

June 26, 2007

Hon. Joel I. Klein  
Chancellor  
New York City Public Schools  
Department of Education  
52 Chambers Street, Room 314  
New York, NY 10007

Re: Cobble Hill High School of American Studies  
SCI Case #2005-2066

Dear Chancellor Klein:

The Office of the Special Commissioner of Investigation for the New York City School District (“SCI”) has concluded a review of an investigation conducted by the Department of Education (“DOE”) Office of Special Investigations (“OSI”). The allegations investigated by OSI involved Regents tampering at the Cobble Hill High School of American Studies (“Cobble Hill”) by then Assistant Principal Theresa Capra, and a cover-up of the tampering allegations by Principal Lennel George.<sup>1</sup> In addition, SCI looked into a complaint that the cover-up extended to higher ranking officials including then Region 8 Superintendent Marcia Lyles, and then Deputy Chancellor for Teaching and Learning Carmen Farina.<sup>2</sup> SCI also examined the prosecution of George brought pursuant to New York State Education Law § 3020-a (“George proceeding”) by the Administrative Trials Unit of the DOE Office of Legal Services (“OLS”).

The OSI investigation substantiated that Capra tampered with Regents examinations and encouraged teachers to assist her in doing so. OSI also substantiated charges that George covered up allegations of tampering with Regents scores at Cobble Hill.

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<sup>1</sup> On May 13, 2004, Capra was reassigned to Region 8 prior to resigning from her employment with the New York City school system. She was placed on the DOE ineligible list in August 2004. George was the subject of a disciplinary proceeding charging him with “a scheme to cover up grade tampering by school staff....” Ultimately, all of the charges against George were dismissed.

<sup>2</sup> Lyles and Farina were not reassigned pending the outcome of this investigation. Farina has retired from the school system. Effective July 1, 2007, Lyles will be promoted to Deputy Chancellor for Teaching and Learning.

The SCI review has concluded that the OSI investigation was flawed from its inception. The investigator was unsupervised and acted as an agent of a complainant. In reality, no witness provided credible evidence to support the accusations concerning Capra and George.

The SCI investigation found no evidence of a cover-up by Region 8 officials, specifically Lyles and Farina.

The SCI investigation also found that the OLS prosecution of George detrimentally relied upon the faulty findings of the Scarcella investigation and report.

### **The Complaint Against Capra**

The written allegation against Capra was contained in a February 25, 2004, memo to George, by Philip Nobile, an untenured teacher at Cobble Hill, who had voiced the same allegation the day before in an exchange with George.<sup>3</sup> Nobile believed he was in danger of having his employment terminated.<sup>4</sup> Prior to making his February 2004, allegation of Regents cheating, Nobile made frequent complaints about Capra to George, accusing her of bias and cruelty, and seeking to get her “off his back.” George, who generally had been sympathetic to Nobile, particularly when Nobile’s wife was terminally ill, intervened with Capra on Nobile’s behalf on a number of occasions.<sup>5</sup>

Principal George told his supervisor, Local Instructional Superintendent (“LIS”) Kathy Pelles, about Nobile’s written allegation against Capra and Pelles instructed George to “talk to the teachers.” Over the course of the next few weeks, George spoke to teachers, who were assigned to Cobble Hill, regarding the scoring of the New York State Regents exams which Capra supervised. The teachers, with the exception of a complainant, Nobile, denied that grades had been changed without a re-reading of the exams and said that “at no time” did Capra order teachers to change grades.<sup>6</sup> George prepared a letter (“George letter”), dated March 24, 2004, for each teacher, in which he memorialized the denial of Nobile’s allegations and all but two of the teachers, Terrence

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<sup>3</sup> In this memo, Nobile claimed that he was present when Capra “directed the changing of Regents grades....” In the course of the OSI investigation and the related OLS prosecution, Nobile maintained that he first told George about an allegation of cheating by Capra in April or May 2003.

<sup>4</sup> In correspondence to George, dated March 26, 2004, Nobile wrote: “Clearly, Ms. Capra’s two recent unsatisfactory observations are part of her plan to drive me out of Cobble Hill and the profession. I predicted this in September and mentioned it to you again in January....”

