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COURT OF APPEALS

STATE OF NEW YORK

MATTER OF CORTORREAL,

Appellant,

-against-

No. 152

ANNUCCI,

Respondent.

20 Eagle Street
Albany, New York 12207
September 13, 2016

Before:

CHIEF JUDGE JANET DIFIORE
ASSOCIATE JUDGE EUGENE F. PIGOTT, JR.
ASSOCIATE JUDGE JENNY RIVERA
ASSOCIATE JUDGE SHEILA ABDUS-SALAAM
ASSOCIATE JUDGE EUGENE M. FAHEY
ASSOCIATE JUDGE MICHAEL J. GARCIA

Appearances:

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Sara Winkeljohn
Official Court Transcriber

1 CHIEF JUDGE DIFIORE: The next matter on
2 the calendar is appeal number 152, Matter of
3 Cortorreal v. Annucci.

4 MR. MCGOWAN: Good afternoon. May it
5 please the court, I'm Matthew McGowan of Prisoners
6 Legal Services of New York for Appellant Rafael
7 Cortorreal. Could I request three minutes please for
8 - - - or for rebuttal, Your Honor?

9 CHIEF JUDGE DIFIORE: Yes, sir.

10 MR. MCGOWAN: This case raises two
11 questions concerning the due process safeguards
12 needed where a requested inmate witness refuses to
13 testify in a prison disciplinary hearing. The
14 Appellate Division has read this court - - -

15 JUDGE RIVERA: Well, what exactly should
16 the hearing officer have done that was not done here?

17 MR. MCGOWAN: In this case, as to the
18 initial three witness, Mr. Harris (ph.), Varguson
19 (ph.) - - -

20 CHIEF JUDGE DIFIORE: Blackman.

21 MR. MCGOWAN: As to those three witnesses
22 who responded merely that they wouldn't testify
23 because they didn't wish to, we think that there
24 should have been a further investigation, whether
25 delegated to a corrections officer or directly by the

1 hearing officer himself. I - - -

2 JUDGE FAHEY: Yeah, but let's say we don't
3 agree with you about that and we focus in on just the
4 witness who's - - - who put in the affidavit,
5 Blackman, I think his name was, in his testimony.
6 Yeah.

7 MR. MCGOWAN: As to Mr. Blackman, we think
8 that the only sufficient safeguard would have been a
9 personal inquiry by the hearing officer. And that's
10 because of the sensitive nature of the threat to an
11 uncoerced - - -

12 JUDGE ABDUS-SALAAM: Was the officer - - -
13 was the sergeant or whoever the correction officer
14 was that the hearing officer asked to inquire of that
15 witness, was he the person who made the threat or
16 allegedly made the threat to the inmate not to
17 testify?

18 MR. MCGOWAN: He was not, Your Honor. Mr.
19 Blackman alleged - - -

20 JUDGE ABDUS-SALAAM: He was - - - he was
21 totally divorced from this proceeding other than
22 being requested by the hearing officer to make the
23 inquiry?

24 MR. MCGOWAN: That's accurate.

25 JUDGE ABDUS-SALAAM: Okay.

1 MR. MCGOWAN: And the record also shows us
2 that that sergeant, in fact, didn't inquire about any
3 ongoing effect of the coercion. He testified only
4 that he had not personally threatened Mr. Blackman,
5 observed others do, and that Mr. Blackman hadn't just
6 volunteered any information about ongoing effect of
7 the coercion. To our knowledge - - -

8 JUDGE GARCIA: And he asked him if he
9 wanted to testify, right?

10 MR. MCGOWAN: Yes.

11 JUDGE GARCIA: He even asked him again.
12 But your position would be that we make a rule that
13 says the hearing officer has to personally follow up.

14 MR. MCGOWAN: Yes.

15 JUDGE GARCIA: And wouldn't a different way
16 to look at this be it depends on the fact and
17 circumstances of the case. So in this case, it's not
18 the officer who allegedly threatened the person.
19 This prisoner is in a different facility, as I
20 understand it, from the facility he was in when this
21 threat allegedly occurred, and he does it through
22 this officer here. Why would we want to make a rule
23 one-size-fits-all on what follow-up a hearing officer
24 would have to take in every case?

