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THE STATE EDUCATION DEPARTMENT  
THE UNIVERSITY OF THE STATE OF NEW YORK

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In the Matter of  
NEW YORK CITY DEPARTMENT OF EDUCATION  
v.  
BOUBAKAR FOFANA  
Section 3020-a Education Law Proceeding (File #8,234)

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DATE: May 28, 2008  
TIME: 10:09 a.m. to 1:07 p.m.  
LOCATION: NYC Department of Education  
Office of Legal Services  
49-51 Chambers Street  
New York, New York 10004  
BEFORE: JAY SIEGEL, ESQ.  
Hearing Officer  
12 Rock Street  
Cold Springs, NY 10516

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1 Boubakar Fofana - 5-28-08  
 2 APPEARANCES:  
 3 FOR THE COMPLAINANT:  
 4 LAURA HEMANS-BRANTLEY, ESQ., of Counsel  
 MICHAEL BEST, ESQ.  
 5 NYC Department of Education  
 Office of Legal Services  
 6 49-51 Chambers Street  
 New York, New York 10004  
 7 Telephone: (212) 374-6741  
 8 FOR THE RESPONDENT:  
 9 Pro Se  
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1 Boubakar Fofana - 5-28-08  
 2 INDEX OF PROCEEDINGS  
 3 Matthew Martucci; Sworn 1006  
 Direct Examination by Ms. Hemans-Brantley 1006  
 4 Cross Examination by Mr. Fofana 1026  
 5 Richard Marin; Sworn 1059  
 Direct Examination by Ms. Hemans-Brantley 1059  
 6 Cross Examination by Mr. Fofana 1066  
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1 Boubakar Fofana - 5-28-08  
 2 EXHIBIT INDEX  
 3 Marked as Description  
 Department  
 4 Ten 1024 - 16  
 S.C.I. investigation file on Mr. Fofana  
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1 Boubakar Fofana - 5-28-08  
 2 THE HEARING OFFICER: Okay.  
 3 Good morning. My name is Jay Siegel and I am  
 4 the Hearing Officer assigned to an Education  
 5 Law Section 3020-a proceeding between the New  
 6 York City Department of Education and Boubakar  
 7 Fofana. Today is May 28th, 2008 and this is  
 8 the fourth day of this hearing.  
 9 Now, at this time, I would  
 10 ask for there to be appearances for the record.  
 11 MS. HEMANS-BRANTLEY: Laura  
 12 Hemans-Brantley on behalf of the New York City  
 13 Department of Education.  
 14 THE HEARING OFFICER: Mr.  
 15 Fofana?  
 16 MR. FOFANA: Fofana --  
 17 Boubakar Fofana, math teacher.  
 18 THE HEARING OFFICER: All  
 19 right. At this time, the parties have been  
 20 informed by the folks who manage the building  
 21 that we are in, that there will be a fire drill  
 22 momentarily. So we're going to go on pause for  
 23 a few moments just to see whether or not that  
 24 drill's going to happen. And if doesn't

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1 Boubakar Fofana - 5-28-08  
 2 happen, we will get this proceeding started.  
 3 Thank you.  
 4 (Off the record)  
 5 THE HEARING OFFICER: All  
 6 right. I would just like the record to reflect  
 7 the fact that these parties have been ready to  
 8 go since we went on the record nearly  
 9 forty-five minutes ago, but this building where  
 10 we are conducting the hearing had a fire drill  
 11 that's kept us out of the building for the last  
 12 forty-five minutes.  
 13 So at this time, Ms.  
 14 Brantley, I see that you've called in another  
 15 witness?  
 16 MS. HEMANS-BRANTLEY: Yes, I  
 17 have. I'm sorry; just one second here. Yes, I  
 18 did. Investigator Matthew Martucci was called  
 19 in.  
 20 THE HEARING OFFICER: All  
 21 right. Mr. Martucci, I'm going to need to  
 22 swear you in.  
 23 Do you swear or affirm that  
 24 the testimony you're about to give will be the

Page 1007

1 **Martucci - Direct - Hemans-Brantley**  
 2 **investigator.**  
 3 Q. Okay. And approximately how  
 4 long have you been employed with that agency?  
 5 **A. For over five years now.**  
 6 Q. And can you please tell us  
 7 what kind of cases you investigate.  
 8 **A. I investigate -- the office**  
 9 **looks at allegations of misconduct regarding**  
 10 **school officials from -- from the custodians,**  
 11 **to the teachers, to the administrative staff.**  
 12 **We also look into investigations regarding**  
 13 **vendors that have contracts with the City of**  
 14 **New York and -- which includes bid rigging and**  
 15 **investigations of that sort.**  
 16 Q. Okay. Prior to your current  
 17 position with S.C.I., can you please give us a  
 18 brief background -- employment background,  
 19 please?  
 20 **A. I was employed -- prior to**  
 21 **coming the Special Commissioner of**  
 22 **Investigation, I was a New York City Police**  
 23 **Officer, where I was appointed January of 1982.**  
 24 **I worked up the ranks to Detective and I**

Page 1006

1 Boubakar Fofana - 5-28-08  
 2 truth, the whole truth, and nothing but the  
 3 truth?  
 4 MR. MARTUCCI: Yes, I do,  
 5 sir.  
 6 MATTHEW MARTUCCI: Sworn.  
 7 THE HEARING OFFICER: Okay.  
 8 Ms. Brantley, you may begin.  
 9 MS. HEMANS-BRANTLEY: Thank  
 10 you. One moment, please? I'm sorry.  
 11 THE HEARING OFFICER: No  
 12 problem.  
 13 MS. HEMANS-BRANTLEY: I  
 14 apologize.  
 15 DIRECT EXAMINATION  
 16 BY MS. HEMANS-BRANTLEY:  
 17 Q. Good morning, Mr. Martucci.  
 18 By whom are you employed?  
 19 **A. I'm employed by the Special**  
 20 **Commissioner of Investigations for the New York**  
 21 **City School District.**  
 22 Q. And in what capacity are you  
 23 employed with that agency?  
 24 **A. I'm an assistant supervising**

Page 1008

1 **Martucci - Direct - Hemans-Brantley**  
 2 **made -- also was Detective Second Grade.**  
 3 **During the course of my employment with the New**  
 4 **York City Police Department, I worked at**  
 5 **narcotics. I worked with the Drug Enforcement**  
 6 **Administration, which is the Federal Task**  
 7 **Force. I also worked in a Detective Squad and**  
 8 **I also worked in Manhattan D. A.'s office.**  
 9 Q. Now, I'm just going to ask  
 10 you whether or not you're familiar with a case  
 11 that came to you involving Boubakar Fofana?  
 12 **A. Yes, I am.**  
 13 Q. And who was that individual?  
 14 **A. He was a -- he's a teacher**  
 15 **and he's seated right here to my right.**  
 16 Q. And were you asked to  
 17 investigate an allegation against him?  
 18 **A. Yes, I was. I was assigned**  
 19 **to investigate an allegation of employee**  
 20 **misconduct regard -- on April 17th, of 2006**  
 21 **regarding the posting of confidential student**  
 22 **information on the -- on a public domain, a --**  
 23 **on a website, basically.**  
 24 Q. Okay. And how was it that it

3 (Pages 1005 to 1008)

Page 1009

1 Martucci - Direct - Hemans-Brantley  
 2 came to pass you were assigned this particular  
 3 investigation?  
 4 **A. On April 12th, prior to the**  
 5 **investigation being assigned to myself,**  
 6 **Principal Wiltshire telephoned the complainant**  
 7 **at the Special Commissioner's Office and lodged**  
 8 **an allegation against Mr. Fofana alleging**  
 9 **employee misconduct regarding the posting of**  
 10 **confidential student information.**  
 11 Q. And what, if anything, did  
 12 you do after -- after being assigned this case?  
 13 **A. After being assigned the**  
 14 **case, I -- I accessed the website to make**  
 15 **sure -- to find out the -- the validity of the**  
 16 **complaint. And I was able to access two**  
 17 **websites, one being teacherabuse.com. And to**  
 18 **the best of my recollection there was a link to**  
 19 **mathspell.com. And when I accessed both those**  
 20 **web pages, okay, I saw and observed**  
 21 **confidential student information, which --**  
 22 **which was posted. And it had the student OSID**  
 23 **number -- numbers of students that -- grades --**  
 24 **posted grades and there were a couple photos of**

Page 1011

1 Martucci - Direct - Hemans-Brantley  
 2 record, please?  
 3 **A. Richard Marin.**  
 4 Q. Prior to contacting Mr.  
 5 Marin, did you make any attempts, yourself, to  
 6 download the information?  
 7 **A. Yes, I did. And I actually**  
 8 **printed out some of the information and I put**  
 9 **it as an exhibit in -- in the case file.**  
 10 Q. When you -- after you spoke  
 11 to Mr. Marin, do you know what Mr. Marin did?  
 12 **A. Yes. He created two discs --**  
 13 **two C.D. discs of the downloaded information.**  
 14 **And he -- what -- what I did, I received two**  
 15 **discs from Mr. Marin and I vouchered one into**  
 16 **the evidence vault. Okay. And I actually kept**  
 17 **a disc and I placed it into the case file.**  
 18 Q. When -- were you present --  
 19 withdrawn.  
 20 How do you know what Mr.  
 21 Marin did?  
 22 **A. I was there. I -- we went to**  
 23 **Mr. Marin's office and from his computer, he**  
 24 **was able to, I guess, copy the web pages. I**

Page 1010

1 **Martucci - Direct - Hemans-Brantley**  
 2 **two students, I think a male and a female.**  
 3 Q. When you assessed -- accessed  
 4 these websites can you tell us where you were?  
 5 Where were you?  
 6 **A. I was at my work station at**  
 7 **my desk.**  
 8 Q. And was anyone else present  
 9 at the time you first accessed the website?  
 10 **A. No, there wasn't.**  
 11 Q. After you viewed the  
 12 information on these two particular websites,  
 13 what, if anything, did you do?  
 14 **A. I had a conversation with the**  
 15 **information technology person at my office, Mr.**  
 16 **Marin. And I asked Mr. Marin if he could**  
 17 **download, I guess -- I don't know the -- and**  
 18 **then -- then create a C.D. disk, okay, so we**  
 19 **had the information just in case, you know, the**  
 20 **individual -- Mr. Fofana was -- wiped out the**  
 21 **information, at least we had in -- as -- as a**  
 22 **record.**  
 23 Q. Prior to contact -- and by  
 24 the way, what's Mr. Marin's first name for the

Page 1012

1 **Martucci - Direct - Hemans-Brantley**  
 2 **don't know if that's the right term, but copy**  
 3 **and download those -- the -- both web pages and**  
 4 **the information that was on the actual web --**  
 5 **websites.**  
 6 Q. Were you present the entire  
 7 time while Mr. Marin performed his -- whatever  
 8 it is that he did? Were you present?  
 9 **A. To the best of my**  
 10 **recollection, yes, I was.**  
 11 Q. How were you -- now you  
 12 indicated you were provided with two discs?  
 13 Who gave you the discs?  
 14 **A. Mr. Marin.**  
 15 Q. After Mr. Marin gave you the  
 16 discs, were they -- did you maintain custody  
 17 and control of the discs?  
 18 **A. Yes, I did.**  
 19 Q. Now, as part of your  
 20 investigation, in addition to what you just  
 21 told us with regard to accessing the websites  
 22 and downloading information, what, if anything,  
 23 else did you do as part of your investigation?  
 24 **A. I conducted interviews and I**

4 (Pages 1009 to 1012)

1 **Martucci - Direct - Hemans-Brantley**  
 2 **memorialized them on -- on reports.**  
 3 Q. Who did you interview?  
 4 **A. I interviewed Mr. --**  
 5 **Principal -- Dr. Wiltshire -- Wiltshire?**  
 6 Q. Wiltshire.  
 7 **A. Wiltshire.**  
 8 Q. Did you interview anyone  
 9 else?  
 10 **A. No, I did not.**  
 11 Q. Was any effort made by you to  
 12 speak with Mr. Fofana?  
 13 **A. Yes, I -- yes, I did make an**  
 14 **effort to speak to Mr. Fofana.**  
 15 Q. And can you tell us what, if  
 16 anything, happened?  
 17 **A. I went to the school where**  
 18 **Mr. Fofana was reassigned and I attempted to**  
 19 **interview Mr. Fofana. And at that point he**  
 20 **represented -- he expressed that he wanted**  
 21 **representation and I did not have the**  
 22 **opportunity to speak with him.**  
 23 Q. Did you reach any -- did you  
 24 reach a conclusion -- what, if any conclusion

1 Martucci - Direct - Hemans-Brantley  
 2 did you reach at the end of your investigation?  
 3 **A. Based on -- based on the --**  
 4 **the information and the downloading of the**  
 5 **websites, which was in black and white, okay, I**  
 6 **determined that the information that was posted**  
 7 **was confidential student information, and I --**  
 8 **I concluded that the allegation was**  
 9 **substantiated.**  
 10 Q. Did you prepare a final  
 11 report with regards to your investigation?  
 12 **A. I did prepare a final report.**  
 13 Q. And was the report included  
 14 in your file?  
 15 **A. Yes, it was.**  
 16 Q. What, if anything, did you do  
 17 after preparing your final report?  
 18 **A. The final report was**  
 19 **submitted to my supervisors and it was then --**  
 20 **the case file was then submitted to the**  
 21 **attorneys assigned at the S.C.I. office.**  
 22 Q. And who is your -- who are  
 23 your supervisors?  
 24 **A. Anthony Contanasi (phonetic**

1 **Martucci - Direct - Hemans-Brantley**  
 2 **spelling) and Thomas Fennell; they're --**  
 3 **they're on the investigative side. And then**  
 4 **there is Regina Loughran, who is on the --**  
 5 **attorney's side of the office.**  
 6 Q. Do you know what, if  
 7 anything, Ms. Regina Loughran did with your  
 8 file?  
 9 **A. She also issued -- she**  
 10 **reviewed the -- the file and she also issued a**  
 11 **final report.**  
 12 Q. And is that included in your  
 13 file?  
 14 **A. Yes, it is.**  
 15 Q. I want you to take a look at  
 16 what's marked as D.O.E. Exhibit Number -- I  
 17 believe --  
 18 MS. HEMANS-BRANTLEY: Is it  
 19 ten, Mr. Siegel?  
 20 THE HEARING OFFICER: Just  
 21 checking right now to see if we're -- number  
 22 nine -- yes, we're up to number ten.  
 23 MS. HEMANS-BRANTLEY: Okay.  
 24 THE HEARING OFFICER: Yes,

1 Martucci - Direct - Hemans-Brantley  
 2 Department of Ed. Ten.  
 3 MS. HEMANS-BRANTLEY: Okay.  
 4 MR. FOFANA: That would be  
 5 eleven?  
 6 THE HEARING OFFICER: No;  
 7 this would be ten. This would actually be ten.  
 8 MS. HEMANS-BRANTLEY: The  
 9 copy I'm going to have him look at is actually  
 10 a copy I'm going to ultimately give to you.  
 11 THE HEARING OFFICER: Okay.  
 12 That's fine.  
 13 (Department Exhibit Ten is  
 14 marked for identification.)  
 15 BY MS. HEMANS-BRANTLEY:  
 16 Q. And you can take a look at  
 17 this and tell me if you recognize this? Just  
 18 look through everything.  
 19 **A. Are you putting the final**  
 20 **report in here from Ms. Loughran?**  
 21 Q. It should be in there -- if  
 22 you look through it, it should be towards the  
 23 back.  
 24 **A. Okay. It's there. I just**

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1 **Martucci - Direct - Hemans-Brantley**  
 2 **want to state for the record, if you don't**  
 3 **mind, that this was produced on May 14th, of**  
 4 **2008, for the purposes of documentation here to**  
 5 **turn over.**  
 6 THE HEARING OFFICER: Okay.  
 7 So is it your testimony that everything except  
 8 for his -- everything except for the discs is  
 9 the report -- your file report?  
 10 THE WITNESS: Correct.  
 11 THE HEARING OFFICER: And the  
 12 disc was -- is a copy of what you had  
 13 originally attached?  
 14 THE WITNESS: Correct.  
 15 MS. HEMANS-BRANTLEY: Okay.  
 16 Right, I -- what I asked -- if I could just  
 17 interject?  
 18 THE HEARING OFFICER: Sure.  
 19 MS. HEMANS-BRANTLEY: Okay.  
 20 I asked -- for purposes of providing a copy to  
 21 you, Mr. Siegel, I asked -- I have the copy  
 22 which is included in Mr. -- Mr. Martucci's  
 23 file. I asked him, as a courtesy, to make me a  
 24 copy of the C.D. in his file --

Page 1018

1 Martucci - Direct - Hemans-Brantley  
 2 THE HEARING OFFICER: I see.  
 3 MS. HEMANS-BRANTLEY: -- so  
 4 that I could provide you with a copy. I also  
 5 provided Mr. Cavallaro, at the time, with a  
 6 copy, which I assuming he, in turn, provided to  
 7 Mr. Fofana.  
 8 THE HEARING OFFICER: Okay.  
 9 Mr. Fofana --  
 10 THE WITNESS: I just want to  
 11 set the record straight --.  
 12 THE HEARING OFFICER: And you  
 13 received a copy -- you have a copy of this  
 14 C.D.?  
 15 MR. FOFANA: Let me see.  
 16 Well, the date is a little different.  
 17 THE HEARING OFFICER: The  
 18 date would be different because that date  
 19 reflects the date he photocopied it, but that's  
 20 when he --.  
 21 MR. FOFANA: May I take a  
 22 look at it, because I -- it is, you know, I  
 23 don't know what's in it. So I cannot, you  
 24 know, ascertain that I received the same C.D.

