you talk to Mr. Miller about his
5 deposition?

6 A No, I did not.

7 Q Did you talk to anybody else about your
8 deposition here today?

9 A Just my attorneys.

10 Q This is Exhibit 6. This is, for the
11 record, from you, Mr. Martuscello, to Anthony Annucci on
12 October 5th of 2015.

13 Do you want to take a look at Exhibit 6?

14 A Okay.

15 Q Do you recall that document?

16 A Only to the extent I am reviewing it
17 today.

18 Q You haven't seen it before? I mean --
19 I'm sorry. Withdrawn.

20 The documents you said you reviewed
21 before coming here to testify today, this is not one of
22 them?

23 A This is one of them.

24 Q This is one of the ones you reviewed?

25 A Correct.

1 Q Okay. And what was the purpose of that
2 e-mail to Mr. Annucci?

3 A So the commissioner could make a
4 determination on the arbiter's recommendation.

5 Q But he didn't even remember reading it,
6 so why would you inform him of that?

7 MR. KALIL: Object to form. You can
8 answer, if you are able.

9 A Ask me again.

10 Q With respect to Exhibit 6, you indicated
11 that you attached to the decision of the Montegari case
12 that found him not guilty of the thruway stop, but
13 guilty of speeding; correct?

14 A Could I see that again?

15 Q Yeah. It's the first sentence.

16 A Yes.

17 Q Okay. So my question is, why are you
18 sending the Montegari decision to Mr. Annucci?

19 A Because under Civil Service Law Section
20 75, the commissioner makes the final determination of
21 accepting the recommendation of the hearing officer
22 modifying and/or overturning.

23 Q Okay. And did he make independent
24 decisions with respect to those factors?

25 A He made the final determination.

1 Q Did he make independent determinations
2 with respect to those factors?

3 A I made a recommendation, along with
4 others, to the commissioner, and he made a final
5 determination.

6 Q Did he make an independent determination
7 or did he rely on your recommendation?

8 A You would have to ask him.

9 Q I did. I am asking you.

10 A I don't know.

11 Q Okay. May I have that? Did you make a
12 recommendation to Mr. Annucci that he suggested that he
13 accept the decision to the extent that Mr. Montegari be
14 reinstated to a correction captain position at a
15 facility and reprimanded for speeding?

16 MR. KALIL: Can you let him see that
17 exhibit, please?

18 MS. BOSMAN: Sure. I don't have a
19 copy. Sorry.

20 A What was the question, ma'am?

21 MS. BOSMAN: Can you read back the
22 question?

23 THE REPORTER: "Q Did you make a
24 recommendation to Mr. Annucci that he
25 suggested that he accept the decision to

1 the extent that Mr. Montegari be
2 reinstated to a correction captain
3 position at a facility and reprimanded
4 for speeding?"

5 A That's accurate based on the exhibit.

6 Q Why did you make that recommendation?

7 A Prior to -- what part of the
8 recommendation?

9 Q Any part of it. Why did you make that
10 recommendation to Annucci?

11 A I recommended that he accept the
12 arbiter's determination and reinstate him to his civil
13 service position, which is the capacity he served in the
14 DOCCS Inspector General's Office at a facility, as well
15 as reprimanding him for speeding based on the
16 determination.

17 Q You wanted him reinstated to the OSI
18 office?

19 A No. To a correction captain.

20 Q Why? Why didn't you want him to get his
21 job back?

22 A He was a correction captain.

23 Q That's not my question. My question was,
24 why not reinstate him to the position, in the inspector,
25 the OSI office?

1 MR. KALIL: The witness is
2 explaining.

3 A Prior to this going to arbitration and
4 Mr. Montegari being suspended, I was informed that he
5 resigned from his position at OSI.

6 Q Who told you that?

7 A Deputy Commissioner Steve Maher.

8 Q And what did he tell you about that?

9 A He informed me that Mr. Montegari
10 resigned his position from OSI and wanted to return to
11 the field.

12 Q When?

13 A I don't know the specific date.

14 Q Before or after the arbitration?

15 A Prior.

16 Q Before or after the charges were served
17 on him?

18 A Prior.

19 Q Did you get a written document?

20 A I recall Steve Maher telling me.

21 Q Okay. You never saw a written document
22 that Mr. Montegari resigned his position; correct?

23 A Not that I recall.

24 Q Did you speak to Mr. Montegari about
25 that?

1 A About resigning, no.

2 Q Yeah. Why not?

3 A He had a conversation with the deputy
4 commissioner and chief of investigations. I would have
5 had no reason to discuss it with Mr. Montegari. That
6 was his supervisor.

7 Q Did you have a cordial relationship with
8 Mr. Montegari at the time?

9 A I would say so.

10 Q Were you able to speak with him
11 informally as well as formally?

12 A I don't understand the question.

13 Q Were you able to say "hi," as you passed
14 in the hall or drank a cup of coffee with him as well as
15 call him into your office and speak to him about
16 something professional?

17 A I would say "hi," in the office; not the
18 coffee.

19 Q Okay. Is there any reason why you
20 couldn't have a discussion with Mr. Montegari about your
21 recommendations to Mr. Annucci?

22 A Because the commissioner makes the final
23 determination. This was the recommendation after
24 conferring with others to the commissioner and it was
25 subject to his final determination.

1 Q I know that. My question is, why didn't
2 you discuss it with Mr. Montegari?

3 A Because I was talking to the commissioner
4 who would make the final determination.

5 Q Pardon?

6 A I wouldn't talk to Mr. Montegari about
7 the commissioner's determination to accept, modify or to
8 not accept the arbiter's determination.

9 Q No. But you made a recommendation. So
10 before you make the recommendation, you want to be fully
11 informed; correct?

12 A I was so informed.

13 Q You were not fully informed; were you?

14 MR. KALIL: Objection. Form.

15 A I believe I was.

16 Q You believe that Mr. Montegari resigned
17 his position?

18 A Yes.

19 Q Based upon what Mr. Maher told you?

20 A Yes.

21 Q Anything else?

22 A Yes. Deputy Commissioner Joe Bellnier
23 had also informed me that Mr. Montegari had contacted
24 facility operations about returning to a facility.

25 Q When?

1 A I don't have the specific date.

2 Q Do you have a record of that

3 conversation?

4 A No.

5 Q Do you have any document that was

6 contemporaneous to that conversation?

7 A Not that I recall. Not that I can

8 identify.

9 MS. BOSMAN: May I see Exhibit 6,

10 please.

11 Q How many people have been reprimanded for

12 speeding during the time that you have held your

13 position?

14 A I don't know.

15 Q How many times in the past 25 years are

16 you aware of any individual who was reprimanded for

17 speeding?

18 A I don't know.

19 Q Do you recall any instance in which a

20 reprimand from the commissioner for speeding was issued?

21 A I don't know.

22 Q Do you know of any instance in which

23 anybody, anybody has reprimanded anyone for speeding?

24 A I don't know.

25 Q Do you know of any instances in which

1 employees were arrested and charged with speeding?

2 A Yes.

3 Q And were they reprimanded after they were
4 arrested and charged for speeding?

5 A No. They were fired.

6 Q They were fired for being arrested and
7 charged with speeding?

8 A Oh, I'm sorry. I didn't understand your
9 question. Not for speeding.

10 Q Well, that's what I'm talking about, for
11 speeding.

12 A Yeah. I apologize. Not for speeding.

13 Q Who was fired?

14 A I was thinking about someone that was
15 involved in pulling someone over.

16 Q I'm sorry. Somebody that was involved in
17 what?

18 A Making a traffic stop.

19 Q Who made a traffic stop?

20 A It was another employee of the agency.

21 Q Who?

22 A I don't remember now.

23 Q You don't remember who it was?

24 A I don't know.

25 MS. BOSMAN: We are asking for any

1 documents of any other individual at the
2 Department of Corrections who is alleged
3 to have pulled anybody over at any time,
4 as well as any records of any speeding
5 reprimands by any individual arrested or
6 not.

7 MR. KALIL: I'm sure you will put it
8 in writing; right?

9 MS. BOSMAN: Yeah.

10 EXAMINATION BY MS. BOSMAN:

11 Q So it says, "If you agree, I will consult
12 DC Bellnier as to what facility to return him to and
13 have John draft the notice to the employee."

14 Who is John?

15 A John Shipley.

16 Q And DC Bellnier?

17 A Bellnier.

18 Q Why would he make a decision about what
19 facility to return him to?

20 A He was the deputy commissioner for
21 correctional facilities and he oversaw all correction
22 captains across the state.

23 Q Did he have a personal relationship with
24 Mr. Montegari?

25 A I don't know.

1 Q Did you have a conversation with
2 Mr. Bellnier before you drafted this e-mail to
3 Annucci --

4 A Not that I recall.

5 Q -- about Mr. Montegari?

6 A Not that I recall.

7 Q Why did you withhold his 2 percent pay
8 increase?

9 A As a result of the notice of charges that
10 were issued against him.

11 Q Really? Why would you do that?

12 A I've done that whenever there's been
13 notice of charges against an MC employee.

14 Q Because there was a notice of charges
15 that he was found not guilty of, you withheld the
16 2 percent pay raise?

17 MR. KALIL: Objection. Form. He
18 didn't withhold it.

19 MS. BOSMAN: It's a form objection.
20 That's it. You can't coach him.

21 MR. KALIL: Well, phrase your
22 questions properly.

23 MS. BOSMAN: I do. You could object
24 to the form. That's all you have to do
25 is say "form."

1 MR. KALIL: Okay.

2 A What was your question, ma'am?

3 MS. BOSMAN: Would you read back the
4 question.

5 THE REPORTER: "Q Because there
6 was a notice of charges that he was found
7 not guilty of, you withheld the 2 percent
8 pay raise?"

9 A The budget bulletin regarding MC raises
10 provides broad discretion on the agency to recommend the
11 withholding.

12 Q And it's your testimony here today that
13 you did that because of the charges that were made
14 against him?

15 MR. KALIL: Objection. Form.

16 A That was my recommendation as a result of
17 the charges. That's my recollection.

18 Q Did you ever draft any documents for
19 signature by Mr. Annucci?

20 MR. KALIL: In this case?

21 MS. BOSMAN: That's not what I asked
22 him.

23 MR. KALIL: No. Are you saying in
24 general or just in this case?

25 MS. BOSMAN: I'm asking the

1 question.

2 Q Do you understand the question?

3 A No.

4 MS. BOSMAN: Okay. Could you read
5 back the question, please.

6 THE REPORTER: "Q Did you ever
7 draft any documents for signature by
8 Mr. Annucci?"

9 A Yes.

10 Q What documents have you drafted for his
11 signature?

12 A I don't recall.

13 Q Did you have a secretary?

14 A Yes.

15 Q Did your secretary draft the documents
16 for you to provide to Mr. Annucci?

17 A Occasionally.

18 Q What documents would you draft for
19 Mr. Annucci?

20 A Responses to increase from a host of
21 individuals and/or incarcerated individuals.

22 Q If you take a look at Exhibit 8, is that
23 a document that you drafted for Mr. Annucci at his
24 request?

25 A No.

1 Q Is this one that you drafted because he
2 told you to draft it?

3 A Yes.

4 Q And what is Exhibit 8?

5 A It's a letter that I signed dated
6 November 18, 2015, to a Mr. Samuel C. Breslin, Esq.

7 Q And who is Mr. Breslin?

8 A I don't know.

9 Q Pardon?

10 A I don't know.

11 Q You don't know?

12 A No.

13 Q Do you want to review the document, see
14 if you can recall who Mr. Breslin was?

15 A He appears to be a lawyer from the
16 Breslin Law Group.

17 Q Why did you draft Exhibit 8 to him?

18 A He had sent a letter dated October 29,
19 2015, to the commissioner regarding Correction Captain
20 Alfred Montegari.

21 Q May I have the exhibit, please?

22 A Sure.

23 Q What did you do? What documents did you
24 review in order to respond to Mr. Breslin's
25 correspondence?

1 A Could I see it again?

2 Q Sure.

3 A I don't recall specifically what I
4 reviewed, but after reviewing the letter, I cite the
5 hearing officer's determination.

6 Q What is the date of that letter again?

7 A November 18, 2015.

8 Q Did you draft the letter of reprimand?

9 A No. Not that I recall.

10 Q You indicate in your letter to
11 Mr. Breslin that Mr. Montegari offered his resignation
12 from OSI prior to his suspension from duty. Do you see
13 that?

14 A I do.

15 Q What made you determine that he had
16 offered his resignation prior to his suspension?

17 A A discussion with Chief Maher.

18 Q And did you just, like, carry that around
19 in your head or did you have a note somewhere from
20 Mr. Maher that said that he offered his resignation
21 prior to his suspension?

22 A I don't recall.

23 Q Who accepted his resignation?

24 A According to the letter, the chief of
25 investigations.

1 Q Who was the chief of investigations that
2 accepted his resignation?

3 A Steve Maher.

4 Q And you are saying that in furtherance of
5 his desire to leave his assignment in the Office of
6 Special Investigations, Captain Montegari sought
7 assignment within central office in the facility
8 operations division. Do you see that?

9 A I see it.

10 Q Was that before or after his suspension?

11 A My recollection is that is prior to,
12 which is what I testified to here today.

13 Q So at the same time that he offered his
14 resignation, Maher accepts his resignation, he requests
15 that he be reassigned to central office facility
16 operations division. Is that your understanding?

17 A No.

18 Q What happened and in what sequence?

19 A He inquired, as stated in the letter, he
20 sought assignment by the central office of facility
21 operations division. They are responsible under the
22 direction of Deputy Commissioner Bellnier for making
23 captain reassignments and promotions.

24 Q So Mr. Bellnier would have had to be
25 aware that he had resigned his position at OSI and

1 requested reassignment to the facility operations
2 division; correct?

3 MR. KALIL: Objection. Form.

4 A I don't know what Mr. Bellnier was aware
5 of.

6 Q Well, otherwise, how would he seek
7 assignment to the facility operations division if it
8 wasn't through Bellnier?

9 A It would have been through Mr. Bellnier
10 or the facility operations office, but I don't know to
11 the extent of what Bellnier knew in terms of his
12 resignation. But I was informed by Mr. Bellnier that he
13 had reached out to that office for reassignment back to
14 the field.

15 Q When were you advised of that?

16 A I don't know the date.

17 Q Was it before or after the arbitration?

18 A Prior.

19 Q Was it before or after his suspension?

20 A I believe it was prior.

21 Q Okay. So now it says, "Reinstating
22 Mr. Montegari to his civil service position as captain
23 was in line with Ms. Gelerneter's recommendation";
24 correct?