25 MR. MCGOWAN: That's because any express

1 allegation of coercion by a uniformed security staff
2 member is a really dire threat to the due process
3 right here in that sending another uniformed staff
4 member, it's still an agent of the state, a member of
5 the same agency, the same security staff, the same
6 union who levied the initial threat against this
7 individual. There's every reason to believe that he
8 wouldn't be at ease discussing a threat that a
9 correction officer had made against him in that - - -

10 JUDGE ABDUS-SALAAM: So, counsel, can you
11 tell me what status the hearing officer is? Do they
12 bring in someone from outside of the prison who is
13 not a correction officer to conduct these hearings?

14 MR. MCGOWAN: So the hearing officer at
15 times is an agency employee directly. It might be a
16 high-ranking security staff member. There are also
17 commissioners hearings officer who are employed by
18 the agency but generally are attorneys. But the
19 hearing officer is the finder of fact in this
20 proceeding who is ultimately an employee of the
21 Department of Corrections on - - - on community
22 supervision.

23 JUDGE FAHEY: Well, one - - - one of the
24 things I noticed is that neither - - - neither party
25 briefed the remedy issues. Do the parties - - - I

1 know you're only speaking for yourself, but what's
2 your understanding of it? Do the parties concede
3 that a remittal isn't a remedy? It's - - - if the
4 court ruled in your favor, exp - - - expungement
5 would be required?

6 MR. MCGOWAN: Your Honor, we think
7 expungement would be necessary here, both due to the
8 gravity of the offense and on a balancing of the
9 equities.

10 JUDGE FAHEY: Well, you recognize, though,
11 that neither of you brief the remedy issue at all.

12 MR. MCGOWAN: Your Honor, it was - - - it
13 was briefed before the Third Department, but I
14 recognize it would have been prudent to brief it to
15 this court as well. We do think that expungement is
16 - - -

17 JUDGE FAHEY: You've got to take a shot.
18 If you're going to try and win, you might as well try
19 and win, right?

20 MR. MCGOWAN: That's right. Absolutely.

21 JUDGE FAHEY: So - - - so what the heck.

22 MR. MCGOWAN: And in this case, a balance
23 in the equity certainly weighs in favor of
24 expungement. More than four years have passed since
25 the incident. Respondent - - - I'm sorry; appellant

1 finished his solitary confinement sentence more than
2 three years ago. There was no loss of good time
3 imposed. All of those factors, under the balancing
4 of equities test used by the Appellate Division,
5 weigh in favor of expungement.

6 JUDGE ABDUS-SALAAM: Getting back to the
7 actual duty of the hearing officer, counsel, in
8 Barnes, didn't we give three alternate ways to handle
9 witnesses in - - - when they decide not to testify,
10 and wasn't - - - weren't those all in the conjunctive
11 you either do one thing or another thing or the third
12 thing, and the third thing being that the hearing
13 officer personally inquires of the witness whether
14 that witness wants to testify?

15 MR. MCGOWAN: Yes. Barnes found that when
16 three alternative conditions weren't met there was a
17 violation of the right to call witnesses, the third
18 being that the hearing officer communicated with the
19 witness to verify. And that is one of the
20 touchstones of the witness refusal jurisprudence.
21 Which is that the authenticity and voluntariness of
22 the refusal is a critical component that the hearing
23 officer must be concerned with. And in the instance
24 of a vague or nonresponsive statement like those
25 given by the initial three witnesses, that's an

1 inherently suspect scenario.

2 JUDGE ABDUS-SALAAM: So you're suggesting
3 that we extend Barnes or we change the rule that
4 we've already decided or decided - - - and to add
5 another, a fourth category? I'm not sure what you're
6 asking us to do.

7 MR. MCGOWAN: The rule of law that we would
8 propose is that in any circumstance where there's an
9 express allegation of coercion, there always be a
10 requirement for personal inquiry just due to the
11 highly sensitive nature of the due process threat
12 presented. In any circumstance where a witness
13 states merely that they don't want to be involved or
14 don't wish to testify, there always needs to be some
15 further inquiry - - -

16 JUDGE PIGOTT: How deep - - -

17 MR. MCGOWAN: - - - whether - - -

18 JUDGE PIGOTT: How deep should the inquiry
19 be in - - - in terms of a coercion allegation?

20 MR. MCGOWAN: I'm - - - I'm sorry, Your
21 Honor?

22 JUDGE PIGOTT: I'm - - - I'm wondering
23 whether or not - - - you're suggesting that the
24 hearing officer inquire as to the witness or as to
25 the alleged coercer or whom?

