

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

BASSIL ALLY,)
)
Plaintiff,)
)
vs.)
) Case No. 4:09CV1144
CITY OF YOUNGSTOWN,)
ET AL.,)
)
Defendant(s).)

- - - - -
DEPOSITION OF JOSEPH MACEJKO
Thursday, February 25, 2010
- - - - -

Deposition of JOSEPH MACEJKO, called by the
Plaintiff for cross-examination, under the Ohio
Rules of Civil Procedure, taken before me, the
undersigned, Lorraine A. Litvin, a Notary Public
in and for the State of Ohio, at the offices of
Haber Polk, LLP, 737 Bolivar Avenue, Suite 4400,
Cleveland, Ohio, commencing at 11:11 a.m. the day
and date above set forth.

- - - - -

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1 APPEARANCES:
 2 On Behalf of the Plaintiff:
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 10 On Behalf of the Defendant:
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17 Also Present:

18 Bassil Ally
 19 -----
 20
 21
 22
 23
 24
 25

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JOSEPH MACEJKO

1 called by the Plaintiff for cross-examination
 2 under the Ohio Rules of Civil Procedure, after
 3 having been first duly sworn, as hereinafter
 4 certified, was examined and testified as follows:

CROSS-EXAMINATION

5 BY MR. POLK:

6 Q Late morning to you.

7 A Yes.

8 Q Could you please state and spell your name
 9 for the record?

10 A Joseph R. Macejko. My last name is spelled
 11 M-A-C-E-J-K-O.

12 Q We've met a few times leading up today. I'm
 13 Shannon Polk. I represent Bassil Ally in
 14 connection with the claims he has against the
 15 city and other folks including yourself. Do you
 16 understand that?

17 A I do.

18 Q Have you ever been deposed in a civil case
 19 before?

20 A No.

21 Q Okay. One of the first things I'll ask you
 22 to do is -- we're both lawyers. We both are
 23 reasonably smart people who anticipate where
 24
 25

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1 people will go when talking.
 2 I'll ask you to let me finish my question and
 3 then you can go ahead and answer, all right?
 4 **A All right.**
 5 Q Are you familiar with what a court reporter
 6 does?
 7 **A Yes.**
 8 Q Okay. You understand then she's trying to
 9 write down everything I'm saying and what you're
 10 saying, and your lawyer will say some things, and
 11 she can only do one thing at once.
 12 If we could just not talk over each other,
 13 that would be good.
 14 **A I fully understand her role.**
 15 Q I just want you to understand a couple of
 16 ground rules. I have no doubt you have properly
 17 prepared before today. I would just ask that you
 18 tell me if you don't understand my question. Is
 19 that fair?
 20 **A Yes.**
 21 Q You understand that you have to tell the
 22 truth in response to my questions?
 23 **A I understand.**
 24 Q I'll assume if you don't tell me you didn't
 25 understand that you went ahead to try to answer

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1 my questions to the best of your ability. Is
 2 that a fair assumption?
 3 **A You can make that assumption.**
 4 Q That's a fair assumption to make?
 5 **A That's a fair assumption.**
 6 Q Give me a thumbnail of how you got to where
 7 you are today. I don't want too much detail.
 8 Give me a gist. You grew up here, you took
 9 this job, and who I am today.
 10 MR. ABBARNO: One second. As
 11 we go through his depo, plus Iris,
 12 The Mayor, I assume Bassil, I
 13 think it would benefit if we
 14 agreed to seal the depositions.
 15 There will be personal information
 16 that will come out, and if anybody
 17 ever gets their hands on the
 18 depositions if they're filed, the
 19 last thing we want is people in
 20 the community finding out
 21 addresses and about families.
 22 It's a safety issue. I think
 23 it would make sense for us to seal
 24 the depositions.
 25 MR. POLK: I can't agree to

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1 seal the deposition, for the
 2 following reason, Ken, I don't
 3 believe that I will be able to
 4 actually honor that commitment
 5 absent a court order to do so.
 6 At the same time, if you're
 7 telling me that you intend to ask
 8 the court for a court order to
 9 seal the depositions, I have no
 10 problem telling you I won't file
 11 them until that order is
 12 resolved.
 13 MR. ABBARNO: I'll file the
 14 request.
 15 MR. POLK: At the same time,
 16 I'm not disagreeing with you.
 17 Things like addresses, Social
 18 Security Numbers, and things of
 19 that nature should be kept
 20 confidential.
 21 I'll tell you what I'll do,
 22 and assuming you'll give me the
 23 same commitment, to the extent
 24 we're filing something, if it has
 25 that type of information, I can't

Page 9

1 anticipate ever filing the pages
 2 which have your address or things
 3 about your family or things like
 4 that in it. If I did, I would do
 5 everything possible to redact that
 6 or take that out, even if we
 7 didn't have an order.
 8 MR. ABBARNO: Understand I
 9 will file a request to have the
 10 depositions sealed, at least the
 11 ones I want to have sealed.
 12 MR. POLK: Will you give me
 13 the same commitment with respect
 14 to Bassil?
 15 MR. ABBARNO: Sure. I won't
 16 file anything with his personal
 17 information.
 18 MR. POLK: All right.
 19 THE WITNESS: Wait.
 20 (Conversation between The Witness
 21 and his Counsel)
 22 MR. ABBARNO: And keep in
 23 mind there has been threats made
 24 in the past as to family members.
 25 We want to make sure all of that

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1 is off base in terms of being
2 sealed and ever being divulged.
3 We, I think, are
4 communicating correctly that we
5 won't put any personal information
6 into play in an unsealed fashion.
7 To the extent we think more
8 should be sealed, we will file a
9 motion. You can file whatever you
10 need to.
11 MR. POLK: I won't file
12 anything that identifies where you
13 live or family or your wife or
14 kids.
15 To the extent I ask any
16 questions about it, it's simply to
17 get to know who you are, and,
18 frankly, given the circumstances
19 and given what you just shared
20 with me and your concerns, I don't
21 have a strong interest in knowing
22 that stuff. I really don't care.
23 I mean that genuinely.
24 The last thing I want is to
25 do anything that would put any

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1 potential out there that you would
2 have some hardship. We are all on
3 the same page. You have my
4 commitment to that.
5 THE WITNESS: Thank you.
6 MR. POLK: If I were in your
7 position, I would want the same
8 thing.
9 Let me do this, Ken. To the
10 extent I need his address for any
11 reason in this case, will you just
12 agree that you will give it to me
13 off line to the extent I need?
14 He's a defendant. If we ever have
15 an issue bringing him to trial,
16 you will work with me on that?
17 MR. ABBARNO: Yes.
18 MR. POLK: I won't ask you.
19 It's not an issue.
20 THE WITNESS: Thank you.
21 MR. POLK: I don't care
22 about -- I don't mean that. I
23 don't care to ask you questions
24 about your children, if you have
25 any. I don't care to ask you

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1 questions about your family, if
2 you have any. I assume that you
3 will give that same courtesy to
4 Bassil.
5 MR. ABBARNO: Yes.
6 Q Please give me a thumbnail about how you got
7 to where you are, 30 seconds or less, like we're
8 at a cocktail party. I want to get your
9 background.
10 A Focusing on professional?
11 Q Yes, please.
12 A I graduated from Youngstown State University
13 in '93. I attended the University of Akron Law
14 School. I graduated in '98.
15 I was initially employed as a probation
16 officer in the Ashtabula County Juvenile Court.
17 I then had a short stint with the City of
18 Youngstown as a prosecutor when I
19 passed the bar in November of '98.
20 In August of 2001 I became employed at the
21 Mahoning County Prosecutor's Office as an
22 assistant county prosecutor. I eventually became
23 the assistant chief of criminal division.
24 Q At Mahoning County?
25 A Yes. In January of 2006 I was appointed by

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1 Mayor Williams as the prosecutor for the City of
2 Youngstown.
3 Q I don't know much about Youngstown politics
4 or the extent of the difference between Mahoning
5 County and City of Youngstown, et cetera.
6 In a nutshell, how is it you went from
7 Mahoning County employment to being appointed by
8 The Mayor as the prosecutor for the City of
9 Youngstown?
10 A After The Mayor had been elected in November
11 of 2005, he solicited applications for all
12 cabinet-level positions. I viewed it as a step
13 up. I applied. I was interviewed and was
14 selected.
15 Q All right. Again, this was in mid 2006?
16 A January of 2006.
17 Q January of '06. I assume The Mayor, to whom
18 you're referring to, is Mayor Williams?
19 A Yes.
20 Q The current mayor?
21 A Yes.
22 Q Did you have a relationship with Mayor
23 Williams before you were given the position or
24 appointed to the position?
25 A No.

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1 Q I have a couple questions that are probably
 2 obvious. Just to confirm, my understanding is
 3 correct that when you got to the City of
 4 Youngstown when you started working there Bassil
 5 already was working with the city?
 6 A Yes.
 7 Q He was working there as assistant
 8 prosecutor?
 9 A Yes.
 10 Q When you came in, you were Bassil's boss from
 11 the start?
 12 A Yes.
 13 Q You were the boss of all assistant
 14 prosecutors in your position as prosecutor?
 15 A Yes.
 16 Q You had no involvement at all in hiring
 17 Bassil?
 18 A No.
 19 Q You had no involvement whatsoever in
 20 evaluating Bassil's performance up to January of
 21 2006?
 22 A No.
 23 Q Okay. When you started your role as
 24 prosecutor for the City of Youngstown, what did
 25 you do to first get to know the folks working for

Page 15

1 you, the assistant prosecutors?
 2 A We sat down either as a group or
 3 individually. There was nothing formal. I
 4 basically spoke with them to get to know them
 5 better.
 6 Q Okay. Were there files containing
 7 assessments of past performance, et cetera, that
 8 you would sit down and review to get yourself
 9 acquainted with their performance?
 10 A I had no such files.
 11 Q Did you have any conversations with your
 12 predecessor about the folks working under him?
 13 A No.
 14 Q In January of 2009 you had no input, no sort
 15 of prior basis, for understanding how Bassil's
 16 performance matched up against any of the other
 17 prosecutors?
 18 A No.
 19 Q You didn't do anything to try to assess how
 20 they had performed, Bassil, or any of the other
 21 assistant prosecutors, before January of 2006?
 22 A No.
 23 Q You just came into the job, and you decided
 24 you would make your own assessment of their
 25 performance and their contributions going

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1 forward?
 2 A Yes.
 3 Q Help me please understand the hierarchy that
 4 is your current position, and to the extent it's
 5 any different, how your position evolved since
 6 January of 2006 to the current date.
 7 Who do you report to, what type of authority
 8 do you have, et cetera?
 9 A The hierarchy of the executive branch of the
 10 City of Youngstown is The Mayor is at the top,
 11 the law director is a cabinet-level position that
 12 answers directly to The Mayor of Youngstown, and
 13 the law director is the direct supervisor of the
 14 city prosecutor.
 15 Q You're the city prosecutor?
 16 A Yes.
 17 Q Are you also a cabinet member?
 18 A No.
 19 Q I heard you, I thought, tell me when Mayor
 20 Williams was elected he solicited resumes for
 21 cabinet-level position and you applied?
 22 A True.
 23 Q At one point in time were you a cabinet
 24 member?
 25 A No.

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1 Q Cabinet-level position?
 2 A No. I use that term generically to upper
 3 level. He does refer to me as a cabinet member
 4 or upper level individual. However, by virtue of
 5 the charter and by definition I am not.
 6 Q What charter are you referring to?
 7 A The charter of the City of Youngstown.
 8 Q Who is on Mayor Williams' cabinet? The law
 9 director? Start with position first please.
 10 A The law director, the finance director, the
 11 police chief, fire chief, water commissioner. I
 12 believe the buildings and grounds supervisor.
 13 Beyond that, I'm not sure.
 14 Q Beyond that you're not sure meaning you can't
 15 recall any other people or you can't think of who
 16 else they are?
 17 A No. What I mean by that is that I'm not
 18 sure. I mean that there are other individuals
 19 who may straddle that line, as I do. I'm aware
 20 he treats them as such, but by definition of the
 21 charter, he may not be.
 22 Q That was my next question, which is using
 23 your term, folks who straddle the line, meaning
 24 not technically, as you indicated, according to
 25 the charter, a cabinet-level position, who else

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1 besides yourself is regarded as a cabinet-type
 2 position by Mayor Williams?
 3 **A** Going back to the buildings and grounds
 4 supervisor, depending on if he is or is not
 5 within the definition.
 6 **Q** Okay.
 7 **A** The health commissioner, the chief of staff,
 8 the civil service commissioner, the street
 9 supervisor, the community development agency or
 10 CDA director, that's about the extent that I can
 11 recall.
 12 **Q** All right. Who does the civil service
 13 director report to?
 14 **A** The Mayor and the Civil Service Commission.
 15 **Q** Who does the street supervisor report to
 16 directly?
 17 **A** I'm not certain. I'm not certain. It would
 18 be a guess.
 19 **Q** Who do you think that the street supervisor
 20 reports to?
 21 **A** I think that the street supervisor reports to
 22 the buildings and grounds commissioner.
 23 **Q** The CDA director, who do you believe they
 24 report directly to?
 25 **A** I believe the CDA director reports to The

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1 Mayor.
 2 **Q** And what about the health commissioner?
 3 **A** Likewise.
 4 **Q** The health commissioner directly reports to
 5 The Mayor?
 6 **A** Yes.
 7 **Q** Who does the chief of staff report directly
 8 to?
 9 **A** Mayor.
 10 **Q** Okay. Other than yourself, can you point me
 11 to anyone else who's regarded as a cabinet-level
 12 position by The Mayor who doesn't directly report
 13 to The Mayor?
 14 **A** No.
 15 **Q** Okay. How long have you been directly
 16 reporting to the law director?
 17 **A** Since my appointment January of 2006.
 18 **Q** Is that spelled out somewhere that says
 19 within the confines of the City of Youngstown the
 20 law director is the direct supervisor of the
 21 chief prosecutor?
 22 **A** It is.
 23 **Q** Or words to that effect?
 24 **A** It's either in the City Charter, the Revised
 25 Code, or possibly both.

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1 **Q** But, certainly, one of those two sources, if
 2 not both, specifically mandate that you don't
 3 report to The Mayor but rather you report in your
 4 position as chief prosecutor to the law
 5 director?
 6 **A** I don't know that it necessarily establishes
 7 that hierarchy that you're pursuing. It says
 8 that the city may appoint a city prosecutor, and
 9 I think it goes from there.
 10 **Q** I guess my question is actually trying to be
 11 a little more precise. Is there any authority I
 12 can look to that demonstrates why it is that of
 13 all the cabinet members or people who are
 14 regarded as cabinet members you're the only one
 15 who has a direct report in between yourself and
 16 The Mayor?

17 **MR. ABBARNO:** That's not what
 18 his statement was. I think he
 19 said the street supervisor may
 20 also report to the buildings and
 21 grounds commissioner as a go
 22 between.

23 **MR. POLK:** Is that your way
 24 of saying objection?

25 **MR. ABBARNO:** No. I'm saying

Page 21

1 the statement was incorrect. He
 2 said street supervisor.

3 **MR. POLK:** He said he didn't
 4 know three questions ago. If we
 5 went back, I said, can you point
 6 me to anybody else who has a
 7 direct report other than The
 8 Mayor? We can argue about his
 9 testimony.

10 **MR. ABBARNO:** I won't argue.

11 **MR. POLK:** You can say
 12 objection and he can correct it
 13 himself.

14 **MR. ABBARNO:** I'm simply
 15 pointing out --

16 **MR. POLK:** If we can do that,
 17 we can point out all the evidence,
 18 that's what we would do in the
 19 context of the case. I know what
 20 you're doing. I do it too.

