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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: March 5, 2008  
TIME: 10:25 a.m. to 10:56 a.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

1 Boubakar Fofana - 3-5-2008  
 2 APPEARANCES:  
 3 FOR THE COMPLAINANT:  
 4 LAURA HEMANS-BRANTLEY, ESQ., of Counsel  
 5 MICHAEL BEST, ESQ.  
 6 NYC Department of Education  
 7 Office of Legal Services  
 8 49-51 Chambers Street  
 9 New York, New York 10004  
 10 Telephone: (212) 374-6741  
 11 FOR THE RESPONDENT:  
 12 ANTONIO CAVALLARO, ESQ., of Counsel  
 13 JAMES R. SANDNER, ESQ.  
 14 NEW YORK STATE UNITED TEACHERS  
 15 52 Broadway, 9th Floor  
 16 New York, New York 10004  
 17 Telephone: (212) 533-6300  
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1 Boubakar Fofana - 3-5-2008  
 2 THE HEARING OFFICER: Good  
 3 morning.  
 4 My name is Jay Siegel and I  
 5 am a hearing officer appointed by the New York  
 6 State Department of Education in a matter  
 7 between the New York City Department of  
 8 Education and Boubakar Fofana, that's  
 9 F-O-F-A-N-A.  
 10 This is S.E.D. file number  
 11 8,234.  
 12 Today is March 5, 2008. And  
 13 let me just begin with a little bit of  
 14 background in terms of this proceeding and how  
 15 we got here. And certainly Mr. Cavallaro when  
 16 I'm through if I'm inaccurate in any way,  
 17 please clarify that for the record.  
 18 MR. CAVALLARO: Absolutely.  
 19 THE HEARING OFFICER: This  
 20 proceeding commenced during the week of  
 21 February 11, 2008 and we actually did conduct  
 22 one hearing day in this matter. After that  
 23 first hearing day, the next hearing day that  
 24 was scheduled was February 26, 2008.

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 2 The parties learned from Mr.  
 3 Cavallaro who's Respondent's attorney on  
 4 February 25, 2008 that his office, the New York  
 5 State United Teachers had received notice that  
 6 Mr. Fofana was one of several plaintiffs in a  
 7 litigation that was filed against the United  
 8 Federal of Teachers which is one of Mr.  
 9 Cavallaro's clients as well as Mr. Fofana.  
 10 And, as a result this  
 11 obviously raised some potential conflict issues  
 12 that Mr. Cavallaro's office needed to research  
 13 before proceeding. Requests were made by Mr.  
 14 Cavallaro on behalf of Mr. Fofana to adjourn  
 15 the proceeding on February 26, 2008 and  
 16 February 27, 2008 and those requests were  
 17 granted.  
 18 I would note for the record  
 19 that the parties did actually conduct a  
 20 conference call on this matter on the record on  
 21 February 27, 2008.  
 22 We did anticipate having some  
 23 work on this case today, not in the form of  
 24 hearing but in terms of learning about the

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 2 status of things for -- insofar as Mr.  
 3 Cavallaro's office was concerned and the issue  
 4 of counsel.  
 5 And Mr. Cavallaro first of  
 6 all, is there anything that you need to clarify  
 7 for the record in terms of what I've stated so  
 8 far?  
 9 MR. CAVALLARO: No. There  
 10 is -- there is nothing that needs to be  
 11 clarified with regard to what you stated. And  
 12 the only thing that I -- I have to add for the  
 13 record is that the determination has been made  
 14 at this point in time that -- that the office  
 15 of -- of James R. Sandner cannot through its  
 16 own attorneys provide representation to Mr.  
 17 Fofana any longer because of the possibility  
 18 for conflict of interest. That, you know,  
 19 it -- it has been determined that there is no  
 20 way to overcome that conflict in this  
 21 situation.  
 22 However, unfortunately at  
 23 this point in time there has been no substitute  
 24 counsel -- no determination was made with