1 MR. MCGOWAN: The ideal inquiry, in this
2 case, would be with the witness himself or herself,
3 and it would involve questions concerning whether the
4 threat was, in fact, made, any ongoing effect that
5 that threat or coercion has on their willingness to
6 testify, whether there might be easily implemented
7 accommodations or remedies that might put them at
8 ease and allow their testimony.

9 JUDGE FAHEY: Well, it - - - it seems to be
10 a really impractical rule. It wouldn't be - - - it
11 wouldn't be meaningful inquiry in some form in line
12 with Barnes without requiring that that specific
13 hearing officer had to make that specific inquiry.

14 MR. MCGOWAN: Respectfully, Your Honor, we
15 don't believe it would be a major burden in that it's
16 routine when witnesses are transferred to other
17 facilities. They can be contacted by telephone.

18 JUDGE FAHEY: Um-hum.

19 MR. MCGOWAN: Their testimony can be
20 obtained in any number of ways which wouldn't be a
21 major onus on - - - on respondent or the agency.

22 JUDGE RIVERA: You're not saying it has to
23 be an in-person interview.

24 MR. MCGOWAN: It - - -

25 JUDGE RIVERA: You're saying it could be by

1 phone?

2 MR. MCGOWAN: Correct. In this case - - -

3 JUDGE RIVERA: Because that the hearing
4 officer, he or she, must actually engage with the
5 inmate who claims that there's been some coercion.

6 MR. MCGOWAN: That's right. And that that
7 forum and that interaction will allow the most
8 meaningful exchange there can be and analysis of - -
9 -

10 CHIEF JUDGE DIFIORE: And if the requested
11 witness ends the inquiry by saying I don't want to
12 talk to you, does - - - does the hearing officer have
13 to go further?

14 MR. MCGOWAN: As long as there has been
15 that meaningful and personal engagement with the
16 witness, then that would be sufficient because - - -

17 CHIEF JUDGE DIFIORE: So he doesn't have to
18 get to the - - - to resolve the underlying whether
19 there was or wasn't?

20 MR. MCGOWAN: Well, since the witness can't
21 be compelled to testify, what we're looking for is -
22 - - is not the - - -

23 CHIEF JUDGE DIFIORE: Compelling him to
24 testify, trying to vet whether or not he was coerced.

25 MR. MCGOWAN: That's right. In - - - in

1 that as long as the hearing officer is taking
2 substantial and meaningful efforts to interact
3 personally and to try to - - -

4 CHIEF JUDGE DIFIORE: And then - - -

5 MR. MCGOWAN: - - - bring to light any
6 coercion and to - - - to present possible
7 accommodations that might allow the testimony, that
8 would be sufficient.

9 JUDGE RIVERA: Can I ask does - - - does
10 the hearing officer need to simply consider or - - -
11 or engage in this conversation to determine whether
12 or not that inmate feels currently coerced? That
13 maybe there was coercion in the past, but what's
14 relevant is whether or not there's coercion at the -
15 - - now with respect to appearing now? Is that what
16 the focus of that conversation should be?

17 MR. MCGOWAN: The focus should be the - - -
18 the ongoing effect of the coercion, with the caveat
19 that the rehearing has occurred. In this case, there
20 was an hearing reversed on other grounds, a rehearing
21 now at issue, with the caveat that there hasn't been
22 a sufficient separation in time that it would be
23 wildly implausible that it might have some effect.

24 CHIEF JUDGE DIFIORE: Okay. Thank you,
25 sir.

1 MR. MCGOWAN: Thank you.

2 CHIEF JUDGE DIFIORE: Counsel.

3 MS. OSER: Good afternoon, Your Honor;
4 Andrea Oser. I think there's a lot that the parties
5 agree about here, so we agree that where there are
6 witness refusal forms that appear suspicious, a
7 further inquiry - - -

8 JUDGE RIVERA: Why not when there's - - -
9 when there is an inmate who says, you know, I was
10 coerced and that's why I was - - -

11 MS. OSER: And there's no - - -

12 JUDGE RIVERA: - - - I refused, why - - -
13 why not just have the hearing officer either do it in
14 person, if that's what the hearing officer thinks
15 appropriate or easily available, or just get on the
16 phone and say do you currently feel coerced; is that
17 why you won't testify now?

18 MS. OSER: It's not always feasible - - -
19 it's not always feasible, and we're worried about the
20 safety of the inmate.