21 **Q** Now, with the benefit of your lawyer's
 22 comments and his objection, can you answer my
 23 question, please, which is: Is there anybody
 24 else who is regarded as a cabinet member who has
 25 a direct supervisor between themselves and The

<p style="text-align: right;">Page 22</p> <p>1 Mayor other than yourself?</p> <p>2 A I can't answer that question.</p> <p>3 Q Okay. Can you identify anyone like that for</p> <p>4 me?</p> <p>5 A I have done my best to identify who I believe</p> <p>6 is in that situation. I can't go beyond what I</p> <p>7 told you.</p> <p>8 Q You can't tell me one way or the other</p> <p>9 whether or not the street supervisor reports</p> <p>10 directly to The Mayor or not?</p> <p>11 A No.</p> <p>12 Q With that in mind, is there any authority out</p> <p>13 there, anything I can look to, that tells me why</p> <p>14 it is or that it is that you have a direct</p> <p>15 supervisor between yourself and The Mayor unlike</p> <p>16 most if not all the other folks regarded as</p> <p>17 cabinet members?</p> <p>18 A The short answer is no, I can't point you to</p> <p>19 anything beyond what I have identified.</p> <p>20 Q What involvement in your hiring did the law</p> <p>21 director have?</p> <p>22 A None.</p> <p>23 Q What type of authority over you does the law</p> <p>24 director have with respect to your compensation?</p> <p>25 A I don't know.</p>	<p style="text-align: right;">Page 24</p> <p>1 director position have over your position?</p> <p>2 A She has final say over most if not all the</p> <p>3 decisions. However, that's rarely the case where</p> <p>4 she becomes involved in the day-to-day operations</p> <p>5 of the prosecutor's office.</p> <p>6 Q Okay. When you say all decisions, do you</p> <p>7 mean that literally? For example, with respect</p> <p>8 to decisions about plea agreements, decisions</p> <p>9 about how late to keep the office open, virtually</p> <p>10 every decision the law director has the ultimate</p> <p>11 say in?</p> <p>12 A Theoretically, yes.</p> <p>13 Q Is that in practice how it works in the</p> <p>14 prosecutor's office?</p> <p>15 A No.</p> <p>16 Q Okay. How does it work in the practice of</p> <p>17 the prosecutor's office? Who runs the</p> <p>18 prosecutor's office?</p> <p>19 A I do.</p> <p>20 Q Okay. Who decides office hours and office</p> <p>21 policy within the prosecutor's office?</p> <p>22 A Office hours are set by the City of</p> <p>23 Youngstown.</p> <p>24 Q All right. Who decides policy within the</p> <p>25 prosecutor's office?</p>
<p style="text-align: right;">Page 23</p> <p>1 Q Evaluation of performance?</p> <p>2 A None that I know of.</p> <p>3 Q Assignment of duties and tasks, initiatives?</p> <p>4 A She can assign tasks or initiatives.</p> <p>5 Q Does she?</p> <p>6 A Rarely.</p> <p>7 Q Okay. Can you tell me a time in the last</p> <p>8 several years where she assigned to you a task or</p> <p>9 initiative?</p> <p>10 A Housing court.</p> <p>11 Q Was that essentially to create housing court?</p> <p>12 A No. To take over operations of housing</p> <p>13 court.</p> <p>14 Q I see. Explain for me, please, then what the</p> <p>15 law director's responsibilities over the</p> <p>16 prosecutor's office are.</p> <p>17 A In what fashion?</p> <p>18 Q In general operating sense.</p> <p>19 A She has very little, if no, input into the</p> <p>20 operation of the prosecutor's office.</p> <p>21 Q Explain for me, please, what type of</p> <p>22 involvement she has. We're saying she. We both</p> <p>23 know the law director is a female. I'm talking</p> <p>24 positionally now explain to me what type of</p> <p>25 authority or what type of power does the law</p>	<p style="text-align: right;">Page 25</p> <p>1 A In what type of policy or what respect?</p> <p>2 Q Day-to-day policies, practices, assignments.</p> <p>3 Who runs the prosecutor's office?</p> <p>4 A Well, I'm not playing games. I don't know</p> <p>5 what you mean. If you're talking about charging</p> <p>6 versus personnel policy, you would get two</p> <p>7 different answers.</p> <p>8 Q Okay. Tell me the difference, please.</p> <p>9 A In regard to criminal matters, I run the</p> <p>10 daily operations of the prosecutor's office. We</p> <p>11 have every-day contact with the police</p> <p>12 department.</p> <p>13 I decide how cases are handled, charged, or</p> <p>14 disposed of. I assist or assign someone to</p> <p>15 assist in enforcement of investigations, and</p> <p>16 otherwise oversee all aspects of the operation of</p> <p>17 the criminal side of it.</p> <p>18 Q All right. What about personnel matters?</p> <p>19 A Those are established by the City of</p> <p>20 Youngstown.</p> <p>21 Q Who governs them? Who maintains those things</p> <p>22 on a day-to-day basis? The law director?</p> <p>23 A She's one cog in the wheel. It's interaction</p> <p>24 between The Mayor, the other executive level</p> <p>25 individuals, and city council.</p>

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25 Q When roughly did you verbally reprimand [REDACTED]?

Page 29

24 Q What did you do? Did you sit down with him
25 and talk to him?

25 A [REDACTED] FILMS

Page 30

1 A No.

2 Q Okay. How did you verbally reprimand him

3 then?

4 A Whenever I ran into him, I would tell him,

5 work starts at 8:30.

6 Q I see. Okay. It wasn't a formal meeting.

7 It was more of a work starts at 8:30 suggestion

8 that you have to be here on time?

9 A Correct.

10 Q Did you ever reduce any of your 2006

11 discussions with Bassil about what you have said

12 to be tardiness to writing?

13 A No.

14 Q Other than talking with Bassil in 2006 about

15 the time he got into work, what you called

16 tardiness, when is the next time you reprimanded

17 or disciplined Mr. Ally at all?

18 A I would again use the generic term of

19 whereabouts. I didn't know where he was when I

20 would need to speak with him or if something

21 needed done.

22 Q When was the next time -- if 2006 was a

23 discussion about tardiness, when was the next

24 time you had any type of disciplinary type

25 discussion with Bassil?

Page 31

1 A 2006.

2 Q Okay. Let's do it this way. In 2006 you

3 talked to Bassil about tardiness and

4 whereabouts?

5 A Yes.

6 Q Were any of those discussions in 2006 ever

7 reduced to writing by you or anyone else?

8 A By me, no. By anyone else, not that I'm

9 aware of.

10 Q To your knowledge?

11 A No.

12 Q Did you discipline Bassil at all in 2007?

13 A Yes.

14 Q How so?

15 A Verbally and in writing.

16 Q Okay. For what?

17 A Verbally. For the same things.

18 Q Tardiness?

19 A Tardiness and whereabouts.

20 Q All right.

21 A And then in June of 2007 he was issued a

22 written reprimand.

23 Q Why?

24 A For violating a direct order on how to handle

25 the disposition of a case and for tardiness,

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1 compliance with my discovery policy, and

2 compliance with the policies I had set regarding

3 the disposition of criminal cases.

4 Q That was in June of 2007?

5 A Yes.

6 Q Is there some type of documentation somewhere

7 about that sort of discipline?

8 A Yes.

9 Q Okay. Would it be in Mr. Ally's personnel

10 file?

11 A I don't maintain personnel files.

12 Q Would that have been something that went to

13 the Ohio Civil Rights Commission?

14 A I don't know.

15 Q In June of 2007 did you author some type of a

16 memo to Bassil then regarding these issues?

17 A I did.

18 Q Any other type of discipline verbally or in

19 writing in 2007 that you issued to Bassil or that

20 you knew about that was issued to Bassil?

21 A Both.

22 Q Okay.

23 A In December of 2007 there was a written memo

24 that I had prepared that I then reviewed with

25 him.

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1 Q Regarding what?

2 A A number of topics. Can I see the document?

3 Do you have it with you?

4 Q I don't have any discipline from 2007.

5 MR. ABBARNO: You got it

6 yesterday.

7 THE WITNESS: I need to see

8 it.

9 MR. ABBARNO: We can resend

10 it if you didn't get it. It

11 should have been part of the

12 e-mail you got yesterday.

13 MR. POLK: I'll grab it at a

14 break. I don't have it in this

15 stack of documents here.

16 Your lawyer provided us with

17 some things yesterday afternoon

18 that apparently I don't have in

19 front of me right now. At a break

20 I will get it for you.

21 THE WITNESS: I would

22 appreciate that.

23 MR. ABBARNO: I thought that

24 stuff was in the OCRC file. I

25 didn't prepare the OCRC file.

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1 MR. POLK: So did I. That's
2 where my head was.
3 Q So, whatever it says, you issued a memo in
4 December of 2007 to Bassil talking about various
5 things you have called a form of discipline?
6 A Yes.
7 Q From your memory, any other discipline other
8 than the tardiness and verbal discussions, the
9 June 2007 written memo, or December 2007 written
10 memo? Any other type of discipline issued to
11 Bassil Ally in 2007?
12 A Can I have a minute to ask Ken a question?
13 MR. ABBARNO: You have to
14 answer that first before you can
15 talk to me. Sorry.
16 THE WITNESS: That's all
17 right.
18 MR. POLK: I was going to say
19 the same thing.
20 THE WITNESS: I'm a rookie at
21 this.
22 MR. POLK: No. You're not
23 doing anything wrong. It's just
24 that Ken couldn't talk to you
25 while the question is pending. I

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1 wouldn't let you, but at the same
2 time I want to hear what you have
3 to say.
4 A As I was sitting here, I recalled that there
5 was a memo issued to all staff about call-off
6 procedure in November of 2007.
7 Q All right. Would you characterize that as a
8 discipline on Bassil though?
9 A Not directly.
10 Q All right. Would you characterize that as
11 discipline to everybody working under you, sort
12 of corrective measures?
13 A I would characterize it as a corrective
14 measure. That's a fair characterization.
15 However, it was his continued tardiness that lead
16 up to the memo that had to be addressed to
17 everyone.
18 MR. POLK: Do you still need
19 to talk to your lawyer? Just so
20 you understand how it works, the
21 rule is while a question is
22 pending you can't talk to your
23 lawyer.
24 There are certain
25 exceptions. For example, if I ask

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1 you a question and you're not sure
2 whether or not in answering it you
3 would be revealing privileged
4 information, I want you to talk to
5 him. I don't want you to waive
6 any privilege. I would be more
7 than happy to do that.
8 If it's a factual question,
9 you can't take a break. If a
10 clarification needs to be made,
11 I'll take that too.
12 THE WITNESS: I wasn't sure.
13 MR. POLK: No problem.
14 Q With respect to this November of 2007 memo,
15 is it your testimony that the memo was issued to
16 all assistant prosecutors, however, it was
17 Bassil's conduct specifically that effectuated
18 that memo or lead to the memo?
19 A Yes.
20 Q It was Bassil's conduct and no other
21 prosecutor's conduct that lead to the memo?
22 A No. If you recall, I indicated that
23 [REDACTED]
24 Q Fine. Fair. In 2008 you issued a memo that
25 included discipline to Mr. Ally?

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1 A I did.
2 Q Okay. We'll get into that in a moment. In
3 2006, any of the discipline that you issued to
4 Mr. Ally, did you discuss it and get prior
5 approval for it from the law director?
6 A No.
7 Q With respect to anything you did
8 discipline-wise to Bassil Ally in 2007, did you
9 discuss it and get approval for it from the law
10 director?
11 A No.
12 Q Prior to January of 2008, had you ever
13 terminated anybody who worked under you?
14 A At the City of Youngstown?
15 Q Yes.
16 A No.
17 Q By that I mean literally, whether it's
18 assistant prosecutors or staff or anyone else who
19 ultimately reported up to you. Did you have any
20 role in terminating anybody at the City of
21 Youngstown prior to January of 2008?
22 A No.
23 Q Prior to January of 2008, with respect to any
24 of the discipline you issued to anyone working
25 under you, whether it be the tardiness

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1 discussions with the other attorneys or the
2 whereabouts discussions, et cetera, with respect
3 to any of that discipline, did you, with respect
4 to any of those instances, talk to and get
5 approval for issuing that discipline from the law
6 director?
7 **A No.**
8 Q With respect to each of the instances of
9 discipline you effectuated in either 2006 or
10 2007, why didn't you talk to the law director
11 about it first?
12 **A I felt there was no need to do that.**
13 Q Did you believe you had the authority to
14 effectuate that discipline?
15 **A Yes.**
16 Q As of January of 2008, what authority did you
17 believe you had with respect to the prosecutor's
18 office at the City of Youngstown relative to
19 personnel decisions?
20 **A By personnel, do you mean hiring and firing?**
21 Q Start there. Sure.
22 **A I had no direct authority to hire, and I was**
23 **not sure about my ability to fire.**
24 Q So taking you back to January 1, 2008 -- not
25 today but January 1, 2008, did you believe you

Page 39

1 had the ability to unilaterally hire somebody to
2 work under you?
3 **A No.**
4 Q How did that process work? It had to go
5 through other channels?
6 **A Yes.**
7 Q What channels?
8 **A Once interviews were completed, if a**
9 **candidate for the job was adequate, they met the**
10 **requirements, the process would go through the**
11 **Board of Control for approval and certification**
12 **that the funds were available in that position,**
13 **and then it would go to The Mayor for the**
14 **issuance of an appointment letter.**
15 Q Did that policy and practice apply for
16 assistant prosecutors and staff alike?
17 **A No.**
18 Q It was just assistant prosecutors?
19 **A Yes.**
20 Q With respect to staff, do you have the
21 ability to hire staff?
22 **A Those are civil service positions.**
23 Q Thank you. With respect to terminations,
24 going back to January 1, 2008, did you believe
25 you had the ability to fire or terminate

Page 40

1 employees?
2 **A I wasn't sure.**
3 Q You didn't know?
4 **A No.**
5 Q Okay. January 1, 2008, who were you sure had
6 the ability to terminate an employee within the
7 prosecutor's office?
8 **A The Mayor.**
9 Q Anyone else?
10 **A Iris.**
11 Q As of --
12 **A Sorry. The law director.**
13 Q Sure. Fair. As of January 1, 2008 you
14 believed The Mayor had the ability to terminate
15 an employee?
16 **A Not a belief. That's a fact.**
17 Q As of January 1, 2008, was it also a fact
18 that the law director could terminate an
19 employee?
20 **A No. That was a belief.**
21 Q As you sit here today, do you have a better
22 understanding of who has the ability to terminate
23 employees within the prosecutor's office?
24 **A Yes.**
25 Q Tell me about that, please.

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1 **A It's The Mayor.**
2 Q Does the law director have the ability to
3 terminate employees in the prosecutor's office?
4 **A No.**
5 Q Do you?
6 **A No.**
7 Q How is it you became better educated about
8 that today versus January 1, 2008?
9 **A As it relates to your client.**
10 Q Okay. Tell me how it is you actually learned
11 that though.
12 **A I learned after January 11, 2008 that only**
13 **The Mayor has authority to discharge employees.**
14 Q How did you learn that?
15 **A Because I attempted to discharge him on**
16 **January 11, 2008. I learned after the fact I**
17 **didn't have authority to do so.**
18 Q How did you learn that?
19 **A This may be one of the issues I have to ask**
20 **him.**
21 Q Ask your lawyer?
22 **A Yes.**
23 MR. ABBARNO: Well, in this
24 instance you can tell him who
25 informed you of it.

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1 THE WITNESS: Okay.

2 A The law director informed me.

3 Q Iris?

4 A Yes.

5 Q What's her last name?

6 A Gugliucello.

7 Q Please spell that.

8 A G-U -- I froze. G-U-G-L-U-C-E-L-L-O.

9 Q Can we call her Iris?

10 A Please.

11 Q What did Iris say to you on that subject?

12 How is it that you learned that information?

13 MR. ABBARNO: You can answer

14 this question.

15 A Okay. She informed me after meeting with The

16 Mayor that only The Mayor has authority to

17 discharge executive branch employees.

18 Q So Iris told you on or about January 11, 2008

19 that only The Mayor has the authority to

20 terminate executive branch employees?

21 A It was after that date.

22 Q Fair enough. How long after?

23 A The following week.

24 Q Following week?

25 A Yes.

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1 Q Back to my question. Sometime within the

2 week following January 11, 2008, Iris, the law

3 director, told you only The Mayor has the

4 authority to terminate executive-level

5 employees?

6 A Correct.

7 Q What does that encompass? What is an

8 executive-level employee?

9 A I think I said executive branch.

10 Q Executive-branch employees, okay. What is an

11 executive-branch employee?

12 A Employees as distinguished from the judicial

13 branch of the legislative branch that are

14 appointed or hired by The Mayor of the City of

15 Youngstown.

16 Q Those would be assistant prosecutors?

17 A Among them.

18 Q What other positions?

19 A Firefighters, police officers, water

20 department, street department. In summary,

21 anyone other than judicial or legislative

22 employees. Just about anyone.

23 Q Okay. Taking a step back now, when you were

24 appointed chief prosecutor and you assumed that

25 position, did you take the opportunity to

Page 44

1 introduce yourself or meet the assistant

2 prosecutors?

3 A Certainly.

4 Q Bassil was one of them?

5 A He actually came to me first.

6 Q All right. What were your initial

7 impressions of Bassil in 2006 when you were

8 appointed?

9 A It was too soon to form an impression. He

10 seemed competent. That was about it.

11 Q Had you heard anything about him from any

12 source as of that point in time whether or not he

13 was good at his job, a good person, anything

14 about him?

15 A Very little. I knew who he was just by being

16 in the legal circles in our community, but no.

17 Other than those things, no.

18 Q And being in legal circles, as I am as well,

19 you sometimes have a sense for whether or not

20 somebody is good, bad, nice, not nice, et

21 cetera. Sometimes you don't at all. What was it

22 with you? Any sense?

23 A I didn't have an opinion.

24 Q All right. Did you know going into your

25 appointment that Bassil was Muslim?

Page 45

1 A No.

2 Q Did you have any concept at all?

3 A No.

4 Q When did it occur to you that -- what

5 religion are you?

6 A Catholic.

7 Q Okay. When did you learn that Bassil was

8 Muslim?

9 A After I started -- sorry. After I started at

10 the City of Youngstown and just during casual

11 conversations.

12 Q With?

13 A Bassil.

14 Q How did that come up?

15 A It came up first soon after I was appointed

16 when he came into my office and asked about

17 attendance at Friday services.

18 Q What did he say?

19 A He told me that seeing as how I had frozen

20 the courtroom rotation and he would be assigned

21 to Judge Douglas's court for the time being, that

22 he would like to attend Friday services, as they

23 were important to him. We talked a little bit

24 about what they were very briefly.

25 I told him that as long as it didn't

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1 **interfere with the operations of the office I was**
 2 **okay with that.**
 3 Q At that point in time did you have an
 4 understanding about what the practice had been in
 5 the prosecutor's office with respect to
 6 Mr. Bassil and his attendance at Friday prayer
 7 ceremonies?
 8 A No.
 9 Q Did he communicate to you at that initial
 10 meeting that he had been attending Friday
 11 services for long periods of time under your
 12 predecessors?
 13 A No.
 14 Q Did you come to learn that that was the case
 15 at some point in time?
 16 A No.
 17 Q So right now is the first time you were
 18 learning he had done that under your
 19 predecessors?
 20 A Yes.
 21 Q Okay. Prior to today, you didn't know that
 22 Bassil was attending prayer services on Fridays
 23 for years before your appointment as city
 24 prosecutor?
 25 A No. What you're saying is contrary in some

Page 47

1 **respect to what he told me.**
 2 Q How is it contrary?
 3 A **It's contrary in that he indicated to me that**
 4 **there were times he could not go based on the**
 5 **various courtroom rotation. It was something he**
 6 **wanted to do. He felt it was important to him.**
 7 **Even after that conversation I had no concept**
 8 **about what he had done in the past.**
 9 Q So today is the first day that somebody is
 10 sharing with you, at least as you would put it in
 11 an allegation, that Bassil had been attending
 12 Friday prayer services before your appointment
 13 under your predecessors?
 14 MR. ABBARNO: Objection.
 15 You're mischaracterizing his
 16 testimony.
 17 A No. I don't agree with that statement.
 18 Q Why?
 19 A **Could you repeat that or have it read back to**
 20 **me, please?**
 21 Q What did I mischaracterize? Here's what I'm
 22 trying to understand is whether or not when
 23 Bassil met with you for the first time in 2006
 24 and discussed with you his desire to attend
 25 Friday prayer services, whether or not prior to

Page 48

1 that meeting you had any notion or any concept
 2 that Bassil had in fact been attending Friday
 3 prayer services under your predecessors?
 4 A No. Not --
 5 MR. ABBARNO: Are you now
 6 talking prior to the meeting?
 7 Q I'm going to go over it again. Prior to the
 8 discussion you shared with me about Bassil, you
 9 had no concept, right?
 10 A **Not a grain of understanding.**
 11 Q Now, during the course of your first
 12 discussion with Bassil on the subject, did you
 13 learn from Bassil that Bassil had been attending,
 14 under your predecessors, Friday prayer services?
 15 A **I learned he had been attending when he**
 16 **could.**
 17 Q Fair enough. What did Bassil share with you
 18 about the regularity with which he was attending
 19 prayer services on Fridays under your
 20 predecessors?
 21 A **That the courtroom rotations, as they were**
 22 **prior to my administration, sometimes caused**
 23 **difficulties, sometimes caused difficulties in**
 24 **attending.**
 25 Q Bassil, in sum and substance, shared with you

Page 49

1 during the first meeting it was very important
 2 for him to try to attend Friday prayer service
 3 under your administration?
 4 A Yes.
 5 Q You told him that that wouldn't be a
 6 problem?
 7 A **I told him it wouldn't be a problem as long**
 8 **as it didn't interfere with the operations of the**
 9 **office.**
 10 Q Now, coming into that meeting, did you have
 11 any type of opinions about folks who are Muslim?
 12 A No.
 13 Q Did you have any bias one way or the other in
 14 favor or against Muslims?
 15 A No.
 16 Q After your first meeting with Bassil in 2006,
 17 did you learn from Bassil or any other source
 18 anything more about Bassil's attendance at
 19 Friday's prayer ceremonies under your
 20 predecessors?
 21 A No.
 22 Q At some point in time did Bassil's attendance
 23 at prayer services on Fridays under your
 24 supervision become a problem?
 25 A No.

