

1 A. My recollection is that there was
2 something, DSS did something prior to the 2000
3 audit. Whether it was a full audit or a desk review
4 or some other type of an audit -- but I honestly
5 can't recall much more than that.

6 (Leslie Deposition Exhibit 21 marked
7 for identification.)

8 BY MR. KOGUT:

9 Q. Take a look at that, Mr. Leslie. Do you
10 recall seeing that document before, Mr. Leslie?

11 A. I do.

12 Q. Do you recall the first time you may have
13 seen it?

14 A. I don't know when the first time I may
15 have seen it was.

16 Q. Do you recall where you saw it before
17 Dr. Weber was arrested?

18 A. I don't recall.

19 Q. Did you have occasion to speak to
20 Mr. Brown?

21 A. (No response.)

22 Q. Do you recall that?

23 A. I don't recall speaking to Mr. Brown.

24 Q. But in any event, this was a desk review
25 performed by a Ray Brown; is that correct?

1 A. It's a review performed by Ray Brown.

2 Q. It's dated the 15th of July of 1998,
3 correct?

4 A. Yes.

5 Q. It specifically addresses the use of the
6 code for materials and supplies, correct?

7 A. (No response.)

8 Q. Do you see the line listed
9 "Recommendations"?

10 A. Yes.

11 Q. Do you see the word "supplies" there?

12 A. I see the word "supplies" there.

13 Q. Do you see the "conclusions"?

14 A. Yes.

15 Q. I know it's difficult to read, but does it
16 appear to you that it says all field auditors have
17 too much work to go to Stamford to see what supplies
18 he uses?

19 A. It appears to say that.

20 Q. Under there it says "Laser," L-A-S-E-R?

21 A. Yes.

22 Q. What appears to be S-U-R-G?

23 A. Yes.

24 Q. This document was reviewed by you at some
25 point during the prosecution?

1 A. Yes.

2 Q. It could have been pre-arrest, it could
3 have been post arrest?

4 A. Yes.

5 Q. Is this the audit that you were referring
6 to when you answered my question earlier about
7 knowing of an audit prior to the audit that formed
8 the basis for the arrest?

9 A. Yes.

10 Q. Did you know that there had been an audit
11 before 1997-98?

12 A. I may have. At this point I don't recall.

13 Q. Would it have mattered to you if you had
14 known that, and the Department of Social Services
15 had information that Dr. Weber was using 99070 as a
16 facility fee?

17 A. Yes.

18 Q. It's your memory today that you simply
19 don't know, don't remember whether or not you knew
20 of another audit?

21 A. I don't know whether there was another
22 audit or not.

23 MR. KOGUT: I'm going to ask to have
24 this marked, and I'll have to make copies. Why
25 don't we do this: Give me five minutes and I'll

1 make the copies, and I'll give you my best estimate
2 how much longer. Is that fair?

3 (Recess: 12:28 to 12:34 p.m.)

4 (Leslie Deposition Exhibit 22 marked
5 for identification.)

6 BY MR. KOGUT:

7 Q. If you would take a look at that,
8 Mr. Leslie, and tell me whether or not, if you have
9 any memory of seeing that document before?

10 A. I don't honestly recall seeing the
11 document.

12 Q. Does it refresh your memory at all as to
13 whether or not you knew there had been an audit
14 prior to the 1997 review? Review. Strike "audit."

15 A. Yes.

16 Q. What is that memory?

17 A. That somebody at DSS reviewed for the
18 period of 1/95 to 1/96.

19 Q. You knew that?

20 A. That's what the document says.

21 Q. Did you know it either pre or post arrest?

22 A. I can't recall.

23 Q. Do you see where it indicates that it's
24 closed for insufficient volume?

25 A. Yes.

1 Q. I see that. Do you see what the amount is
2 for the review period?

3 A. Yes.

4 Q. Some \$30,000, it appears to be 36 dollars?

5 A. Yes.

6 Q. Do you know what the volume was on the
7 '97-98 audit?

8 A. It would appear to be \$41,938.

9 Q. Is that significant to you?

10 MR. RING: Object to the form of the
11 question.

12 A. I cannot answer that question because I
13 don't know what the amount relates to. I don't know
14 if that is the total amount billed to Medicaid, I
15 don't know if that's just focusing on a particular
16 code. I don't know what that figure represents.

17 Q. Would you want to know that from somebody
18 at DSS before proceeding to prosecute Dr. Weber for
19 the use of the 99070?

20 A. I would want to know what that figure
21 represents.

22 Q. Did you ever ask anyone?

23 A. I did not.

24 Q. It's your testimony that you have no
25 memory today whether this document was even given to

1 you, the '95-96?

2 A. I have no recollection of seeing this
3 before.

4 Q. The memo that you, the e-mail that you had
5 given to Donna Frank on May 2, 2003, if you would
6 look on page 2, inquiry number 7, you ask her
7 hypothetically if a physician purchased a brand new,
8 high tech piece of equipment, and then billed DSS
9 under 99070 to cover the cost of the equipment,
10 including maintenance, would DSS consider that use o
11 99070 appropriate, would DSS consider that use of
12 99070 akin to what Weber did. You recall asking her
13 that question, right?