21 JUDGE RIVERA: Why is it not feasible?

22 MS. OSER: Because the hearing officer and
23 the refusing witness, as here, were not at the same
24 facility. That means organizing that telephone
25 interview means the inmate has to be escorted from

1 his cell to a private room for a telephone call.

2 JUDGE RIVERA: Um-hum.

3 MS. OSER: And even if all he says is I
4 refuse to testify, if that inmate is found guilty, as
5 he was here, on the basis of confidential
6 information, it's going to look like he was a snitch.
7 And so if you look at it from the witness's
8 perspective, he doesn't want that escort. And in
9 fact, DOCCS did an experiment for a while because the
10 hearing officers, even when they were at the same
11 facility, were uncomfortable going down the block to
12 interview people personally. They were being - - -

13 JUDGE FAHEY: Here it's a little odd,
14 though, because here he signed an affidavit.

15 MS. OSER: Yes. Yes.

16 JUDGE FAHEY: So I don't think he's worried
17 about being a snitch then.

18 MS. OSER: And - - - and that's quite
19 extraordinary.

20 JUDGE FAHEY: Yeah.

21 MS. OSER: No question that is quite
22 extraordinary.

23 JUDGE FAHEY: Yeah.

24 MS. OSER: And the reason - - -

25 JUDGE RIVERA: And isn't that then - - -

1 doesn't that make this a different case from the run-
2 of-the-mill case where an inmate - - -

3 MS. OSER: It does.

4 JUDGE RIVERA: - - - might say, you know, I
5 don't want to testify, I don't want to have anything
6 to do with this, I don't want to talk to you anymore,
7 I have nothing to say to you?

8 MS. OSER: It does. But as Your Honor has
9 pointed out, these cases are so fact-specific. And
10 on the facts of this case, this hearing officer's
11 additional inquiry, which he did do, was sufficient.
12 Why?

13 JUDGE RIVERA: Well, it's not his inquiry,
14 right?

15 MS. OSER: Well, this hearing offic - - -

16 JUDGE RIVERA: He had someone else go ask.

17 MS. OSER: He - - - he did a further
18 inquiry. I didn't say he did a personal interview.
19 He did something further, right. He - - - he had the
20 - - - got the testimony of the CO, who tried to - - -

21 JUDGE RIVERA: But isn't - - - isn't that
22 the point? If - - - if the coercion comes from the
23 staff, why is the hearing officer asking another
24 category of staff to go ask that question?

25 MS. OSER: I would ask Your Honor to just

1 consider the particular facts here which are these:
2 This sergeant at the second facility, the inmate is
3 now in Upstate New York, goes to ask if he will
4 testify. And even though just four months earlier he
5 was willing to take the extraordinary step of putting
6 in an affidavit saying I was coerced and naming his
7 alleged coercer, he says nothing about any continuing
8 coercion. Isn't - - - doesn't his silence give rise
9 - - -

10 JUDGE RIVERA: Maybe he's not saying that
11 so the - - -

12 MS. OSER: - - - to an inference that he
13 doesn't feel - - -

14 JUDGE RIVERA: Maybe he's not saying that
15 to the officers, right?

16 MS. OSER: Well, doesn't his silence give
17 rise to an inference that he doesn't feel any
18 continuing effects?

19 JUDGE RIVERA: Isn't that what the hearing
20 officer should inquire? I mean I think their point
21 is - - -

22 MS. OSER: Would it have been - - -

23 JUDGE RIVERA: - - - isn't that for the
24 hearing officer to at least engage with that inmate
25 to make that determination as opposed to - - -

1 MS. OSER: Well, you're saying - - -

2 JUDGE RIVERA: - - - as opposed to when you
3 have, as you say, extraordinary situation - - -

4 MS. OSER: Yes.

5 JUDGE RIVERA: - - - where the inmate signs
6 an affidavit saying yes, I was coerced.

7 MS. OSER: Yes.

8 JUDGE RIVERA: Admits that publicly in this
9 way, or at least in this particular situation.

10 MS. OSER: Yes. He admits it publicly.

11 JUDGE RIVERA: Completely unusual that the
12 hearing officer would then send potentially a person
13 sort of standing in the same posture as the per - - -
14 I know it's not the same individual but in that same
15 relationship to an inmate to ask the question?