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1 Boubakar Fofana - 3-5-2008  
 2 regard to substitute counsel. So  
 3 unfortunately, you know, as I -- as I said we  
 4 do not have any information for the hearing  
 5 officer on that issue. As soon as we do,  
 6 obviously that attorney will be contacting the  
 7 hearing officer and Ms. Brantley to, I guess,  
 8 continue discussions on -- on this matter and  
 9 how to resume.  
 10 But from here forward, I -- I  
 11 can say that, you know, my office at least  
 12 cannot hold itself out as representing Mr.  
 13 Fofana any -- any further.  
 14 And, you know, there will be  
 15 substitution of counsel. It's just not certain  
 16 how that will occur at this point in time.  
 17 THE HEARING OFFICER: And  
 18 I -- I -- I do note for the record that I did  
 19 neglect to allow the parties to make official  
 20 appearances for the record. So, Mr. Cavallaro,  
 21 you've obviously already spoken. You've  
 22 obviously are appearing on behalf of Respondent  
 23 today or probably for the last time as -- based  
 24 on what you've just said.

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 2 MR. CAVALLARO: Right.  
 3 THE HEARING OFFICER: And Ms.  
 4 Brantley, would you make an official appearance  
 5 for the record please?  
 6 MS. HEMANS-BRANTLEY: Laura  
 7 Hemans-Brantley on behalf of the New York City  
 8 Department of Education.  
 9 THE HEARING OFFICER: Ms.  
 10 Brantley, does the Department have any response  
 11 it wishes to make at this time relative to what  
 12 Mr. Cavallaro has said?  
 13 MS. HEMANS-BRANTLEY: Only  
 14 that with regards to substitute counsel, do we  
 15 know at this point whether counsel is going to  
 16 be appointed or whether or not Mr. Fofana will  
 17 be seeking his own counsel to -- to come  
 18 forward on the matter?  
 19 MR. CAVALLARO: I can't  
 20 comment on that. I -- I don't know.  
 21 MS. HEMANS-BRANTLEY: And the  
 22 only reason that -- of course that I'm  
 23 concerned is how we will proceed from this  
 24 point forward.

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 2 THE HEARING OFFICER: Right.  
 3 Well it's -- it's a hearing --  
 4 MS. HEMANS-BRANTLEY: We're  
 5 already in the middle of the case.  
 6 THE HEARING OFFICER: --  
 7 and -- and I think that's a -- a very  
 8 legitimate concern. And it's -- it's the  
 9 hearing officer's view point. And I -- I  
 10 obviously don't have the statute or -- or  
 11 regulations before me, but what I certainly am  
 12 conversant in is the fact that the statute says  
 13 words to the effect that the hearing must be  
 14 moved at a relatively swift pace. And once  
 15 they're started they need to continue  
 16 proceeding. And, that there's really very  
 17 little opportunity for a Respondent or -- or  
 18 for that matter the Department to avoid  
 19 continuing the hearing once it's moving ahead.  
 20 I -- I think what -- what --  
 21 it's my view as the hearing officer that the  
 22 best course of action is the following. I have  
 23 as the parties know made a request for an  
 24 expedited transcript for the first day that

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 2 this hearing was conducted. It's my feeling  
 3 that once we receive that transcript, I think  
 4 then I can confer with the calendar that the  
 5 Department has with the hearing officer, as  
 6 well as with Mr. Cavallaro, and target a date  
 7 as soon as possible to get this hearing back on  
 8 the -- the calendar.  
 9 And, it's my thinking that  
 10 what we would do is I would order the  
 11 Department once we receive the expedited  
 12 transcript to send Mr. Fofana a copy of the  
 13 transcript along with a letter and maybe even  
 14 an attachment of this particular pre-hearing  
 15 conference or conference indicating that this  
 16 hearing officer's going to be ordering a date  
 17 certain for the proceeding to commence and then  
 18 it would be Mr. Fofana's responsibility to be  
 19 here with counsel on whichever date I select  
 20 for the hearing to reconvene. And that if he  
 21 is not here without -- with counsel the hearing  
 22 will proceed in his absence.  
 23 And, you know, as I'm  
 24 thinking aloud in ordering this I may very well