14 A. Yes.

15 Q. Why did you ask her that question?

16 A. As I sit here today, I can't tell you why
17 I asked her that question.

18 Q. Isn't that information that you certainly
19 wanted to know in making the decision to continue to
20 prosecute Dr. Weber?

21 A. It would be information that I think would
22 be important as to how the Franks hearing would
23 proceed.

24 Q. Was her response -- were you satisfied
25 with her response?

1 A. Yes.

2 Q. Prior to this response did you know the
3 difference between a technical and professional
4 component to a procedure?

5 A. Yes.

6 Q. Why don't you tell us what that is.

7 A. The technical component to a procedure is
8 the cost of, for lack of a better term, the machines
9 or, I don't know, other things that are
10 nonprofessional. The professional component is the
11 amount of money that is paid to the physician or the
12 provider for his or her professional expertise.

13 Q. Did you believe on the 25th of November,
14 2003 that Dr. Weber was entitled to that fee?

15 MR. RING: Object to the form of the
16 question.

17 MR. VECHELLI: Objection.
18 Unspecific. What fee are you referring to?

19 MR. KOGUT: Technical component fee.

20 MR. VECHELLI: In what context? I
21 still object to the form of the question; but he can
22 answer it.

23 Q. If you understand the question,
24 Mr. Leslie. If not, I'll rephrase it.

25 A. From a strictly black and white

1 perspective, looking at the definition of 99070, and
2 what Medicaid allowed to be billed in terms of a
3 facility fee, no, he was not entitled to use 99070
4 to recover for a facility fee for procedures that
5 were performed in his office; however, in light of
6 the remittance advice that you showed me for the
7 first time on that day, as well as Ms. Rivera's
8 testimony, I did not believe that Weber had the
9 intent to permanently defraud the State of
10 Connecticut, which is an essential element in the
11 crime of larceny.

12 Q. Did the DSS audit of Dr. Harper play a
13 factor in your decision or your opinion?

14 A. My opinion when?

15 Q. That you just gave. She can reread it if
16 you'd like.

17 A. No. I suppose subconsciously it may have.
18 Dr. Harper was in a position where she was using
19 modifiers that were not recognized by the DSS
20 billing system. My recollection is that when she
21 was confronted at her audit, at her exit conference,
22 that she agreed with the assessment. She said,
23 "You're right, I didn't realize that Medicaid
24 doesn't use the same modifiers as Medicaid does.
25 There was no intent to my part here to defraud the

1 state," and I believe she voluntarily paid back the
2 overpayment.

3 So maybe that was running around inside my
4 head, you know, when I reviewed the remittance
5 advice and came to the conclusion that Weber did not
6 have the necessary intent.

7 Q. She wasn't, Dr. Harper wasn't referred for
8 prosecution, was she?

9 A. Not while I was there.

10 Q. Do you recall Dr. Nasaduke being referred
11 for prosecution?

12 A. No.

13 Q. Do you recall the discussions during the
14 course of Mr. McCormick's testimony about podiatry?

15 A. I recall the subject came up.

16 Q. Do you recall in what context?

17 A. I don't.

18 Q. Do you recall that Mr. McCormick was asked
19 by Judge Keller what other Medicaid providers used
20 the code 99070? Do you recall that?

21 A. I don't specifically recall that question.

22 Q. Do you recall Mr. McCormick saying that
23 there had been some problem that was discovered by
24 Mr. Comerford with regard to the use of 99070 by
25 podiatry providers?

1 A. Again, I don't specifically recall that
2 answer.

3 Q. Do you recall that that's information that
4 I had requested pursuant to a Freedom of Information
5 request?

6 A. I know that you submitted several Freedom
7 of Information requests with several state agencies.
8 I don't know whether that was part of your request.

9 (Leslie Deposition Exhibit 23 marked
10 for identification.)

11 BY MR. KOGUT:

12 Q. Does that document look familiar?

13 A. I have seen this document.

14 Q. This is a fax from John McCormick to you,
15 correct?

16 A. Yes.

17 Q. Dated the 20th of December of 2002, right?

18 A. Yes.

19 Q. Post arrest?

20 A. Yes.

21 Q. The letter from me requesting documents is
22 dated the 19th of December?

23 A. Correct.

24 Q. Do you recall what, if anything, you did
25 with this document?

1 A. I read it, and I presume I put it either
2 in my trial file or in one of the notebooks that I
3 was keeping regarding the prosecution.

4 Q. Do you know why Mr. McCormick sent it to
5 you?

6 A. I don't know why he sent it to me.

7 Q. Did you ask him?

8 A. No.

9 Q. Was it important for you to know why he
10 would send you this document?

11 A. It was important that I receive a copy of
12 the document. The reasons why he wished to send
13 them were not necessarily important.

