

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS

FOR MONTGOMERY COUNTY

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:  
NADJA CABELLO, :  
Complainant :  
v. : Office of Human Rights  
MONTGOMERY COUNTY DHHS BEHAVIORAL : Referral No. E-04252  
HEALTH DIVISION, : OZAH No. HR-14-01  
Respondent :  
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A hearing in the above-entitled matter was held on January 20, 2015, commencing at 9:40 a.m., at the Office of Zoning and Administrative Hearings, 100 Maryland Avenue, Rita Davidson Memorial Hearing Room, Rockville, Maryland 20850 before:

Lynn A. Robeson

Hearing Examiner

## A P P E A R A N C E S

On Behalf of the Complainant:

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## P R O C E E D I N G S

1 MS. ROBESON: All right. I am calling the case of  
 2 Nadja Cabello versus Montgomery County Department of Health  
 3 and Human Services, HR Case No. E-04252, OZAH Case No. HR-  
 4 14-01. I have a couple of preliminary matters, and I  
 5 believe probably that the parties -- I don't know. Are  
 6 there preliminary matters from the parties?

7 MS. WINDLE: Yes. A letter that was sent, I think  
 8 it was a couple weeks ago now, trying to resurrect what is  
 9 in the Office of Human Rights file.

10 MS. ROBESON: Yes.

11 MS. WINDLE: Because I was not aware, until seeing  
 12 the docket list, what you had been provided and what you  
 13 hadn't been.

14 MS. ROBESON: Right.

15 MS. WINDLE: So what I did was put together the  
 16 packet for reference where things are already in.

17 MS. ROBESON: With the attachments.

18 MS. WINDLE: Yes.

19 MS. ROBESON: Correct.

20 MS. WINDLE: And I did actually bring extra tabs  
 21 so that we can, I think there are a few blank tabs at this  
 22 point in the exhibit books but I brought some extra ones if  
 23 we need to put other pages in so.

24 MS. ROBESON: Okay. Mr. Katz, do you have any

## C O N T E N T S

Witnesses:	Direct	Cross	Redirect	Recross
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Daryl Plevy

By Ms. Windle:	26	105
By Mr. Katz:		66

Corrine Stevens

By Ms. Windle:	116	
By Mr. Katz:		139

## E X H I B I T S

Exhibit No.	Marked/Received
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94A-O	22/--
87	32

1 objection --

2 MR. KATZ: No.

3 MS. ROBESON: -- to admitting these as an exhibit?

4 MR. KATZ: No.

5 MS. ROBESON: Okay. So I'm going to mark, have  
 6 these be -- let me just explain how we work. We have docket  
 7 entries that are just everything filed, but what goes to the  
 8 Commission is only the exhibits admitted in this case. So  
 9 the docket entries don't go to the Commission, so when you  
 10 see it as a docket entry, that doesn't mean it's admitted or  
 11 not. Okay. So let's give this a number. How did you  
 12 number this in the -- these are tabs. Does Mr. Katz, do you  
 13 have the tabs?

14 MR. KATZ: No.

15 MS. ROBESON: Okay. They begin at 101. Oh, wait.  
 16 I'm in the wrong book here.

17 MS. WINDLE: I thought you were using your own  
 18 book. Do you want --

19 MR. KATZ: Can I ask where, Ms. Windle, if I may  
 20 ask where, we have up to Exhibit Number --

21 MS. ROBESON: 100 I have.

22 MR. KATZ: You have 100?

23 MS. ROBESON: Because we made the other -- the  
 24 only thing that came in that wasn't in the book is, was 85A.

25 MR. KATZ: Right.

<p style="text-align: right;">Page 6</p> <p>1 MS. ROBESON: So and I have, the last exhibit I 2 have -- oh, wait. No.</p> <p>3 MS. WINDLE: I don't think it's 100.</p> <p>4 MS. ROBESON: Actually, you're right. There's 5 extra tabs.</p> <p>6 MS. WINDLE: 90 --</p> <p>7 MS. ROBESON: I have 93 as the last exhibit.</p> <p>8 MS. WINDLE: Yes.</p> <p>9 MR. KATZ: That's what we have, Your Honor.</p> <p>10 MS. WINDLE: Yes.</p> <p>11 MS. ROBESON: Okay. So you're just adding these.</p> <p>12 MS. WINDLE: Some additional tabs in the event 13 that they're needed.</p> <p>14 MS. ROBESON: Okay. All right. So this is going 15 to be 94. Exhibit 94, correct?</p> <p>16 MS. WINDLE: Well --</p> <p>17 MS. ROBESON: The packet that you submitted.</p> <p>18 MS. WINDLE: Do you want to put the whole thing in 19 as one?</p> <p>20 MS. ROBESON: Do you have any objection?</p> <p>21 MR. KATZ: No.</p> <p>22 MS. WINDLE: Okay.</p> <p>23 MS. ROBESON: Actually, it had exhibits attached, 24 correct? The attachments had exhibit -- maybe out of an 25 abundance of caution, we need to -- no. Let's put it in all</p>	<p style="text-align: right;">Page 8</p> <p>1 together over the weekend. I attempted to e-mail them to 2 Ms. Windle yesterday. They bounced back. Our intent is to 3 use them during Ms. Cabello's testimony. She can testify as 4 to what the documents are to the extent that they may need 5 authentication. The documents, if I may, they are compiled 6 by year. If I may approach.</p> <p>7 MS. ROBESON: I think I have -- is this the fifth, 8 are these the documents attached to the fifth supplemental 9 responses to discovery or --</p> <p>10 MR. KATZ: No. This is -- no, it's not. These 11 are documents, the personnel action forms, correspondence 12 from the county regarding Ms. Cabello's wages, increases.</p> <p>13 MS. ROBESON: I thought they were already in the 14 record.</p> <p>15 MR. KATZ: The ones for, the ones through 2007 are 16 in the record. For subsequent years, they are not. We 17 compiled them to basically, we were going to present 18 testimony as to not only lost wages in that period of time 19 but --</p> <p>20 MS. ROBESON: I see.</p> <p>21 MR. KATZ: -- the effect of the lost wages over an 22 extended period of time.</p> <p>23 MS. ROBESON: Okay.</p> <p>24 MR. KATZ: So we have compiled these documents 25 which essentially, I think all of them are either documents</p>
<p style="text-align: right;">Page 7</p> <p>1 as one, so it will be 94.</p> <p>2 MR. KATZ: My only request, Your Honor, is perhaps 3 when we take a break, I can look at the paper that's been 4 handed to me --</p> <p>5 MS. ROBESON: Yes.</p> <p>6 MR. KATZ: -- to make sure that it coincides with 7 what I saw before.</p> <p>8 MS. ROBESON: Exactly. That's fine.</p> <p>9 MR. KATZ: Okay.</p> <p>10 MS. ROBESON: I don't have an issue with that.</p> <p>11 All right. Now, Mr. Katz, did you -- Ms. Windle, do you 12 have any other preliminary matters?</p> <p>13 MS. WINDLE: No.</p> <p>14 MS. ROBESON: You're sure?</p> <p>15 MS. WINDLE: I think I will have something to say 16 after Mr. Katz does but I don't have anything else.</p> <p>17 MS. ROBESON: Okay. Mr. Katz?</p> <p>18 MR. KATZ: Your Honor, in preparation for Ms. 19 Cabello's testimony regarding lost wages, we compiled a 20 number of documents, most of which were, at least half of 21 which were produced by the County in discovery. The other 22 documents for years after 2007 are either county documents 23 or tax documents. We basically made a compilation so that 24 Ms. Cabello can work year by year though her allegation of 25 lost wages. We just were able to get all the documents</p>	<p style="text-align: right;">Page 9</p> <p>1 generated by the county's system or a couple of Ms. 2 Cabello's tax records.</p> <p>3 MS. ROBESON: Okay. Ms. Windle, do you have a 4 response?</p> <p>5 MS. WINDLE: Yes. I object. I object because I 6 received a partial, part of this last night at about quarter 7 to seven. The e-mail indicated that it was e-mail 3 of 3. 8 There was no e-mail 1 or 2. So there was no context, just, 9 you know, these documents. They've had months to provide 10 this and in terms of when, we were supposed to put our 11 exhibits in months ago and I get this on a holiday at 12 quarter to seven the day before the hearing. I think he's 13 blindsiding me and I totally object to this being put in.</p> <p>14 I also would say that the issue of lost wages, 15 there's one issue is was she discriminated against and our 16 position is she wasn't. I think the second question, if in 17 fact you determine that that's the case, that she was 18 discriminated against on the basis of ancestry, then the 19 issue becomes, you know, what are her losses and how should 20 she be compensated. They of course are, I believe from the 21 other things I've seen, taking the position that she should 22 have gotten, you know, three percent every year for those 23 years where she got a lump sum. And if in fact you 24 determine that she does deserve compensation, I think 25 there's an issue about how much and I think that's really a</p>

<p style="text-align: right;">Page 10</p> <p>1 second step. But to receive this the night before a 2 hearing, I would just --</p> <p>3 MS. ROBESON: Mr. Katz?</p> <p>4 MR. KATZ: Yes. A couple of things. There were 5 three e-mails sent. Two of them bounced back because I 6 guess the County can't handle many PDFs.</p> <p>7 MS. ROBESON: They --</p> <p>8 MR. KATZ: The --</p> <p>9 MS. ROBESON: Ten megabytes.</p> <p>10 MR. KATZ: I'm sorry?</p> <p>11 MS. ROBESON: If it's more than 10 megabytes.</p> <p>12 MR. KATZ: It was under. Actually, I have the 13 bounce-back message so we can -- we don't need to do that.</p> <p>14 MS. ROBESON: They just -- yes. Go ahead.</p> <p>15 MR. KATZ: Okay. A couple of items. Number one 16 is I mean, this isn't a bifurcated proceeding so that we 17 have prepared to present Ms. Cabello's allegation of lost 18 wages as, you know, as the last part of her testimony, so we 19 don't see a need to bifurcate it. Number two, most of the 20 documents are documents previously produced by the County. 21 We previously, the County asked us, we previously produced, 22 in response to interrogatories, calculation of lost wages. 23 We have worked very hard to refine that and actually, we 24 refined it to the point where we're now calculating damages 25 as less than what we answered in the interrogatories having</p>	<p style="text-align: right;">Page 12</p> <p>1 then is you're right, that you should have more time to 2 review it. Now, under the APA, you can let exhibits in in 3 your case, your case in chief should be, technically the 4 exhibits in your prehearing statement but on rebuttal, you 5 have the ability to introduce new exhibits. Now, in this 6 case, if it makes the exhibit, if it makes the testimony in 7 the case in chief flow more comprehensively, you know, they 8 can come in on rebuttal anyway.</p> <p>9 The issue I do agree with you is that you haven't 10 had time to review them and so we are not going to go 11 through any of those exhibits today. If when we get to 12 February 3rd, if we, even if we have to cut this hearing 13 short, I don't know how long your witnesses are going to 14 take, we will go through them February 3rd because I have 15 the discretion, under the APA, to admit exhibits that 16 weren't in the prehearing statement but I do think that it's 17 only fair to give you more time to review them.</p> <p>18 So what we'll do is we'll go as far as we can 19 today without letting these exhibits in. If you have 20 objections to the exhibits, I would appreciate your getting 21 to them before February 3rd. Are the parties agreed on 22 February 3rd as the next hearing date?</p> <p>23 MR. KATZ: Yes.</p> <p>24 MS. ROBESON: Yes.</p> <p>25 MS. WINDLE: Yes.</p>
<p style="text-align: right;">Page 11</p> <p>1 gotten the additional --</p> <p>2 I mean, it took Ms. Cabello a long time to get 3 documents that, you know, we could put it together so that 4 the presentation of damages is coherent. She will testify 5 as to what these documents are. There's plenty of time for 6 the County to review these documents before her testimony 7 and in the sense of, I mean, we just received from the 8 County --</p> <p>9 MS. ROBESON: The full file.</p> <p>10 MR. KATZ: -- and it's being entered evidence 11 today, the entire file from the OHR and we have constantly 12 heard from the County that this is an old case, we can't 13 produce documents, we can't produce documents. I would have 14 liked to have put this together earlier. We have now put it 15 together. Ms. Windle will have plenty of time to review it, 16 and half the documents are documents she produced in 17 discovery.</p> <p>18 MS. WINDLE: Excuse me, but when am I going to 19 have time to review this? He handed this to me about 10 20 minutes ago when I was trying to set up.</p> <p>21 MS. ROBESON: Okay. Well, all right. What we're 22 going to do is this. We still have several witnesses. Who 23 do we have for your case?</p> <p>24 MS. WINDLE: Daryl Plevy and Ms. Stevens.</p> <p>25 MS. ROBESON: Okay. So what we're going to do</p>	<p style="text-align: right;">Page 13</p> <p>1 MS. ROBESON: Okay, good. So if necessary, we 2 will cut this short today so she, so Ms. Windle can review 3 them and then we will finish, if Ms. Cabello gets on today, 4 we'll finish with her testimony February 3rd, all right? So 5 now on, are there any other preliminary matters? Yes, Mr. 6 Katz.</p> <p>7 MR. KATZ: Just very quickly. I don't know if we 8 have to correct this today but in reading through the 9 transcript of the first day, I noticed a couple of errors in 10 the transcript. Should we just -- I would have to find them 11 but should we put them in writing? I mean, I, they're not 12 substantively affecting --</p> <p>13 MS. ROBESON: I noticed a few and I didn't mark 14 them down. There's a couple of places I noticed where a 15 witness was talking and it says I was talking. You can put 16 them in writing. If you see anything that I didn't see. 17 Well, if you could put them in writing and submit them, we 18 can have the transcript corrected.</p> <p>19 MR. KATZ: Okay.</p> <p>20 MS. ROBESON: Speaking of the transcript, I have 21 my own preliminary matter which is when I was reviewing -- 22 at this point, nothing in here, we didn't formally admit 23 anything in, in the prehearing statement even though we 24 referred to them in the testimony so, you know, but one 25 thing that I, when I had the chance to review some of the</p>

<p style="text-align: right;">Page 14</p> <p>1 documents, I noticed on the PAFs, and I have the list, on      2 the PAFs and some of the other documents, there's like      3 social security numbers, and this is a public file.      4 So when I let the performance, I let the      5 performance evaluations in because I felt that the      6 statistical approach that you took, these are the MLS ones      7 and this is their, you know, they got this lump sum, I felt      8 that that didn't adequately address the case because this      9 case is really a subset of three people and whether there      10 was discrimination. Mr. Dudley or Mr. Warner, sorry,      11 testified that he didn't know what the other people, what      12 the other supervisors were doing and so I felt that the only      13 way to address the issues of discrimination and to      14 understand what the County was doing or not doing was via      15 the performance evaluations. Now, I didn't realize that the      16 socials were on it and then thinking this through, you know,      17 there's also their names and addresses which I guess I      18 don't, it didn't hit home until I saw the social security      19 numbers.</p> <p>20 So what I propose to do, I'm going to keep the      21 performance evaluations in but I would like to redact the      22 social security numbers and the names of the individuals.      23 Now, Mr. Warner testified, acknowledges that these were the      24 people that he supervised. We can redact the names and      25 simply call the woman Jane Doe and the man John Doe, and I</p>	<p style="text-align: right;">Page 16</p> <p>1 referred to. It's not --      2 MS. ROBESON: Yes. We'll call the female      3 employee, I don't want to mess up another transcript, we'll      4 call the -- now, Ms. Cabello, you know, waives her right to      5 the personal identifying information because she's bringing      6 the claim, but I don't see any need to include social      7 security numbers, employee ID numbers as long as Mr. Warner      8 admits that the two employees were the ones that he      9 supervised.</p> <p>10 MS. WINDLE: And I believe he already testified to      11 that.</p> <p>12 MS. ROBESON: Yes. He did. All right. So let's      13 do it that way. Yes, Mr. Katz.</p> <p>14 MR. KATZ: I guess we would need to have all the      15 documents reviewed for redaction. I mean, I'm not, I don't      16 think I misheard you. If Ms. Cabello's social security      17 number shows up, also that should also be redacted even      18 though her name isn't --</p> <p>19 MS. ROBESON: Certainly.</p> <p>20 MR. KATZ: Yes.</p> <p>21 MS. ROBESON: I mean, it's up to her to waive what      22 she wishes and what she doesn't wish to have in. I don't      23 have a problem doing the same thing for Ms. Cabello because      24 I don't think the social security number is really necessary      25 for a determination in this case unless someone else thinks</p>
<p style="text-align: right;">Page 15</p> <p>1 would like to redact their names out of the transcript too      2 because of the personal, I didn't think that the personal      3 information -- what I would like to redact out is the names,      4 the social security numbers and any other personal      5 identifying information as long as Mr. Warner is      6 acknowledging that these are the three people he supervised.      7 I really don't see any way to address the      8 discrimination claim in this case without having the      9 performance evaluations in. I would also, for the court      10 reporter, I'm going to ask that the transcript be adjusted      11 to refer to the two employees, the two other employees as      12 Jane and John Doe but I don't know, I couldn't think of any      13 other way to address some of the -- I didn't think, I don't      14 think that the personal identifying information is really      15 necessary to prosecute the claim. If you want to comment,      16 I'd be happy to hear comments but, Ms. Windle, do you have      17 any comments?</p> <p>18 MS. WINDLE: I don't have any problem with that.      19 I had opposed having them coming in --</p> <p>20 MS. ROBESON: Yes. I know.</p> <p>21 MS. WINDLE: -- in the first place but I have no      22 problem with redacting.</p> <p>23 MS. ROBESON: Mr. Katz, do you see any issues with      24 that?</p> <p>25 MR. KATZ: No. As long as it's clear who is being</p>	<p style="text-align: right;">Page 17</p> <p>1 so, but I don't think so. If it ever, you know, the damages      2 issue or the wages issue is not at issue at the moment and      3 if for some reason it become relevant later, we'll deal with      4 that, okay?</p> <p>5 All right. With that --</p> <p>6 MS. WINDLE: Actually, I do have one other matter.      7 On Friday, we received --</p> <p>8 MS. ROBESON: The supplemental.</p> <p>9 MS. WINDLE: -- the supplemental.</p> <p>10 MS. ROBESON: Yes.</p> <p>11 MS. WINDLE: And I, well, for one thing, I looked      12 at the documents. They're all documents they would have had      13 access to long, long ago, certainly in time for the      14 prehearing submission, and we get it afternoon on the Friday      15 before a three-day weekend before the hearing on Tuesday.      16 And so if there is going to be any attempt to put these      17 documents in, I would object. And specifically, a number of      18 the documents refer by name to an individual who was a staff      19 person in the Victim Advocate Program or Victim Advocate      20 Sexual Assault, whatever the name of the program is, and he      21 was severely disabled. And they've put in all kinds of      22 documents with his name and I would certainly object to      23 that. I don't think, I mean, I don't think the documents      24 are relevant. I also object on the basis that they came up      25 with them, you know, on Friday afternoon.</p>

<p style="text-align: right;">Page 18</p> <p>1 MS. ROBESON: Mr. Katz?      2 MR. KATZ: We haven't stated that we're putting      3 any of these into evidence. If any of the documents we wish      4 to propose to put into evidence have an individual's name      5 who should be redacted, we would not object to doing so.      6 The issue as to they could have provided these at any point,      7 the first time we heard an allegation that Mr. Warner was in      8 any way dissatisfied with how Ms. Cabello dealt with the      9 reintegration of a disabled employee was during Mr. Warner's      10 testimony here and a number of the documents in there      11 address the issue of basically, the, do a reasonable      12 accommodation for this disabled person. So that is why      13 those documents were introduced because Mr. Warner's      14 testimony was the first time we heard anything about that.      15 MS. ROBESON: Ms. Windle, do you have any      16 response?      17 MS. WINDLE: I don't recall Mr. Warner being      18 critical of that process. I don't know how important he      19 thought it was but --      20 MS. ROBESON: I recall --      21 MS. WINDLE: I'd have to look at the transcript.      22 MS. ROBESON: Yes. I definitely recall, because I      23 just, what we do is summarize the testimony when we send our      24 recommendation to the Commission and that was, that was      25 definitely a factor in his testimony. What I'm going to do</p>	<p style="text-align: right;">Page 20</p> <p>1 record.      2 (Whereupon, at 10:05 a.m., a brief recess was      3 taken.)      4 MS. ROBESON: Okay. We're back on the record.      5 MS. WINDLE: And I just have one other thing      6 related to this exhibit that was just put in that was made,      7 was it 94?      8 MS. ROBESON: Yes.      9 MS. WINDLE: I did have, I think there are red      10 sheets between each individual document and I would just      11 suggest for ease of, because I'm probably going to want --      12 MS. ROBESON: I'm not sure I have it. I got the      13 -- I just realized.      14 MS. WINDLE: Oh, did I not give you the --      15 MS. ROBESON: I got the tabs but I didn't get the      16 exhibit.      17 MS. WINDLE: Oh. Sorry.      18 MS. ROBESON: Thank you. All right.      19 MS. WINDLE: And if I could ask that those be      20 labeled A, B, C, D so --      21 MS. ROBESON: That's fine. Let me do that right      22 now.      23 MR. KATZ: Can I ask, Ms. Windle, are you going to      24 be using this with any of your direct this morning?      25 MS. WINDLE: No. I don't believe so.</p>
<p style="text-align: right;">Page 19</p> <p>1 is the same thing as we did for the other exhibits and that      2 is you have, we're kind of backwards in the typical order of      3 things but he would be able to admit the, or to submit these      4 on what in this case would be surebuttal so I am going to,      5 you know, again give you the chance to review them and if it      6 -- this is more a rebuttal exhibit because I don't know if      7 it's a supplemental discovery request but it's more a      8 rebuttal exhibit.      9 So I'm going to, subject to relevancy, I'm going      10 to let them in as we go and in his, what would here be his      11 case in chief simply because that would give you time,      12 rather than going all the way to surebuttal, that would give      13 you time to address it in your rebuttal case, all right?      14 But it's subject to any other objections. You haven't seen      15 them, I haven't seen them so I'm not admitting them at this      16 point. And I would expect that the name of the disabled      17 employee be redacted as long as we have some statement on      18 the record that the redacted, that the individual was the      19 individual discussed in Mr. Warner's testimony, all right?      20 So we'll go with it that way. Anything else?      21 MR. KATZ: No, Your Honor.      22 MS. ROBESON: Ms. Windle? Yes.      23 MS. WINDLE: I need to go off the record for a      24 minute, please.      25 MS. ROBESON: Okay. Court reporter, we're off the</p>	<p style="text-align: right;">Page 21</p> <p>1 MR. KATZ: Okay. Just because we wanted time to      2 review it before using it.      3 MS. WINDLE: Yes. Well, you received it a couple      4 weeks ago but --      5 MR. KATZ: No.      6 MS. ROBESON: Now, so what is 90 --      7 MR. KATZ: No, we didn't.      8 MS. ROBESON: I'm sorry. I didn't mean -- go      9 ahead.      10 MR. KATZ: No. I was just saying because we had      11 requested a chance to review this before it's formally      12 admitted.      13 MS. ROBESON: Right. Well, all I'm doing now is      14 marking it.      15 MR. KATZ: That's fine.      16 MS. ROBESON: For identification. Attachment A,      17 is that 94(A)? Is that how you want to do it?      18 MS. WINDLE: Yes.      19 MS. ROBESON: So this will be 94(A).      20 MR. KATZ: Is there a separate 94?      21 MS. ROBESON: No.      22 MR. KATZ: Okay.      23 MS. WINDLE: No. So it will just be 94(A), (B),      24 (C).      25 MS. ROBESON: Okay. So I'll go through and mark</p>