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1 Martucci - Direct - Hemans-Brantley  
 2 So I need to put it in and check if it's the  
 3 same document I received.  
 4 MS. HEMANS-BRANTLEY: I have  
 5 no objection.  
 6 THE HEARING OFFICER: All  
 7 right. So let's --.  
 8 MS. HEMANS-BRANTLEY: Do you  
 9 want to take a few minutes and do that?  
 10 THE HEARING OFFICER: All  
 11 right.  
 12 THE WITNESS: Here you go,  
 13 sir.  
 14 MR. FOFANA: Thank you.  
 15 THE HEARING OFFICER: We're  
 16 going to let the record reflect that Mr. Fofana  
 17 is taking a look at the --  
 18 MS. HEMANS-BRANTLEY: And if  
 19 you want to compare that --.  
 20 THE HEARING OFFICER: -- the  
 21 attached C.D. Well, let's see what -- what  
 22 he -- what his thoughts are. But he's taking a  
 23 look on his computer at the attached C.D. to  
 24 what is Department of Education Number Ten for

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1 Martucci - Direct - Hemans-Brantley  
 2 I.D. right now to confirm that it is, in fact,  
 3 identical with the C.D. that he received much  
 4 earlier in this proceeding as part of the  
 5 discovery furnished by the Department of  
 6 Education.  
 7 MS. HEMANS-BRANTLEY: Well,  
 8 it's not in evidence. I don't know --.  
 9 THE HEARING OFFICER: Right.  
 10 MS. HEMANS-BRANTLEY: -- is  
 11 it okay with you? I mean I don't --.  
 12 MR. FOFANA: Okay.  
 13 THE HEARING OFFICER: That's  
 14 it?  
 15 MR. FOFANA: Uh-huh.  
 16 THE HEARING OFFICER: All  
 17 right. So the -- the record can reflect that  
 18 Mr. Fofana has, in fact, received that C.D. and  
 19 that it's a --  
 20 MR. FOFANA: Thank you, sir.  
 21 THE HEARING OFFICER: -- part  
 22 of the attachment to D.O.E. Number Ten for I.D.  
 23 MR. FOFANA: This is yours?  
 24 MS. HEMANS-BRANTLEY: Well,

6 (Pages 1017 to 1020)

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1 Martucci - Direct - Hemans-Brantley  
 2 not quite yet.  
 3 THE HEARING OFFICER: Not  
 4 yet.  
 5 MS. HEMANS-BRANTLEY: I don't  
 6 know if you want to give him the opportunity  
 7 to --  
 8 THE HEARING OFFICER: Yes.  
 9 Does he have a copy of this yet?  
 10 MS. HEMANS-BRANTLEY: Oh, I'm  
 11 sorry. I -- well, I had provided -- I don't  
 12 have an exact replica of this --  
 13 THE HEARING OFFICER: Uh-huh.  
 14 MS. HEMANS-BRANTLEY: --  
 15 because I had previously provided the entire  
 16 file to --.  
 17 MR. FOFANA: Actually, I'm  
 18 not requesting the exact copy. I just want to  
 19 quickly --  
 20 MS. HEMANS-BRANTLEY: Oh,  
 21 yes.  
 22 THE HEARING OFFICER: All  
 23 right. So why don't you do that.  
 24 MR. FOFANA: -- see if I have

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1 Martucci - Direct - Hemans-Brantley  
 2 MR. FOFANA: Yes; the letter  
 3 to -- December 8th -- Thomas Fennel to --.  
 4 MS. HEMANS-BRANTLEY: Okay.  
 5 I have a copy of that, as well.  
 6 MR. FOFANA: Uh-huh. This  
 7 is -- the index, this one --.  
 8 MS. HEMANS-BRANTLEY: What --  
 9 just tell me the index -- okay. Hold on, I  
 10 have -- I believe I have another copy.  
 11 MR. FOFANA: Two pages --.  
 12 MS. HEMANS-BRANTLEY: I have  
 13 a copy.  
 14 THE WITNESS: Is he referring  
 15 to page one?  
 16 MS. HEMANS-BRANTLEY: Yes, I  
 17 have this. I'm providing to Mr. Fofana, as  
 18 well.  
 19 (Off-the-record discussion)  
 20 THE HEARING OFFICER: That's  
 21 okay. No -- no. Take your time. I want to  
 22 make sure you have everything.  
 23 MS. HEMANS-BRANTLEY: Okay.  
 24 Here you go, providing Mr. Fofana with another

Page 1022

1 Martucci - Direct - Hemans-Brantley  
 2 the complete document. That's all. I'm just  
 3 checking quickly. I can see a couple of  
 4 documents I haven't received and I'm going to  
 5 request them, if you don't mind.  
 6 MS. HEMANS-BRANTLEY: Mr.  
 7 Fofana, I have this -- don't pull it out. Just  
 8 tell me because I have extra copies I can  
 9 give -- oh, go ahead.  
 10 MR. FOFANA: The letter --  
 11 MS. HEMANS-BRANTLEY: And  
 12 everything, I have extra copies.  
 13 MR. FOFANA: -- December  
 14 21st, 2004 letter --  
 15 MS. HEMANS-BRANTLEY: Okay.  
 16 I have a copy right here for you.  
 17 MR. FOFANA: -- to Dr.  
 18 Michael Wiltshire.  
 19 MS. HEMANS-BRANTLEY: Let the  
 20 record reflect that I'm providing Mr. Fofana  
 21 with another copy.  
 22 THE HEARING OFFICER: Okay.  
 23 MS. HEMANS-BRANTLEY: And is  
 24 there anything else, Mr. Fofana?

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1 Martucci - Direct - Hemans-Brantley  
 2 copy of that.  
 3 MR. FOFANA: And I don't have  
 4 the final report by Mr. Martucci.  
 5 MS. HEMANS-BRANTLEY: Hold  
 6 on. Okay. Here you are.  
 7 MR. FOFANA: Thank you. This  
 8 is yours, sir?  
 9 THE WITNESS: No.  
 10 MS. HEMANS-BRANTLEY: I'm  
 11 sorry, I didn't finish the --.  
 12 BY MS. HEMANS-BRANTLEY:  
 13 Q. Do you recognize all of the  
 14 documents contained in D.O.E. Exhibit Ten?  
 15 **A. Yes, I do.**  
 16 Q. Okay. And are all of those  
 17 documents contained in your S.C.I. file with  
 18 regards to your investigation into allegations  
 19 pertaining to Mr. Fofana?  
 20 **A. Yes -- yes, it is, Counselor.**  
 21 **MS. HEMANS-BRANTLEY: At this**  
 22 **time, I wish to move what has been marked as**  
 23 **D.O.E. Exhibit Ten for identification into**  
 24 **evidence, which I should include, as stated**

7 (Pages 1021 to 1024)

Page 1025

1 **Martucci - Direct - Hemans-Brantley**  
 2 **previously on the record, just so the record is**  
 3 **clear, contains several documents and a C.D.**  
 4 **THE HEARING OFFICER: All**  
 5 **right. Mr. Fofana, is there objection to that**  
 6 **going in?**  
 7 MR. FOFANA: Which -- D.O.E.  
 8 Number Ten, what documents are you referring  
 9 to? Are you --?  
 10 MS. HEMANS-BRANTLEY: The  
 11 ones you just reviewed.  
 12 MR. FOFANA: Oh, the  
 13 whole --?  
 14 THE HEARING OFFICER: The  
 15 whole package --  
 16 MR. FOFANA: Oh, thank you.  
 17 THE HEARING OFFICER: -- she  
 18 submitted.  
 19 MR. FOFANA: Okay. The  
 20 package -- thank you. No, I have no  
 21 objections.  
 22 THE HEARING OFFICER: Okay.  
 23 So then D.O.E. Number Ten will -- will go in.  
 24 And that will be reflected as the S.C.I.

Page 1026

1 Martucci - Direct - Hemans-Brantley  
 2 Investigation Report with supplemental  
 3 materials.  
 4 MS. HEMANS-BRANTLEY: Well,  
 5 it's basically his S.C.I. Investigative file  
 6 pertaining to his investigation of the  
 7 allegation against Mr. Fofana.  
 8 THE HEARING OFFICER: Okay.  
 9 MS. HEMANS-BRANTLEY: Okay.  
 10 I have no further questions for this witness.  
 11 THE HEARING OFFICER: Mr.  
 12 Fofana, do you need a few minutes for your --  
 13 to prepare your cross examination?  
 14 MR. FOFANA: Yes, just a few  
 15 minutes.  
 16 THE HEARING OFFICER: Okay.  
 17 So then we're going to go off the record for  
 18 about ten minutes and we'll be back as soon as  
 19 Mr. Fofana is ready.  
 20 (Off the record)  
 21 THE HEARING OFFICER: Mr.  
 22 Fofana, cross examination?  
 23 MR. FOFANA: Yes; thank you.  
 24 CROSS EXAMINATION

Page 1027

1 Martucci - Cross - Fofana  
 2 BY MR. FOFANA:  
 3 Q. Mr. Martucci, you said  
 4 earlier that you went to the school to try to  
 5 interview me. Is that correct?  
 6 **A. Correct.**  
 7 Q. What school?  
 8 **A. To the best of my**  
 9 **recollection, I think it was somewhere in**  
 10 **Staten Island.**  
 11 Q. Okay. You are saying --  
 12 actually, you're referring to the rubber room.  
 13 That was the rubber room; right?  
 14 **A. It was -- it was a location**  
 15 **where Mr. Fofana was reassigned.**  
 16 Q. Okay. Just on the record, I  
 17 just want to make clear where we met. All  
 18 right?  
 19 Are you aware, Mr. Martucci,  
 20 that employees in a 3020-a proceeding are not  
 21 obligated to answer any questions to -- to  
 22 submit themselves to any interview regarding  
 23 their case? Are you aware of that?  
 24 MS. HEMANS-BRANTLEY:

Page 1028

1 Martucci - Cross - Fofana  
 2 Objection.  
 3 MR. FOFANA: Well --.  
 4 THE HEARING OFFICER: Basis?  
 5 MS. HEMANS-BRANTLEY: Well,  
 6 he's asking about -- at the time when he met  
 7 him, it wasn't a 3020-a proceeding.  
 8 MR. FOFANA: Well, if I --  
 9 if -- if -- if I've been removed from -- from  
 10 my school and for more -- and it's not for --  
 11 it's about 3020-A.  
 12 THE HEARING OFFICER: Well,  
 13 I'll -- I will allow you to -- the question is  
 14 a general question about his knowledge, so I'm  
 15 going to allow the question to be answered.  
 16 **A. About --?**  
 17 BY MR. FOFANA: (Cont'g.)  
 18 Q. Let me repeat my question.  
 19 Are you aware of a provision in 3020-a, you  
 20 know, law that says tenured teachers, for  
 21 instance, are not obligated to submit  
 22 themselves to any interviews or to answer any  
 23 questions? Are you aware of that?  
 24 **A. Yes, I am.**

8 (Pages 1025 to 1028)

Page 1029

1 **Martucci - Cross - Fofana**  
 2 Q. You are? You received a  
 3 letter from Mr. -- Mr. Vogelmann, my lawyer,  
 4 stated -- stating the same thing?  
 5 **A. That's correct.**  
 6 Q. All right. So you agree with  
 7 me that my refusal to submit myself to your  
 8 interview were within the legal boundaries?  
 9 **A. Yes, absolutely.**  
 10 Q. All right. Thank you. I  
 11 just wanted to clear that.  
 12 **A. Okay.**  
 13 Q. You mentioned confidential  
 14 records -- you know, student confidential  
 15 records that was posted, you know, as you say,  
 16 according to you. I would like to know  
 17 specifically what records -- what's in it? I  
 18 want you to spell out those records, what you  
 19 saw, because if you say confidential records,  
 20 it's a broad -- it's general. I want specific  
 21 now. What did you see?  
 22 **A. To the best of my**  
 23 **recollection, there was a -- student names --.**  
 24 Q. Okay. Hold on. Are you

Page 1031

1 Martucci - Cross - Fofana  
 2 D.O.E. would be able to identify this student,  
 3 based on the OSID number -- any by, you know,  
 4 some -- someone passing and to see this number?  
 5 **A. It's -- the number is**  
 6 **associated with -- with a student.**  
 7 Q. No -- no -- no; that's not my  
 8 question sir. I'm asking you if someone comes  
 9 across a number in the street, would that  
 10 person -- would be able to trace back this  
 11 number to the student?  
 12 **A. Only if he had access to the**  
 13 **A.T.S. system.**  
 14 Q. All right. So is -- it's  
 15 purely internal?  
 16 **A. Correct, I thought I said**  
 17 **it's internal.**  
 18 Q. Okay. Thank you. Now, what  
 19 else? We're talking about confidential  
 20 records. You just mentioned name. What else?  
 21 **A. To the best of my**  
 22 **recollection, there were pictures, two**  
 23 **pictures, pictures of a male and a female.**  
 24 Q. Okay.

Page 1030

1 Martucci - Cross - Fofana  
 2 saying the name of students is confidential?  
 3 **A. The name of a student is**  
 4 **confidential.**  
 5 Q. The name of a student?  
 6 **A. Of a student, affixed to it**  
 7 **was an -- was an OSID number, which is your**  
 8 **student identification number for a student.**  
 9 Q. Okay. The -- the OSID  
 10 number, this is internal number; right? It's  
 11 internal in the D.O.E. It's not something that  
 12 would rise to the level of Social Security  
 13 members?  
 14 **A. It's an identification**  
 15 **assigned to the student --**  
 16 Q. With the --.  
 17 **A. -- which is numerated by the**  
 18 **Department of Education, which makes it more**  
 19 **confidential.**  
 20 Q. Right, well, it's just --  
 21 this number is within the D.O.E. In other  
 22 words, it's limited -- put it another way. If  
 23 someone just pick a number outside, in the  
 24 street, a non-employee, even an employee of

Page 1032

1 Martucci - Cross - Fofana  
 2 **A. If I remember correctly**  
 3 **without looking at my notes.**  
 4 Q. I -- for -- for the sake of  
 5 clarity, since you have all the documents on  
 6 D.O.E. Number Ten -- I think you have the whole  
 7 S.C.I. documentation, so could you refer to  
 8 them to answer this question, because if you  
 9 said to me, to your best recollection, we're  
 10 trying to be more accurate. So --.  
 11 MS. HEMANS-BRANTLEY: I'm  
 12 going to object.  
 13 BY MR. FOFANA: (Cont'g.)  
 14 Q. -- you have all documents --  
 15 MS. HEMANS-BRANTLEY:  
 16 Well --.  
 17 BY MR. FOFANA: (Cont'g.)  
 18 Q. -- so -- just so -- refer to  
 19 them anytime in trying to be more accurate.  
 20 **A. After reviewing the**  
 21 **documents -- there are -- there are records --**  
 22 Q. Okay. What --  
 23 **A. -- referring to --**  
 24 Q. -- what I would like to do,

9 (Pages 1029 to 1032)

Page 1033

1 Martucci - Cross - Fofana  
 2 for example, if I ask you for a confidential  
 3 record, you pull out and you show me, to make  
 4 it faster.  
 5 **A. Oh, okay. That's fine.**  
 6 Q. So what -- what records --  
 7 what is confidential and --  
 8 **A. Okay.**  
 9 Q. -- would this be  
 10 confidential?  
 11 **A. Yes. This is a confidential**  
 12 **student --**  
 13 Q. Okay.  
 14 **A. -- grade -- grade**  
 15 **recording --**  
 16 Q. Can you pull out --?  
 17 **A. -- form.**  
 18 THE HEARING OFFICER: Yes, he  
 19 can't pull it out.  
 20 MR. FOFANA: I'm sorry. I  
 21 should have a copy.  
 22 BY MR. FOFANA: (Cont'g.)  
 23 Q. So what -- what -- what is  
 24 the grades here? Can you show -- what is the

Page 1035

1 Martucci - Cross - Fofana  
 2 reporting form and it begins with students  
 3 that -- that appear to have last names of A and  
 4 goes through D, the first document, we're  
 5 looking at.  
 6 BY MR. FOFANA: (Cont'g.)  
 7 Q. Now --.  
 8 **A. And for the record also --**  
 9 Q. No -- no -- no --.  
 10 THE HEARING OFFICER: No;  
 11 there is no question. So --.  
 12 MR. FOFANA: No -- no -- no;  
 13 it's not a -- you know it's a Q and A.  
 14 BY MR. FOFANA: (Cont'g.)  
 15 Q. Now, I'm going to ask you,  
 16 other than grades, what confidential you can  
 17 refer us to?  
 18 **A. As I said, the student's**  
 19 **names, the student's OSID number and grade**  
 20 Q. Yes -- yes.  
 21 **A. Okay. There was also a --**  
 22 **a -- photographs.**  
 23 Q. Pictures, yes --.  
 24 **A. Okay? There are other, I**

Page 1034

1 Martucci - Cross - Fofana  
 2 grade? I don't see any grades here.  
 3 **A. They're -- they're marked in**  
 4 **here.**  
 5 Q. Uh-huh.  
 6 **A. It says -- the way I**  
 7 **interpret this, this is a sixty -- a fifty,**  
 8 **sixty, I mean a forty --**  
 9 Q. Let me -- let me -- let me --  
 10 **A. I'm not a teacher.**  
 11 Q. And you saw these on the  
 12 website?  
 13 **A. It says right there, grade --**  
 14 Q. No -- no, I'm just -- no --  
 15 no --  
 16 **A. -- grade reporting form.**  
 17 Q. -- that's -- I'm saying you  
 18 saw these on the website?  
 19 **A. Correct.**  
 20 Q. Okay.  
 21 THE HEARING OFFICER: I -- I  
 22 would just like the record to reflect that the  
 23 document we are looking at right now in D.O.E.  
 24 Ten is -- does state in the heading, grade

Page 1036

1 **Martucci - Cross - Fofana**  
 2 **guess, documents pertaining to New York City**  
 3 **Public Schools, like teacher.**  
 4 Q. Where -- no, no, no I'm  
 5 sorry, it doesn't go that way. You have to  
 6 tell me specifically what records you're  
 7 talking about.  
 8 **A. Well, are we looking at just**  
 9 **the student records?**  
 10 Q. I want --.  
 11 THE HEARING OFFICER: No --  
 12 no -- no. His question is what confidential --  
 13 MR. FOFANA: My --  
 14 confidential --  
 15 THE HEARING OFFICER: --  
 16 information --  
 17 THE WITNESS: Oh, okay.  
 18 THE HEARING OFFICER: -- was  
 19 it you found on the website?  
 20 MR. FOFANA: -- yes, website.  
 21 THE HEARING OFFICER: Right.  
 22 **A. It looks like class**  
 23 **assignments of students --**  
 24 BY MR. FOFANA: (Cont'g.)