<sup>5</sup> Nobile’s wife died in December 2003.

<sup>6</sup> These were the two allegations cited by Nobile.

Swords and Vincent Leardi, signed the letter.<sup>7</sup>

During March 2004, Nobile renewed his complaint against Capra in a letter to George. In that same month, he also contacted the New York State Education Department (“NYSED”) with his claims of cheating.<sup>8</sup> In April, Vincent Leardi, a Cobble Hill teacher out on a Restoration of Health leave for psychological problems, wrote a letter (“Leardi letter”) accusing Capra of changing Regents grades, brought a copy of the document to the Region, and also had it delivered to George by Nobile. The Region forwarded a copy of Leardi’s letter to SCI which referred the matter to OSI. Indicating that it was out of their hands, Pelles then instructed George not to investigate further. George complied with that directive. Also in April 2004, the NYSED sent a letter to Region 8 directing that an investigation of Nobile’s allegations concerning the June 2003 Regents examinations be undertaken. The Region forwarded that letter directly to OSI after the OSI investigation had begun.<sup>9</sup> The Region did not refer the NYSED letter to this office.

### **The OSI Investigation**

In April 2004, OSI Investigator Louis Scarcella was assigned to the Cobble Hill case and, in early May, began a year-long investigation.<sup>10</sup> Scarcella concluded his investigation with a 30-page closing report, dated May 25, 2005, which substantiated that Capra tampered with Social Studies Regents exams in June 2002 and June 2003, and that in June 2003, she encouraged teachers in the Social Studies Department – which she chaired – to assist her in the tampering.<sup>11</sup> That investigation also substantiated that George engaged in a cover-up of Nobile’s tampering allegations by acts of both omission and commission. Scarcella listed more than 10 actions and inactions on the part of George which constituted the cover-up. Finally, Scarcella substantiated that LIS Pelles failed to supervise George and failed to notify her superiors, Lyles and Farina, of the Cobble Hill matter. He further substantiated that Pelles failed to notify SCI or the NYSED of the tampering allegations.

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<sup>7</sup> At the George proceeding, Leardi acknowledged that he did not tell George that anything improper had occurred with the grading. See the transcript at pages 1126 and 1127. Swords acknowledged in his testimony that he told George that he had not observed Capra cheat and was not asked to do so. See the transcript at page 1875. According to the Scarcella report, in an interview at OSI, Swords said that he never received the George letter. In George’s testimony at his disciplinary proceeding, George said that a letter containing different language was to be given to Swords, but acknowledged that it never got to Swords. George did not know why, but speculated that his secretary did not place the letter in Swords’s mailbox. At the time the George letter was distributed to the teachers, Leardi was on leave from the school.

<sup>8</sup> Nobile’s letter to George was dated March 9, 2004. A representative from the NYSED informed SCI that NYSED’s first record of an e-mail message from Nobile concerning Cobble Hill was dated March 27, 2004.

<sup>9</sup> The OSI investigation began as a result of the Leardi letter.

<sup>10</sup> Prior to working at OSI, Scarcella was employed at SCI. Scarcella achieved the rank of 1<sup>st</sup> Grade Detective before retiring from the New York City Police Department. Effective February 2, 2007, Scarcella resigned from his position at OSI.

<sup>11</sup> Scarcella’s OSI report is captioned “MEMORANDUM.”

### **The New York State Attorney General's Investigation**

A July 1, 2005, New York Times article mentioned that the Office of the New York State Attorney General ("AG") had received a referral about Cobble Hill and was considering criminal charges against Capra.<sup>12</sup> Before commencing our own inquiry, SCI investigators met with the assigned Assistant Attorney General ("AAG") who confirmed that Scarcella had brought the Cobble Hill case to the AG's office in 2004.<sup>13</sup> The AAG added that the AG's investigation had revealed no criminal conduct on Capra's part, the matter was being closed, and SCI was authorized to conduct a review.<sup>14</sup>

### **The SCI Investigation**

In July 2005, a confidential source contacted SCI and raised issues about a high level cover-up regarding Regents exams tampering at Cobble Hill which OSI had investigated. The confidential source was not Philip Nobile.