16 MS. OSER: I - - - I would say this, Your
17 Honor, given - - - given the facts of these case - -
18 - this case, he is sending his delegate - - -

19 JUDGE RIVERA: Yes.

20 MS. OSER: - - - who is now 300 miles away
21 from the alleged coercer. And we checked that CO is
22 still at Sing Sing to this day. So he is asking
23 someone 300 miles away to go ask for this. Would it
24 have been better if the hearing officer had advised
25 that CO in advance about this allegation, certainly.

1 We think the hearing officer's additional inquiry was
2 still - - -

3 JUDGE RIVERA: Wouldn't that be better - -
4 -

5 MS. OSER: - - - good enough.

6 JUDGE RIVERA: - - - if the hearing
7 officer, perhaps, put on the record why the hearing
8 officer, in this case he, himself was not going to
9 contact that inmate and thought that this was
10 appropriate notwithstanding the - - - the claim of
11 coercion, thinking this - - - under all these facts
12 and under these circumstances, I think this is
13 appropriate?

14 MS. OSER: I would ask Your Honor to take a
15 - - - consider this court's decision in Abdur-Raheem
16 where the court rejected a rigid rule that would
17 require hearing officers to personally interview
18 confidential informants every time.

19 JUDGE GARCIA: Counsel, separate issue.

20 MS. OSER: Yes.

21 JUDGE GARCIA: Is this issue specifically
22 preserved below?

23 MS. OSER: Which issue?

24 JUDGE GARCIA: The issue on Blackman and
25 whether it should have been a personal follow-up

1 call.

2 MS. OSER: The parties certainly briefed
3 and - - - yes, I mean, the inmate objected at the
4 hearing.

5 JUDGE GARCIA: But in the petition before
6 the Supreme Court.

7 MS. OSER: In the petition, I would say
8 it's - - - the focus of the petition was the - - -
9 not getting the unredacted refusal forms, but we
10 certainly never raised a failure to object objection.
11 So - - - so we are treating it as - - - as properly
12 before the court. And I also want to be sure to - -
13 - Your Honor mentioned why the parties hadn't
14 remedied - - -

15 JUDGE FAHEY: Yeah, the remedy issue. I
16 just - - - I wanted to hear what you had to say too.

17 MS. OSER: Well, in this case, the agency
18 has already decided that a fair rehearing can't be
19 had. This incident happened four years ago. So
20 they're - - - they're not interested - - -

21 JUDGE FAHEY: So you concede on - - - in
22 this instance expunge it. Yeah.

23 MS. OSER: So we're not - - - we're not
24 asking for remittal. The agency's position, in
25 general, as we have briefed in - - - in other cases

1 before this court, but the court didn't reach, is
2 that a procedural issue, the default rule should be
3 remittal.

4 JUDGE FAHEY: Um-hum.

5 MS. OSER: It's just DOCCS isn't interested
6 in pursuing a remittal here. So - - - so - - -

7 JUDGE FAHEY: I see.

8 MS. OSER: - - - we have agreed - - -
9 agreed to the expungement. And then I would just say
10 as to the other - - -

11 JUDGE ABDUS-SALAAM: I'm sorry. Did you've
12 say you've agreed to the expungement?

13 MS. OSER: We would agree to that remedy -
14 - -

15 JUDGE ABDUS-SALAAM: Oh, you would agree.
16 Okay.

17 MS. OSER: - - - if the court finds error.
18 Yes. Thank you, Your Honor. As to the other written
19 refusal forms, the - - - the ones from the other
20 three inmates who didn't suggest any coercion, I
21 would just say that absent additional suspicious
22 circumstances, it is reasonable for a hearing officer
23 to accept the voluntariness and authenticity of those
24 forms. There were no additional suspic - - -
25 suspicious circumstances as to those forms, and

1 that's why it was reasonable for the hearing officer
2 to accept them.

3 And additional inquiry in all of those
4 cases, even though a hearing officer, may seem small
5 but, in fact, it's enormously burdensome and
6 therefore, we'd ask the court not to impose that rule
7 unless it finds it's necessary.

8 And just to give the court some context, in
9 2015 alone, DOCCS completed 65,000 disciplinary
10 hearings. That's an average of something like five
11 new hearings at every workday at every facility
12 throughout the state. And as you know even from this
13 case, these hearings go over multiple days. Inmates
14 ask for multiple witnesses. Unlike in other states
15 which restrict the number of witnesses that an inmate
16 can request, DOCCS doesn't impose that restriction.