<p>1 that. All right. Anything else?      2 (Exhibit Nos. 94(A) through      3 94(O) were marked for      4 identification.)</p> <p>5 MS. ROBESON: All right. Ms. Windle, I think      6 you're up.</p> <p>7 MS. WINDLE: All right. I'll get my witness. Let      8 me just get the binder.</p> <p>9 MR. KATZ: Before the witness comes in, can I just      10 request, Ms. Robeson, that you voir dire the witness at the      11 beginning to confirm that she has not had any discussion      12 about this case since she left this room?</p> <p>13 MS. ROBESON: That's fine.</p> <p>14 MR. KATZ: Okay.</p> <p>15 MS. ROBESON: Ms. Plevy, please raise your right      16 hand.</p> <p>17 (Witness sworn.)</p> <p>18 MS. ROBESON: And can you please confirm that you      19 haven't discussed this case with anyone else since the last      20 time you were here?</p> <p>21 MS. PLEVY: I have not.</p> <p>22 MS. ROBESON: Okay. Ms. Windle.</p> <p>23 THE WITNESS: Except with Anne. She gave me the      24 questions she was going to ask me.</p> <p>25 MS. WINDLE: Well, I talked with her yesterday.</p>	<p>Page 22</p> <p>1 She was not to talk about the case with anybody because she      2 was here to testify previously and we just didn't get to      3 her. We're in the middle of their case in chief. The      4 witness should be stricken.</p> <p>5 MS. ROBESON: I am not going to strike the      6 witness. Were the questions that you prepared, were they      7 the same questions that you prepared earlier?</p> <p>8 MS. WINDLE: Yes. They did not change based on      9 anything that happened on December 4th. It was simply      10 again, because it had been quite some time that we had gone      11 over her testimony. We went over it again. I did not      12 change the questions. In fact, I hadn't even looked at the      13 transcript at that point so.</p> <p>14 MR. KATZ: A moment, Your Honor.</p> <p>15 MS. ROBESON: I want to go check the -- I don't      16 have the transcript with me. If we can take a brief recess      17 and let me get the transcript. I want to take one more look      18 at the --</p> <p>19 MS. WINDLE: I have the transcript if you want to      20 look at it.</p> <p>21 MS. ROBESON: Yes. But I want to find the place,      22 the instruction.</p> <p>23 MR. KATZ: Your Honor, if I can just point you to      24 dialogue on page 193 and 194.</p> <p>25 MS. ROBESON: Yes. I don't have -- okay. Let me</p>
<p>Page 23</p> <p>1 It's been I don't know how long since I prepared her and      2 went over her testimony. I did not discuss with her --</p> <p>3 MS. ROBESON: What the other witnesses said?</p> <p>4 MS. WINDLE: Not at all.</p> <p>5 THE WITNESS: No.</p> <p>6 MR. KATZ: I would request that the witness leave      7 the room.</p> <p>8 MS. ROBESON: Please leave.</p> <p>9 (Whereupon, the witness exited the hearing room.)</p> <p>10 MR. KATZ: Your Honor, the instruction was that      11 Ms. Plevy was not to talk about this case with anybody      12 between the time she left this room and her testimony today.      13 Ms. Windle just stated that she talked about the questions      14 she would ask to Ms. Plevy in the interim, apparently      15 yesterday. I would move the witness be stricken. It is a      16 complete violation of the order of this court.</p> <p>17 MS. WINDLE: I did not take the order, and I did      18 not take the order to mean that I could not continue to      19 prepare my witnesses. I know that certainly, he's been      20 talking with Ms. Cabello. I did not discuss the testimony      21 of any of the witnesses. I went over the questions that had      22 already been prepared for Ms. Plevy because it had been some      23 period of time when I had prepared her and I did not see it      24 as a violation of that order.</p> <p>25 MR. KATZ: Your Honor, the order was very clear.</p>	<p>Page 25</p> <p>1 just take a five minute recess so I can get my copy of the      2 transcript, okay, because there were a couple of      3 instructions so let me look.</p> <p>4 (Whereupon, at 10:18 a.m., a brief recess was      5 taken.)</p> <p>6 MS. ROBESON: All right. Now we're back on the      7 record. I did check the transcript and the instruction was      8 not to discuss it with any other witness.</p> <p>9 MS. WINDLE: Correct.</p> <p>10 MS. ROBESON: And so I am going to let her testify      11 but, Mr. Katz, if you want to cross on whether or not she      12 discussed the case, you can, you know, whether or not there      13 was discussion of Mr. Warner's testimony in her preparation      14 with Ms. Windle, you can do so but I'm not going to strike      15 the witness. So we're going to -- especially based on Ms.      16 Windle's representation that she was only preparing the      17 questions. So let's have Ms. Plevy come back. She's sworn.      18 What I don't remember is if I, I did ask her to confirm      19 except that she hadn't discussed it with any other witness      20 so.</p> <p>21 (Whereupon, the witness re-entered the hearing      22 room.)</p> <p>23 MS. ROBESON: Thank you, Ms. Plevy.</p> <p>24 (Witness previously sworn.)</p> <p>25 MS. ROBESON: You are still under oath, and you're</p>

<p style="text-align: right;">Page 26</p> <p>1 still under the instruction not to discuss this with any 2 other witness, all right? Ms. Windle.</p> <p>3 MS. WINDLE: Thank you.</p> <p>4 DIRECT EXAMINATION</p> <p>5 BY MS. WINDLE:</p> <p>6 Q Please state your name for the record, please.</p> <p>7 A Daryl Plevy.</p> <p>8 Q And by whom are you currently employed?</p> <p>9 A The State of Maryland.</p> <p>10 Q And what is your position currently?</p> <p>11 A Deputy Director of the Behavioral Health 12 Administration for Operations.</p> <p>13 Q Okay. And very briefly, what are your 14 responsibilities in that job?</p> <p>15 A Um --</p> <p>16 MS. ROBESON: Just before you get further, did she 17 give her address for the record?</p> <p>18 MS. WINDLE: I'm sorry. I didn't know you needed 19 it. We can certainly ask.</p> <p>20 MS. ROBESON: We do ask that. Can you give us 21 your address for the record?</p> <p>22 THE WITNESS: Yeah. My work address?</p> <p>23 MS. ROBESON: You can give your work address, yes.</p> <p>24 THE WITNESS: It's 55 Wade Avenue, W-A-D-E, Dix 25 Building, Catonsville, Maryland.</p>	<p style="text-align: right;">Page 28</p> <p>1 A From 1995 until 2000 and, 2006 I think.</p> <p>2 Q And what was our first position with Montgomery 3 County?</p> <p>4 A Chief of accountability and customer service.</p> <p>5 Q And was this a merit system or a political 6 appointment?</p> <p>7 A Political appointment.</p> <p>8 Q And what was your grade?</p> <p>9 A MLS-1.</p> <p>10 Q And how long did you hold that position?</p> <p>11 A Until, um, 2001.</p> <p>12 Q And again briefly, what were your responsibilities 13 in that position?</p> <p>14 A Um, the County Executive wanted to put together an 15 outcome-based system for health and human services that 16 created a system of accountability in all of the different 17 programs in the department where you measured the impact of 18 funds spent on the individuals served. And then there are a 19 number of other functions in that unit including press 20 relations, legislative relations, communication with members 21 of the public. Those kinds of things.</p> <p>22 Q And was there a time when your position changed?</p> <p>23 A Yes. In 2001, I was asked to become acting 24 director of, or acting chief of behavioral health and then 25 later, I was appointed permanent chief of what was then</p>
<p style="text-align: right;">Page 27</p> <p>1 MS. ROBESON: Okay. Go ahead, Ms. Windle.</p> <p>2 BY MS. WINDLE:</p> <p>3 Q And what are your responsibilities in your current 4 position?</p> <p>5 A I oversee the budget, the local government 6 operations. We have a contract for payment of state 7 Medicaid funds, and I oversee that in conjunction with 8 someone from Medicaid. That's 1 point I think 3 billion 9 dollars of payments. Um, what else. Just normal operation 10 stuff.</p> <p>11 Q Do you supervise other employees?</p> <p>12 A Yes.</p> <p>13 Q How many?</p> <p>14 A Direct reports or everybody?</p> <p>15 Q Well, how many direct reports do you have?</p> <p>16 A Probably about seven.</p> <p>17 Q And how many people do you supervise indirectly?</p> <p>18 What's the total number of people you supervise.</p> <p>19 A Maybe 50.</p> <p>20 Q And tell me about your education and training.</p> <p>21 A Um, I have an undergraduate degree in sociology 22 and a law degree and am a member of the Maryland and D.C. 23 Bars.</p> <p>24 Q Okay. And when, if ever, did you work for 25 Montgomery County?</p>	<p style="text-align: right;">Page 29</p> <p>1 called behavioral health and crisis services.</p> <p>2 Q As chief of behavioral health and crisis services, 3 what were your responsibilities?</p> <p>4 A I oversaw what's known as the local core service 5 agency which is the state-funded authority that operates 6 mental health services in the local jurisdiction and 7 oversees the, that oversees addiction services, crisis 8 services. They've done services, the abused persons 9 program, homeless services, energy assistance, and that 10 would be it.</p> <p>11 Q Okay. How many employees were in your service 12 area?</p> <p>13 A I don't know the exact number but I'd say maybe 14 100.</p> <p>15 Q And what was your responsibility in relation to 16 performance evaluation and compensation of management, 17 leadership service employees?</p> <p>18 MS. ROBESON: Before, I'm sorry to interrupt but 19 before we get to that, I'm just going to let you know that 20 in addition to Ms. Cabello, Mr. Warner directly supervised 21 two other employees, one a male and one a female. To 22 protect their privacy, we are referring to them as Jane Doe 23 and John Doe. If you could remember to do that in your 24 testimony, that would help us.</p> <p>25 THE WITNESS: Okay.</p>

<p style="text-align: right;">Page 30</p> <p>1 MS. ROBESON: I'm sorry, Ms. Windle. I wanted to, 2 we were kind of honing down to the area so I wanted to get 3 that in.</p> <p>4 MS. WINDLE: That's fine. I hope I can remember 5 to --</p> <p>6 MS. ROBESON: I know.</p> <p>7 MS. WINDLE: -- to use that.</p> <p>8 BY MS. WINDLE:</p> <p>9 Q Okay. My question was what was your 10 responsibility in relation to performance evaluation and 11 compensation of management leadership, service employees.</p> <p>12 A Well, people who reported directly to me, I did 13 their evaluations and recommended compensation to the 14 director of the department.</p> <p>15 Q How many direct reports did you have?</p> <p>16 A Around seven or eight, something like that. And 17 then I also reviewed recommendations for performance 18 evaluations by my managers of the people they were 19 supervising, and I review that with them and then approve 20 it. That was compensation recommendations.</p> <p>21 Q And what was the general process of evaluating and 22 compensating management leadership service or MLS employees?</p> <p>23 A Um, well, every year we got instructions from Joe 24 Adler about what the ranges were supposed to be if I 25 remember correctly, and we -- can you repeat your question?</p>	<p style="text-align: right;">Page 32</p> <p>1 like give one person a higher rating than somebody who is 2 actually doing better than they are doing, so you have to 3 look at everybody similarly situated together.</p> <p>4 Q Okay. If I could have you look in this book at 5 Exhibit 87. It's already in as a joint exhibit.</p> <p>6 MS. ROBESON: Well, I think I didn't formally -- 7 this was a joint exhibit and we'll just, but I need to go 8 through and formally -- you didn't have any objection since 9 it's a joint exhibit, correct?</p> <p>10 MR. KATZ: No. We proposed them.</p> <p>11 MS. ROBESON: Okay. So we will admit 87 just out 12 of an abundance of caution to clarify the record. (Exhibit No. 87 was received 14 into evidence.)</p> <p>15 MS. WINDLE: Okay. Do we need to do that with all 16 of the exhibits? Most of them are joint exhibits.</p> <p>17 MS. ROBESON: Okay. The joint exhibits we can 18 admit subject to redaction, all right, to the redaction of 19 -- there are some listed as joint that are the PAFs and some 20 that have the personal identifying information, so we'll do 21 that. We can admit them subject to redacting the personal 22 identifying information. (Exhibit No. 87 were received 24 into evidence.)</p> <p>25 MS. WINDLE: Okay.</p>
<p style="text-align: right;">Page 31</p> <p>1 I forgot it.</p> <p>2 Q I just asked what was the general process of 3 evaluating and compensating MLS employees.</p> <p>4 A Okay. So the general processes, we would get 5 instructions and we were expected to have a range of, we 6 were, we got some training and we were expected, we got a 7 lot of instructions and we were expected to make sure there 8 was a range, kind of a bell curve or recommendations both on 9 the, you know, from the different levels on the performance 10 review plus at different levels of the compensation 11 recommendations. And we would, what I would do and what I 12 think every manager did was we would look at all of the 13 initial drafts of people in the service area and then we 14 were expected to calibrate them so that they weren't just 15 fair to the individual but they were fair as a whole across 16 the board.</p> <p>17 Q Okay. Can you talk more about calibration? What 18 is that?</p> <p>19 A Well, the way I understand it is that you, kind of 20 like what I'm saying with the bell curve. You know, you are 21 looking for a few people on the really high end, looking for 22 a few people on the low end and then less people would fall 23 somewhere in the middle. And we want to make sure that the 24 group as a whole is treated fairly in addition to 25 individuals. You want to make sure you don't do something</p>	<p style="text-align: right;">Page 33</p> <p>1 MS. ROBESON: And the numbers, whether they come 2 in or out, we're not going to change the numbers. We'll 3 just say not admitted on the exhibit, on the docket sheet, 4 okay? Go ahead.</p> <p>5 MS. WINDLE: Okay. Thank you.</p> <p>6 BY MS. WINDLE:</p> <p>7 Q Okay. No. 87 has been admitted, and it's the 8 fiscal year '06/07 handbook. Do you recall seeing this?</p> <p>9 A Yes.</p> <p>10 Q And how, if at all, did you use the handbook?</p> <p>11 A Well, I would use it, you know, to review it every 12 year and I would use it to, you know, help them make sure I 13 was doing the evaluation process correctly.</p> <p>14 Q So you got a handbook like this every year, is 15 that correct?</p> <p>16 MR. KATZ: Objection.</p> <p>17 MS. ROBESON: Basis?</p> <p>18 THE WITNESS: Yes.</p> <p>19 MS. ROBESON: No. Don't answer. If there's an 20 objection, don't answer, okay?</p> <p>21 THE WITNESS: Oh, okay.</p> <p>22 MR. KATZ: There's a reference to you got a 23 handbook like this every year. We don't know what that's 24 referring to, a handbook like that. And there isn't 25 testimony from the witness that she got other handbooks.</p>

<p style="text-align: right;">Page 34</p> <p>1 MS. ROBESON: Okay. Can you ask it in another way 2 rather than, can you be more specific?</p> <p>3 BY MS. WINDLE:</p> <p>4 Q Did you receive an MLS performance management and 5 performance based pay handbook every year?</p> <p>6 A Yes.</p> <p>7 Q And how, if at all, did you use the handbook?</p> <p>8 A As a means of making sure that what I was, that I 9 was, whether I was doing the evaluations myself or 10 overseeing them, that I was doing them as expected.</p> <p>11 Q And do you recall receiving training on how to 12 evaluate MLS members?</p> <p>13 A Yes.</p> <p>14 Q Okay. And how often did you receive training, do 15 you remember?</p> <p>16 A Well, I'm using training in a broad way. We had 17 discussions at the County Executive's, he had these 18 leadership forums, I think they were quarterly, and then we 19 also had what were called HHS excellence meetings that, 20 where it was discussed and we also discussed it in our 21 management team. So it was discussed a lot because, and 22 including the expectations because initially, this was a new 23 process and there were a lot of concerns that we do it 24 correctly.</p> <p>25 Q Now, if you could look at Joint Exhibits, several</p>	<p style="text-align: right;">Page 36</p> <p>1 evaluation of Ms. Cabello, rated overall successful. Did 2 you concur with Mr. Warner's rating of Ms. Cabello in '03?</p> <p>3 A I did.</p> <p>4 Q And why?</p> <p>5 A Because I think it accurately reflected her 6 performance at that time.</p> <p>7 Q And can you be any more specific?</p> <p>8 A Um, well, I mean, in terms of successful 9 performance, that it was the level at which she was 10 functioning. She, Nadja's performance was I would say good 11 on the clinical and satisfactory on the management part of 12 her job, and successful performance was appropriate for how 13 she was doing.</p> <p>14 Q If you could look at Joint Exhibit 22, this is, 15 I'm sorry, this is a letter --</p> <p>16 MR. KATZ: Objection. She asked her to look at a 17 letter.</p> <p>18 MS. ROBESON: She has to tell us what the letter, 19 the witness has to tell us what the letter is.</p> <p>20 MS. WINDLE: Well, if it's a joint exhibit, isn't 21 it already in? I certainly understand you have to do that 22 with exhibits that aren't in.</p> <p>23 MS. ROBESON: Well, I would prefer if she could 24 tell us what it is. The exhibit's in but, you know --</p> <p>25 MS. WINDLE: Okay. That's fine. That's fine.</p>
<p style="text-align: right;">Page 35</p> <p>1 of them here, 75, okay, and I'll just have you look at all 2 of these at the same time, 76, 77 and 78. And these are 3 also in as joint exhibits. Do you recognize these 4 documents?</p> <p>5 A Yes.</p> <p>6 Q And what do you recall about these documents?</p> <p>7 A These were the kinds of documents we got every 8 year that talked about the expectations as to, as they 9 kicked off the performance evaluation process.</p> <p>10 Q Okay. Now, I'd like you to look at Joint Exhibit 11 7.</p> <p>12 A I can't find it.</p> <p>13 Q I know. A little too full.</p> <p>14 A Okay.</p> <p>15 Q Now, this is in as a joint exhibit, Nadja 16 Cabello's position description. As you recall, is this an 17 accurate description of Ms. Cabello's job responsibilities 18 between 2003 and 2006? And if you need a minute to look at 19 it, please do.</p> <p>20 A Okay.</p> <p>21 Q Okay. So is this an accurate description of Ms. 22 Cabello's job responsibilities between 2003 and 2006?</p> <p>23 A Yes.</p> <p>24 Q Now, if you can please look at Joint Exhibit 9. 25 This is in as a joint exhibit. It's the fiscal year '03</p>	<p style="text-align: right;">Page 37</p> <p>1 BY MS. WINDLE:</p> <p>2 Q Can you identify Exhibit 22, please?</p> <p>3 A Yes. That was the, it was Carolyn's letter to 4 Nadja about what her compensation would be that year.</p> <p>5 Q And who made this recommendation?</p> <p>6 A Dudley made it to me. I made it to Carolyn.</p> <p>7 Q And did you agree with Mr. Warner's 8 recommendation?</p> <p>9 A I did.</p> <p>10 Q And why?</p> <p>11 A I'm trying to think of exactly how to put this. 12 As I said a minute ago, Nadja's performance was successful. 13 She did do a good job in the clinical area but there are 14 other areas where there was, it was a lot of work related to 15 helping Nadja work through issues and things like that. 16 And, you know, in looking at everybody in my service area, 17 Nadja's performance was on the low end while still 18 successful and so this was an appropriate recommendation in 19 my judgment.</p> <p>20 Q Okay. And what was the recommendation?</p> <p>21 A Well, it was for the cost of living of 2 percent, 22 which I think everybody got, and a lump sum of \$883.</p> <p>23 Q Okay. Now, if you could look at Joint Exhibit 41.</p> <p>24 MS. ROBESON: Which involves Jane Doe. 25 MS. WINDLE: Right.</p>

<p style="text-align: right;">Page 38</p> <p>1 BY MS. WINDLE:      2 Q And can you identify this document?      3 A This is Jane Doe's position description.      4 MS. ROBESON: And Jane Doe was also supervised by      5 Mr. Warner?      6 THE WITNESS: Yes.      7 MS. ROBESON: Okay. Go ahead.      8 BY MS. WINDLE:      9 Q As you recall, is this an accurate description of      10 Jane Doe's position from fiscal year '03 through fiscal year      11 '06?      12 A I haven't seen this document before so give me a      13 second. Yes.      14 Q Okay. Now, if you could look at Joint Exhibit 42,      15 and can you identify this document?      16 A Yeah. This is Jane Doe's performance evaluation      17 for I guess it's fiscal year '03.      18 Q And what rating, overall rating did she receive?      19 A Successful.      20 Q And who rated her?      21 A Mr. Warner.      22 Q And did you agree with Mr. Warner's rating?      23 A Yes, I did.      24 Q And why?      25 A Um, at that point in time, Ms. Doe was doing, she</p>	<p style="text-align: right;">Page 40</p> <p>1 lump sum?      2 A That was a long time ago. I don't remember having      3 a specific conversation about that.      4 Q Okay. If you could look at Joint Exhibit 10.      5 Okay. And can you identify this document, please?      6 A It's a performance evaluation for Ms. Cabello for      7 fiscal year '04.      8 Q And what was her overall rating?      9 A Successful performance.      10 Q And did you agree with this rating?      11 A Yes.      12 Q Why?      13 A Because I felt like the successful performance was      14 an accurate reflection of her performance.      15 Q Do you remember any specifics about her      16 performance that year?      17 A Throughout this period, there had been a lot of      18 tension between Nadja, specifically, and some of the people      19 in her unit and the police department, and we had quite a      20 number of discussions and efforts to resolve that and during      21 this period, they still weren't resolved. And there really      22 wasn't, you know, when you get beyond successful, successful      23 is still solid performance but when you get beyond      24 successful, you have to be able to demonstrate that you've      25 done something that's out of the ordinary, that's more than</p>
<p style="text-align: right;">Page 39</p> <p>1 had a mix of successful and highly successful areas and on      2 balance, more were successful than the others.      3 Q Okay. Now, if you could look at Joint Exhibit 49,      4 please, can you identify this?      5 A Um, it's a personnel action form.      6 Q For who?      7 A For Jane Doe.      8 Q Okay. And what is this personnel action form?      9 A It's what you got when a change was made in your      10 compensation or other work conditions if I remember      11 correctly.      12 Q Okay. In this case, what, for Jane Doe, what was      13 the action taken?      14 A She got a lump sum payment of \$892.      15 Q And do you recall, is this what Mr. Warner      16 recommended?      17 A I believe he did, yes.      18 Q And did you agree with this recommendation?      19 A Yes.      20 Q And why?      21 A Um, because that was -- I felt like his judgment      22 and recommendation were reasonable based on her performance      23 at the time.      24 Q Okay. Did you have any discussion with Mr. Warner      25 about giving a percent increase to Jane Doe rather than a</p>	<p style="text-align: right;">Page 41</p> <p>1 what you're expected to do based on your job description and      2 there really wasn't a lot in that area. She did get      3 exceptional performance in customer service orientation and      4 in serving LEP clients. She had a few where she got highly      5 successful. In general, her performance was in the      6 successful range.      7 Q What is LEP?      8 A Limited English proficiency.      9 Q Okay. If you could now look at Joint Exhibit 18,      10 please, and can you identify this document?      11 A Yeah. This was a recommendation from me to      12 Carolyn Colvin, who was the director of health and human      13 services, and I was recommending a lump sum of 2 percent.      14 Q And did someone make this recommendation of the 2      15 percent lump sum to you?      16 A Dudley did.      17 Q And did you agree?      18 A Yes.      19 Q Why?      20 A Um, for the same reasons that I described a minute      21 ago from the other year is that in looking at all of the      22 people in my service area and their performance plus span of      23 control, this was a relatively small program compared to      24 some of the others, this is where she fit in comparison to      25 the others and it's appropriate.</p>