We self-initiated an investigation based on the information provided by the confidential source. In the course of our investigation, we expanded our review and attempted to ascertain the basis for the substantiated findings put forth by OSI in general, and Scarcella in particular. We later examined the disciplinary proceeding involving the charges against Lennel George.

The 23 month SCI review of the Cobble Hill matter was staffed by an investigator and an attorney who had not worked with Scarcella during his employment at SCI. They were assisted by additional investigators, attorneys, and student interns. The investigation was supervised by the Special Commissioner and the First Deputy Commissioner.

Officials at the Attorney General's Office, who had decided not to pursue a case against Capra, provided details about their investigation. Every piece of paper in Scarcella's OSI file was examined and re-examined. Documents provided by Theresa Capra were reviewed as well. More than a dozen field interviews were conducted and more than a dozen other witnesses were formally questioned under oath at SCI. As the case unfolded, witnesses were re-interviewed. Officials at the NYSED were contacted for information on a number of occasions. DAA officials provided testing information as well. Additional documents, including voluminous e-mail correspondence, were obtained and scrutinized. We subpoenaed the transcript of the George proceeding. The testimony of all the witnesses was read and re-read by multiple readers.

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<sup>12</sup> The article, on page 1 of the Metro or "B" section, was entitled, "Principal Hid Fraud on Tests In Brooklyn, Officials Say."

<sup>13</sup> In a letter dated December 14, 2004, NYSED Commissioner Richard P. Mills also requested that the AG's Office conduct an investigation into the Cobble Hill matter.

<sup>14</sup> The AG's investigation included interviews with both Philip Nobile and Theresa Capra.

### The SCI Review

Our first step was to obtain and review the file of the OSI investigation. We examined the interviews as documented by Scarcella. Thereafter, we interviewed a number of witnesses under oath.

### Interviews by Scarcella

#### Terrence Swords

Teacher Terrence Swords, then the United Federation of Teachers (“UFT”) Chapter Leader at Cobble Hill, described Capra as “very vindictive.”<sup>15</sup> Scarcella first interviewed Swords at Cobble Hill on May 5, 2004. According to the Scarcella report, at that time, Swords said that, “Capra would never do anything improper in his presence,” asserting that the assistant principal did not “trust” him and that he was “a threat” to her. With respect to correcting essays, Swords described Capra as “lean[ing] to liberal allocation of points to pass.” According to Scarcella’s handwritten notes relating to this interview, Swords stated that he never saw Capra do anything wrong. Swords added: “I am not a witness.”<sup>16</sup> Swords said that he did not sign the George letter.

The second interview of Swords took place at OSI in June 2004, in the presence of his UFT representative. The report indicated that Scarcella informed Swords that no disciplinary action would be taken against him with regard to his statement at OSI. According to the report, Swords said that Capra told the graders: “See if you can find points.” Swords responded: “Ok, but let’s not cheat.” Scarcella wrote that Swords said that Capra’s directive was “not clear,” but his interpretation of her statement was to “cheat.” According to the Scarcella report, Swords said: “[in] April 2004 [*sic*],” Nobile told George that Capra was a “cheater” and George replied: “[*sic*] I don’t want to hear that.”<sup>17</sup> Swords acknowledged that, when he was questioned by George, he told the principal that he had not seen Capra cheat and that she had not asked him to cheat. Scarcella wrote that Swords told him that he had never received the George letter. According to the report, Swords reiterated: “Capra’s approach to correcting regents [*sic*] had been very liberal.”

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<sup>15</sup> Philip Nobile succeeded Swords as the UFT Chapter Leader at Cobble Hill. Swords no longer works at Cobble Hill; his current assignment is the Urban Assembly School for the Urban Environment.

<sup>16</sup> Swords repeated this statement in his testimony during cross-examination at the George proceeding. See the transcript at page 1869.

<sup>17</sup> These statements – claimed by Nobile, but denied by George – purportedly took place in April or May 2003. Later in his report, Scarcella wrote that Nobile told Swords about this verbal exchange. This was inconsistent with Swords’s testimony at the George proceeding in which he said that Nobile did not have to tell him about the exchange because he had been present for it. In contrast, Nobile testified at the George proceeding that he was alone with George. See the transcript at pages 1219, 1220, and 1677.