17 We have multiple inmate refusals. I don't
18 have statistics for you on how often inmates refuse,
19 but I'm advised, and I know from our own litigation
20 experience, it's common. And the single most common
21 reason that inmates give is that they don't want to
22 be involved, and that's not inherently suspicious.
23 Inmates are understandably afraid of retribution and
24 retaliation. And unfortunately, not wanting to be
25 involved is consistent with human nature. So absent

1 an additional suspicious circumstance, we would say
2 that there - - - it's fine to accept that - - - that
3 written form.

4 CHIEF JUDGE DIFIORE: Thank you, counsel.

5 MS. OSER: Thank you.

6 CHIEF JUDGE DIFIORE: Counsel.

7 JUDGE RIVERA: So, counsel, if the hearing
8 officer had actually put on the record why he chose
9 to pursue this question about Blackman's coercion in
10 the manner that he did, would there be any basis to
11 disturb that decision?

12 MR. MCGOWAN: I'm sorry. Had he put on the
13 record - - -

14 JUDGE RIVERA: Let - - - let's say he
15 decide - - - what I had asked counsel, he said I've -
16 - - I've considered whether or not I myself - - -

17 MR. MCGOWAN: Yes.

18 JUDGE RIVERA: - - - should do a personal
19 interview, and I deem that unnecessary under these
20 circumstances and gives a reason. Would the - - - is
21 there any reason to upset that? What - - - how would
22 we review that?

23 MR. MCGOWAN: There's - - - there's two
24 reasons to upset that. First and foremost is because
25 of the particularly sensitive nature of the - - - of

1 the scenario, sending a hearing officer or a hearing
2 officer communicating by telephone, as the case may
3 require, is the only way to truly root out any
4 ongoing effected coercion. And that sending someone
5 in functionally the same position as the person who
6 levied the threat is so unlikely to render a truthful
7 response that that's not sufficient to - - -

8 JUDGE RIVERA: So you mean that as a matter
9 of law the hearing officer under these circumstances
10 could never send - - -

11 MR. MCGOWAN: As a matter of law where
12 there's - - -

13 JUDGE RIVERA: - - - a corrections officer
14 to ask this question?

15 MR. MCGOWAN: Where there has been an
16 express allegation of staff coercion, that strikes so
17 closely at the heart of due process that there always
18 would need to be some meaningful and direct
19 communication between the hearing officer and the
20 requested witness.

21 But beyond that on the specific facts here,
22 the hearing officer sent a sergeant who didn't
23 inquire about ongoing effect of the coercion at all.
24 It's clear from the record that Sergeant Maddecks
25 (ph.), when he spoke with Mr. Blackman, asked only if

1 he was willing to testify. He didn't ask - - -

2 CHIEF JUDGE DIFIORE: He missed the point.

3 MR. MCGOWAN: Yes, absolutely. And I would
4 urge Your Honors to bear in mind that the - - - the
5 due process rights of prisoners in these
6 administrative hearings are distinctly limited, and
7 the stakes can be incredibly high. In this case, it
8 was a year of solitary confinement. In some cases,
9 it's months or years of lost good time that can
10 extend incarceration. And therefore, the added
11 burden of simply having the correction officer who
12 interviews a witness ask a single follow-up question,
13 noting that the response they gave was evasive or
14 nonresponsive and - - - and then confirming that
15 they, in fact, are refusing to testify, wouldn't be a
16 radical change in the current jurisprudence or in the
17 current procedure.

18 JUDGE RIVERA: But well - - - but it is to
19 the extent that you say only the hearing officer can
20 ask that.

21 MR. MCGOWAN: Yes.

22 JUDGE RIVERA: You're - - - you're not
23 agreeing that if the sergeant had actually asked that
24 or asked about that and had gotten a response that
25 that would be good enough.

1 MR. MCGOWAN: To clarify, that would be as
2 it relates to Mr. Blackman in the instance of express
3 allegations of staff coercion. As to the other three
4 witnesses who gave vague and evasive statements, that
5 might be delegated, and it could be done without some
6 particularly serious burden. Thank you.

7 CHIEF JUDGE DIFIORE: Thank you.

8 (Court is adjourned)

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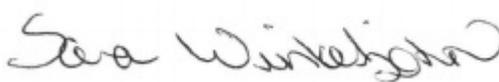
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C E R T I F I C A T I O N

I, Sara Winkeljohn, certify that the foregoing transcript of proceedings in the Court of Appeals of Matter of Cortorreal v. Annucci, No. 152 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



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