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1 Q It was never a problem?

2 A **The only time it posed a problem was on**

3 **January 11, 2008.**

4 Q Okay. So on January 11 his desire to attend

5 his prayer service at his mosque was a problem?

6 A **No.**

7 Q Okay. I'm misunderstanding.

8 A **Maybe I misunderstood you.**

9 Q Here's my question. From the moment Bassil

10 told you, I would like to try to attend Friday

11 prayer services, in 2006, after you were

12 appointed, throughout the course of his

13 employment up to today has the fact that Bassil

14 has desired to attend Friday prayer services ever

15 presented a problem?

16 A **No.**

17 Q All right. Has Bassil's desire to attend the

18 Friday prayer services ever, in your opinion,

19 conflicted or caused a problem with work

20 responsibilities or work duties?

21 A **If you're using the terms generically, the**

22 **answer is yes.**

23 Q All right. In any respect, has his

24 attendance or desire to attend Friday prayer

25 service caused any type of a work problem?

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1 A **The attendance itself, no. No. No.**

2 Q Okay. You were hesitating. Tell me what you

3 were going to say, please.

4 MR. ABBARNO: Objection. He

5 answered the question.

6 Q My question is: What were you going to say?

7 MR. ABBARNO: Did you answer

8 the question?

9 THE WITNESS: I did.

10 Q What were you going to say?

11 MR. ABBARNO: Did you say

12 what you were going to say?

13 THE WITNESS: I did.

14 MR. POLK: Is this your depo,

15 Ken?

16 Q When you looked at me and hesitated, what

17 were you going to say?

18 A **I wasn't going to say anything. I hesitated**

19 **because I was trying to sort through your**

20 **questions.**

21 Q Okay. That's your testimony?

22 A **Yes.**

23 Q Great. Fine. You didn't need Ken to tell

24 you that.

25 MR. ABBARNO: Every time he

Page 52

1 takes a breath are you going to

2 assume he was going to say

3 something?

4 MR. POLK: No. I don't have

5 it on videotape when he hesitates

6 and acts like he will hesitate.

7 MR. ABBARNO: Objection. We

8 have to keep it a little light.

9 MR. POLK: Pardon me?

10 MR. ABBARNO: Keep it a

11 little light. Go ahead.

12 MR. POLK: I don't understand

13 what that means.

14 MR. ABBARNO: I don't

15 either. Go ahead.

16 Q Okay. I'll ask you some fundamental

17 questions. I want to understand your position.

18 So we can get our understanding straight, my

19 first question to you is throughout Bassil's

20 employment up to today, have you ever disciplined

21 Bassil for attending or trying to attend Friday

22 prayer ceremonies at his mosque?

23 A **No.**

24 Q Have you ever attempted to discipline Bassil

25 for either attending or trying to attend Friday

Page 53

1 prayer ceremonies at his mosque?

2 A **No.**

3 Q Your position is everything that has

4 transpired between yourself and Bassil related to

5 discipline, et cetera, is completely separate and

6 apart from his desire to attend Friday prayer

7 ceremonies at his mosque?

8 A **Yes.**

9 Q Sitting here today, you have worked with

10 Bassil for several years. Tell me your opinions,

11 please, about his performance as assistant

12 prosecutor.

13 A **His performance is substandard.**

14 Q Substandard?

15 A **That's my answer.**

16 Q I didn't hear you.

17 A **My answer is substandard.**

18 Q As of today, your testimony is that Bassil's

19 performance as assistant prosecutor is

20 substandard?

21 A **Yes.**

22 Q All right. Has it always been substandard in

23 your mind since you started working with him in

24 2006?

25 A **Since I started, no. There was a period**

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1 **where I didn't have an opinion.**
 2 Q Fair enough. Ever since the moment in time
 3 you began to form your own opinions about Bassil
 4 and his performance within presumably weeks or
 5 months of taking over as city prosecutor, has
 6 your opinion always been Bassil as assistant
 7 prosecutor is a substandard performer?
 8 A Yes.
 9 Q I have seen in some of the documents and some
 10 of the other things I have looked through
 11 references to performance reviews or performance
 12 review processes.
 13 Let me ask you this. Have you created
 14 performance reviews for Bassil during the course
 15 of your employment?
 16 A No.
 17 Q Have you created performance reviews for any
 18 of the other assistant prosecutors under you
 19 since you have been chief prosecutor?
 20 A No.
 21 Q Why not?
 22 A After I issued the initial memo indicating
 23 that I would perform evaluations, I chose not
 24 to. I chose not to.
 25 Q Why?

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1 A The office, first of all, was extremely
 2 busy. Second of all, I didn't know that they
 3 would -- I didn't know they would satisfy what my
 4 initial hope was for them.
 5 Q Did your decision not to follow through on
 6 your memo regarding the starting of the
 7 performance review process have anything to do
 8 with the pending litigation involving Bassil?
 9 A Do you have the dates I issued that, please?
 10 I'm trying to keep things in perspective.
 11 Q No problem. I may mark this later. I'll
 12 just show it to you right now. March 2008.
 13 A Okay.
 14 Q I'll represent to you it was after the
 15 instance on January -- it was after a charge was
 16 filed, et cetera, which was why I asked.
 17 A So your question was did my decision -- it
 18 was based directly on --
 19 Q I'll ask you again.
 20 A Please.
 21 Q Did your decision not to follow through on
 22 this memo in March of 2008 that you will be
 23 conducting individual performance reviews going
 24 forward on a bi-annual basis with respect to all
 25 assistant prosecutors, did your decision not to

Page 56

1 do that have anything to do with the pending
 2 litigation or pending legal issues involving
 3 Mr. Bassil Ally?
 4 A No.
 5 Q I want to talk to you in a general sense
 6 first about the lawsuit itself. What are your
 7 feelings about the fact that Bassil has brought a
 8 lawsuit against yourself and the city, et
 9 cetera?
 10 A My main feeling is surprise.
 11 Q Why?
 12 A I had actually felt that things had slightly
 13 improved, and then we got served with a lawsuit.
 14 Q Let's take a step back. That was a fair
 15 answer to my question in a literal sense. Let me
 16 ask you a little bit differently. What are your
 17 feelings about the fact that Bassil initiated
 18 legal proceedings against the city?
 19 Dating way back to early 2008, what were your
 20 feelings when that first came to your attention
 21 that he filed a charge of discrimination?
 22 A I was shocked that he had filed charges for
 23 discrimination.
 24 Q Why?
 25 A Because there was no discrimination.

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1 Q Were you upset?
 2 A No.
 3 Q Have you ever been upset by the fact that
 4 Bassil had filed a charge of discrimination or
 5 filed this lawsuit?
 6 A No.
 7 Q Have you ever treated Bassil differently than
 8 other assistant prosecutors as a consequence of
 9 the fact that he chose to file a charge of
 10 discrimination?
 11 A What do you mean by different?
 12 Q Unlike the others.
 13 A Do you mean professionally or personally?
 14 Q Start professionally.
 15 A Professionally I treat him no different now
 16 than I did since January 2006.
 17 Q Have you ever treated Bassil Ally different
 18 in a professional sense than you have any of the
 19 other assistant prosecutors as a consequence of
 20 the fact that he filed a charge of discrimination
 21 or a lawsuit?
 22 A Absolutely not.
 23 Q Have you ever treated Bassil Ally differently
 24 in a personal way than you do the other
 25 prosecutors as a consequence of the fact that he

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1 filed a charge of discrimination and a lawsuit?
2 **A Yes.**
3 Q How so?
4 **A I'm very much less trusting of him. I keep**
5 **him at arm's length. I measure what I say**
6 **because he twists and manipulates it. Just as a**
7 **general guarded feeling on our interactions.**
8 Q Do you believe that that sediment impacts
9 your professional working relationship with
10 Bassil?
11 **A No.**
12 Q Do you distrust the other assistant
13 prosecutors with whom you work?
14 **A No.**
15 Q Do you keep the other assistant prosecutors
16 with whom you work at arm's length?
17 **A It's different. I treat them all in their**
18 **own respect.**
19 Q Other than Bassil, is there any other
20 assistant prosecutor you would tell me today you
21 keep at arm's length, in your guard, or cagey
22 about what you say to them?
23 MR. ABBARNO: I don't believe
24 he used the word cagey.
25 MR. POLK: I did.

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1 MR. ABBARNO: I don't want it
2 to come back that he said it was
3 cagey.
4 **A My truthful answer to you is it depends on**
5 **what the subject is.**
6 Q All right. How so?
7 **A There are certain prosecutors who are, if it**
8 **was a legally sensitive matter, that I would not**
9 **take into -- that I would not share with others.**
10 **There are certain other prosecutors that have**
11 **other abilities or other areas of knowledge or**
12 **expertise that I would consult others.**
13 **I address each of them according to their**
14 **talents or inabilities, including your client.**
15 Q Other than Bassil, are there any other
16 assistant prosecutors that you would tell me you
17 believe twists words or manipulates your words?
18 **A Yes.**
19 Q All right. Who?
20 **A Dana Lantz.**
21 Q Do you believe Dana Lantz is dishonest?
22 **A No.**
23 Q Do you believe Bassil Ally is dishonest?
24 **A Dishonest, no.**
25 Q Do you believe he would lie?

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1 **A Yes.**
2 Q Do you believe Dana Lantz would lie?
3 **A Yes.**
4 Q What's the difference in your mind between
5 dishonest and lying?
6 **A Dishonest, in my context, means that you**
7 **would, for example, fix the outcome of a case or**
8 **take something in exchange for a certain**
9 **disposition. To me, there's a difference between**
10 **dishonesty and truthfulness.**
11 Q I see. The lie in your mind means not
12 telling the truth?
13 **A Correct.**
14 Q Whereas dishonest means maybe a bribery or --
15 **A Corruption.**
16 **(Brief recess)**
17 Q Help me understand, please, just the
18 framework of who the other assistant prosecutors
19 have been since January of 2008.
20 **A Staff-wise?**
21 Q Are there a number of them?
22 **A No. Only a few.**
23 Q Okay. Since January of 2008, who are the
24 people who held assistant prosecutor positions
25 working under you?

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1 MR. ABBARNO: Did you say
2 '06?
3 MR. POLK: I thought I said
4 '08.
5 MR. ABBARNO: Did you want
6 '06 or '08?
7 MR. POLK: I want to start in
8 January of 2008.
9 Q January 1, 2008, who were assistant
10 prosecutors who worked under you?
11 **A Pete Klimis, Brett Hartup.**
12 Q Spell the last names to the extent it's not
13 something really basic.
14 **A Bassil Ally.**
15 Q Pete Klimis.
16 **A Again the spelling is K-L-I-M-I-S; the second**
17 **is Brett Hartup, H-A-R-T-U-P; Bassil Ally; Dana**
18 **Lantz, L-A-N-T-Z.**
19 Q As of January 1, 2008, those were your four
20 assistant prosecutors?
21 **A Correct.**
22 Q All right. As of today, who are your
23 assistant prosecutors?
24 **A Brett Hartup, Bassil Ally, Dana Lantz, and**
25 **John Marsh, M-A-R-S-H.**

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1 Q When did John become assistant prosecutor
2 under you?
3 **A The end of March of '08. I would say the**
4 **31st, but don't hold me exactly to that date.**
5 Q Now, help me understand, please, when you
6 came in 2006, who were your assistant
7 prosecutors?
8 **A In January of 2006?**
9 Q Is that when you were appointed, January
10 2006?
11 **A That is, but there was a change in February.**
12 **In January 2006, it was Bassil Ally, Dana**
13 **Lantz -- you stumped me for a second. I'm**
14 **sorry. I'm drawing a blank. There were three.**
15 **There was one for each courtroom.**
16 Q Was it Pete or Brett?
17 **A No. Pete didn't come until the end of the**
18 **year. Brett didn't start until February of**
19 **2006.**
20 MR. ALLY: Tony Ferris.
21 THE WITNESS: Thank you. I
22 appreciate that.
23 **A I remember now that he covered until the new**
24 **assistant prosecutor came on board, because he**
25 **was going to be transferred to the law**

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1 **department.**
2 Q In January of 2006 you had three assistant
3 prosecutors: Bassil Ally, Dana Lantz, Tony
4 Ferris?
5 **A Yes.**
6 Q You said a couple months later it changed?
7 **A In February it changed.**
8 Q How did it change?
9 **A Tony Ferris was transferred to the law**
10 **department and Brett Hartup was hired.**
11 Q Any other changes?
12 **A In December of 2006 Pete Klimis was hired.**
13 Q From January of 2006 through today, the
14 assistant prosecutors working under you have
15 been, in some combination of, Bassil Ally, Dana
16 Lantz, Tony Ferris, Brett Hartup, Pete Klimis and
17 John Marsh?
18 **A Yes.**
19 Q Other than Bassil Ally, have any of the
20 assistant prosecutors who have worked under you
21 since 2006 been Muslim in terms of their
22 religion?
23 **A I don't know.**
24 Q Do you believe any of the other assistant
25 prosecutors are Muslim in terms of their

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1 religion?
2 **A I have no basis for that belief.**
3 Q You don't have a belief one way or the
4 other?
5 **A No.**
6 Q Do you have an understanding at all as to
7 whether or not any of the assistant prosecutors
8 under you other than Bassil Ally are of any type
9 of national origin, middle eastern in nature?
10 **A I have no idea.**
11 Q You have no idea whether by appearance or by
12 speaking to them about their background? Your
13 testimony is you have no clue?
14 **A I have no clue what they are.**
15 Q Before the break we were talking about a lot
16 of different types of interactions you were
17 having with Bassil, rationale behind them, why
18 you did or didn't do certain things.
19 My question to you is this. As you sit here
20 as chief law director and Bassil sits across from
21 you as somebody suing, would you like to see
22 Bassil no longer working at the City of
23 Youngstown?
24 **A First of all, I'm the prosecutor, not the law**
25 **director.**

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1 Q Did I call you the law director?
2 **A You did. You gave me a promotion.**
3 Q Some day maybe.
4 **A Your question is would I like to see him**
5 **continue to work?**
6 Q No. We made enough miscues that I'll
7 rephrase the question. Sitting in that chair as
8 the chief prosecutor in a case where Bassil Ally
9 is sitting across the table from you, works under
10 you as assistant prosecutor, and is suing you and
11 the city, would you like to see Bassil no longer
12 working under you and for the city?
13 **A No.**
14 Q Do you have any opinion in that regard?
15 **A My opinion is -- the answer is yes.**
16 Q What is your opinion?
17 **A My opinion is that I could continue to work**
18 **with him. That, as I had indicated earlier to**
19 **you, I thought the matters were beginning to**
20 **improve, and I thought that once the air was**
21 **cleared, as misunderstandings were dealt with,**
22 **that all of us could get past this.**
23 Q Do you believe that as of today, given all
24 that's gone on given the pending case, that that
25 still is the case?