Philip Nobile

As it did with some of the other teachers from Cobble Hill, the Scarcella report described two interviews with Nobile.<sup>18</sup> The first was a brief interaction at the school.<sup>19</sup> According to the Scarcella report, during that meeting, Nobile informed Scarcella that he had been “rated satisfactory until he made the [Regents tampering] allegations.”<sup>20</sup> Unlike the other teachers who were called down to OSI, on May 13, 2004, Scarcella conducted Nobile’s second interview at Cobble Hill.

According to Scarcella’s handwritten notes relating to the second interview, Nobile “did not report the 2003 cheating until Jan & Fe 2004 because [his] wife died and [he] did not have the emotional resources to withstand the unconscionable blow back that [he was] getting currently from the administration. Wife died on 12/2/04 [*sic*] freeing [him] to pursue the regents [*sic*] matter.”<sup>21</sup>

Nowhere in the OSI report did Scarcella indicate that Nobile had firsthand knowledge of cheating committed by Capra or done at her direction. With respect to the June 2002 Regents, Scarcella wrote: “Nobile said that in his mind, he recalled that Mr. Cohen, in particular, scrubbed energetically with Ms. Capra’s approval.”<sup>22</sup> Nobile added that June 2003, “was the same, only worse.” Nobile also told Scarcella that he “specifically remembered” Capra gave a stack of failing exams to Colon “for scrubbing.” Details in the OSI report then reverted to “Mr. Nobile said that Mr. Colon told him” or “Mr. Nobile said that Mr. Kaufman told him.” According to the Scarcella report, Nobile said: “Colon later told him that he changed many of the failing examinations to passing automatically, without reviewing the material to see if points were missed.”<sup>23</sup>

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<sup>18</sup> The Scarcella report referred to a third interview with Nobile. However, it described the session as Nobile visiting OSI on July 1, 2004, to review the examinations. The report also referenced another visit by Nobile to OSI on October 1, 2004.

<sup>19</sup> The Scarcella report indicates that Nobile told Scarcella that Scarcella “was not prepared to conduct the investigation.”

<sup>20</sup> In fact, Nobile had received several “U” or unsatisfactory observations before he lodged the Regents tampering complaint against Capra.

<sup>21</sup> Nobile’s wife died in December 2003.

<sup>22</sup> Other evidence indicated that Scarcella likely meant Colon rather than Cohen.

<sup>23</sup> Nobile also asserted this claim in a communication to OSI Deputy Director Thomas Hyland in May 2004. In contrast, at the George proceeding, Colon testified that he re-read the examinations prior to making grade changes. See the transcript at page 1058.

Vincent Leardi

At the time of his April 4, 2004, letter which helped launch the Cobble Hill investigation, untenured Teacher Vincent Leardi was on leave for Restoration of Health as a result of his “bipolar Manic Depressive Disorder.”<sup>24</sup> By his own admission in the Leardi letter, the teacher had unrequited feelings for Capra which he described as “an emotional infatuation” with the assistant principal.<sup>25</sup> The Leardi letter alleged that he saw Capra “personally change grades” during the scoring of the June 2003 Regents, adding that he “could not swear that these [changes] were not legitimate but the climate was one of desperation.”<sup>26</sup> Leardi also wrote that teachers, including him, “were asked to review grades in the 60’s [*sic*].” Leardi asserted that he would “testify to this under immunity and strict confidentiality.”<sup>27</sup>

On May 12, 2004, during his leave, Leardi was interviewed at OSI. The report indicated that Scarcella advised Leardi that no disciplinary action would be taken against him regarding the investigation. The Scarcella report described Leardi’s cheating during the scoring of the 2003 Global History Regents at Cobble Hill. According to the report, Leardi had come forward because Capra was treating Nobile unfairly and giving Nobile too many ““Unsatisfactory”” ratings.<sup>28</sup> By Scarcella’s account, Leardi said that Capra had ““blessed”” changing failing grades to passing. Scarcella also wrote that one of the reasons Leardi agreed to change the failures was because he “wanted to please Ms. Capra.” The report indicated that, according to Leardi, “the required third reader was not practiced” and, instead, Capra said to ““scrub them”” which meant “to pass a failing examination.”<sup>29</sup>

Kenneth Kaufman

Teacher Kenneth Kaufman, who left his employment at Cobble Hill in June 2003, was interviewed at OSI in May 2004, in the presence of his UFT representative. The report indicated that Scarcella advised Kaufman that no disciplinary action would be

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<sup>24</sup> This information was included in Leardi’s letter.