10 (Pages 1033 to 1036)

1 Martucci - Cross - Fofana  
 2 Q. No.  
 3 **A. -- students' names -- student**  
 4 **names and class assignments for period four.**  
 5 Q. This is -- let me see --  
 6 attendance. This is attendance sheet.  
 7 Attendance sheet. So this attendance sheet,  
 8 yes -- yes, that's part of the --.  
 9 **A. Okay. I guess -- I guess**  
 10 **that's about it, unless going into the disc and**  
 11 **opening it up and viewing --**  
 12 Q. Well, well, I will, you  
 13 know --.  
 14 **A. -- in its entirety.**  
 15 Q. Well, do that, if you -- if  
 16 you feel that there's something missing,  
 17 because we want -- I want to be exhaustive on  
 18 this matter. So if you feel that there's  
 19 something missing and it's on the -- on the --  
 20 on the -- what do they call it, the C.D., help  
 21 yourself. Show me, because I intend to know  
 22 exactly what we're talking about. What did you  
 23 have in mind when you say have more on the C.D.  
 24 that is not here?

1 Martucci - Cross - Fofana  
 2 **A. It's -- I don't know -- I**  
 3 **don't know if the entire printout of the**  
 4 **documents, which I took off the -- your**  
 5 **website, okay, as exhibits, okay, are the**  
 6 **entire -- entire, you know, download of the**  
 7 **entire website.**  
 8 Q. Are you saying -- would --  
 9 **A. That would cause me to the**  
 10 **C.D. disc --**  
 11 Q. -- okay.  
 12 **A. -- with the amount of**  
 13 **information that was on the --**  
 14 Q. Sir -- sir --  
 15 **A. -- can I finish?**  
 16 Q. -- no, no, you --.  
 17 THE HEARING OFFICER: Let him  
 18 finish.  
 19 MR. FOFANA: I have a very  
 20 specific question.  
 21 **A. Well, I know that, but you**  
 22 **asked a question --**  
 23 BY MR. FOFANA: (Cont'g.)  
 24 Q. My question is --

1 Martucci - Cross - Fofana  
 2 **A. -- but you asked --**  
 3 THE HEARING OFFICER: Wait --  
 4 wait, Mr. Fofana, --.  
 5 BY MR. FOFANA: (Cont'g.)  
 6 Q. -- my question --  
 7 THE HEARING OFFICER: -- Mr.  
 8 Fofana --.  
 9 BY MR. FOFANA: (Cont'g.)  
 10 Q. -- answer my question --  
 11 THE HEARING OFFICER: Hold  
 12 on. Hold on, Mr. Fofana. I do want to let him  
 13 just finish his answer --  
 14 MR. FOFANA: Uh-huh.  
 15 THE HEARING OFFICER: -- and  
 16 then you can go on.  
 17 MR. FOFANA: No, because he's  
 18 just going off in --  
 19 THE HEARING OFFICER: No --  
 20 no; you asked him a question --  
 21 MR. FOFANA: -- he's going  
 22 off --.  
 23 THE HEARING OFFICER: -- and  
 24 what -- what he's saying, if I heard him

1 Martucci - Cross - Fofana  
 2 correctly, is he is not sure if all of the  
 3 information on the C.D. is contained within  
 4 D.O.E. Ten.  
 5 MR. FOFANA: All right.  
 6 Well --  
 7 THE HEARING OFFICER: Is that  
 8 right?  
 9 THE WITNESS: Correct.  
 10 THE HEARING OFFICER: Okay.  
 11 MR. FOFANA: May -- may I  
 12 have the C.D.?  
 13 THE WITNESS: The C.D. speaks  
 14 for itself.  
 15 BY MR. FOFANA: (Cont'g.)  
 16 Q. Well, you tell me. We have a  
 17 copy. I have a copy.  
 18 MS. HEMANS-BRANTLEY: Well, I  
 19 don't know if that's the same thing in the  
 20 file, Mr. Siegel.  
 21 THE HEARING OFFICER:  
 22 Well --.  
 23 MR. FOFANA: This -- is given  
 24 by you; you gave it to us.

Page 1041

1 Martucci - Cross - Fofana  
 2 MS. HEMANS-BRANTLEY: Oh,  
 3 okay. I didn't -- you just cited in the case.  
 4 I didn't have a chance to see it. So if you  
 5 recognize it as --?  
 6 BY MR. FOFANA: (Cont'g.)  
 7 Q. Now -- what is in the C.D.  
 8 you want -- because we don't want to waste  
 9 time.  
 10 **A. Oh, okay.**  
 11 Q. You have to tell us what is  
 12 in the C.D. that's missing in the package?  
 13 **A. I don't know, unless I look**  
 14 **at -- at the C.D., but the package is --**  
 15 Q. Okay.  
 16 **A. -- a reflection of -- can I**  
 17 **finish my answer?**  
 18 THE HEARING OFFICER: Yes,  
 19 let -- let's finish. Let's go ahead.  
 20 **A. (Cont'g.) In the package,**  
 21 **which is in the case file, is -- is they're**  
 22 **given exhibit numbers --**  
 23 BY MR. FOFANA: (Cont'g.)  
 24 Q. Uh-huh.

Page 1043

1 Martucci - Cross - Fofana  
 2 you will --  
 3 **A. And I think --.**  
 4 Q. -- you will -- you will. I'm  
 5 going to give you the opportunity to tell us  
 6 now. Go ahead. Tell us what might be missing  
 7 from the package because you have everything  
 8 here.  
 9 **A. Well, I'm not computer savvy,**  
 10 **so --.**  
 11 Q. Well, if you are able to  
 12 download documents, you should be able to  
 13 review your own --.  
 14 THE HEARING OFFICER: Mr.  
 15 Fofana, ultimately your question is a fair one  
 16 that you started with --  
 17 MR. FOFANA: Uh-huh.  
 18 THE HEARING OFFICER: --  
 19 which is what in the disc is confidential in  
 20 his view --  
 21 MR. FOFANA: Yes.  
 22 THE HEARING OFFICER: -- as  
 23 the investigator?  
 24 MR. FOFANA: Yes.

Page 1042

1 Martucci - Cross - Fofana  
 2 **A. -- that was -- that was**  
 3 **placed in there as a sample --**  
 4 Q. Uh-huh.  
 5 **A. -- of the information that**  
 6 **was downloaded, okay --**  
 7 Q. Uh-huh.  
 8 **A. -- from the -- from the web**  
 9 **pages, from the websites to make it -- to make**  
 10 **it that the entire web page -- websites would**  
 11 **be saved so Mr. Fofana, if he was aware that**  
 12 **there was an active investigation, he wouldn't**  
 13 **destroy the information. Okay. I backed up**  
 14 **the information --**  
 15 Q. We -- we haven't --  
 16 **A. -- by a C.D.**  
 17 Q. -- yes, let's --  
 18 **A. -- which reflected on the**  
 19 **C.D. --**  
 20 Q. -- yes, yes I --  
 21 **A. -- we don't know the entirety**  
 22 **of the C.D., unless I view it, but the C.D.**  
 23 **speaks for itself.**  
 24 Q. -- you will -- you will --

Page 1044

1 Martucci - Cross - Fofana  
 2 THE HEARING OFFICER: I guess  
 3 I'd -- I'd like to try and streamline this if  
 4 it's possible. If -- maybe what we can do  
 5 is -- is your testimony that what's in the  
 6 Department of Ed. Ten is representative of the  
 7 types of things you found on the website, but  
 8 maybe not everything you found on the website?  
 9 That's what I understand.  
 10 THE WITNESS: Correct.  
 11 THE HEARING OFFICER: Okay.  
 12 THE WITNESS: That's what  
 13 I've been saying.  
 14 THE HEARING OFFICER: All  
 15 right. Well, then I think that I'm going to go  
 16 back to Mr. Fofana's question. Then I'm going  
 17 to suggest that you take your time going  
 18 through D.O.E. Ten, and we've already heard so  
 19 far that are, in your view, names --  
 20 MR. FOFANA: Right.  
 21 THE HEARING OFFICER: -- the  
 22 numbers, and the grades were confidential  
 23 And photos.  
 24 MR. FOFANA: And attendance

12 (Pages 1041 to 1044)

Page 1045

1 Martucci - Cross - Fofana  
 2 sheets.  
 3 THE HEARING OFFICER: If  
 4 there -- and the attendance sheets.  
 5 MS. HEMANS-BRANTLEY: Class  
 6 assignments.  
 7 THE HEARING OFFICER: And so  
 8 if there's anything else that you see after you  
 9 review it, you should note that and then I  
 10 think we could avoid us having to spend time on  
 11 this.  
 12 THE WITNESS: Okay.  
 13 THE HEARING OFFICER: So  
 14 that's my version of D.O.E. Ten and why don't  
 15 you do that now? I think that could save us  
 16 some time and it will get to the heart of Mr.  
 17 Fofana's inquiry.  
 18 MR. FOFANA: Yes.  
 19 THE WITNESS: Without --  
 20 without opening up the --?  
 21 THE HEARING OFFICER: Without  
 22 opening up anything.  
 23 THE WITNESS: Okay. Fine.  
 24 THE HEARING OFFICER: No --

Page 1047

1 Martucci - Cross - Fofana  
 2 students' names, the pictures, okay. But,  
 3 okay, the C.D. may contain more of the  
 4 confidential information.  
 5 THE HEARING OFFICER: But --  
 6 but now --  
 7 MS. HEMANS-BRANTLEY: He's  
 8 saying -- I think what he's --.  
 9 MR. FOFANA: That's my point.  
 10 THE HEARING OFFICER: --  
 11 but -- but it includes more of the same things,  
 12 just different kids --  
 13 THE WITNESS: Right.  
 14 THE HEARING OFFICER: -- or  
 15 different numbers.  
 16 THE WITNESS: Yes, because --  
 17 THE HEARING OFFICER: Okay.  
 18 THE WITNESS: -- right.  
 19 Well, I don't know that unless I open up the --  
 20 THE HEARING OFFICER: Right.  
 21 THE WITNESS: -- disc. Okay.  
 22 THE HEARING OFFICER: We  
 23 don't need to know about that. That -- that we  
 24 don't need to know about. What we do need to

Page 1046

1 Martucci - Cross - Fofana  
 2 no. You can look -- read through this. See if  
 3 there's anything else --  
 4 THE WITNESS: Okay.  
 5 THE HEARING OFFICER: --  
 6 other than what you've said so far.  
 7 MR. FOFANA: Yes, because --  
 8 THE HEARING OFFICER: Is --  
 9 is confidential. Other than the attendance,  
 10 the grades, the names, the numbers, was there  
 11 something else in there that you haven't made  
 12 reference to that you consider confidential?  
 13 MS. HEMANS-BRANTLEY: That's  
 14 in here. Look through here again.  
 15 THE WITNESS: Oh, okay.  
 16 No -- no -- I know -- I know what -- I know  
 17 what you're saying, but everything for the  
 18 record that's in here speaks for itself.  
 19 THE HEARING OFFICER: Okay.  
 20 THE WITNESS: As far as the  
 21 attendance records --  
 22 THE HEARING OFFICER: Right.  
 23 THE WITNESS: -- the student  
 24 identification numbers, the O.C.S. numbers, the

Page 1048

1 Martucci - Cross - Fofana  
 2 know about is and what Mr. Fofana's question  
 3 was --  
 4 MR. FOFANA: Uh-huh.  
 5 THE HEARING OFFICER: -- was  
 6 other than that which you've already testified  
 7 to, subject matter-wise --  
 8 MR. FOFANA: Uh-huh.  
 9 THE HEARING OFFICER: --  
 10 names, the numbers, the attendance, the grades,  
 11 are there other things that you deem  
 12 confidential on the site that aren't ultimately  
 13 in here.  
 14 MS. HEMANS-BRANTLEY: Well,  
 15 why don't you look through that?  
 16 THE HEARING OFFICER: So,  
 17 take a look --  
 18 THE WITNESS: Okay. No --.  
 19 THE HEARING OFFICER: -- and  
 20 see if there's something else, that's -- okay.  
 21 THE WITNESS: No -- no; I'm  
 22 fine with -- with the contents of what's  
 23 contained in the file here in Exhibit Ten.  
 24 BY MR. FOFANA: (Cont'g.)

13 (Pages 1045 to 1048)

Page 1049

1 Martucci - Cross - Fofana  
 2 Q. Okay. So it's fair to say  
 3 that what you meant by confidential records  
 4 boils down to student name, OSID number, grade,  
 5 photo, and attendance sheet. Is it fair to say  
 6 that?  
 7 **A. Correct.**  
 8 Q. Okay. That's all I want to  
 9 be exhaustive so we won't have to -- you know,  
 10 to shoot in the dark later on. Now, did you  
 11 conduct any downloading yourself?  
 12 **A. When you -- when -- when you**  
 13 **say downloading, I --.**  
 14 Q. Downloading, meaning do  
 15 you -- did you go to the website and download  
 16 files, on your computer, on the S.C.I.  
 17 computer, or on a C.D., did you do any  
 18 downloading?  
 19 **A. Just what I printed out.**  
 20 Q. No -- no -- no; I'm -- that's  
 21 not my question. My question is did you  
 22 conduct any downloading?  
 23 **A. I -- you mean putting**  
 24 **information from the computer to a C.D.?**

Page 1051

1 **Martucci - Cross - Fofana**  
 2 **marking period one, grade zero four, whatever**  
 3 **that --**  
 4 BY MR. FOFANA: (Cont'g.)  
 5 Q. Uh-huh.  
 6 **A. -- computer jargon is --**  
 7 Q. Uh-huh.  
 8 **A. -- okay, that's where I got**  
 9 **the information from. Do you want to go there?**  
 10 Q. No.  
 11 **A. Okay.**  
 12 Q. So let me -- let me make this  
 13 clear. I ask the question.  
 14 **A. I gave you an answer.**  
 15 Q. You -- you're a cop, you  
 16 should know --  
 17 **A. But I gave you an answer.**  
 18 Q. -- that I --.  
 19 THE HEARING OFFICER: All  
 20 right. All right. Gentlemen -- gentlemen --  
 21 gentlemen --  
 22 BY MR. FOFANA: (Cont'g.)  
 23 Q. All right. So --.  
 24 THE HEARING OFFICER: --

Page 1050

1 **Martucci - Cross - Fofana**  
 2 Q. For instance?  
 3 **A. Okay. No, I didn't do that.**  
 4 Q. Okay. So you print out what  
 5 you saw on the website?  
 6 **A. Correct.**  
 7 Q. Did you print out grades, for  
 8 instance? Did you print out any grade sheets,  
 9 yourself?  
 10 **A. I did. I printed out the**  
 11 **grade form. That's what contained in Exhibit**  
 12 **Ten.**  
 13 Q. From the website?  
 14 **A. Correct.**  
 15 Q. Okay. Excuse me. So where  
 16 exactly in the website you saw the grades?  
 17 **A. Can I look through my notes**  
 18 **for that?**  
 19 **THE HEARING OFFICER:**  
 20 **Absolutely -- sure. Take your time -- take**  
 21 **your time.**  
 22 **A. (Cont'g.) Grade reported**  
 23 **form. If you go to W.W. -- if you go to H T P**  
 24 **dot slash slash teacher abuse dot com M C H**

Page 1052

1 Martucci - Cross - Fofana  
 2 let's just get through the question and answer.  
 3 We don't need to give each other side comments.  
 4 **A. I gave you an answer.**  
 5 BY MR. FOFANA: (Cont'g.)  
 6 Q. I ask you --  
 7 **A. Whether you like it or**  
 8 **not --.**  
 9 Q. -- you answer. That's the  
 10 way it works.  
 11 **A. Okay.**  
 12 Q. Exactly the way --.  
 13 THE HEARING OFFICER: All  
 14 right. Mr. Fofana, next question. We --  
 15 we --.  
 16 MR. FOFANA: Thank you.  
 17 **A. Asked and answered.**  
 18 **THE HEARING OFFICER: All**  
 19 **right.**  
 20 BY MR. FOFANA: (Cont'g.)  
 21 Q. Now, my question -- my next  
 22 question is, sir, did you download this --  
 23 where it is -- did you download this? This is  
 24 the C.D.s. This is the contents of the C.D.s.