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 2 need to issue this letter myself. And I think  
 3 that's probably what I will do and before we go  
 4 off the record I'd like to get information from  
 5 Mr. Fofana as to where I can reach him to issue  
 6 this order. But it's my thinking in any event  
 7 Ms. Brantley that once we receive the  
 8 transcript of proceeding, that will then allow  
 9 Mr. Fofana to be fairly represented in that he  
 10 will then have all of the materials relevant to  
 11 what's gone on up to date.  
 12 And, at that point I would  
 13 then submit a letter to him ordering him to  
 14 appear with counsel on that date. And along  
 15 with that I would simply be requesting that you  
 16 forward to him -- unless Mr. Cavallaro can --  
 17 someone needs to forward to him any of the  
 18 discovery matters that have already been  
 19 submitted to Mr. Cavallaro, so that those  
 20 materials can also get to Mr. Fofana and his  
 21 attorney, whoever it may be. So, that there's  
 22 no basis for there to be any arguments that  
 23 they cannot proceed with the -- with the  
 24 matter.

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 2 Because I think that if Mr.  
 3 Fofana and his counsel have all of the -- the  
 4 transcript of proceedings and all of the  
 5 discovery that was submitted, that they have  
 6 everything they need to proceed with the case.  
 7 Does that sound reasonable to  
 8 you Ms. Brantley?  
 9 MS. HEMANS-BRANTLEY: Yes.  
 10 THE HEARING OFFICER: All  
 11 right. So Mr. Fofana, at this time -- first of  
 12 all I'd ask you -- could you give me, on the  
 13 record, an address where I can reach you?  
 14 THE RESPONDENT: May I -- may  
 15 I go off a couple of minutes?  
 16 THE HEARING OFFICER: Off  
 17 the -- yes.  
 18 THE RESPONDENT: Yes.  
 19 THE HEARING OFFICER: Okay.  
 20 We're going just go on pause for a moment.  
 21 (Off the record)  
 22 THE HEARING OFFICER: All  
 23 right, Mr. Cavallaro I note that you spent a  
 24 moment outside of the room with Mr. Fofana and

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 2 you have something you need to put on the  
 3 record?  
 4 MR. CAVALLARO: Yes, there  
 5 was. Actually before -- my last act before  
 6 indicating withdrawal of my office actually and  
 7 I -- and I'd spoken to Mr. Fofana about this  
 8 was that to put on the record that Mr. Fofana  
 9 actually seeks an adjournment of these  
 10 proceedings in total, until such time as the  
 11 Federal lawsuit that the Hearing Officer has  
 12 taken, I guess, judicial notice of, has been  
 13 resolved.  
 14 So, I'm sure that the hearing  
 15 officer doesn't want to rule on that issue now  
 16 but it should be on the record that that is  
 17 being, you know, that that is being requested  
 18 on Mr. Fofana's behalf that that is a motion  
 19 that he wishes to place before this hearing  
 20 officer. And I'm certain that once substitute  
 21 counsel, whoever that may be, is in place that  
 22 that individual will make the same motion  
 23 before this hearing officer. And Mr. Fofana  
 24 wanted to make sure that that was on the record

4 (Pages 322 to 325)

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2 as far as it goes. And -- and then once that's

3 on the record then we can move to the -- to

4 the -- the --

5 THE HEARING OFFICER:

6 Procedure.

7 MR. CAVALLARO: -- procedure.

8 Yes, exactly.

9 THE HEARING OFFICER: Got

10 you. Okay. Ms. Brantley --

11 MR. CAVALLARO: And I -- I

12 apologize for the misunderstanding.

13 THE HEARING OFFICER: --

14 that's not a problem. Ms. Brantley, does the

15 Department wish to make any comment as to that

16 request that was made at this time?

17 MS. HEMANS-BRANTLEY: Yes.

18 The Department would wholeheartedly object to

19 any adjournment of the hearing. The trial has

20 commenced. Mr. Fofana was -- has been on

21 notice with regards to these proceedings, which

22 is separate and apart from the lawsuit that

23 he's waiting to be resolved. There's no basis

24 on which this particular hearing cannot go

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2 THE HEARING OFFICER: All

3 right.

4 MR. CAVALLARO: -- just for

5 the information of the parties, that is why Mr.

6 Fofana, you know, seeks -- and yeah.

7 THE HEARING OFFICER: All

8 right. Well, I -- I will -- I -- I certainly

9 appreciate Mr. Cavallaro giving me that --.