<sup>25</sup> Scarcella’s file contained two copies of the Leardi letter; each had a different signature. At the George proceeding, Leardi testified that he had signed both documents and claimed that he sometimes used different signatures. See the transcript at pages 1103 and 1104.

<sup>26</sup> According to the Scarcella report, regarding the June 2003, grading of the Regents, Nobile told him “there was a sense of desperation in the correction room and the scrubbing began.”

<sup>27</sup> In a March 2004, e-mail to the NYSED, Nobile suggested the idea of granting immunity to Cobble Hill witnesses.

<sup>28</sup> An observation is a single occurrence. The outcome – “S” for satisfactory or “U” for unsatisfactory – is commonly referred to as a rating. An official end of year rating is a culmination of a series of observations.

<sup>29</sup> In contrast, at the George proceeding, Leardi testified that a third reader was used in the grading process. See the transcript at page 1114.

taken against him as a result of the interview. Kaufman described Capra as creating a “hateful atmosphere.”<sup>30</sup> According to the report, in scoring the June 2002 and June 2003 Regents, Kaufman stated: “Capra passed out failing tests to teachers and told them to pass them.” The report does not indicate that Kaufman named any of these teachers. Scarcella asked Kaufman if Capra “directed” scoring teachers to cheat and Kaufman said that “in his opinion ‘encouraged or else’ was more accurate.” Scarcella wrote that Kaufman responded affirmatively when asked whether Capra instructed him to give more points than the original scorer. According to the report, Kaufman then “became nervous” and said, “I did grade papers in accordance with the rubric.”

Kaufman was not interviewed by SCI and was not called as a witness at the George disciplinary proceeding.

#### Theresa Capra

According to the Scarcella report, on June 21, 2004, Capra’s union representative from the Council of Supervisors and Administrators (“CSA”) contacted Scarcella and said that Capra had chosen not to be interviewed.<sup>31</sup>

Capra’s testimony at SCI is described later in this report. Capra was not called as a witness at the George disciplinary proceeding.

#### Lennel George

The Scarcella report referred to three interviews with Principal George. The first occurred during Scarcella’s May 5, 2004, visit to Cobble Hill. According to the report, George and Scarcella discussed Leardi’s complaint against Capra, and the principal explained that each member of the marking committee – except Nobile – had signed the George letter.<sup>32</sup>

On June 30, 2004, George was interviewed at OSI in the presence of a CSA representative. George informed Scarcella that, in 2003, Nobile told him that Capra was “corrupt, biased and unfair,” but he did not remember Nobile using the word “cheat.” After receiving Nobile’s written complaint of February 25, 2004, George notified LIS Kathy Pelles about it and George asserted that he made all notifications in a timely fashion.

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<sup>30</sup> In March 2003, Capra rated Kaufman’s classroom performance as unsatisfactory.

<sup>31</sup> Capra resigned her employment with the DOE effective June 30, 2004.

<sup>32</sup> Although not mentioned in Scarcella’s report, the evidence at the principal’s disciplinary proceeding showed that George also told Scarcella that he should speak with Nobile about the cheating allegation and suggested that Scarcella contact Kaufman.



According to Scarcella's report, George said that with respect to the George letter, the principal "believed that the interviews he did with the graders, which included [the George letter], put to rest any question of cheating."<sup>33</sup> Upon Scarcella's questioning, George explained that he did not have Kaufman read and sign the George letter because the teacher had transferred to another school and he "had no reason whatsoever to believe that Mr. Kaufman had damaging evidence against Ms. Capra." Regarding Swords, George said that he "believed his secretary gave [the George letter] to [Swords] and it was never returned."<sup>34</sup> George noted that he "had no indication, other than from Mr. Nobile, that Ms. Capra was doing anything improper or beyond the scope of the appropriate re-reading of the exams."