25 A That's what it says.

1 Q Okay. When you say "was in line," why
2 are you making that distinction, "was in line"?

3 A Because throughout Mr. Montegari's
4 employment with OSI, he was employed as a correction
5 captain with OSI.

6 Q Right. But we are talking about it being
7 in line with the arbitrator's recommendation.

8 A Right. That's what I just responded to.

9 Q So you are saying the arbitrator didn't
10 say reinstate him to his position?

11 A Yes. Which he was a correction captain
12 at the time.

13 Q Because he had resigned his position at
14 OSI?

15 A He was even a correction captain at OSI.

16 Q But that's not what I'm asking. What I'm
17 asking is, he had resigned his position at OSI --

18 A Correct.

19 Q -- according to Maher.

20 A Correct.

21 Q And it asked for this reassignment prior
22 to his suspension.

23 A Correct.

24 Q And then the arbitrator says, restore him
25 to his position.

1 A Correct.

2 Q And you are saying, well, he was a
3 captain anyway, so we just reassigned him back to the
4 captain position.

5 A Because he had resigned.

6 Q Because he had resigned?

7 A Yep.

8 Q I see. So your understanding and belief
9 was that -- is that he resigned; yes?

10 A Yes. Correct.

11 Q Did you see him at work at all between,
12 let's see, April of 2015 and October of 2015?

13 A I don't know specifically. You would
14 have to give me more information about if I saw him. I
15 don't remember those dates.

16 Q Where was his office compared to your
17 office?

18 A If we were still in Building 2, I was on
19 the second floor and OSI's offices were located on the
20 first floor, but OSI also has offices around the state
21 as well.

22 Q Right. So did you see Mr. Montegari
23 between April or May of 2015 and November of 2015 in
24 your building where you worked and where he used to
25 work?

1 A I don't know specifically during that
2 time frame. I have seen Mr. Montegari during this time
3 working for the DOCCS Inspector General, but I can't
4 speak specifically towards those dates.

5 Q What was your understanding of where he
6 was working between April and May of 2015 and October of
7 2015?

8 A Again, you have to give me more context
9 of dates. I mean, you are talking about years ago.

10 Q Right. He's got to have a job; right?
11 He's got a job. He's got a desk, got an office, got a
12 job; right?

13 A But I am not familiar when Mr. Montegari
14 left the correction facility to come to the Inspector
15 General's Office to work and when the dates --

16 Q I am not talking about when he went to
17 the OSI. I'm talking about when he left. You are
18 saying he resigned; Maher told you he resigned.

19 A Correct.

20 Q He left his position at OSI --

21 A Yep.

22 Q -- before he was suspended. And that was
23 in May of 2015. So my question is, where was
24 Mr. Montegari between the time that he was suspended in
25 October of 2015 when you decided that he should be

1 reinstated to a captain position to some other facility?

2 MR. KALIL: Objection. Form.

3 A That was a lot of information. You got
4 to say it again or have it read back.

5 MS. BOSMAN: Okay. You can read it
6 back.

7 THE WITNESS: Thank you.

8 (Whereupon the reporter read back the
9 requested portion of testimony.)

10 A Prior to his suspension, he was still
11 associated with the Inspector General's Office waiting
12 on an assignment from facility operations, is my
13 assumption.

14 Q So was he suspended that entire time that
15 he went through the arbitration?

16 A Once he was issued the notice of charges,
17 I recall he was suspended from duty and then restored to
18 the payroll but not allowed in the workplace.

19 Q What workplace?

20 A Any workplace.

21 Q So it didn't matter whether he resigned
22 and requested reassignment, he wouldn't have been
23 reassigned anyway. Is that your testimony?

24 A My testimony was that once the notice of
25 charges were issued, he was suspended from duty and at

1 that point he would not be allowed on facility grounds
2 and/or in central office.

3 Q So he wasn't reassigned because he was
4 suspended?

5 A During the period of suspension he would
6 not have been reassigned.

7 Q Okay. Even if he made a request for
8 reassignment prior to suspension?

9 A He could have been reassigned prior to,
10 but once the suspension took place with the notice of
11 charges, I'm not aware that that would happen at that
12 junction.

13 Q Are you aware of any information that
14 indicates that Mr. Montegari was reassigned prior to his
15 suspension?

16 A Not that I'm aware.

17 Q Are you aware of any application, any
18 letter, any correspondence that Mr. Montegari signed
19 requesting reassignment prior to his suspension?

20 A Not that I'm aware.

21 Q How about after his suspension?

22 A Not that I'm aware of. Only -- not that
23 I'm aware of.

24 Q Are you aware of any document by his
25 attorney that requested he be reassigned?

1 A Be reassigned where?

2 Q Pardon?

3 A Be reassigned where?

4 Q Anywhere. Reassigned anywhere.

5 A I don't recall.

6 Q Didn't the arbitrator's decision say to
7 put Mr. Montegari back in OSI sex crimes unit?

8 A I would have to review the arbiter's
9 decision specifically.

10 Q Okay. I think I have that for you.
11 Exhibit 4.

12 A Is there a specific section I am looking
13 at or read the entire document?

14 Q I can point it out to you, if you want to
15 hand it back to me. I don't have a copy. I am
16 referring to page 27 of Exhibit 4, third paragraph. If
17 you could read that into the record, I would appreciate
18 it. Thank you.

19 A Third paragraph?

20 Q Yeah.

21 A "I also recommend that Mr. Montegari be
22 reinstated to his prior position as deputy chief at OSI
23 and retain the civil service title of captain.
24 Mr. Montegari should also receive any backpay owed as a
25 result of any period in which he was suspended without

1 pay, as permitted by CSL 75 Sub 3."

2 Q Okay. Am I correct that she recommended
3 that he be reinstated to his position at OSI?

4 A Yes.

5 Q Did you inform Mr. Annucci of that fact?

6 A Could I see the e-mail correspondence
7 back to Mr. Annucci?

8 Q Let the record reflect the witness is
9 looking at Exhibit 6 -- or is that 4? Yeah, that's 6.

10 A I provided the commissioner with a full
11 copy of the decision in my e-mail correspondence as
12 outlined in Exhibit 6.

13 Q Right. But you didn't tell him
14 specifically that the arbitrator had recommended he be
15 reinstated to his position at OSI; did you?

16 A Not specifically.

17 Q Mr. Annucci gets a lot of paper; doesn't
18 he?

19 A You would have to ask Mr. Annucci.

20 Q Well, you have worked with him for a long
21 time; haven't you?

22 A I have.

23 Q Did he read the decision from the
24 arbitrator?

25 MR. KALIL: Form.

25 MR. KALIL: Objection. Form.

1 A I recall that they substantiated that
2 they found that Mr. Montegari had pulled over a driver
3 on the thruway and that he was driving at high rates of
4 speed.

5 Q But there was not sufficient evidence to
6 show that he had pulled anyone over; correct?

7 MR. KALIL: Objection. Form.

8 Q Do you understand the question?

9 A Can you say it again?

10 MS. BOSMAN: Could you repeat the
11 question.

12 THE REPORTER: "Q But there was
13 not sufficient evidence to show that he
14 had pulled anyone over; correct?"

15 A I don't know that to be the case. I
16 don't know what the arbiter determined other than --

17 Q So you didn't read the report, either?

18 MR. KALIL: Objection. Form.

19 A Which report?

20 Q By the arbitrator. The findings of
21 arbitrator.

22 A I read them. I believe I recall reading
23 them.

24 Q Okay. And am I correct that there was
25 not any evidence that he pulled anyone over?

1 MR. KALIL: Objection to form.

2 That's a mischaracterization of the
3 arbitrator's decision.

4 MS. BOSMAN: Don't do that again.
5 You can object to form. If you want to
6 coach him, take him outside. You could
7 give him all the answers you want, C.J.

8 MR. KALIL: I'm not trying to give
9 him any answers.

10 MS. BOSMAN: Do not do it here on
11 the record.

12 MR. KALIL: No. Don't
13 mischaracterize the decision.

14 MS. BOSMAN: Then take him outside
15 if you want to coach him. You can object
16 to form. That's it. Don't object to
17 anything else. Form. Period.

18 EXAMINATION BY MS. BOSMAN:

19 Q Was there any evidence that he had pulled
20 anyone over?

21 A As I previously testified, I don't --
22 that's not my understanding that there was insufficient
23 evidence.

24 Q Pardon?

25 A It was not my understanding from the

1 decision that there was insufficient evidence.

2 Q What is your understanding from the
3 decision?

4 A She found him not guilty. But whether
5 there was evidence that supported that or not, that, I
6 can't testify to.

7 Q Really? Okay. So let's look at the
8 report by the arbitrator, Exhibit 4. Take another look
9 at that. You believe that he pulled somebody over as
10 you sit here today?

11 A I do.

12 Q Really? Why? What do you base that on?

13 A It's my opinion.

14 Q Based on what?

15 A It's my belief that I base it on knowing
16 that Mr. Montegari is a police officer in addition to
17 his duties with DOCCS as a peace officer. And I believe
18 that he acted and intertwined with the responsibilities
19 from each of his positions.

20 Q Why? Why would you believe that? You
21 believe that he is guilty because he is a police
22 officer?

23 A No. As a result of the --

24 MR. KALIL: Form.

25 A -- Office of Special Investigations

1 substantiating the allegations.

2 Q Based on what? Substantiating how?

3 A Through their investigation.

4 Q What part of their investigation

5 substantiated that he had stopped anyone?

6 A Again, I can't speak specifically to
7 their investigation other than it was substantiated.

8 Q Because you haven't reviewed any
9 documents; correct?

10 A That's not what I said.

11 Q You said you didn't review the
12 investigation.

13 A I said I did not review the entire case
14 file of the investigation.

15 Q Right. So did you review any part of the
16 case file of the investigation that led you to believe
17 that there was evidence that he had pulled somebody
18 over?

19 A I had been briefed by the deputy
20 commissioner and chief --

21 Q Is that a "No"?

22 A -- and others. Excuse me?

23 Q Is that a "No"?

24 A I don't recall if there were portions. I
25 may have reviewed portions thereof.

1 Q Okay. What portions did you review that
2 supported the conclusion that you have, sitting here
3 today, that he pulled someone over?

4 A Again, I can't specifically cite what
5 document I may or may not have reviewed or if it was
6 through verbal briefings from the deputy commissioner.

7 Q Okay. So it might have been through
8 hearsay through other individuals; correct?

9 A Possibly.

10 Q And those individuals would be Mr. Maher
11 and --

12 A The deputy.

13 Q Mr. Miller? Mr. Maher and Mr. Miller?

14 A I believe it through Mr. Maher.

15 Q Okay. So Mr. Maher told you about the
16 investigation and you believe that Mr. Maher had some
17 valid basis to make those conclusions?

18 A Yes.

19 Q And you believe that the arbitrator was
20 snowed by Mr. Montegari and his attorney?

21 MR. KALIL: Objection. Form. What
22 do you mean by "snowed"?

23 Q Do you understand what I mean by
24 "snowed"?

25 A No.

1 Q You don't know what the term "snow"
2 means, "snowed"?

3 A Snowed?

4 Q Yeah.

5 A In the form of an arbiter, no.

6 Q Yeah. Tricked, deceived, led astray,
7 snowed.

8 A I don't know that I would characterize it
9 as "snowed."

10 Q Okay. So you think that the arbitrator
11 was not capable of making an accurate decision?

12 MR. KALIL: Objection. Form.

13 A I am not going to characterize whether
14 the arbiter's decision that she came to was in her
15 capabilities.

16 Q Well, did the Department of Corrections
17 have an opportunity to present evidence?

18 A I believe so.

19 Q And Mr. Montegari had an opportunity to
20 present evidence?

21 A I believe so.

22 Q And did you agree that the arbitrator was
23 independent, neutral?

24 A I believe so.

25 Q So what basis do you have to determine or

1 believe that the arbitrator was wrong and that Mr. Maher
2 was right?

3 A Again, I told you my opinion. It was
4 based on my opinion and the findings of the
5 substantiated case by the Office of Special
6 Investigations.

7 Q Which findings?

8 A That substantiated the allegations that
9 resulted in the notice of charges against Mr. Montegari.

10 Q And what were those?

11 A I would have to see specifically the
12 notice of charges, but generally about pulling somebody
13 over on the New York State Thruway and driving at
14 excessive speeds.

15 Q Okay. So did you know that the
16 individual that alleged that he had pulled him over was
17 on a different portion of the thruway at the time
18 Mr. Montegari was in Auburn?

19 A No.

20 Q Did you know that they determined that
21 they weren't on the thruway at the same time?

22 A No.

23 Q Did you read the arbitrator's decision?

24 A Again, I believe I generally recall
25 reading portions thereof. I don't know if I have read

1 it in its entirety.

2 Q Okay. She says on page 18, "First, the
3 photo array identification of Mr. Montegari, which is
4 the only piece of evidence that clearly linked
5 Mr. Montegari with the vehicle stop was not conclusive.
6 At the time of Mr. Famelette's identification, DOCCS
7 understandably took steps to rein in a potentially rogue
8 investigator. Management was not aware at that time of
9 all the evidence that was produced at the hearing,
10 including detailed cell phone records for Mr. Montegari
11 that provided more details about his location at various
12 times during the morning of March 6th," referring to
13 Respondent's Exhibit 17, "nor of some of the
14 inconsistencies in gaps in Mr. Famelette's testimony."

15 Did you read that portion of her
16 decision?

17 A I don't recall.

18 Q Do you have any evidence, as you sit here
19 today, that that's inaccurate, that conclusion that she
20 came to?

21 A I do not.

22 Q Okay. So how about the finding that she
23 made that Mr. Famelette's memory and observations were
24 faulty or hazy on many other issues, making his
25 identification even less reliable?

1 A What's the question?

2 Q Did you read that portion of her
3 decision?

4 A Again, I don't recall.

5 Q Do you have any basis to credit
6 Mr. Famelette's memory or observations with regard to
7 Mr. Montegari?

8 A Just through the substantiated
9 allegations from the Office of Special Investigations.

10 Q You keep saying "substantiated." How are
11 they substantiated?

12 A They substantiated their allegations
13 during the course of their investigation.

14 Q My question was how? How are they
15 substantiated?

16 A I wasn't part of the investigation, so
17 I'm not sure.

18 Q So you are doing this in a conclusory
19 fashion? You are saying substantiated --

20 MR. KALIL: Objection. Form.

21 Q You are saying substantiated based upon
22 what Maher told you?

23 A No, not based on what Maher told me.
24 Based on the OSI investigation.

25 Q But you didn't read the report, so where

1 are you getting the information from?