14 Q. Was there anything in these requests that
15 was of interest to you?

16 A. Well, certainly I would like to see all
17 the documents that related to Dr. Weber, but this
18 was something that is completely out of my control.
19 This is a request for documents pursuant to Freedom
20 of Information that was sent to a state agency by
21 which I was not employed, so I had no control over
22 what they did and did not or could not provide to
23 you. So I'm sure I made a mental note of what was
24 being requested, and I simply waited to hear
25 regarding whether or not that request was acted

1 upon.

2 Q. Did you get other such communications from
3 Mr. McCormick?

4 A. I think that if there were other requests
5 for information under the Freedom of Information Act
6 that were sent to Mr. McCormick, that he in all
7 likelihood would have given me a copy of them.

8 Q. Did you ever say to him, Why are you
9 sending me these things, they don't apply to my
10 prosecution?

11 A. No.

12 Q. Did they?

13 A. They may have.

14 Q. How would you determine whether it would
15 or wouldn't?

16 A. Because I would request the opportunity to
17 review the documents upon them being turned over.

18 Q. You see there on number 9 there's a
19 request for an HCFA file by all providers, including
20 physicians and podiatrists? Do you see that?

21 A. I see that.

22 Q. Was that significant to you when
23 Mr. McCormick testified under oath about podiatry?

24 A. I'm not sure that I made the connection
25 when he testified under oath.

1 Q. Do you recall him testifying under oath
2 that the department had sent out some 159 letters to
3 podiatrists because Mark Comerford had identified a
4 problem with the use of 99070 in podiatry?

5 A. I don't recall that specific testimony,
6 no.

7 Q. Did you ever hear of a Dr. Gerski?

8 A. Not to the best of my recollection.

9 Q. You testified earlier that you were
10 familiar with the name Reuven Rudich, correct?

11 A. Yes.

12 Q. I believe you testified you weren't sure
13 when you became aware of that, correct?

14 A. I believe that was my testimony.

15 Q. If I suggested to you that an internal
16 document from the chief state's attorney's office
17 suggested or stated that you requested on the 5th of
18 May from Mr. Mauer some information on Dr. Rudich,
19 would that refresh your memory?

20 A. No, it would not.

21 Q. Do you have any memory at all of asking
22 Mr. Mauer for information on Dr. Rudich?

23 A. I remember asking for some information on
24 him, yes.

25 Q. Do you recall what you were looking for?

1 A. I don't recall.

2 Q. Do you recall why?

3 A. It came to my attention that that
4 particular provider was also a heavy biller for
5 99070, so I thought it would be important for me to
6 review with DSS records regarding his billings and
7 compare and contrast those with Weber's records.

8 Q. Is that what you asked for from Mr. Mauer?

9 A. I don't recall what I asked for from him.

10 Q. Do you recall what he gave you?

11 A. I do.

12 MR. VECCELLI: Objection.

13 Q. Do you have any memory of what you learned
14 about Dr. Rudich's billings?

15 MR. VECCELLI: I'm going to object
16 and instruct the witness not to answer.

17 You're asking him questions about
18 billings by doctors other than Dr. Weber, and it
19 invades the privacy of those other doctors. I'll
20 instruct the witness not to answer.

21 Q. Are you refusing to answer my question on
22 advice of your counsel?

23 A. I'm following the advice of my counsel.

24 MR. VECCELLI: You can ask generic
25 questions and categories, but we object to

1 particular questions about particular doctors
2 reviewed by the Office of the Chief State's
3 Attorney.

4 Q. Did you know in May of 2003 that there was
5 another ophthalmologist using the 99070 code for the
6 use of the in-facility laser in his office?

7 A. I don't recall when I learned that
8 information, and I don't recall whether I learned
9 the information that this particular ophthalmologist
10 was using that code for a facility fee, or whether
11 it was for some other, appropriate billing.

12 Q. So it was of no consequence to you in
13 continuing or discontinuing the prosecution of
14 Dr. Weber?

15 A. That was not my testimony. My testimony
16 was that I did not recall when I learned of his, of
17 this other provider's use of 99070 or what he was
18 using it for. It would have been important to me.
19 I may have asked for this information from
20 Mr. Mauer, but I don't recall exactly what I asked
21 for.

22 Q. Do you know what prompted you to ask for
23 the information?

24 A. I don't recall.

25 Q. Do you know whether you ever discussed

1 that provider with Mr. McCormick?

2 A. I don't believe I discussed it with
3 Mr. McCormick.

4 Q. If a provider such as an ophthalmologist,
5 practicing the same specialty as Dr. Weber who you
6 were prosecuting was submitting 99070 claim forms
7 for the same purpose that Dr. Weber was, would that
8 be information that you would want to know?

9 A. In connection with?

10 Q. Your prosecution.

11 A. The prosecution? In a sense, perhaps,
12 just to see why the code was being used, and what,
13 if any, justification that particular provider gave
14 to DSS for the use of the code; but quite frankly,
15 what one provider does as versus another provider is
16 irrelevant to the prosecution of a specific
17 provider. What I need to look at is what that
18 particular provider was doing and the intent with
19 which he or she was doing it.