Scarcella wrote that, during the interview, he informed George that "his teachers had lied to him" and to Scarcella during his May 5, 2004, visit to Cobble Hill.<sup>35</sup> Shortly thereafter, Scarcella ended the interview.

George's third interview occurred on September 14, 2004, at OSI in the presence of his CSA representative. Scarcella's report described this as "a series of follow-up questions based on answers given in his June 30, 2004, interview and raised other unsettling issues connected to the case." This section comprised nine pages of the closing report and focused on 12 "matters" which Scarcella found significant. The wording of this section of the report is similar to the wording of a May 17, 2004, list of questions contained in Nobile's communication to Thomas Hyland, then the Deputy Director of OSI. It is also similar to the wording of the checklist of questions to be asked of witnesses, which Scarcella admitted he created with Nobile's assistance.

- 1<sup>st</sup> George's "failure to deny" Nobile's claimed April 2003, exchange with the principal about Capra cheating on the Regents. Scarcella found Nobile's account to be "consistent" and confirmed by Swords; he found George to be "inconsistent" and without supporting records.<sup>36</sup>
- 2<sup>nd</sup> This "concerned the lack of documentation behind Mr. George's investigation of the cheating allegations." Scarcella questioned how George could have

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<sup>33</sup> George interviewed Teachers Terrence Swords, Jill Yamali, Talisha Sanders, Elliot Cohen, Jeffrey Slater, John Hammond, Terrence Crosby, Hector Colon, and Vincent Leardi. Only Swords and Leardi did not sign the George letter. George did not interview Teacher Kenneth Kaufman.

<sup>34</sup> There is no indication in the OSI investigative file that Scarcella ever interviewed the secretary. SCI spoke with her and she did not remember Swords getting a letter.

<sup>35</sup> The Scarcella report erroneously referred to the interviews at Cobble Hill as occurring on May 9, 2004.

<sup>36</sup> There was nothing in the Scarcella report or file to indicate that Swords and Nobile were consistent. In fact, they gave inconsistent accounts at the George proceeding. Directly to Scarcella and later at the George proceeding, George denied that the exchange took place. If it did not occur, there would be no records.

- conducted “a serious investigation without making or keeping records.”<sup>37</sup> According to the report, George was “unresponsive.”
- 3<sup>rd</sup> “George’s failure to interview Mr. Kaufman, a key member of the 2003 Regents grading team.”<sup>38</sup> Although Nobile had given Kaufman’s telephone number to George, he did not place a call to the teacher. According to Scarcella, George responded: “I do not work for Mr. Nobile. I wasn’t going to spend time tracking [Kaufman] down.” In the report, Scarcella accused George of “chang[ing] his story again.” Scarcella concluded: “neither explanation is convincing.”
- 4<sup>th</sup> This involved the fact that George did not give the George letter, which denied cheating, to Swords who “had suspicions” about the grading. Scarcella concluded that George’s actions and statements “strongly suggest that he did not want Mr. Swords’ [*sic*] dissenting opinion of the Regents grading to be included in the record of this case.”<sup>39</sup> Scarcella also determined that George’s statement during the May 5<sup>th</sup> interview at Cobble Hill, that he had each member of the marking committee – except Nobile – read and sign the George letter “was false” because Swords, Kaufman, and Leardi did not sign the document.<sup>40</sup>
- 5<sup>th</sup> Concerned the “extent and integrity” of George’s investigation of the cheating allegations.<sup>41</sup> Scarcella wrote that, according to four teachers on the grading committee interviewed by Scarcella, George “did not try very hard or very long to get to the truth.” Scarcella concluded: “The fact that [George] avoided Mr. Kaufman, avoided probing or extensive questions for the teachers, and wrote their statements about the alleged cheating himself (for their signature) indicates he did not intend to conduct an honest investigation, thereby, jeopardizing the integrity of said investigation.”<sup>42</sup>

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<sup>37</sup> George asked the teachers about each of the allegations in Nobile’s February 25, 2004, complaint and recorded their answers in the letters the teachers signed. In his testimony at the George proceeding, Scarcella acknowledged that he took no notes when he spoke to Nobile on May 5, 2004, at Cobble Hill. See the transcript at page 801.