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1 A Yes.
 2 Q You could continue to work with him?
 3 A Yes.
 4 Q You believe that yourself and Bassil and the
 5 city and everybody could go back to normal and
 6 work together into the future?
 7 A I can only speak for myself, and my answer is
 8 yes.
 9 Q Has there ever been a time since January 11,
 10 2008 where you felt that you could not work with
 11 Bassil?
 12 A On that day and for a few days thereafter.
 13 Q How did you go from being of a position you
 14 couldn't work with him anymore in January of 2008
 15 to the position you just expressed to me?
 16 A Calmer heads prevailed.
 17 Q Tell me what that means.
 18 A That means that I took a step back. When I
 19 was finally able to take a step back from the
 20 incident of January 11th and just start measuring
 21 where we were and what was going on, I felt that
 22 it was something we could get past.
 23 Q Okay. And to this day you feel that it's
 24 possible for him to continue working with you at
 25 the city without any problems with his

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1 employment?
 2 A I do believe it's possible, yes.
 3 Q Given where things are, do you believe Bassil
 4 is qualified and able to continue his employment
 5 for the indefinite future?
 6 A Yes.
 7 Q Okay. How does that square with your view
 8 that he's a substandard assistant prosecutor?
 9 A Because we all have room for improvement.
 10 Q You believe that you would give Bassil the
 11 opportunity to improve and continue to work under
 12 you with the city?
 13 A Yes.
 14 Q Fair enough. With respect to any of the
 15 discipline that you issued in 2006 or 2007 to any
 16 of the assistant prosecutors, did you ever
 17 consult with and get approval of The Mayor before
 18 doing that?
 19 A No.
 20 MR. POLK: I'll mark a couple
 21 exhibits. The way this works
 22 is -- we're both lawyers -- let me
 23 tell you what I'll do is mark some
 24 exhibits for purposes of your
 25 deposition. I'll mark them 1

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1 through whatever. I'll hand them
 2 to you. I'll give your lawyer a
 3 copy.
 4 Feel free to read every word,
 5 but in fairness to you I'll point
 6 you to a piece that I'm interested
 7 in, so I don't waste time. I
 8 don't want to tell you that you
 9 can't look at every word. Leave
 10 your copy with her. Your lawyer
 11 will keep a copy.
 12 THE WITNESS: I know the
 13 routine.
 14 (Plaintiff's Exhibit 1 was marked
 15 for identification.)
 16 Q Have you ever seen Exhibit 1 before?
 17 A I have.
 18 Q And you were telling me before the break
 19 there were a couple of written instances of
 20 discipline relative to Bassil Ally.
 21 I told you I would show them to you once I
 22 got them. I assume this is the letter or memo of
 23 June of 2007 to which you referred earlier.
 24 A It is.
 25 Q I have a couple of questions. The first is

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1 did you actually give this Plaintiff's Exhibit
 2 1 document to Bassil?
 3 A Yes.
 4 Q You handed it to him?
 5 A Yes.
 6 Q Personally?
 7 A I don't recall.
 8 Q Okay. Tell me about that.
 9 A If I issued a reprimand, whether it was to
 10 Bassil or any other prosecutor, there were times
 11 when I would call them in and speak with them and
 12 then hand this to them.
 13 There were times when I would lay it on their
 14 chair and then follow up with them once they got
 15 out of court.
 16 There were times when I -- no. Those are the
 17 two situations. I would either call them in and
 18 give it to them and go over it, or I would leave
 19 it with them and then call them in.
 20 Q Whose writing and handwriting is it on the
 21 top right, "spoke personally, 6/21/07"?
 22 A My handwriting.
 23 Q Why did you write this on that document?
 24 A This was the copy that I would keep, and that
 25 was a reminder to me that I went over it with

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1 him. That was a reminder to me I went over it
 2 with him.
 3 Q How did you prepare this document? Did you
 4 physically sit down and type something?
 5 A I did.
 6 Q On your computer?
 7 A Yes.
 8 Q Do you pull up like a memo form that you type
 9 in and go from there, like the header?
 10 A No.
 11 Q Tell me.
 12 A I just create the document in Word, and then
 13 we load our pre-printed letterhead. We're not
 14 high tech at the city yet.
 15 Q All right. You created this on your
 16 computer?
 17 A Yes.
 18 Q The one you still have and use?
 19 A That, I don't know.
 20 Q Why not?
 21 A There were some changes to -- computers go
 22 down, computers are replaced.
 23 Q Did your computer go down since June of
 24 2007?
 25 A I know there have been numerous times I

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1 called to have it worked on. The answer is yes,
 2 it has gone down. I don't know if it or part of
 3 it was replaced.
 4 Q Would you expect to be able to go back to
 5 your office today and pull this document up in
 6 its computer format if you needed to?
 7 A I would think so.
 8 Q Okay. If my client testified he never
 9 received Plaintiff's Exhibit 1, is that possible
 10 in your eyes?
 11 A Anything is possible.
 12 Q What I'm getting at is you indicated you
 13 thought you gave it to him. My point is I expect
 14 my client will say, I never seen this document
 15 before.
 16 What I'm getting at is would you characterize
 17 that as not possible, I know I gave it to him, or
 18 alternatively, okay, with respect to this
 19 document it's possible, and here's why?
 20 A My statement to your question would be I
 21 believe I gave this to him.
 22 (Plaintiff's Exhibit 2 was marked
 23 for identification.)
 24 Q I'm going to hand you Plaintiff's Exhibit 2
 25 Feel free to review it. I have similar questions

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1 as I did to the first one. Did you prepare this
 2 document in the same way you prepared Exhibit 1?
 3 A I did.
 4 Q Would you also believe that if you went back
 5 to your office today you would be able to pull up
 6 the electronic version of this December 5, 2007
 7 memo?
 8 A I would believe that.
 9 Q Do you believe you gave this document to
 10 Bassil?
 11 A That, I'm not sure about, with regard to this
 12 document.
 13 Q Why not?
 14 A Because when I reviewed it with him, I went
 15 through the list of issues that I had identified,
 16 and you'll note that with regard to paragraph 7
 17 there's a slash through the number. That means I
 18 did not review that issue with him.
 19 Q You did not?
 20 A I did not.
 21 Q All right. Let's take a big step back. Why
 22 did you prepare Exhibit 2?
 23 A It would have been prompted by the conduct
 24 identified and placed into this. I would have
 25 prepared this because he came in after 8:30.

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1 I would have prepared this because he was not
 2 participating in preparation of charges, so on
 3 and so forth, for each of the paragraphs
 4 contained in that.
 5 Q All right. Is it your writing on the
 6 right-hand top corner that says -- what does it
 7 say?
 8 A "Spoke personally."
 9 Q Why is it you wrote that on this memo as
 10 well?
 11 A Because this is the copy I would have
 12 retained.
 13 Q Is that your practice each time you sit with
 14 somebody and speak to them about a memo you
 15 record that on the top?
 16 A Yes.
 17 Q Now, why is it you went about addressing
 18 certain things from this memo with Bassil and not
 19 others?
 20 A The only thing I didn't address was paragraph
 21 7.
 22 Q What about paragraph 6? It looks like it has
 23 a strike through. That's why I ask.
 24 A No. I would have reviewed paragraph 6 with
 25 him. Youngstown treatment court was in Judge

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1 Douglas's court at that time, courtroom number
2 1. He was the prosecutor assigned to courtroom
3 number 1 at this point in time, so I would have
4 gone over it with him.
5 Q Why did you choose not to address paragraph 7
6 with Bassil in 2007?
7 A That caused me to pause. I wasn't sure how
8 to deal with that issue, and I wanted to seek
9 further advice.
10 Q From whom?
11 A I would have gone to the law director.
12 Q Did you go to the law director after you
13 wrote this memo and recorded what you did in
14 paragraph 7?
15 A Yes.
16 Q What did you talk to her about?
17 A I talked to her about the ability to
18 compensate for time when he would be attending a
19 religious service.
20 Q What did she tell you?
21 A She indicated that was appropriate that I
22 could account for all time for the employees in
23 the office or time out of the office.
24 Q As of December of '07, was the fact that
25 Bassil Ally had been attending Friday mosque

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1 prayer services becoming some type of an issue
2 for you?
3 A It was not becoming an issue. Well, what do
4 you mean by issue?
5 Q Well, the fact that you would write in a memo
6 and address it with him potentially.
7 A It was just a matter that had now come to my
8 attention.
9 Q What do you mean?
10 A It came to my attention because he had
11 applied for a block of vacation at the end of
12 2007 and carrying over into 2008. It would have
13 required us to adjust some schedules and make
14 sure we had sufficient personnel to cover the
15 office and court operations during that time.
16 As I was reviewing that, I realized that he
17 was typically out of the office in a normal
18 situation two hours or so in a week. Quick math
19 tells you that's a potential of 104 hours out of
20 the office in a year, and he was still sitting on
21 a large block of vacation time.
22 Q When did he make this vacation request?
23 About December of '07?
24 A Yes.
25 Q Before December of 2007, you hadn't

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1 recognized or appreciated that Bassil was
2 attending Friday mosque services in the prior two
3 years?
4 A Did I appreciate that he was attending -- I
5 just never took time to think about the total
6 time it took him out of the office.
7 Q This request for a vacation time caused you
8 to start doing a calculation about how much time
9 he was sitting out of the office versus time he
10 was in the office?
11 A Yes. It could have been before this. It
12 wasn't necessarily prompted directly by the
13 application for vacation time. It just could
14 have been something that dawned on me building up
15 to this.
16 I would have to actually see the date of the
17 vacation request. It could have been a
18 conversation or a comment he made to me about
19 wanting the time before he actually applied, but
20 it would have definitely been around this time
21 that I just sat down and I thought, wait a
22 minute, it's 104 hours out of the office.
23 Q When you did that, did you do anything to
24 determine whether or not Bassil, in his judgment,
25 had been doing things you suggest here that he

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1 could do to make up for the services such as
2 arriving to work early, staying late, foregoing
3 lunch hour?
4 A No.
5 Q Why not?
6 A There is no other option. Those are the only
7 opportunities he would have to make up the time.
8 Q My question is before you sat down to counsel
9 Bassil on these issues, did you do any type of a
10 calculation to determine or any investigation to
11 determine whether or not he had in fact been
12 offsetting the hours he took on Friday to attend
13 his prayer services with lunches, staying later,
14 arriving early?
15 A No.
16 Q Why not?
17 A It's just not something I had been thinking
18 about.
19 Q You testified that Bassil is someone you
20 believe would lie.
21 A Yes.
22 Q Would you lie?
23 A No.
24 Q After Bassil filed his charge of
25 discrimination with the Ohio Civil Rights

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1 Commission, did you have any type of discussions
2 with Bassil wherein you suggested that Bassil
3 should get a new job instead of coming back to
4 the city because that's what people do when they
5 get fired?
6 **A There was a comment like that made. The**
7 **comment, as it was presented, is entirely out of**
8 **context.**
9 **Q Help me understand, please.**
10 **A It would have been in April of 2008 coming up**
11 **to the courtroom rotations that he came into my**
12 **office and he wanted to talk about the**
13 **rotations.**
14 **First of all, let me back up one step. I**
15 **want to say we had a staff meeting about the**
16 **upcoming rotations. It was after that meeting**
17 **that he came into my office and said he wanted to**
18 **talk to me one on one. It was about the**
19 **rotations.**
20 **He, generally speaking, asked me if I would**
21 **commit someone to cover Fridays. He generally**
22 **asked me if I would commit to cover Fridays. He**
23 **asked me how long the rotation would be. He**
24 **asked a few other things. It was probably about**
25 **a 20 to 30 minute conversation.**

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1 **During the course of that conversation, as he**
2 **was sitting in my office, I told him that -- the**
3 **issue of firing or wanting to fire came up.**
4 **To put that comment in context, he said,**
5 **"what was I supposed to do, you want to fire me,**
6 **what was I supposed to do, get a new job?"**
7 **I said, "yes, that's what people do when they**
8 **get fired."**
9 **Q All right. When Bassil was saying, "what was**
10 **I supposed to do," what is your side of the story**
11 **about what he was referring to? What was the**
12 **context?**
13 **A The context was that entire conversation**
14 **related back to January 11th. Part of the**
15 **conversation was me telling him I did not**
16 **discriminate against him. He rolled his eyes at**
17 **me. He didn't believe me. He turned away from**
18 **me. He didn't really want to hear what I had to**
19 **say.**
20 **I told him it had nothing to do with his**
21 **religion. I told him he could go about his**
22 **business as long as it didn't interfere with the**
23 **office. That's how it lead then to that**
24 **exchange.**
25 **Q Your testimony is you told Bassil in April of**

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1 2008 that that's what people do when they get
2 fired, but it was a different context than what
3 he alleges?
4 **A Yes.**
5 **Q Okay. As of April of 2008, you didn't want**
6 **Bassil to be working at the City of Youngstown**
7 **any longer?**
8 **A No. That's not what I said.**
9 **Q Okay.**
10 **A The April 2008 conversation was a**
11 **conversation about what had happened in the**
12 **past.**
13 **Q I see.**
14 **A It had nothing to do with that moment or the**
15 **future.**
16 **Q All right. Bassil said to you, "what was I**
17 **supposed to do," and did you understand that to**
18 **be in reference to what was I supposed to do**
19 **short of filing some type of legal action?**
20 **A Yes.**
21 **Q In response, you said something to the effect**
22 **of "get a job with somebody else, that's what**
23 **people do when they get fired"?**
24 **A Right. Yes. That's true. That is a good**
25 **portion of the context.**

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1 **Q Okay. Now, did you ever, in conversations**
2 **with Bassil, tell him that in sum and substance**
3 **or words to the effect of everything that**
4 **happened over the past few months, meaning**
5 **January, February, March of 2008, had been a huge**
6 **inconvenience for everyone in reference to the**
7 **fact that Bassil had filed a charge and been**
8 **returned to work from administrative leave, the**
9 **issues over termination, et cetera? Did you ever**
10 **say those words?**
11 **A I don't recall making that statement.**
12 **Q We're both lawyers. This is your first time**
13 **in a civil deposition. In fairness to you, I**
14 **will tell you why I will ask you this question,**
15 **because a lot of times people don't know the**
16 **answer, and sometimes people can tell me they're**
17 **certain something didn't happen. All I want to**
18 **know is your position on the issue.**
19 **For example, if my wife, who is also a**
20 **partner, walked in and said, have you ever**
21 **cheated on me, I wouldn't say I don't know. I**
22 **would say, no, I didn't do that. Okay?**
23 **I'm just going to ask you whether or not you**
24 **are denying you ever did this or whether it ever**
25 **happened.**

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1 Here's my question to you. I wanted you to
2 understand the context. I'm not playing games
3 with you. I want to understand where you will
4 come down in terms of your version of the facts.
5 Do you deny telling Bassil words to the
6 effect of everything that happened over the past
7 few months has been a huge inconvenience for
8 everyone in reference to the fact that he filed a
9 charge of discrimination and issues related to
10 his return to work after you told him he was
11 terminated?
12 **A I do not deny that, nor do I admit it. I**
13 **simply don't recall.**
14 Q Did you ever, shortly after learning about
15 Bassil's filing the charge of discrimination in
16 early 2008, direct Bassil or tell him it needed
17 to resolve itself, it needed to be over with,
18 that needed to be done?
19 **A I made that statement, but not in that**
20 **context.**
21 Q What was the context?
22 **A What I meant by it was the tension in the**
23 **office and the tension between he and I after he**
24 **was returned to employment. What he did with his**
25 **lawsuit or who he consulted with and whatever**

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1 **avenue he pursued is his business. My only**
2 **concern was the operation of my prosecutor's**
3 **office.**
4 Q Okay. Did you tell him within the context of
5 those discussions in 2008 that his lawsuit, his
6 charge of discrimination, his return to work
7 after you told him he was terminated, was causing
8 a problem in the office or words to that effect?
9 **A No. As it relates to those things, no.**
10 **Again, it goes back to the tension and the**
11 **atmosphere.**
12 Q Sorry. I didn't mean to cut you off.
13 **A I was pretty much finished. It was the**
14 **tension and atmosphere that was causing**
15 **problems.**
16 Q Do you deny telling Bassil that the charge of
17 discrimination that he had filed, his initiation
18 of legal activity, had caused a problem in the
19 office or words to that effect?
20 **A I do deny that.**
21 **(Plaintiff's Exhibit 3 was marked**
22 **for identification.)**
23 Q I'm handing you what I will mark as
24 Plaintiff's Exhibit 3. I will direct you to
25 specific questions I have about it. You can feel

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1 free to read every word, but I'll submit to you
2 that in the interest of time is not necessary.
3 **A Let's go.**
4 Q My first question is have you ever seen that
5 document before?
6 **A I had seen the requests for admissions, a**
7 **blank copy.**
8 Q All right. I don't know or don't want to
9 know what you spoke about. I assume sometime
10 after you had discussions with your attorneys
11 from Reminger about them.
12 **A Yes.**
13 Q I won't ask you what you talked about. I
14 assume then it was after those discussions that I
15 received the document that is Plaintiff's Exhibit
16 3?
17 **A That's a safe assumption.**
18 Q I want to turn your attention to page 6,
19 request for admission number 5.
20 **A Okay.**
21 Q You're asked to admit whether or not you told
22 Bassil that he was making a big mistake, a huge
23 mistake, by taking time off to undergo medical
24 tests recommended by his physician.
25 I want to ask you, regardless of the response

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1 provided in this exhibit, do you deny making
2 those types of statements to Bassil?
3 **A Do I deny making those types of statements or**
4 **that statement?**
5 Q Start there. Did you make that statement?
6 **A No.**
7 Q Do you deny making a statement that is
8 substantially similar to the one reflected in
9 Exhibit 6?
10 **A Yes.**
11 Q Your testimony is you never said anything to
12 the effect of words to the effect of or similar
13 to what's reflected in the substance of paragraph
14 5?
15 **A My testimony would be I used the word**
16 **"mistake" during a conversation, but it was not**
17 **related to undergoing a medical test**
18 **recommendation by his physician.**
19 Q You didn't say "big mistake" or "huge
20 mistake," you just said "mistake"?
21 **A Yes.**
22 Q When you said the word "mistake" to him, in
23 what context was that?
24 **A It was during a cell phone conversation**
25 **between he and I in February of 2008.**

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1 Q What was the context? Why did you tell him
2 you thought he was making a mistake?
3 A I told him I thought he was making a mistake
4 primarily out of concern that he was again
5 drawing attention to himself. He had returned to
6 work on February 4, 2008, and the month of
7 February of 2008 then lead to a series of
8 absences from work.
9 Q Look at paragraph 6 please.
10 A Okay.
11 Q It asks you to admit that you told Bassil
12 that he had been assigned to night court for five
13 consecutive weeks because Bassil had quote
14 burdened the prosecutor's office by virtue of his
15 conduct. My question to you is did you say such
16 things to Bassil?
17 A No.
18 Q Did you say anything like that to Bassil?
19 A No. Not with the use of burden. Again,
20 going back to our previous conversation a few
21 moments ago, I talked him about the atmosphere of
22 the office and that it was causing problems or
23 that it was tense in the office.
24 Q Did you ever say anything to the effect of
25 Bassil, you're being assigned to five weeks of

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1 night court because of what you have done in the
2 context of filing a charge or returning to work
3 and rocking the boat, if you will?
4 A Absolutely not.
5 Q Paragraph 7, you're asked to admit whether
6 you told Bassil that you were quote not happy one
7 bit that Bassil filed a charge of
8 discrimination. Regardless of what's set forth
9 in Plaintiff's Exhibit 3, I'll ask you, did you
10 make such a statement to Bassil?
11 A Not that I recall.
12 Q Okay. Are you denying ever making such a
13 statement, or are you telling me you don't
14 remember?
15 A I'm telling you I don't remember.
16 Q Turn the page please. In referring to
17 paragraph 8, did you ever concede to Bassil that
18 you treat him differently or you decided to start
19 to treat him differently as a consequence of or
20 as a result of his filing the charge of
21 discrimination in early 2008?
22 A No. I never made that statement.
23 Q Did you say anything to that effect?
24 A Only what we spoke about before, which was
25 different in the professional versus personal

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1 sense.
2 Q Did you tell Bassil that on a personal level
3 you treat him differently because he filed a
4 charge of discrimination?
5 A I don't recall if I actually said that to
6 him, but I certainly felt it.
7 Q Do you believe it's possible for you to treat
8 Bassil fairly in the office in an environment
9 that is a law-type environment where people are
10 working with one another, there are reporting
11 obligations, when at the same time you told me
12 you treat him -- personally you don't trust what
13 he says, you're guarded with what he says, you
14 believe he manipulates? Your words.
15 A I believe it's possible for me to treat him
16 fairly.
17 Q How is that possible?
18 A By way of example, I will tell you this.
19 Having been in the courtroom enough to have a
20 judge rule against you or overrule your
21 objection, you don't tell the judge, go whatever,
22 I'll sue you or get you. You don't do those
23 things. You continue to act professionally in
24 the context of what you're doing, and regardless
25 of my personal feelings, that's what I do.