<p style="text-align: right;">Page 42</p> <p>1 Q Okay. Now, if you could turn to Joint Exhibit 43, 2 can you identify this document, please?</p> <p>3 A Yeah. This is Jane Doe's evaluation for fiscal 4 year '04.</p> <p>5 Q Okay. And what rating did she get?</p> <p>6 A It's not on the cover sheet, but I believe she got 7 highly successful that year.</p> <p>8 Q And who rated her?</p> <p>9 A Dudley made recommendations and I approved.</p> <p>10 Q And why did you approve this rating of highly 11 successful?</p> <p>12 A Well, as time went on, she really responded when 13 we made comments about areas where she needed to do more or 14 when we were clear, you know, made it clear to her what we 15 were looking for. She responded. And, you know, her 16 behavior certainly pulled her ahead of the pack. And there 17 are a number of things that she was doing and I can, it's 18 almost easier for me to talk about it over a period of time 19 than from document to document but she was, she was in 20 charge of the access team, which was how people came into 21 mental health or substance use service, which required 22 merging mental health and substance use together and these 23 were two very different cultures.</p> <p>24 We were also changing. It used to be that county 25 employees would provide mental health services in the same</p>	<p style="text-align: right;">Page 44</p> <p>1 base pay in a permanent change.</p> <p>2 Q Okay. Now, if you could look at 51, please, and 3 identify this document.</p> <p>4 A This is also Ms. Doe's personnel action form for 5 2004, and she also got a lump sum of \$892 that year.</p> <p>6 Q And do you recall if this is what Mr. Warner 7 recommended to you?</p> <p>8 A Yes, it was.</p> <p>9 Q And did you concur?</p> <p>10 A I did.</p> <p>11 Q Why?</p> <p>12 A For the reasons I just stated. She was really 13 starting to pull ahead of the pack. She was doing some 14 really impressive work, and it's where she fit when you look 15 at everybody that was in my service area. She was really 16 starting to just get better and better at what she was 17 doing.</p> <p>18 QOkay. Now, if you could look at Joint Exhibit 11, 19 please, and if you could identify this document.</p> <p>20 A It's Ms. Cabello's fiscal year '05 evaluation.</p> <p>21 Q And what's the overall rating?</p> <p>22 A Successful.</p> <p>23 Q And who gave her this rating?</p> <p>24 A Dudley made the recommendation to me and I 25 approved.</p>
<p style="text-align: right;">Page 43</p> <p>1 fashion that private providers did, and the state had moved 2 to a fee for service system so private providers were 3 available to, at a volume enough that they could serve most 4 people. So what we wanted to do with the county-funded 5 services was to serve people who were difficult to find 6 places for in the private sector and that meant giving up 7 clients who were easy to serve and taking on the more 8 difficult clients, and she was working to move in that 9 direction.</p> <p>10 And she was also doing a really good job with 11 measuring her success and so, you know, you start to see a 12 progression that she's understanding. And, I mean, we 13 talked about this in all of our meetings but, you know, she 14 starts to understand what we're talking about, she starts to 15 do things that are impressive.</p> <p>16 Q Okay. If you could look at Joint Exhibit 50 and 17 identify it, please.</p> <p>18 A Um, this is Ms. Doe's personnel action form and --</p> <p>19 Q For what year?</p> <p>20 A Well, it's 2004. And we added to the base \$1,783.</p> <p>21 Q Okay. And when you say added to the base, what do 22 you mean by that?</p> <p>23 A Well, it wasn't a lump sum. It was probably a 24 percentage increase that's transferred or translated into 25 that dollar amount so that would be, that would reflect her</p>	<p style="text-align: right;">Page 45</p> <p>1 Q And why did you approve it?</p> <p>2 A Um, well, in contrast to Ms. Doe, the performance 3 of Ms. Cabello was pretty flat. There weren't any major 4 changes or improvements in her service area. They continued 5 to be pretty much the same, and the areas where there were 6 concerns were, were continuing, whether it was with the 7 police department or, you know, other -- that's what I'm 8 thinking of. And a lot, you know, her basic, her basic 9 management was flat. There wasn't any exceptional, and when 10 I looked at -- I shouldn't say anything. There were a few 11 things like the commitment to serving clients with limited 12 English proficiency and she did have a strong customer 13 service orientation but in general, it was sort of just, you 14 know, there weren't, there wasn't anything creative or new 15 of any significant magnitude as compared to other people in 16 the service area.</p> <p>17 Q Now, if you could look at Joint Exhibit 19, 18 please, and identify this document.</p> <p>19 A This is my recommendation to Carolyn Colvin for 20 2005 for miss, compensation for Ms. Cabello, and it's for a 21 lump sum of 2 percent.</p> <p>22 Q And who recommended this to you, if anybody?</p> <p>23 A Dudley.</p> <p>24 Q And why did you concur with this?</p> <p>25 A Um, for the reasons I just stated. The</p>

<p style="text-align: right;">Page 46</p> <p>1 performance of Ms. Cabello was, you know, it just continued,      2 for the most part, on a straight line. There weren't a lot      3 of significant changes to what she was doing during this      4 time period.</p> <p>5 Q Okay. Now, if you can turn to Joint Exhibit 44      6 and identify this document.</p> <p>7 A Um, this is Ms. Doe's performance evaluation.</p> <p>8 Q Jane. Jane Doe.</p> <p>9 MS. ROBESON: Ms. Doe's.</p> <p>10 THE WITNESS: Sorry.</p> <p>11 MS. ROBESON: That's okay. We'll redact the      12 transcript. I know it's -- go ahead.</p> <p>13 THE WITNESS: Sorry. Ms. Doe's performance      14 evaluation for fiscal year '05.</p> <p>15 BY MS. WINNIE:</p> <p>16 Q And what's the overall rating?</p> <p>17 A Highly successful.</p> <p>18 Q And who rated her?</p> <p>19 A Dudley made a recommendation and I concurred.</p> <p>20 Q And why did you concur?</p> <p>21 A Well, she, she continued to make progress in the      22 areas she was managing and I believe it was this year that      23 we were really pushing hard on a number of things but one      24 thing that was really important to me, partly based on my      25 earlier job, was the focus on outcomes which was continued</p>	<p style="text-align: right;">Page 48</p> <p>1 Q Okay. If you could look at page 5 of Joint      2 Exhibit 44, this area is competencies.</p> <p>3 A Okay.</p> <p>4 Q Can you comment on her rating as to these, the      5 competencies?</p> <p>6 A Yeah. Well, the competencies were related to how      7 she was, I think she was conflicted about the changes in the      8 adult mental health clinic and so I think in retrospect, you      9 know, she ended up doing a great job and I think this was      10 maybe part of the process at the time was that she was      11 struggling with whether she wanted to do this, et cetera and      12 so Dudley wanted to make it clear that she had to work on      13 those areas.</p> <p>14 Q What are those areas?</p> <p>15 A Well, the, like with organizational commitment, if      16 we say that you have to change the focus of the adult mental      17 health clinic, that means you have to do it and you have to      18 do it with enthusiasm even if you have some personal doubts      19 if you're a county employee, and the organizational system      20 awareness is related to that as well.</p> <p>21 Q And did you concur with Mr. Warner's rating of her      22 in those areas?</p> <p>23 A Um, yeah. I think he was sending a message in      24 those areas. I think, you know, he was trying to make clear      25 you've got to really do this and do it with enthusiasm. And</p>
<p style="text-align: right;">Page 47</p> <p>1 to be a high priority for the County Executive and the      2 department and we had won, several awards for our work in      3 this area and Ms. Doe was, each year she was continuing to      4 work on how she measured her success. She also received a      5 National Association of Counties award that year. She had      6 worked to redesign the Medbank. She had, her progress was      7 pretty impressive.</p> <p>8 There was an area where we had some concern. She      9 was somewhat resistant to the movement of long-term clients      10 to the community so that county-funded staff could treat      11 people. This was in the mental health, the adult mental      12 health clinics so county-funded people could treat people      13 with, who could not be served in the private sector. So      14 Dudley recommended rating her down in that area and I      15 concurred. We wanted to make it clear to her that      16 resistance was not acceptable but even so, overall, the      17 progress that she had made was, was impressive.</p> <p>18 Q Okay. Are you talking about competencies?</p> <p>19 A No. No. I'm talking about just generally, just      20 looking through this, that the progress she had made, not      21 incompetencies but in her area of responsibility. The      22 access team and the change in focus of the adult mental      23 health clinic and the other thing she was doing was still,      24 still in the highly successful range when taken as a whole      25 and when calibrated with other people in the service area.</p>	<p style="text-align: right;">Page 49</p> <p>1 he was using the evaluation as a way of saying this is      2 really important but it was in the context of, you know, two      3 really solid years of doing a lot of great things.</p> <p>4 Q Okay. If you could turn to Joint Exhibit 46,      5 please, and identify that exhibit.</p> <p>6 A This is my recommendation to Carolyn Colvin for      7 2005 for Ms. Doe that there be an addition to base salary of      8 2 percent.</p> <p>9 Q And to your recollection, is this what Mr. Warner      10 recommended to you?</p> <p>11 A Yes.</p> <p>12 Q And you concurred?</p> <p>13 A Yes.</p> <p>14 Q Why?</p> <p>15 A Um, for the reasons I've said, that she, she had a      16 lot on her plate during this period. She also had a lot of      17 vacancies and so she was not only managing this area but she      18 was also doing some of the clinical work so she basically      19 was doing two jobs. And she was, she made enormous progress      20 with the access team and she made a lot of progress with the      21 adult mental health clinic as well. And she got national      22 awards, or at least the NACo Award, and she did an      23 outstanding job with the outcome measures. There were a lot      24 of things she was doing really well during this time.</p> <p>25 Q Okay. Now, if you could look at Joint Exhibit 58</p>

<p>1 and identify this document.</p> <p>2 A Um, this is a fiscal year '05 rating for Mr. Doe.</p> <p>3 Q Okay. And what rating did he receive?</p> <p>4 A Exceptional performance.</p> <p>5 Q And who did his rating?</p> <p>6 A Dudley recommended and I approved.</p> <p>7 Q And why did you approve it?</p> <p>8 A Because I agreed with it. Um, Mr. Doe, sorry.</p> <p>9 I'm trying really hard.</p> <p>10 MS. ROBESON: Can you strike that? Can you strike</p> <p>11 and just keep Mr. Doe?</p> <p>12 THE WITNESS: Mr. Doe had come into this job in an</p> <p>13 acting capacity and was eventually selected to do the job</p> <p>14 and he, from day one, started solving problems that had been</p> <p>15 very difficult to solve. We had had a lot of concerns with</p> <p>16 the Betty Anne Krahne Center and with the way that contract</p> <p>17 was working, and he was able to get in there and pay</p> <p>18 attention to what needed to be done and devote the time</p> <p>19 necessary to get that working well.</p> <p>20 He also worked with partners in the victim</p> <p>21 services area that we had been struggling, we had been, as I</p> <p>22 mentioned this earlier, we had been really struggling with</p> <p>23 relationships, in particular with the police department, and</p> <p>24 during this period in time when Mr. Doe came in, he was able</p> <p>25 to very quickly look for ways to get people to the table to</p>	<p>Page 50</p> <p>1 Q And what was that recommendation?</p> <p>2 A An increase to the base salary of 3 percent and a</p> <p>3 lump sum of 1.5 percent.</p> <p>4 Q And who recommended this to you?</p> <p>5 A Dudley.</p> <p>6 Q And did you concur?</p> <p>7 A I did.</p> <p>8 Q Why?</p> <p>9 A Because I felt like Mr. Doe was doing an</p> <p>10 outstanding job. He came into the job and very quickly</p> <p>11 turned some problems around. He really, he really did an</p> <p>12 amazing job. And when I looked at people across the service</p> <p>13 area, he was one of the superstars so he deserved</p> <p>14 exceptional performance.</p> <p>15 Q Okay. Now, if you could look at Joint Exhibit 12,</p> <p>16 and can you identify this document?</p> <p>17 A Yeah. It's the fiscal year '06 evaluation for Ms.</p> <p>18 Cabello.</p> <p>19 Q May I ask, what was the rating?</p> <p>20 A Successful.</p> <p>21 Q And who rated her?</p> <p>22 A Dudley recommended and I concurred.</p> <p>23 Q And why?</p> <p>24 A Um, for the reasons I previously stated. Her</p> <p>25 performance was general, generally flat. And what I mean by</p>
<p>Page 51</p> <p>1 start to develop trusting relationships and to keep the</p> <p>2 focus on problem solving and not personalities, and so that</p> <p>3 started to really turn around very rapidly and it was very,</p> <p>4 very impressive. It was especially impressive how quickly</p> <p>5 he was able to address some longstanding problems.</p> <p>6 BY MS. WINDLE:</p> <p>7 Q And what was the overall rating that he received?</p> <p>8 A Exceptional performance.</p> <p>9 Q And did you concur with that rating?</p> <p>10 A I did. I did.</p> <p>11 Q And actually, I need to have you just go back for</p> <p>12 a minute to, if you could look at Joint Exhibit 57, and can</p> <p>13 you identify that document?</p> <p>14 A It's a job description.</p> <p>15 Q For?</p> <p>16 A For Mr. Doe.</p> <p>17 Q And if you could take a minute to look at this.</p> <p>18 A Okay.</p> <p>19 Q And does this description adequately describe Mr.</p> <p>20 Doe's position?</p> <p>21 A Yes, it does.</p> <p>22 Q Okay. Now, if you could look at 61, which is a</p> <p>23 joint exhibit, and identify it.</p> <p>24 A It's my recommendation to Carolyn Colvin for 2005</p> <p>25 for compensation for Mr. Doe.</p>	<p>Page 53</p> <p>1 that is there's a sort of a truism in management that if</p> <p>2 you're standing still, you're going backwards and there</p> <p>3 weren't major or significant changes or improvement to what,</p> <p>4 what the program was doing. It was pretty much staying the</p> <p>5 same year-to-year and there might be a tweak here and there</p> <p>6 but overall, it wasn't, wasn't moving or changing in any</p> <p>7 significant way. There still wasn't an ability, the program</p> <p>8 had not identified a way to document the impact that they</p> <p>9 had on the people that they served. There weren't</p> <p>10 significant changes in relationships with other partners and</p> <p>11 some of the, some of the issues that Mr. Doe solved were</p> <p>12 issues that Nadja first had an opportunity to solve and</p> <p>13 didn't.</p> <p>14 Q And what were those things?</p> <p>15 A Well, the VASAP Board is one I can think of.</p> <p>16 There was a lot of tension with the Board and that wasn't</p> <p>17 really, it would flare up at Council hearings and sometimes</p> <p>18 would be complaints about different things and lack of</p> <p>19 support of the Board, et cetera, and it led to a Council</p> <p>20 study. So there are a number of things like that. The --</p> <p>21 Q I'm sorry. What was Ms. Cabello's role and</p> <p>22 relation to this advisory board, is it?</p> <p>23 A She was staffing it and then at some point I think</p> <p>24 this particular year --</p> <p>25 Q This particular year meaning what?</p>

<p style="text-align: right;">Page 54</p> <p>1 A Fiscal year '06. I think it was this year. Mr.      2 Doe started playing a much more significant role with the      3 Board and they, things were much smoother after that. And      4 the same is true with relations with the police department.      5 Q Okay. Talk about what were the issues with the      6 police department?      7 A Well, there were, these were -- for a period of      8 time, a long period of time, more than a year, there were      9 very frequent battles back and forth between the, between      10 Nadja and the police department about the role of victim      11 services and like when somebody is assaulted and raped,      12 there are, the VASAP program works to counsel the victim and      13 provide support and the police department's primary role is      14 to gather evidence and make sure that they get that evidence      15 while it's fresh so that they can prosecute the perpetrator.      16 And what was happening was they were getting in these      17 battles over who should talk to the victim first and the      18 police department felt like the, the victim's advocates were      19 coming in and in a manner that was tainting the evidence and      20 possibly affecting the outcome of the, of the case.      21 And so there had been, even before, I think even      22 before I, this happened or started before I took over      23 management of VASAP and then it continued when I started      24 managing it and it was something that the police department      25 brought to my attention pretty quickly after I took over the</p>	<p style="text-align: right;">Page 56</p> <p>1 Dee Walker, who was assistant chief of police at the time,      2 to the major crime investigators, and the document is to put      3 in writing what the protocol ought to be for working with      4 VASAP volunteers or VASAP representatives.      5 Q Okay. And the date on this?      6 A December 31st, 2002.      7 Q And you got a copy of this?      8 A It looks like I got it January 8th, 2003.      9 Q And had you talked with captain, or I guess it's      10 Assistant Chief Walker, prior to this memo coming out?      11 A I can't tell you at this point. I don't know. I      12 did talk to her a number of times but it was around this      13 time that I started supervising VASAP so it's possible that      14 the memo came out before I took over supervision. I'm just      15 not sure.      16 Q I'm sorry. I kind of lost my place here. Okay.      17 I'm sorry. Okay. Now, I'll get back on track here. I'm      18 sorry. Let's go to Exhibit 20. Can you identify this      19 document?      20 A This is my memo to Carolyn Colvin for 2006      21 recommending a lump sum of 2 percent for Ms. Cabello.      22 Q And who recommended this to you?      23 A Mr. Warner.      24 Q And you concurred?      25 A I did.</p>
<p style="text-align: right;">Page 55</p> <p>1 management to say this has been an ongoing problem, and so      2 that was another area that would flare up.      3 Q Did you ever talk to Ms. Cabello about --      4 A I did.      5 Q -- her relationship with the police?      6 A I did.      7 Q Do you recall when?      8 A Not specifically, no, but during this period of      9 time.      10 Q Do you remember how many times you talked to her      11 about it?      12 A No. I don't remember exactly how many but it's      13 more than one.      14 Q And did you talk to Mr. Warner about this problem?      15 A Yes.      16 Q And do you recall when?      17 A Well, almost -- until Mr. Doe came into the      18 picture, from the time I started managing this program,      19 which wasn't immediately after I took over the service area      20 in 2001 so it might have been 2002 perhaps, but from that      21 time until approximately 2006, this was an ongoing series of      22 bruised feelings and finger pointing and that type of thing.      23 Q If you could turn to, I believe it's a joint      24 exhibit, 79 and identify this document.      25 A Um, this is a copy of a document that was sent by</p>	<p style="text-align: right;">Page 57</p> <p>1 Q Why?      2 A Um, for the reasons I just gave. Although there      3 were some areas where she was doing well, generally, the      4 progress was flat. It was kind of the same program just      5 year after year with a few tweaks to it, not significant      6 reorganization or partnership with other parts of the      7 department or anything like that.      8 Q Okay. Now, if you'll go to Joint Exhibit 45, can      9 you identify this document?      10 A This is fiscal year '06 evaluation of Ms. Doe.      11 Q Okay. And what was the overall rating?      12 A Highly successful.      13 Q And who did this rating?      14 A Mr. Warner with my concurrence.      15 Q And why did you concur?      16 A She continued to make progress in her area. She      17 addressed the issues from the prior year that involved some      18 resistance related to the adult mental health program. She      19 continued to focus on outcomes and better ways to measure      20 her program. She was able to articulate it very nicely in      21 her summaries. She, her staff were coming together really      22 nicely. She had also, I think this was the year that she      23 was able to bring in new staff and increase diversity in her      24 area.      25 Q Let me ask you, how important is diversity in your</p>

<p style="text-align: right;">Page 58</p> <p>1 service area, diversity of staff?</p> <p>2 A It was really important. The population of the 3 county was changing over time, has been changing for a while 4 and it involves more minorities and, as compared to the rest 5 of the state, an unusual number of ethnic minorities and a 6 number of the clients that, or the people we serve, served 7 at the time in health and human services were of ethnic 8 minorities.</p> <p>9 And again, getting back to the point I was making 10 earlier about our programs as compared to ones that could be 11 funded through the Medicaid fee for service system, we were 12 focusing specifically on diversity and Carolyn Colvin, who 13 was our director at the time, she and I used to work 14 together in Baltimore City and had worked in partnership to 15 bring more diversity when Baltimore City's population 16 changed and in that case, it was more, many more African 17 Americans than ethnic minorities but we worked really 18 closely together to get our staff and our leadership and our 19 board and commission appointments to reflect the population 20 of the city.</p> <p>21 So it's something that we had both worked on for, 22 together in the past and we both felt really passionate 23 about it and so when we were rethinking how we did 24 behavioral health services, we wanted to make sure that we 25 did way better than the private sector did in having people</p>	<p style="text-align: right;">Page 60</p> <p>1 have excellence in government, she was moving toward that 2 and so I think the, the high number on the addition to base 3 is a good reflection of where she stood by then.</p> <p>4 Q Okay. Now, if you could look at Exhibit 59, which 5 is a joint exhibit.</p> <p>6 A That is Mr. Doe's evaluation for fiscal year '06.</p> <p>7 Q And what was the rating?</p> <p>8 A Exceptional performance.</p> <p>9 Q And who gave him this rating?</p> <p>10 A Mr. Warner with my concurrence.</p> <p>11 Q And why did you concur?</p> <p>12 A For pretty much the same reasons. It wasn't like 13 they were cut and dry years. He came in and right away 14 rolled up his sleeves and started working to solve problems. 15 He was exceptionally well-focused on, you know, solving 16 those problems. The Betty Anne Krahne Center was doing 17 much better. The VASAP board was under control. 18 Relationships with the police department were much, much 19 better. He was working with a lot of community partners. 20 He did a really good job with those that, you know, the 21 stakeholders I guess, people who had an interest in people 22 served by the programs that he was overseeing. And again, 23 he had an exceptional focus on diversity too so it was just, 24 you know, he just did a really good job.</p> <p>25 Q Okay. If you could look at Joint Exhibit 62,</p>
<p style="text-align: right;">Page 59</p> <p>1 who were able to serve the needs of the people in the 2 community. So I was pushing really hard to increase 3 diversity in our service area in particular and Dudley was 4 pushing really hard among his managers.</p> <p>5 Q Okay. Now, if you could look at Joint Exhibit 47 6 and identify that.</p> <p>7 A This is my memo to Carolyn Colvin from 2006 for 8 Jane Doe, and the recommendation is an addition to the base 9 salary of 3 percent.</p> <p>10 Q And to your recollection, is this what Mr. Warner 11 recommended?</p> <p>12 A Yes.</p> <p>13 Q And you concurred?</p> <p>14 A I did.</p> <p>15 Q Why?</p> <p>16 A This year in particular, you know, I mentioned 17 before there was a period where you could see her starting 18 to pull ahead of the pack, by this year, she was getting 19 really close to exceptional performance in my judgment. 20 She, you know, she had brought the access team together. 21 She had reconstituted the adult services program. She had 22 been unusually proactive in bringing in best practice models 23 to everything she was managing. She was able to document 24 very clearly the impact she was having. So all the sort of 25 management things we were saying, you know, we want to do to</p>	<p style="text-align: right;">Page 61</p> <p>1 please.</p> <p>2 A This is my recommendation to Carolyn Colvin for 3 2006 for Mr. Doe, and I recommended an increase to base 4 salary of 3.5 percent and a lump sum award of 1.5 percent.</p> <p>5 Q And who recommended this to you?</p> <p>6 A Mr. Warner.</p> <p>7 Q And you concurred, and why?</p> <p>8 A Um, he just, like I said. He had, he had 9 exceptional problem-solving skills and exceptional people 10 skills and taken together, he was solving one problem after 11 another. And not just solving the problem but doing it in 12 such a way that increasingly, we were perceived as a leader 13 in the state and even sometimes nationally. People looked 14 to us for what we were doing in that area. And that was, at 15 this point, I think after a year-and-a-half, people were 16 calling us, you know, for advice on how to do this really 17 well.</p> <p>18 Q When you say this area, what are you talking 19 about?</p> <p>20 A Well, victim services which is what he was 21 managing, domestic violence.</p> <p>22 Q Now, to your recollection, did Ms. Cabello ever 23 approach you about being unhappy with her performance rating 24 or evaluation?</p> <p>25 A Yeah. I believe she did once, and I met with her</p>