10 MR. CAVALLARO: However, I --

11 I just would say that obviously I would refer

12 the hearing officer to the papers and the

13 arguments and I'm sure that they will be more

14 cogently argued by the individuals involved in

15 that lawsuit.

16 THE HEARING OFFICER: Right.

17 I mean at this time I'm -- I'm -- I'm certainly

18 not granting the motion.

19 Mr. Fofana when he has

20 substitute counsel will, it sounds like, be

21 having that counsel make a motion before me.

22 But, you know, at this time I -- I have no

23 basis under which I see a -- a reason to not

24 allow this matter to proceed. And I will

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2 forward.

3 THE HEARING OFFICER: Right.

4 Obviously, I've virtually no information about

5 the lawsuit, don't even know what its subject

6 matter is. I really cannot make any ruling on

7 this request at this time.

8 MR. CAVALLARO: Right. I --

9 I think it -- it is incumbent on me to inform

10 the hearing officer that part of -- actually

11 the parties in general, that part of the

12 subject matter of the suit is this actual

13 process, and that this -- this process -- the

14 3020-a process as agreed to between the

15 Department of Education and United Federation

16 of Teachers approximately five or so years ago

17 or six or so years ago in -- in contract

18 negotiations and then implemented through

19 changes in the 3020-a Education Law by the

20 State Legislature, that part of the lawsuit

21 objects to that process as being violative of

22 the due-process rights of the individual

23 plaintiffs that are involved in that process.

24 So just -- just for the hearing officer --

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2 continue to place before Mr. Fofana the

3 expectation that as soon as this transcript in

4 this proceeding is received, that I will then

5 be sending him a date when I expect this

6 proceeding to proceed with a copy of the

7 transcript, so that his attorney who's going to

8 be substituting will have that. I would along

9 with that be expecting the Department to submit

10 all the discovery that Mr. Cavallaro received

11 to Mr. Fofana's new counsel. And at this

12 time --.

13 MR. CAVALLARO: Just -- I --

14 I don't think that'll be necessary. Obviously

15 once it's determined that Mr. Fofana has new

16 counsel, it -- it -- it is absolutely incumbent

17 upon me to make sure that a full copy of my

18 file including any discovery will be provided

19 to that individual.

20 THE HEARING OFFICER: Okay.

21 Right.

22 MR. CAVALLARO: So I -- I

23 will, you know, I will ensure that that occurs.

24 THE HEARING OFFICER: Okay.

5 (Pages 326 to 329)

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 2 That's greatly appreciated. All right.  
 3 So then at this time Mr.  
 4 Fofana, do you -- first of all would you  
 5 give -- provide on the record your address  
 6 where I can reach you with notice about this  
 7 proceeding.  
 8 THE RESPONDENT: Sure. 12  
 9 Audubon, A-U-D-U-B-O-N, Avenue, Apartment 402,  
 10 Jersey City, New Jersey 07305.  
 11 THE HEARING OFFICER: 07305?  
 12 THE RESPONDENT: Correct.  
 13 THE HEARING OFFICER: Okay.  
 14 So it's 12 Audubon Avenue, Apartment 402,  
 15 Jersey City, New Jersey 07305?  
 16 THE RESPONDENT: Correct.  
 17 THE HEARING OFFICER: All  
 18 right. Mr. Fofana do you -- you know what,  
 19 I'm -- I'm going to just swear you in for just  
 20 a moment if you don't mind.  
 21 THE RESPONDENT: Sure.  
 22 THE HEARING OFFICER: Could  
 23 you -- would you raise your right hand? Do you  
 24 swear or affirm that the testimony you are