20 Q. Would it also be irrelevant to you in a
21 claim or defense of selective prosecution?

22 A. No. In that case, it would not be.

23 Q. Isn't that what Dr. Weber was claiming?
24 Isn't that what the motions were all about?

25 A. In part, yes.

1 Q. Well, wasn't the principle for the motion
2 to suppress the search and to suppress the arrest
3 and to dismiss the information selective
4 prosecution?

5 A. The theory on the motions to suppress
6 pursuant to Franks was that the inspectors
7 intentionally or with reckless disregard for the
8 truth provided false information on the search and
9 seizure affidavit and the arrest warrant affidavit.
10 My recollection is that the basis for the motion to
11 dismiss was based upon selective prosecution as one
12 aspect of it.

13 Q. Did you ever at any point after this was
14 all over and done with ask John McCormick what
15 documents he withheld from you?

16 A. No.

17 MR. RING: Object to the form of the
18 question. I don't believe he ever testified he
19 withheld documents from him.

20 A. What's the question?

21 Q. Why not? Why didn't you?

22 A. I don't know how to answer that.

23 Q. You do recall Mr. McCormick's testimony
24 under oath that there were certain documents he did
25 not give you because they were attorney-client

1 privilege?

2 A. I recall a rather lengthy discussion about
3 the attorney-client privilege. During that
4 discussion the court became involved in the
5 questioning, and at one point in time the court
6 turned to me and stated that there was not an
7 attorney-client privilege, and I indicated that I
8 agreed with the court that there was not an
9 attorney-client privilege. I believe that was in
10 the October court date, October 20.

11 At that point in time I asked for and
12 received a brief recess. That was when the offer of
13 a nolle was given. We came back at 2:00 o'clock and
14 I had to withdraw that offer. The testimony did not
15 continue at that point in time at my request.

16 Q. We all agree there was no attorney-client
17 privilege, correct?

18 A. Yes.

19 Q. When the offer was withdrawn, that was
20 based on -- that was done by telephone, was it not,
21 to me?

22 A. In October?

23 Q. Yes.

24 A. That is correct.

25 Q. Who specifically ordered you to withdraw

1 it?

2 A. Paul Murray and John DeMattia.

3 Q. They both did?

4 A. That is correct.

5 Q. They were both present at the time it was
6 ordered?

7 A. Yes.

8 Q. Did he also order you to withdraw the
9 original plea agreement?

10 A. Did who? Mr. Murray and Mr. DeMattia?

11 A. On October 20th?

12 Q. Yes.

13 A. They were not aware of the original offer.

14 Q. So is it your understanding that when you
15 withdrew the offer to nol pros the case that the
16 plea offer was still in place?

17 A. Yes.

18 Q. Had the hearing progressed and the motions
19 failed, you would have recommended a three-month AR
20 as outlined in your remarks and conference notes?

21 A. Yes.

22 (Leslie Deposition Exhibit 24 marked
23 for identification.)

24 BY MR. KOGUT:

25 Q. If you would just take a look at Exhibit

1 24, Mr. Leslie. That's the transcript from the
2 hearing of the 25th of November?

3 A. It is a transcript from the 25th of
4 November.

5 Q. You remember this day, don't you?

6 A. Yes, I do.

7 Q. What was the purpose of your coming to
8 court that day?

9 A. I was going to be continuing the Franks
10 hearing.

11 Q. Wasn't there something else that you
12 intended to do?

13 A. At what point in time?

14 Q. Weren't you going to withdraw as
15 prosecutor in the case?

16 A. When I arrived at court that morning it
17 was my intention to proceed with the Franks hearing.
18 Prior to the judge taking the bench you showed me
19 the remittance advice with the handwritten notes.
20 At that point in time I did not believe probable
21 cause existed to continue to prosecute the matter,
22 so I was going to nolle the case.

23 Subsequent to a nolle even entering Paul
24 Murray and John DeMattia became involved. They had
25 lengthy discussions with me outside of your

1 presence, and then with you outside of my presence.

2 Q. Go ahead.

3 A. After those discussions, we all went into
4 chambers with Judge Keller, and ethical issues
5 concerning continuing the prosecution were raised
6 with the court, but also Mr. Murray raised the
7 spector of possibly taking an appeal from the
8 court's waiver or acceptance of a waiver by the
9 state of the substantial preliminary showing aspect
10 of the Franks hearing.

11 When that happened, Judge Keller ordered
12 the parties back in front of her at 2:00 o'clock to
13 continue with the cross-examination of John
14 McCormick.

15 After speaking in chambers with the court,
16 Mr. Murray inquired of me as to whether I had any
17 ethical concerns about going forward with the
18 cross-examination that afternoon of John McCormick.
19 I could think of none, so I was ordered to continue
20 with the cross-examination of John McCormick at 2:00
21 o'clock.