2 A Again, I said that I did not read the
3 entire file that I recollect, but that there would be
4 portions that I may have read.

5 Q There were portions you may have read?

6 A Sure.

7 Q Which portions?

8 A It could have been the case summary, but
9 not the entire file.

10 Q Okay. And that was what you base your
11 opinion, as you sit here today, that Mr. Montegari
12 stopped someone on the thruway?

13 A Yes.

14 Q Did you recommend him for a position in
15 the Department of Corrections?

16 A Did I recommend him for a --

17 Q A position.

18 A I did not recommend him.

19 Q Or any position.

20 A I don't know that I -- I don't know that
21 "recommend" is the word I would choose.

22 Q Well, what word would you choose?

23 A I supported him for positions. Supported
24 his promotion and opportunities.

25 Q What is his current position?

1 A He is a deputy superintendent for
2 security and the acting superintendent at Mohawk
3 Correctional Facility.

4 Q Did you support that position?

5 A Yes.

6 Q And why do you support that position for
7 Mr. Montegari?

8 A I think that Al has performed inside the
9 confines of a correctional facility and that one
10 aberration shouldn't be something that stops people from
11 advancing in their career.

12 Q One aberration being what?

13 A The notice of charges.

14 Q So you consider the notice of charges as
15 an aberration?

16 A Well, it was discipline. One blemish, if
17 you will. A disciplinary record that's within his
18 personnel file.

19 Q Doesn't it go much farther than that,
20 Mr. Martuscello?

21 A I don't understand your question.

22 Q You are aware that Mr. Montegari denies
23 the allegations; correct?

24 A That's my understanding.

25 Q And you are aware that he denied those

1 allegations under oath; correct?

2 A I wasn't at the hearing, so...

3 Q So you are not aware that he denied those
4 allegations under oath?

5 A No.

6 Q Okay. So let's assume that he denied
7 those allegations under oath.

8 A Okay.

9 Q Does that make him a liar?

10 MR. KALIL: Objection. Form.

11 A I don't know what it makes him.

12 Q Do you believe that Mr. Montegari lied
13 when he said he didn't stop anybody?

14 MR. KALIL: Objection. Form.

15 A I believe that Mr. Montegari, as I
16 previously testified in my opinion, that he pulled
17 someone over.

18 Q Do you believe he lied, is my question?

19 A I believe he may have.

20 Q And you can recommend someone for an
21 acting superintendent position who has lied under oath.
22 Is that your testimony?

23 MR. KALIL: Objection. Form.

24 A That is not my testimony.

25 Q Okay. Let's see. Were you aware that

1 Mr. Miller had gone to see Mr. Famelette at his place of
2 work?

3 A No. Not that I recall.

4 Q Didn't you go with him?

5 A No.

6 Q Do you know whether or not anyone
7 authorized Mr. Miller or anyone to surround
8 Mr. Famelette's place of work?

9 A I'm not aware.

10 Q Were you advised that he had not
11 positively identified Mr. Montegari on the photographic
12 lineup?

13 A No, I'm not aware. I don't recall that.

14 Q Were you aware that Mr. Famelette was a
15 convicted felon?

16 A I don't know that I knew that. I may
17 have known that generally.

18 Q Were you aware that Mr. Famelette was
19 sentenced to a term of five years probation and was
20 still serving his sentence at the time of the hearing?

21 A I don't recall that.

22 Q It's in the decision from the arbitrator.

23 A Okay.

24 Q Wouldn't that be an important factor for
25 you to consider during your investigation?

1 A No.

2 MR. KALIL: Objection. Form. It
3 wasn't his investigation.

4 THE WITNESS: Yeah, I wasn't --

5 Q Well, wait a minute. You are part of the
6 Department of Correctional Services; right?

7 A No.

8 Q You're not?

9 A It's Corrections and Community
10 Supervision, but --

11 Q Well, DOCCS. You are part of DOCCS;
12 right?

13 A Yeah. But I did not conduct an
14 investigation --

15 Q Well, but you are the director of HR;
16 right?

17 A No, I was not.

18 Q What were you?

19 A I was the deputy commissioner for
20 administration.

21 Q Okay. So do you have any responsibility
22 for the accuracy of investigations concerning employees
23 under your supervision?

24 A The investigations are handled by the
25 Office of DOCCS and Inspector General and now the Office

1 of Special Investigations.

2 Q That wasn't my question.

3 MS. BOSMAN: Could you read back the
4 question, please.

5 THE REPORTER: "Q Okay. So do
6 you have any responsibility for the
7 accuracy of investigations concerning
8 employees under your supervision?"

9 A I don't directly supervise
10 investigations.

11 Q Do you have any responsibility for the
12 accuracy of investigations for employees under your
13 supervision?

14 A I don't have responsibilities for
15 investigations.

16 Q Define in your own words what
17 "substantiated" means.

18 A That OSI found that there was enough
19 investigations to believe that the allegations occurred.

20 MS. BOSMAN: Could you read that
21 back? I didn't hear it.

22 (Whereupon the reporter read back the
23 requested portion of testimony.)

24 Q That's your definition of substantiated?

25 A Yeah. That they found that there was --

1 that there was enough evidence to support the
2 allegations against the particular employee.

3 (Whereupon a brief recess was taken.)

4 Q I placed Exhibit 9 in front of you,
5 Mr. Martuscello, which, for the record, is a document
6 dated April 30th of 2015 received May 1st of 2015
7 regarding IG Case No. IAD15/0446, which I believe is
8 with regard to Mr. Montegari; correct?

9 A It appears so.

10 Q Okay. At the bottom of the first
11 section, summary of findings, third paragraph, could you
12 read that sentence, please?

13 A "Montegari denied under oath that he
14 performed a traffic stop on the thruway and that he
15 drove the OSI vehicle at speeds exceeding 75 miles an
16 hour."

17 Q Okay. So earlier, we talked about
18 whether or not Mr. Montegari denied these matters under
19 oath. Does this answer your question --

20 MR. KALIL: Objection. Form.

21 Q Does this answer your question regarding
22 that?

23 A I didn't have a question.

24 Q Does it appear that Mr. Montegari denied
25 under oath that he performed a traffic stop?

1 A That's what the report reflects.

2 Q And does the report also reflect that he
3 denied under oath that he drove the OSI vehicle at
4 speeds exceeding 75 miles per hour?

5 A That's correct.

6 Q And what is that based on?

7 A His testimony.

8 Q Yeah.

9 A According to this document.

10 Q When did he testify that he denied
11 driving the vehicle at speeds exceeding 75 miles per
12 hour?

13 A Based on that portion, I can't tell when
14 that occurred.

15 Q When was Mr. Montegari put under oath
16 prior to April 30th of 2015?

17 A According to that statement that you
18 directed my attention to, there is no date associated
19 with it.

20 Q Do you know of any instance in which
21 Mr. Montegari was placed under oath before April 30th of
22 2015?

23 A Based on this document, it appears that
24 he was placed under oath prior to this being authored,
25 but I am not familiar as to when that was.

1 Q Are you familiar with the investigative
2 procedures that are followed with respect to employees?

3 A Yes.

4 Q And are they placed under oath?

5 A When they are formally questioned.

6 Q When they are formally questioned?

7 A Correct.

8 Q They are placed under oath?

9 A Correct.

10 Q And who places them under oath?

11 A I would say OSI or the stenographer that
12 may be present for the interrogation.

13 Q So you are saying that during
14 interrogations, employees are placed under oath? Are
15 you certain of that?

16 A That's my understanding.

17 Q Really? So is this the investigative
18 report that you said you relied upon that you made a
19 finding or substantiated the allegations against
20 Mr. Montegari?

21 MR. KALIL: Objection to form.

22 A Again, that's not my testimony. I said
23 that had I reviewed any documentation, it may have been
24 the investigative report case summary or the -- or,
25 particularly, briefings by the deputy commissioner and

1 chief.

2 Q And is that report what you are looking
3 at right now?

4 A That I referenced in my previous
5 testimony? Yes.

6 Q Okay. So this is the report that you
7 reviewed; correct?

8 A No. Again, that's not my testimony that
9 I definitively reviewed it. I was briefed by
10 Deputy Chief Maher in that if I were to review any
11 files, this would have been the file that I would have
12 had access to.

13 Q Okay. Why don't you look it over and
14 tell me whether or not you have ever read it before.

15 A Yeah. I don't recall reading this
16 specifically.

17 Q And this is the investigative summary?

18 A This is the document I referred to.

19 Q Executive summary?

20 A No. Investigative summary.

21 Q Investigative summary.

22 A Yep.

23 Q Okay. On the fifth page, there is a
24 chart. Do you see that chart?

25 A I see it.

1 Q Okay. Am I correct that that chart
2 indicates that Mr. Montegari had traveled at a speed of
3 141 miles per hour?

4 A I don't see that reflected on the chart.

5 Q Okay. Let me see. Does it have the
6 speed of any of them? Total miles, average speed. Last
7 column.

8 A Okay.

9 Q 141.4 miles per hour. Do you see that?

10 A Oh, yep. I see that there now on the
11 line that starts with February 22nd.

12 Q Does that appear to be a speed that is
13 questionable to you?

14 A Questionable?

15 Q Yeah. Questionable.

16 A I don't understand the question.

17 Q Is it doubtful that Mr. Montegari was
18 traveling at 141 miles an hour on the thruway?

19 A I mean, I have no direct knowledge
20 whether he was or was not traveling at 141 miles an
21 hour.

22 Q Have you ever traveled at 141 miles an
23 hour?

24 A No.

25 Q Do you know anyone that has?

1 A Not that I know.

2 Q Did anyone that gets stopped and arrested
3 or charged with speeding, travel at speeds averaging 141
4 miles per hour?

5 MR. KALIL: Objection. Form.

6 A Again, I am not specifically aware of
7 anyone that was arrested or charged.

8 Q I thought you told me that people had
9 been reprimanded for speeding and arrested for speeding
10 before with DOCCS.

11 A No. That was not my testimony.

12 Q Oh. You don't know of anybody that's
13 been charged with speeding before?

14 A I don't. I'm not directly. I don't have
15 any recollection.

16 Q You don't have any recollection of
17 anybody that is charged or disciplined for speeding
18 before?

19 A Correct.

20 Q But you remembered somebody who pulled
21 somebody over and got terminated, fired?

22 A Correct.

23 Q But you don't remember who it was?

24 A I don't.

25 Q And you don't remember where they were

1 from or anything?

2 A It happened on Long Island, I believe.

3 Q You see that average speed of 103.5 miles
4 per hour?

5 A I do.

6 Q On February 22, 2015? I think it's '15.

7 A There is no year. But, yes, on the line,
8 February -- 22, February.

9 Q Does that surprise you that Mr. Montegari
10 would travel 103 miles an hour on the thruway, average
11 speed?

12 A The document speaks for itself. I mean,
13 I don't know that it surprises me.

14 Q Did anybody tell you this was wrong?

15 MR. KALIL: Objection. Form.

16 A No.

17 Q Nobody admitted to you that this was
18 inaccurate?

19 A No.

20 Q No? They didn't tell you that?

21 A No.

22 Q Who is Chris Martuscello?

23 A He is my brother.

24 Q Yeah. What does he do?

25 A He is -- currently?

1 Q Sure. What does he currently do?

2 A He is the director of operations for the
3 Office of Special Investigations.

4 Q And what was he doing in 2015?

5 A I believe he was the Deputy Inspector
6 General in the narcotics unit.

7 Q And what did he have to do with
8 investigating Mr. Montegari's alleged impropriety,
9 misconduct?

10 A I have no idea.

11 Q You didn't know that your brother Chris
12 went to Mr. Famelette's place of work with Mr. Miller?

13 A No.

14 Q He didn't talk to you about that?

15 A No.

16 Q Did he talk to you about Mr. Montegari at
17 all?

18 A No.

19 Q Did you know that he was involved in
20 investigating Mr. Montegari?

21 A No.

22 Q You had no idea?

23 A No.

24 Q You didn't see his name anywhere on this
25 investigation?

1 A No. Not that I recall.

2 Q If you take a look at the last page of
3 Exhibit 9, right, that conclusion there, do you see that
4 conclusion?

5 A Last paragraph?

6 Q The bottom of the page, yes. Have you
7 ever read that before?

8 A I don't recall.

9 Q Well, how about on page six? Do you
10 recall seeing this report with his picture on it before?

11 A Again, I don't recall specifically
12 reviewing this document. As I previously testified, I
13 was briefed by Deputy Chief Maher that if there was
14 anything that I would have had access to, it would have
15 been this report. But I don't recall it and it doesn't
16 jog my recollection based on reviewing the document.

17 Q Does Mr. Maher work with your brother?

18 A Mr. Maher was the deputy commissioner.

19 Q That wasn't what I asked you. I asked
20 you if he worked with your brother?

21 A He worked -- my brother worked for
22 Mr. Maher.

23 Q Okay. So he was an employee supervised
24 by Mr. Maher?

25 A Yes.

1 Q And Mr. Maher didn't tell you that your
2 brother was involved in investigating Mr. Montegari?

3 A Nope.

4 Q Do you have like a regular brother
5 relationship with your brother Chris?

6 MR. KALIL: Form.

7 A I don't know what that means.

8 Q Do you see him when you are not working?
9 Do you have family dinners together, go on vacations,
10 family reunions, pleasant with one another?

11 A Yes.

12 Q Regular brother relationship.

13 A If that's how you define it, yes.

14 Q Have you ever talked with him about work
15 before?

16 A Yes.

17 Q Okay. May I have the exhibit, please.
18 And you didn't have any discussions about Mr. Montegari
19 with your brother. Is that your testimony?