<sup>38</sup> George’s reasons for not interviewing Kaufman were not inconsistent. Moreover, Scarcella failed to interview all the teachers involved in the grading, including others who had left the school.

<sup>39</sup> In his report, Scarcella failed to mention that Swords said, “I am not a witness.”

<sup>40</sup> George did not interview Kaufman during his investigation. George interviewed Leardi, but Leardi was on a Restoration of Health leave when the George letter was distributed to the teachers. At the time of his interview with Scarcella, George believed that his secretary had given the George letter to Swords and it had not been returned.

<sup>41</sup> George asked the teachers questions dealing with the allegations made by Nobile. All of them denied the allegations to George and later to Scarcella during interviews at Cobble Hill.

<sup>42</sup> During his testimony at the George proceeding, Scarcella stated that he was “leaning and, quite frankly, hoping that this case was unsubstantiated....” See transcript at page 812. Scarcella further indicated that, prior to speaking to Nobile, he was “hoping and wishing” that the investigation had ended with his initial visit to Cobble Hill. However, Nobile caused him to restart his investigation. See transcript at pages 970 and 971.

- 6<sup>th</sup> The fact that George did not implement the NYSED guidelines “in grading the 2003 and January 2004 Social Studies Regents” when he failed to see that the graders were trained and did not recommend the use of rating sheets to score the essays.<sup>43</sup> Scarcella based that conclusion on information provided by Nobile and Swords.<sup>44</sup> Scarcella wrote that George said that he made sure the teachers were properly trained and that the proper rating sheets were used. According to the report, both of George’s answers “appear to be false.”
- 7<sup>th</sup> Concerned George’s “definition of scrubbing.” According to the report, George said: “Scrubbing means to re-read a test which is within the guidelines of marking Regents examinations.” However, Scarcella maintained that the common understanding of scrubbing was “changing failing scores that are close to passing when the change is not justified in the re-reading process.”<sup>45</sup> Scarcella supported his definition with Leardi’s description of grading and by the statement of another teacher who admitted he had “cheated.”<sup>46</sup> Scarcella concluded: “Mr. George’s definition of scrubbing allowed him to defend his decision to ignore Mr. Nobile’s memo of January 26, 2004, warning of massive scrubbing at Cobble Hill.”<sup>47</sup>
- 8<sup>th</sup> The next “concerned Mr. George’s reaction to the Regents statistics cited in Mr. Nobile’s memo of January 26, 2004.” According to the report, Scarcella asked George why he was not “alarmed by the lopsided scores of the 2003 Regents.”<sup>48</sup> George reportedly responded that the numbers cited by Nobile “did not make him suspicious” and that he had spoken about them to Capra and other principals – whom he did not name – and “saw similar results at other schools.” Scarcella termed George’s statement as “difficult to credit” and cited reaction by the NYSED to the “cluster of scores above and below 65.”

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<sup>43</sup> There was no evidence in the Scarcella report or file to support the assertion that George did not implement the NYSED guidelines. No evidence was produced at the George proceeding to substantiate this conclusion. The January 2004 Regents was canceled as a result of a snowstorm.

<sup>44</sup> Based on testimony elicited at the George proceeding, Nobile and Swords may not even have taken part in the grading of the Regents in 2003.

<sup>45</sup> In testimony at the George proceeding, Scarcella acknowledged that George’s definition of “scrubbing” was accurate and re-reading exams was permissible. See the transcript at pages 837 and 838.

<sup>46</sup> Scarcella was referring to Cobble Hill Teacher Hector Colon whose testimony at SCI is detailed later in this report.

<sup>47</sup> The January 26, 2004, document, which was dated 2003 in error, did not refer to “massive” scrubbing. Rather, Nobile wrote: “Some members of the Social Studies department have expressed concern to me about the marking of the Regents exams in the recent past. They do not wish to be part of any situation in which failures are ‘scrubbed’ into passes.”