22 When the court recommenced its afternoon
23 session I think it's fair to say that my mind was
24 not sufficiently able to focus on cross-examining
25 Mr. McCormick, so I asked the court for a brief

1 recess so we could discuss the matter in chambers.
2 We discussed that in chambers, and then the court
3 went back out on the bench, indicating a willingness
4 to entertain my motion to withdraw as trial counsel
5 if I chose to file said motion.

6 Q. Did you agree with Mr. Murray's decision
7 that you continue the prosecution when you came to
8 court on November 25?

9 A. I did not.

10 Q. Did you feel that you had sufficient basis
11 to withdraw as trial counsel?

12 A. I felt that there was sufficient basis to
13 support my contention that probable cause no longer
14 existed.

15 Q. Did you believe that Dr. Weber's rights
16 were violated when you were ordered to withdraw the
17 offer to nol pros?

18 MR. VECCELLI: Object to the form of
19 the question. I think that's a question that will
20 be decided by an adjudicator, and not the witness.

21 You can answer the question.

22 A. When?

23 Q. Let's start with November 25.

24 A. I need some time to talk with my attorney.

25 MR. KOGUT: Okay.

1 (Recess: 1:03 to 1:12 p.m.)

2 BY MR. KOGUT:

3 Q. Mr. Leslie, you've had opportunity to
4 confer with counsel?

5 A. I have.

6 Q. Would you like the question reread to you?

7 A. Yes, please.

8 (Question read.)

9 A. No.

10 Q. Would you tell us again the reason or
11 reasons you had on October 20 for offering to nol
12 pros?

13 A. Considering the poor performance of
14 Mr. McCormick on the stand, particularly in light of
15 the court's numerous questions to the witness, both
16 during your examination and the start of my
17 cross-examination, and also in light of her ruling
18 on your objection to my asking leading questions on
19 cross-examination, it was my opinion that the best
20 way to resolve the case was for the state to enter
21 an unconditional nolle, to drop the charges against
22 Dr. Weber.

23 Q. Wasn't it based on the fact that you no
24 longer believed probable cause existed?

25 A. In October?

1 Q. Yes.

2 A. No.

3 Q. Judicial economy?

4 A. That would factor into it.

5 Q. You just wanted to wash your hands of the
6 case?

7 A. That's not a correct statement.

8 Q. You did not want to proceed?

9 A. I didn't believe that it was appropriate
10 to proceed.

11 Q. Something changed between October 20 and
12 November 25, correct?

13 A. Yes.

14 Q. That was the information provided to you
15 with what was described as Ms. Rivera's handwritten
16 notes?

17 A. Yes.

18 Q. Anything else?

19 A. No.

20 Q. It's also your testimony that when the, it
21 was also your testimony that when the nol pros,
22 offer to nol pros was retracted, that you continued
23 to have the plea offer, keep the plea offer open,
24 correct?

25 A. When the offer of a nolle was withdrawn in

1 October?

2 Q. Well, let's start with October.

3 A. Then the original agreement of going
4 forward on your motions, and if the state was
5 successful in defending, there would be one count of
6 larceny 6, a three-month period of accelerated
7 rehabilitation. That was still on the table.

8 Q. Why did you do that?

9 A. Because I was instructed by a superior to
10 go forward with the hearing.

11 Q. Short of violating the superior's order,
12 was there any other reason?

13 A. Quite frankly, I was concerned about
14 disciplinary action should I violate my superior's
15 order.

16 Q. Did you also express to Mr. Murray that
17 you were concerned about being sued civilly?

18 A. I believe that I was concerned about a
19 civil action, that's correct.

20 Q. And you had a discussion with him about
21 that?

22 A. Yes.

23 Q. Did anything else change or come to your
24 attention between October 20 and November 25 that
25 influenced your decisions?

1 A. The document that you referred to.

2 Q. Other than you testified to, anything
3 else?

4 A. That's it.

5 Q. I believe you testified that despite the
6 fact that you withdrew the offer or were ordered to
7 withdraw the nol pros, the offer to nol pros, that
8 you still believed the plea deal, the three-month AR
9 was still in place, correct?

10 A. In October?

11 Q. Yes.

12 A. That's correct.

13 Q. How about November?

14 A. Because I never communicated to you that
15 the original offer was withdrawn, it was my position
16 that that offer was still on the table.

17 Q. How can you reconcile that with
18 Mr. Murray's statement both to you and to me, and to
19 the court, for that matter, that if the state lost,
20 they would appeal?

21 A. Because Mr. Murray did not know what the
22 offer was.

23 Q. You agree with me, however, that if the
24 state appealed, the plea offer for three months AR
25 was of no use, correct?

1 A. It would be contrary to what the agreement
2 was.

3 Q. While you were employed at the Medicaid
4 fraud unit did you have any performance evaluations?

5 A. I did.

6 Q. How many, if you recall?

7 A. In the first year that I was there, I had
8 four, once every quarter, and once every year
9 thereafter until -- I cannot remember when the last
10 one was where I was in that unit.