14 (Pages 1049 to 1052)

Page 1053

1 Martucci - Cross - Fofana  
 2 **A. Did I personally download it?**  
 3 Q. Yes.  
 4 **A. No, I did not.**  
 5 Q. Okay. Thank you. Okay. So  
 6 that question -- well, you interviewed the  
 7 principal on April 12th, 2006. Is that  
 8 correct?  
 9 **A. No.**  
 10 Q. Well, that's what I -- I  
 11 interviewed Principal Michael, you know Michael  
 12 Wiltshire --.  
 13 **A. I'd have to look at my**  
 14 **report.**  
 15 Q. Well, that's -- that's what  
 16 I -- agreed here.  
 17 **A. Can I just look at the report**  
 18 **quickly?**  
 19 Q. Please. You don't remember  
 20 interviewing the principal?  
 21 **A. I may have spoke to him on**  
 22 **the phone prior to meeting with him and then**  
 23 **that may have been --.**  
 24 Q. You -- you will deny this?

Page 1055

1 Martucci - Cross - Fofana  
 2 **A. That, I don't personally**  
 3 **know. All I do know is on April 12th, he**  
 4 **notified our office. Okay? And he reported an**  
 5 **allegation of misconduct against Mr. Fofana.**  
 6 Q. He called -- he called --.  
 7 **A. How he -- you know, what he**  
 8 **did to arrive to that point, I don't know.**  
 9 Q. All right. Well, I want to  
 10 ask you what was the nature of the interview?  
 11 What questions you ask? Can you give us some  
 12 examples in your interview with the principal?  
 13 **A. Oh, I did -- I eventually did**  
 14 **interview him and I asked him --**  
 15 Q. Okay.  
 16 **A. -- what, you know, were the**  
 17 **two websites. And he gave the name of the two**  
 18 **websites.**  
 19 Q. Okay.  
 20 **A. And then I took that and, you**  
 21 **know, I memorialized the information that I**  
 22 **received --**  
 23 Q. Uh-huh.  
 24 **A. -- from Mr. Wiltshire --**

Page 1054

1 Martucci - Cross - Fofana  
 2 It's your writing.  
 3 THE HEARING OFFICER:  
 4 Where -- where is that from? Is that an  
 5 excerpt from D.O.E. Number Ten?  
 6 MR. FOFANA: Yes.  
 7 THE HEARING OFFICER: Okay.  
 8 So let him look through D.O.E. Number Ten and  
 9 we'll see if that refreshes his recollection.  
 10 **A. You're saying what day it**  
 11 **was?**  
 12 BY MR. FOFANA: (Cont'g.)  
 13 Q. No; the date it -- it doesn't  
 14 matter. It's immaterial. My question is did  
 15 you interview the principal?  
 16 **A. Yes, I did.**  
 17 Q. Okay. Now, can you tell us  
 18 how he came across the website -- the website?  
 19 THE HEARING OFFICER: If you  
 20 remember.  
 21 **A. How did Mr. --?**  
 22 BY MR. FOFANA: (Cont'g.)  
 23 Q. Mr. -- Doctor Wiltshire came  
 24 across the website?

Page 1056

1 **Martucci - Cross - Fofana**  
 2 **Wiltshire on -- on a report.**  
 3 Q. Mr. -- Mr. Martucci, you  
 4 don't remember your own writing -- your  
 5 signature? I don't understand. You say you  
 6 interview him and he stated that when he  
 7 searched in Yahoo, that's how he came across  
 8 the websites, and you don't remember that?  
 9 THE HEARING OFFICER: You can  
 10 answer that.  
 11 **A. That's what the reflection --**  
 12 **that's reflected in your report that he did**  
 13 **search the websites.**  
 14 BY MR. FOFANA: (Cont'g.)  
 15 Q. Okay.  
 16 **A. But I don't know when he did**  
 17 **it or --**  
 18 Q. No, but that's not the  
 19 question.  
 20 **A. -- or prior to how he -- how**  
 21 **he --.**  
 22 Q. No -- no -- no -- no. You  
 23 are putting forward something I never  
 24 mentioned.

15 (Pages 1053 to 1056)

Page 1057

1 Martucci - Cross - Fofana  
 2 **A. Okay.**  
 3 Q. I was talking about the  
 4 simple fact -- did he -- how he came across the  
 5 website. And you wrote, by searching the -- by  
 6 making some search in the Yahoo engine. That's  
 7 what happened. Okay. We agree on that?  
 8 **A. Correct.**  
 9 Q. Okay. Now, let me ask you;  
 10 did he tell you that some parents objected to  
 11 the pictures?  
 12 **A. No, he did not.**  
 13 Q. He did not? He never -- he  
 14 never mentioned that?  
 15 **A. Not to the best of -- to the**  
 16 **best of my recollection, no, he did not.**  
 17 MR. FOFANA: Okay. That's  
 18 all I have.  
 19 THE HEARING OFFICER: Okay.  
 20 Ms. Brantley, any redirect?  
 21 MS. HEMANS-BRANTLEY: No.  
 22 THE HEARING OFFICER: All  
 23 right. Then you are excused as a witness.  
 24 Thank you very much.

Page 1059

1 Martucci - Cross - Fofana  
 2 truth, the whole truth, and nothing but the  
 3 truth?  
 4 MR. MARIN: Yes, I do.  
 5 RICHARD MARIN; Sworn.  
 6 THE HEARING OFFICER: Okay.  
 7 Ms. Brantley, you may begin.  
 8 MS. HEMANS-BRANTLEY: Thank  
 9 you.  
 10 DIRECT EXAMINATION  
 11 BY MS. HEMANS-BRANTLEY:  
 12 Q. Good afternoon, Mr. Marin.  
 13 By who are you employed?  
 14 **A. The Special Commissioner of**  
 15 **Investigation.**  
 16 Q. In what capacity?  
 17 **A. I am the director of**  
 18 **information.**  
 19 Q. And how long have you been  
 20 employed with S.C.I. in that position?  
 21 **A. In this particular position,**  
 22 **I'd have to look at my resume, but I've been in**  
 23 **there since May of '96, twelve years, with the**  
 24 **first two years as a programmer, approximately**

Page 1058

1 Martucci - Cross - Fofana  
 2 THE WITNESS: Thank you, sir.  
 3 THE HEARING OFFICER: You  
 4 have a good day.  
 5 THE WITNESS: You, too.  
 6 Thank you.  
 7 THE HEARING OFFICER: Take  
 8 care.  
 9 THE WITNESS: Good luck to  
 10 you.  
 11 MR. FOFANA: Good day.  
 12 THE HEARING OFFICER: We're  
 13 going to go on pause for a moment while Ms.  
 14 Brantley sees if her next witness is available.  
 15 (Off the record)  
 16 THE HEARING OFFICER: Okay.  
 17 Ms. -- Ms. Brantley, I see that you have called  
 18 in another witness?  
 19 MS. HEMANS-BRANTLEY: Yes. I  
 20 have Mr. Richard Marin present.  
 21 THE HEARING OFFICER: Okay.  
 22 Mr. Marin, please raise your right hand.  
 23 Do you swear or affirm the  
 24 testimony you are about to give will be the

Page 1060

1 **Marin - Direct - Hemans-Brantley**  
 2 Q. Okay. And after those two  
 3 years as a programmer, were you -- did you  
 4 become Director --  
 5 **A. Director of Information.**  
 6 Q. -- of --?  
 7 **A. No, director.**  
 8 Q. And you've held that position  
 9 to -- to this current date?  
 10 **A. Correct.**  
 11 Q. Can you tell us what your  
 12 duties and responsibilities are?  
 13 **A. I'm in charge of the**  
 14 **programming, the networking and forensics, all**  
 15 **computing needs necessary for the Department of**  
 16 **Investigation issues we investigate.**  
 17 Q. Now, let me just ask you.  
 18 **A. I don't know if you want me**  
 19 **to get technical, just more or less everything.**  
 20 Q. Do you have individuals who  
 21 report to you?  
 22 **A. No.**  
 23 Q. Okay. When you state that  
 24 you basically are technical director for

16 (Pages 1057 to 1060)

Page 1061

1 Marin - Direct - Hemans-Brantley  
 2 S.C.I., can you be more specific, just in terms  
 3 of internally --  
 4 **A. Correct.**  
 5 Q. -- serving the need -- the  
 6 computing needs of the office and in  
 7 additional -- and in addition, do you also help  
 8 S.C.I. investigators who may bring database  
 9 inquiries to you?  
 10 **A. Correct.**  
 11 Q. Okay.  
 12 **A. I handle all of the computer**  
 13 **needs for the office relating to the day-to-day**  
 14 **operation. But also in investigations when**  
 15 **technical -- when they need me to do technical**  
 16 **things, I provide them with assistance.**  
 17 Q. Okay. Can you --?  
 18 **A. Depending on whatever those**  
 19 **may be and those vary.**  
 20 Q. Can you tell us -- give us a  
 21 little bit of your technical background.  
 22 **A. Okay. I went to Iona**  
 23 **College. I graduated there with a Bachelors in**  
 24 **Management Information Systems. I worked in a**

Page 1063

1 Marin - Direct - Hemans-Brantley  
 2 **A. Right.**  
 3 Q. And can you tell us how it is  
 4 that you're familiar with this individual?  
 5 **A. Investigator Matthew Martucci**  
 6 **explained to me that he needed to download**  
 7 **images off of a particular website. He showed**  
 8 **me the website. I went to the particular**  
 9 **website. There was nothing technical needed.**  
 10 **I did file save. I saved all the images to the**  
 11 **computer and then created a disk containing all**  
 12 **those images by burning the software -- burning**  
 13 **the documents all to one C.D. That got placed**  
 14 **in evidence, kept for, you know, whatever the**  
 15 **investigator's needs are.**  
 16 Q. Okay. I'm just going to show  
 17 you -- actually, I'm taking this one out. Just  
 18 a moment. I'm going to show you what's in  
 19 evidence as --  
 20 **A. Sure.**  
 21 Q. -- D.O.E. -- part of D.O.E.  
 22 Exhibit Ten.  
 23 **A. Okay.**  
 24 Q. Just tell me if you recognize

Page 1062

1 **Marin - Direct - Hemans-Brantley**  
 2 **hospital for two years prior to working for the**  
 3 **director -- for the Special Commissioner of**  
 4 **Investigations. I worked approximately two**  
 5 **years programming and doing other networking**  
 6 **needs before I became director. And I've been**  
 7 **there for the last eight years -- twelve years,**  
 8 **it's been.**  
 9 Q. Now, in addition --.  
 10 **A. Oh yeah, there, fourteen some**  
 11 **odd years in total.**  
 12 Q. In addition to your  
 13 educational --  
 14 **A. Okay.**  
 15 Q. -- background, can you tell  
 16 us in terms of your technical background?  
 17 **A. All right. I was certified**  
 18 **in Microsoft systems, server systems, I've**  
 19 **taken some forensics certifications in**  
 20 **particular programs. And that's pretty much it**  
 21 **as far as that.**  
 22 Q. Okay. Now, are you familiar  
 23 with a case regarding an individual by the name  
 24 of Boubakar Fofana?

Page 1064

1 Marin - Direct - Hemans-Brantley  
 2 this and what it is?  
 3 **A. This would be the C.D. that**  
 4 **we created with the documents that were found**  
 5 **on the website.**  
 6 Q. And did you actually create  
 7 that C.D.?  
 8 **A. Yes, I create all -- most of**  
 9 **the C.D.s with any visual evidence at all.**  
 10 Q. And after you created that  
 11 document, I mean that -- I'm so used to saying  
 12 document.  
 13 **A. C.D.**  
 14 Q. After you created that C.D.,  
 15 what, if anything, did you do with it?  
 16 **A. No. The investigator then**  
 17 **retains it and places it in evidence and I also**  
 18 **make him additional copies to keep in his case**  
 19 **file.**  
 20 Q. Okay. Now, as part of -- I'm  
 21 sorry; withdrawn.  
 22 Were you -- did you do  
 23 anything in addition after you provided the  
 24 copies of the C.D. --

17 (Pages 1061 to 1064)

Page 1065

1 Marin - Direct - Hemans-Brantley  
 2 **A. No.**  
 3 Q. -- to Investigator Martucci?  
 4 **A. Just in case they need future**  
 5 **copies of the same evidence, sometimes they'll**  
 6 **ask me for copies, but other than that, no.**  
 7 Q. So you had nothing -- you  
 8 took no further part in the investigation --  
 9 **A. No.**  
 10 Q. -- other than --  
 11 **A. No.**  
 12 Q. -- what you just testified  
 13 to?  
 14 MS. HEMANS-BRANTLEY: Okay.  
 15 I have no further questions.  
 16 THE HEARING OFFICER: Mr.  
 17 Fofana, do you need a few minutes or you are  
 18 ready to --?  
 19 MR. FOFANA: No -- no.  
 20 THE HEARING OFFICER: All  
 21 right. Cross --.  
 22 MR. FOFANA: I'm ready.  
 23 THE HEARING OFFICER: Cross  
 24 examination can begin, then.

Page 1067

1 Marin - Cross - Fofana  
 2 **A. It doesn't necessarily have**  
 3 **to be -- well, I don't want to get too**  
 4 **technical, but most of the times, it --.**  
 5 Q. Okay. Now, this is -- do you  
 6 recognize this -- recognize this --?  
 7 **A. Right, that's the information**  
 8 **I write down, loaded and created a C.D.,**  
 9 **correct.**  
 10 Q. Okay. I'm going to ask you  
 11 did you or did you not access the server  
 12 hosting teacherabuse --  
 13 **A. I --.**  
 14 Q. -- in order to download these  
 15 folders; yes or no?  
 16 **A. I accessed the website.**  
 17 Q. No. That's not my question.  
 18 Did you access the server in order to --  
 19 **A. First of all --.**  
 20 Q. -- I'm asking the question.  
 21 **A. I'm answering your question.**  
 22 Q. No -- no. Let me -- yes --  
 23 did you download these folders from the server;  
 24 yes or no?

Page 1066

1 Marin - Direct - Hemans-Brantley  
 2 MR. FOFANA: Yes.  
 3 CROSS EXAMINATION  
 4 BY MR. FOFANA:  
 5 Q. Mr. Marin, can you tell us in  
 6 layman terms what is a server?  
 7 **A. A server?**  
 8 Q. Yes.  
 9 **A. A server is a central -- it's**  
 10 **a computer used as a central filing system for**  
 11 **the network or area of a few computers in which**  
 12 **people are using.**  
 13 Q. Okay. So servers are also  
 14 used to host -- that's a technical word, to  
 15 host websites?  
 16 **A. Correct.**  
 17 Q. Okay. So any website resides  
 18 in a server?  
 19 **A. It's possible, yes.**  
 20 Q. Possible or is --?  
 21 **A. Are you saying any server --?**  
 22 Q. No. If you have a website, a  
 23 website resides, by definition, in a computer,  
 24 which is a server?

Page 1068

1 Marin - Cross - Fofana  
 2 **A. I downloaded them from the**  
 3 **website. Websites can be hosted on**  
 4 **machines --.**  
 5 Q. No -- no; just answer my  
 6 question.  
 7 THE HEARING OFFICER: Just --  
 8 just answer the question. You did answer --  
 9 MR. FOFANA: No, but --.  
 10 THE HEARING OFFICER: -- he  
 11 answered that question --  
 12 MR. FOFANA: Yes.  
 13 THE HEARING OFFICER: -- so  
 14 he said he downloaded it from the website, not  
 15 the server.  
 16 MR. FOFANA: Yes.  
 17 THE HEARING OFFICER: You can  
 18 ask another question.  
 19 MR. FOFANA: Right.  
 20 BY MR. FOFANA: (Cont'g.)  
 21 Q. So you're saying you did not,  
 22 if I -- if I understand, you did not download  
 23 it from the server; you downloaded it from the  
 24 website. What's your question?