20 A That's my testimony.

21 Q And your brother never said anything to
22 you about Mr. Montegari?

23 A Not that I recall.

24 Q Is that correct?

25 A That is correct.

1 Q Okay. And what is your brother doing
2 now?

3 A He is the director of operations for the
4 Office of Special Investigations.

5 Q Don't you have a number of relatives that
6 work for the Department of Corrections?

7 A I have a few.

8 Q Who else works for the Department of
9 Corrections that's related to you?

10 A My sister works for the Department and my
11 brother.

12 Q Your brother Chris?

13 A I have another brother, too.

14 Q Oh. What's his name?

15 A Nicholas.

16 Q So what does Nicholas do?

17 A He is a trainer at the academy.

18 Q How long has he been doing that?

19 A I don't recall.

20 Q And your sister does what?

21 A My sister is the director of nursing.

22 Q How long has she done that?

23 A I don't know specific dates.

24 Q Pardon?

25 A I don't know specific dates.

1 Q I am not asking specifics.

2 A I don't know even --

3 Q Within the last two years, did she get
4 that position?

5 A No. I believe she's been in that
6 position for longer than two years.

7 Q More than 10?

8 A I don't believe more than 10.

9 Q Was she in the position in 2015?

10 A I don't -- I don't know.

11 Q Any other relatives that work for the
12 Department of Corrections?

13 A My brother-in-law works for the
14 Department.

15 Q What does he do?

16 A He is an investigator in OSI.

17 Q That's your sister's husband?

18 A Correct.

19 Q So your sister's husband works where
20 Mr. Montegari used to work?

21 A That's correct.

22 Q Anybody else related to you works for
23 DOCCS?

24 A No. Not that I'm aware of.

25 Q What about your father?

1 A He doesn't work for DOCCS.

2 Q He doesn't?

3 A No.

4 Q He never did?

5 A He did.

6 Q He did?

7 A Yes.

8 Q When did he work for DOCCS?

9 A For 45-plus years.

10 Q Until when?

11 A Approximately, four years ago.

12 Q That would have been 2018?

13 A Again, approximately. I don't recall

14 exactly when he retired.

15 Q So when Mr. Montegari was working at OSI,

16 your father was a superintendent where?

17 A Coxsackie.

18 Q How long had he been there?

19 A At Coxsackie?

20 Q Yeah.

21 A I don't know. More than two years.

22 Q More than 10 years?

23 A As the superintendent?

24 Q Yeah.

25 A No.

1 Q What was he before he was superintendent?

2 A He held a variety of titles over his
3 45-plus-year career.

4 Q What were they?

5 A Correction officer, correction sergeant,
6 correction lieutenant, correction captain, deputy
7 superintendent for security, superintendent.

8 Q Okay. And other than Cossackie, where
9 did he work?

10 A He worked at a number of facilities.

11 Q What facilities do you recall that your
12 father worked at?

13 A I know he worked at Hudson and Washington
14 and Great Meadow and Watertown. Those are the ones that
15 I know of. There may be others.

16 Q Did he ever work in the same facility as
17 Mr. Montegari?

18 A Not that I am aware.

19 Q How about your brother-in-law? Did he
20 work in the same facility as Mr. Montegari?

21 A Not that I know of.

22 Q Did your brother Chris work at any
23 facilities?

24 A Yes.

25 Q What facilities did he work at?

1 A Sing Sing and Green Haven.

2 Q Did Mr. Montegari work at the same
3 facility?

4 A At Green Haven.

5 Q Pardon?

6 A At Green Haven.

7 Q Anyone else you are related to works for
8 the Department of Corrections and Community Services,
9 Mr. Martuscello?

10 A I assume you mean community supervision;
11 right? So, no, not that I --

12 Q Community supervision, yeah. They made
13 it more complicated. It used to be DOCS, D-O-C-S. Now,
14 it's DOCCS; right?

15 A Yeah. It covers that parole piece.

16 MS. BOSMAN: Right. I'll just mark
17 this, if you don't mind, because I don't
18 seem to be able to locate it.

19 (Whereupon Exhibit 18 was marked for
20 identification, 02/22/22, LMM)

21 Q Exhibit 18, for the record, is a letter
22 dated June 19, 2015, from Mr. Martuscello to
23 Mr. Montegari. Do you recall that document?

24 A To the extent I am looking at it, I
25 recall it.

24 MR. KALIL: Sorry, A.J. I'm sorry
25 to interrupt you. Exhibit 18?

1 MS. BOSMAN: Mm-hmm.

2 MR. KALIL: As reflected in Exhibit
3 18? Okay. It says that in the -- okay.
4 Thank you. Apologies for the
5 interruption.

6 MS. BOSMAN: Okay.

7 EXAMINATION BY MS. BOSMAN:

8 Q Okay. So when was that determination
9 made to withhold the 2 percent salary increase based
10 upon unsatisfactory performance evaluations?

11 A Again, as I previously testified, it
12 wasn't specific to a documented unsatisfactory
13 performance eval. It was based on broader context as
14 allowed in the budget bulletin and clarified in a letter
15 that preceded this. And that determination, I don't
16 know the date in which it was made or the
17 recommendation, but it was a result of the budget
18 bulletin.

19 Q Clarified in a letter prior to this one?

20 A After this one.

21 Q Oh, after this one?

22 A After this one.

23 Q After this one --

24 A You provided it to me to look at the
25 exhibit earlier, in which we reviewed.

1 Q I don't know which exhibit you are
2 referring to, but you are saying that there is some
3 later document where you reflected that the reason
4 Mr. Montegari didn't get his 2 percent was based upon
5 the charges against him?

6 A I did not testify that it was specific to
7 the charges. I testified that it -- the previous
8 exhibit expanded beyond the term of art in this letter
9 to include additional language as contained in the
10 budget bulletin.

11 Q Wasn't it true that the budget bulletin
12 D-1131 stated that fiscal year -- that was effective
13 April 1, 2015 and/or fiscal year 2016 performance
14 advances and longevity payments from individual
15 employees withholding them must be based on a documented
16 record of unsatisfactory job performance or other
17 factors that an agency had deemed relevant during the
18 period of April 1, 2014 to March 31, 2015?

19 A I don't have the document in front of me.

20 Q Did you seek the recommendation or
21 approval of the director of the budget to withhold
22 Mr. Montegari's 2 percent salary increase?

23 A Yes.

24 Q Who was the director of the budget that
25 concurred that you could withhold his 2 percent salary

1 increase?

2 A I don't recall who that was. They have
3 changed a few times.

4 Q Well, who was the budget director in the
5 spring of 2015 or 2014 to 2015?

6 A Again, I don't know who was in the
7 position at the time.

8 Q Okay. We will leave a blank space for
9 you in this transcript and when you get it to review it
10 to sign it, can you look it up and determine who was the
11 person who was the director of the budget that approved
12 your recommendation that Mr. Montegari not get his
13 2 percent salary increase and just fill in the name.
14 Can you do that?

15 MS. BORDONARO: He can supply it to
16 us if he is able to get it and then we
17 will get it to you.

18 Q Can you do that? Can you look it up?

19 MR. KALIL: He will supply it to us
20 and we will provide you with it. The
21 witness isn't going to fill in blanks on
22 a transcript.

23 Q Okay. Can you look it up,
24 Mr. Martuscello? Can you research that identity of that
25 person for us?

24 MR. KALIL: No. I want it in a
25 letter; not from the transcript.

1 MS. BOSMAN: Well, what you want and
2 what you get may not be the same thing,
3 C.J.

4 MR. KALIL: Okay. Well, you might
5 not be happy with the response.

6 MS. BOSMAN: Okay. Well, that
7 wouldn't be the first time.

8 MR. KALIL: I'm sure.

9 EXAMINATION BY MS. BOSMAN:

10 Q Am I correct that your letter of June 19,
11 2015, referring to an unsatisfactory performance
12 evaluation, is not speaking of any document?

13 A Could I see it again? Yeah, that was my
14 testimony.

15 MR. KALIL: Just to clarify the
16 record, what has been marked as Exhibit
17 18 has been previously marked as
18 Plaintiff's Exhibit 3 in prior
19 depositions.

20 MS. BOSMAN: Oh. I couldn't find
21 it. I didn't know it was previously
22 marked as No. 3.

23 EXAMINATION BY MS. BOSMAN:

24 Q Is it safe to say you are currently
25 second in charge of the DOCCS department?

1 A That would be accurate.

2 Q It's also safe to say during the time of
3 dealing with Mr. Montegari's situation, you also held a
4 high-ranking position at that time?

5 A That would be accurate.

6 Q Have you ever violated vehicle and
7 traffic law while operating a state vehicle?

8 A There is a lot to V&T law, so I am not
9 familiar with all the verses of it. So I'm not sure
10 what your question specifically is.

11 Q Have you ever violated the vehicle and
12 traffic law while operating a state vehicle?

13 A Possibly.

14 Q What vehicle and traffic law have you
15 possibly violated while operating a state vehicle?

16 A I am sure that I have gone over the speed
17 limit on occasion.

18 Q Anything else?

19 A No.

20 Q How much over the speed limit have you
21 gone while operating a state vehicle?

22 A I don't know specifically.

23 Q Have you ever gone more than 15 miles an
24 hour over the speed limit while operating a state
25 vehicle?

1 A I don't recall.

2 Q Is it possible that you have gone over 15
3 miles an hour over the speed limit while operating a
4 state vehicle?

5 A Yes.

6 Q Have you ever been stopped for speeding
7 while operating a state vehicle?

8 A Not that I recall.

9 Q Have you ever been stopped for speeding
10 while operating a personal vehicle?

11 A Yes.

12 Q Have you ever received any tickets or
13 traffic infractions as a result of speeding?

14 A I don't recall. I wouldn't -- I may
15 have.

16 Q Did you report any tickets you received
17 for speeding to your employer when you worked for DOCCS?

18 A No.

19 Q Pardon?

20 A No.

21 Q If you were to produce your E-ZPass
22 records, would they show that you have exceeded the
23 speed limit in any way while operating a state vehicle?

24 A I don't know. I mean, again, I'm sure
25 that I've gone over the speed limit.

1 Q Have you reported your exceeding the
2 speed limit to your supervisor, Mr. Annucci, at any
3 time?

4 A No.

5 Q Why not?

6 A I just haven't.

7 Q Were you counseled or disciplined for any
8 matter at all at any time during the employment with the
9 Department of Corrections?

10 A No.

11 Q Have you ever had a 2 percent pay raise
12 withheld during the time that you worked for the
13 Department of Corrections?

14 A No.

15 Q Are you married?

16 A I am.

17 Q Do you have children?

18 A I do.

19 Q How old are they?

20 A They are 19 and 16.

21 Q Have you ever had your pay suspended or
22 you have been suspended during your employment with
23 DOCCS?

24 A No.

25 Q Did you ever -- were you asked to restore

1 Mr. Montegari's denied 2 percent pay raise after the
2 hearing results?

3 A Not that I recall.

4 Q Let's just, for the record, make it
5 clear. You notified Mr. Montegari he wasn't going to
6 get his 2 percent contractual pay raise; correct?

7 A That's not correct.

8 Q What did you notify him of?

9 A That he wasn't getting the 2 percent
10 salary increase, but it was not contractual.

11 Q Would that be for 2014?

12 A I would have to review the budget
13 bulletin.

14 Q It would be for the year prior; right?

15 A Again, I would have to review the budget
16 bulletin.

17 Q Okay. So you made a decision to deny him
18 that 2 percent prior to the arbitrator's decision;
19 correct?

20 A It was a recommendation to the division
21 of the budget by the agency.

22 Q No. That's not what I asked. I asked
23 you did you make the decision to withhold
24 Mr. Montegari's pay raise prior to the arbitrator's
25 decision?

1 A No.

2 Q I am showing you Exhibit 18 again. What
3 was the date of the arbitrator's decision? What does
4 Exhibit 18 say? What is the date?

5 A This isn't the arbiter's decision.

6 Q No. I know that. What is the date of
7 Exhibit 18?

8 A June 19, 2015.

9 Q That's the letter you wrote to
10 Mr. Montegari saying you are not going to get your
11 raise; right?

12 A This is notifying him that it was
13 recommended, the withholding. Not that I made a
14 determination.

15 Q They can't do it without your
16 recommendation; can they?

17 A It's a recommendation.

18 Q They can't do it without your
19 recommendation; can they?

20 MR. KALIL: Objection. Form.

21 A They can't do it without the agency's
22 recommendation.

23 Q Okay. And who makes the agency's
24 recommendation?

25 A That would have been through my office.

1 Q Okay. So I'm going to go back to that
2 question and I'm going to say it again. They can't do
3 it without your recommendation; can they?

4 A Without the agency's recommendation.

5 Q Through you; correct?

6 A It doesn't necessarily have to be through
7 me. It's the agency's recommendation.

8 Q Who does it have to be through?

9 A It could have been by the agency head.

10 Q Who?

11 A Commissioner Annucci or the director of
12 budget and finance.

13 Q Who?

14 A It's from the agency.

15 Q Who was the director of budget and
16 finance?

17 A Sandy Downey.

18 Q Did Sandy Downey make a recommendation
19 that Mr. Montegari not get his 2 percent increase?

20 A Not that I am aware of.

21 Q You were the only one that made that
22 recommendation; correct?

23 A Yeah. It was an agency recommendation.

24 Q You personally --

25 A I made it on behalf of the agency.

1 Q You personally --

2 MR. KALIL: Objection.

3 Q -- made that recommendation; correct?

4 MR. KALIL: Objection to form.

5 A It was an agency recommendation.

6 Q You personally made that recommendation
7 for the agency; correct?

8 MR. KALIL: Objection to form.

9 A It was an agency recommendation.

10 Q Do you understand my question?

11 A I do, and that's my answer.

12 Q Who did you tell to withhold the
13 2 percent?

14 A Again, I didn't tell anyone. It was an
15 agency recommendation.

16 Q Who recommended it to you?

17 A It wasn't necessarily a recommendation.
18 It was looking at people that were MC that had been
19 subject to discipline and/or demotion.

20 Q Who were they?

21 A Again, I don't know off the top of my
22 head.

23 Q We are going to make a demand for anyone
24 that was subject to demotion or discipline or charges of
25 misconduct during the time frame that we are talking

1 about Mr. Montegari. So we will go from 2014 to, what,
2 2017? Does that sound good?

3 MR. KALIL: Objection.

4 A If that's what you'd like.

5 Q Okay. So you are saying that you made
6 the recommendation on behalf of the agency or somebody
7 else in the agency made the recommendation to you on
8 behalf of the agency?

9 A Again, I didn't say that. I said it was
10 the agency's recommendation as a result of the notice of
11 charges to withhold the 2 percent.

12 Q Okay. Who at the agency made that
13 recommendation?

14 A It was transmitted to the division of the
15 budget by our budget and finance office.

16 Q Who made that recommendation to the
17 budget and finance office?

18 A Again, that had been the agency's
19 determination. I don't know that it's --

20 Q Who at the agency?

21 A I don't know that it's any one person.

22 Q Well, did you make --

23 A I would have been involved in the
24 determination.

25 Q Okay. And that's why you wrote the

1 letter, right, Exhibit 18?