11 Q. Were they performed by Ms. Salerno?

12 A. Yes.

13 Q. Did Mr. DeMattia perform any?

14 A. I don't think he did.

15 Q. You might want to check with your lawyer
16 first. Do you want to tell me what they were?

17 MR. VECCELLI: We have objected to
18 this fishing to see his personnel file. That would
19 include performance evaluations.

20 You don't have to answer that. Do
21 you want to discuss it?

22 THE WITNESS: Yes.

23 (Recess: 1:18 to 1:21 p.m.)

24 (Question read.)

25 BY MR. KOGUT:

1 Q. You had a chance to confer with counsel?

2 A. I have.

3 Q. Would you like me to have the question
4 read back?

5 MR. VECCHELLI: Yes, we will.

6 Speaking for the witness, we do have
7 an objection pending concerning exploration of his
8 personnel file; but without waiving that objection,
9 the witness does want to answer your question, the
10 question that you have asked.

11 MR. KOGUT: I'll rephrase it, then.

12 MR. VECCHELLI: Why don't we repeat
13 it because that's what we talked about.

14 If you can read back the question.

15 (Question reread.)

16 MR. VECCHELLI: The question is:
17 What were they?

18 A. My performance evaluations? I had
19 received nothing but excellent performance
20 evaluations from the time that I joined the Medicaid
21 fraud control unit up through the present day.

22 Q. Do you know why Inspector DiNino would say
23 that you messed up in this case?

24 MR. RING: I'm going to object to the
25 form of that question. I don't think it's an

1 accurate characterization of his testimony.

2 MR. VECCELLI: I'll object, too, to
3 the form; but you can answer the question.

4 A. I don't know.

5 Q. Do you know why Mr. Murray had the
6 comments about your performance that he had?

7 A. As I said before, I don't know how he
8 could have those comments or make those comments
9 because he did not have the requisite knowledge of
10 the case or of my abilities, to make those comments.

11 Q. Did you at some point early on in the
12 prosecution offer to nol pros the information
13 against Dr. Weber in return for a charitable
14 contribution?

15 A. I don't specifically recall that offer.

16 Q. That's not uncommon, though, is it?

17 A. I think nowadays it's becoming more and
18 more uncommon; but certainly in my days in private
19 practice doing criminal defense work, as well as
20 doing prosecutions down in New Haven, it would occur
21 frequently.

22 Q. Have you made such offers since you've
23 been down in New Haven?

24 A. I have.

25 Q. And they have been accepted?

1 A. In some cases they have been accepted.

2 Q. When you reviewed -- I believe you said
3 you reviewed Inspector DiNino's reports as they were
4 being prepared, after they were prepared?

5 A. Yes.

6 Q. During the course of the investigation?

7 A. Yes.

8 Q. Did you have any occasion to review his
9 handwritten notes?

10 A. No.

11 Q. If we just go back to November 25, 2003,
12 for just a couple of minutes, it's at that time, it
13 would be fair to say that at that time you told
14 Judge Keller that you had ethical concerns about
15 continuing the prosecution?

16 A. At some point in time during that day,
17 yes.

18 Q. You hadn't raised those with her prior to
19 that, had you?

20 A. No.

21 Q. There was also a discussion that day with
22 regard to the withdrawal of the offer to nol pros,
23 correct?

24 A. Yes.

25 Q. You recall that she asked actually both

1 parties to brief that issue?

2 A. Yes.

3 Q. Do you recall that she asked you to relay
4 that to your successor if you were not going to
5 continue with the case?

6 A. Yes.

7 Q. Was that ever done, do you know?

8 A. I did not do it. I presume that it was
9 done at least internally, based upon Mr. Sugrue's
10 memo to Mr. Murray, because it did, in fact, cover
11 Judge Keller's request for information regarding
12 whether an offer of a nolle, once accepted and then
13 withdrawn, is still binding on the state.

14 Q. Do you recall whether anything was ever
15 filed with the court on that issue?

16 A. I don't know.

17 Q. Would you have expected Mr. Murray and
18 Mr. DeMattia to tell you or provide you with copies?

19 A. No, I would not have.

20 Q. On the 25th of November, 2003, Judge
21 Keller also told you that she was willing to
22 entertain your motion for withdrawal. Do you recall
23 that?

24 A. I do.

25 Q. Why didn't you on the 25th of November?

1 A. I was concerned about possible or probable
2 disciplinary action that might be taken against me
3 for doing something that was contrary to what
4 Mr. Murray had told me to do. He had told me to
5 continue with the cross-examination of John
6 McCormick and to get as long a continuance date as
7 possible at the end of that day's hearing, and I was
8 concerned that if I were to move to withdraw as
9 trial counsel that he would take disciplinary action
10 against me for doing so, so I elected not to make
11 such a motion at that time.

12 Q. Would he have the authority to do that
13 where you were now employed in the State's Attorney
14 Office in New Haven?