18 (Pages 1065 to 1068)

Page 1069

1 Marin - Cross - Fofana  
 2 **A. You're asking the question?**  
 3 Q. Yes -- yes.  
 4 THE HEARING OFFICER: Was  
 5 that correct or not?  
 6 **A. The website address, correct.**  
 7 **I used the website address, teachers --**  
 8 **whatever it was --**  
 9 BY MR. FOFANA: (Cont'g.)  
 10 Q. Uh-huh.  
 11 **A. -- accessed it and downloaded**  
 12 **the images.**  
 13 Q. All right. Well, sir to  
 14 what -- you are technical -- can you do exactly  
 15 what you did, to clarify how you did? We are  
 16 online?  
 17 **A. Uh-huh.**  
 18 Q. Just go -- go ahead and --  
 19 **A. What? Download that website?**  
 20 Q. Yes -- yes, just go to the  
 21 same folders --.  
 22 THE HEARING OFFICER: Well --  
 23 MS. HEMANS-BRANTLEY: I  
 24 object. That's --.

Page 1071

1 Marin - Cross - Fofana  
 2 THE HEARING OFFICER: Uh-huh.  
 3 MR. FOFANA: I'm not asking  
 4 Mr. Marin to access exactly those folders. I  
 5 just want him to go pick any -- any folders  
 6 in -- you know, on the website and download it.  
 7 In other words --.  
 8 **A. What I did was do file**  
 9 **save --.**  
 10 BY MR. FOFANA: (Cont'g.)  
 11 Q. I'm aware. Just go ahead  
 12 sir. Just go --.  
 13 **A. From which website? This**  
 14 **website?**  
 15 **MS. HEMANS-BRANTLEY: I still**  
 16 **have to object.**  
 17 THE HEARING OFFICER: Hold  
 18 on; there's been an objection.  
 19 What's the -- Ms. Brantley?  
 20 MS. HEMANS-BRANTLEY: I still  
 21 have an objection, because first of all, I  
 22 don't know what this is he's asking him to  
 23 download.  
 24 MR. FOFANA: Well, no -- hold

Page 1070

1 Marin - Cross - Fofana  
 2 THE HEARING OFFICER: --  
 3 well, first of all, I just want to make a  
 4 comment. First of all, the record can reflect  
 5 that Mr. Fofana is making a request that the  
 6 computer that he does have online and is using  
 7 for conducting his cross examination, he's  
 8 asked the witness to access --  
 9 MR. FOFANA: Sure.  
 10 THE HEARING OFFICER: -- as I  
 11 understand, the website that he accessed way  
 12 back in '06. Now, obviously, Ms. Brantley's  
 13 made an objection.  
 14 MR. FOFANA: Uh-huh.  
 15 THE HEARING OFFICER: I may  
 16 allow him to access it, but I -- I will say for  
 17 the record before she even objects that we  
 18 don't know that the website --  
 19 MS. HEMANS-BRANTLEY: Right.  
 20 THE HEARING OFFICER: -- is  
 21 what it was, so -- but I will allow it for  
 22 purposes of the exercise to -- to go ahead.  
 23 MR. FOFANA: For  
 24 clarification.

Page 1072

1 Marin - Cross - Fofana  
 2 on. Well, this is not --.  
 3 THE HEARING OFFICER: What  
 4 are you asking -- okay. So you're going to  
 5 teacherabuse dot com?  
 6 MR. FOFANA: We're -- we're  
 7 going to teacherabuse -- okay. I have a better  
 8 idea. To -- to clarify my question.  
 9 MS. HEMANS-BRANTLEY: And I'm  
 10 going to note my objection.  
 11 MR. FOFANA: Wait a minute.  
 12 Hold on -- hold on.  
 13 THE HEARING OFFICER: Hold  
 14 on; there's an objection.  
 15 You may continue.  
 16 MR. FOFANA: Objection to  
 17 what?  
 18 MS. HEMANS-BRANTLEY: And  
 19 secondly, the witness has testified that he --  
 20 to what he did, indicating he said that he put  
 21 files --.  
 22 THE WITNESS: Save as -- I  
 23 clicked on each --.  
 24 MS. HEMANS-BRANTLEY: Wait.

19 (Pages 1069 to 1072)

Page 1073

1 Marin - Cross - Fofana  
 2 So I'm not sure I understand  
 3 the relevance of the -- of what Mr. Fofana is  
 4 asking this witness to do.  
 5 MR. FOFANA: We are -- we are  
 6 in the heart of the problem. Let me be really  
 7 specific. Mr. Marin illegally accessed the  
 8 server and steal this folders and presented as  
 9 evidence that he downloaded from the website.  
 10 In other words, your regular visitor, which is  
 11 technical, has absolutely no way to go straight  
 12 and have access to -- to have folders  
 13 directory --.  
 14 THE WITNESS: I created  
 15 those.  
 16 MS. HEMANS-BRANTLEY:  
 17 Wait --.  
 18 THE HEARING OFFICER: No --  
 19 no; Mr. Marin, let -- this is very important.  
 20 MR. FOFANA: Yes.  
 21 THE HEARING OFFICER: You --  
 22 MR. FOFANA: That's the heart  
 23 of the problem --.  
 24 THE HEARING OFFICER: No --

Page 1075

1 Marin - Cross - Fofana  
 2 right. So as a result of that, you're asking  
 3 him to show us what he might have done that  
 4 day --  
 5 MR. FOFANA: Uh-huh.  
 6 THE HEARING OFFICER: -- to  
 7 get the information that he did get. Is that  
 8 my understanding Mr. Fofana?  
 9 MR. FOFANA: Absolutely --  
 10 absolutely. And this is -- you know, the  
 11 nature of the folders themselves. I -- to make  
 12 it clear, my question, let me -- let me, you  
 13 know, to pave the way -- way for -- for -- to  
 14 avoid any problems.  
 15 MS. HEMANS-BRANTLEY: And I  
 16 object, but I'm just going to --.  
 17 MR. FOFANA: No; this is --  
 18 this is the -- the company I pay annually to  
 19 host my website. And in order to have access  
 20 to the server, as you see, e-mail password, so  
 21 in other words --.  
 22 THE HEARING OFFICER: Right.  
 23 Mr. Fofana, but I don't -- I -- I --.  
 24 MR. FOFANA: I'm going --

Page 1074

1 Marin - Cross - Fofana  
 2 no; just let me finish. Your role is -- can be  
 3 a difficult one here. But you're -- you're a  
 4 source of information and only a source of  
 5 information when you're asked questions. And  
 6 you may actually have a lot more information  
 7 you could furnish us, but until we ask you  
 8 questions, it's actually going to cause more  
 9 trouble if you're interrupting Mr. Fofana. I  
 10 do have to give him his -- his chance to make  
 11 an offer of proof, which I'm allowing.  
 12 MR. FOFANA: Right.  
 13 THE HEARING OFFICER: So --  
 14 so you're suggesting that you believe that the  
 15 way that Mr. Marin went about conducting his  
 16 review, because of his technical background, he  
 17 accessed things that the general public may not  
 18 have been able to do?  
 19 MR. FOFANA: Absolutely. And  
 20 I --.  
 21 THE HEARING OFFICER: That's  
 22 your argument?  
 23 MR. FOFANA: Yes.  
 24 THE HEARING OFFICER: All

Page 1076

1 Marin - Cross - Fofana  
 2 going to -- to -- I'm sorry, sir. Just in one  
 3 second. I'm just going to the server --  
 4 immediately show you the server and show you  
 5 where these folders are and you will see there  
 6 the same thing as what is on the C.D.s I'm  
 7 asking him his technical -- here is the C.D.s,  
 8 this is what's on the server, it's still there.  
 9 Can you bring them down in front of us?  
 10 THE HEARING OFFICER: And --  
 11 and that -- and I may or may not let you do  
 12 that, but I don't want you testifying more  
 13 about what you're doing. That's all I'm  
 14 concerned about at this point. You know,  
 15 again, I don't want you doing what you're doing  
 16 right now.  
 17 MR. FOFANA: Okay.  
 18 THE HEARING OFFICER: Don't  
 19 do that. You -- you may get a chance -- you'll  
 20 get a chance if choose to testify to do so  
 21 later.  
 22 MR. FOFANA: Right.  
 23 THE HEARING OFFICER: Ms.  
 24 Brantley has an objection and then we'll see if

20 (Pages 1073 to 1076)

Page 1077

1 Marin - Cross - Fofana  
 2 we'll going to be able to do this.  
 3 MS. HEMANS-BRANTLEY: Okay.  
 4 MR. FOFANA: So --?  
 5 THE HEARING OFFICER: Wait a  
 6 minute; let her raise her further objection.  
 7 MS. HEMANS-BRANTLEY: The  
 8 first -- well, my primary objection right now  
 9 is that Mr. Fofana is asking him to execute an  
 10 exercise on a system that he's just now -- that  
 11 he has in effect now. We don't know whether  
 12 that was in effect at the time that this  
 13 individual downloaded the information.  
 14 MR. FOFANA: I answered the  
 15 question.  
 16 THE HEARING OFFICER: Shh,  
 17 shh --  
 18 MR. FOFANA: I'm sorry.  
 19 THE HEARING OFFICER: -- just  
 20 let him finish -- let her finish.  
 21 MS. HEMANS-BRANTLEY:  
 22 Secondly, we just had the investigator testify  
 23 and D.O.E. is now in evidence, which indicates  
 24 that -- as the investigator testified and which

Page 1079

1 Marin - Cross - Fofana  
 2 to allow Mr. Fofana further questions. Before  
 3 we do any -- any computer work, because the  
 4 computer work is highly speculative, I'm going  
 5 to state before I even see it done --  
 6 MR. FOFANA: Uh-huh.  
 7 THE HEARING OFFICER: --  
 8 because it puts us at a time that's not what --  
 9 MR. FOFANA: Yes.  
 10 THE HEARING OFFICER: --  
 11 happened when it happened.  
 12 MR. FOFANA: Okay.  
 13 THE HEARING OFFICER: And --  
 14 and so I'm not sure I -- I'm going to -- I -- I  
 15 don't know what I'm going to do about that yet.  
 16 But what I do want to do is --  
 17 MR. FOFANA: Uh-huh.  
 18 THE HEARING OFFICER: -- have  
 19 you -- so I may even ask a few questions --  
 20 MR. FOFANA: Sure.  
 21 THE HEARING OFFICER: -- if  
 22 you don't mind.  
 23 EXAMINATION  
 24 BY THE HEARING OFFICER:

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1 Marin - Cross - Fofana  
 2 is in evidence, the same pages -- some of the  
 3 same pages that are on the C.D. that's in  
 4 evidence was -- was printed by the  
 5 investigator. This individual has now  
 6 testified that he downloaded from the -- the  
 7 website.  
 8 THE HEARING OFFICER: He --  
 9 he has -- he has.  
 10 MS. HEMANS-BRANTLEY: Right.  
 11 THE HEARING OFFICER:  
 12 However, this is -- Mr. Fofana is right in one  
 13 regard here. This is very critical information  
 14 and this is cross examination --  
 15 MS. HEMANS-BRANTLEY: Right.  
 16 THE HEARING OFFICER: -- and  
 17 I do want to allow Mr. Fofana to pursue this  
 18 information to make sure that I understand  
 19 completely. And we clearly have a -- you know,  
 20 a difference of opinion here --  
 21 MS. HEMANS-BRANTLEY: Right.  
 22 THE HEARING OFFICER: -- just  
 23 my sense between the questioning already. And  
 24 I would like to have Mr. Fofana -- I would like

Page 1080

1 Marin - Examination - Hearing Officer  
 2 Q. So, as I understand it, Mr.  
 3 Marin -- is it Marin, as I'm saying?  
 4 **A. Yes.**  
 5 Q. You're testimony is that you  
 6 were alerted to a website?  
 7 **A. Correct.**  
 8 Q. And do you remember the name  
 9 of the website?  
 10 **A. I know it was a**  
 11 **teachersabuse -- I don't remember it**  
 12 **specifically right now.**  
 13 Q. And it's your testimony that  
 14 you typed that in --  
 15 **A. Yes.**  
 16 Q. -- so that you -- you  
 17 would -- I'm not technically savvy, but you --  
 18 you pull up, let's just say, your internet  
 19 explorer --  
 20 **A. Correct.**  
 21 Q. -- you get that online --  
 22 **A. Absolutely.**  
 23 Q. -- you then type in your --  
 24 you're testifying you type in teacherabuse dot

21 (Pages 1077 to 1080)

Page 1081

1 Marin - Examination - Hearing Officer  
 2 com --  
 3 **A. Uh-huh -- right.**  
 4 Q. -- is that right?  
 5 **A. Correct.**  
 6 Q. And then that pulled up Mr.  
 7 Fofana -- well a website?  
 8 **A. Correct.**  
 9 Q. And that that website is  
 10 where you found the information --  
 11 **A. Correct.**  
 12 Q. -- that you burned on the  
 13 C.D.?  
 14 **A. Correct.**  
 15 Q. And you're -- you're  
 16 testimony is you did not go any further than  
 17 that?  
 18 **A. No, I did not.**  
 19 MR. FOFANA: Okay. Well, I  
 20 just want to -- to assuage Ms. Brantley on one  
 21 issue. It's not about the content prior to --  
 22 you know, to -- to -- what happened before and  
 23 what's happened now. It's the process. The  
 24 process of downloading of getting these

Page 1083

1 Marin - Examination - Hearing Officer  
 2 MR. FOFANA: Right.  
 3 THE HEARING OFFICER: So why  
 4 don't we go back to that if you have further  
 5 questions?  
 6 MR. FOFANA: Right.  
 7 CROSS EXAMINATION  
 8 BY MR. FOFANA:  
 9 Q. You said something, sir, I  
 10 would like to follow up on. You said you  
 11 created the -- these folders; right?  
 12 **A. Correct.**  
 13 Q. Now, to create folders, you  
 14 have to know the names of the folders?  
 15 **A. No.**  
 16 Q. Well, by what miracle you  
 17 were able to -- let me do this. Excuse me one  
 18 second.  
 19 **A. Are you showing me things**  
 20 **before you ask me a question.**  
 21 THE HEARING OFFICER: Well,  
 22 we're going to -- I think he's going to pull  
 23 something up, yes.  
 24 THE WITNESS: Because my

Page 1082

1 Marin - Examination - Hearing Officer  
 2 folders --.  
 3 THE HEARING OFFICER: I -- I  
 4 understand that completely, Mr. Fofana, except  
 5 for one thing.  
 6 MR. FOFANA: Uh-huh.  
 7 THE HEARING OFFICER: I don't  
 8 know -- I can't be sure --  
 9 MR. FOFANA: Uh-huh.  
 10 THE HEARING OFFICER: -- that  
 11 you had it in a situation like it is now,  
 12 supposedly, on I X Marketing back then. And  
 13 the witness can only testify to what he  
 14 testified to and doing the exercise it -- it  
 15 places us at a point in time now that could  
 16 be --  
 17 MR. FOFANA: Uh-huh.  
 18 THE HEARING OFFICER: --  
 19 different than it is -- than it was then. Now,  
 20 you -- we may ultimately just simply have a  
 21 dispute between two witnesses, ultimately, but  
 22 you know, I -- so, I'm going to allow you  
 23 further questions of about his process for  
 24 finding the information.

Page 1084

1 Marin - Cross - Fofana  
 2 answer may --.  
 3 THE HEARING OFFICER: Well,  
 4 we're going -- let's -- let's see what does  
 5 first.  
 6 MR. FOFANA: Okay. One  
 7 second, sir?  
 8 (Off-the-record discussion)  
 9 BY MR. FOFANA: (Cont'g.)  
 10 Q. Are you familiar to this  
 11 F.T.P. software?  
 12 **A. Correct.**  
 13 Q. It allows you to have access  
 14 to the server?  
 15 **A. If you have a password,**  
 16 **correct.**  
 17 Q. Right. Exactly. And right  
 18 now I went to my website, using my password,  
 19 and you recognize the N.C.H.S. folder?  
 20 **A. Right.**  
 21 Q. Okay. Now, same thing, it's  
 22 a folder?  
 23 **A. Right.**  
 24 Q. And this folder is right

22 (Pages 1081 to 1084)

Page 1085

1 Marin - Cross - Fofana  
 2 sitting in -- in the server? So you're saying  
 3 that you did not access this server to have  
 4 this folder?  
 5 **A. No, I didn't access it in the**  
 6 **manner that you're speaking of.**  
 7 Q. Well, the manner -- it  
 8 doesn't matter. My question is did you access  
 9 the server, yes or no, to have this folder,  
 10 which is sitting in the server?  
 11 **A. I accessed the website.**  
 12 Q. What do you mean? What  
 13 website?  
 14 **A. The website is the**  
 15 **teachersabuse dot org website in which**  
 16 **information is contained.**  
 17 Q. Can you define -- can you  
 18 define --  
 19 **A. And I also --.**  
 20 Q. -- website as opposed to the  
 21 server?  
 22 **A. Again, you say that the**  
 23 **information is on --.**  
 24 Q. That's not my question.