<p style="text-align: right;">Page 62</p> <p>1 and talked to her about it and --</p> <p>2 Q Do you recall when?</p> <p>3 A I do not. Sometime during this time frame, but</p> <p>4 I'm not sure the exact --</p> <p>5 Q When you say this time frame, what period are you</p> <p>6 referring to?</p> <p>7 A During the time frame that we have for the</p> <p>8 evaluation, so I would say it's probably about mid-way</p> <p>9 through so maybe, 2004 maybe. And she did say she wasn't</p> <p>10 happy with her evaluation, um, and I talked to her about it.</p> <p>11 I can't tell you exactly what I said at this point though.</p> <p>12 Q Do you recall anything else that she said besides</p> <p>13 she was unhappy?</p> <p>14 A No, I don't.</p> <p>15 Q And what, if anything, did you do as a result of</p> <p>16 your conversation with Ms. Cabello?</p> <p>17 A Um, I don't remember the specifics of it. I can</p> <p>18 tell you what I usually do but I don't know if that's</p> <p>19 helpful.</p> <p>20 Q No. Whatever you recall. Do you recall talking</p> <p>21 to Mr. Warner about this?</p> <p>22 A No. I mean, I'm sure I did but, no.</p> <p>23 Q You don't recall. Okay. Ms. Plevy, do you have</p> <p>24 an opinion about the allegation that Ms. Cabello's ratings</p> <p>25 and compensation were less than others', the other two</p>	<p style="text-align: right;">Page 64</p> <p>1 Q Okay.</p> <p>2 MS. WINDLE: I don't have anything else.</p> <p>3 MS. ROBESON: I just have one thing. When you</p> <p>4 said outcome issues, what do you mean by that?</p> <p>5 THE WITNESS: I'm talking about outcome measures.</p> <p>6 When, when the county, when County Executive Duncan was</p> <p>7 elected, he wanted to base his administration, and in</p> <p>8 particular health and human services, on measuring the</p> <p>9 impact that what we do in government has on the individual,</p> <p>10 so the term of art is outcomes. So you measure like, for</p> <p>11 example, if you served somebody in the service, you could</p> <p>12 measure it either based on do they get better, did they</p> <p>13 appreciate the service, you know, did -- I'll use mental</p> <p>14 health treatment. If they're in treatment, we would look at</p> <p>15 over time did they get a job, you know, are they homeless,</p> <p>16 you know, look at positive and negative measures. Are they</p> <p>17 arrested, you know, what is their housing situation, that</p> <p>18 type of thing. And then so we look at individuals and then</p> <p>19 we also look at the whole group to see if the money we're</p> <p>20 spending is actually changing people's lives for the better.</p> <p>21 So every unit of health and human services was</p> <p>22 supposed to be doing that and some did it really, really</p> <p>23 well and others, a few of them just didn't and that was an</p> <p>24 area that I was, had had multiple conversations with Ms.</p> <p>25 Cabello over the years because they kept having the same</p>
<p style="text-align: right;">Page 63</p> <p>1 people, the two Does, because of her ancestry?</p> <p>2 A I do.</p> <p>3 Q And what is that?</p> <p>4 A I think it's really sad and for a lot of reasons.</p> <p>5 One is, um, you know, as I mentioned kind of in passing,</p> <p>6 diversity has really been a passion of mine in my career and</p> <p>7 it's something that I really worked on and when I was</p> <p>8 pressing my direct reports to work on it, Dudley was one of</p> <p>9 the most enthusiastic about moving toward diversity and, you</p> <p>10 know, if you look at the diversity in the, just among the</p> <p>11 managers he supervised, you can see that they all knew how</p> <p>12 important it was.</p> <p>13 I also know that, you know, I've worked with, I</p> <p>14 haven't worked on all these areas with Ms. Cabello but I</p> <p>15 worked on some of them in great detail, one being the</p> <p>16 outcome measures and one being the, the police department</p> <p>17 issues, and in both cases, there was very little change over</p> <p>18 time. And I think, I feel sad for a lot of reasons. One is</p> <p>19 that I think Dudley was, he was so committed to doing things</p> <p>20 to help bring about diversity that it, that it really</p> <p>21 saddens me that he's being put in this position but it also</p> <p>22 saddens me that after all the conversations that we had</p> <p>23 about different ways to move forward, that Nadja didn't look</p> <p>24 at what she could do to improve the situation and instead,</p> <p>25 is blaming somebody that I think is totally blameless.</p>	<p style="text-align: right;">Page 65</p> <p>1 intervention or same approach which wasn't working. And</p> <p>2 every year it would just be well, that's all we can do</p> <p>3 instead of being creative and seeing what other places are</p> <p>4 doing and that type of thing, so it was frustrating.</p> <p>5 MS. ROBESON: Mr. Katz. Do you have any follow-up</p> <p>6 questions based on my question?</p> <p>7 MS. WINDLE: Actually, I --</p> <p>8 MS. ROBESON: Well, you can do that. Let's do</p> <p>9 this. You can have follow-up questions when you get to</p> <p>10 redirect, okay?</p> <p>11 MS. WINDLE: Okay. That's fine.</p> <p>12 MS. ROBESON: Now, it's almost noon so this may be</p> <p>13 a good point to take a lunch break and we can, it's now</p> <p>14 close to, we can come back at 12:45 and start cross-</p> <p>15 examination.</p> <p>16 MR. KATZ: That's fine.</p> <p>17 MS. ROBESON: Okay. Do you anticipate going</p> <p>18 longer with Ms. Plevy than today or --</p> <p>19 MR. KATZ: No.</p> <p>20 MS. ROBESON: Okay. All right. So we'll be back</p> <p>21 at 12:45.</p> <p>22 MR. KATZ: Oh, I'm sorry. Can there just be a --</p> <p>23 MS. ROBESON: Yes. I knew you were --</p> <p>24 MR. KATZ: Thank you.</p> <p>25 MS. ROBESON: Ms. Plevy, you are not to discuss</p>

<p style="text-align: right;">Page 66</p> <p>1 your testimony with any other witnesses, nor are you and Ms.    2 Windle to discuss other people's testimony with you, all    3 right?</p> <p>4 THE WITNESS: Okay.</p> <p>5 MR. KATZ: I would request an instruction that Ms.    6 Plevy and Ms. Windle not talk about this case during the    7 break. I mean, they can have lunch.</p> <p>8 MS. WINDLE: That's fine. I have no problem with    9 that.</p> <p>10 MS. ROBESON: Okay. All right. Fine.</p> <p>11 MR. KATZ: Thank you.</p> <p>12 MS. ROBESON: So now we're off the record. Thank    13 you.</p> <p>14 (Whereupon, at 11:49 a.m., a luncheon recess was    15 taken.)</p> <p>16 MS. ROBESON: Kathy, we're back on the record.    17 All right. Ms. Plevy, you're still under oath and I, can    18 you confirm that you didn't discuss the case with anyone?</p> <p>19 THE WITNESS: Yes.</p> <p>20 MS. ROBESON: Yes. All right. Mr. Katz, cross-    21 examination. And then, Ms. Windle, if you have any    22 questions on my question, you can do it on redirect. Okay,    23 Mr. Katz, go ahead.</p> <p>24 MR. KATZ: Thank you.</p> <p>25 CROSS-EXAMINATION</p>	<p style="text-align: right;">Page 68</p> <p>1 today in addition to yourself?</p> <p>2 A No.</p> <p>3 Q Okay. In explaining to you her questions, did she    4 explain to you what point she was trying to ask you to raise    5 during your testimony?</p> <p>6 A No.</p> <p>7 Q Okay. Now, a couple of questions. Is it accurate    8 to say that in regards to Ms. Cabello, Mr. Doe, Ms. Doe,    9 that you agreed with each of the performance evaluation    10 recommendations for the final evaluation and each salary    11 recommendation that Mr. Warner gave to you in regard to    12 those three individuals?</p> <p>13 A Yes.</p> <p>14 Q Now, at the end of your testimony, you talked    15 about the importance of diversity. Can you explain, was    16 diversity, were you talking in the sense of who was being    17 served by the staff of an agency, the staff of an agency or    18 both?</p> <p>19 A Both. Who, um, I think it's important that the    20 staff of an agency be similar to the staff that they're    21 serving. I also think diversity is a really important thing    22 that needs, a really important element for effective    23 government. I used to be a soccer coach and at one point, I    24 was the president of MSI and one of the things I think is    25 really wonderful about soccer is how people from all</p>
<p style="text-align: right;">Page 67</p> <p>1 BY MR. KATZ:</p> <p>2 Q Ms. Plevy, we've met. My name's Daniel Katz. I'm    3 Ms. Cabello's attorney. Thank you for coming today again.    4 A couple questions. At the start of your testimony, you    5 said that you spoke with Ms. Windle recently about your    6 testimony. When was that?</p> <p>7 A Yesterday.</p> <p>8 Q Okay. And was that in person or over the phone?</p> <p>9 A On the phone.</p> <p>10 Q Okay. And can you explain what Ms. Windle said to    11 you during that conversation, what you said to her?</p> <p>12 A We hadn't talked since the last time, and she    13 asked me if she sent me the list of questions she was going    14 to ask me and I didn't remember getting it so she sent them    15 to me. And she asked me, started to ask me on a couple of    16 them what my answer would be but we didn't really finish    17 doing it, so that was about it.</p> <p>18 Q You said she sent you a list of questions?</p> <p>19 A The ones she asked me today.</p> <p>20 Q Okay. Did she explain to you at all the content    21 of Mr. Warner's testimony at the prehearing?</p> <p>22 A No.</p> <p>23 Q Or Mr. Adler's?</p> <p>24 A No.</p> <p>25 Q Okay. Did she explain who would be testifying</p>	<p style="text-align: right;">Page 69</p> <p>1 different cultures come together and over the course of a    2 game, you know, they become a team and that team functions    3 stronger than the sum of its parts. It's really a magical    4 kind of thing. So when I talk about diversity, I guess I'm    5 talking about trying creating that kind of magic where you    6 have people from different cultures bringing the strengths    7 of each of them to the table and also understanding the    8 needs of the people they're serving.</p> <p>9 Q Would you agree in carrying out the mission of a    10 program like VASAP that the diversity of both its staff and    11 volunteers is important in its, in its ability to serve its,    12 the community it serves?</p> <p>13 A Yes.</p> <p>14 Q Okay. And would you agree that any efforts    15 towards diversification of the staff at VASAP or    16 diversification of the group of volunteers would be an    17 important activity?</p> <p>18 A Yes.</p> <p>19 Q And would you agree that actually, a strength of    20 Ms. Cabello through the years that we have been talking    21 about, 2003 through 2007, is that she worked very hard and    22 successfully to diversify both its staff and volunteers?</p> <p>23 A Yes.</p> <p>24 Q Now, I want to turn for a little bit to the issue    25 regarding the police that you testified to today. You</p>

<p style="text-align: right;">Page 70</p> <p>1 testified that in the course of the years in which you were 2 essentially Ms. Cabello's second supervisor, you had one 3 conversation with her in regard to the dispute with the 4 police you referenced.</p> <p>5 A No. I didn't say one, one conversation. There 6 were more than one, there was more than one conversation 7 related to the dispute with the police. I think we had one 8 conversation about her unhappiness with Mr. Warner.</p> <p>9 Q I'm sorry. I think I confused your testimony.</p> <p>10 Now, when was the conversation that you had with Ms. Cabello 11 about her dissatisfaction with Mr. Warner?</p> <p>12 A Um, I, as I said earlier, I don't know exactly 13 when. I think it was about the middle of the time, the 14 range in here but I can't be sure at this point. It was a 15 long time ago.</p> <p>16 Q Okay. What did Ms. Cabello say to you in that 17 conversation?</p> <p>18 A Um, well, what happened was one year she didn't 19 like her evaluation and she wouldn't sign it, and it was a 20 requirement that you sign an evaluation. And signing it did 21 not mean you agreed with it. Signing it meant you saw it. 22 And she wouldn't sign it, so I had a conversation with her 23 about the purpose of signing, the requirements of signing 24 and she thought her evaluation should be higher, but I don't 25 remember the details of it beyond that.</p>	<p style="text-align: right;">Page 72</p> <p>1 volunteer or anyone else was interfering with the interview 2 process?</p> <p>3 A No. It wouldn't. This is a transmittal to people 4 in the police department about protocol. It wouldn't 5 contain, you know, the backup. I mean, it does, it doesn't, 6 it says what you're supposed to do moving forward, not what 7 you didn't do.</p> <p>8 Q Right. And doesn't it say moving forward, we're 9 instituting this policy that consistency, in regard to when 10 volunteers are notified to assist victims?</p> <p>11 A Yes.</p> <p>12 Q Okay. And your comment I believe was, correct me 13 if I'm wrong, during your testimony you said that the police 14 department felt that advocates were tainting evidence and 15 potentially affecting the outcome of cases. Now, when did 16 any police officer ever say that to you?</p> <p>17 A What, what I mean by that is that they, that they 18 felt like the VASAP volunteers were coming in prior to the 19 interview or during, they wanted someone to be there during 20 the interview and they did in fact say to me -- this was an 21 ongoing dispute that went on for a long time and they did 22 tell me that they felt like that was tainting the evidence 23 or affecting the evidence.</p> <p>24 Q Okay. Isn't it accurate that you can't remember a 25 single telephone call in which anyone specifically stated</p>
<p style="text-align: right;">Page 71</p> <p>1 Q Can you please look at Exhibit No. 79? This is 2 the December 31st, 2002 memo from Assistant Chief Walker 3 that you looked at before. Now, isn't it accurate to say 4 that one of the effects of this memorandum is to institute 5 essentially a process that VASAP wanted the police to 6 institute to help ensure that VASAP volunteers were notified 7 by investigating officers?</p> <p>8 A It was, that was part of what VASAP wanted but 9 what they also wanted was to go in there while the police 10 were interviewing or prior to when the police were 11 interviewing, and it was to clarify that the police 12 interview went first before VASAP volunteers went in.</p> <p>13 Q Actually, isn't it accurate to say that the police 14 -- excuse me a second. Isn't it accurate to say that the 15 protocol the assistant chief is stating will now be in 16 effect reverses a policy with which VASAP had some 17 disagreement?</p> <p>18 A Um, that, that's an incomplete explanation I guess 19 is what I'm trying to say is that meaning yes, VASAP wanted 20 to be notified but the reason the police were not notifying 21 VASAP is because they weren't being respectful when they, 22 from the police perspective, they weren't being respectful 23 when they arrived and they were interfering with the 24 interview process.</p> <p>25 Q Is there anything in here that says that any VASAP</p>	<p style="text-align: right;">Page 73</p> <p>1 that to you, that evidence was being tainted? I'm just 2 going to remind you we discussed this at the deposition.</p> <p>3 A Uh-huh.</p> <p>4 Q During the deposition, I asked you if you had any 5 notes, e-mails or any other documentation regarding any 6 police contact with you regarding this issue.</p> <p>7 A Yes.</p> <p>8 Q And you have none.</p> <p>9 A No. That was a long time ago. When I left the 10 county, I didn't take my notes or my e-mails with me.</p> <p>11 Q Okay. We asked -- okay. Today, which you didn't 12 say during your deposition, today, you said there was a 13 concern that evidence was being tainted.</p> <p>14 A Right.</p> <p>15 Q Okay. Did you ever tell Ms. Cabello about that 16 concern?</p> <p>17 A Yes. I --</p> <p>18 Q When?</p> <p>19 A This went, this was an ongoing discussion that 20 involved lots of people, lots of meetings over a four-year 21 period so, you know, it was discussed and discussed and 22 discussed. Now, can I parse out what happened in one 23 discussion versus another at this distance, no.</p> <p>24 Q Okay. Isn't it accurate you never wrote Ms. 25 Cabello an e-mail about any of your concerns that you're</p>

<p style="text-align: right;">Page 74</p> <p>1 expressing today?</p> <p>2 A No. I can't say that's accurate.</p> <p>3 Q That's what --</p> <p>4 A I said -- what you asked me, if I recall, at the</p> <p>5 deposition was did I have e-mails today in 2015 about</p> <p>6 something that happened say in 2004. No. I have no e-mails</p> <p>7 from anything in the department that happened in 2004. Not</p> <p>8 just with respect to Ms. Cabello but with respect to</p> <p>9 anything.</p> <p>10 Q Okay. Isn't it accurate that you can't remember</p> <p>11 if you ever wrote her an e-mail saying here's a problem,</p> <p>12 this needed to be corrected? You can't recall if you ever</p> <p>13 did that, can you?</p> <p>14 A That specific question, no.</p> <p>15 Q Okay. Isn't it correct that you never counseled</p> <p>16 Ms. Cabello about any of the problems which you've described</p> <p>17 were occurring with the police department?</p> <p>18 A I met with her many times. I discussed with her</p> <p>19 -- there were meetings that she attended with the police</p> <p>20 department. There were lots of discussions about this.</p> <p>21 Q Isn't it accurate she attended many meetings with</p> <p>22 the police department in which you were not present?</p> <p>23 A Yes.</p> <p>24 Q Okay. And isn't it accurate that you can't recall</p> <p>25 any specific meeting with Ms. Cabello which you sat down and</p>	<p style="text-align: right;">Page 76</p> <p>1 A -- parse out like February 2nd, this is the</p> <p>2 conversation we had 10 years after the fact? No, I can't.</p> <p>3 Q Okay. But isn't it accurate that you never wrote</p> <p>4 Ms. Cabello an e-mail saying one, two, three about the</p> <p>5 police department --</p> <p>6 MS. WINDLE: Objection. Asked and answered.</p> <p>7 MS. ROBESON: Well, I'm getting confused by her</p> <p>8 responses because we started out by what she has custody of</p> <p>9 and now we're in not to what she has custody of but to what</p> <p>10 she knows, and I hesitate to say this. I would like her to</p> <p>11 respond to this question so I'm clear as to which is which,</p> <p>12 all right? And do we have the question again? I believe</p> <p>13 the question is do you remember any specific time, now, you</p> <p>14 can correct me if I'm wrong, do you remember a specific time</p> <p>15 where you went point by point --</p> <p>16 THE WITNESS: We had --</p> <p>17 MS. ROBESON: -- where you communicated to Ms.</p> <p>18 Cabello point by point the issues.</p> <p>19 THE WITNESS: We had multiple meetings with the</p> <p>20 police department that started without me but they weren't,</p> <p>21 they were getting more and more acrimonious so then I got</p> <p>22 involved and Dee Walker got involved and we made sure we</p> <p>23 went through the issues point by point by point. And we let</p> <p>24 Ms. Cabello give her side and we let the police people give</p> <p>25 their side and then we worked toward reconciling the</p>
<p style="text-align: right;">Page 75</p> <p>1 you talked about any of these specifics about the police</p> <p>2 department?</p> <p>3 MS. WINDLE: I'm going to object. This was asked</p> <p>4 and answered about 10 minutes ago.</p> <p>5 MS. ROBESON: I'll let it in.</p> <p>6 THE WITNESS: Okay. Can you repeat the question?</p> <p>7 MR. KATZ: Can I have the question read back,</p> <p>8 please?</p> <p>9 MS. ROBESON: Mr. Katz is going to rephrase the</p> <p>10 question rather than have the reporter read it back.</p> <p>11 BY MR. KATZ:</p> <p>12 Q Okay. The question is isn't it accurate that you</p> <p>13 do not recall any specific meeting in which you spoke to Ms.</p> <p>14 Cabello about these police issues and what happened to that</p> <p>15 meeting?</p> <p>16 A I don't know how to answer that. We had multiple</p> <p>17 conversations that I was in that Ms. Cabello was in, that</p> <p>18 the police department was in and we discussed these issues</p> <p>19 many times so there's no way she was not aware of them. I</p> <p>20 mean, they were also, these issues were also part of a</p> <p>21 council legislative study. I mean, these issues were</p> <p>22 discussed as much as any other issue.</p> <p>23 Q Okay.</p> <p>24 A So can I --</p> <p>25 Q So --</p>	<p style="text-align: right;">Page 77</p> <p>1 process. It wasn't, it just, you know, so to that extent, I</p> <p>2 mean, I am sure, I am absolutely certain we went over these</p> <p>3 point by point on more than one occasion because it was a</p> <p>4 lot of meetings.</p> <p>5 MR. KATZ: Okay.</p> <p>6 MS. ROBESON: Okay. That's --</p> <p>7 THE WITNESS: Did I write an e-mail, I don't know</p> <p>8 per se.</p> <p>9 BY MR. KATZ:</p> <p>10 Q You don't know if you wrote a single e-mail,</p> <p>11 correct?</p> <p>12 A You're --</p> <p>13 MS. ROBESON: No. Just --</p> <p>14 THE WITNESS: I wrote e-mails. I did -- that was</p> <p>15 not your first question. Your first question was did I</p> <p>16 write a single, did I personally --</p> <p>17 BY MR. KATZ:</p> <p>18 Q Yes.</p> <p>19 A -- write a single e-mail with one, two, three,</p> <p>20 four, five. I may not have but there were written documents</p> <p>21 that went through the list.</p> <p>22 Q Isn't it accurate you never had a meeting one-on-</p> <p>23 one with Ms. Cabello regarding this issue?</p> <p>24 A One-on-one?</p> <p>25 Q Yes.</p>