15 A. I don't know the answer to that.

16 Q. You can check with counsel first, but was
17 there ever any disciplinary action taken against
18 you?

19 (Recess: 1:27 to 1:28 p.m.)

20 MR. VECCELLI: Again, as you know,
21 we have an objection pending to exploration of his
22 personnel matters, but the witness does want to
23 answer the question, and so without waiving the
24 objection, he'll agree to answer your narrow
25 question?)

1 A. Could you just repeat the question.

2 BY MR. KOGUT:

3 Q. Sure.

4 (Question read.)

5 A. Regarding the Weber matter?

6 Q. Yes.

7 A. To the best of my knowledge, no.

8 Q. It would be fair to say that you had no
9 further discussions with Mr. Murray in that regard
10 after the 25th of November?

11 A. Regarding the Weber matter?

12 Q. Yes.

13 A. Except for a copy of the letter that he
14 drafted to you indicating his inclination or his
15 intention to nolle the matter, I had no discussion
16 with Mr. Murray.

17 Q. That was a written document. It wasn't a
18 discussion, correct?

19 A. That's correct.

20 Q. Did anyone ever tell you or give you a
21 report or summary about Mr. Murray's reappointment
22 hearing?

23 A. I saw an article that appeared in "The
24 Hartford Courant."

25 Q. Is that the article which indicated that

1 according to Mr. Murray, you had made some dubious
2 decisions or concessions?

3 A. That's my recollection of the article,
4 yes.

5 Q. You don't agree with that?

6 A. That's correct.

7 Q. Did anyone ever tell you that Mr. Murray
8 said that you were in over your head?

9 A. No.

10 Q. If he did say that, would that be true?

11 A. No.

12 MR. KOGUT: No further questions.

13 MR. RING: I'm going to have a few
14 questions. I don't know if you want me to ask them
15 before you talk with him.

16 MR. VECHELLI: Why don't you ask
17 him.

18 CROSS-EXAMINATION

19 BY MR. RING:

20 Q. Could you look at Exhibit 18, please. I
21 believe you said you were familiar with the
22 document, correct?

23 A. Yes.

24 Q. Could you just explain to me what the
25 second page of this document is, to the best of your

1 knowledge?

2 A. Well, it appears to be a Rolodex typed
3 card with, among other information, the name of Paul
4 Gronback, with a telephone number, a title of
5 supervisor handwritten in. That name is circled.
6 This was part of the attachments that Mr. Kogut
7 attached to his December 6, 2002 submission which is
8 Exhibit 8.

9 Q. So is this document referenced in Exhibit
10 8?

11 A. I believe it is.

12 Q. Would you just take a moment to look and
13 see if you can find that. Are you referring to page
14 8, right above Roman numeral V, that paragraph?
15 There's a reference to tab 9. Do you see where I'm
16 referring to? Is that what you're talking about?

17 A. Yes, that's correct.

18 Q. So you got this document from Attorney
19 Kogut?

20 A. Yes.

21 Q. Was all this, everything that's on this
22 page, was on it when you received it from Attorney
23 Kogut, or did you add anything to it, or did anyone
24 else, to your knowledge?

25 A. I did not add anything to it. I can't

1 recall whether all the handwriting was on what was
2 submitted by Attorney Kogut, but it's again possible
3 that this is just a copy of what was submitted.
4 Without seeing what was actually submitted I can't
5 say for sure.

6 Q. Do you recognize any of the handwriting on
7 this page?

8 A. I do not recognize any of the handwriting.

9 Q. Did you have any conversation with
10 Attorney Kogut or anyone else about this document,
11 as to what it represented?

12 A. I'm sure we did.

13 Q. But you don't have any specific
14 recollection as we sit here this morning?

15 A. I don't have any specific recollection. I
16 think that without -- with this information I
17 certainly would have gone back and tried to contact
18 Paul Gronback to verify or not verify what was in
19 the initial submission in December of 2002. So I
20 guess that was a stepping off point to see whether
21 or not what was submitted to me in support of a
22 nolle was valid or not.

23 Q. I just wanted to clarify the discussion
24 about attorney-client privilege and John McCormick's
25 attorney. Attorney Kogut asked you about that. You

1 agreed with him that everybody agreed that there was
2 no attorney-client privilege, and my question is:
3 That was relative to his relationship to what
4 attorney? To you, or to some other attorney?

5 A. My recollection was that it was in the
6 context with not me personally, but with the
7 Medicaid fraud control unit.

8 Q. With the state's attorney's office?

9 A. Yes.

10 Q. So is it your understanding or belief that
11 Mr. McCormick withheld documents from you based on
12 an attorney-client privilege he had with your
13 office?

14 A. I mean, it's been so long since that
15 testimony took place that I would really need to
16 review the transcript of the questions and the
17 answers to be able to answer your question.

18 Q. So as we sit here this morning you cannot
19 say one way or the other whether you believe
20 Mr. McCormick withheld documents from you based on
21 an attorney-client privilege he had with your
22 office?