2 A I wrote the letter.

3 Q Yeah. You wrote the letter and you told
4 Mr. Montegari about it.

5 A That's accurate.

6 Q Right? You didn't say that the director
7 of the budget made that decision; did you?

8 A Yes, I did.

9 Q You said that the director of the budget
10 made that decision?

11 A The director of the budget approved the
12 recommendation.

13 Q Who made the recommendation?

14 A The agency.

15 Q Who at the agency made the
16 recommendation?

17 A Again --

18 Q Why are you afraid to take responsibility
19 for that?

20 MR. KALIL: Objection.

21 Q No, I want to know. Why are you afraid
22 to take responsibility for making the recommendation
23 that he not get his 2 percent --

24 MR. KALIL: Objection to form.

25 MS. BOSMAN: You've got to let me

1 finish my question, C.J. You know we
2 will come back.

3 MR. KALIL: Certify the question.
4 He's answered it.

5 MS. BOSMAN: I am not going to put
6 up with this.

7 MR. KALIL: Certify the question.
8 He's answered it. You are badgering him.
9 Put it on the record. You're badgering
10 him.

11 EXAMINATION BY MS. BOSMAN:

12 Q I want to know why you won't take
13 responsibility for making that recommendation to the
14 budget office.

15 A Again, it was an agency recommendation.
16 It wouldn't have been mine alone.

17 Q Whose was it then?

18 A It was the agency's.

19 Q Who at the agency?

20 A It would have involved the commissioner's
21 office, my office, could have been other people
22 regarding the notice of charges --

23 Q What other people?

24 A -- in the budget and finance -- or not in
25 budget and finance, in the bureau of labor relations.

1 Q What other people?

2 A The director of labor relations.

3 Q Who was that? Use their names.

4 A John Shipley.

5 Q So John Shipley had a role in denying
6 that 2 percent?

7 MR. KALIL: Objection. Form.

8 That's not what he said.

9 A He would have been involved in
10 identifying individuals who were subject to withholding.

11 Q So when you say "subject to withholding,"
12 you don't mean tax withholding. You mean withholding of
13 2 percent increase in their pay?

14 A Yes. Recommending the withholding of the
15 2 percent.

16 Q Okay. And that gets approved by Annucci?

17 A Again, it's not one person collectively.
18 It's -- again, he would have been involved or aware, as
19 well as my office and labor relations.

20 Q He has already said the buck stops there.
21 So he makes the final decision on everything; right?
22 Yes?

23 A Okay.

24 Q Does he or -- I mean, does he or does he
25 not? You agree with that?

1 A He oversees the agency.

2 Q And the buck stops there with

3 Mr. Annucci; right?

4 A He is the commissioner.

5 Q Is that a "Yes"?

6 A I mean, I can't tell you that he makes
7 every decision in the agency.

8 Q Who else makes the decisions?

9 A There is decisions made every day.

10 Q By whom?

11 A Every employee that works for the agency.

12 Q That are not approved by Mr. Annucci?

13 A I mean, Mr. Annucci can't be involved
14 personally in every determination across the state.

15 Q So he relies on what?

16 A Staff to follow procedures.

17 Q And their recommendations; correct?

18 A I can't speak to what he relies on.

19 Q You can't?

20 A Not in terms of recommendations.

21 Q Have you ever advised anyone how to
22 submit something to Mr. Annucci for his approval?

23 A Not that I recall.

24 Q Okay. Did it concern you that

25 Mr. Montegari had children to support at the time that

1 you withheld his 2 percent on June 19th of 2015?

2 MR. KALIL: Objection. Form.

3 A Again, I did not make the recommendation.

4 Q I didn't ask you if you made the
5 recommendation. I asked you if you had a concern that
6 Mr. Montegari had children to support at the time that
7 the 2 percent was withheld?

8 MR. KALIL: That's not what your
9 question was.

10 A Based on that question, again, that's not
11 something that I would have or the agency would have
12 considered in withholding 2 percent.

13 Q Okay. So in June, that was before the
14 report and recommendation came from the arbitrator;
15 correct?

16 A I would have to look at the arbitration
17 decision.

18 Q You don't know whether or not you
19 recommended --

20 A I don't know the date of the arbitration
21 decision.

22 Q You don't know whether or not the
23 2 percent was withheld from Mr. Montegari before the
24 arbitration?

25 A I believe that it was, but I can't

1 specifically without knowing the date based on the way
2 you phrased your question.

3 Q Okay. So when the arbitrator came back
4 and said he is not guilty of what you said he was guilty
5 of --

6 MR. KALIL: Objection to form.

7 Q -- why didn't you reinstate the 2 percent
8 or recommend or have some group of the agency recommend
9 that the 2 percent be reinstated?

10 MR. KALIL: Objection. Form.

11 A Again, to your phrasing of the question
12 and what the arbitrator said, I am not agreeing to that,
13 what your statement was. However, what I will say is
14 that there is a process to grieve the withholding of the
15 2 percent, and the 2 percent was not tied to the
16 disciplinary decision by the arbiter.

17 Q Why not?

18 A Excuse me?

19 Q Why not?

20 A There is a separate and distinct process
21 to grieve the withholding of the 2 percent that's
22 outside the disciplinary arbitration process.

23 Q Or you could just sue somebody who holds
24 it against him for demanding an arbitration; right?

25 MR. KALIL: Objection. Form.

1 Q You don't have to grieve it.

2 Mr. Montegari isn't under an obligation to grieve it; is
3 he?

4 A If there is a policy and they, under the
5 governor's office of employee relations rules, that --
6 that is something that would be subject to the
7 management confidential grievance process.

8 Q Okay. So he could grieve it?

9 A Correct.

10 Q Right. But the decision by the
11 arbitrator wasn't till October; correct?

12 A According to that document, yes.

13 Q Well, that document is what?

14 A Exhibit 4, which appears to be the
15 arbiter decision.

16 Q Okay. So the arbitrator made a decision
17 in October?

18 A Correct.

19 Q And in October, the arbitrator said he is
20 not guilty; correct?

21 MR. KALIL: Objection. Form.

22 A Again, that's not what the arbiter said.

23 Q Okay. What did the arbiter say? I think
24 it's "arbitrator." I don't think it's "arbiter."

25 A Okay.

1 Q Thank you.

2 A What specific area do you want me to look
3 at?

4 Q You told me that wasn't the finding.
5 What was the finding?

6 A The arbiter recommended that the
7 commissioner dismiss all the disciplinary charges except
8 for charge seven and eight concerning speeding.

9 Q What was the finding?

10 A Again, there is no specific finding that
11 is under summary of recommendations.

12 Q You don't see any findings in that
13 report?

14 A Again, under Section 75 of the Civil
15 Service Law, the arbiter makes recommendations. If
16 there is a specific spot you want me to look at, I would
17 be glad to.

18 Q Well, you haven't read it anyway; right?

19 A That's not my testimony.

20 Q You don't remember reading it; right?

21 A That's correct.

22 Q And even after reviewing it, you don't
23 remember reading it?

24 A Again, it did not refresh my memory, but
25 I certainly understand the outcome of the determination.

1 Q Do you understand the impact of the
2 determination?

3 MR. KALIL: Objection. Form.

4 A Yeah. Mr. Montegari received a letter of
5 reprimand.

6 Q That's the only impact you think the
7 recommendation has?

8 A That's what he received in terms of
9 discipline.

10 Q Was that the only impact that the
11 recommendation has?

12 A Yeah. That's the impact.

13 Q Have you ever been accused of something
14 you didn't do?

15 A Yes.

16 Q What have you been accused of that you
17 didn't do?

18 A I don't know. I have been investigated
19 throughout my career.

20 Q What have you been accused of that you
21 didn't do?

22 A I had been investigated when I worked in
23 the correctional facility with regards to dealings with
24 incarcerated individuals. I was investigated by the
25 State Inspector General for my appointment to the

1 Director of Personnel. That's --

2 Q What were you accused of doing?

3 A I wasn't specifically accused of doing
4 anything per se, but I was investigated.

5 Q Were you ever accused of anything that
6 you didn't do?

7 A Again, if I am subject to an
8 investigation, I assume somebody made an allegation
9 against me.

10 Q What was the allegation made against you
11 that you didn't do?

12 A We don't always get to know the
13 allegations when we are asked questions.

14 Q I didn't ask you always.

15 A Again, I can't specifically recount the
16 allegations --

17 Q You can't recall anything?

18 A I do remember the State Inspector
19 General's investigation. But, again, I don't know --
20 that was about me. I don't know if it was about
21 something I did or was alleged to do.

22 Q What was the Inspector General
23 investigating about you?

24 A My appointment to the Director of
25 Personnel.

1 Q Why were they investigating that?

2 MR. KALIL: Objection. Form.

3 A You would have to ask them.

4 Q You don't know?

5 A I understand that they may have received
6 an allegation, but what specifically the allegation was,
7 I am not familiar.

8 Q Do you know generally what the allegation
9 was?

10 A It was about my appointment to the
11 Director of Personnel.

12 Q What was the allegation about your
13 appointment to the Director of Personnel?

14 A I don't even know how to characterize it.
15 I mean, it wasn't my eligibility. It was whether a
16 civil service rule was followed in making the
17 appointment.

18 Q Anything else?

19 A Not that I recall.

20 Q Okay. Are you aware that the pension
21 system still has not restored Mr. Montegari to the month
22 of his suspension time?

23 A No, I am not.

24 Q Why not?

25 A I don't oversee the pension system.

1 Q Do you feel any obligation to make
2 Mr. Montegari whole in light of the finding of the
3 arbitrator?

4 MR. KALIL: Objection. Form.

5 A I don't understand the question.

6 Q What part of the question don't you
7 understand?

8 A What making him whole -- what you mean by
9 making him whole.

10 Q Well, do you believe that Mr. Montegari
11 should be compensated for being falsely accused of doing
12 something wrong?

13 MR. KALIL: Objection. Form.

14 A Again, there was -- I don't know that he
15 was falsely accused. I know that there was an internal
16 investigation that was independently conducted by
17 outside that substantiated it which resulted in the
18 charges and the arbiter made a ruling based on the
19 circumstances presented to her.

20 Q Did the arbitrator make a decision based
21 upon evidence?

22 A You would have to ask her what she relied
23 upon.

24 Q Well, do you want to review the report
25 again?

1 A Sure.

2 Q Okay. Here you go, Exhibit 4. You can
3 see what she relied on.

4 A Is there a specific area you want me to
5 look at?

6 Q No. I think you should read the whole
7 thing.

8 A Okay.

9 Q So have you had an opportunity to review
10 the report?

11 A I did.

12 Q Now you are you familiar with the
13 evidence that was relied on by the arbitrator?

14 A Yes.

15 Q You were aware in spring of 2015 that
16 there was an issue with investigations at DOCCS;
17 correct?

18 A I don't know what you are referring to.

19 Q Well, wasn't there an investigation that
20 was done about your appointment, a news report, right,
21 within the newspaper, in Times Union, in the Albany
22 paper. Do you remember that?

23 A Yes.

24 Q And it referred to you; correct?

25 A It did.

1 Q And it also said that there was a
2 determination in the internal affairs unit that
3 investigates misconduct and abuse in state prisons was
4 for years, mired in cover-ups, nepotism and unbridled
5 sexual harassment, and investigators who questioned or
6 reported the problems faced threats of retaliation,
7 including being returned to their prison guard jobs and
8 marked as "rats."

9 Do you recall that article?

10 MR. KALIL: Do you want to show it
11 to him? For the record, the witness is
12 looking at what's been marked as
13 Plaintiff's Exhibit 11.

14 MS. BOSMAN: First page.

15 MR. KALIL: First page.

16 A I am familiar with the article.

17 Q And the internal affairs office, with an
18 estimated 125 investigators, had come under scrutiny in
19 the past two years prior to this article, which is
20 January 2016. So it would be January 2014, right, as a
21 result of fallout from last year's escape by two
22 convicted murderers from Clinton Correctional Facility
23 in Dannemora; correct?

24 MR. KALIL: Objection. Form.

25 A That is what the document says.

1 Q And then the article went further to say
2 that Miller, who was sexually harassed by Ferro, who was
3 in charge of the -- what was Ferro in charge of?

4 MR. KALIL: For the record, you are
5 showing the witness Exhibit 11. It is
6 six pages and you are reading -- it's not
7 fair to the witness. If you want him to
8 read the article --

9 MS. BOSMAN: I don't. I will let
10 him know if I want him to read it. Thank
11 you.

12 EXAMINATION BY MS. BOSMAN:

13 Q Who is Ferro?

14 A James Ferro.

15 Q Yeah.

16 A That's who he is.

17 Q Okay.

18 A Is that your question?

19 Q Yeah. Who is he?

20 A He was an employee of DOCCS.

21 Q What did he do?

22 A He was the director of operations in the
23 DOCCS Inspector General's Office.

24 Q Did you work with him?

25 A Yes, I worked with him.

1 Q Okay. And am I correct that Mr. Ferro
2 was charged with sexual harassment, including
3 allegations by Mr. Miller?

4 A That's what the article says.

5 Q And then one incident involved the
6 withholding of documents that were somehow related to
7 your appointment; right?

8 A Where, specifically?

9 Q Didn't that refer to your appointment in
10 that article?

11 A Yep. I am reading about it. Okay. What
12 is your question?

13 Q Okay. So is that the investigation you
14 were talking about earlier where they investigated your
15 appointment?

16 A That's correct.

17 Q And did that involve somebody supposedly
18 going to a records facility and taking your personnel
19 records or records involving you and removing them from
20 the facility? Isn't that the allegation?

21 A Not to my -- I mean, I have no knowledge
22 of that.

23 Q No. In that article, isn't that what
24 it's talking about?

25 A This talks about one incident centered

1 around the suspected withholding of documents by DOCCS
2 officials regarding my appointment as the Director of
3 Human Resources.

4 Q Right. So is that the investigation that
5 you were referring to earlier about your appointment?

6 A Correct.

7 Q Okay. And there was an allegation that
8 your brother Chris had gone to the facility and removed
9 records relating to you during the investigation of your
10 appointment?

11 A I don't know that that's an allegation.
12 You would have to ask the Inspector General's Office.

13 Q Okay. But it appears in that article;
14 yes? Next page.

15 A Next page. Inspector General's Office.
16 It says -- what was your question again?

17 MS. BOSMAN: Can you read back the
18 question, please.

19 THE REPORTER: "Okay. And there was
20 an allegation that your brother Chris had
21 gone to the facility and removed records
22 relating to you during the investigation
23 of your appointment?"