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1 I file charges for people I don't care for
2 that I have met over the years just as easily as
3 I file charges for people I like over the years.
4 My personal feelings about anyone or anything
5 have nothing to do with what I do
6 professionally.
7 Q But you don't have to work with those people
8 every single day and have them do stuff with you
9 and for you and be in a small office
10 environment. That's what I'm trying to
11 understand.
12 A Sure I do. There may be police officers I
13 don't like or don't like me, but we're forced to
14 interact, so you have my answer.
15 Q You're forced to interact with a police
16 officer, but you don't have involvement in
17 disciplining them or making decisions about their
18 promotions or employment or hiring, firing, or
19 pay, or anything like that, do you?
20 A Not directly, no.
21 Q Turn your attention to paragraph 10. It asks
22 you to admit that you conceded to Bassil that he
23 was the most talented prosecutor employed by the
24 City of Youngstown measured by his performance in
25 the courtroom. Did you ever make such statements

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1 to Bassil?
 2 A No.
 3 Q Do you believe that what's written in
 4 paragraph 10?
 5 A No.
 6 Q Have you ever believed that?
 7 A No.
 8 (Plaintiff's Exhibit 4 was marked
 9 for identification.)
 10 Q In keeping up with my promise to you, I'm
 11 handing you the other memo you had referenced
 12 earlier that I didn't have with me. Is
 13 Plaintiff's Exhibit 4 a copy of the document you
 14 referred to earlier that was generated November
 15 of 2007 to all assistant prosecutors regarding
 16 attendance issues?
 17 A It is.
 18 Q [REDACTED] was issued [REDACTED] [REDACTED]
 19 [REDACTED] in February 2008?
 20 A Correct.
 21 Q Was he ever issued at any other time any
 22 other type of written discipline?
 23 A No.
 24 Q [REDACTED] one instance of discipline
 25 [REDACTED] some type of writing, I assume, to

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1 [REDACTED]
 2 A Yes.
 3 Q Other than that instance, have you ever given
 4 [REDACTED] discipline?
 5 A No.
 6 Q [REDACTED]
 7 A No.
 8 Q [REDACTED]
 9 A No.
 10 Q [REDACTED]
 11 A No.
 12 Q Let me ask you this question. Other than
 13 Bassil Ally and the written discipline you issued
 14 to Bassil, the only other discipline ever issued
 15 [REDACTED]
 16 [REDACTED] under you at the City of
 17 [REDACTED] of
 18 2008, [REDACTED] type of written
 19 discipline to [REDACTED]
 20 A [REDACTED]
 21 Q I assume that [REDACTED] your files,
 22 whether or not it's a personnel file or some type
 23 of discipline file, I could go through and find
 24 [REDACTED]
 25 A Yes.

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1 Q Before you got here today -- I don't want to
 2 know your discussions with your lawyers -- did
 3 you do anything to search for documents
 4 responsive to document requests that were issued
 5 by me or my client?
 6 A I turned over copies of my material when the
 7 OCRC complaint came in, and I had provided
 8 documents to Mr. Abbarno.
 9 Q Let me ask you this. When did you turn over
 10 documents to the OCRC investigators?
 11 A I never turned them over directly to anybody
 12 other than Dan Pribich in the law department.
 13 Q I assume Dan is of a position where he
 14 essentially represents you and various things,
 15 he's like your in-house lawyer?
 16 A Yes. It's P-R-I-B-I-C-H.
 17 Q I'm not trying to get into what you and he
 18 might have talked about. All I want to
 19 understand from a timing perspective is what you
 20 have done to gather documents. You gathered
 21 documents relative to what you understood to be
 22 the EEOC investigation?
 23 A Some investigation, yes.
 24 Q Fair enough. Other than with respect to
 25 providing documents for the EEOC investigation,

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1 have you done anything as of this date to gather
 2 documents responsive my document requests?
 3 A Directly to yours?
 4 Q Yes.
 5 A Other than gathering documents that
 6 Mr. Abbarno requested, no.
 7 Q Have you ever gone through Bassil's work
 8 e-mail?
 9 A I don't think so.
 10 Q Have you ever asked anybody to or directed
 11 anybody to?
 12 A No, because as I understand, he didn't use
 13 e-mail for a long time.
 14 Q I mean as of today.
 15 A As of today?
 16 Q Yes.
 17 A No.
 18 Q Okay. To your knowledge, nobody has gone
 19 looking through Bassil's e-mail at his work
 20 computer or anything like that?
 21 A No.
 22 Q Have you ever searched Bassil's office for
 23 any reason?
 24 A To locate a case file if he wasn't there or
 25 we needed something. I guess you could call that

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1 a search.
2 Q Your testimony is you haven't and you have
3 not searched nor had anybody at your direction
4 search Bassil's office for any reason other than
5 maybe to locate a file?
6 A Other than to locate a file, that's correct.
7 Q To locate a file would be exclusively for
8 work-related purposes? Nobody went into his
9 office under the guise of looking for a file or
10 snooped through his drawers or anything like
11 that?
12 A No.
13 Q Back to January 11, 2008, did you tell Bassil
14 that he was fired?
15 A No.
16 Q Did you tell him he was terminated?
17 A No.
18 MR. ABBARNO: What day?
19 Q January 11, 2008.
20 MR. ABBARNO: January 11,
21 2008.
22 A My answer to the second question was no.
23 Q Did you tell Bassil words to the effect of
24 you're terminated, you're fired, you're no longer
25 going to be working for the City of Youngstown on

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1 January 11, 2008?
2 A The phrase I used was, "you're done here."
3 Q "You're done here"?
4 A Yes.
5 Q What did you mean when you told Bassil on
6 January 11, 2008, "you're done here"?
7 A That he was terminated.
8 Q Okay. Your intent was to communicate to him
9 on that day he was no longer going to be employed
10 by the City of Youngstown as of that moment?
11 A Yes.
12 Q What happened next?
13 A During that same conversation I asked him to
14 turn in his key, his badge, and his ID, and that
15 was it. He left my office.
16 Q What was the next thing you did relative to
17 Bassil Ally?
18 A The next thing I did was prepare a memo for
19 the law director about the discharge.
20 Q Why?
21 A Because I wanted it to be documented to her,
22 because she wasn't there, and I wanted to do it
23 while it was fresh in my memory.
24 Q What happened next?
25 A In what respect?

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1 Q Did you talk to Iris? Did somebody talk to
2 you? Did you call Bassil? Did he call you?
3 What happened after you wrote the memo relative
4 to Bassil Ally?
5 A The next thing I did was at the end of the
6 day I went into his office and I looked for files
7 for the following week to make sure we had
8 everything. I knew that either I or someone was
9 going to have to cover court.
10 Q Okay. What did you do next?
11 A When I was in the office, I noticed his
12 personal belongings were still there, and so I
13 boxed them up.
14 Q Why?
15 A Because I didn't want him back in the
16 office.
17 Q What did you do with his personal
18 belongings?
19 A Gave them to Tony Ferris.
20 Q Did you tell Tony to give them to Bassil?
21 A Tony told me that's what he was looking for.
22 Q What happened next?
23 A That's about it.
24 Q What happened next relative to you and Bassil
25 Ally?

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1 A I didn't see him until February 4th, if
2 that's what you're asking.
3 Q I'm asking what happened next in your life as
4 it relates to Bassil. You told him he's fired.
5 You packed up his personal belongings. You wrote
6 the memo to Iris. What happened next?
7 A I didn't tell him he was fired.
8 Q You told him he was done here. It meant to
9 communicate he was terminated?
10 A Yes.
11 Q You did those things. What happened after
12 you wrote the memo to Iris? You packed up his
13 personal belongings?
14 A I gave them to Tony. I imagine I went home.
15 Q Who did you talk to next about Bassil Ally?
16 A I would imagine the next person -- it may be
17 the first person to bring it up -- was Marty
18 Desmond.
19 Q Who is that?
20 A Marty is an assistant county prosecutor.
21 Q Assistant county prosecutor?
22 A Correct.
23 Q Okay. Somebody you used to work with?
24 A Correct.
25 Q Over when you were with Mahoning County?

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1 **A Correct.**
 2 **Q What's Marty's last name? D-E-S-M-O-N-D?**
 3 **A Yes.**
 4 **Q He brought it up how to you?**
 5 **A I was at his son's birthday party the**
 6 **following day. He just asked about it.**
 7 **Q He asked about what?**
 8 **A He asked about Bassil's departure.**
 9 **Q Did he use that word, departure?**
 10 **A I don't recall what words he used. I'm**
 11 **characterizing it as that.**
 12 **Q What do you think he said to you?**
 13 **A I don't remember. He asked about Bassil**
 14 **leaving or Bassil's departure.**
 15 **Q He understood at that birthday party the next**
 16 **day Bassil had been terminated?**
 17 **A Yes.**
 18 **Q Please continue. You're at the birthday**
 19 **party. Marty asked you about Bassil's**
 20 **termination. What did you say?**
 21 **A I told him that he was fired.**
 22 **Q Did you tell him you had in fact fired him?**
 23 **A Yes.**
 24 **Q What did Marty say?**
 25 **A He asked why, and I stated, "for**

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1 **insubordination."**
 2 **Q Did you give any further detail?**
 3 **A No. It wasn't much beyond that.**
 4 **Q Your testimony is Marty asked you why was**
 5 **Bassil terminated, and you said for**
 6 **insubordination, and that was the end of the**
 7 **discussion?**
 8 **A That was about the end of the discussion. He**
 9 **primarily asked because he was interested in**
 10 **leaving the county prosecutor's office and he**
 11 **thought there might be a position open.**
 12 **Q It was your understanding he was asking**
 13 **because he was interested in maybe taking**
 14 **Bassil's spot?**
 15 **A I don't know why he asked. That was one**
 16 **possibility.**
 17 **Q Your understanding, your thought process, is**
 18 **maybe that's why he was asking?**
 19 **A Yes.**
 20 **Q Did you ever confess to Marty that you had**
 21 **scheduled the meeting that you did before January**
 22 **11, 2008? That was the Friday.**
 23 **A Correct.**
 24 **Q Did you ever confess to Marty that you had**
 25 **scheduled that meeting in order for Bassil to**

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1 choose between going to the mosque or coming to
 2 work?
 3 **A Absolutely not.**
 4 **Q Did you ever confess something like that to**
 5 **anybody?**
 6 **A No.**
 7 **Q Did you ever tell anybody in the Youngstown**
 8 **area you had in fact scheduled the meeting on**
 9 **January 11, 2008 on purpose to force Bassil to**
 10 **pick between attending his mosque or coming to**
 11 **the meeting so you could terminate him for**
 12 **insubordination?**
 13 **A No.**
 14 **Q Anybody that said you told them that is**
 15 **lying?**
 16 **A Yes.**
 17 **Q Okay. You talked to Marty at this birthday**
 18 **party the next day?**
 19 **A Yes.**
 20 **Q What happens next relative to your life and**
 21 **Bassil Ally and that whole issue?**
 22 **A I went to work Monday, and that morning I**
 23 **sent an e-mail to the judges, to the clerk of**
 24 **court, and possibly to the court administrator**
 25 **indicating that we would be short staffed.**

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1 **Q Did you tell them by way of your memo why you**
 2 **would be short staffed?**
 3 **A Yes. I don't remember the exact words I used**
 4 **though. That was the sum and substance. I told**
 5 **them Bassil was no longer with the office or**
 6 **something to that effect.**
 7 **Q In sum and substance, you informed the**
 8 **judges, the administrators, et cetera, and court,**
 9 **by way of written communication Bassil was**
 10 **terminated from his employment?**
 11 **A Yes.**
 12 **Q Forgive me if I have this. I don't recall**
 13 **seeing it. Is that a document you can put your**
 14 **hands on to get to me?**
 15 **MR. ABBARNO: I don't think**
 16 **you have that.**
 17 **Q It's a document you can put your hands on to**
 18 **get to me?**
 19 **A Yes.**
 20 **Q You advised essentially all the folks who**
 21 **work in the judiciary or executive portion of the**
 22 **mayor's world --**
 23 **A No.**
 24 **Q -- that Bassil is no longer there?**
 25 **A It was primarily judiciary.**

1 Q Why do you say that?
2 A We were not at minimum staff level. Given
3 the volume of the cases we were dealing with,
4 there would likely be delays in processing
5 charges and getting things to court.
6 Q What happened after you sent that memo?
7 A Nothing that day, that I recall.
8 Q What happened next relative to you and Bassil
9 and that whole situation?
10 A The next thing I learned would be that Iris,
11 the law director, had countermanded my decision.
12 Q How did you learn that?
13 A She told me.
14 Q Did she call you or did you go to her?
15 A I don't recall.
16 Q In sum and substance she told you she -- what
17 did you say?
18 A Countermanded.
19 Q Countermanded your decision. Why did she
20 tell you she had done that?
21 A I don't know that she stated why. She just
22 told me that she had placed Bassil on
23 administrative leave on Friday.
24 Q What does countermanded mean? I mean that
25 sincerely. I don't know the way in which

1 you're --
2 A The opposite of command.
3 Q She had countermanded your decision?
4 A Yes.
5 Q What day and the week did she do that
6 following January 11, 2008 to the best of your
7 memory?
8 A To the best of my memory, it was Tuesday,
9 Tuesday of the following week.
10 Q You discussed with Iris the fact that she had
11 countermanded your decision. You don't recall
12 what she told you as to the reason why?
13 A No.
14 Q She told you this on Tuesday?
15 A To the best of my recollection, yes.
16 Q Your testimony is that on Tuesday, to the
17 best of your recollection, she told you that she
18 had in fact actually placed Bassil on
19 administrative leave on Friday, January 11?
20 A Yes.
21 Q Did she tell you she had communicated that to
22 Bassil?
23 A Yes.
24 Q Tell me about that. What did she tell you
25 she had done specifically?

1 A She told me that Friday afternoon she was
2 stepping off the elevator and that Bassil was in
3 the lobby just outside the office near the
4 elevators, and he made a comment to her about
5 either not seeing her or saying goodbye or
6 something to that effect.
7 She asked him what he was talking about, and
8 he said, Jay fired me. My understanding is she
9 said, no, he didn't, just go home.
10 Q I see. That's what Iris told you she had
11 done with Bassil by way of a conversation on
12 Friday, the 11th, of January?
13 A Yes.
14 Q Okay.
15 MR. POLK: Ken, real quick, I
16 have a couple documents here. I
17 suspect you will as the same. Can
18 we get a stipulation between you
19 and me that the documents you
20 produced to me and the documents I
21 produced to you are authentic,
22 reserving the objections to
23 admissibility, and if you want to
24 have a document you want to attach
25 to a pleading later so we don't

1 have to authenticate a bunch of
2 documents?
3 MR. ABBARNO: Yes. I don't
4 know if any of the documents you
5 and I will get may have writing on
6 them after the fact. I know there
7 is some OCRC. I will not dispute
8 whatever typing is on the page is
9 the typing, if there is any
10 writing on it. I won't stipulate
11 to who did the writing.
12 MR. POLK: Fair enough.
13 That's good. Generally speaking,
14 documents we produced to each
15 other are authenticated. We can
16 ask questions about the writing.
17 That's a fair deal.
18 MR. ABBARNO: Fair deal.
19 Some of the OCRC have writing that
20 are neither mine nor yours.
21 MR. POLK: For example, I
22 have some letters regarding
23 Bassil's employment before you
24 were even appointed concerning his
25 pay grade, when he was appointed,

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1 all that kind of stuff. Those are
2 the kinds of things I don't want
3 to waste your time with.
4 MR. ABBARNO: Let's take two
5 seconds to run to the bathroom.
6 (Brief recess)
7 Q Are you okay to continue?
8 A I'm ready.
9 Q I think your best estimate was Tuesday, the
10 week after January 11, 2008, you talked to Iris,
11 and she tells you she has the reverse of
12 commanded your decision to terminate Bassil Ally,
13 and she didn't tell you why she told you that,
14 right?
15 A That's fair, yes.
16 Q And so it wasn't until four days after you
17 had fired Bassil or told Bassil effectively he
18 was fired that you learned that Iris disagreed
19 with your decision?
20 A Yes.
21 Q It wasn't until four days after the decision
22 that you were told by somebody else that you
23 apparently didn't have the ability to actually
24 fire Bassil?
25 A It would have been after my initial