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<p>1 A Regarding this issue?</p> <p>2 Q Yes.</p> <p>3 A I don't know.</p> <p>4 Q Okay. Isn't it accurate that you never wrote Ms. Cabello, apart from an e-mail, a memorandum or any type of note to her regarding what you wanted her to do differently in regards to the relationship with the police?</p> <p>8 A We had meetings to go through it. These were meetings where we worked together with our partners in the police department to come up with a joint protocol. This, this memo from Dee Walker is an example. I can't say whether this preceded when I came in or didn't but we had memos like this and then they wouldn't work and we'd have to adjust them or tweak them or whatever, but we had multiple meetings like that.</p> <p>16 Q Isn't it accurate that your testimony this morning was that this memo was written, this memo's dated December 31st, 2002 and it says copied to you January 8th, 2003. You said that means you received it on January 8th, 2003.</p> <p>20 A That's my guess. I mean, that's what it looks like to me.</p> <p>22 Q Okay. So now, it's your guess. Okay.</p> <p>23 A No. I'm saying -- what I thought I said this morning is that it's dated 1/8/03 so I'm assuming that's when I got it but --</p>	<p>1 A Yes.</p> <p>2 Q Okay. Now, okay. It's also accurate in this period of time, which would have been fiscal 2003, Ms. Cabello was agency staff to the Victim Services Advisory Board, correct?</p> <p>6 A During this time?</p> <p>7 Q Yes.</p> <p>8 A Yes.</p> <p>9 Q Okay. Do you think it would have been helpful if Assistant Chief Walker had been able to address the Victim Service Advisory Board, just as part of the process, of making better the relationship between VASAP and the police department?</p> <p>14 A I don't know without the -- I don't understand the question.</p> <p>16 Q The question is do you think it would have been a positive development if Assistant Chief Walker would have been invited to speak with the Victim Service Advisory Board in this period of time, you know, as this relationship was being addressed?</p> <p>21 A You're talking ten years after the fact. It might have been positive. It might have been not helpful depending on the dynamics of the various people at the time.</p> <p>24 Q Okay.</p> <p>25 A I don't know. I can't say.</p>
Page 79	Page 81
<p>1 Q Okay. And is --</p> <p>2 A -- on the back, it has Ms. Stevens cc'd.</p> <p>3 Q Okay.</p> <p>4 A So I was -- and I'm just noticing now it says acting director of DHHS so I was thinking she was still probably, at this time, overseeing VASAP.</p> <p>7 Q Okay. So you do recall seeing this memo early in your tenure in the position in which you were Ms. Cabello's second level supervisor.</p> <p>10 A Yes.</p> <p>11 Q Okay. Now, isn't it correct, the second paragraph of the memo is as follows from Assistant Chief Walker. "July of 2002, department protocol for notification of victim support services changed from our historical practice. Commencing immediately, I am initiating some important modifications." Okay. And one of the modifications has to do with, in the next paragraph down states, "Prior to completion of police interview, investigator will ensure the on call volunteer from VASAP is notified and asked to respond." Next paragraph says, "Nothing precludes earlier activation of the VASAP volunteer service."</p> <p>23 So isn't it accurate to say that this memorandum from Assistant Chief Walker addresses concerns that VASAP had at that period of time?</p>	<p>1 Q Okay. Could you please turn to Exhibit 84? Okay. Exhibit 84 says Victim Service Advisory Board, that's VSAB, minutes, January 3rd, 2003.</p> <p>4 A Uh-huh.</p> <p>5 Q Now, members present, guests, et cetera. One of the guests was Deidre Walker, Assistant Chief of Police. Okay. Now, the first, below the bold where it says minutes, October 24th, 2002, bold Montgomery County Police Assistant Chief Walker. It states as follows in the second sentence. She expressed her support for the Board which she feels can only improve relations with the police and victim services. She feels a renewed and invigorated commitment from the police and victim services to work together and she strongly encourages dialogue. She's open to being contacted, et cetera.</p> <p>16 A Uh-huh.</p> <p>17 Q The memo she wrote on December 31st, 2002 is the beginning of improvement to victim services in the future.</p> <p>19 A Uh-huh.</p> <p>20 Q Okay. So wouldn't you say on the scale that this, this indicates a step forward in working on the relationship between or addressing any tensions between Victim Service Advocates and the police?</p> <p>24 A Um, yes.</p> <p>25 Q Okay.</p>

<p>1 A However, it didn't stick.</p> <p>2 Q Well, I understand that's your position.</p> <p>3 A Okay.</p> <p>4 Q So when it didn't stick, isn't it correct that you</p> <p>5 state it didn't stick. You never counseled Ms. Cabello at</p> <p>6 any point in this period of time regarding that there is a</p> <p>7 problem with the police department that you thought was so</p> <p>8 important.</p> <p>9 A I --</p> <p>10 Q Isn't it correct? There's no counseling memo.</p> <p>11 A No. I don't do counseling memos unless I'm at a</p> <p>12 point where I'm moving toward termination. I don't --</p> <p>13 counseling memos make people very defensive. They're</p> <p>14 usually not effective so I do talk to people. I also model</p> <p>15 behavior. There's lots of things I do but I rarely do</p> <p>16 counseling memos.</p> <p>17 Q Okay. And isn't it accurate that there's no</p> <p>18 documentation? There are no notes to Ms. Cabello, no e-</p> <p>19 mails to Ms. Cabello. Nothing regarding the problems with</p> <p>20 the police department.</p> <p>21 MS. WINDLE: Again, I'm going --</p> <p>22 THE WITNESS: What you're saying --</p> <p>23 MS. WINDLE: -- to object. I'm going to object.</p> <p>24 He is haranguing her. She's answered this to the best of</p> <p>25 her ability.</p>	<p>Page 82</p> <p>1 was some sense that things were getting better.</p> <p>2 Q It's accurate that that type of a comment reflects</p> <p>3 positive movement, yes?</p> <p>4 A At that point in time, yes.</p> <p>5 Q Okay. Now, during your testimony this morning,</p> <p>6 you said that Ms. Cabello, if I'm saying this correct,</p> <p>7 correct me if I'm wrong, Ms. Cabello was somehow resistant</p> <p>8 to development of outcome measures for VASAP?</p> <p>9 A Yes.</p> <p>10 Q Okay. Well, if you look at item no. 6, which is I</p> <p>11 believe page 3 of the evaluation, there are three bullet</p> <p>12 points there regarding work, addressing outcome</p> <p>13 measurements. Ms. Cabello was rated successful. Isn't it</p> <p>14 accurate that there's no, no comment there or in any</p> <p>15 narrative comments to indicate that Mr. Warner or you were</p> <p>16 actually critical of her in regard to outcome measurements?</p> <p>17 A We started doing outcome measures, measurements in</p> <p>18 1995. This is 2003. So, um, this is eight years after we</p> <p>19 started and it says we have a form that we mail to people</p> <p>20 and it requires them to mail it back and we don't have a</p> <p>21 very high rate of return so there's not a lot of discussion</p> <p>22 here but this is after eight years of discussion. So, you</p> <p>23 know, I think at some point, you move on to other things or</p> <p>24 else you move toward termination, and this was a small</p> <p>25 program.</p>
<p>Page 83</p> <p>1 MS. ROBESON: All right. Sustained.</p> <p>2 MR. KATZ: Okay. Excuse me a moment.</p> <p>3 BY MR. KATZ:</p> <p>4 Q Let me ask you to look at Exhibit No. 9. Let me</p> <p>5 know when you've gotten to it. I know the notebook's big.</p> <p>6 Yes. This is Ms. Cabello's fiscal year 2003 evaluation.</p> <p>7 Would you agree that these types of performance evaluations</p> <p>8 play an important role in personnel development?</p> <p>9 A Yes.</p> <p>10 Q Okay. Would you also agree that evaluations</p> <p>11 essentially have both a retrospective outlook in evaluating</p> <p>12 and a prospective outlook in --</p> <p>13 A Uh-huh.</p> <p>14 Q -- trying to guide any employee as to where she</p> <p>15 should be going in the next period of time?</p> <p>16 A Yes.</p> <p>17 Q Okay. Now, if you could please look at Ms.</p> <p>18 Cabello's fiscal year 2003 evaluation and point out anything</p> <p>19 in the evaluation which indicates any type of criticism of</p> <p>20 her relationship with the police department that you</p> <p>21 testified to.</p> <p>22 A I don't see anything right now but we've got the</p> <p>23 discussion. There is, on page 5, one of the goals is to</p> <p>24 continue to build on the collaborative work achieved this</p> <p>25 year with the police so it looks like at that point, there</p>	<p>Page 85</p> <p>1 But my point is to be at that place eight years</p> <p>2 later and to go back and compare that to some of the things</p> <p>3 that Ms. Doe did, the comparison is striking. They're both</p> <p>4 with the department when we started outcome measures and one</p> <p>5 made huge strides, including doing research on best</p> <p>6 practices, partnering with NIH, bringing in, you know,</p> <p>7 measuring things, tweaking measures, moving to better</p> <p>8 measures. And this is contrasted with something where</p> <p>9 they're mailing something to the clients, they're not</p> <p>10 mailing it back and they say well, we have mixed success, no</p> <p>11 suggestions for making it better. That's how I read that.</p> <p>12 Q Well, if there was a problem, don't you think it</p> <p>13 was the responsibility of the supervisors to raise it?</p> <p>14 A We did raise it. I --</p> <p>15 Q It's not -- excuse me.</p> <p>16 A -- personally raised it.</p> <p>17 Q If it was so important that you mentioned it in</p> <p>18 your testimony today as what you see as one of the</p> <p>19 deficiencies in Ms. Cabello's work yet it doesn't show up in</p> <p>20 the evaluation, either retrospectively saying this should</p> <p>21 have happened but didn't or prospectively in any of the</p> <p>22 comment, it doesn't show up at all.</p> <p>23 A At some point --</p> <p>24 Q Isn't that accurate?</p> <p>25 A At some point you give up, okay? What I said --</p>

<p style="text-align: right;">Page 86</p> <p>1 Q And what -- excuse me.      2 A -- today --      3 Q What, you gave up?      4 A No.      5 Q You're saying it was --      6 A At some point --      7 MS. ROBESON: Just a second. Just a --      8 THE WITNESS: -- you let an issue go.      9 MS. ROBESON: -- second. Just a second.      10 THE WITNESS: Oh, sorry.      11 MS. ROBESON: Okay. You can't argue with him and      12 you need to let her answer the question. So you can      13 continue. What is the question? The question is isn't it      14 true that this never showed up as an issue. Is that the      15 question, Mr. Katz?      16 MR. KATZ: Yes.      17 MS. ROBESON: Okay.      18 BY MR. KATZ:      19 Q Isn't it accurate that it is not in the evaluation      20 at all?      21 A It is in the evaluation in the sense that it's      22 marked successful. And it is in the evaluation that it's      23 noted as mixed success. And my point is that when I said      24 earlier today that the, in contrast to other people who got      25 higher evaluations, that Ms. Cabello's performance was flat</p>	<p style="text-align: right;">Page 88</p> <p>1 wanted to do. We gave suggestions for changes. And, you      2 know, some eventually, a lot of them took it and just ran      3 with it. Some just sort of stayed stuck in place year after      4 year and that's what I'm describing with this. We had      5 multiple meetings. If I could go back to 1995 or 1996, I'm      6 sure I could give you piles of paper that documents it but I      7 don't have it this many years later.</p> <p>8 BY MR. KATZ:</p> <p>9 Q Isn't it accurate that you weren't supervising      10 VASAP in 1995?</p> <p>11 A I, I was in a department-wide position so I was      12 not her line supervisor but I had authority in that area to      13 have people do this work.</p> <p>14 Q Isn't it accurate that the outcome measures in the      15 matter that you're speaking with VASAP was not responsible      16 for developing until 2000?</p> <p>17 A No. I don't think that's true.</p> <p>18 Q Okay. Please turn to Ms. Cabello's 2004      19 evaluation which is Exhibit No. 10.</p> <p>20 A I'm sorry. What number?</p> <p>21 Q Ten. Isn't it accurate, Ms. Plevy, that there's      22 no negative reference to Ms. Cabello's work, VASAP's work      23 with the police in this evaluation also?</p> <p>24 A No. I don't see anything in her review.</p> <p>25 Q No reference at all, correct?</p>
<p style="text-align: right;">Page 87</p> <p>1 for the most part, what I meant by that is we had been going      2 over this issue now at this point in time for eight years.      3 So for eight years later, her to say that, at some point,      4 you don't keep putting it in there. I mean, maybe some      5 people would but we, we were looking for other areas where      6 we might get more movement but it was, it was not, but it      7 still is an example of something that never got solved.      8 That's what I was trying to say. And I'm not, you know, it      9 is -- to take out one little section and one evaluation is      10 essentially creating a lie because this was, this is a piece      11 that is part of a way larger whole, and that larger whole      12 includes all the discussions about outcomes that preceded      13 it.</p> <p>14 Q Isn't it correct neither you nor Mr. Warner never      15 wrote any type of a memorandum or note or had a specific      16 meeting which you can document with Ms. Cabello about these      17 so-called concerns about outcome measurements?</p> <p>18 A I had multiple meetings with Ms. Cabello in my      19 prior job on outcomes. We met area by area multiple times      20 and the areas --</p> <p>21 MS. ROBESON: What does that mean, areas?</p> <p>22 THE WITNESS: Well, each like, each manager, each      23 section. Like so for example, it would be VASAP. We met      24 with each part of the department and worked through. We      25 provided technical assistance. They presented what they</p>	<p style="text-align: right;">Page 89</p> <p>1 A I don't see it.</p> <p>2 Q It's accurate that there's no criticism in here in      3 regard to Ms. Cabello not working on outcome measures that      4 you've discussed.</p> <p>5 A No. As I said, at some point, you just let it go.</p> <p>6 Q So you gave up on Ms. Cabello when?</p> <p>7 A On that issue, I didn't give up on Ms. Cabello. I      8 gave up on that issue.</p> <p>9 Q Do you have any documentation at all for any of      10 these years in which you say Ms. Cabello, Nadja, this really      11 has to happen? There's nothing like that, is there?</p> <p>12 A I feel like I'm sitting here talking to you --</p> <p>13 MS. ROBESON: No. No. Miss --</p> <p>14 THE WITNESS: -- with both hands tied behind my      15 back.</p> <p>16 MS. ROBESON: You need to answer his question.</p> <p>17 THE WITNESS: Okay.</p> <p>18 MS. ROBESON: To your knowledge.</p> <p>19 THE WITNESS: Okay. I do not have access to my      20 records for when I was with the county.</p> <p>21 MS. ROBESON: To your knowledge then.</p> <p>22 THE WITNESS: To my knowledge, there would be      23 documentation if I could, if it existed anymore. I don't      24 have it.</p> <p>25 MS. ROBESON: Well, his question was do you, did</p>

<p style="text-align: right;">Page 90</p> <p>1 you instruct, is there any document that would have      2 instructed, that instructs Ms. Cabello that she needed to      3 improve in those areas. Is that your basic gist of your      4 question?</p> <p>5 MR. KATZ: Yes.</p> <p>6 THE WITNESS: And we had meetings --</p> <p>7 MS. ROBESON: No. Just, I know you had meetings.      8 The question is did you, do you have any documents or do you      9 know of any documents where you told, informed Ms. Cabello      10 that she was deficient in those areas.</p> <p>11 THE WITNESS: We had meetings with the police --      12 let me just try, let me just try to get there. We had      13 meetings with the police department which were reduced to      14 writing so everybody knew what they needed to do which      15 included Ms. Cabello. Was all of that put into her      16 performance evaluation? It looks like it wasn't all there      17 but there were discussions and there were documents that      18 were very clear about what needed to happen in that area.</p> <p>19 MS. ROBESON: Go ahead, Mr. Katz.</p> <p>20 BY MR. KATZ:</p> <p>21 Q You responded to the judge by talking about the      22 police department. Who wrote what to who and when, and if      23 you can't recall, just say you can't recall.</p> <p>24 A Someone in the meeting. I don't know.</p> <p>25 Q What meeting?</p>	<p style="text-align: right;">Page 92</p> <p>1 County Attorney's Office and volunteers on a specific issue?      2 A Yes.</p> <p>3 Q Okay. Now, moving down, the reference is      4 continued to attend Maryland Coalition Against Sexual      5 Assaults, Women of Color Network and MCASA meetings as      6 needed. Would you agree that that indicates outreach to the      7 community which VASAP is mandated to serve?</p> <p>8 A Okay. It says she attended a meeting, yeah.</p> <p>9 Q Well, wouldn't you say that that's part of the      10 outreach that VASAP would do to meet with groups that serve      11 a diverse group of sexual assault victims?</p> <p>12 A Um, there's a difference between having a meeting      13 or setting up a meeting and getting to a point where you      14 have strong and trusted relationships. I'm not saying none      15 of these are strong and none of these are trusting      16 relationships. What I was trying to say earlier and think I      17 did say is that there a lot of them that were kind of      18 routine and rote so if you, you know, this is a long list of      19 activities but it doesn't tell you -- it's the difference      20 between saying what impact you had and just what you did.</p> <p>21 Q And --</p> <p>22 A And this is, this doesn't go to impact.</p> <p>23 Q Okay. But it also doesn't not indicate that,      24 correct?</p> <p>25 A That's correct.</p>
<p style="text-align: right;">Page 91</p> <p>1 A The meetings we had on this issue. Because there      2 was so much tension, every meeting had somebody who was      3 taking notes about what we would do next but who took those      4 minutes, at this point, I don't know.</p> <p>5 Q And the only documentation that exists to date as      6 of now is the December 31st, 2002 memorandum from Assistant      7 Chief Walker.</p> <p>8 A Yes. To my knowledge.</p> <p>9 Q Okay. I'm actually going to ask you to turn to      10 Exhibit 15 and I'm sorry, this goes chronologically      11 backward. I'm going back to fiscal year 2003. Okay. It's      12 a joint exhibit which has been entered into evidence and I      13 can represent that Mr. Warner testified that he, that when      14 he reviewed Ms. Cabello's evaluation with him, it included      15 the document that you are looking at, that he asked her to      16 write up an expanded explanation of what her year looked      17 like.</p> <p>18 A Okay.</p> <p>19 Q Okay? So could you look at the third page of that      20 document, please? Okay. It has a number of bullet points      21 including, seven from the top, reference to arranging a      22 meeting with the police, VASAP County Attorney      23 Representative Anne Windle in regard to social work hearsay      24 legislation. Now, would you agree with me that that      25 indicates Ms. Cabello's ability to work with the police, the</p>	<p style="text-align: right;">Page 93</p> <p>1 Q Okay. But it does indicate a breadth of work of      2 who Ms. Cabello would be meeting with and talking with in      3 the process of her work, correct?</p> <p>4 A Uh-huh.</p> <p>5 Q So it is important that she, for example,      6 participates in the police chief's Hispanic Liaison      7 Committee. That's important, isn't it?</p> <p>8 A Yes.</p> <p>9 Q Okay. And isn't it also important in the sense of      10 the diversification of who is being served by this program?</p> <p>11 A Yes.</p> <p>12 Q And that's a priority, correct?</p> <p>13 A Yes.</p> <p>14 Q Okay. It also references meeting with Assistant      15 Chief Dee Walker, police representatives, HHS      16 representatives in reference to outreach protocol issues.</p> <p>17 A Yes.</p> <p>18 Q Okay. It also references discussing merger with      19 Hispanic liaison, African-American Liaison Committee, the      20 police chief's initiative. Now, that's potentially an      21 important activity in regard to the issue of diversity,      22 correct?</p> <p>23 A Yes.</p> <p>24 Q If you can turn to the next page, please, just so      25 that we're on the same page, there are various markings. At</p>

<p style="text-align: right;">Page 94</p> <p>1 the bottom, it has 00461.      2 A Yes.      3 Q Okay. The third bullet point from the top      4 references attended a diversity conference at the University      5 of Maryland, okay?      6 A Uh-huh.      7 Q About five down, attended Montgomery County      8 Hispanic Employees Association. Down further, quarterly      9 employment services in Immigrant Welfare Reform Working      10 Committee. Those all indicate, don't they, participation in      11 what you identified as a priority, diversification of either      12 staff or of the community being served, correct?      13 A Yes.      14 Q Okay. Now, we can move towards about two-thirds      15 of the way down. The reference is participation in forums      16 for victim service provider and crime victim's rights      17 sponsored by National Victims Constitutional Amendment,      18 blah, blah, funded by U.S. Department of Justice. Would you      19 agree with me that that indicates Ms. Cabello being involved      20 in an activity which you would say is broader than just the      21 immediate provision of services to her constituency?      22 A Um, yes.      23 Q Okay. Now, if we go down through two more, the      24 reference is sponsoring a visit by a representative from      25 Mauritania Islands who were interested in sexual assault</p>	<p style="text-align: right;">Page 96</p> <p>1 Cabello's evaluation?      2 A I can't tell you whether I talked to him. We      3 probably did talk about it but I don't know that for sure at      4 this point. I know I read it. I know I've seen it before.      5 Q Right. There's no question you saw it in my      6 office at the deposition.      7 A No. I had seen it before that.      8 Q My question is isn't it accurate that you didn't,      9 when reviewing Ms. Cabello's evaluation, that you and Mr.      10 Warner didn't say gee, you know, this is a good point of      11 outreach, you know, by Ms. Cabello this year. That's      12 accurate, right?      13 A I don't know.      14 Q Okay. Could you please turn to Exhibit No. 12?      15 Okay. Excuse me. I don't believe we, if I can go backwards      16 to Exhibit No. 11, 2004. This is Ms. Cabello's fiscal year      17 2005 evaluation.      18 A Uh-huh.      19 Q Isn't it accurate that there's no reference in      20 this evaluation to any criticism of Ms. Cabello, VASAP's      21 relationship with the police      22 A There's a continuing, in all of these, continuing      23 to work with the police.      24 Q Yes. Isn't that part of Ms. Cabello's job, to      25 work with the police at various levels to ensure the</p>
<p style="text-align: right;">Page 95</p> <p>1 program. I guess the same question. Doesn't that indicate      2 a broader, a perspective broader than just the provision of      3 immediate services to her constituency?      4 A Yes.      5 Q Okay. Now, when you reviewed the evaluation, or      6 let me say at any point, did you know that Ms. Cabello was      7 involved in those three or four specific activities I just      8 asked you about?      9 A This list, my memory is I've seen this before. I      10 believe it was attached to the evaluation. And I believe we      11 even discussed it at one point in the deposition because I      12 made the point that attending meetings is not, people don't      13 typically list every meeting they've attended. That's not,      14 that's a beginning place but what I'm looking for is an      15 actual in to those parts of the community or a change in the      16 results you're getting from the program, not just      17 participating in a meeting. So attending something is a      18 first step but if that's all you're listing is what's on      19 your calendar, then you're losing sight of what impact      20 you're having on the community. So although attending a      21 meeting is good, if the attendance at that meeting doesn't      22 lead to something better for the people we're serving, then      23 it's a waste of meeting in some respects.      24 Q Isn't it accurate that you didn't talk about that      25 list with Mr. Warner when you met with him to go over Ms.</p>	<p style="text-align: right;">Page 97</p> <p>1 delivery of victim services programs?      2 A Yeah, but what I guess what -- you don't need a      3 reminder to do something like that if there hadn't been a      4 problem to begin with. And there's also a continuing theme      5 through here about the OLO study which also stemmed from the      6 disagreements between the two groups so, you know, it's, I      7 guess, you know, I'm not finding it in hard words but I can      8 say that this was something that was discussed a lot. I      9 guess there's no point going over old ground.      10 Q Okay. You said there's a reference to the police.      11 What are you looking at?      12 A Um, there's a couple places. On page, page 6 on      13 the bottom, it says she will need to work in a manner that      14 is increasingly collaborative and values the contribution of      15 the criminal justice system. That's in the narrative      16 comments. Um, on page 7, goal or competency, 1, continue to      17 build on the collaborative work achieved this year with the      18 police.      19 Q Are you saying that, is that like a damning by      20 faint praise?      21 A No. It's that it was really bad and so, you know,      22 as it began to improve, it's not a damning by faint praise      23 but if you take this out of context, it means one thing.      24 Within the context of how bad it got and it's starting to      25 get a little better and she's being praised for that, I</p>