Page 1087

1 Marin - Cross - Fofana  
 2 another way. So you're saying that this folder  
 3 that is sitting -- first of all, did you -- do  
 4 you agree that this folder is right now sitting  
 5 in the server?  
 6 **A. As to what you say.**  
 7 Q. No, you can see it; you're  
 8 technical.  
 9 **A. I don't know --.**  
 10 Q. And it uses the server --.  
 11 **A. That could be -- that could**  
 12 **be hosted on your machine, particularly. I**  
 13 **don't know that you're connected to the**  
 14 **website. I don't know that you're online.**  
 15 Q. I am.  
 16 **A. I don't know anything unless**  
 17 **you tell me.**  
 18 **THE HEARING OFFICER: Mr.**  
 19 **Fofana, he's answering.**  
 20 **A. (Cont'g.) I'm answering your**  
 21 **questions.**  
 22 BY MR. FOFANA: (Cont'g.)  
 23 Q. Okay.  
 24 **A. So you tell me.**

Page 1086

1 Marin - Cross - Fofana  
 2 **A. If you're asking me the**  
 3 **question, you let me answer it.**  
 4 Q. Go ahead.  
 5 **A. You say it's on the server.**  
 6 **It doesn't have -- websites don't have to be**  
 7 **hosted on servers. It can be simple machines**  
 8 **with application software. It doesn't have to**  
 9 **be server software. If you want to be**  
 10 **technical about it --**  
 11 Q. Go ahead; I'm -- I'm  
 12 listening --.  
 13 **A. It doesn't necessarily have**  
 14 **to be --.**  
 15 Q. I'm not illiterate; just go  
 16 ahead.  
 17 **A. The documents -- I accessed**  
 18 **the website. I'm not going to assume or guess**  
 19 **what this information was hosted on. I don't**  
 20 **know.**  
 21 Q. Okay.  
 22 **A. I went to the page --.**  
 23 Q. All right. That's fine.  
 24 We -- we're going to go

Page 1088

1 **Marin - Cross - Fofana**  
 2 Q. Now, you just said earlier  
 3 that this -- you're familiar with this  
 4 professional -- what does F.T.P. stand for?  
 5 **A. File transfer protocol.**  
 6 Q. So it means you can go  
 7 directly to your server using this software;  
 8 correct?  
 9 **A. You can use that software,**  
 10 **correct.**  
 11 Q. Okay. Now, do you -- do you  
 12 agree that these files here sitting on my  
 13 computer, on the left-hand side, from your  
 14 understanding of the F.T.P. --  
 15 **A. The drive, I'm assuming**  
 16 **it --.**  
 17 Q. Well, it is.  
 18 **A. Well, I'm --.**  
 19 **THE HEARING OFFICER: Mr.**  
 20 **Fofana, you have to --.**  
 21 MR. FOFANA: I'm sorry, but  
 22 there is a lot, we know -- even I know  
 23 specifically this software, this is on my  
 24 computer -- my computer.

23 (Pages 1085 to 1088)

Page 1089

1 Marin - Cross - Fofana  
 2 THE HEARING OFFICER: Mr. --  
 3 Mr. -- Mr. Fofana, you're -- you're  
 4 experiencing what sometimes attorneys  
 5 experience if they're -- they find a witness  
 6 that they don't feel is answering questions in  
 7 the way that they're happy with, but he's  
 8 answering --  
 9 MR. FOFANA: Okay.  
 10 THE HEARING OFFICER: -- to  
 11 the best of his ability and you have to keep  
 12 trying, but you can't testify --  
 13 MR. FOFANA: All right.  
 14 THE HEARING OFFICER: -- for  
 15 him. Okay?  
 16 MR. FOFANA: All right.  
 17 Fine -- fine. I'm sorry.  
 18 THE HEARING OFFICER: That's  
 19 okay.  
 20 BY MR. FOFANA: (Cont'g.)  
 21 Q. Well, reasonably, these  
 22 folders are sitting in the server?  
 23 THE HEARING OFFICER: That's  
 24 your question?

Page 1091

1 Marin - Cross - Fofana  
 2 are online now?  
 3 **A. You put me online.**  
 4 Q. We are or we are not?  
 5 **A. You could be -- I mean --.**  
 6 Q. But no, I knew I -- I want to  
 7 know if it's a fact.  
 8 **A. You could be page, you can be**  
 9 **off-page -- you go to a page that appears --.**  
 10 Q. Sir, are you -- are you --?  
 11 **A. I'm just answering your**  
 12 **question.**  
 13 Q. Are you willing -- are you  
 14 willing to check for yourself that we are  
 15 online?  
 16 **A. I'll take your word for it.**  
 17 Q. Please.  
 18 **A. You're online; let's go.**  
 19 **Let's move on.**  
 20 Q. Okay. Thank you. So we are  
 21 online. Now, by the same token, I will cancel  
 22 this. I will go back to this software --  
 23 software. I will click on it and will go back.  
 24 Okay? Logging information. Connect.

Page 1090

1 Marin - Cross - Fofana  
 2 Can you answer that?  
 3 THE WITNESS: The question?  
 4 THE HEARING OFFICER: Based  
 5 on what your knowledge, does it -- does it  
 6 appear that way to you based on your knowledge  
 7 of the software?  
 8 **A. If he's connected to the**  
 9 **web --**  
 10 BY MR. FOFANA: (Cont'g.)  
 11 Q. I am.  
 12 **A. (Cont'g.) -- it appears that**  
 13 **way.**  
 14 THE HEARING OFFICER: No; you  
 15 can't say you are --  
 16 MR. FOFANA: I --.  
 17 THE HEARING OFFICER: --  
 18 right, but -- but -- so the -- the answer is if  
 19 he's connected to the web, that -- that -- that  
 20 would appear to be the case?  
 21 THE WITNESS: Correct.  
 22 BY MR. FOFANA: (Cont'g.)  
 23 Q. Okay. To -- to reassure you  
 24 about -- I will go online. We agree that we

Page 1092

1 Marin - Cross - Fofana  
 2 Reasonably, do you agree that we are online and  
 3 these folders are on the -- the server?  
 4 **A. Okay.**  
 5 **THE HEARING OFFICER: The**  
 6 **answer's yes?**  
 7 THE WITNESS: Yes.  
 8 THE HEARING OFFICER: Okay.  
 9 MR. FOFANA: Thank you.  
 10 BY MR. FOFANA: (Cont'g.)  
 11 Q. Now -- so you say that you  
 12 went on the website?  
 13 **A. Correct.**  
 14 Q. And you were able to have  
 15 what is on this C.D. without accessing the  
 16 server. Is that correct? That's what you  
 17 said?  
 18 **A. Well, the document --.**  
 19 Q. No -- no -- no -- no.  
 20 **A. For example --.**  
 21 Q. No -- no. The right question  
 22 is yes or no? Did you --?  
 23 **A. It's not a yes or no**  
 24 **question.**

24 (Pages 1089 to 1092)

Page 1093

1 **Marin - Cross - Fofana**  
 2 Q. Well, I'm going to repeat my  
 3 question to that format. Did you access the  
 4 server to have this document or not?  
 5 **A. I accessed the website.**  
 6 Q. No.  
 7 THE HEARING OFFICER: So the  
 8 answer is no --  
 9 BY MR. FOFANA: (Cont'g.)  
 10 Q. It's no?  
 11 THE HEARING OFFICER: -- you  
 12 didn't access --?  
 13 **A. It may --.**  
 14 BY MR. FOFANA: (Cont'g.)  
 15 Q. No; you see, you --.  
 16 **A. You want me to answer the**  
 17 **question. I'm answering your question.**  
 18 Q. No, you are not -- you are  
 19 going -- you're beating the -- around the bush,  
 20 if you will.  
 21 **A. No, I'm not. You don't let**  
 22 **me finish the question. You don't want me to**  
 23 **answer it. Do you want me to answer it or do**  
 24 **you want me to not answer it?**

Page 1095

1 **Marin - Cross - Fofana**  
 2 Q. All right.  
 3 **A. Whether it resides on the**  
 4 **server or not, that's --.**  
 5 Q. Forget it --.  
 6 THE REPORTER: One at a time,  
 7 please?  
 8 THE HEARING OFFICER:  
 9 Folks -- folks, the reporter cannot take  
 10 down --  
 11 MR. FOFANA: Sorry.  
 12 THE HEARING OFFICER: -- all  
 13 this information when we're all talking and  
 14 yelling. The second thing is I cannot  
 15 understand any issues, ultimately, if there's a  
 16 lot of yelling back and forth.  
 17 THE WITNESS: Yes.  
 18 THE HEARING OFFICER:  
 19 Sometimes, Mr. Fofana, going for a yes or no  
 20 question is perfectly fair.  
 21 MR. FOFANA: Uh-huh. Yes.  
 22 THE HEARING OFFICER:  
 23 However, if the witness has difficulty  
 24 answering a yes or no question, because there's

Page 1094

1 **Marin - Cross - Fofana**  
 2 THE HEARING OFFICER: Well,  
 3 let's -- let's -- time out. Time out -- I  
 4 do -- I want to understand his answer.  
 5 THE WITNESS: That's what I'm  
 6 trying explain. You asked me --.  
 7 BY MR. FOFANA: (Cont'g.)  
 8 Q. No -- no -- explanation --  
 9 you -- did you access the server or not? The  
 10 question is simple. Further back, website,  
 11 further back, yes or no.  
 12 **A. The technical part when you**  
 13 **said about it, does this thing reside on --.**  
 14 **THE HEARING OFFICER: Mr.**  
 15 **Fofana, if he --.**  
 16 BY MR. FOFANA: (Cont'g.)  
 17 Q. You don't fool anybody. Yes  
 18 or no?  
 19 THE HEARING OFFICER: Mr. --  
 20 Mr. Fofana --.  
 21 BY MR. FOFANA: (Cont'g.)  
 22 Q. Did you access the server or  
 23 not?  
 24 **A. I accessed the website.**

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1 Marin - Cross - Fofana  
 2 more depth to it --  
 3 MR. FOFANA: Uh-huh.  
 4 THE HEARING OFFICER: -- as  
 5 the Hearing Officer, I still would like to hear  
 6 that, because in the absence of it, it leaves  
 7 it uncertain.  
 8 MR. FOFANA: Okay.  
 9 THE HEARING OFFICER: So I  
 10 would suggest that you might want to allow him  
 11 pursue it if this is an area you wish to  
 12 pursue.  
 13 MR. FOFANA: Okay. I'm going  
 14 to put the issue another way.  
 15 BY MR. FOFANA: (Cont'g.)  
 16 Q. Did you obtain this through  
 17 another way, other than going through the  
 18 server?  
 19 **A. I used the Internet Explorer.**  
 20 **I went to the page. I went to each section**  
 21 **within that website. I made folders and I**  
 22 **saved each page to those folders.**  
 23 Q. Okay. I'm going to stop you  
 24 one second.

25 (Pages 1093 to 1096)

1 Marin - Cross - Fofana  
 2 **A. That's what I did.**  
 3 Q. I'm going to stop you one  
 4 second --.  
 5 THE HEARING OFFICER: Okay.  
 6 Now, you answer. So now he --.  
 7 MR. FOFANA: Yes.  
 8 BY MR. FOFANA: (Cont'g.)  
 9 Q. We have -- we have these  
 10 folders. We have the contents of these  
 11 folders. I would like you -- it's there on  
 12 the -- on the server. I would like you show us  
 13 how you were able to get this particular  
 14 folder -- go ahead; show us? And we are online  
 15 because your explanation is murky and it's  
 16 better for us to show as a process by which you  
 17 were able to get this particular folder to the  
 18 C.D.s? Show us.  
 19 MS. HEMANS-BRANTLEY: I have  
 20 an objection.  
 21 THE HEARING OFFICER: Yes.  
 22 MS. HEMANS-BRANTLEY: Again,  
 23 going back to my first objection with regard to  
 24 this particular exercise, what Mr. Fofana has

1 Marin - Cross - Fofana  
 2 up and is asking the witness to do is not what  
 3 this -- same things as what the witness  
 4 testified to.  
 5 MR. FOFANA: Doesn't  
 6 understand -- she does not understand. Once  
 7 again --  
 8 MS. HEMANS-BRANTLEY:  
 9 Objection.  
 10 MR. FOFANA: -- it's about  
 11 getting this.  
 12 THE HEARING OFFICER: Right.  
 13 MR. FOFANA: I'm not trying  
 14 to compare what is here right now.  
 15 MR. FOFANA: Let me finish.  
 16 I'm not trying to compare what it is here with  
 17 C.D.s, I want to process how you take something  
 18 that's here and put it on C.D.s. It's not  
 19 about comparing what is --.  
 20 THE HEARING OFFICER: I -- I  
 21 understand, but --  
 22 MR. FOFANA: Yes.  
 23 THE HEARING OFFICER: -- Ms.  
 24 Brantley's point is that what is here right

1 Marin - Cross - Fofana  
 2 now --  
 3 MR. FOFANA: Uh-huh.  
 4 THE HEARING OFFICER: -- he  
 5 may not be able to do the same process he did  
 6 two years ago, because the configuration may be  
 7 completely different and -- and that's -- am I  
 8 correct?  
 9 MS. HEMANS-BRANTLEY: Yes.  
 10 THE HEARING OFFICER: And --  
 11 and so the exercise may -- or the attempt to do  
 12 the exercise may not land us in a place that's  
 13 accurate from the perspective of the  
 14 Department. And that does resonate with me as  
 15 an argument. I mean it's hard for us to go  
 16 back in time and know, you know, that if he  
 17 went on teacherabuse dot com --  
 18 MR. FOFANA: Uh-huh.  
 19 THE HEARING OFFICER: -- and  
 20 tried to do what he did, whether it would work  
 21 or not, if it doesn't work --  
 22 MR. FOFANA: Uh-huh.  
 23 THE HEARING OFFICER: -- that  
 24 doesn't necessarily prove to me that it didn't

1 Marin - Cross - Fofana  
 2 work then. I don't know that for sure.  
 3 MR. FOFANA: Oh.  
 4 THE HEARING OFFICER: All I  
 5 know is he's testified that --  
 6 MR. FOFANA: Uh-huh.  
 7 THE HEARING OFFICER: -- that  
 8 he did do it that way then.  
 9 MR. FOFANA: Uh-huh.  
 10 THE HEARING OFFICER: But  
 11 to -- for him to do the exercise today, if it  
 12 doesn't work --  
 13 MR. FOFANA: Uh-huh.  
 14 THE HEARING OFFICER: --  
 15 well, let's put it this way. If he does it and  
 16 it works, that's obviously detrimental to the  
 17 argument you're making.  
 18 MR. FOFANA: Yes.  
 19 THE HEARING OFFICER: If he  
 20 does it and it doesn't work, I don't know that  
 21 that is or isn't, because it may be different  
 22 than it was then. So it's -- it's all  
 23 speculative.  
 24 MR. FOFANA: So I -- if --

Page 1101

1 Marin - Cross - Fofana  
 2 okay. It would be better for him to tell us,  
 3 rather than Ms. Brantley speaking for him.  
 4 It's for him to tell us.  
 5 BY MR. FOFANA: (Cont'g.)  
 6 Q. Would you be able to go and  
 7 get this N.C.H.S. folder any way you want other  
 8 than going to the server? That's my question,  
 9 yes or no? Let me --.  
 10 THE HEARING OFFICER: Can you  
 11 answer that question?  
 12 **A. Can I get to N.C.H. server --**  
 13 BY MR. FOFANA: (Cont'g.)  
 14 Q. Can you --?  
 15 **A. -- folder -- yes, I can,**  
 16 **because I -- create it.**  
 17 Q. You created this?  
 18 **A. I created the folder. You're**  
 19 **saying I downloaded the folder. I created the**  
 20 **folder and I saved the documents to the folder**  
 21 **That's what you're missing.**  
 22 Q. But -- I didn't miss at all.  
 23 It's highly -- because it's beyond me. I would  
 24 like to know how you can -- let me go back to

Page 1103

1 **Marin - Cross - Fofana**  
 2 **There's nothing --.**  
 3 Q. I'm stopping, because I don't  
 4 need more --.  
 5 THE HEARING OFFICER: Right,  
 6 but he -- you ask him a question and he's  
 7 explaining.  
 8 MR. FOFANA: Well, that's --  
 9 I'm satisfied.  
 10 THE HEARING OFFICER: Okay.  
 11 BY MR. FOFANA: (Cont'g.)  
 12 Q. I'm asking you then why on  
 13 earth you would not go and give us, instead of  
 14 giving you a verbal explanation, I'm not  
 15 proving anything just to see the process, to  
 16 see you -- how you do it. Whether it's  
 17 successful or not, that's immaterial.  
 18 MR. FOFANA: The process,  
 19 because my point, Mr. Siegel, it's impossible  
 20 for him to recreate or replicate this without  
 21 accessing the server. And my expert witness  
 22 will prove it. And before that, I need him to  
 23 tell us about the process.  
 24 THE HEARING OFFICER: Well,