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1 conversation with Iris, but yes.
2 Q Your initial conversation with Iris was
3 roughly four days after you told Bassil on the
4 11th he was terminated?
5 A Yes.
6 Q Let's take a step back now for a minute.
7 Prior to January 11, 2008, had you discussed with
8 The Mayor your thoughts on whether or not to
9 terminate Bassil Ally?
10 A No.
11 Q Had you ever raised the issue at all in any
12 respect of terminating Bassil with The Mayor, Jay
13 Williams, prior to January 11, 2008 when you told
14 Bassil he was done here?
15 A No.
16 Q Between the moment when you told Bassil
17 "you're done here" and communicated to him that
18 he was fired on January 11, 2008, through your
19 initial meeting with Iris four days later, did
20 you talk at all with The Mayor about Bassil Ally
21 in any respect?
22 A I don't think I did in that initial three or
23 four or five day period, no.
24 Q You didn't talk to Iris at all in the interim
25 between the moment you told Bassil he's done

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1 here, he's fired, and four days later?
2 A No.
3 Q After that initial discussion with Iris four
4 days after you told Bassil on the 11th that he
5 was done here, who did you talk to next about
6 Bassil Ally?
7 A Did you say after?
8 Q After your discussion with Iris where she
9 told you she had recommended your decision, who
10 did you talk to next?
11 A My main conversations after learning that
12 Iris had overruled my decision, if you would,
13 main conversations would have been with Iris,
14 with The Mayor, and with representatives from a
15 firm named Clemans Nelson.
16 Q You said your main conversations were with
17 Clemans Nelson, Iris, and Mayor Williams?
18 A Yes.
19 Q My question was a little broader than that,
20 meaning what happened next? Quite literally,
21 what was your next conversation after discussing
22 with Iris that she had apparently overruled your
23 decision with anyone about Bassil Ally?
24 A My next conversations would have been with
25 those individuals and leading up to any issues

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1 surrounding it or how to handle it or what the
2 outcome would be.
3 Q Did you talk to anybody outside of Iris, The
4 Mayor, Clemans Nelson, about Bassil Ally after
5 you terminated Bassil?
6 A Not that I recall, aside from Marty, who we
7 mentioned.
8 Q Fair enough.
9 A No. Not that I recall.
10 Q Going forward, that was the case even into
11 the weeks that followed January 11th? You
12 weren't talking to other people about Bassil and
13 his termination?
14 A No. There were periodic questions here and
15 there from people, but nothing of substance.
16 Q Did you begin to text message other attorneys
17 in town after you told Bassil he was fired on
18 January 11, 2008 about Bassil Ally?
19 A Not that I recall.
20 Q Do you have any idea why Bassil might have
21 received calls from area lawyers shortly after
22 you terminated him?
23 A I have no idea.
24 Q Your testimony is you didn't communicate to
25 anybody else that you had fired Bassil other than

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1 Iris and Marty?
 2 **A My testimony is I don't recall communicating**
 3 **with anyone else outside of those individuals.**
 4 Q When you first spoke to Mayor Williams about
 5 Bassil Ally, when was that?
 6 **A It would have been that following week.**
 7 Q Okay. Obviously, my question related to
 8 matters concerning the 11th termination, et
 9 cetera. I'm not concerned with whether or not
 10 you talked to The Mayor about Bassil in 2007 for
 11 any reason, okay. It would have been roughly
 12 seven days after?
 13 **A Sometime that following week.**
 14 Q What were your first discussions with The
 15 Mayor on the topic of Bassil Ally?
 16 MR. ABBARNO: Objection. At
 17 this point I'll instruct him not
 18 to answer relative to substantive
 19 discussions that took place
 20 between The Mayor and Jay and any
 21 other counsel that were present
 22 after January 15th, which is when
 23 I think that conversation took
 24 place. Legal proceedings, I
 25 believe, had already been

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1 initiated. What the staff is
 2 doing is privileged.
 3 Q When you talked to Mayor Williams on January
 4 15th or whenever it was for the first time about
 5 Bassil Ally, who was there?
 6 **A It would have been a conversation between**
 7 **Mayor Williams and I.**
 8 Q Nobody else was present?
 9 **A Not that I recall, no.**
 10 Q Were you providing Mayor Williams some type
 11 of legal advice?
 12 MR. ABBARNO: To the extent
 13 your conversations includes legal
 14 advice or legal consultation,
 15 those are the ones I don't want
 16 you to answer.
 17 MR. POLK: I want to know --
 18 MR. ABBARNO: I'm trying to
 19 open up the scope of what you can
 20 talk about, at least in our
 21 opinion, at this point.
 22 MR. POLK: I may agree with
 23 you.
 24 Q Is your testimony that when you went and
 25 talked to Mayor Williams on the 15th, you were

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1 providing The Mayor with some type of legal
 2 advice?
 3 **A In some respects.**
 4 Q How were you doing that?
 5 **A We were talking about facts that were giving**
 6 **rise to either resisting our potential matters, I**
 7 **believe legal officer, for the municipality.**
 8 Q Was Mayor Williams, in your opinion, seeking
 9 your legal advice?
 10 **A Yes.**
 11 Q You were providing legal advice?
 12 **A Yes. To the extent I could.**
 13 Q Mayor Williams is not a lawyer, right?
 14 **A No.**
 15 MR. POLK: Ken, is it your
 16 position -- I think I understand
 17 it -- after January 15, 2008
 18 you're not going to permit your
 19 witnesses to testify about their
 20 discussions related to Bassil
 21 Ally?
 22 MR. ABBARNO: To the extent
 23 that there's non-privileged
 24 information, it can be discussed.
 25 He can talk about that. I don't

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1 know the full gamut of what
 2 discussions all took place. There
 3 may be certain discussions that
 4 may or may not fall within the
 5 confines of that.
 6 Q Can you tell me anything about your
 7 discussions with Mayor Williams following Bassil
 8 Ally's termination by you on January 11, 2008
 9 that aren't privileged?
 10 **A No.**
 11 Q Sorry?
 12 **A No.**
 13 Q Can you tell me anything about your
 14 discussions with Iris following your termination
 15 of Bassil on January 11, 2008 that aren't
 16 privileged?
 17 **A No.**
 18 MR. ABBARNO: Other than what
 19 you already talked about.
 20 **A Other than what we already talked about.**
 21 Q What we talked about is before January 15,
 22 2008. After January 11.
 23 MR. ABBARNO: We talked about
 24 actually, on, January 15th, and we
 25 talked about after.

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1 MR. POLK: I'm with you.

2 Q Can you tell me about your conversations with

3 anyone at all within the City of Youngstown

4 concerning Bassil Ally after your termination of

5 Bassil Ally on January 11, 2008 without revealing

6 privileged communications other than what we

7 talked about already?

8 MR. ABBARNO: You want to say

9 presumably no, but there are other

10 people within the broad definition

11 of the City of Youngstown.

12 A I recognize how broad that was. My answer

13 would be not that I can recall at this moment. I

14 can't recall privileged communications at this

15 time.

16 (Discussion between The Witness and

17 his Counsel)

18 MR. ABBARNO: Let the record

19 reflect that Jay and I have had a

20 brief discussion about what may or

21 may not constitute the City of

22 Youngstown and about Bassil. I'm

23 asking him to think about it in

24 the broadest sense that would not

25 be privileged.

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1 Shannon, if you want him to

2 elaborate at least in one

3 particular instance, he will. I

4 don't want you to think I'm

5 coaching. I'm trying to make sure

6 we're getting everything out.

7 MR. POLK: Sure.

8 Q Did you have something you would like to add

9 after talking with Ken?

10 A Having thought about it in the broadest

11 sense, yes.

12 Q Okay. Great.

13 A Sometime following Bassil's return to work in

14 February of 2008 a detective sergeant came into

15 my office with a cartoon so to speak.

16 Q Okay. So what? What happened?

17 A He walked into my office with a paper. I was

18 seated at my desk. He placed it on my desk. I

19 picked it up. I looked at it, and then words

20 were exchanged between he and I.

21 Q Who brought that into your office?

22 A Detective Sergeant John Kelty.

23 Q Can you spell that?

24 A K-E-L-T-Y.

25 Q What's your understanding as to why he was

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1 bringing that cartoon into your office?

2 A My understanding was to either harass or

3 tease me concerning Bassil's return.

4 Q Why do you have that understanding?

5 A Just knowing John as I do and the nature of

6 the cartoon itself.

7 Q You said words were exchanged. What words

8 were exchanged?

9 A Do you want the rated G version or actual --

10 Q I want the words that were used.

11 A He walked into my office. He slipped it on

12 my desk. I looked at it. He was smiling about

13 it. I told him, get this shit out of here. He

14 then picked it up and said, what's your problem,

15 and I said, you fucking asshole, this is going to

16 be a fucking exhibit on a federal lawsuit.

17 Q On what?

18 A A federal lawsuit.

19 Q What did he say in response?

20 A He blew me off, just kind of shrugged his

21 shoulders. I told him, get the fuck out of my

22 office.

23 Q Why did you think it was going to be an

24 exhibit in a federal lawsuit?

25 A Because that's where I thought you sued for

Page 117

1 discrimination.

2 Q When in time did this exchange happen?

3 A It would have been sometime in very early

4 February of 2008.

5 Q After Bassil filed this charge of

6 discrimination?

7 A Yes. Time-wise, yes.

8 Q Presumably right around the time Bassil was

9 returning to work?

10 A Presumably it was.

11 Q It was the day he was returning to work?

12 A No. It was after that time. It was a moment

13 on or after or very soon.

14 Q Do you have an idea of the day Bassil

15 returned in February of '08? I think maybe the

16 4th.

17 A February 4th.

18 Q Is it your testimony that this exchange with

19 the police officer and cartoon happened on or

20 about February 4, 2008?

21 A Yes.

22 (Plaintiff's Exhibit 5 was marked

23 for identification.)

24 Q I'll hand you a copy of the complaint. I'll

25 mark it as an exhibit. I think we're on 5. I'm

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1 not going to ask you about the contents of the
2 document. Turn to page 8. There's a cartoon
3 featured on page 8, yes?
4 **A Yes.**
5 **Q** Is that the cartoon that you were describing
6 earlier that the police officer brought in to
7 harass you and tease you?
8 **A Yes.**
9 **Q** Did you have an understanding about who else
10 was given a copy of the cartoon identified at
11 page 8 of the first amended complaint?
12 **A No.**
13 **Q** Did you ever do any type of investigation to
14 figure out how far or broadly that cartoon had
15 been disseminated?
16 **A No.**
17 **Q** Why not?
18 **A I thought it was done. I gave no thought to**
19 **it after I threw him out of my office.**
20 **Q** Did you wonder whether or not that police
21 officer had actually distributed it amongst the
22 prosecutor's office?
23 **A No.**
24 **Q** Did you care?
25 **A I would have cared had I seen it. I took no**

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1 **steps to investigate it. And, in fact, there was**
2 **nothing around the office I saw.**
3 **Q** Obviously, there was something, because my
4 client got a copy as well.
5 **A Well, obviously, but I have no idea how it**
6 **got there or who put it there.**
7 **Q** Did you think you had an obligation to
8 investigate that instance or look into it at
9 all?
10 **A No.**
11 **Q** Are you able to tell me about any
12 conversations you had with anyone employed by or
13 affiliated with the City of Youngstown without
14 revealing privileged communications other than
15 the instance we just discussed as well as the few
16 communications you described with Iris following
17 the instance where you terminated Bassil's
18 employment on January 11th?
19 **A No, not at this moment.**
20 **Q** Everything else you believe would be covered
21 by attorney/client or work product privilege?
22 **A Either work product or attorney client. I**
23 **don't recall at this moment.**
24 **Q** You won't be able to give me any testimony at
25 trial later about any type of conversations other

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1 than what you have described for me on the
2 subject of Bassil Ally of January 11, 2008?
3 **A That's what I said. I'm saying I don't**
4 **recall. If something jars my memory, there's a**
5 **subsequent conversation that comes to mind, I**
6 **would be able to give you such testimony.**
7 **Q** Do you need to talk to Mr. Abbarno again?
8 **A I don't think so.**
9 **MR. ABBARNO:** To the extent
10 that we make the collective
11 decision to waive any of those
12 privileges, we will let you know,
13 and you will be entitled to
14 inquire as to Jay or any of the
15 other witness.
16 **MR. POLK:** Well, as I
17 understood your objection based on
18 your position right now, you're
19 not willing to waive those
20 privileges. You made the decision
21 you will instruct him not to
22 answer?
23 **MR. ABBARNO:** At this point
24 in time, I have. We are coming
25 back for Jay's deposition. So

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1 there won't be any prejudice or
2 you won't have to do anything
3 special to otherwise prepare, and
4 to the extent we make a different
5 decision, we will let you know.
6 **MR. POLK:** You will tell me
7 that before his next deposition so
8 I can have follow-up and ask those
9 questions?
10 **MR. ABBARNO:** Yes. You might
11 want to ask that question in the
12 depo in case I forget. I will do
13 my best to remember.
14 **Q** As I understand things now, you told me all
15 the conversations you can following Bassil's
16 termination on January 11th that you recall and
17 that do not have some type of protection in your
18 mind by the attorney-client or work product
19 privilege?
20 **A Yes.**
21 **Q** I can't ask you anything else because your
22 attorney told you you can't answer that, is that
23 correct?
24 **A Yes.**
25 **MR. ABBARNO:** The next time

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1 we convene, ask that question
 2 again and we will see if we --
 3 MR. POLK: If you waive that
 4 privilege, please tell me.
 5 MR. ABBARNO: All I'm saying
 6 is if for whatever reason we don't
 7 broach the subject before the next
 8 deposition, I'm saying ask the
 9 question again in case I forgot to
 10 tell you so we're not down the
 11 road with you saying, hey, you
 12 never let me know, so I never
 13 asked that question.
 14 MR. POLK: My point to you, I
 15 absolutely am going to say that if
 16 having asked this gentleman these
 17 questions you took the position
 18 you did, and if you don't tell me
 19 you're now waiving the privilege
 20 after telling me you're not and we
 21 get a trial some day and you start
 22 telling me all kinds of
 23 conversations you had with The
 24 Mayor and Iris and all these other
 25 things, I'll have a problem.

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1 I'm respecting your
 2 privilege. Give me the respect if
 3 you choose to waive it. The
 4 choice is yours, not Ken's. I
 5 would ask for somebody to inform
 6 me of that.
 7 THE WITNESS: I agree with
 8 you in a general respect. I have
 9 no authority to waive a
 10 privilege.
 11 Q Somebody. You're a defendant. The other
 12 defendant. Somebody tell me if you're waiving
 13 the privilege. Until then, I will assume you are
 14 taking the position you have today.
 15 MR. ABBARNO: If you want to
 16 ask the question again at the next
 17 depo, do it again. You don't want
 18 to be boxed into that. If I don't
 19 bring it up, I'm suggesting you
 20 bring it up. If you don't want
 21 to, that's fine. That's okay.
 22 You're not going to take that
 23 burden on yourself?
 24 MR. POLK: I'm not going to
 25 ask every time we meet with Iris

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1 and Jay and him whether you're
 2 waiving the privilege.
 3 MR. ABBARNO: You're going to
 4 have to ask with Iris. She's a
 5 party in this case too. If you
 6 don't want to ask Iris the
 7 question, fine. That's proper.
 8 MR. POLK: If you're taking
 9 the position that all things are
 10 privileged, how is Iris not taking
 11 it with respect to Jay?
 12 MR. ABBARNO: I'm not saying
 13 it with Iris as to Jay. We're not
 14 talking Iris to Jay. Iris talked
 15 to other people as well. You have
 16 to ask that question of Iris and
 17 The Mayor.
 18 MR. POLK: I understand what
 19 I have to do there. With respect
 20 to the communications that he has
 21 with Iris, he told me he can't
 22 remember anything else that's not
 23 privileged. I'm going to assume
 24 everything else is privileged and
 25 confidential and I don't get to

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1 know about it and neither does
 2 anybody else in the future.
 3 That's easy.
 4 MR. ABBARNO: We disagree.
 5 MR. POLK: You still maintain
 6 privilege?
 7 MR. ABBARNO: We're quibbling
 8 about a non issue. All I'm saying
 9 is for convenience sake if I
 10 forget to tell you, ask him next
 11 time you see him and we'll see if
 12 it changes. If you don't want to
 13 do that, that's fine.
 14 Q Going back to the 11th of January of 2008,
 15 why did you tell Bassil "you're done here"?
 16 A Insubordination. That's my answer.
 17 Q What did he do that constituted
 18 insubordination?
 19 A That day it was the manner in which he spoke
 20 to me.
 21 Q Which was?
 22 A Insubordinate, disrespectful.
 23 Q What did he do that was insubordinate and
 24 disrespectful?
 25 A It was the way he answered my indication to

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1 him that we were going to have a meeting.
 2 Q What did he do?
 3 A He told me, "I won't be there." It wasn't
 4 simply the words. It was the tone.
 5 Q The tone? Okay.
 6 A Yes.
 7 Q Other than the tone in which he said, "I
 8 won't be there," in reference to the meeting of
 9 January 11, 2008, anything else that Bassil did
 10 in your mind that constituted the insubordination
 11 that lead to his termination?
 12 A Insubordination, no. We spent a great deal
 13 of this deposition going over the disciplinary
 14 matters and other issues that presented itself.
 15 This was simply a culmination.
 16 Q When I asked you, why did you terminate
 17 Bassil, you told me insubordination. I want to
 18 understand what your testimony is going to be to
 19 the reasons you terminated him.
 20 I said, what is insubordination? I want to
 21 know what it is. If your answer is it's a
 22 culmination of all things from day to this day --
 23 if it was when he said this --
 24 I want to understand when you said to Bassil
 25 on January 11, 2008, "you're done here," and as

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1 you said, you meant to communicate to him he's
 2 fired, why did you make that decision? Why did
 3 you do that?
 4 A I did that because of everything that had
 5 built up with regard to him. It was finally this
 6 moment of insubordination that was the end of
 7 it. That was it. I hit my limit.
 8 Q So it was when he said to you and the tone
 9 when he said, I'm not going to be there on the
 10 11th?
 11 A Yes.
 12 Q But it also was the things that lead up to
 13 that?
 14 A Things don't happen in a vacuum. Yes.
 15 Q What else was it that lead to your decision
 16 to terminate Bassil Ally?
 17 A It was the constant tardiness, the issue of
 18 whereabouts. It was the disregarding of my
 19 direct orders on how to handle cases. It was the
 20 culmination of all those things, and that moment
 21 of insubordination provided the tipping point.
 22 Q When you say it was all the issues about
 23 tardiness and whereabouts, do you mean to
 24 reference issues that you experienced in 2008?
 25 A I mean, it was a build-up ever since these

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1 issues started going back to 2006. We were only
 2 11 days into 2008.
 3 Q When you told me you terminated him on
 4 January 11, 2008 for issues involving
 5 insubordination as well as everything that lead
 6 up to that, you actually mean to reference
 7 everything that lead up to it starting in 2006
 8 continuing through 2007, and as you pointed out,
 9 a few days into 2008?
 10 A Yes.
 11 Q When was the first time you thought to
 12 yourself, I might terminate Bassil?
 13 A January 11, 2008.
 14 Q You never thought about that at all in 2006,
 15 2007, or in the first 10 days of January 2008?
 16 A No. I felt I could bring him around.
 17 Q The first time it occurred to you in any
 18 respect was on January 11, 2008 to terminated
 19 Bassil?
 20 A Yes.
 21 Q Why was it all of a sudden on January 11,
 22 2008 termination popped into your mind and you
 23 thought to yourself you need to fire him right
 24 now?
 25 A Because in that moment of insubordination I

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1 realized he had no respect for me, that he would
 2 not subject himself to my authority, and that he
 3 would not commit to complying with what I needed
 4 this office to do.
 5 Q What should he have done on January 11, 2008
 6 to succumb to your authority?
 7 A He should have come to the meeting.
 8 Q Instead of going to the mosque to pray?
 9 A If that's where he goes, yes.
 10 Q You knew that's where he was going that day.
 11 That's what he told you.
 12 A No. He never told me that.
 13 Q Before the meeting Bassil Ally missed on
 14 January 11, 2008, he never told you he was going
 15 to miss it because he needed to go to the
 16 mosque?
 17 A He never told me that. If you use "told" in
 18 the sense of speaking, no. It wasn't until he
 19 provided me with a letter later that morning
 20 indicating that's where he was going.
 21 Q Your testimony is that when you talked to
 22 Bassil on January 11, 2008 and he said to you, I
 23 will not be there, he did not tell you he
 24 wouldn't be there because he had to go to his
 25 mosque?