24 A The article alludes to that. Not
25 specifically in those words, but, yes.

1 Q And were there records that were removed
2 by your brother?

3 A I have no idea.

4 Q Okay. It also indicates here that your
5 family, the Martuscellos, are very powerful in the
6 Department of Corrections; is that correct?

7 A No.

8 Q You are not very powerful?

9 A No.

10 Q You were second in command for the State
11 Department of Corrections?

12 A I am.

13 Q And your brother works in the Office of
14 Inspector -- no, he works in OIS [sic]?

15 MR. KALIL: Which brother?

16 Q Which brother works where?

17 A What are you asking me?

18 Q Which brother works where?

19 A Nicholas works in the training academy
20 and Christopher works for OSI.

21 Q OSI. And what does he do for OSI,
22 Christopher?

23 A Currently, he is the Director of
24 Operations.

25 Q Did anybody address with him that his

1 investigation was flawed regarding Mr. Montegari?

2 MR. KALIL: Objection. Form.

3 A Again, I have no knowledge that my
4 brother was involved in the investigation.

5 Q You just read the report; right?

6 A I did.

7 Q The investigative report? Well, here.
8 Let's look at Exhibit 14. Okay. Now, you are going to
9 have to locate it. Halfway down the page, it makes
10 reference to DC Martuscello, which I don't think is you.

11 A "Director Miller and DC Martuscello sent
12 e-mail to complainant regarding E-ZPass records."

13 Q Is that you?

14 A No, that's not me.

15 Q Okay. Who is that? What Martuscello is
16 that referring to?

17 MR. KALIL: Objection to form.

18 A Again, this is the first time I've seen
19 this record, so I don't know who it's specifically
20 referring to.

21 Q Who is DC Martuscello?

22 A Again, I was the Deputy Commissioner for
23 Administration. Christopher was the Deputy Chief of
24 Narcotics for OSI. Who it's referred to there, I don't
25 know.

1 Q Well, it says, "DC Martuscello"; right?

2 A Right.

3 Q It's not you; right?

4 A I didn't do that, but that doesn't mean
5 that that's not somebody in error, referring to me. So
6 I don't know who the author of that record is.

7 Q Well, the author of this record is the
8 Inspector General's Office at the Department of
9 Corrections and Community Supervision. This is your
10 record.

11 MR. KALIL: Objection. Form. I
12 don't see who the author is based on the
13 one page, Exhibit 14.

14 Q It says on the bottom, "Created at
15 3/25/15 by Mark Miller"; correct? Do you want to look
16 at that? Your counsel is questioning whether or not
17 that's your document. Take a look at the lower
18 left-hand corner. What does it say?

19 A "Created on 3/25/15, 2:36 p.m. by
20 Mark Miller. Last modified on 9/27/21 at 3:18 p.m. by
21 Shawn Mousseau.

22 Q Are those people with --

23 A Yeah, they work for DOCCS, OSI. Yep.

24 Q Did you interview Mark Miller for the
25 superintendent position at Green Haven?

1 A I didn't interview him, but I had
2 conversations with him regarding the appointment.

3 Q Did you recommend him for the position?

4 A Making recommendations for superintendent
5 is done by a group. It's not one particular individual.

6 Q I know. But I am just interested in what
7 you did.

8 A I don't know that I was the one that
9 advanced his name. I don't really recall who advanced
10 his name.

11 Q Did you support him for the position?

12 A Yes.

13 Q Okay. Did you represent to Mr. Breslin,
14 Mr. Montegari's attorney during the arbitration, that
15 you will have the final say in the outcome with respect
16 to discipline?

17 A No.

18 Q Did you make an offer to his attorney to
19 cut the fine in half or extend the suspension by two
20 weeks?

21 A No. Not that I recall.

22 Q Pardon?

23 A No, not that I recall.

24 Q Who is Kevin Kortright?

25 A He is an attorney in DOCCS counsel.

1 Q Have you ever had any conversations with
2 him about Mr. Martuscello [sic]?

3 MR. KALIL: Objection.
4 Attorney-client.

5 MS. BOSMAN: It's not privileged.

6 MR. KALIL: Sure it is.

7 MS. BOSMAN: No, it's not.

8 MR. KALIL: Of course it is. It's
9 his former counsel.

10 MS. BOSMAN: It doesn't matter. The
11 fact of him having a conversation is not
12 privileged.

13 MR. KALIL: That's true. You can
14 ask him -- my apologies. You can inquire
15 that far.

16 MS. BOSMAN: I can inquire further
17 than that, as long as it's not legal
18 advice.

19 MR. KALIL: You can't inquire about
20 communications.

21 MS. BOSMAN: Yes, I can.

22 EXAMINATION BY MS. BOSMAN:

23 Q Did you speak with Mr. Kortright about
24 Mr. Montegari?

25 MR. KALIL: Objection. Don't answer

1 it. Certify the question.

2 MS. BOSMAN: Who is doing the
3 deposition? You or Ms. Bordonaro, who is
4 whispering in your ear?

5 MR. KALIL: I am doing the
6 deposition. You have counsel whispering
7 to you as well.

8 MS. BOSMAN: I am reflecting that we
9 have three counsel here from the
10 Department of Corrections. Two from the
11 AG's office.

12 MR. KALIL: Okay. Just ask the
13 questions.

14 EXAMINATION BY MS. BOSMAN:

15 Q Take a look at Exhibit 12. You can tell
16 me then if you had made that statement to Mr. Kortright
17 or not to the extent that there is any assertion of
18 privilege that has been way waived.

19 MS. BORDONARO: No privilege has
20 been waived with counsel's conversations,
21 if that's what you're asking about --

22 MS. BOSMAN: I am not asking about
23 conversation. I am asking about the fact
24 of the conversation. Whether or not the
25 person has a conversation with their

1 attorney about a subject or person
2 related to in an e-mail is not
3 privileged.

4 MS. BORDONARO: You can ask if he
5 had a conversation. Beyond --

6 MS. BOSMAN: I did ask that and you
7 told him to not answer it.

8 EXAMINATION BY MS. BOSMAN:

9 Q Do you see the reference to you in that
10 e-mail?

11 A I do. I see it.

12 Q Is that accurate?

13 A I don't recall having any conversations
14 with Mr. Kortright regarding settlement discussions.

15 Q My question is, is it accurate when it
16 says that you make the call?

17 A I am definitely involved in the final
18 determination.

19 Q That's not what I asked you, either. I
20 had asked you if you were involved in the final --

21 A For Mr. Montegari, no.

22 Q I wanted to know whether or not that was
23 accurate when he said Dan Martuscello will have the
24 final say in the outcome?

25 A No. That's not accurate.

1 Q That's not accurate?

2 A No.

3 Q Was Kevin Kortright your attorney?

4 A He was the attorney for the agency that
5 was representing the department in the disciplinary
6 case.

7 Q Prosecuting my client?

8 MR. KALIL: Form.

9 A He was presenting evidence of the notice
10 of charges.

11 Q Against my client?

12 A Yes.

13 Q So is it your testimony that he was your
14 counsel?

15 A That's not my words. I said that he was
16 counsel for the agency.

17 Q Well, that's what I'm trying to find out.

18 A I don't know that he would generally be
19 referred to as my counsel.

20 Q I can't hear you.

21 A I'm not sure if he was my counsel, to be
22 honest with you. I mean, he is counsel for the agency,
23 which I would have privileged conversations with.

24 Q He is counsel for the agency at the same
25 time that he is presenting evidence against

1 Mr. Montegari?

2 A He is an attorney for the agency, yes.

3 Q So it was the agency against

4 Mr. Montegari?

5 MR. KALIL: Objection. Form.

6 A Again, the notice of charges was issued
7 by the department.

8 Q Right. Was it -- does the department
9 have any interest in ensuring fairness in
10 investigations, accuracy in investigations?

11 A Yes.

12 Q So you didn't have any interest in
13 finding Mr. Montegari guilty?

14 MR. KALIL: Objection. Form.

15 Q Is that true?

16 MR. KALIL: Objection. Form.

17 A Yeah. You would have to reask me the
18 question. I'm not sure what you are asking me.

19 Q Did you have any interest in finding
20 Mr. Montegari guilty of the charges?

21 A No, I didn't have any interest one way or
22 another other than to follow the investigation and the
23 charges as presented.

24 Q So who is it that told you that
25 Mr. Montegari should be disciplined for the charges that

1 were not founded against him?

2 MR. KALIL: Objection. Form.

3 A Yeah. I don't understand the question.

4 MS. BOSMAN: Would you read back the
5 question, please.

6 THE REPORTER: "Q So who is it
7 that told you that Mr. Montegari should
8 be disciplined for the charges that were
9 not founded against him?"

10 A Again, as I previously testified, as a
11 result of the DOCCS IG or the OSI investigation that
12 substantiated it, there was conversations with the
13 deputy commissioner in chief, the director of labor
14 relations, and the commissioner that resulted in the
15 notice of charges.

16 Q Has the Department of Corrections and
17 Community Services or whatever you call it ever been
18 wrong when they charge somebody with misconduct?

19 MR. KALIL: Objection. Form.

20 A I don't know specifically, but I would
21 not say we are right all the time.

22 Q What is an example of an instance in
23 which you were not right?

24 A Again, I can't say right off the top of
25 my head right now.

1 Q Well, then how do you know that you have
2 ever been found to be not right in charges against an
3 employee?

4 MR. KALIL: Objection. Form.

5 Q You have been there a long time.

6 A Yeah. Just my belief is that we are
7 never a hundred percent right.

8 Q Okay.

9 A That we follow the evidence and it's
10 substantiated and it goes to hearing and arbiters make
11 determinations.

12 Q And there is a history in your agency, in
13 your department, of faulty investigations; true?

14 MR. KALIL: Objection. Form.

15 Q Yes?

16 A No. I don't know that to be accurate.

17 Q So the report in the paper was
18 inaccurate?

19 MR. KALIL: Objection. Form.

20 A Yeah. I don't believe that news article.

21 Q You don't believe the news article?

22 A There may be components of it that are
23 accurate.

24 Q Which components were accurate?

25 A Without having the article in front of

1 me, the one that jumps to mind is that Mr. Ferro was
2 charged with a crime, he did plead guilty. The things
3 regarding myself were not accurate.

4 Q How about the retaliations, threats of
5 retaliation? Were those accurate?

6 A Who were those alleged to be against?

7 Q By the agency against employees who
8 reported wrongdoing.

9 MR. KALIL: Objection. Form.

10 A I am not aware of any retaliatory
11 behavior by the agency.

12 Q Nobody has ever complained to you about
13 retaliation by the agency?

14 A I am not saying we never had a
15 retaliation complaint; I can't speak to one generally,
16 but I'm not aware of any broad retaliatory efforts or
17 conduct on behalf of the agency.

18 Q Okay. No broad efforts?

19 A Yeah. I am not aware of any
20 specifically. And if they were raised, staff would have
21 been appropriately investigated and then subsequently
22 disciplined. So to the extent that we have had
23 investigations that were founded of that, we would take
24 the proper disciplinary steps.

25 Q So when Mr. Montegari raised to Mr. Maher

1 that he was being retaliated against, did Mr. Maher have
2 an obligation to do an investigation regarding that
3 allegation?

4 MR. KALIL: Objection. Form.

5 A Again, I am not aware of any such
6 allegation.

7 Q I didn't ask you if you were aware. I
8 said when Mr. Montegari made a complaint to Mr. Maher
9 that he was being retaliated against, did Mr. Maher have
10 an obligation to investigate that allegation?

11 MR. KALIL: Objection. Form.

12 A I mean, it was his responsibility to
13 conduct investigations into misconduct. So to the
14 extent that there was an allegation that was made, it
15 would have been his responsibility to look into it.

16 Q And if Mr. Montegari or someone alleged
17 that Mr. Maher was retaliating against them, who would
18 do that investigation?

19 A That would likely be referred outside of
20 the agency.

21 Q To whom?

22 A Likely, the State Inspector General,
23 could be DOCCS counsel's office. It could take a host
24 of baths.

25 Q Got it. So I just have a few more

1 questions for you, Mr. Martuscello.

2 A Okay.

3 Q Except for the ones that we certified
4 that now we are going to have to come back on.

5 Okay. So I had asked you about the
6 pension system retroactively restoring Mr. Montegari.
7 You said you weren't aware of that.

8 A Correct.

9 Q Now, having been given that information,
10 as we sit here today, what can you do to fix that?

11 MR. KALIL: Objection. Form. Can
12 you rephrase that question? I don't
13 understand. I am not the witness, but I
14 don't understand it.

15 Q Do you understand the question?

16 A No. I don't understand it, either.

17 Q Now that Mr. Montegari has told you
18 through me that he has not been restored to his pension
19 status retroactively after his suspension, is there
20 anything that you can do about it?

21 A We could make an inquiry with the pension
22 system if that's the case.

23 Q Can you make a recommendation that they
24 fix it?

25 MR. KALIL: Objection. Form.

1 A Yeah. I don't know that it's a
2 recommendation. I think that we can inquire and provide
3 any records that would show that he was made whole for
4 that period. I don't know that I would characterize it
5 as a "recommendation."

6 Q So if they come back to you and they say,
7 well, no, we didn't give him that month back on his
8 pension and we should have, do they have to have a
9 recommendation to correct that?

10 A No.

11 Q They can automatically correct that?

12 A Correct.

13 Q All they have to do is be made aware of
14 it?

15 A It should be an automated process that
16 occurs. So to the extent that it hasn't is news to me.

17 Q How long did Mr. Montegari have to wait
18 for his back pay at 30 days?

19 A I don't know.

20 Q You don't know?

21 A No.

22 Q It wasn't in the complaint?

23 A I don't know.

24 Q What is the difference between a security
25 retirement versus a civilian retirement?

1 A The security retirement falls under
2 Retirement Social Security Law 89(i), which allows for
3 someone to retire with 25 years of service at half pay.
4 And then depending upon what tier you are in, you either
5 can accrue additional percentages for excess years or
6 not. But if you are a certain tier, you are capped at
7 age 62, you can get 60 percent under the civilian
8 retirement plan. Again, depending on what tier you are
9 in, typically rules are 30 years of service, 55 years of
10 age, and you are entitled to 60. And then there is
11 percentages thereafter that it's capped. But, again,
12 that's depending on what date you were hired and what
13 tier you fall into and all subject to comptroller rules,
14 which have no determination by the agency.

15 Q So that is 60 percent and more, depending
16 on how many years you have into the agency. We are
17 talking about a lot of money, difference of a lot of
18 money; right?