23 A. I can't.

24 MR. RING: That's all I had.

25 MR. VECHELLI: I just need one

1 moment.

2 (Recess: 2:38 to 2:16 p.m.)

3 MR. VECCELLI: No questions.

4 (Deposition concluded: 1:38 p.m.)

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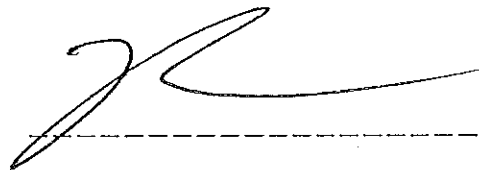
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J U R A T

1
2
3 I, BRIAN LESLIE, have read the foregoing
4 transcript of the testimony given at my deposition
5 on August 22, 2005, and it is true and accurate to
6 the best of my knowledge and belief as transcribed
7 and/or with the changes as noted on the attached
8 Errata Sheet.

9
10 

BRIAN LESLIE

11
12
13
14 Subscribed and sworn to before me on
15 this 23^d day of September, 2005.

16
17
18 
19
20 Notary Public.
21 comm. Sup. Court

22
23 My Commission expires: _____
24
25

WITNESS INDEX		
1	WITNESS	PAGE
2	Brian Leslie	
3	Direct Examination by Mr. Kogut	21
4	Cross-examination by Mr. Ring	153
5		
6		

EXHIBIT INDEX			
7	LESLIE EXHIBITS	DESCRIPTION	PAGE
8	5	Memo, 10/22/03, Leslie to DeMattia (remarked).	75
9	6	Court appearance report, 10/23/02.	43
10	7	"Remarks and Conference Notes," one page.	45
11	8	Letter, 12/6/02, Kogut to Leslie.	50
12	9	Letter, 10/1/02, Kogut to Leslie, and attachments.	51
13	10	"State v. Weber 12/26/02 meeting."	59
14	11	Memo, 4/16/02, Leslie to file.	66
15	12	Memo, 12/10/03, Sugrue to Murray.	75
16	13	E-mails, 10/23/03.	83
17	14	E-mails, 5/15/03 and 5/8/03.	85
18	15	E-mail, 5/7/03, Leslie to Mauer.	85
19	16	Handwritten notes, 10/8/03.	94
20	17	Handwritten notes.	97
21	18	Fax, 12/9/02, Leslie to McCormick; handwritten notes, one page.	107
22	19	E-mail, 5/5/03, Gronback to Leslie.	112
23			
24			
25			

1	EXHIBIT INDEX (Continued)	
2	20	E-mails, 5/2/03. 115
3	21	Document, "Total paid during last calendar year," 7/15/98. 120
4	22	Document, "Total Paid During Last Calendar Year," 10/16/96. 123
5	23	"Department of Social Services, Office of Quality Assurance, Medical Audit Unit," fax 12/20/02; letter, 12/19/02, Kogut to Office of Legal Counsel. 129
6	24	Transcript, 11/25/03, State of Connecticut v. Weber. 138

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Reporter's note: Exhibits retained by counsel.

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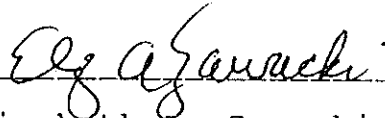
C E R T I F I C A T E

I hereby certify that I am a Notary Public, in and for the State of Connecticut, duly commissioned and qualified to administer oaths.

I further certify that the deponent named in the foregoing deposition was by me duly sworn and thereupon testified as appears in the foregoing deposition; that said deposition was taken by me stenographically in the presence of counsel and transcribed by computer-aided transcription, and the foregoing is a true and accurate transcript of the testimony.

I further certify that I am neither of counsel nor attorney to either of the parties to said suit, nor of either counsel in said suit, nor am I interested in the outcome of said cause.

WITNESS my hand and seal as Notary Public this 29 day of August, 2005.



Elizabeth A. Zawacki

LSR #00287

Notary Public

My commission expires:
February 28, 2010

VICTIM/VICTIM FAMILY CONTACT: _____

SPECIAL INSTRUCTIONS: _____

DATE REMARKS AND CONFERENCE NOTES INITIALS

10/23 Pro forma NY Jury election. Referral 11/26/82 K

4/85 Δ to file 2 motions to suppress + motion to

Dismiss Δ later with 5/2 to file. State

has until 5/30 to respond. On Temp list

for 6/2/83 R

6/2/83 Referral w/ Keller, S. Δ has until 7/1/83 to

file reply to State's motion to dismiss

Court to rule on Δ's motion for deposition and

State's objection thereon. Against that motion to dismiss

is dispositive. Δ motion is granted → charges

necessary to apply for a number condition →
Full restitution, continuing care lesson from Medicaid
See life. Offer to remain open pending ruling on
motion to dismiss.

R

7/1/03

Heller, S. Combined motion to suppress w/ motion to
dismiss. A has 30 days to get records from DSS.
will be scheduled for hearing. Offer open pending ruling
on motions

R