<p style="text-align: right;">Page 98</p> <p>1 mean, that, there's nothing wrong with praising her for, or    2 for her trying to make it better but certainly, if it was    3 really bad and it starts to get better, you're not going to    4 say well, it's not good enough, you know. You say okay,    5 you're getting there but just keep working on it.</p> <p>6 Q Well, doesn't the list of activities that follows    7 that phrasing references numerous meetings with the police,    8 meeting quarterly with Police Captain Demy (phonetic sp.)    9 from major crimes and sergeant for criminal victim case    10 reviews; participating in monthly meetings with Chief    11 Manges, Latino police liaison; participating in training,    12 two trainings sponsored by the police department. Down    13 further, meeting with the police and healthcare providers in    14 regard to the health services at Shady Grove. And then at    15 the end, organizing successful outreach for national sexual    16 assault awareness, national crime victim's right work. I    17 mean, doesn't that indicate ongoing work with various levels    18 and individuals in the police department to assure service    19 delivery?</p> <p>20 A Yes. But ongoing work has to be coupled with    21 effective work.</p> <p>22 Q Well, what's not effective here? Look at this    23 list and tell me what wasn't effective this year.</p> <p>24 A The level of effectiveness is based on the    25 perception of the partners, the perception of the</p>	<p style="text-align: right;">Page 100</p> <p>1 think Mr. Warner would have withdrawn, taken them out of    2 here?</p> <p>3 A They are accurate.</p> <p>4 Q Okay.</p> <p>5 A I think, I believe they are accurate but my point    6 is that going to meetings is not enough. That's all. I'm    7 not being critical of going to the meeting. You just have    8 to have an impact afterwards. What did that meeting lead    9 to.</p> <p>10 Q Okay. Where's the criticism?</p> <p>11 A There is no criticism.</p> <p>12 Q There is no criticism. Thank you. So why don't    13 you turn to page, excuse me, Exhibit 17. One of the    14 accomplishments, projects listed here fourth from the    15 bottom, is the opening and staffing of two VASAP court    16 offices in Rockville and Silver Spring. That's a positive    17 development, wasn't it?</p> <p>18 A Uh-huh. It was.</p> <p>19 Q I'm sorry. She needs to record you.</p> <p>20 A I said, yes, it was.</p> <p>21 Q Yes, okay. And this list also, for the same year,    22 references numerous meetings with different officers and    23 members of the police department. Above that, from the    24 VASAP office, meeting with other staff people in regard to    25 Office of Justice grant regarding trafficking victims. That</p>
<p style="text-align: right;">Page 99</p> <p>1 stakeholders, the fact that in this case, we've got this    2 ongoing study by the council about what's going on over    3 several years. So there's, there's nothing wrong with going    4 to these meetings. I am not saying there's anything wrong    5 with that but I'm saying that going to meetings is what    6 everybody in government does. We go to meetings. But if    7 those meetings don't lead to a significant change for the    8 better compared to what you had before, you've always got to    9 be moving forward.</p> <p>10 Q Well --</p> <p>11 A And so --</p> <p>12 Q My question is what was, where wasn't she    13 effective in any of these. I mean, there are these bullet    14 points that were included in the evaluation that Mr. Warner    15 did of Ms. Cabello.</p> <p>16 A Well, I believe --</p> <p>17 Q So I'm really --</p> <p>18 A -- these were from Ms. Cabello. They were a list    19 of meetings she goes to.</p> <p>20 Q Well, isn't it a list of activities she    21 participated in --</p> <p>22 A Right.</p> <p>23 Q -- contributed to, et cetera?</p> <p>24 A Right.</p> <p>25 Q Right. So if they weren't accurate, don't you</p>	<p style="text-align: right;">Page 101</p> <p>1 was a new initiative, correct, to work with trafficking    2 victims at that time?</p> <p>3 A Uh-huh. Uh-huh.</p> <p>4 Q And Ms. Cabello was involved in initiating that,    5 correct?</p> <p>6 A Um, I don't know. I thought it was a state    7 initiative, but I don't know.</p> <p>8 Q Now, the last, the last page of that exhibit    9 references organizing an outreach campaign for April, the    10 National Sexual Assault Month.</p> <p>11 A Where is it?</p> <p>12 Q It's the last page of that exhibit.</p> <p>13 A Sorry.</p> <p>14 Q That's all right. It's got type on half the page.</p> <p>15 Wouldn't you agree that participation in an effort connected    16 to national crime victim's rights is an activity which has a    17 focus that is broader than just serving the immediate needs    18 of VASAP's constituency?</p> <p>19 A Yes.</p> <p>20 Q Could you please turn to Exhibit No. 12? Okay.    21 This is Ms. Cabello's fiscal year 2006 evaluation.</p> <p>22 A Uh-huh.</p> <p>23 Q Isn't it correct that nowhere in this evaluation    24 does any criticism of Ms. Cabello's work or relationship    25 with the police appear?</p>

<p style="text-align: right;">Page 102</p> <p>1 A I believe this was the year that Mr. Doe had 2 started to work on those issues. I'm not seeing anything at 3 all on this anymore.</p> <p>4 Q Isn't it accurate that during -- 5 MS. WINDLE: She's still reviewing it. 6 MR. KATZ: Excuse me. Don't interrupt me. 7 MS. ROBESON: Yes. 8 MS. WINDLE: Well, don't interrupt her. 9 MS. ROBESON: Ms. Windle -- 10 MR. KATZ: Do not interrupt my question. 11 MS. ROBESON: Please. If she needs more time, 12 then she can say so.</p> <p>13 BY MR. KATZ:</p> <p>14 Q Do you need more time, Ms. Plevy? 15 A Yes, please. On page 8 in the narrative comments 16 it says Ms. Cabello displayed -- wait, no. Her teamwork, 17 cooperation and collaboration with key agency serving crime 18 victims have improved during the year. She displayed a 19 willingness to take on additional responsibilities such as 20 the testimony she provided to the Maryland House of 21 Delegates on infant trafficking legislation. 22 MS. ROBESON: Which item is that? 23 THE WITNESS: This is Exhibit 12. Page 8 of the 24 exhibit, and it's the first paragraph of the narrative 25 comments at the bottom. And then there's the second</p>	<p style="text-align: right;">Page 104</p> <p>1 services? 2 A Yes. 3 Q Okay. 4 MR. KATZ: Can I have a moment, please? 5 MS. ROBESON: I'm sorry? 6 MR. KATZ: Could we have a moment, please? 7 MS. ROBESON: Yes. 8 MR. KATZ: Okay. 9 MS. ROBESON: Why don't we take a 10 minute break 10 if -- 11 MR. KATZ: That's fine. 12 MS. ROBESON: Is that enough for you? 13 MR. KATZ: Yes. 14 MS. ROBESON: Okay. We'll take a 10 minute break. 15 Ms. Plevy, you're not to discuss the case, okay? 16 (Whereupon, at 2:03 p.m., a brief recess was 17 taken.) 18 MS. ROBESON: Okay. Mr. Katz? 19 BY MR. KATZ: 20 Q Ms. Plevy, if you could please look back at 21 Exhibit No. 12. 22 A I'm there. I'm there. 23 Q Oh, Okay. Thank you. This is the, Ms. Cabello's 24 fiscal year '06 evaluation. 25 A Uh-huh.</p>
<p style="text-align: right;">Page 103</p> <p>1 paragraph about if she wants to receive a review for the 2 next level, she needs to begin to work at a more macro 3 level. She needs to work on issues that impact policy and 4 how victim's issues relate and integrate with other 5 services.</p> <p>6 BY MR. KATZ:</p> <p>7 Q Would you agree with me that one way to impact 8 policy is to testify before the Maryland House of Delegates 9 on proposed legislation?</p> <p>10 A Yes.</p> <p>11 Q So why don't we turn backwards to page 6 and look 12 at some of the bullet points that address Ms. Cabello's, 13 VASAP's work with the police department. Bullet point 2 14 references that major crimes and family services continue to 15 call VASAP outreach volunteers to work with the police at 16 police stations or hospitals. No. 2, Ms. Cabello's 17 participation in quarterly victim services meeting with 18 major crimes. Next bullet point, her participation in 19 monthly chief Latino liaison meeting. Next bullet point 20 states participation in the police department community 21 engagement workshop. Next bullet point states Ms. Cabello 22 assisted the police departments personnel in translating 23 materials into Spanish and French. Would you agree with me 24 that that indicates ongoing work with important elements of 25 the police department to ensure the delivery of victim</p>	<p style="text-align: right;">Page 105</p> <p>1 Q It's correct that there's no reference to outcome 2 measures in this evaluation?</p> <p>3 A Yes.</p> <p>4 Q Okay.</p> <p>5 MR. KATZ: I have no more questions.</p> <p>6 MS. ROBESON: Okay. Ms. Windle, Redirect.</p> <p>7 REDIRECT EXAMINATION</p> <p>8 BY MS. WINDLE:</p> <p>9 Q Now, you had testified about the importance of 10 diversity. Can you address the issue of diversity as it 11 relates to the Victim Services Advisory Board? Were there 12 ever issues about diversity on that Board when Ms. Cabello 13 was staffing it?</p> <p>14 A Um, one issue I remember about that particular 15 Board, I think it was that Board, was -- I think I need to 16 say I don't remember.</p> <p>17 Q Okay. Now, you testified that you met once with 18 Ms. Cabello about her evaluation, and that was when she 19 wouldn't sign the evaluation.</p> <p>20 A Right.</p> <p>21 Q Did you initiate that meeting or did she, do you 22 recall?</p> <p>23 A Um, I'm not sure. At first I was thinking she 24 initiated it but then when I thought about the -- I'm not 25 sure.</p>

<p style="text-align: right;">Page 106</p> <p>1 Q Okay. The Victim Services Advisory Board, what 2 was the role of the Board? Was it only to advise victim 3 services in sexual assault?</p> <p>4 MR. KATZ: Objection, Your Honor.</p> <p>5 MS. ROBESON: Basis?</p> <p>6 MR. KATZ: It's not proper redirect. It was not 7 brought up in cross.</p> <p>8 MS. WINDLE: Well, the Victim Services Advisory 9 Board certainly was.</p> <p>10 MS. ROBESON: Yes. I'm going to let it in.</p> <p>11 MR. KATZ: Okay.</p> <p>12 MS. ROBESON: Go ahead. You can answer.</p> <p>13 THE WITNESS: Can you repeat the question?</p> <p>14 BY MS. WINDLE:</p> <p>15 Q Yes. I was asking about the role of the Victim 16 Services Advisory Board. Was it only for the purpose of 17 advising victim services with the sexual assault program or 18 was there a broader role?</p> <p>19 A My memory was it was just to advise them, but I am 20 not sure.</p> <p>21 Q Is that how it functioned while Ms. Cabello was 22 chairing it?</p> <p>23 MR. KATZ: Objection. She answered. She didn't 24 recall.</p> <p>25 MS. ROBESON: Yes. Sustained.</p>	<p style="text-align: right;">Page 108</p> <p>1 MS. ROBESON: I'm not going to strike it but I'm 2 going to instruct her not to answer it.</p> <p>3 MS. WINDLE: Okay. I will re-ask it.</p> <p>4 BY MS. WINDLE:</p> <p>5 Q Can you comment on this progress note?</p> <p>6 MR. KATZ: Your Honor, I would ask this question 7 not be allowed.</p> <p>8 MS. ROBESON: All right. The cat's out of the bag 9 in a way through that question so let's move on.</p> <p>10 BY MS. WINDLE:</p> <p>11 Q Okay. Exhibit 17, page 3, the last bullet that 12 Mr. Katz asked you about. In fact, that was an activity 13 that's done every year, is that correct?</p> <p>14 A Yes.</p> <p>15 MR. KATZ: Objection. It's still a leading 16 question.</p> <p>17 MS. ROBESON: Yes. Ms. Windle, can you stay 18 within the -- we want to hear, I want to hear what she has 19 to say but I don't want you prompting.</p> <p>20 MS. WINDLE: Well, I would like her to talk too.</p> <p>21 MS. ROBESON: I don't want you prompting her.</p> <p>22 MS. WINDLE: Okay.</p> <p>23 BY MS. WINDLE:</p> <p>24 Q This last bullet that you commented on --</p> <p>25 MS. ROBESON: This is redirect.</p>
<p style="text-align: right;">Page 107</p> <p>1 BY MS. WINDLE:</p> <p>2 Q Okay. If you'll go to Exhibit 9, please, page 4. 3 Actually, I'm sorry. Scratch that. I don't have a question 4 about that. Let me just look. I think I won't -- yes. If 5 you will go to Exhibit 11, please.</p> <p>6 A What page?</p> <p>7 Q Page 7. And if you could read the progression 8 discussion notes at the bottom of the page, if you'd take a 9 look at that.</p> <p>10 A Out loud or to myself?</p> <p>11 Q Just take a look at it and then I'll ask you about 12 it. Well, actually, why don't you read it out loud.</p> <p>13 A "Ms. Cabello should focus on how VASAP can 14 position itself to maximize its contribution to the victim 15 service delivery system. This will involve developing 16 increasingly collaborative relationships with other human 17 service as well as criminal justice programs and providers. 18 In addition, refocusing its services to sync with what is 19 the current priority for public-funded victim services would 20 be essential."</p> <p>21 Q Okay. So your prior testimony that there was 22 nothing in this evaluation about the police was incorrect, 23 is that --</p> <p>24 MR. KATZ: Objection. That's leading and it 25 should be stricken as a question.</p>	<p style="text-align: right;">Page 109</p> <p>1 MS. WINDLE: Right. I understand.</p> <p>2 BY MS. WINDLE:</p> <p>3 Q How frequently was this activity done to your 4 knowledge?</p> <p>5 MR. KATZ: I'm going to object. The cat's --</p> <p>6 MS. ROBESON: I'm going to let it in.</p> <p>7 MR. KATZ: Okay.</p> <p>8 THE WITNESS: It was an annual event.</p> <p>9 BY MS. WINDLE:</p> <p>10 Q Now, okay. Exhibit 17.</p> <p>11 A Uh-huh. What page?</p> <p>12 Q Actually, the whole document. If you need to take 13 a minute to look at it, fine.</p> <p>14 A Okay.</p> <p>15 Q Can you point me here to anything in this list 16 that reflects an outcome or a result?</p> <p>17 A Can I borrow your pen?</p> <p>18 MS. WINDLE: I really --</p> <p>19 MR. KATZ: Can I ask if the witness is marking the 20 book?</p> <p>21 MS. ROBESON: Just both of you started talking.</p> <p>22 MR. KATZ: I was just going to ask that you 23 instruct the witness not to mark the exhibit. She's marking 24 the exhibit.</p> <p>25 MS. ROBESON: Oh, well, her exhibit doesn't go</p>

<p style="text-align: right;">Page 110</p> <p>1 into the record. My exhibit does.      2 MR. KATZ: Oh, okay.      3 MS. ROBESON: So --      4 THE WITNESS: But will somebody else look at this      5 after me?      6 MR. KATZ: Maybe. Yes.      7 THE WITNESS: So maybe I shouldn't.      8 MS. WINDLE: Actually, they're the county's      9 exhibits. We'll replace it. That's fine. We'll replace      10 that.      11 MS. ROBESON: Well, just can you do it without      12 marking it?      13 THE WITNESS: I think I can. Yeah. I just, okay.      14 So I'm going through. I'll just say and when I come to --      15 MS. ROBESON: But it is an exhibit that's part of      16 the official record. What I have in front of me is part of      17 the official record. Go ahead.      18 THE WITNESS: Submitted and negotiated a      19 successful renewal of the rape crisis grant is one that I      20 would say. It's not an outcome for the clients but it's,      21 it's a result. Like a lot of these are process things like      22 went to, assisted, I met. Opened the two VASAP court      23 offices in Rockville and Silver Spring is a result.      24 Established a smooth transition back to work for an      25 individual who was a quadriplegic is a result. Coordinated</p>	<p style="text-align: right;">Page 112</p> <p>1 BY MS. WINDLE:      2 Q Okay. Could you turn to 15, please? Okay. I      3 have the same question. On Exhibit 15, can you identify,      4 look over this list and identify any items that are outcomes      5 or results?      6 A The yearly VASAP volunteer seminar is a result.      7 So I'll just note that in this one, '03, page 3, second to      8 the last bullet says she met with me, so that must be the      9 year we met. That's it.      10 Q Okay.      11 MS. ROBESON: Did you say there was a --      12 THE WITNESS: There was one I found, which was the      13 annual event, that's a result. Everything else in here is      14 like attended, attended, attended, attended, wrote, provided      15 information. Those are like routine --      16 MS. ROBESON: Well, what about the coordinated and      17 provided crisis outreach for the sniper crime victims for      18 the --      19 THE WITNESS: Where is that?      20 MS. ROBESON: One, two, three, four, five, six,      21 seven, eight.      22 THE WITNESS: On which page?      23 MS. ROBESON: Three.      24 THE WITNESS: Um, I didn't see that one but I      25 don't remember VASAP doing the crisis outreach, having the</p>
<p style="text-align: right;">Page 111</p> <p>1 VASAP and Silver Spring emergency services response to      2 building fire. Received the Governor's Victim Assistance      3 Award. Received the Civic Federation Award on behalf of      4 VASAP. Well, that's --      5 BY MS. WINDLE:      6 Q I'm sorry. Is that one or two?      7 A They're two separate bullets on page 3. I mean,      8 I'm really stretching here because some of these are kind of      9 routine things that are part of doing your job but anything      10 that's a result. And did the outreach campaign for, the      11 annual outreach campaign for April.      12 Q Okay. So out of that list in Exhibit 17, you      13 identified six results or --      14 MR. KATZ: Objection.      15 BY MS. WINDLE:      16 Q -- outcomes, is that right?      17 MS. ROBESON: Ms. Windle, please.      18 BY MS. WINDLE:      19 Q How many results did you identify?      20 MR. KATZ: Objection.      21 MS. ROBESON: Just move on. We'll count them      22 later, but I really am asking you not to lead the witness      23 because once you do, you know --      24 MS. WINDLE: Okay. I apologize. I'm sorry.      25 MS. ROBESON: Okay.</p>	<p style="text-align: right;">Page 113</p> <p>1 lead role in that either so it could be. It could be an      2 outcome.      3 MS. ROBESON: What about the County Executive's      4 thank you letter?      5 THE WITNESS: Where is that?      6 MS. ROBESON: One, two, three -- same page. One,      7 two, three, four, five.      8 THE WITNESS: Um, I don't see those kinds of      9 things as a, as an outcome. Those are, you know, positive      10 things that you take into consideration but we're really      11 looking for impact on the citizens, so a thank you note      12 could be an indicator of it but we all typically got thank      13 you notes from the County Executive so I didn't see that as      14 a high enough level.      15 MS. ROBESON: What about the thank you notes from      16 clients?      17 THE WITNESS: When you're talking -- I mean, a      18 thank you note, I guess it depends on where you want to make      19 the cut, you know, because when we're looking at these      20 evaluations, typically, we're looking for like successful is      21 you're doing a good basic, routine job and when you get to      22 the higher levels, you're looking for something well above      23 the norm. And so a couple thank you notes in the course of      24 a year is not significant, nor would a single thank you note      25 from the County Executive be, in my mind, significant. That</p>

<p style="text-align: right;">Page 114</p> <p>1 doesn't mean it's not something to feel good about but in 2 terms of are you getting above successful performance, 3 that's too low a level. 4 MS. ROBESON: Okay. 5 THE WITNESS: And I mean, you know -- 6 MS. ROBESON: Just a second. Ms. Windle, do you 7 have other questions? 8 MS. WINDLE: Yes. I was waiting for her to make 9 sure she was done. 10 MS. ROBESON: Okay. 11 THE WITNESS: I was just going to go back to the 12 sniper thing. I mean, I had a big role in that and the 13 person I typically called was Dudley on those calls, and I 14 think Dudley did bring some VASAP people into it but I don't 15 remember them playing a lead role because we had a line of 16 authority where typically, I would get a call from the 17 police department or the County Executive's office and then 18 I would call Dudley and then it would fan out from there. 19 BY MS. WINDLE: 20 Q Okay. Are you done with that list? Okay. Could 21 you turn to Exhibit 11, page 7? Could you identify there 22 things that are either outcomes or results? 23 A The rape crisis grant, successful renewal of the 24 rape crisis grant. Opened and staffed the two VASAP court 25 offices, but we've seen this in a couple of these. I</p>	<p style="text-align: right;">Page 116</p> <p>1 MS. ROBESON: Okay. Ms. Windle, go ahead. Can 2 she give her address in addition to her name? 3 MS. WINDLE: Yes. Thank you. 4 DIRECT EXAMINATION 5 BY MS. WINDLE: 6 Q Okay. Could you state your name for the record, 7 please? 8 A Corrine Stevens. 9 Q Okay. And can you state your address? 10 A 3130 St. Florence Terrace, Olney, Maryland 11 Q And for whom do you currently work? 12 A I'm currently unemployed. 13 Q Okay. 14 A Happily. 15 Q Pardon? 16 A Happily. 17 MS. ROBESON: Does that mean retired? 18 THE WITNESS: Retired. 19 BY MS. WINDLE: 20 Q And from where did you retire? 21 A I retired from Montgomery County Government. 22 Q And what was your position when you retired? 23 A When I retired, I was the Department of Health and 24 Human Services Chief Operating Officer. 25 Q And how many years were you with Montgomery</p>
<p style="text-align: right;">Page 115</p> <p>1 don't -- 2 Q Actually, I'm sorry. This may be a duplication. 3 This is what year? It's '05. Then it's a duplicate of one 4 you've already done so I, you can, you can stop on that. 5 A Okay. 6 MS. WINDLE: Okay. I don't have anything else. 7 Thank you. 8 MS. ROBESON: Recross, Mr. Katz? 9 MR. KATZ: No. 10 MS. ROBESON: All right. Ms. Plevy, you may be 11 excused as a witness and please remember not to discuss this 12 case with anyone. 13 THE WITNESS: Okay. 14 MR. KATZ: Thank you, Ms. Plevy. 15 THE WITNESS: Thank you. 16 MS. ROBESON: Let's go off the record. 17 (Whereupon, at 2:40 p.m., a brief recess was 18 taken.) 19 (Witness sworn.) 20 MS. ROBESON: Now, there is a rule on witnesses in 21 this case which means that you are not to discuss your 22 testimony with other witnesses, and I'd like you to confirm 23 if you can that you have not talked with any of the other 24 witnesses about this case. 25 THE WITNESS: That's correct.</p>	<p style="text-align: right;">Page 117</p> <p>1 County? 2 A Thirty-two years. 3 Q And what department or departments were you with 4 during that time? 5 A I initially worked from 1977 until 1995 in the 6 Department of Social Services, and from 1995 until my 7 retirement in the Department of Health and Human Services. 8 Q Did you ever supervise Nadja Cabello? 9 A Yes, I did. 10 Q And when was this? What years? 11 A I supervised Ms. Cabello until 1995 until June of 12 2002. 13 Q And what was your position at, during the years 14 you supervised her? 15 A I was the Chief of Crisis Incoming Victim 16 Services. 17 Q And during these years, what was her area of 18 responsibility? 19 A Victim services and sexual assault programs. 20 Q And what was her grade? You said 1995 to 2002? 21 A That's correct. 22 Q Okay. What was her grade or grades during those 23 years? 24 A Initially, um, my best memory is is that she was a 25 grade 27 which I think was a human service administrator or</p>