1 A That's correct.
 2 Q Notwithstanding the words he might have said
 3 at that moment in time, did you know when he
 4 said, I'm not going to be there, that he was
 5 intending to communicate to you, I will be going
 6 to the mosque to pray?
 7 A No.
 8 Q You had no idea?
 9 A No.
 10 Q I'm correct? You had no idea, yes?
 11 A That is correct.
 12 Q Why was the meeting so important that when
 13 Bassil told you he wasn't going to be there on
 14 January 11th you made the decision to fire him
 15 for insubordination?
 16 A Mainly because the dynamics of the office had
 17 drastically changed within a couple days leading
 18 up to January 11th.
 19 Q What does that mean?
 20 A ~~That means that Dana Lantz was pregnant, and~~
 21 ~~and I believe it was that Wednesday, about~~
 22 ~~January 11th, and for some reason she was having~~
 23 ~~the pregnancy agency had told her she could not~~
 24 ~~come to work.~~
 25 That left me with two assistants and myself.

1 ~~Bassil was not returning to work until January~~
 2 ~~10th, a Thursday, from his vacation. There were~~
 3 ~~dockets that day. It had just -- I didn't think~~
 4 ~~it was going to work. Plus, frankly, I had not~~
 5 ~~collected my thoughts.~~
 6 So, January 11th was the first moment I
 7 believed we could get together and have a meeting
 8 that we needed to have.
 9 Q On January 10th of 2008, the day before the
 10 meeting, did you know that Bassil had been
 11 attending prayer service on Fridays at the
 12 mosque?
 13 A Did I know?
 14 Q Yeah.
 15 A No.
 16 Q You had put it -- in fairness to you, it's
 17 Exhibit 2 or something. You put it in a memo
 18 that you didn't raise with him that he had been
 19 attending things and you wanted to talk to him
 20 about making time. You knew Bassil attends the
 21 mosque on Friday?
 22 A No. I knew that's what he told me he did.
 23 Q I see. Okay. All right. Maybe I should ask
 24 it differently then.
 25 A Please.

1 Q Let me ask you, did you have reason to
 2 suspect that Bassil wasn't being truthful with
 3 you when he was telling you he was going to the
 4 mosque?
 5 A No.
 6 Q You're simply saying you didn't personally
 7 track him there? You don't have first-hand
 8 knowledge that's actually what he did by going to
 9 the mosque?
 10 A That's exactly what I'm saying.
 11 Q Let's assume for purposes of my question when
 12 he told you he was going to the mosque he
 13 actually went to the mosque. Fair enough?
 14 A Yes.
 15 Q As of January 10, 2008, did you have an
 16 understanding based upon what Bassil told you
 17 that Bassil would go to the mosque to pray on
 18 Fridays?
 19 A I had an understanding, yes.
 20 Q Did you have an understanding of roughly when
 21 it was he had his prayer services on Fridays?
 22 A Yes.
 23 Q When was that?
 24 A Approximately 1 to 3 or thereabouts.
 25 Q You understood it took about an hour to an

1 hour and a half and then it went into him going
 2 and coming from the mosque?
 3 A He was gone for a block of approximately two
 4 hours. That's what I understood.
 5 Q My question to you is that you had
 6 information in your mind -- you knew the morning
 7 of January 11th of 2008 --
 8 A I had an understanding. I don't know it was
 9 in my mind.
 10 Q Did you have an understanding -- if I asked
 11 you this same question on January 11th, you would
 12 say, yeah, I know or he tells me he goes to the
 13 mosque for a couple hours on Fridays?
 14 A That's the best I can do, yes.
 15 Q When did you decide to make the January
 16 meeting on January 11th?
 17 A That morning.
 18 Q That morning. Why did you decide to schedule
 19 it when you did during the day?
 20 A Because that was the time that seemed
 21 everybody was available.
 22 Q What time was it?
 23 A 2:00.
 24 Q Right in between 1 and 3 when, at least
 25 according to Bassil, he was going to the mosque

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1 to pray?
2 **A Yes.**
3 Q Now, why did you not schedule it for 8:30 in
4 the morning?
5 **A Again, I don't recall exactly when I**
6 **collected my thoughts. I think it was late**
7 **Thursday. In the morning we have in-takes, new**
8 **cases coming in. People are getting ready for**
9 **their dockets. There's just business of the**
10 **office going on. Mornings are a very busy time**
11 **for us.**
12 Q Why didn't you schedule it for late
13 afternoon?
14 **A Late afternoon meaning?**
15 Q After 3:00 sometime.
16 **A I didn't know how long the meeting was going**
17 **to take. I didn't want to keep people after 4.**
18 Q Did you think the meeting would last more
19 than an hour?
20 **A I had no idea. There were a number of topics**
21 **that had to be addressed.**
22 Q How long did the meeting take?
23 **A Approximately half an hour.**
24 Q In retrospect, had you had it at 3, everybody
25 would be able to finish it and get out by 4?

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1 **A Not necessarily, because there was also a**
2 **matter at 3:45 in Judge Milich's court that day.**
3 Q A matter?
4 **A A case.**
5 Q Okay. Why does that mean that it wouldn't
6 have been able to get resolved at 3:45? Because
7 somebody would have to go to attend to that
8 matter?
9 **A Yes.**
10 Q Did everybody in the prosecutor's office
11 other than Bassil attend your meeting on January
12 11, 2008 at 2?
13 **A My two assistant prosecutors did, yes. By**
14 **"everyone" I assume you're not referring to the**
15 **secretary?**
16 Q Well --
17 **A It was my two assistant prosecutors that**
18 **attended the meeting.**
19 Q Did all assistant prosecutors other than
20 Bassil attend your meeting on January 11, 2008 at
21 2?
22 **A Yes.**
23 Q What about Pete Klimis?
24 **A Pete was there.**
25 Q He was there?

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1 **A Yes.**
2 Q Do you know whether or not he was scheduled
3 to be in court that afternoon?
4 **A I do.**
5 Q What happened?
6 **A There were two sentencings set on that**
7 **docket, one for 1:30, one for 1:45. I told him**
8 **to get there as soon as possible, and we had the**
9 **meeting.**
10 Q So I understand correctly, had Bassil Ally
11 not gone to the mosque on Friday, January 11th
12 but instead attended the meeting at 2 that you
13 had scheduled that morning, he would not at least
14 have been told by you that he was fired?
15 **MR. ABBARNO: All other facts**
16 **being the same, the way he acted.**
17 **MR. POLK: Objection is**
18 **sufficient.**
19 Q That means remember to talk about the tone
20 and attitude.
21 **A I knew exactly what he meant.**
22 Q I know you did. That's why you're not
23 supposed to talk.
24 **A Him being told "you're done here,"**
25 **terminated, fired, however you want to cast it,**

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1 **had nothing to do with his attendance at the**
2 **mosque that day. It all related back to the way**
3 **in which he spoke to me that morning.**
4 Q Okay. So let me understand this. Had Bassil
5 Ally, on January 11, 2008, said to you, I'm not
6 going to be there, but spoke those words in a
7 very respectful, nice, kind way, he would not
8 have been terminated by you?
9 **A I'm saying it would have been a very**
10 **different conversation had he spoken to me in a**
11 **kind, respectful way.**
12 Q What would you have done? Would you have
13 excused him from the meeting so he could attend
14 his prayer ceremony?
15 **A I would have asked him why he couldn't be**
16 **there, and that would have lead to a greater**
17 **conversation.**
18 Q Is it your testimony, sir, when he told you
19 he wasn't going to be there on Friday, January
20 11, you had no concept that he was telling you he
21 wasn't going to be there to attend the mosque?
22 **A He told me he won't be there. He never**
23 **stated a reason.**
24 Q That wasn't my question. When he told you
25 that, wordsmithing aside, are you testifying

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1 under oath you didn't understand, I'm not going
2 to be there at 2 on Friday, that you didn't know
3 exactly why he was telling you that, because he
4 had to go to prayer services on Friday?
5 Is that your testimony?
6 MR. ABBARNO: Objection to
7 your characterization of
8 wordsmithing. Now answer the
9 question.
10 **A That's what I'm telling you.**
11 Q What did you think Bassil Ally was trying to
12 communicate to you on Friday, January 11, 2008
13 when he told you he wasn't going to be there?
14 **A He was communicating to me he wouldn't be at**
15 **the meeting.**
16 Q What did you think he had to do other than
17 come to the meeting?
18 **A I didn't speculate why he was saying that.**
19 Q No concept at all?
20 **A No. He told me he won't be there. Quite**
21 **literally, I took it he won't be there.**
22 Q Ken wanted you to talk about tone and
23 attitude. Tell me how that came into play and
24 how he could have done things differently so he
25 wouldn't be terminated.

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1 MR. ABBARNO: He already
2 answered that.
3 MR. POLK: We'll do it
4 again.
5 MR. ABBARNO: Answer again.
6 Q Here is what I want to understand. Is there
7 something different in terms of the tone or in
8 terms of the attitude that you claim Bassil Ally
9 communicated or expressed to you on that day that
10 he could have done differently that would not
11 have lead to your telling him he's terminated?
12 **A Yes.**
13 Q What is that?
14 **A Could have approached -- sorry. He could**
15 **have approached my initial request to come to the**
16 **meeting in a more respectful manner that would**
17 **have lead to a greater conversation between he**
18 **and I. That could have possibly lead to some**
19 **resolution of the attendance.**
20 Q All right. You have told me already, in
21 fairness to you, he said to you, "I'm not going
22 to be there." He said it in a disrespectful
23 tone.
24 Is there anything else about what he said to
25 you prior to the meeting that also in your mind

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1 was disrespectful, insubordinate?
2 **A It was entirely the tone, and all he said is,**
3 **"I won't be there."**
4 Q When did you first learn that Bassil filed a
5 charge of discrimination?
6 **A Within about two weeks of January 11th.**
7 **Sometime in that time period.**
8 Q I have a copy of the charges. Your belief is
9 you learned within two weeks of January 11, 2008
10 that Bassil actually filed a charge?
11 **A Yes.**
12 Q And who was the first person you spoke to
13 about the fact that Bassil filed a charge? I'm
14 not going to ask you details.
15 **A Attorney Dan Pribich, P-R-I-B-I-C-H.**
16 Q Did you learn about the fact that Bassil
17 filed a charge of discrimination before or after
18 Bassil actually returned to work on February 4,
19 2008?
20 **A Before.**
21 Q So when Bassil came into work from the leave,
22 you knew at that point in time Bassil had already
23 initiated legal proceedings?
24 **A By way of filing the charge of**
25 **discrimination. I knew he filed this, whatever**

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1 **it is, legal or administrative.**
2 **(Plaintiff's Exhibit 6 was marked**
3 **for identification.)**
4 Q You knew he filed the charge of
5 discrimination which is Exhibit 6?
6 **A Yes.**
7 **(Plaintiff's Exhibit 7 was marked**
8 **for identification.)**
9 Q Bassil returns to work February 4, 2008. I'm
10 going to hand you a memo that you created and I
11 think distributed February 6, 2008, am I
12 correct?
13 **A I did create it February 6, 2008. I would**
14 **have distributed it on or within a day or so of**
15 **that date.**
16 Q All right. There's a little handwriting
17 above 2007. I don't know whose that is. Do
18 you?
19 **A That's mine.**
20 Q Were you essentially confirming it was 2008
21 when it was being sent out?
22 **A Yes.**
23 Q Did you do that before you distributed this
24 or after the fact?
25 **A I don't remember when I did that.**

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1 Q It's obviously 2008.
2 A Yes.
3 Q If you would, please, explain for me why you
4 decided to roll out a memo on office policies on
5 February 6, 2008.
6 MR. ABBARNO: Let me talk to
7 Jay real quickly about this, okay?
8 MR. POLK: Sure.
9 (Brief recess)
10 Q Before we took a break, I asked you a
11 question, and as you're allowed to do, you wanted
12 to talk to your lawyer about presumably matters
13 relating to potential privileges.
14 Let me pose the question to you again. You
15 tell me whatever you need to tell me in response
16 to my question to you.
17 Why is it you chose to roll out a memo
18 regarding office policies on February 6, 2008?
19 A This document was generated on advice of
20 counsel.
21 Q So as a consequence I assume it's your
22 position you can't share with me the answer to my
23 question without revealing privileged
24 information?
25 A That is correct.

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1 Q Notwithstanding, let me ask you couple
2 questions about the document itself. Turn to the
3 second page, paragraph 14.
4 A Okay.
5 Q Other than Bassil Ally, can you identify for
6 me any other assistant prosecutor under your
7 supervision who would have to leave the office
8 during normal business hours, 8 to 4 p.m., for
9 recognized religious obligations or religious
10 beliefs?
11 A No.
12 Q Was paragraph 14 placed into the memo that is
13 Exhibit 7 specifically to address Bassil Ally?
14 MR. ABBARNO: The document
15 was generated on the advice of
16 counsel.
17 Q If in response you need to say, I can't
18 answer because he told me not to, that's fine. I
19 need to be able to ask the question to see where
20 you're drawing the line.
21 A The document was generated on the advice of
22 counsel.
23 Q Please turn to the following page that
24 contains paragraph 15. Other than Bassil Ally,
25 can you identify any other assistant prosecutor

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1 under your supervision who ever wished to observe
2 a religious holiday on a day not officially
3 recognized by the city?
4 A Possibly Attorney Pete Klimis, but I'm
5 leaning more towards the answer being no.
6 Q All right. One of the ground rules I didn't
7 talk about -- I assume your lawyer did that I
8 agree with -- which is don't guess or speculate.
9 Why is it you think Pete Klimis might have
10 wanted to take time off for a religious holiday
11 not officially recognized by the city?
12 A There's something in my mind about having a
13 conversation with him, but I'm not sure.
14 Q Do you know what religion Pete is?
15 A No.
16 Q Do you have a guess? Do you have any
17 speculation about what type of religion he is?
18 Do you go to similar churches, Ash Wednesday?
19 MR. ABBARNO: You asked him
20 not to guess.
21 A You asked me not to guess. We don't go to
22 the same church. To the remainder of your
23 compound question, I can't answer it.
24 Q All right. Under oath today can you identify
25 for me anybody else that you know with certainty

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1 that ever asked to take some time off for a
2 religious holiday on a day that wasn't officially
3 recognized by the city?
4 A With certainty, no.
5 Q Now, I asked you both the questions about
6 paragraph 14 and 15 with respect to any other
7 assistant prosecutors. I would like to broaden
8 my question to understand a little further.
9 Can you identify for me anybody under your
10 supervision whether assistant prosecutors, staff,
11 et cetera, other than Bassil Ally, who has ever
12 needed to take time away from normal business
13 hours or needed to take time off for a religious
14 belief or religious obligation that wasn't
15 recognized by the city?
16 A With certainty, I cannot answer that
17 question.
18 Q I think I know the answer to your question.
19 Was paragraph 15 inserted into Plaintiff's
20 Exhibit 7 specifically to address Bassil Ally?
21 A This document was generated on advice of
22 counsel, yes.
23 Q Therefore, you can't answer?
24 A Correct.
25 Q Did you give Plaintiff's Exhibit 7 to Bassil

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1 Ally?
2 **A Yes. Either by handing it to him or leaving**
3 **it on his chair.**
4 Q When do you believe you did that, February
5 6th or sometime thereafter?
6 **A Sometime thereafter.**
7 Q Do you believe it was the next day, the same
8 day, two days later, a week later?
9 **A I don't recall specifically. He noted he**
10 **received it 2/8.**
11 Q Do you have any reason to dispute he received
12 it on 2/8?
13 **A No.**
14 Q Consistent with that, I'm going to hand you
15 plaintiff's exhibit --
16 **A Can I back up? I just want to clarify that**
17 **again. I can tell you with certainty he did not**
18 **receive it until 2/8.**
19 Q Until 2/8?
20 **A Yes.**
21 Q I think I agree with you. The reason being
22 is I have been given a memo where at least it
23 appears from the memo that the office policies
24 were at least reviewed with Bassil on 2/8 and the
25 memo appears to reference the attached