19 MR. KALIL: Objection. Form.

20 A I don't understand the question.

21 Q Well, if you get 60 percent depending on
22 how many years you have invested in the State Department
23 of Corrections; right? You are not talking about tiers.
24 You are talking about civilian; right?

25 A I am talking about civilian, which deputy

1 superintendent for security or captain or sergeant or CO
2 are not in --

3 Q That's not a tier system.

4 A No.

5 Q Right?

6 A Those are titles that are eligible or
7 required under the uniform plan.

8 Q And you get 60 percent plus whatever your
9 investment is in time; right?

10 A Not for security. Civilians.

11 Q Civilians. That's what I'm talking
12 about. Civilians.

13 A You are confusing me. So, start again.
14 What's your question?

15 Q I am saying, isn't that worth a lot of
16 money?

17 MR. KALIL: Objection. Form.

18 A It depends on your salary, I suppose.

19 Q Because it has continuing effect. If you
20 lose a month, you lose that 60 percent exponentially;
21 don't you?

22 A I don't know that one month would have
23 that exponential effect, but...

24 Q Okay. What did Mr. Maher tell you
25 regarding the alleged resignation by Mr. Montegari?

1 A It's my recollection that he informed me
2 that Mr. Montegari had resigned from his position within
3 OSI.

4 Q Before or after you decided to withhold
5 the 2 percent?

6 MR. KALIL: Objection. Form.

7 A I don't recall.

8 Q Okay. Did you address correspondence to
9 Mr. Montegari after you were told that he had allegedly
10 resigned?

11 A I don't understand the question.

12 Q Did you address any correspondence to
13 Mr. Montegari after you were told -- allegedly told by
14 Mr. Maher that Mr. Montegari had resigned?

15 A Again, I don't know the date that that
16 was noticed, but I definitely sent Mr. Montegari
17 correspondence as evidenced in Exhibit 18.

18 Q Right. And was that after he resigned or
19 before?

20 A I don't know.

21 Q Did you address him as Deputy Chief
22 Montegari after you were told supposedly that he
23 resigned?

24 A I don't know. This letter addressed him
25 as "Mister."

1 Q Right. You are looking at Exhibit what?

2 A Eighteen.

3 Q Eighteen?

4 A Yes, ma'am.

5 Q And that was done in October?

6 A June.

7 Q June?

8 A Yes.

9 Q Okay. When was Mr. Montegari's job
10 posted?

11 A I don't know.

12 Q Were you aware that Mr. Montegari
13 reported to Mr. Maher the improper treatment he was
14 receiving by others in the unit?

15 A No.

16 Q Were you aware that he complained to
17 Mr. Maher about his treatment by Mr. Maher?

18 A No.

19 Q He didn't tell you that?

20 A Who?

21 Q Mr. Maher. He didn't tell you that, "Al
22 complained to me about the way I was treating you"?

23 A No. Not to my recollection.

24 Q Would that create a conflict of interest
25 in your mind --

1 MR. KALIL: Objection. Form.

2 Q -- for Mr. Maher?

3 A Would it create a conflict of interest in
4 what?

5 Q Him investigating Mr. Montegari after
6 Mr. Montegari had complained to him that he didn't like
7 the way he was treating him?

8 A Potentially.

9 Q Did you tell Mr. Montegari during a
10 conversation in your office that even if he went to a
11 hearing and won, that you didn't have to follow the
12 recommendation of the hearing officer and you could make
13 him a sergeant, or words to that effect?

14 A I don't recall that conversation.

15 Q Is it possible you had that conversation
16 or you just don't remember it?

17 A It's possible that we would have talked
18 about the decision being a recommendation, but to the
19 extent any further than that, no, that authority doesn't
20 lie with me.

21 Q Okay. But did you say in words or
22 substance that even if he went to a hearing, that
23 doesn't mean -- and he won, that doesn't mean that you
24 would have to follow the direction of the arbitrator?

25 A Again, I don't recall the conversation,

1 but that's accurate under Civil Service Law 75.

2 Q Right. And it's also accurate under
3 Civil Service Law Section 70 through 75 that you can't
4 threaten or retaliate against an employee for exercising
5 their right to go to an Article 75 hearing; correct?

6 A Correct.

7 Q And if Mr. Montegari hadn't gone to a
8 Section 75 hearing and he was only charged with
9 speeding, excessive speed, that he would have gotten a
10 verbal admonishment and nothing else; true?

11 MR. KALIL: Objection. Form.

12 A If the only allegation that was
13 substantiated was excessive speed, it would be my guess
14 that we would not have pursued formal notice of charges
15 if the only allegation that was substantiated was
16 speeding.

17 Q That's not what I asked you. Are you
18 deliberately not understanding it?

19 MS. BOSMAN: Read that question
20 back, please. I'm sure I worded it well.

21 THE REPORTER: "Q And if
22 Mr. Montegari hadn't gone to a Section 75
23 hearing and he was only charged with
24 speeding, excessive speed, that he would
25 have gotten a verbal admonishment and

1 nothing else; true?"

2 A And my answer reflected that if that was
3 the only charge, it wouldn't have gone to a Section 75
4 hearing at all.

5 Q Well, why not? You can charge somebody
6 with misconduct for speeding; can't you?

7 A We can. But it would -- I don't believe
8 that would have been the standalone charge.

9 Q Why? You could charge him with speeding
10 as misconduct.

11 A We could. Yes, that's accurate.

12 Q So why wouldn't you charge him with --

13 A I don't believe if that was the
14 standalone charge, we would have pursued a notice of
15 charges against the employee.

16 Q Why?

17 A That's just my belief.

18 Q What would you have done?

19 A We could have done a whole host of other
20 things.

21 Q Including the verbal admonishment;
22 correct?

23 A Could have been verbal or written.

24 Q Because that's traditionally what is done
25 for speeding; correct?

1 A Again, I can't -- I testified before, I'm
2 not certain of any cases on speeding where we would or
3 would not have done something otherwise.

4 Q We are going to look at those. So did
5 you issue a memorandum to Mr. Montegari on April 23rd of
6 2015, which titled Mr. Montegari as deputy chief of
7 investigations?

8 A I would have to see the memorandum.

9 Q Is it possible you did?

10 A Again, I don't recall the memo. I would
11 have to see the document.

12 Q Isn't April 23rd of 2015, after Mr. Maher
13 or Mr. -- yeah, Mr. Maher told you that Mr. Montegari
14 had resigned?

15 A Again, I don't know the date that it
16 occurred, but I know that it did --

17 Q Isn't that an important date? Isn't that
18 an important date? When somebody resigns from their
19 position, isn't that an important date? Don't you have
20 to do things about people --

21 A Again --

22 Q -- resigning? Wait. Let me finish. You
23 are the former director of personnel and human resources
24 and all those things that have to do with employees.
25 Isn't the date that somebody resigns their position an

1 important date that would be memorialized somewhere?

2 A He wasn't resigning from state
3 employment.

4 Q That's not what I asked.

5 A Yeah, I understand that. So if he had
6 been resigning from state employment, yes, we would want
7 that in writing. But I don't recall seeing his
8 resignation from OSI in writing. He was not reducing in
9 rank; he was just leaving the office of OSI.

10 Q He didn't resign. You know that.

11 MR. KALIL: Okay. Objection. Now
12 you're badgering.

13 MS. BOSMAN: No, I'm not.

14 MR. KALIL: Yes, you are.

15 MS. BOSMAN: No, I'm not. I'm
16 arguing.

17 MR. KALIL: Okay.

18 MS. BORDONARO: Well, you are
19 testifying, A.J. --

20 MS. BOSMAN: No, I'm not testifying
21 either. I just want to --

22 A I am not aware of that.

23 Q You are not aware that he says he never
24 resigned?

25 A I am not.

1 Q This is the first you are hearing of
2 that?

3 A Correct.

4 Q Okay. Good to know. Would it be routine
5 to immediately post the position of someone who
6 resigned?

7 A Routine postings happen at different
8 intervals. In fact, positions at OSI don't require a
9 posting at all.

10 Q Do you recall throwing a box of tissues
11 to Mr. Montegari while he was in your office during the
12 conversation where you said, even if he went to a
13 hearing, that they didn't have to follow the hearing
14 officer's recommendation?

15 A I don't recall that those are my words,
16 nor do I recall a box of tissues.

17 Q You don't recall anything about that
18 meeting at all?

19 A I recall meeting with Mr. Montegari. I
20 don't remember that.

21 Q Okay. What do you remember about the
22 meeting?

23 A My recollection is that's at the time
24 that Mr. Montegari was placed on administrative leave.

25 Q Okay. What else do you recall about the

1 meeting?

2 A We did discuss potential settlement
3 options in lieu of going to arbitration.

4 Q Such as what?

5 A I believe it was loss of accrued time.

6 Q Anything else?

7 A That's all I recall.

8 Q Do you recall anything Mr. Montegari
9 said?

10 A He didn't want to settle the case.

11 Q What did he say?

12 A I don't recall specifically. I recall
13 that he said he was not interested in settlement and
14 that he would go to arbitration.

15 Q Was anyone else present?

16 A No.

17 Q What else did he say?

18 A That's all I recall.

19 Q How long did the conversation last?

20 A Not long at all. I couldn't put a time
21 on it.

22 Q More than five minutes?

23 A I don't know. Maybe.

24 Q Less than 10 minutes?

25 A I don't know, ma'am. I would be making

1 it up.

2 Q Well, how did the conversation start?

3 Did you invite him in?

4 A Yeah. He was scheduled to come meet with
5 me.

6 Q He came to meet with you for what reason?

7 A He was going to be placed on
8 administrative leave because we were going to pursue
9 disciplinary charges.

10 Q Did he know that?

11 A I don't know what he knew at the time.

12 Q Well, who knew besides you at the time?

13 A The Commissioner's Office, the
14 Commissioner Deputy Chief, Deputy Commissioner
15 Chief Maher and John Shipley.

16 Q Anybody else?

17 A That's all I can recall. I don't know if
18 anyone else had knowledge.

19 Q How did you notify Mr. Montegari to come
20 to your office?

21 A I don't know if I called him or my
22 secretary did or someone else made notice to him. I
23 don't recall.

24 Q And he came alone?

25 A That's my recollection.

1 Q Was he at the office that day?

2 A I assume he came to my office, so he was
3 there.

4 Q And you don't remember anything he said
5 to you other than he didn't want to settle?

6 A Correct.

7 Q Nothing else?

8 A No.

9 Q Did you tell him what the charges were?

10 A I told him that he was -- what the
11 investigation substantiated; that he had pulled somebody
12 over and that he was traveling at high rates of speed.
13 At that time, the notice of charges had been not
14 drafted.

15 Q Okay. So who drafted the notice of
16 charges?

17 A The Bureau of Labor Relations.

18 Q Who?

19 A The Bureau of Labor Relations.

20 Q Did they have a name?

21 A John Shipley was the director. I don't
22 know whether he specifically drafted them or if it was
23 an employee within that office.

24 Q Does John Shipley or anyone in his office
25 have the authority to charge anyone with a crime?

1 A No.

2 Q So why did the charges include
3 allegations of criminal conduct?

4 A Again, we have the ability through the
5 investigation if the conduct would constitute a crime to
6 reference that in the notice of charges.

7 Q Aren't you obligated to subject that
8 person to due process to prosecution and arrest?

9 MR. KALIL: Objection. Calls for a
10 legal conclusion.

11 A Again, this is an administrative hearing,
12 not a legal proceeding.

13 Q I agree. So what authority does
14 John Shipley or you or anybody else over there have the
15 authority to allege that someone committed a crime in a
16 document alleging misconduct?

17 A Again, it's -- the allegations that were
18 substantiated could constitute a crime which could be
19 reflected in a notice of discipline or notice of
20 charges.

21 Q The allegations that were substantiated?
22 Meaning, the speeding?

23 A And the allegation that he pulled someone
24 over.

25 Q So you are sticking with that story, huh?

1 A I am telling you that the facts and
2 circumstances based on the investigation being
3 substantiated is what led to the notice of charges.

4 Q Okay. So you've got substantiated
5 charges that he pulled somebody over; in your mind, you
6 think that those are substantiated charges?

7 A The investigation was substantiated by --

8 Q No, that's not what I asked you. I said
9 do you believe those charges are substantiated? In your
10 mind, are they substantiated?

11 A The investigation was substantiated. The
12 charges --

13 Q No. My question is about you. My
14 question is about in your mind, were those charges
15 substantiated? Yes or no?

16 A I believe the investigation was
17 substantiated.

18 Q I didn't ask if the investigation was
19 substantiated. I asked you whether or not the charges
20 were substantiated?

21 MR. KALIL: At what point?

22 Q Do you believe the charges were
23 substantiated? Yes or no?

24 A The arbiter did not substantiate the
25 charges, the one charge.

1 Q My question is what you believe.

2 A I believe that the arbiter did not
3 substantiate the charge. I already testified that I
4 believe that he participated in that conduct, but I
5 don't believe that the allegations, as found by the
6 arbiter, were substantiated.

7 Q And why do you believe that? Because
8 your brother was involved in the investigation?

9 MR. KALIL: Objection. Form.

10 A I didn't even know my brother was
11 involved in the investigation.

12 Q Really? Okay.

13 A Correct.

14 Q Why did you believe that they are
15 correct? Why do you believe they are accurate? They
16 said he was averaging 141 miles an hour on the thruway.

17 MR. KALIL: Objection. Form.

18 A Again --

19 Q Isn't that beyond belief, in your mind?

20 A People speed. I don't know what the rate
21 of speed which he was going. They conducted the
22 investigation. It was not my investigation or my
23 findings.

24 Q Okay. So somebody could present charges
25 to you that are so outlandish and so crazy that they

1 couldn't, under any circumstances, be founded in reality
2 and you are just going to say that's the investigation
3 that was substantiated?

4 MR. KALIL: Objection. Form. Now
5 you are badgering the witness.

6 Q This is interesting. Do you use any
7 critical thinking when you review investigative reports?
8 Yes or no?

9 A Yes.

10 Q Okay. Do you believe everything Maher
11 says?

12 MR. KALIL: Objection. Form.

13 A I have no reason to believe that Deputy
14 Commissioner Maher did not present me with facts as the
15 investigation is founded to be.

16 Q What basis do you have to believe that
17 Mr. Montegari would misrepresent or lie about what he
18 did or didn't do?