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 2 about to give will be the truth, the whole  
 3 truth and nothing but the truth?  
 4 THE RESPONDENT: I do.  
 5 BOUBAKAR FOFANA; Sworn  
 6 EXAMINATION  
 7 BY THE HEARING OFFICER:  
 8 Q. I'm -- I'm not asking you  
 9 anything about the substance of your case or  
 10 anything. I hope -- I want to preface that  
 11 before I even ask you a question. First of  
 12 all, I just want to make sure you understand  
 13 everything I've said about the procedure from  
 14 this point forward. Do you?  
 15 **A. I do. Except that I object**  
 16 **to, you know, my own counsel's summary of what**  
 17 **the Federal case is about. This was -- it's**  
 18 **not proper for one simple reason, if he's --**  
 19 **he's -- it's not proper for him to summary --**  
 20 **to give you a summary -- please --.**  
 21 Q. I -- I understand and I'm --  
 22 I'm not --  
 23 **A. -- this is not --**  
 24 Q. -- and -- and ultimately as I

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 2 indicated on the record, if -- if the position  
 3 that your future counsel takes is that this  
 4 proceeding should be held abeyance until your  
 5 Federal lawsuit has concluded, I'm sure your  
 6 substitute counsel will make those arguments  
 7 and articulate those in a way you're  
 8 comfortable with.  
 9 And we can deal with that at  
 10 that time. So you need not be concerned about,  
 11 you know, how I perceive the lawsuit in any  
 12 way.  
 13 All right. But in terms of  
 14 the procedure, do you understand number one  
 15 that it's prudent for you to start seeking  
 16 counsel for this proceeding?  
 17 **A. I have, you know, but this is**  
 18 **not an issue because my union has an official**  
 19 **obligation to provide me with counsel and the**  
 20 **matter has been discussed with Mr. Cavallaro**  
 21 **with copy of correspondence with a copy to Mr.**  
 22 **Sandner. In other words it's not an issue for**  
 23 **me to have counsel.**  
 24 Q. Okay.

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 2 **A. So the substitute counsel**  
 3 **will be provided by --.**  
 4 Q. That's your -- what you  
 5 anticipate at least.  
 6 **A. Yes.**  
 7 Q. Okay. All right, so and --  
 8 and -- all right. At this point, though, you  
 9 do understand that when this transcript is  
 10 received that I will then be forwarding that to  
 11 you and you understand that then along with  
 12 that I'll be indicating in a cover letter what  
 13 date this proceeding will be expected to  
 14 commence and that you'll be expected to appear  
 15 on that day with your counsel.  
 16 Do you understand that?  
 17 **A. I understand that I do need**  
 18 **some -- I think it's a reasonable request that**  
 19 **we need extra time for my new counsel to look**  
 20 **into the matter to -- and to conduct a proper,**  
 21 **you know, defense.**  
 22 Q. Well I -- I certainly will  
 23 not be receiving the transcript and giving you  
 24 thirty days to proceed. I will give you some

1 Boubakar Fofana - 3-5-2008  
 2 kind of reasonable time but I will look at our  
 3 schedule and then afford you some reasonable  
 4 time. And I do respect your request for that.  
 5 I will certainly keep that in mind, as we  
 6 proceed. So that's kind of where we're at. Do  
 7 you have any other questions while we're on the  
 8 record at this time?  
 9 **A. Well, I have a last request.**  
 10 **There have been -- the Discovery is not**  
 11 **completed because we requested the A-420**  
 12 **incident report.**  
 13 **In other words, the incident**  
 14 **report introduced by the principal to the**  
 15 **O.S.I., we need a copy. We have repeatedly**  
 16 **requested it and haven't received it and I**  
 17 **believe that it wouldn't be proper to continue**  
 18 **while we are struggling to get the discovery**  
 19 **completed. It should be a prerequisite to --**  
 20 **to the proceeding. So we need it.**  
 21 **THE HEARING OFFICER: Ms.**  
 22 **Brantley, is there anything you can inform us**  
 23 **about relative to this is? Have you seen a**  
 24 **request made for this particular report?**