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1 memorandum.
2 **A That is correct.**
3 **(Plaintiff's Exhibit 8 was marked**
4 **for identification.)**
5 Q Taking Plaintiff's Exhibit 7 together with
6 Plaintiff's Exhibit 8, you know Bassil did not
7 actually get the office policies that you rolled
8 out in February of 2008 until February 8th of
9 2008?
10 **A I did not get this writing until February 8th**
11 Q Okay. He likewise didn't get the policies
12 contained in Plaintiff's Exhibit 7?
13 **A True. No.**
14 Q You think he got Plaintiff's Exhibit 7 before
15 February 8th?
16 **A I think he got certain portions of**
17 **Plaintiff's Exhibit 7 prior to February 8th.**
18 Q Help me understand why you hold that belief.
19 **A Some of them are reflected in other memos or**
20 **some of them are policies I established at the**
21 **beginning of my tenure.**
22 Q You roll out with new policies on February
23 6th of 2008 that are delivered to your
24 subordinates on February 8, 2008?
25 **A Some of these are not new policies.**

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1 Q Okay. Let me rephrase my question. You
2 decided to roll out with a memorandum reviewing
3 office policies on February 6, 2008, which is
4 distributed to your subordinates February 7th or
5 February 8th?
6 **A Right. The decision was to reduce to writing**
7 **the policies on February --**
8 Q Regardless, you rolled out this memo that
9 talked about office policies on February 6th, and
10 it was actually distributed February 7th or 8th,
11 right?
12 **A Yes.**
13 Q That was, I think, if my memory is correct,
14 and me several is correct, a Wednesday was
15 February 6th, Thursday was February 7th, Friday
16 was February 8th?
17 **A Sounds right.**
18 Q That was the week Bassil was returned from
19 the administrative leave?
20 **A Right.**
21 Q Right after you rolled out with a memo,
22 Bassil was disciplined in writing for attending
23 his religious service?
24 **A No.**
25 **(Plaintiff's Exhibit 9 was marked**

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1 **for identification.)**
2 Q No? Why do you disagree with that when you
3 look at Plaintiff's Exhibit 9?
4 **A First of all, it's not characterized as a**
5 **reprimand or discipline in any way. It's a**
6 **request for him to account for the time that he**
7 **was out of the office.**
8 Q Have you ever placed a memo like Plaintiff's
9 Exhibit 9 in anyone else's file?
10 **A No.**
11 **(Plaintiff's Exhibit 10 was marked**
12 **for identification.)**
13 Q Plaintiff's Exhibit 10, an exchange ensued
14 between you and Bassil over the next several
15 days, yes?
16 **A This was generated as a result of my February**
17 **8th memo.**
18 Q There was an issue before Plaintiff's Exhibit
19 9 a few days after Bassil returned to work
20 separate and apart from his attendance at the
21 mosque, you reduced to writing concerns about
22 Bassil's treatment after a particular sentencing
23 issue or DUL amendment, correct? Do you remember
24 that? I have the memo in front of me. Generally
25 do you recall what I'm talking about?

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1 A No. I would like to see it.
2 (Plaintiff's Exhibit 11 was marked
3 for identification.)
4 Q Okay. I'll show you. I think I would
5 characterize this as another letter of discipline
6 that week when he returned from his leave,
7 Plaintiff's Exhibit 11. Tell me if you would
8 agree with me Plaintiff's Exhibit 11 is some type
9 of disciplinary memo.
10 A I would agree.
11 Q So, before you wrote him the memo on February
12 8th for making sure that he accounted for city
13 time and confirmed he attended his mosque, the
14 day before you had written a disciplinary memo
15 related to a long-standing policy in this office
16 that no DUI offense may be amended without your
17 approval, right?
18 A If you're simply talking temporal or
19 time-wise, your question is correct. However, in
20 a very broad sense, your question is incorrect.
21 Q Why am I incorrect about my question in a
22 broader sense?
23 A Because, as I mentioned, February 6th or 7th
24 or 8th is simply the day or days those policies
25 were reduced to writing and distributed. It had

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1 been my policy since day one of my tenure or very
2 nearly thereafter that DUI's were not amended
3 without my authorization.
4 Q Fair enough. As it relates to that policy,
5 it never had been memorialized until February 6,
6 2008?
7 MR. ABBARNO: Objection.
8 A Yes.
9 Q Now, moving on --
10 MR. ABBARNO: How long will
11 your next topic be?
12 MR. POLK: I'm keeping that
13 in mind. I'm trying to move
14 forward. I may go a couple
15 minutes over. It won't be more
16 than a few. I'll get you out of
17 here at 3. I'm trying to finish up
18 some things.
19 You and I will have to meet
20 again. It will be similar in
21 circumstances. It will allow me
22 to have the benefit of whatever
23 information your lawyer is looking
24 for in response to my questions.
25 A Looking forward to it.

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1 (Plaintiff's Exhibit 12 was marked
2 for identification.)
3 Q 12. Take one, please pass the other one to
4 your lawyer. This is all part of the back and
5 forth that ensued from the memo you gave to
6 Bassil on February 7, 2008 regarding his
7 violation of your long-standing policy that was
8 reduced to writing on February 6, 2008.
9 A This was his response, yes.
10 Q Had you ever disciplined in the form of a
11 written reprimand any other assistant prosecutor
12 for amending a DUI charge without your approval?
13 A In writing, no.
14 (Plaintiff's Exhibit 13 was marked
15 for identification.)
16 Q You obviously issued another memo related to
17 the same issues, which is marked as Plaintiff's
18 Exhibit 13, yes?
19 A Yes.
20 Q Fast forward for a moment. You told me
21 earlier you never took any action or said
22 anything negative about the fact that Bassil had
23 [REDACTED] in February of
24 2008. Do you recall that we were going through
25 my requests for admissions?

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1 A Which one are you talking about?
2 Q [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 A I said I never made those comments as they
6 were quoted there.
7 Q You can go there if you want. I'm not going
8 to ask you the same questions. At some point in
9 February of 2008 you [REDACTED] Bassil needed to
10 [REDACTED] medical testing?
11 A Yes. That's what he told me.
12 Q All right. And [REDACTED] when one of your
13 employees tells you they need to go to medical
14 testing, do you call for three or more days and [REDACTED]
15 [REDACTED] you take that seriously?
16 A Yes.
17 Q [REDACTED] Bassil report to you that [REDACTED]
18 [REDACTED] to be out seriously?
19 A Yes.
20 Q Okay. Did you give him, in your mind, a
21 amount time relative to taking time off in
22 [REDACTED] to be medical testing?
23 A No.
24 Q You know there's obviously back and forth
25 about documentation. Why is it that you took the

1 position you did in requiring him to take the
2 steps he did to have to verify he was taking the
3 time off for medical testing.
4 **A To bring his request into compliance with the**
5 **city ordinance.**
6 **Q Your position is his initial request wasn't**
7 **in compliance with the city ordinance?**
8 **A Correct.**
9 **Q What was deficient about his initial**
10 **request?**
11 **A The doctor's excuse.**
12 **Q Was there a doctor's excuse provided?**
13 **A Actually, no.**
14 **Q Was there at some point in time?**
15 **A Later, yes.**
16 **Q Was it satisfactory to you?**
17 **A Eventually.**
18 **Q Was he credited for the time off?**
19 **A For those sick days?**
20 **Q Yes.**
21 **A I don't know.**
22 **Q Does somebody know?**
23 **A Somebody that handles payroll.**
24 **Q I mean, should he have been credited for that**
25 **time off?**

1 **A Yes.**
2 **Q If he hadn't, that obviously --**
3 **A That's not my area.**
4 **Q What type of training have you received**
5 **during the course of your career managing people**
6 **in complying with employment laws?**
7 **A No formal training.**
8 **Q Sort of informal training. Did you ever get**
9 **training by the city on how to make sure you**
10 **comply with various employment laws?**
11 **A There were certain mandatory sessions that we**
12 **had to attend, but other than that, no. No**
13 **formal training.**
14 **(Plaintiff's Exhibit 14 was marked**
15 **for identification.)**
16 **Q Handing you real quick Plaintiff's Exhibit**
17 **14, I believe that's the position statement filed**
18 **in response to Bassil Ally's charge of**
19 **discrimination.**
20 **A That is what it purports to be.**
21 **Q Have you seen that before?**
22 **A I have seen it before.**
23 **Q Okay. Everything in the document is true and**
24 **accurate to the best of your belief?**
25 **A It appears to be.**

1 **Q When you previously saw it, did you think to**
2 **yourself anything contained in that document was**
3 **in any way incorrect or wrong?**
4 **A I have no reason to believe anything is**
5 **wrong.**
6 **(Plaintiff's Exhibit 15 was marked**
7 **for identification.)**
8 **Q Have you ever seen Plaintiff's Exhibit 15**
9 **before?**
10 **A In the OCRC file.**
11 **Q Okay. You understand that Bassil Ally's**
12 **charge of discrimination that was filed in early**
13 **2008 was ruled probable cause that the City of**
14 **Youngstown engaged in discriminatory activity**
15 **towards Bassil in 2008?**
16 **MR. ABBARNO: Continuing**
17 **objection relative to the findings**
18 **of the investigation. Go ahead.**
19 **A I understand they found probable cause for**
20 **that issue.**
21 **Q How did you feel when you learned that they**
22 **had found probable cause to support Bassil Ally's**
23 **charge of discrimination?**
24 **A Confused.**
25 **Q Why?**

1 **A Because the facts are not accurate.**
2 **Q The facts contained in the OCRC findings?**
3 **A Correct.**
4 **(Plaintiff's Exhibit 16 was marked**
5 **for identification.)**
6 **Q What facts are not accurate about that**
7 **finding?**
8 **A Beginning the fourth paragraph, third line**
9 **flowing over to the fifth line where it starts:**
10 **Charging party informed Mr. Macejko he would not**
11 **be able to attend the meeting at that time due to**
12 **his religious obligations and so on. That is not**
13 **accurate.**
14 **Q He didn't tell you that?**
15 **A No.**
16 **Q Your testimony -- you said it 16 times -- is**
17 **when he told you that, you had no understanding**
18 **that he was actually telling you he wasn't going**
19 **to attend the meeting on January 11, 2008 so he**
20 **could attend his prayer service.**
21 **A My testimony was he told me, "I won't be**
22 **there."**
23 **Q And my point is not withstanding what he told**
24 **you, your testimony was in your mind at that**
25 **moment in time you didn't believe he was going to**

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1 the prayer service on Friday instead of attending
2 the meeting.
3 **A I didn't know why.**
4 Q You had no belief at all?
5 **A No.**
6 Q 16. Same question. The statement of
7 position, which is did you see this request for
8 reconsideration when it was sent out?
9 **A No.**
10 Q Did you see it at some point thereafter?
11 **A Yes.**
12 Q Is everything contained in the request for
13 reconsideration true and accurate?
14 **A It appears to be.**
15 Q When I was talking to you about January 11,
16 2008, I was talking to you about discussions you
17 had with The Mayor surrounding that point in
18 time.
19 I want to make sure that I understand any
20 communications you had with The Mayor around that
21 time, okay.
22 Here's my question to you. There was a
23 moment in time on January 11, 2008 where you said
24 to Bassil, "you're done here," right?
25 **A Yes.**

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1 Q Prior to that moment in time, did you have
2 any discussions at all with Mayor Williams about
3 Bassil Ally or potentially terminating Bassil or
4 potentially disciplining Bassil Ally?
5 **A That's a very broad question. Allow me to**
6 **answer backwards. I'll tell you with regard to**
7 **discipline and firing there were no such**
8 **conversations prior to or on January 11, 2008.**
9 **No discussions with Mayor Williams. The first**
10 **part is the --**
11 Q Have you ever talked to him about Bassil?
12 **A I'm sure I may have.**
13 Q About matters related to his employment?
14 **A How the office is doing. Discipline, no.**
15 **How the office is doing. If there were a key**
16 **case or something that The Mayor needed to know**
17 **about.**
18 Q Prior to the moment where you told him that
19 he was effectively fired, you never talked to
20 Mayor Williams about terminating him, about
21 disciplining him, or how to handle any of the
22 issues related to the mosque or anything else
23 contained in the memos you wrote?
24 **A That is correct.**
25 MR. ABBARNO: Why don't we

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1 stop?
2 MR. POLK: I have a couple
3 other quick questions.
4 MR. ABBARNO: My only concern
5 is I know with a couple quick
6 questions it will take us to 10 or
7 15 minutes.
8 Q After you told Bassil he was fired on January
9 11, 2008, did you ever talk to Paul Gains about
10 Bassil Ally?
11 **A Yes.**
12 Q Tell me about that.
13 **A I talked to Paul after I learned that Bassil**
14 **had interviewed for a position at the Mahoning**
15 **County Prosecutor's Office.**
16 Q Tell me about those discussions.
17 **A I told him, hire him.**
18 Q You told Paul, hire Bassil?
19 **A Yes.**
20 Q What did he say?
21 **A As I recall -- the court reporter will get**
22 **mad at me. He made a noise like ahhhh. He said**
23 **that -- I would have to guess at the rest. It**
24 **was either the interview didn't go well or it**
25 **just wouldn't work, something to that effect. I**

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1 **can't tell you the exact words.**
2 Q Did you, in any respect, communicate with
3 Paul Gains about the issues that you had had with
4 Bassil attending religious services?
5 **A No.**
6 Q None at all?
7 **A Not that I recall.**
8 Q Did you talk to him at all about any of the
9 performance issues you had had with Bassil?
10 **A No.**
11 Q You simply said, full endorsement, hire
12 Bassil Ally?
13 **A I said, "you should hire him."**
14 Q Did you say anything else --
15 **A No.**
16 Q -- like you should hire him but you need to
17 understand the following?
18 **A No.**
19 Q Nothing along those lines?
20 **A No.**
21 Q Did you say anything negative to Paul Gains
22 about Bassil relative to your discussions about
23 Paul Gains potentially hiring Bassil Ally?
24 **A No.**
25 Q When you came in to your position in 2006,

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1 you made reference earlier to the courtroom
2 rotation being frozen you said.
3 **A That the words I used, yes.**
4 **Q How long was it frozen? From January of '06**
5 **to when?**
6 **A May 5, 2008.**
7 **Q When you say it's frozen, does that mean the**
8 **prosecutor assigned to certain courtrooms will**
9 **stay in those courtrooms?**
10 **A Yes.**
11 **Q On May 5, 2008, why did the rotation become**
12 **unfrozen or thawed out?**
13 **A The reasons I had frozen it initially had**
14 **dissipated. It was just time for a rotation.**
15 **Q What were those reasons?**
16 **A The reasons were that the court -- well, the**
17 **prosecutor's office previously operated on a**
18 **three-month rotation.**
19 **What I knew from my experience there and what**
20 **I knew continued thereafter was that if a**
21 **prosecutor encountered a certain case they didn't**
22 **want to deal with they would blow it off until**
23 **after the rotation.**
24 **As a result, dockets were clogging up.**
25 **People were not taking interest or ownership in**

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1 **their dockets. Frankly, I think some of it**
2 **bordered on abuse.**
3 **By freezing rotations, it thrust ownership**
4 **and responsibility onto that for the dockets and**
5 **their operations.**
6 **Q Prior to May 5, 2008 --**
7 **A Correct.**
8 **Q -- Bassil Ally was assigned to a courtroom**
9 **that did not require him to be in the courtroom**
10 **on Fridays between 1 and 3, true?**
11 **A I don't know.**
12 **Q Do you have any reason to dispute that**
13 **contention?**
14 **A If you're making it a blanket statement, my**
15 **answer is I don't know. If you're saying**
16 **generally do they not have court on Fridays, my**
17 **answer would be yes.**
18 **Q Thank you. You understood that at least up**
19 **until May 5, 2008 Bassil's assignment to a**
20 **courtroom generally didn't require him to be in**
21 **the courtroom on Fridays between 1 and 3?**
22 **A Yes.**
23 **Q Why were you discussing matters with Clemans**
24 **Nelson?**
25 **MR. ABBARNO: If you know**

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1 why.
2 **Q What is Clemans Nelson?**
3 **A Clemans Nelson, I believe, is a law and**
4 **management firm.**
5 **Q Okay. Without getting into the particulars,**
6 **did you have some understanding Clemans Nelson**
7 **was brought in specifically to deal with Bassil**
8 **Ally?**
9 **A No.**
10 **Q Just generally?**
11 **A Yes.**
12 **Q Did you consult with folks at Clemans Nelson**
13 **on a legal basis about how to handle Bassil**
14 **Ally's situation?**
15 **A Yes.**
16 **MR. POLK: All right. We**
17 **agreed we would be done at 3:00.**
18 **I want you to be done. We will**
19 **arrange for your continued**
20 **deposition later. That's it.**
21 -----
22 **(Deposition adjourned for the day at 3:00 p.m.)**
23
24 -----
25

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1 The State of Ohio,)
2) SS: CERTIFICATE
3 County of Cuyahoga.)
4 I, Lorraine A. Litvin, Notary Public within
5 and for the State of Ohio, duly commissioned and
6 qualified, do hereby certify that the
7 within-named, JOSEPH MACEJKO, was by me first
8 duly sworn to testify the truth, the whole truth,
9 and nothing but the truth in the cause aforesaid;
10 that the testimony then given by him/her was by
11 me reduced to stenotypy in the presence of said
12 witness, afterwards transcribed on a computer,
13 and that the foregoing is a true and correct
14 transcript of the testimony so given by him/her
15 as aforesaid.
16 I do further certify that this deposition was
17 taken at the time and place in the foregoing
18 caption specified and was completed without
19 adjournment.
20 I do further certify that I am not a
21 relative, employee of, or attorney for any of the
22 parties in the above-captioned action; I am not a
23 relative or employee of an attorney for any of
24 the parties in the above-captioned action; I am
25 not financially interested in the action; I am
not, nor is the court reporting firm with which I
am affiliated, under a contract as defined in
Civil Rule 28(D); nor am I otherwise interested
in the event of this action.
IN WITNESS WHEREOF I have hereunto set my
hand and affixed my seal of office at Cleveland,
Ohio, on this 5th day of March, 2010.
Lorraine A. Litvin, Notary Public
in and for the State of Ohio.
My commission expires July 30, 2011.