Page 1102

1 Marin - Cross - Fofana  
 2 this. How can you know in advance the name --  
 3 the way it's written all these folders, created  
 4 them and put it in a folder called N.C.H.S.?  
 5 In essence, you replicate the whole thing.  
 6 How?  
 7 THE HEARING OFFICER: Can you  
 8 answer that?  
 9 **A. When you save a web page, it**  
 10 **creates the folders and a document and it puts**  
 11 **it in that order. When you go file save, you**  
 12 **save a web page, it creates its own stuff,**  
 13 **everything pertaining to it, because a**  
 14 **document -- a web document contains photos and**  
 15 **documents. So when you a particular thing, it**  
 16 **saves it, it puts it in a format for you. Now**  
 17 **if I go to each and every area, whether**  
 18 **attendance, this, that, whatever was on that**  
 19 **document, I clicked on it, it would save it.**  
 20 **Even when you access it, the address or the**  
 21 **format shows at the top.**  
 22 BY MR. FOFANA: (Cont'g.)  
 23 Q. All right. Okay.  
 24 **A. So to create the folder.**

Page 1104

1 Marin - Cross - Fofana  
 2 he -- he's testifying about the process. I  
 3 mean as I understand, and certainly I'd like  
 4 the witness to clarify if I don't, because this  
 5 is important --  
 6 MR. FOFANA: Okay. Sure.  
 7 THE HEARING OFFICER: -- and  
 8 technical and I want to make sure I understand.  
 9 As I understand your testimony is that you  
 10 typed on the web, teacherabuse dot com.  
 11 You then -- when you saw it,  
 12 there were several different areas on the  
 13 website -- I assume there was a front page. Is  
 14 that correct?  
 15 THE WITNESS: Correct.  
 16 THE HEARING OFFICER: And the  
 17 front page had categories?  
 18 THE WITNESS: Correct.  
 19 THE HEARING OFFICER: And  
 20 clicked those on and when you clicked on a  
 21 certain category, if you felt it was worthy of  
 22 saving, you then did whatever -- I don't know  
 23 how to save websites --  
 24 THE WITNESS: File --

27 (Pages 1101 to 1104)

Page 1105

1 Marin - Cross - Fofana  
 2 THE HEARING OFFICER: -- but  
 3 you -- you do it in the same way that you would  
 4 save something else on a computer?  
 5 THE WITNESS: Correct.  
 6 THE HEARING OFFICER: And  
 7 you're --.  
 8 THE WITNESS: It's right in  
 9 the browser, file, save as, and you point to  
 10 where you want to save and you just save. I  
 11 used no specialized tools. I use --.  
 12 THE HEARING OFFICER: And  
 13 when you were initially saving it, were you  
 14 saving it on your actual computer that you  
 15 used?  
 16 THE WITNESS: Right.  
 17 THE HEARING OFFICER: And  
 18 then after that, you transferred it to this?  
 19 THE WITNESS: Correct.  
 20 THE HEARING OFFICER: Okay.  
 21 So that's what his testimony is. You may --  
 22 you may have an expert who's going to differ --  
 23 MR. FOFANA: Uh-huh.  
 24 THE HEARING OFFICER: -- and

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1 Marin - Cross - Fofana  
 2 say that's impossible. That's what he's  
 3 testified he did.  
 4 MR. FOFANA: Okay.  
 5 THE HEARING OFFICER: And I  
 6 want to further this. Since we don't have an  
 7 attorney I want to make sure the questions  
 8 are -- and it's your testimony that you had no  
 9 way to access the -- you were not accessing the  
 10 server in the way that Mr. Fofana showed us  
 11 earlier?  
 12 THE WITNESS: Correct; I used  
 13 no specialized tools to access the server.  
 14 THE HEARING OFFICER: And to  
 15 take another way, in other words, as Mr. Fofana  
 16 is suggesting, which would be -- I'm -- Mr.  
 17 Fofana, please interrupt me if this --  
 18 MR. FOFANA: Sure.  
 19 THE HEARING OFFICER: -- is  
 20 not accurate. What I sensed from Mr. Fofana's  
 21 suggestion is that only a specialist or expert  
 22 would have been able to get this information  
 23 and -- in other words, it was not in the public  
 24 eye --

Page 1107

1 Marin - Cross - Fofana  
 2 MR. FOFANA: Uh-huh.  
 3 THE HEARING OFFICER: -- and  
 4 your testimony is that's not true?  
 5 THE WITNESS: That's not  
 6 true.  
 7 THE HEARING OFFICER: That  
 8 --- that your basic teacher, if you knew  
 9 teacherabuse dot com --  
 10 THE WITNESS: Correct.  
 11 THE HEARING OFFICER: -- that  
 12 that got you the information?  
 13 THE WITNESS: Right.  
 14 THE HEARING OFFICER: Clearly  
 15 Mr. Fofana's questioning suggests he has  
 16 evidence to the contrary, but you're disputing  
 17 that?  
 18 THE WITNESS: I am.  
 19 THE HEARING OFFICER: Okay.  
 20 We're all clear on where the witness stands?  
 21 MR. FOFANA: Yes.  
 22 MS. HEMANS-BRANTLEY: Uh-huh.  
 23 MR. FOFANA: Okay.  
 24 THE HEARING OFFICER: Okay.

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1 Marin - Cross - Fofana  
 2 BY MR. FOFANA: (Cont'g.)  
 3 Q. Well, there's -- there's no  
 4 way that -- to further this, other than saying  
 5 that these a violation of the server?  
 6 MS. HEMANS-BRANTLEY:  
 7 Objection.  
 8 BY MR. FOFANA: (Cont'g.)  
 9 Q. An expert witness will -- and  
 10 will refer to this in court, Mr. Marin. Keep  
 11 that in mind.  
 12 MS. HEMANS-BRANTLEY:  
 13 Objection, Mr. Siegel.  
 14 THE HEARING OFFICER: All  
 15 right. Yes, sustained. You can't be -- you  
 16 can't be threatening the witness like that, Mr.  
 17 Fofana.  
 18 MR. FOFANA: I'm sorry. I'm  
 19 sorry.  
 20 THE HEARING OFFICER: That's  
 21 okay.  
 22 MR. FOFANA: This is hard,  
 23 because this is so obvious for me that --.  
 24 THE HEARING OFFICER: Well,

28 (Pages 1105 to 1108)

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1 Boubakar Fofana - 5-28-08  
 2 you'll -- you'll have every opportunity to --  
 3 to prove what you seek to prove.  
 4 MR. FOFANA: Yes. Thank you.  
 5 I'm going to need the -- the transcript in an  
 6 expedited manner. I haven't received the  
 7 previous one --  
 8 THE HEARING OFFICER: Yes.  
 9 MR. FOFANA: -- I haven't  
 10 even received Ms. Adonai's --  
 11 THE HEARING OFFICER: Yes.  
 12 MR. FOFANA: -- you know,  
 13 cross examination. And right now I'm -- you  
 14 know, it's -- my defense is totally in chaos.  
 15 I'm not able to function because even the  
 16 earliest days --  
 17 MS. HEMANS-BRANTLEY: May we  
 18 have this discussion outside of the witness'  
 19 province?  
 20 MR. FOFANA: Yes.  
 21 MS. HEMANS-BRANTLEY: Is he  
 22 done with the witness?  
 23 THE HEARING OFFICER: Yes; do  
 24 you have questions?

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1 Boubakar Fofana - 5-28-08  
 2 on; let me just check. I -- let me just -- I  
 3 thought I did, but maybe --  
 4 THE HEARING OFFICER: I know  
 5 I personally have not received anything, but I  
 6 seem to get the transcript a little later than  
 7 the parties, for whatever reason.  
 8 MS. HEMANS-BRANTLEY: Okay.  
 9 I think I was confusing another -- let me see  
 10 what I have here. These might be --  
 11 THE HEARING OFFICER: Do you  
 12 have --?  
 13 MS. HEMANS-BRANTLEY: Okay.  
 14 I'm sorry.  
 15 THE HEARING OFFICER: All  
 16 right. Mr. -- Mr. Fofana what you can do is,  
 17 like you're doing, is making a request for an  
 18 expedited transcript. I certainly would asked  
 19 Stacy, the court reporter, to ask her  
 20 supervisor if special consideration could be  
 21 given to expediting all the transcripts in this  
 22 proceeding, particularly given the fact that we  
 23 have an individual who's working on his own  
 24 behalf who's a pro se litigant and -- and who

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1 Boubakar Fofana - 5-28-08  
 2 MR. FOFANA: Yes. No -- no  
 3 further questions.  
 4 THE HEARING OFFICER: No  
 5 further questions? Anything further?  
 6 MS. HEMANS-BRANTLEY: No  
 7 redirect.  
 8 THE HEARING OFFICER: Then  
 9 you are concluded. Thank you very much. You  
 10 have a good day.  
 11 (Off-the-record discussion)  
 12 THE HEARING OFFICER: All  
 13 right. Let's get back -- I know Mr. Fofana's  
 14 raised an issue about the transcripts.  
 15 MR. FOFANA: Uh-huh.  
 16 THE HEARING OFFICER: The  
 17 transcripts you -- have not been received since  
 18 the -- the case has been reinstated, I'll  
 19 say, and --  
 20 MS. HEMANS-BRANTLEY: I think  
 21 we did get --.  
 22 MR. FOFANA: Cross  
 23 examination.  
 24 MS. HEMANS-BRANTLEY: Hold

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1 Boubakar Fofana - 5-28-08  
 2 doesn't have the -- benefit of, you know,  
 3 attorney training and experience.  
 4 And so, to whatever extent  
 5 possible, the transcripts could be provided on  
 6 an expedited basis, it would be extremely  
 7 helpful and welcome for this proceeding.  
 8 THE REPORTER: I will make  
 9 note of it, Mr. Siegel.  
 10 THE HEARING OFFICER: Thank  
 11 you.  
 12 All right. At this time,  
 13 does -- does the Department have another  
 14 witness?  
 15 MS. HEMANS-BRANTLEY: No. I  
 16 didn't -- didn't know what our scheduling --  
 17 how it would pan out --  
 18 THE HEARING OFFICER: Okay.  
 19 MS. HEMANS-BRANTLEY: -- and  
 20 I did inquire, but -- to see if I can get a  
 21 last minute witness since we were progressing  
 22 so rapidly today. However, I could not secure  
 23 someone else.  
 24 THE HEARING OFFICER: All

29 (Pages 1109 to 1112)

Page 1113

1 Boubakar Fofana - 5-28-08  
 2 right. So we have no other witnesses for  
 3 today?  
 4 MS. HEMANS-BRANTLEY: That's  
 5 correct.  
 6 MR. FOFANA: May I ask you  
 7 what's the next witness, if any?  
 8 MS. HEMANS-BRANTLEY: I'll  
 9 have to respond to you by e-mail. As we stand  
 10 here today, I don't know.  
 11 MR. FOFANA: Okay.  
 12 MS. HEMANS-BRANTLEY: But I  
 13 will -- as soon as I know, I will send you that  
 14 information promptly via e-mail.  
 15 THE HEARING OFFICER: And  
 16 while we're on the record, does the Department  
 17 have any idea at this stage how many more  
 18 witnesses it has in total?  
 19 MS. HEMANS-BRANTLEY: One  
 20 definite; maybe two. I should be able to wrap  
 21 up my case if -- between the two dates.  
 22 Hopefully, the first date. If not the first  
 23 date, then certainly by June 4th.  
 24 MR. FOFANA: Okay. I

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1 Boubakar Fofana - 5-28-08  
 2 benefit of the transcripts, that's not how I  
 3 entirely recall the principal's testimony. I'm  
 4 just trying to recall in my mind. I believe  
 5 that what the principal testified to was that  
 6 with regards to the observations he made the --  
 7 Mr. Fofana aware of certain aspects with  
 8 regards to the lesson that did require  
 9 improvement. And the principal did forward --  
 10 I don't know how much of this was actually put  
 11 out in evidence, but the principal did testify  
 12 that he referred certain allegations to our  
 13 office and that part of that was indeed the --  
 14 the U-rated lessons, which were referred to our  
 15 office, which ultimately became part of the  
 16 specifications. So I'm not entirely clear for  
 17 the premise of -- of Mr. Fofana's request to  
 18 have the -- the specifications dismissed at  
 19 this point in time.  
 20 Secondly, with regards to the  
 21 specifications as they're included, we  
 22 presented testimony to yourself, Mr. Siegel,  
 23 and I don't believe at this juncture that Mr.  
 24 Fofana's request, one, is an appropriate

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1 Boubakar Fofana - 5-28-08  
 2 requested -- I introduce, by e-mail, a motion.  
 3 Have you a chance to look into the matter?  
 4 THE HEARING OFFICER: Yes.  
 5 We -- I should state for the record that Mr.  
 6 Fofana did -- yesterday, sent an e-mail to  
 7 myself and Ms. Brantley where he made a motion  
 8 to dismiss specifications one and three. And  
 9 essentially the -- the gist of the motion dealt  
 10 with his contention that Dr. Wiltshire stated  
 11 on the record, during the questioning, that he  
 12 did not feel that Mr. Fofana was incompetent.  
 13 And it's Mr. Fofana's request that the claims  
 14 of incompetency, insofar as teaching is  
 15 concerned, be dismissed.  
 16 Now, obviously before I would  
 17 make any ruling on such a motion, I'd have to  
 18 give the Department an opportunity to respond.  
 19 So, Ms. Brantley, do you want a few minutes to,  
 20 you know, collect your thoughts and make a  
 21 response to that request or are you ready to  
 22 make a response now?  
 23 MS. HEMANS-BRANTLEY: Well,  
 24 certainly that's not how -- I guess without the

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1 Boubakar Fofana - 5-28-08  
 2 request; two, that it's been substantiated.  
 3 And that at this point, that is something that  
 4 since the D.O.E. is still on its case-in-chief,  
 5 that's a point that you could rule on it at  
 6 this particular time.  
 7 MR. FOFANA: Well, I -- it's  
 8 not about, you know -- this is very clear  
 9 because the transcript will show that Dr.  
 10 Wiltshire clearly said that I did not say that  
 11 you are incompetent. I asked specifically this  
 12 question in regards to the -- the U-ratings.  
 13 My question was like saying okay, I have two  
 14 U-ratings, you know, two lessons. So what? Is  
 15 that enough to be, you know, dubbed as  
 16 incompetent? That was the substance of my  
 17 question.  
 18 THE HEARING OFFICER: All  
 19 right.  
 20 MR. FOFANA: He said no, I  
 21 didn't say that. As a matter of fact, and he  
 22 brought here this information -- I don't  
 23 know -- I did not request this U-rating as the  
 24 basis for charges. I simply forwarded your

30 (Pages 1113 to 1116)

Page 1117

1 Boubakar Fofana - 5-28-08  
 2 file to the -- to the legal department. They  
 3 went through it and they just pick up this.  
 4 So my request is totally  
 5 warranted because people substituted themselves  
 6 from -- you know, from a supervisor to say that  
 7 I'm incompetent; therefore, this should be -- I  
 8 should be tried on such charges. They are not  
 9 indicated -- they are not my supervisor, they  
 10 never met with me. Therefore, it's just  
 11 inappropriate for them to -- to put these  
 12 charges, based on two lesson U-ratings.  
 13 MS. HEMANS-BRANTLEY: May I  
 14 please go further?  
 15 THE HEARING OFFICER: Yes.  
 16 Sure.  
 17 MS. HEMANS-BRANTLEY: With  
 18 regards to what the principal testified to, he  
 19 indicated primarily that he contacted our  
 20 office with regards to the -- the website  
 21 allegations, as well as the corporal punishment  
 22 allegations. However, when the principal --  
 23 and I don't know far I can go into this because  
 24 it's -- you know, I don't want to seem if I'm

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1 Boubakar Fofana - 5-28-08  
 2 THE HEARING OFFICER: But --  
 3 I -- I -- I understand where the arguments are  
 4 going. I -- I think there's a couple of -- of  
 5 points that I think are worthy of making.  
 6 First of all, Mr. Fofana --  
 7 MR. FOFANA: Uh-huh.  
 8 THE HEARING OFFICER: -- what  
 9 you need to know is from a -- from a legal  
 10 standpoint, the motion to dismiss is the -- the  
 11 most draconian ruling that the Hearing Officer  
 12 can make, because it essentially closes out --  
 13 MR. FOFANA: Uh-huh.  
 14 THE HEARING OFFICER: --  
 15 charges on a particular matter for good. And  
 16 hearing officers, in general, are often  
 17 reluctant to grant motions to dismiss, but that  
 18 in no way means that the hearing officer has  
 19 necessarily deemed the proof that's been  
 20 presented to be worthy of a finding of guilt on  
 21 charges. You know, my -- my view of this is  
 22 that certainly some of the arguments you've  
 23 made --  
 24 MR. FOFANA: Uh-huh.