19 A Again, the allegations and the
20 investigation conducted by OSI were substantiated that
21 we had a person that identified Mr. Montegari regardless
22 of after the fact that his statements may have changed
23 during the course of the arbitration at the time --

24 Q Whose statements?

25 A Whoever the witness was.

1 Q What witness? The felon, you mean? The
2 guy that accused him of stopping him?

3 A The person that accused him of stopping
4 him.

5 Q The felon?

6 A I don't know him to be a felon other
7 than --

8 Q You don't know that he is a felon? You
9 didn't read the report? Do you want to go back and look
10 at it again? Do you agree that he is a felon?

11 A I agree that the report said he is a
12 felon.

13 Q Do you believe the report is accurate?

14 A I do.

15 Q Okay. So the person who reported it was
16 a felon. We agree with that; correct?

17 A We agree.

18 Q Okay. And Mr. Montegari who has 25 years
19 of service or more with the Department of Correctional
20 Services, do you have any basis to believe that he has
21 ever been dishonest in any way, shape or form during his
22 employment?

23 A Only during this incident.

24 Q No. I said any way, shape or form, what
25 was he dishonest about?

1 A Again, the investigation found that he
2 was dishonest --

3 Q No. I am asking you in what way was
4 Mr. Montegari dishonest?

5 A Just during his testimony during this
6 investigation.

7 Q What did he say that was dishonest?

8 A He denied being -- pulling the individual
9 over and I don't know if he denied speeding or not. I
10 can't remember that.

11 Q Okay. And you are saying that was
12 dishonest?

13 A That's what the investigation found.

14 Q No. The investigation didn't find that.

15 A Okay.

16 Q Where in the investigation does it say
17 that, that he was dishonest? Did I miss that? Did it
18 say that he is dishonest?

19 A The investigation said that he said under
20 oath that he didn't do it and it concluded that it
21 occurred.

22 Q It says, "Montegari denied under oath
23 that he performed a traffic stop on the thruway and that
24 he drove the OSI vehicle at speeds exceeding 75 miles
25 per hour"; correct?

1 A I would have to look at it, but I believe
2 that's what it says.

3 Q It's highlighted.

4 A That's what it says.

5 Q That's what it says. Okay. And you are
6 saying that he lied when he denied under oath that he
7 performed a traffic stop on the thruway?

8 A What I said is that the investigation was
9 substantiated and the allegation was that he performed a
10 traffic stop and they substantiated that allegation. So
11 if he testified under oath that it didn't occur, the
12 investigation substantiated that it did occur.

13 Q Did he lie or not, is my question to you?
14 Do you believe --

15 A Based on this, yes.

16 Q Wait. Let me finish. Do you believe
17 Mr. Montegari is lying when he says he never committed
18 any stop on the thruway?

19 A Yes.

20 Q Really? So what are you going to do
21 about that?

22 MR. KALIL: Objection. Form.

23 A The agency pursued notice of charges and
24 we lived by the arbiter's determination.

25 Q When did you pursue notice of charges of

25 MR. KALIL: Do you have a question?

1 MS. BOSMAN: Yeah. I am going to
2 give them back to him because he's got a
3 question. Where is the report? Well,
4 okay. We won't belabor the point, but I
5 don't believe what I'm hearing. I mean,
6 really.

7 MR. KALIL: Okay. Please. We are
8 running out of time; you started at 2:25.
9 We made a lot of plans to get here. So,
10 please, the building is closing shortly.

11 MS. BOSMAN: If I knew that we could
12 have had this done without your calendar,
13 your schedule, it would have happened a
14 lot sooner.

15 MR. KALIL: You are making a lot of
16 assumptions.

17 MS. BOSMAN: So are you, C.J. You
18 know, really?

19 EXAMINATION BY MS. BOSMAN:

20 Q Okay. So you don't remember throwing a
21 box of tissues at Mr. Montegari?

22 A I do not.

23 Q Have you ever thrown anything at anybody?

24 A Ever?

25 MR. KALIL: Object to form.

1 Q Yeah. On the job, in your office --

2 A No.

3 Q -- walking down the hallway, during the
4 time that you were working at DOCCS, have you ever
5 thrown anything at anybody?

6 A No. Not that I recall.

7 Q Okay. Were you aware that Mr. Montegari
8 still had his vehicle, his weapon, his badge, his ID and
9 department equipment on the day that you summoned him to
10 your office on April 23rd of 2015?

11 A I wasn't specifically aware, but usually
12 the administrative leave would trigger the collection of
13 department equipment.

14 Q Does a resignation from the position
15 trigger the collection of department equipment?

16 A Again, not necessarily. I mean, it could
17 be time to identify a location for Mr. Montegari because
18 he was not resigning from the department to allow us to
19 identify a position for him to go to.

20 Q Who told you he wasn't resigning from the
21 department?

22 A Again, Mr. -- Deputy Commissioner Chief
23 of Investigations Maher informed me that he was
24 resigning from OSI and then Deputy Commissioner Bellnier
25 had informed me that Montegari had inquired about

1 returning to the field as a captain.

2 Q If he had resigned prior to his
3 suspension from duty, as you stated in your
4 November 2015 letter to Mr. Breslin, would he still have
5 had his state vehicle, badge, ID, gun and other OSI
6 equipment at that time?

7 MR. KALIL: Can you show the
8 witness -- if you are referring to a
9 particular letter, can you let the
10 witness see it, please?

11 MS. BOSMAN: Sure.

12 Q Do you understand the question?

13 A No.

14 MS. BOSMAN: Could you read back the
15 question.

16 THE REPORTER: "Q If he had
17 resigned prior to his suspension from
18 duty, as you stated in your November 2015
19 letter to Mr. Breslin, would he still
20 have had his state vehicle, badge, ID,
21 gun and other OSI equipment at that
22 time?"

23 A As I previously testified, until which
24 time he found we identified a position in the field for
25 him to transition to, it would not necessarily

1 necessitate the collection of his DOCCS equipment until
2 which time he actually separated from the office.

3 Q So when was his DOCCS equipment taken
4 from him?

5 A My assumption would be at the time of the
6 administrative leave.

7 Q When you put him on leave?

8 A That's correct.

9 Q Did you take his gun and his ID and his
10 badge?

11 A I wouldn't have done that. The Deputy
12 Chief of Investigations -- or Deputy Commissioner in
13 Chief would have collected his equipment.

14 Q Who was that?

15 A Steve Maher or someone in OSI.

16 Q So that would have been their
17 responsibility?

18 A Yep.

19 Q And they knew that you were suspending
20 him?

21 MR. KALIL: Objection. Form.

22 A Yeah. As I previously testified, he was
23 placed on administrative leave and they were aware of
24 the determination by the Commissioner to pursue charges
25 and place him on administrative leave pending the

1 issuance of the charges.

2 Q Was that based upon your recommendation?

3 A Again, not just my recommendation. It
4 was a collective based on the investigation.

5 Q Were you one of the collective?

6 A I was involved based on the
7 investigation.

8 Q Okay. You were one of the collective
9 that recommended the suspension; correct?

10 A I'm sorry. Did you ask a question?

11 Q You were one of the collective that --

12 A I was one of the people --

13 Q -- that recommended the suspension?

14 A I was one of the people involved.

15 Q Okay. Were you or your family members in
16 DOCCS ever under investigation by the department or any
17 other outside agency?

18 A The only investigation I am aware of was
19 the one I previously testified regarding the State
20 Inspector General.

21 Q What were the results of that
22 investigation?

23 MR. KALIL: Objection. Form.

24 A Unknown. They didn't issue final
25 outcomes of determinations.

1 Q Were you aware of an incident where
2 Christopher Nunez had gotten into a vehicle accident in
3 a state vehicle?

4 A Not that I recall.

5 Q And you said you went to college where?

6 A SUNY Cortland.

7 Q Was there a hazing incident that occurred
8 while you were in college that you were involved in?

9 A There was a hazing incident involved.

10 Q What happened?

11 A I was in a fraternity at the time.

12 Q What was the hazing incident that
13 occurred?

14 A I don't recall specific information about
15 the incident.

16 Q Generally.

17 A Just hazing in general.

18 Q What kind of hazing in general?

19 A Again, I don't specifically recall.

20 Q Was somebody injured?

21 A I don't know that it was ever determined
22 that someone was injured as a result of hazing.

23 Q Was there an allegation that someone was
24 injured as a result of a hazing?

25 A I believe so.

1 Q What was the nature of the injury that
2 was alleged as a result of the hazing?

3 A I don't recall the injury.

4 Q You don't recall?

5 A No.

6 Q Do you consider yourself a friend of
7 Christian Nunez?

8 A Not based on your previous definition.

9 Q Okay. What about -- well, what is
10 Christian -- Christian Nunez, what does he do?

11 A He works in OSI.

12 Q What does he do in OSI?

13 A He is the deputy chief of the sex crimes
14 unit.

15 Q And is he the one that had an accident in
16 a state vehicle?

17 MR. KALIL: Objection. Form.

18 A I don't know.

19 Q Did he ever discuss with you having an
20 accident in a state vehicle?

21 A Not that I recall.

22 Q Did anyone ever report to you that
23 Christopher or Christian Nunez had gotten into a vehicle
24 accident in a state vehicle?

25 A Not that I recall.

1 Q Have you ever been at parties of
2 gatherings where illegal drugs were present?

3 A No. Not that I was aware of.

4 Q Do you have a personal relationship with
5 Christian Nunez outside of work?

6 A No.

7 Q Have you ever gone on vacation with
8 Christian Nunez?

9 A No.

10 Q How about Christopher Nunez? Are they
11 the same person or two different people?

12 A His name is Christian.

13 Q Not Christopher?

14 A No.

15 Q So you don't have any social interaction
16 with Christian Nunez?

17 A Nope. Not outside of work.

18 Q Was he awarded Mr. Montegari's position?

19 A He was appointed to that position.

20 Q When was he first familiar with you?
21 When did you first meet him?

22 A We worked at Green Haven together.

23 Q When?

24 A Sometime -- I would say a range between
25 1998 and 2001.

25 MS. BOSMAN: We are going to request

1 copies of any applications for
2 Mr. Montegari's position together with
3 Mr. Nunez's personnel file and his work
4 history, et cetera.

5 Q Were you aware that while
6 Deputy Chief Montegari held his position, discussions
7 were happening regarding making the deputy chief
8 positions, M3 positions?

9 A I was familiar about the deputy chiefs
10 becoming M3 positions, but, again, the time frame
11 surrounding that and how they coincide with
12 Mr. Montegari, I am not aware of.

13 Q Okay. Would holding those positions
14 increase the pay scale for the staff holding them if
15 they were made M3 positions?

16 A There would be a separate appointment
17 mechanism to people that were appointed to deputy chief.

18 Q I'm sorry. I couldn't understand you.
19 Could you repeat that, please.

20 A It would have been a separate appointment
21 mechanism to appoint people to the position of deputy
22 chief.

23 Q Would holding those positions increase
24 the pay scale for the staff holding those positions?

25 A If they were appointed to the new

1 structure of deputy chief, yes.

2 Q So when they were changed over to M3,
3 that means a bump in pay; correct?

4 A If they were subsequently appointed, yes.

5 Q Well, you are saying they have to be
6 subsequently appointed to a position they already held
7 when it was changed over to an M3? Is that what you are
8 saying?

9 A Correct.

10 Q Okay. So was there a discussion about
11 making the positions that Mr. Montegari was in, into an
12 M3 position at the time that he was charged with
13 misconduct and allegedly resigned from his position?

14 A I don't know the timing and if it
15 coincides with when Mr. Montegari worked at OSI.

16 Q Would the M3 position make it possible
17 for the staff holding those positions to be able to be
18 promoted directly to higher rank, such as M4?
19 Specifically, first deputy superintendent.

20 A The qualifications for the first deputy
21 superintendent, you could promote to that position from
22 an M1. You don't necessarily have to be an M3.

23 Q Okay. Does the M3 position make it
24 possible for the staff holding those positions to be
25 able to be promoted directly to higher rank, such as M4?

1 A It depends on the position they are being
2 appointed to.

3 Q So could you go to an M4 without being an
4 M3?

5 A Yes.

6 Q Could you go to an M4 if you are an M2?

7 A M4 is a really bad example. But, yes,
8 potentially.

9 Q Were you ever made aware of overtime
10 abuses or other logistical issues that Mr. Montegari had
11 reported to Mr. Maher?

12 A No.

13 Q Were you aware that Mr. Montegari was
14 assigned to a project on the evidence room and the
15 evidence control policy?

16 A I wasn't aware that Montegari was
17 assigned to that.

18 MS. BORDONARO: Ms. Bosman, we were
19 scheduled to go until 6. Are you almost
20 through, just to give us a general idea?

21 MS. BOSMAN: I'm sorry. What?

22 MS. BORDONARO: We were scheduled to
23 go until 6. It's after 6.

24 MS. BOSMAN: Is it? What time is
25 it?

1 MS. BORDONARO: It's almost 10 after
2 6.

3 MS. BOSMAN: Okay. Well, we are
4 going to have to come back anyway because
5 I can't get through it all. I didn't
6 expect it to take this long. So we can
7 cut off for now and then I have got
8 certified questions that have to be dealt
9 with anyway. And, hopefully, we can get
10 the discovery that's outstanding and make
11 it briefer next time, Mr. Martuscello.

12 MS. BORDONARO: You may have to get
13 leave of court for that.

14 MS. BOSMAN: Yeah. I think we will
15 anyway.

16 MS. BORDONARO: You may have to, I
17 guess I am saying, because we have been
18 here for four hours and --

19 MS. BOSMAN: Yeah, I know. I'm
20 sorry. But part of the problem is --

21 MR. KALIL: Can you send us the copy
22 of the discovery demand that you
23 mentioned?

24 MS. BOSMAN: Yeah. Sure. Thank
25 you. All right. I don't want to have to

1 keep anybody late.

2 MS. BORDONARO: Are we off the

3 record, A.J.?

4 MS. BOSMAN: Yes.

5 MS. BORDONARO: Okay.

6 (Whereupon the witness was excused at

7 6:08 p.m.)

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1 C E R T I F I C A T I O N

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4 I, LISA M. MAZZEI, Registered

5 Professional Reporter, Florida Professional Reporter,

6 and Notary Public in and for the State of New York, DO

7 HEREBY CERTIFY that I attended the foregoing

8 proceedings, took stenographic notes of the same, that

9 the foregoing is a true and correct copy of same and the
10 whole.

11

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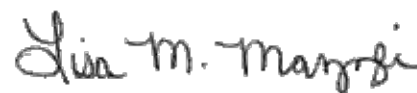
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LISA M. MAZZEI, RPR, FPR

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25 Dated: March 17, 2022

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