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 2 **MS. HEMANS-BRANTLEY: I**  
 3 **have -- at this time I don't know what report**  
 4 **is being referred to. Perhaps Antonio could**  
 5 **provide -- Mr. Cavallaro could provide some**  
 6 **clarification for me.**  
 7 **MR. CAVALLARO: There was and**  
 8 **I -- I'm trying to be careful here not to --**  
 9 **not to form representation while also**  
 10 **clarifying for the hearing officer. During one**  
 11 **of our -- during the first scheduled date for**  
 12 **this where we actually used it to deal with**  
 13 **Discovery that was outstanding, there was an**  
 14 **indication made that the A-420 report filed by**  
 15 **the principal with the Office of Special**  
 16 **Investigation to the incidents alleged had been**  
 17 **requested. I mean, basically that's just**  
 18 **the -- the report that the principal filled out**  
 19 **indicating certain information about accusers,**  
 20 **the accusation et cetera and requesting the**  
 21 **intervention of O.S.I. I believe. And --**  
 22 **and --**  
 23 **THE WITNESS: It triggers --**  
 24 **it triggers --**

1 Boubakar Fofana - 3-5-2008  
 2 **MR. CAVALLARO: -- right, it**  
 3 **triggers.**  
 4 **THE ITNESS: -- it**  
 5 **triggers --.**  
 6 **MR. CAVALLARO: Right.**  
 7 **Exactly and we did at that -- at that**  
 8 **conference we did make mention of that report.**  
 9 **I -- well -- yeah.**  
 10 **THE HEARING OFFICER: Well**  
 11 **I -- I think then at this point what I will --**  
 12 **what I will direct is that Ms. Brantley, make**  
 13 **effort to find that report and if it can't be**  
 14 **located, make effort to learn that and create a**  
 15 **record that you have made attempts to secure**  
 16 **that report and that good faith efforts have**  
 17 **yielded nothing if in fact nothing can be**  
 18 **yielded, so that we can, you know, have that**  
 19 **issue resolved before we proceed to the best of**  
 20 **our ability.**  
 21 **THE WITNESS: If the**  
 22 **Principal has one --.**  
 23 **MS. HEMANS-BRANTLEY: I will**  
 24 **go back and -- I will go back and refer back to**

1 Boubakar Fofana - 3-5-2008  
 2 my notes from that particular date and make  
 3 inquiries with regards to the report.  
 4 **THE HEARING OFFICER: Okay.**  
 5 **All right. Well then at this time we are going**  
 6 **to go off the record in this proceeding and it**  
 7 **will continue in accordance with the**  
 8 **instructions in this particular matter that**  
 9 **I've made in this particular conference. The**  
 10 **only thing I will request is that this**  
 11 **particular transcript be ordered on an**  
 12 **expedited basis and that even the -- the**  
 13 **conference call we conducted last week on**  
 14 **February 27th also be done on an expedited**  
 15 **basis. So, that any official on the record**  
 16 **matters in this proceeding can be furnished to**  
 17 **Mr. Fofana and his counsel as quickly as**  
 18 **possible. Thank you very much. We're off the**  
 19 **record.**  
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 23  
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1 Boubakar Fofana - 3-5-2008  
 2 STATE OF NEW YORK  
 3 I, Laurie Lowenstein, do hereby certify that  
 4 the foregoing was reported by me, in the cause,  
 5 at the time and place, and in the presence of  
 6 counsel, as stated in the caption hereto, at  
 7 Page 313 hereof; that the foregoing  
 8 typewritten transcription, consisting of pages  
 9 number 313 through 337, inclusive, was prepared  
 10 under my supervision and is a true record of  
 11 all proceedings had at the hearing.  
 12 IN WITNESS WHEREOF, I have  
 13 hereunto subscribed my name, this the 10th day  
 14 of March, 2008.  
 15 *Laurie Lowenstein*  
 16 Laurie Lowenstein, Reporter  
 17  
 18  
 19  
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1 Boubakar Fofana - 3-5-2008  
 2 NAME INITIAL INDEX  
 3 Nikita Allyne Ni. Ae.  
 4 Loikel James Lk. Jm.  
 5 Jalissa Jones Jl. Jn.  
 6 Lisa-Marie Trotman Ls. Tr.  
 7 Ms. Trotman Ms. Ls. Tr.  
 8 Mohammed Yusuf Mh. Ys.  
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1 Boubakar Fofana - 3-5-2008  
 2 E R R A T A S H E E T  
 3 Case: Boubakar Fofana, File #8,234  
 4 Date: March 5, 2008  
 5 CORRECTIONS:  
 6 Page, line  
 7 \_\_\_\_\_  
 8 \_\_\_\_\_  
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