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1 Boubakar Fofana - 5-28-08  
 2 testifying. However, there is a process where  
 3 an allegation report to the legal department  
 4 where upon the -- there is a discussion held  
 5 with regards to what is called a conference  
 6 with regards to a particular teacher and  
 7 allegations. And certain things come out  
 8 during this discussion. And although that may  
 9 not have been the premise from which the  
 10 principal came to our department, again, I  
 11 don't want to testify, but -- and I didn't  
 12 draft these specifications, but with regards to  
 13 that, these were the specifications that came  
 14 forward after these allegations were brought to  
 15 our department. And certainly, it's  
 16 appropriate for the Department to -- after  
 17 consultation with the principal, to draft  
 18 whatever charges the legal department feels is  
 19 appropriate in a particular case. And I don't  
 20 believe that there's been any -- any basis  
 21 shown by Mr. Fofana to suggest that those  
 22 specifications were not appropriate  
 23 specifications to warrant the Department to  
 24 include them in the charges.

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1 Boubakar Fofana - 5-28-08  
 2 THE HEARING OFFICER: -- you  
 3 may renew at the time that this case is closed.  
 4 And they may, in fact, be worthy of my --  
 5 leading me to a determination that there's no  
 6 proof at all of incompetency. But -- and I  
 7 would further point out that I do recollect and  
 8 my notes reflect to some extent, because I  
 9 looked at them last night after I received your  
 10 motion to dismiss --  
 11 MR. FOFANA: Okay.  
 12 THE HEARING OFFICER: -- that  
 13 there was a certain point during the testimony  
 14 when Dr. Wiltshire did state words to the  
 15 effect that he did not deem you to be  
 16 incompetent based on the two observations he  
 17 made of you.  
 18 MR. FOFANA: Uh-huh.  
 19 THE HEARING OFFICER: I did  
 20 note that. However, the observations do speak  
 21 to -- for themselves and the observations also  
 22 make reference to Assistant Principal Adonai's  
 23 review, which is beyond the Wiltshire  
 24 testimony, although you have some issues, I

31 (Pages 1117 to 1120)

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1 Boubakar Fofana - 5-28-08  
 2 know, with that, as well.  
 3 To summarize ultimately,  
 4 number one, I'm not prepared to grant the  
 5 motion to dismiss. First of all, the  
 6 Department's case hasn't even ended, and while  
 7 they may not be presenting any more evidence on  
 8 your alleged incompetency, they have at least  
 9 presented some observations, which were  
 10 U-ratings. And whether or not a couple of  
 11 observations, or four observations in a finite  
 12 period of time would serve as a basis to -- for  
 13 me to make a determination that you're  
 14 incompetent, I'm just simply not prepared to  
 15 make that ruling now. I want to review the  
 16 transcripts in total before I do anything.  
 17 MR. FOFANA: Uh-huh.  
 18 THE HEARING OFFICER: And I  
 19 don't feel it would be prudent for me to be  
 20 making any -- granting any motions to dismiss  
 21 without the benefit of the transcripts. And  
 22 again, I think in making that ruling, I would  
 23 simply emphasize that this Hearing Officer has,  
 24 on many occasions, in these kinds of

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1 Boubakar Fofana - 5-28-08  
 2 THE HEARING OFFICER: Because  
 3 those are the next two days of hearing.  
 4 MR. FOFANA: Yes, but then if  
 5 my testimony requires more time, what will you  
 6 do?  
 7 THE HEARING OFFICER: If  
 8 you -- if you cannot finish in one day?  
 9 MR. FOFANA: Right. For  
 10 instance, after my testimony, I would assume  
 11 that, you know, the D.O.E. Counsel will cross  
 12 examine me --  
 13 THE HEARING OFFICER: Yes.  
 14 MR. FOFANA: -- over the --  
 15 the testimony and there might be some, you  
 16 know, lead me to request, you know, more --  
 17 more time. I cannot specify.  
 18 THE HEARING OFFICER: We  
 19 will -- we will take each aspect of the case a  
 20 step at a time. And I will be open to what --  
 21 what you may feel you need at that time after  
 22 we see what happens. I mean it's my -- but  
 23 what I do want to emphasize to the parties is  
 24 point one being, if the Department has one or

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1 Boubakar Fofana - 5-28-08  
 2 proceedings and other kinds of proceedings,  
 3 denied motions to dismiss and sometimes still  
 4 found no guilt on the charges themselves. And  
 5 I'm going to simply indicate that the motion is  
 6 denied. You should present testimony in  
 7 defense of those particular charges, should you  
 8 feel it's worth -- worthwhile to do so. And I  
 9 will reconsider those when the case has been  
 10 concluded.  
 11 MR. FOFANA: Okay.  
 12 THE HEARING OFFICER: Okay?  
 13 So, at this point, what I'm going to simply  
 14 indicate --  
 15 MS. HEMANS-BRANTLEY: Oh --.  
 16 THE HEARING OFFICER: -- is  
 17 in terms of case management, I would -- I would  
 18 strongly recommend to the Department to do  
 19 everything it has in its power to try and get  
 20 its witnesses here for June 3rd, so we can get  
 21 this case completed in its case-in-chief and so  
 22 that Mr. Fofana can be prepared for June 4, to  
 23 start his case.  
 24 MR. FOFANA: Uh-huh.

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1 Boubakar Fofana - 5-28-08  
 2 two witnesses, it should be prepared to have  
 3 them here June 3rd, so that it can conclude its  
 4 case if that's possible, and that you should be  
 5 prepared to get ready for your case on either  
 6 part of June 3rd or June 4th.  
 7 MR. FOFANA: Okay.  
 8 THE HEARING OFFICER: Now, if  
 9 after you start, other issues arise, we'll deal  
 10 with them as they come.  
 11 MR. FOFANA: So, what's --  
 12 what's tomorrow's agenda, because we're  
 13 meeting?  
 14 THE HEARING OFFICER: No --  
 15 no; we do not have a hearing day tomorrow.  
 16 MR. FOFANA: The 29th?  
 17 THE HEARING OFFICER: No --  
 18 no; the 29th is not a hearing day.  
 19 MR. FOFANA: All right. So  
 20 the next meeting is the third of June?  
 21 THE HEARING OFFICER: Yes.  
 22 Our next dates and I'll -- I'll give them to  
 23 you. Our next hearing dates are June --  
 24 MR. FOFANA: 3rd and 4th.

32 (Pages 1121 to 1124)

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1 Boubakar Fofana - 5-28-08  
 2 THE HEARING OFFICER: -- 3  
 3 and 4. And after that, I'll -- I'll state for  
 4 the record --  
 5 MR. FOFANA: I see.  
 6 THE HEARING OFFICER: -- that  
 7 our next hearing date after that would be June  
 8 11.  
 9 MR. FOFANA: Uh-huh.  
 10 THE HEARING OFFICER: June 16  
 11 and June 26. And I certainly hope that we are  
 12 not going to be here that long --  
 13 MR. FOFANA: I'm -- I'm  
 14 sorry.  
 15 THE HEARING OFFICER: -- but  
 16 I -- you'll have every opportunity to defend  
 17 yourself in -- in your case.  
 18 So the case dates -- we'll go  
 19 over them again, June 3, June 4 --  
 20 MR. FOFANA: Uh-huh.  
 21 THE HEARING OFFICER: -- June  
 22 11, June 16, and June 26.  
 23 MR. FOFANA: 26, this is a  
 24 purely potential dates.

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1 Boubakar Fofana - 5-28-08  
 2 O.S.I. investigator.  
 3 MR. FOFANA: Was that a Mr.  
 4 Robert Colon?  
 5 MS. HEMANS-BRANTLEY:  
 6 Correct.  
 7 MR. FOFANA: Okay. Thank  
 8 you.  
 9 MS. HEMANS-BRANTLEY: If I  
 10 could just -- and certainly just a date prior  
 11 to the 4th, if Mr. Fofana, as part of my  
 12 reciprocal discovery, we request -- could you  
 13 tell me the names of the witnesses he intends  
 14 to call.  
 15 MR. FOFANA: Well --.  
 16 MS. HEMANS-BRANTLEY: And --  
 17 and tell me, you know, just identify who they  
 18 are.  
 19 MR. FOFANA: But I thought,  
 20 if I'm not mistaken, I should furnish those  
 21 names after you conclude your case. That's --  
 22 that's the procedure if I'm not mistaken. In  
 23 other words, I can wait until you finish, let's  
 24 say that the last day, when you -- you know,

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1 Boubakar Fofana - 5-28-08  
 2 THE HEARING OFFICER: Those  
 3 are purely potential dates. And my point would  
 4 be June 3 should be the finish-up of the  
 5 Department's case.  
 6 MR. FOFANA: Okay.  
 7 THE HEARING OFFICER:  
 8 Hopefully, even getting to your case --  
 9 MR. FOFANA: Okay.  
 10 THE HEARING OFFICER: -- part  
 11 of June 3. If not, you're starting on June 4  
 12 with your case and then continuing until such  
 13 time as you've rested.  
 14 MR. FOFANA: Okay, sir.  
 15 Ms. -- Ms. Brantley -- on the  
 16 3rd, you are, you know, expecting two witnesses  
 17 you said?  
 18 MS. HEMANS-BRANTLEY: One  
 19 definite and then after that, it would be --  
 20 perhaps two more. I'm not sure at this  
 21 particular point in time on that.  
 22 MR. FOFANA: But let me ask  
 23 you, what witness is definite?  
 24 MS. HEMANS-BRANTLEY: The

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1 Boubakar Fofana - 5-28-08  
 2 you stay and I would just give you the list of  
 3 my witnesses?  
 4 MS. HEMANS-BRANTLEY: Right,  
 5 but that would be prior to -- if I conclude my  
 6 case on the 3rd, that would be on the 3rd.  
 7 THE HEARING OFFICER: But, I  
 8 don't think he's objecting to that.  
 9 MR. FOFANA: Okay.  
 10 THE HEARING OFFICER: But he  
 11 just doesn't to give you them now.  
 12 MS. HEMANS-BRANTLEY: Uh-huh.  
 13 MR. FOFANA: I will -- I will  
 14 just -- on the 3rd, definitely -- no -- putting  
 15 it this way I'm -- I'm -- I don't want to be,  
 16 you know, by e-mail. I'm going to request  
 17 subpoena by e-mail. I will send a copy --  
 18 within two days, you will know the people I  
 19 intend to call in.  
 20 MS. HEMANS-BRANTLEY: Okay.  
 21 MR. FOFANA: That's fair?  
 22 MS. HEMANS-BRANTLEY: Uh-huh.  
 23 MR. FOFANA: All right. Just  
 24 so --.

33 (Pages 1125 to 1128)

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1 Boubakar Fofana - 5-28-08  
 2 MS. HEMANS-BRANTLEY: Are you  
 3 going to send -- you're going to do the e-mail  
 4 and then --?  
 5 THE HEARING OFFICER: I'm  
 6 going to try. I mean the -- yes, the  
 7 difficulty is I'm going to be out of town for a  
 8 couple of days on cases, but -- so I may not be  
 9 able to get a subpoena out to you until --  
 10 until next week, but I -- what I will do is I  
 11 will try to fax you a subpoena so that you have  
 12 it Monday morning.  
 13 MS. HEMANS-BRANTLEY: Right,  
 14 because what I can do is just scan it to the  
 15 school --  
 16 THE HEARING OFFICER:  
 17 Right -- right -- yes.  
 18 MS. HEMANS-BRANTLEY: -- is  
 19 what I'm thinking. I'm just trying to  
 20 expedite --  
 21 THE HEARING OFFICER: To  
 22 expedite it, exactly. All right.  
 23 MS. HEMANS-BRANTLEY: -- the  
 24 process.

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1 Boubakar Fofana - 5-28-08  
 2 tomorrow, actually, as I said, you will know --  
 3 MS. HEMANS-BRANTLEY: Uh-huh.  
 4 MR. FOFANA: -- who I intend  
 5 to call in to witness.  
 6 MS. HEMANS-BRANTLEY: Do  
 7 you -- I'm sorry to -- do you have the -- you  
 8 know, I can step out of the room. I'm just  
 9 trying again -- do you have the names of the  
 10 individuals that you can give to Mr. Siegel  
 11 now? I'll step out. You don't -- I have --  
 12 no, I'm just trying to --  
 13 THE HEARING OFFICER: All  
 14 right.  
 15 MS. HEMANS-BRANTLEY: --  
 16 because if he can do, maybe he can --  
 17 THE HEARING OFFICER: Right.  
 18 MS. HEMANS-BRANTLEY: --  
 19 just --.  
 20 MR. FOFANA: Okay.  
 21 THE HEARING OFFICER: Or, or  
 22 you could --  
 23 MR. FOFANA: Yes, I can give  
 24 you the bulk of those --

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1 Boubakar Fofana - 5-28-08  
 2 THE HEARING OFFICER: So  
 3 we'll try to and do that. The only thing I  
 4 would suggest though is if, Ms. Brantley, you  
 5 find out before the end of the week that you're  
 6 only going to have one witness, then Mr. Fofana  
 7 you really should be prepared on June 3rd to  
 8 start your case.  
 9 MR. FOFANA: Okay.  
 10 MS. HEMANS-BRANTLEY: I will  
 11 let him know -- well I -- I won't be in on  
 12 Friday. Hopefully by tomorrow, I would -- I  
 13 would let you know.  
 14 MR. FOFANA: Okay.  
 15 MS. HEMANS-BRANTLEY: June  
 16 3rd is what; a Tuesday?  
 17 THE HEARING OFFICER: That's  
 18 a Tuesday.  
 19 MS. HEMANS-BRANTLEY: Okay.  
 20 If not -- if I don't know tomorrow, I will  
 21 indicate such to you and let you. Or I will  
 22 have my secretary -- her name is Sylvia -- send  
 23 you an e-mail on Friday.  
 24 MR. FOFANA: Okay. By

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1 Boubakar Fofana - 5-28-08  
 2 THE HEARING OFFICER: Okay.  
 3 MR. FOFANA: -- yes.  
 4 MS. HEMANS-BRANTLEY: So --  
 5 all right. Let me just -- so is that it?  
 6 THE HEARING OFFICER: Right.  
 7 So why -- why don't we do this? Let's go off  
 8 the record. We're going to continue working on  
 9 some of matters pertaining to the case,  
 10 including names of subpoenas. And I will take  
 11 those down and then work on preparing subpoenas  
 12 for this case.  
 13 Okay. Thank you.  
 14 (The hearing adjourned.)  
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 24

34 (Pages 1129 to 1132)

1 Boubakar Fofana - 5-28-08  
 2 STATE OF NEW YORK  
 3 I, Stacey Guay, do hereby certify that the  
 4 foregoing was reported by me, in the cause, at  
 5 the time and place, and in the presence of  
 6 counsel, as stated in the caption hereto, at  
 7 Page 1000 hereof; that the foregoing  
 8 typewritten transcription, consisting of pages  
 9 number 1000 through 1132, inclusive, was  
 10 prepared under my supervision and is a true  
 11 record of all proceedings had at the hearing.  
 12 IN WITNESS WHEREOF, I have  
 13 hereunto subscribed my name, this the 11th day  
 14 of June, 2008.

15 \_\_\_\_\_  
 16 \_\_\_\_\_  
 17 Stacey Guay, Reporter  
 18  
 19  
 20  
 21  
 22  
 23  
 24

1 Boubakar Fofana - 5-28-08  
 2 Student Index  
 3 Mercedes Mc.  
 4 Nikita Allyne Ni. Ae.  
 5 Loikel James Lk. Jm.  
 6 Jalissa Jones Jl. Jn.  
 7 Lisa-Marie Trotman Ls. Tr.  
 8 Ms. Trotman Ms. Ls. Tr.  
 9 Mohammed Yusuf Mh. Ys.  
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1 Boubakar Fofana - 5-28-08  
 2 ERRATA SHEET  
 3 Case: Boubakar Fofana, File #8,234  
 4 Date: May 28, 2008  
 5 CORRECTIONS:  
 6 Page\_ \_line\_  
 7 \_\_\_\_\_  
 8 \_\_\_\_\_  
 9 \_\_\_\_\_ Word or phrase: \_\_\_\_\_  
 10 Corrected to: \_\_\_\_\_  
 11 \_\_\_\_\_ Word or phrase: \_\_\_\_\_  
 12 Corrected to: \_\_\_\_\_  
 13 \_\_\_\_\_ Word or phrase: \_\_\_\_\_  
 14 Corrected to: \_\_\_\_\_  
 15 \_\_\_\_\_ Word or phrase: \_\_\_\_\_  
 16 Corrected to: \_\_\_\_\_  
 17 \_\_\_\_\_ Word or phrase: \_\_\_\_\_  
 18 Corrected to: \_\_\_\_\_  
 19 \_\_\_\_\_ Word or phrase: \_\_\_\_\_  
 20 Corrected to: \_\_\_\_\_  
 21 \_\_\_\_\_ Word or phrase: \_\_\_\_\_  
 22 Corrected to: \_\_\_\_\_  
 23 \_\_\_\_\_ Word or phrase: \_\_\_\_\_  
 24 Corrected to: \_\_\_\_\_

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