<p style="text-align: right;">Page 118</p> <p>1 some title similar to that. It would be in the position 2 description. And in 2001, positions at that grade level 3 after review by the Office of Human Resources, were brought 4 into the MLS system and became manager 3s.</p> <p>5 Q Okay. And what date did you say that occurred?</p> <p>6 A June 2001.</p> <p>7 Q Now, can you describe Ms. Cabello's job 8 responsibilities between 1995 and 2001?</p> <p>9 A Her responsibilities were to manage the victim 10 assistance and sexual assault programs, to provide clinical 11 supervision to the therapists in that program and to manage 12 the administrative activities for the program which included 13 budget recommendations, contract management, things of that 14 nature.</p> <p>15 Q Okay. And did you perform evaluations on Ms. 16 Cabello in the years 1995 through 2001?</p> <p>17 A Um, the only evaluation that I really have any 18 significant memory of is the first MLS evaluation which was 19 for fiscal year '02 which was done in June of 2000, or May 20 of 2002. In the years preceding that, we had become the 21 Department of Health and Human Services in 1995 and that was 22 an initiative of then County Executive Duncan where four 23 departments of county government became one department. The 24 Department of Social Services, from which I came, was a 25 state department using state forms and the other three</p>	<p style="text-align: right;">Page 120</p> <p>1 MR. KATZ: A couple of observations. Number one, 2 if these were relevant, then the county, it was incumbent on 3 the county to produce these evaluations in discovery since 4 we asked for all relevant documents. No evaluations from 5 this period were produced and therefore, we would be at a 6 complete disadvantage in trying to assess the witness' 7 testimony.</p> <p>8 MS. WINDLE: Let me clarify that I did not ask 9 what her evaluations were. I asked her, as the supervisor 10 during those years, '95 to 2001, how she assessed her 11 performance.</p> <p>12 MS. ROBESON: Well, I would prefer evaluations to 13 evaluations and it's not fair to, or I don't think it's 14 helpful to have someone's opinion without the evaluations to 15 back them up, so let's stick with the period at issue here.</p> <p>16 MS. WINDLE: Okay.</p> <p>17 BY MS. ROBESON:</p> <p>18 Q When Ms. Cabello became a manager 3, did her job 19 responsibilities change?</p> <p>20 A No. Her job responsibilities didn't change. It 21 was a conversion from a grade level to management leadership 22 service.</p> <p>23 Q If you'll turn to Exhibit 8, and can you identify 24 this document?</p> <p>25 A This is an evaluation for Ms. Cabello for the</p>
<p style="text-align: right;">Page 119</p> <p>1 departments, family resources, addictions, victims and 2 mental health services, which Ms. Cabello was part of, and 3 the Health Department used county forms but they weren't 4 necessarily consistent from department to department, so I 5 think the evaluation process during that period of time was 6 less than ideal.</p> <p>7 Q Do you recall what Ms. Cabello's performance was 8 during those years?</p> <p>9 A Um --</p> <p>10 MR. KATZ: Objection.</p> <p>11 MS. ROBESON: Basis?</p> <p>12 MR. KATZ: If there are evaluations to produce, 13 you can refer to them. Over which period of years? It's a 14 little vague.</p> <p>15 MS. ROBESON: Well, I didn't have a question.</p> <p>16 Which period?</p> <p>17 MS. WINDLE: 1995 to 2001.</p> <p>18 MS. ROBESON: And why would they be at issue in 19 this case?</p> <p>20 MS. WINDLE: I think it's significant because if 21 they were successful, if she was evaluated as being 22 successful and not more than that, it would be consistent 23 with the evaluations that she received during the time that 24 is in question.</p> <p>25 MS. ROBESON: Mr. Katz?</p>	<p style="text-align: right;">Page 121</p> <p>1 period July 2001 through June 2002.</p> <p>2 Q And who performed this evaluation on Ms. Cabello?</p> <p>3 A I did.</p> <p>4 Q And what was her overall rating?</p> <p>5 A Successful.</p> <p>6 Q Okay. Now, if you'll turn to, look at another 7 exhibit, 14, please? Can you identify this?</p> <p>8 A Um, this is Ms. Cabello's self-evaluation for the 9 period of fiscal year '02, July through, July '01 through 10 June of '02.</p> <p>11 Q Now, how would you have used this document in 12 conducting her evaluation?</p> <p>13 A It was my practice doing evaluations that I would 14 initially ask all of my direct reports to give me a document 15 of their accomplishments of, for the year, their view of 16 their accomplishments for the year. We would then review it 17 when I met with them to discuss their performance during 18 that year and I would incorporate that information, attach 19 it, actually, to the evaluation that I ultimately completed.</p> <p>20 Q Okay. Now, if you will, I'm sorry, go back to 21 Exhibit 8. Look at page 4, narrative comments. Okay. And 22 can you explain what you meant by she needs to continue to 23 expand her skills, experience and knowledge in 24 administrative and organizational areas.</p> <p>25 A Um, when the Department of Health and Human</p>

<p style="text-align: right;">Page 122</p> <p>1 Services was created, one of Mr. Duncan's priorities to us      2 was to significantly reduce the size of government, and a      3 significant number of positions that had previously      4 performed administrative budget contract work in the various      5 programs were abolished. And this was particularly true in      6 the three departments that had been, had already been part      7 of county government, to some degree less so in the      8 Department of Social Services which was a state department,      9 and so it meant that the staff that remained and were      10 managers needed to do things that they had never done      11 before.</p> <p>12 Some folks took to that more readily than others.      13 I would say, as I said here, that Ms. Cabello's experience      14 had been primarily as a clinician up until that point in      15 time and that therefore, some of the administrative tasks      16 were more challenging for her.</p> <p>17 Q And the next sentence, what did you mean by in      18 addition, opportunities should continue to be sought to      19 further integrate her program's resources and services with      20 those in HSS and the broader community?</p> <p>21 A Um, when the four departments were brought      22 together, one of the major purposes of that was to, was for      23 service integration, to really start to organize ourselves      24 and to think more in terms of what does the client need as      25 opposed to the individual programs which was the way we had</p>	<p style="text-align: right;">Page 124</p> <p>1 Q Okay. And how did Ms. Cabello manage that, that      2 transition in the focus that you just described?</p> <p>3 A I think that it was, it was difficult. It was a      4 major change and there was role confusion and difficulty in      5 sorting out who would do what. In some instances, the      6 victim assistance in the police department wanted to do      7 things that traditionally were done by victim assistance in      8 the health and human services arena and sorting out who did      9 what was a, was a challenging process for everyone involved.</p> <p>10 Q Can you tell me about Ms. Cabello's interactions      11 with the police during that time period, 1995 to well, I      12 guess actually it would be through 2006.</p> <p>13 MR. KATZ: I'm going to object to the reference in      14 period 1995. They didn't provide any documentation that      15 would address any of these issues.</p> <p>16 MS. ROBESON: Can you tell the story without going      17 back to 1995?</p> <p>18 MS. WINDLE: Well --</p> <p>19 MS. ROBESON: You know what, I'm going to let it      20 in because this doesn't feel, I'm going to let her testify      21 on this because whatever was ongoing is not clear and if it      22 started before Ms. Cabello came in, I would like to know      23 what it is and I think it's relevant so I'm going to let her      24 testify to that.</p> <p>25 THE WITNESS: Um --</p>
<p style="text-align: right;">Page 123</p> <p>1 previously operated. The victims programs, victims      2 assistance and sexual assault and the abused persons      3 program, had been part of a separate division in the former      4 Department of Addictions, Victims and Mental Health      5 Services, were somewhat standalone and so there was an      6 expectation that one would not only think about the service      7 that you were delivering as a professional but also think      8 about your client in terms of am I a victim of crime but      9 does my child also need childcare or does my child or does      10 the child in the family need additional healthcare, do they      11 need financial assistance. And I think that the victims      12 services were slower than others to move in the direction of      13 educating their staffs and working more closely with other      14 programs from the client perspective.</p> <p>15 Also, during the latter part of the 1990s, there      16 were major changes in public safety and the police      17 department, the sheriff's department moved in the direction      18 of creating victim assistance in their own departments so      19 there was a need to begin to redefine. When we previously      20 had had victim assistance primarily in the human services      21 arena, we now had victim assistance in human services and we      22 had victim assistance in public safety, and where would they      23 overlap, what changes would that require the whole system to      24 undergo in order to assure the most effective service      25 delivery for the broader community.</p>	<p style="text-align: right;">Page 125</p> <p>1 MS. ROBESON: It doesn't impact, you know, the      2 performance evaluation and what was communicated to her      3 would not be impacted by what the situation was as far as I      4 can see at the moment, all right?</p> <p>5 MR. KATZ: Okay. I just also want to point out      6 that in discovery the county consistently objected to any      7 inquiries we made for any period prior to 2002 so, I mean,      8 we're somewhat, we were hamstrung in discovery because we      9 didn't receive any information, responses or documents that      10 applied to the period she's now asking about.</p> <p>11 MS. ROBESON: Oh, I didn't know any of that.</p> <p>12 MS. WINDLE: I don't know that that's, I don't      13 know that that's true.</p> <p>14 MS. ROBESON: Well, Ms. Windle, can she just start      15 with the situation that existed in --</p> <p>16 MS. WINDLE: I'm fine with asking her about 2002.</p> <p>17 MS. ROBESON: Okay.</p> <p>18 MS. WINDLE: Is that all right?</p> <p>19 MS. ROBESON: Yes.</p> <p>20 MS. WINDLE: Okay.</p> <p>21 THE WITNESS: Um, well, from January of 2002 until      22 May of 2002, I was Ms. Cabello's supervisor. I became      23 acting director of the department in June of 2002 so I      24 really was several steps removed from Ms. Cabello's      25 involvement with the police. Um, I certainly know in the</p>

<p style="text-align: right;">Page 126</p> <p>1 first part of the year, there was continuing frustration on      2 the part of victims, on Ms. Cabello's part and the Victim      3 Services Advisory Board about what, what the volunteers in      4 VASAP can and should be doing and what the police were      5 doing. I do not recall attending any meetings with Ms.      6 Cabello with the police during that period of time so I can      7 only comment on what I know the issues were and Ms.      8 Cabello's, you know, frustration that there was conflict      9 between the police and the victim services program.</p> <p>10 BY MS. WINDLE:</p> <p>11 Q Okay. Can you turn to Exhibit 79, please? Okay.      12 This has already been identified, right, so okay. This is a      13 December 31st, 2002 memo to all major crime investigators      14 from Assistant Chief Deidre Walker, and the last page      15 indicates that you were copied on this memo as the acting      16 director of health and human services. Do you recall      17 receiving this memo at the time?</p> <p>18 A Um, I have -- I know that I've seen it. Actually,      19 you know, the day I got it, I don't, I don't recall that      20 given how long ago it was.</p> <p>21 Q Do you recall, and I realize this was a long time      22 ago, do you recall the circumstances that led to this memo      23 being put out by the police?</p> <p>24 A Um, well, I think as the memo references, there      25 was dispute about the role of the volunteers in the victim</p>	<p style="text-align: right;">Page 128</p> <p>1 A I can't tell you specific dates but I met with Ms.      2 Cabello, as her immediate supervisor, on a regular basis. I      3 also attended the Victim Services Advisory Board on a      4 regular basis and this was a topic of recurring conversation      5 about how we would get to a consistent protocol and one that      6 was satisfactory to both sides.</p> <p>7 Q Okay. Now, I'm going to switch gears a little      8 bit. How many other manager 3s did you supervise in 2002?</p> <p>9 A I would say six or seven.</p> <p>10 Q Okay. Now, do you recall the ratings that you      11 gave those other manager 3s in 2002?</p> <p>12 A No, I do not.</p> <p>13 Q Okay. Are you familiar with the term calibration      14 as it relates to evaluating and compensating management,      15 leadership services managers such as Ms. Cabello?</p> <p>16 A Yes.</p> <p>17 Q Okay. And what does that term mean to you?</p> <p>18 A Um, to me, it means that you look at employees in      19 the same classification and in this instance, it would have      20 been manager 3s, and that in making your recommendations for      21 performance as well as compensation, you try to assure that      22 there's fairness. A rating of satisfactory isn't a fixed      23 place in time. It's a range. And so you want to be sure      24 that someone who is at the higher end of satisfactory or at      25 the lower end or in the middle, that there's a relationship</p>
<p style="text-align: right;">Page 127</p> <p>1 assistance and sexual assault program and the role of the      2 relatively new victim assistance in the police department.      3 And there's reference here to the fact that the police had      4 been contacting their own victim assistance as opposed to      5 contacting the volunteers from, and that was a major area of      6 dispute that had been going on for some period of time.      7 And then also, as the memo references, some of the      8 officers were asking the victim do you want to see a victim      9 assistant or a volunteer from the victim assistance sexual      10 assault program and the preference of the victim assistance      11 and sexual assault program was, as this memo indicates, was      12 that the victim should be allowed to make that determination      13 face-to-face to the volunteer as opposed to through the      14 police and then also, the issue of when the victim assistant      15 would be brought into the process.      16 So those were major issues of disagreement and      17 inconsistent practice on the part of the police. One of the      18 challenges with this is that every time one of these      19 incidences might occur, it would be a different police      20 officer and a different volunteer so achieving consistency      21 was made even more challenging because it wasn't a pair of      22 people who routinely worked together.      23 Q Do you recall ever having any conversations with      24 Ms. Cabello about her relationship with and the program's      25 relationship with the police?</p>	<p style="text-align: right;">Page 129</p> <p>1 to their evaluate, their rating as well as to your      2 compensation recommendation.</p> <p>3 Q Now, was satisfactory one of the rating      4 categories?</p> <p>5 A I think it was successful.</p> <p>6 Q Okay.</p> <p>7 A I think successful is the appropriate term.</p> <p>8 Q So these six or so manager 3s that you were      9 supervising in 2002, did you do evaluations on all of those      10 manager 3s?</p> <p>11 A Oh, yes. It was mandatory.</p> <p>12 Q Okay. So now, if you could look at Joint Exhibit      13 21, okay, and can you identify this document?</p> <p>14 A This is a letter that I signed which was drafted,      15 actually, by our human resources office, to Ms. Cabello      16 thanking her for her work in the previous year and telling      17 her the decisions about her compensation.</p> <p>18 Q Okay. And what compensation did you recommend?</p> <p>19 A The compensation was she was granted the cost of      20 living adjustment of 3-and-a-half percent and I recommended      21 a 3 percent addition to base for her salary.</p> <p>22 Q Okay. In making that recommendation, what factors      23 did you consider?</p> <p>24 A Um, her level of performance during that year and      25 how it related to the other manager 3s, what their</p>

<p style="text-align: right;">Page 130</p> <p>1 responsibilities were as compared to hers. She was the only      2 with perhaps the, I don't remember whether the manager for      3 the abuse persons program had already retired but with the      4 exception of that person, she was the only manager 3 that I      5 was supervising at that point in time who had clinical      6 responsibilities and was supervising licensed staff, whereas      7 the other manager 3s that I supervised were in the income      8 support programs, were not supervising clinical staff but      9 supervising para-professional staff.</p> <p>10 Q So do you recall how Ms. Cabello compared to the      11 other manager 3s in your service area?</p> <p>12 A Um, I think in terms of her clinical work and her      13 commitment to customer service, clearly because she was      14 being compared to other people who weren't clinicians, you      15 know, she was doing a very good job. In terms of service      16 integration, I would say some of them were perhaps more      17 involved in service integration than her program was. So it      18 was a mixed, a mixed bag.</p> <p>19 Q Okay. So was this group of manager 3s in 2002 the      20 same group she would have been compared with in 2003, '04,      21 '05 and '06?</p> <p>22 A No. It was a totally different group.</p> <p>23 Q And why is that? How did that happen?</p> <p>24 A Well, when I became acting director in June of      25 2002, my responsibilities as the chief of crisis income and</p>	<p style="text-align: right;">Page 132</p> <p>1 You can say did you --      2 MR. KATZ: I'll withdraw.      3 MS. ROBESON: -- you know, how often did you      4 observe. I'm going to let it in but give it the weight it      5 deserves.      6 MR. KATZ: Okay. That's fine.      7 MS. ROBESON: Go ahead.      8 BY MS. WINDLE:      9 Q Okay, Ms. Stevens. You have been the department      10 representative on this case, correct?      11 A That's correct.      12 Q Okay. And why did you agree to be the department      13 representative?      14 MR. KATZ: Objection. Irrelevant.      15 MS. ROBESON: Correct. Sustained.      16 MS. WINDLE: Okay.      17 BY MS. WINDLE:      18 Q Have you formed an opinion about the allegation      19 that Ms. Cabello was discriminated against on the basis of      20 her ancestry?      21 MR. KATZ: Objection. Irrelevant.      22 MS. ROBESON: What is the --      23 MS. WINDLE: It was asked, I asked it over the      24 other two, three witnesses. Two witnesses. The same      25 question.</p>
<p style="text-align: right;">Page 131</p> <p>1 victim services were redistributed and the victims programs      2 and the crisis center, which I was responsible for      3 previously, were transferred to Ms. Plevy in behavioral      4 health, and the remainder of my service area was reassigned      5 to a special assistant in the director's office.</p> <p>6 Q Okay.</p> <p>7 A And I served as acting director for 10 months.</p> <p>8 Q Now, in 2002, were you at that time supervising      9 Dudley Warner?</p> <p>10 A I supervised Mr. Warner until June, the end of May      11 2002.</p> <p>12 Q And when did that supervision start?</p> <p>13 A I started in July of 1995.</p> <p>14 Q Okay. In those years that you supervised Mr.      15 Warner and Ms. Cabello, did you ever observe Mr. Warner      16 treat Ms. Cabello differently than his other direct reports?</p> <p>17 A No.</p> <p>18 Q In those years, did you ever observe Mr. Warner      19 treat any Hispanic subordinates or coworkers differently?</p> <p>20 A No.</p> <p>21 MR. KATZ: Objection.</p> <p>22 MS. ROBESON: Basis?</p> <p>23 MR. KATZ: I mean, is there any basis for her      24 stating that these observations were actually made?</p> <p>25 MS. ROBESON: Well, that's a question for cross.</p>	<p style="text-align: right;">Page 133</p> <p>1 MR. KATZ: The objection is this witness did not      2 supervise Ms. Cabello, Mr. Warner, the Does, et cetera in      3 the period of time of the relevant evaluations. I mean,      4 she's basically asking an expert opinion. It shouldn't be      5 allowed.</p> <p>6 MS. WINDLE: She was, excuse me, but she was the      7 acting director during a good chunk of that time and she was      8 the chief operating officer so certainly, she was in the      9 chain of command.</p> <p>10 MR. KATZ: The question was an opinion formed      11 while she's been the department representative during this      12 litigation. It's irrelevant.</p> <p>13 MS. ROBESON: That is -- I'm going to sustain      14 that. I, you know, to the extent she has personal knowledge      15 of her very limited -- how long did she directly supervise      16 Ms. Cabello?</p> <p>17 MS. WINDLE: For seven years.</p> <p>18 MS. ROBESON: Yes, but --</p> <p>19 MS. WINDLE: Oh, but not during the period --</p> <p>20 MR. KATZ: Not during the period of time.</p> <p>21 MS. WINDLE: -- in question.</p> <p>22 MS. ROBESON: Exactly. So if you still want to      23 ask it based on the what, six months that -- the time at      24 issue was, well, calendar date, where is the 202 --</p> <p>25 MR. KATZ: If I may, Your Honor.</p>

<p style="text-align: right;">Page 134</p> <p>1 MS. ROBESON: Yes.      2 MR. KATZ: I think Ms. Windle can correct me if      3 I'm wrong. I believe the testimony is that Ms. Stevens      4 stopped being Ms. Cabello's supervisor as of the end of      5 fiscal year 2002. The evaluations in question began fiscal      6 year 2003, so I would say the question remains irrelevant.      7 MS. WINDLE: Well --      8 MS. ROBESON: Yes, but the evaluation was based on      9 FY '02, correct?      10 MR. KATZ: She stopped being the supervisor, if I      11 believe the testimony is correct, either May or June of      12 2002.      13 MS. ROBESON: Correct.      14 MR. KATZ: So that's the beginning of fiscal year      15 2003, so Ms. Stevens was not the supervisor during any of      16 the period.      17 MS. ROBESON: Then what was the performance      18 evaluation we just read that was performed by Ms. Stevens?      19 MR. KATZ: Fiscal Year 2002 which concluded June      20 30th, 2002.      21 MS. WINDLE: No. No. Concluded in '03.      22 THE WITNESS: No, no, no.      23 MS. ROBESON: It's a year ahead. Yes.      24 MS. WINDLE: Okay.      25 MS. ROBESON: But that meant that she would have</p>	<p style="text-align: right;">Page 136</p> <p>1 6/30/02.      2 MR. KATZ: Yes. That's fiscal year '02.      3 MS. ROBESON: No. That's fiscal -- oh. It is      4 fiscal year '02. I'm sorry. I'm sorry. So she can testify      5 as to her position on fiscal year '02.      6 MR. KATZ: Yes, but not as to opinions formed      7 about the period of time following that --      8 MS. ROBESON: I understand.      9 MR. KATZ: -- by virtue of her participation in      10 this litigation.      11 MS. ROBESON: I understand what you're saying.      12 MR. KATZ: Okay. Can I ask that the question      13 be --      14 MS. ROBESON: Rephrased?      15 MR. KATZ: Somehow.      16 MS. ROBESON: Can you rephrase it? I think the      17 question was what is your position as to the merits of, the      18 question really is do you think, based on your performance      19 evaluation, but the only thing is, Mr. Warner wasn't, do you      20 feel during your tenure that, which would be July 1st, '01      21 to June 30th, '02, that Ms. Cabello was discriminated      22 against.      23 MR. KATZ: If I may, Your Honor.      24 MS. ROBESON: Yes. You can rephrase it.      25 MR. KATZ: Yes. I think, I mean, the question</p>
<p style="text-align: right;">Page 135</p> <p>1 supervised Ms. Cabello in, at some point in FY -- is the FY      2 '03 evaluation?      3 MR. KATZ: Yes.      4 MS. ROBESON: I need to see the evaluation because      5 I'm not sure if -- can we get the evaluation that Ms.      6 Stevens did?      7 MR. KATZ: Yes. It's Exhibit 8, Your Honor.      8 MS. ROBESON: Okay. So this is the year '01.      9 MR. KATZ: If I may, Your Honor.      10 MS. ROBESON: Yes.      11 MR. KATZ: It's the year that goes, if I have it      12 correctly, July 1st, 2001 through June 30th, 2002.      13 MS. ROBESON: Correct. And so why can't she      14 testify as to that?      15 MR. KATZ: The question had to do with a period      16 after that.      17 MS. WINDLE: No.      18 MS. ROBESON: What I was trying to say is she can      19 testify based on her supervisory experience from, for FY      20 '03, correct?      21 MR. KATZ: She was not Ms. Cabello's supervisor in      22 FR '03.      23 MS. ROBESON: She just testified --      24 MS. WINDLE: Can we let --      25 MS. ROBESON: For the review period 7/1/01 to</p>	<p style="text-align: right;">Page 137</p> <p>1 that you allowed had to do, that you allowed Ms. Windle to      2 ask Ms. Stevens had to do with her opinions, if I remember      3 quickly, whether Mr. Warner, Mr. Warner's attitudes. That      4 was the question you permitted.      5 MS. ROBESON: No. I think the question I      6 permitted was what's your opinion on this lawsuit.      7 MR. KATZ: Okay. Now, an assertion is since Mr.      8 Warner was not, Mr. Warner was not supervising Ms. Cabello      9 until after the period Ms. Stevens supervised Ms. Cabello so      10 there cannot be any opinion as to Mr. Warner's supervision      11 of Ms. Cabello.      12 MS. WINDLE: I didn't ask about supervision. Mr.      13 Katz is taking --      14 MS. ROBESON: No. I understand you asked --      15 MS. WINDLE: -- liberties with what I am trying to      16 get to.      17 MS. ROBESON: This is what I'm going to do because      18 I'm not sure that witnesses' opinions about lawsuits don't      19 sway me too much. If you want to rephrase the question      20 about her direct knowledge of Ms. Cabello during those      21 periods, that's up to you, during fiscal year '02 but, you      22 know, what she thinks of it now versus then is, in my mind,      23 irrelevant to what happened. I put more weight on what      24 actually happened than witnesses' opinions of what happened.      25 MS. WINDLE: Okay.</p>

<p style="text-align: right;">Page 138</p> <p>1 MS. ROBESON: So she can testify from her personal 2 knowledge about, something about this lawsuit if you still 3 want to ask her the question.</p> <p>4 MS. WINDLE: Okay. Let me try.</p> <p>5 BY MS. WINDLE:</p> <p>6 Q In fiscal year '02, I guess my first question is 7 how frequently did you have opportunity to observe Ms. 8 Warner or Mr. Warner and Ms. Cabello interact with each 9 other?</p> <p>10 A Um, I met with my senior leadership team which 11 included Ms. Cabello and Mr. Warner on a regular basis. My 12 best memory is that those meetings were at least once a 13 month and when there were more urgent matters, they may have 14 been more frequently. And so I would have observed them in 15 those meetings because they were always both, you know, both 16 present.</p> <p>17 Q And during those meetings when you had opportunity 18 to observe the two of them together, did you ever observe 19 Mr. Warner --</p> <p>20 MS. ROBESON: Wait. Don't ask a leading question.</p> <p>21 MS. WINDLE: Okay.</p> <p>22 BY MS. WINDLE:</p> <p>23 Q What did you observe --</p> <p>24 MS. ROBESON: What did you observe?</p> <p>25 BY MS. WINDLE:</p>	<p style="text-align: right;">Page 140</p> <p>1 A Very much so.</p> <p>2 Q Okay.</p> <p>3 MR. KATZ: We have no further questions.</p> <p>4 MS. ROBESON: Okay. Do you have any redirect, Ms. 5 Windle? I hesitate to -- okay. All right. You may be 6 excused as a witness. And so you are representing the 7 client in, you are representing the party in this case, HHS.</p> <p>8 THE WITNESS: That's correct.</p> <p>9 MS. ROBESON: Okay. All right. So that 10 concludes, does that conclude your case in chief, Ms. 11 Windle?</p> <p>12 MS. WINDLE: Yes it does.</p> <p>13 MS. ROBESON: Mr. Katz, do you wish to star Ms. 14 Cabello's testimony today or --</p> <p>15 MR. KATZ: Our recommendation, Your Honor, would 16 be just to start with her first thing at the next date.</p> <p>17 MS. ROBESON: On February 3rd?</p> <p>18 MR. KATZ: Yes. Because it would be, I think it 19 would just flow a lot more easily.</p> <p>20 MS. ROBESON: Ms. Windle?</p> <p>21 MS. WINDLE: Well, okay. Let me tell you. I have 22 several concerns about that. It does make sense to me. 23 However, if I'm going to bring Mr. Warner in as a rebuttal 24 witness, he will come one more time. He has had it, flying 25 out of Maine to get here and then if he has to come and we</p>
<p style="text-align: right;">Page 139</p> <p>1 Q What did you observe when you saw Mr. Warner and 2 Ms. Cabello interact with each other?</p> <p>3 A I saw two colleagues, because they were then both 4 at the same grade level, engage in conversation with me and 5 with their other colleagues about the business at hand.</p> <p>6 Q Did you observe anything else?</p> <p>7 A No. I never observed any inappropriate behavior 8 on the part of either Ms. Cabello or Mr. Warner.</p> <p>9 Q Okay.</p> <p>10 MS. WINDLE: I have nothing else at this time.</p> <p>11 MS. ROBESON: Okay. Mr. Katz?</p> <p>12 MR. KATZ: Can we have a five minute break, 13 please?</p> <p>14 MS. ROBESON: Yes, but I would like to get through 15 the witness.</p> <p>16 MR. KATZ: We will.</p> <p>17 MS. ROBESON: So we're off the record.</p> <p>18 (Whereupon, at 3:29 p.m., a brief recess was 19 taken.)</p> <p>20 MS. ROBESON: We are back on the record. Are you 21 ready, Mr. Katz?</p> <p>22 MR. KATZ: Yes. Yes.</p> <p>23 CROSS-EXAMINATION</p> <p>24 BY MR. KATZ:</p> <p>25 Q Ms. Stevens, how are you enjoying retirement?</p>	<p style="text-align: right;">Page 141</p> <p>1 don't get to him on the 3rd, and the notion of doing the 3rd 2 was to reserve that and I understand things have taken 3 longer but I'm just concerned that we won't get to rebuttal 4 on the 3rd. And I'm particularly concerned if Mr. Katz 5 plans to put in all of this, you know, information on lost 6 wages and so forth and I guess --</p> <p>7 MS. ROBESON: I haven't seen that so I don't know 8 yet.</p> <p>9 MS. WINDLE: Well, I haven't had an opportunity to 10 look at it either but my recommendation on that would be to, 11 I perhaps should have talked about this earlier but I think 12 we can still do it, to bifurcate and to deal with whether 13 discrimination on the basis of ancestry occurred and then 14 get, if you determine that, then the rest of it becomes 15 relevant. Otherwise, it's not relevant. And we're going to 16 have to, you know, do our own calculations. I have a 17 feeling that we would not agree on the percentage that ought 18 to be, you know, if we got there.</p> <p>19 So my suggestion is that we bifurcate and not get 20 into all of that until it becomes relevant, and it's not 21 right now.</p> <p>22 MS. ROBESON: Well, I don't make the final 23 decision so, but you could still, I understand what you're 24 saying, you're saying we could still bifurcate the damages 25 issue. Mr. Katz, do you want to comment on Ms. Windle's</p>

<p style="text-align: right;">Page 142</p> <p>1 position?</p> <p>2 MR. KATZ: Well, I don't think we should bifurcate 3 at this point. The county propounded discovery on us in 4 regard to damages. They asked about our projections of lost 5 wages and we came up with, you know, and we entered those at 6 discovery the best we can. Actually, what we have just 7 produced is a more refined version of that. I think if we 8 have the witness testifying, it's more efficient to go 9 through all of her testimony.</p> <p>10 MS. ROBESON: Well, there is, there are two 11 options here. The other is that if Mr. Dudley, we can go 12 through the evidence. Is mister, I mean Mr. Dudley, Mr. 13 Warner. Is he necessary to the evidence on wages?</p> <p>14 MS. WINDLE: No.</p> <p>15 MS. ROBESON: He's not. So my feeling is that we 16 could set a day, another day in reserve, which we don't need 17 to do right now, where if he needs to come in just for 18 rebuttal and cross-examination, he can do so. But we'll 19 reserve the 3rd and that way we'll know we'll get to him but 20 we can finish what -- yes. Go ahead.</p> <p>21 MR. KATZ: I'm just thinking there may be another 22 option which is not bifurcating the case but since Mr. 23 Warner would be, well, Mr. Warner would probably or may be 24 irrelevant to a claim for damages. Depending on where the 25 testimony is -- I mean, Ms. Cabello's testimony will be</p>	<p style="text-align: right;">Page 144</p> <p>1 MS. WINDLE: You'd have to send this to them on 2 the, on the liability part and wait for them to make a 3 determination.</p> <p>4 MS. ROBESON: Well, it wouldn't work. I mean, I 5 could make a recommendation. They don't have to take it. 6 So, you know, to do what you are saying and completely 7 bifurcate the two would be, would mean that there would be 8 the additional delay of going to the HRC on the merits and 9 then coming back, and I would be concerned about doing that.</p> <p>10 Part of our job is to try to get the job done.</p> <p>11 MR. KATZ: If I may miss --</p> <p>12 MS. ROBESON: I'm sorry. Go ahead.</p> <p>13 MR. KATZ: If I may, one other point. If the 14 county had wanted to do this, they should have put us on 15 notice. We've put significant effort into preparing the 16 documentation and the witness in looking at all the 17 different numbers and preparing the damages estimate and 18 it's frankly unfair, it's unfair to us to not put us on 19 notice that we wanted to reprocess and see if we could 20 discuss this.</p> <p>21 MS. WINDLE: Well --</p> <p>22 MR. KATZ: And it just, you know. I mean, if the 23 county asked, propounded discovery that goes to damages, 24 they should be prepared to go forward on damages. And I 25 understand Ms. Windle is busy and without detailing it, all</p>
<p style="text-align: right;">Page 143</p> <p>1 liability damages. It's very clear. We could see where we 2 are in liability and if necessary, stop, interrupt her 3 testimony so that if she wants to call Mr. Warner for 4 rebuttal.</p> <p>5 MS. WINDLE: My problem --</p> <p>6 MR. KATZ: Which would sort of be like bifurcating 7 but not completely.</p> <p>8 MS. WINDLE: Well, I would prefer total 9 bifurcation and the reason, I have a number of other things 10 going on and if I know that we're going to have to focus on 11 the damages, then I will have to take the time to do that. 12 Otherwise, I've got two Department of Justice complaints I'm 13 dealing with right now, a couple of EEOC so --</p> <p>14 MS. ROBESON: I guess my concern is this, that 15 this has already dragged on longer than it should have and 16 if I bifurcate, completely bifurcate, then it's got to go to 17 the Human Rights Commission who will make, you know, I can 18 make the recommendation but it would have to then go all the 19 way to the Human Rights Commission and they would then have 20 to remand it back to me for, you know, depending on what 21 they do. So we wouldn't, it's not just my report that, 22 excuse me, it's not just my report. It would be the HRC's 23 decision so that's additional time in the --</p> <p>24 MS. WINDLE: You'd have to --</p> <p>25 MR. KATZ: Excuse me.</p>	<p style="text-align: right;">Page 145</p> <p>1 of us have other work to do also.</p> <p>2 MS. WINDLE: Let me point out that the prehearing 3 submissions were due weeks and weeks and weeks ago and as I 4 said earlier today, we just got all this information about 5 alleged damages this morning so, you know, if we're going to 6 point fingers about timeliness, I --</p> <p>7 MS. ROBESON: Did you claim --</p> <p>8 MS. WINDLE: If he --</p> <p>9 MS. ROBESON: -- damages in your prehearing 10 statement as a basis for your claim, Mr. Katz?</p> <p>11 MR. KATZ: Did we address what the damages were?</p> <p>12 MS. ROBESON: No. Did you address that you would 13 seek damages?</p> <p>14 MR. KATZ: I'm going to pull up our prehearing 15 statement. Yes. The last line of our prehearing statement 16 states Ms. Cabello will urge the Hearing Officer affirm the 17 finding of discrimination and award appropriate damages to 18 be demonstrated at the hearing.</p> <p>19 MS. ROBESON: All right. Well what I can do is 20 this. I mean, I can, quote, informally bifurcate damages in 21 the sense of, well, you've raised two issues. One is Mr. 22 Dudley's attendance and the second is the bifurcation. I am 23 reluctant to bifurcate simply because of the delay. Now, 24 what I can do is add another hearing date to ensure that Mr. 25 Dudley gets on a day he books a flight and he is completed</p>

1 on the same day. Now, however that works out, whether that  
 2 would -- I would think that we would do Ms. Cabello's claims  
 3 on both because, at the next hearing which would be February  
 4 3rd, because that would give, if for some reason you do need  
 5 Mr. Dudley at some later date, all Ms. Cabello's cards, so  
 6 to speak, are on the table so you can respond. Go ahead.

7 MS. WINDLE: I don't have a problem with that. I  
 8 mean, that makes sense and I understand your hesitation not  
 9 to delay further. I would like to set a third day in for  
 10 any rebuttal that we need to put on which would probably be  
 11 more than Mr. Warner if, you know, with the damages and once  
 12 we hear what, you know, once I've gotten to look at what  
 13 his --

14 MS. ROBESON: Okay. So you want to reserve a  
 15 particular date just for rebuttal. As long as you  
 16 understand that, you know, if we can't for some reason get  
 17 to Mr. Warner, you know, he's got to come, if he's only  
 18 going to come one more time, which I think he kind of has to  
 19 come more than once but I'm trying to accommodate him, that  
 20 he get on on whatever day we can agree to get him on, all  
 21 right?

22 MS. WINDLE: Yes.

23 MS. ROBESON: So --

24 MS. WINDLE: I won't know until I hear from Ms.  
 25 Cabello what rebuttal is going to be --

1 February 3rd. I'm just telling you that in advance because  
 2 that is the, that is a conflict, you know, a major -- I'm  
 3 out that whole week. And I can tell you right now our  
 4 hearing room, this hearing room is taken the 23rd through  
 5 the 25th and then the 27th of February. Now, we have rented  
 6 other, I mean not rented, we have been able to reserve other  
 7 hearing rooms. They are not as workable with this one but  
 8 if push comes to shove, we could get another hearing room  
 9 that week if it turns out that that week is the week that  
 10 you all can meet. So the 23rd through the 25th is out.  
 11 That's Monday through Wednesday. And then the Friday the  
 12 27th of February is out in this room.

13 MS. WINDLE: I'm sorry. Can you say those dates  
 14 again?

15 MS. ROBESON: Sure. The 23rd through the 25th of  
 16 February.

17 MS. WINDLE: Is out.

18 MS. ROBESON: This room is taken because there's  
 19 another human rights case. And then Friday the 27th is out.  
 20 So the only date available that week is the 26th.

21 MR. KATZ: I'm sorry. I'm not available.

22 MS. ROBESON: It's okay. It's complicated. The  
 23 week of the 17th beginning Tuesday the 17th after  
 24 President's Day, that's when I am on jury duty or on call  
 25 for jury duty. The only day available the following week is

1 MS. ROBESON: That's why I'm saying --

2 MS. WINDLE: That's fine.

3 MS. ROBESON: -- we don't have to set a date  
 4 today. Well, we should set it prior to February 3rd. I  
 5 will tell you I got called for jury duty in Howard County  
 6 and in Howard County, it's one week, one trial and so I  
 7 can't guarantee, I can't schedule anything that week.

8 MS. WINDLE: What week is that?

9 MS. ROBESON: It's the week of February 17th which  
 10 is President's Day. The day, the week after the President's  
 11 Day weekend. So I'll just let you know I don't feel like I  
 12 can schedule and then, you know, since I got the summons and  
 13 don't have anything on my schedule that I can plead as  
 14 scheduling delay. So I don't know why I get them like  
 15 clockwork every three years and my husband doesn't but  
 16 anyway.

17 MS. WINDLE: In the District of Columbia, it's  
 18 every two years like clockwork. Well, so shall --

19 MS. ROBESON: So that week I'm just saying --

20 MS. WINDLE: -- we set a date today or --

21 MS. ROBESON: No.

22 MS. WINDLE: -- can we do that?

23 MS. ROBESON: We have to have a firm date by the  
 24 next hearing so we don't have to re-advertise or send new  
 25 notice out but we need it, so we don't need a date until

1 Thursday, February 26th.

2 MS. WINDLE: Right. That's when you said you --

3 MR. KATZ: I can't.

4 MS. ROBESON: This room is unavailable next  
 5 Wednesday, tomorrow. No. Next Wednesday, February 11th.  
 6 Wait. I have to check. I'm not clear on what that means.  
 7 We have a major, another HRC case that -- now, you can check  
 8 with Ellen Forbes in our office as to the availability of  
 9 this room next week. Now, the other option, as I said --

10 MS. WINDLE: Excuse me. Next week? It has to be  
 11 after the 3rd, right?

12 MS. ROBESON: I'm sorry. The week following the  
 13 3rd --

14 MS. WINDLE: Okay.

15 MS. ROBESON: -- is the 9th. I'm not clear from  
 16 this whether this room is reserved the whole week or not but  
 17 Ms. Forbes will know. Would you --

18 MR. KATZ: I'm in trial that week.

19 MS. ROBESON: Huh?

20 MR. KATZ: I'm in trial that week.

21 MS. ROBESON: Okay. As I said, we do have the  
 22 option of getting a different room. It's just, you know,  
 23 there's a little, few logistical problems in the two  
 24 additional rooms.

25 MS. WINDLE: I'm going to obviously need to speak

<p style="text-align: right;">Page 150</p> <p>1 with Mr. Warner before I can commit to anything.      2 MS. ROBESON: Right.      3 MS. WINDLE: Could we perhaps have a conference      4 call in a few days?      5 MS. ROBESON: Well, what I can do if -- Ellen can      6 send you dates that the room is open, that I'm free and the      7 room is open for the next two months. So February, the      8 balance, or for February after the 3rd and for April, or for      9 March. I'm jumping the gun. She'll give you available      10 dates. And then if you can find something within those      11 dates, you really won't need me for a conference call.      12 MS. WINDLE: Yes. That's fine.      13 MS. ROBESON: But I'll have her send those dates      14 tomorrow so you have them and then hopefully, we can get the      15 final hearing in. You only have Ms. Cabello, correct?      16 MR. KATZ: Correct.      17 MS. ROBESON: Okay. And then we don't know how      18 much rebuttal we have yet. So I'll have her send the dates      19 for February, March to you tomorrow or possibly the next day      20 and my availability, and then you can get back to her with      21 your time frames, okay? All right. With that -- yes.      22 MR. KATZ: One other thing. Just so that the      23 instruction is clear that I understand, Ms. Windle is going      24 to be coordinating dates with Mr. Warner. That's fine. But      25 the instruction be that there be absolutely no other</p>	<p style="text-align: right;">Page 152</p> <p>1 MS. ROBESON: Yes, yes, yes.      2 MS. WINDLE: Yes. Absolutely.      3 MS. ROBESON: Okay. Well, I'll leave it like      4 this. You aren't to discuss other witness' testimony or      5 where you feel the county stands in the case as far as the      6 merits of the case, the discrimination claim. And you can      7 discuss with other witnesses that they can't talk to each      8 other.      9 MS. WINDLE: Right. I understand.      10 MS. ROBESON: All right. Okay.      11 MR. KATZ: Um --      12 MS. ROBESON: Yes.      13 MR. KATZ: And just so that we're clear, this      14 means no substantive discussion at all with Mr. Warner.      15 He's still under oath.      16 MS. ROBESON: Yes.      17 MR. KATZ: Okay.      18 MS. ROBESON: Okay. And all right. So with that,      19 we are adjourned until February 3rd at 9:30 in this room.      20 (Whereupon at 3:58 p.m., the hearing was      21 concluded.)      22      23      24      25</p>
<p style="text-align: right;">Page 151</p> <p>1 discussion in regards to this case. He's under oath and he      2 cannot, there should be no other discussion with him other      3 than logistics.      4 MS. WINDLE: I certainly don't agree. If I call      5 him as a rebuttal witness, I'm going to need to prepare him.      6 MR. KATZ: Absolutely.      7 MS. WINDLE: I'm not going to tell him what to      8 say. He's my witness. I need to --      9 MS. ROBESON: Yes. But --      10 MS. WINDLE: -- to prepare him.      11 MS. ROBESON: But how can you prepare him without      12 telling him what the other testimony has been? I'm going to      13 agree with Mr. Katz, and you can discuss procedural matters      14 and get him here but not the substance of the case because      15 it's rebuttal.      16 MS. WINDLE: I understand that. Then if I have to      17 call other rebuttal witnesses like somebody from OHR who can      18 testify to salaries and increases and what this would mean      19 and that would mean and so forth, I obviously need to talk      20 to that person.      21 MS. ROBESON: Well, do you anticipate having to do      22 that?      23 MS. WINDLE: Yes.      24 MS. ROBESON: Oh, as far as the wages.      25 MS. WINDLE: Whether we -- yes. Whether --</p>	<p style="text-align: right;">Page 153</p> <p style="text-align: center;"><b>C E R T I F I C A T E</b>      DEPOSITION SERVICES, INC., hereby certifies that      the attached pages represent an accurate transcript of the      electronic sound recording of the proceedings before the      Office of Zoning and Administrative Hearings for Montgomery      County in the matter of:</p> <p style="text-align: center;">Nadja S. Cabello, Complainant      v.      Montgomery County DHHS Behavioral Health Division,      Respondent      Office of Human Resources Referral No.: E-04252      OZAH No. HR 14-01</p> <p style="text-align: right;">By:      Josephine Hayes, Transcriber</p>

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