<sup>48</sup> According to Jennifer Bell-Ellwanger, the current Senior Instructional Manager of the DAA for the DOE, the June 2002 and June 2003 Cobble Hill grade distributions alone would not have triggered a review by DAA.

- 9<sup>th</sup> “George’s reaction to Mr. Nobile’s March 9, 2004, memo which contained many new details of the alleged cheating in 2003.” According to the report, George said he did not interview the teachers about the new memo because it was “the same as the February 25 memo, the same. . . . I felt I did not have to.” Scarcella concluded that “Mr. George’s claim that the two memos were the same is demonstrably false.”<sup>49</sup>
- 10<sup>th</sup> “The tenth matter concerned Mr. Cohen.”<sup>50</sup> Scarcella noted that on May 5, 2004, George presented Cohen “as a credible witness.”<sup>51</sup> Scarcella then described Cohen as an “admitted Regents cheater.” To support his conclusion, Scarcella pointed to an e-mail exchange between Cohen and Nobile.<sup>52</sup>
- 11<sup>th</sup> George’s May 5, 2004, “description of Ms. Capra as a ‘very liberal scorer’ on Regents exams.”<sup>53</sup> According to the report, in the September interview, Scarcella pointed to the NYSED’s “strict guidelines for scoring Regents exams, including detailed rubrics for the essays in order to eliminate bias in either direction.”<sup>54</sup> Scarcella concluded: “George knew that Ms. Capra had a scoring bias.” Scarcella found George’s answer, “[i]t’s subjective,” to be “vague and non-responsive.”
- 12<sup>th</sup> The final matter related to George’s May 5, 2004, “claim that he believed Ms. Capra and her marking committee stayed within the guidelines for administering and scoring Regents exams in 2003.” Scarcella concluded: “With knowledge of Mr. Nobile’s detailed written accusations, and Mr. Swords [*sic*] doubts, and copies of incriminating email admissions of tampering from Ms. Capra, Mr. Cohen, and Mr. Leardi, Mr. George’s claim . . . has little basis for fact.”<sup>55</sup>

SCI did not question George or seek to take testimony from him.

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<sup>49</sup> A review of the March 9, 2004, memo revealed that it did not raise any new improper scoring allegations.

<sup>50</sup> Scarcella was referring to Cobble Hill Teacher Elliot Cohen whose testimony at SCI is detailed later in this report.

<sup>51</sup> In contrast, at the George proceeding, Scarcella testified that George did not present Cohen as a credible witness. See the transcript at pages 845 and 846.

<sup>52</sup> The arbitrator of George’s disciplinary hearing disagreed with Scarcella’s assessment. See section The Nobile – Cohen e-mail Exchange herein.

<sup>53</sup> There is a difference between being liberal and cheating.

<sup>54</sup> The scoring procedure, which anticipates differences of opinion, allows for several readers to review the exams.

<sup>55</sup> There were no e-mail admissions of tampering by Capra or Cohen, Swords was not a witness, and Nobile’s “detailed written accusations” had little basis in fact.

Kathy Pelles

On September 23, 2004, Scarcella interviewed Region 8 LIS Pelles at OSI. She refused representation. Pelles was George's immediate supervisor and she reported to Superintendent Carmen Farina until March 2004, and thereafter reported to Superintendent Marcia Lyles who replaced Farina.<sup>56</sup>

According to Scarcella's report, "[s]ince Mr. Nobile's claims have been proven correct in every detail," Scarcella questioned Pelles about "what went wrong with Mr. George's investigation." Pelles said that George investigated "fairly, honestly and vigorously. Monday morning quarterbacking is a very scary thing."

Scarcella then confronted Pelles, "revealing more damaging evidence to her," and she "dropped her unqualified support of Mr. George's investigation." According to Scarcella's report, ultimately Pelles said: "It was a crappy investigation. He is bungling. Mr. George is improving. The school is better this year than last. I think it's terrible what Ms. Capra did. He told me he is not covering up. Perhaps he is." Scarcella noted that "minutes after her strong defense of Mr. George, and criticism of OSI's investigation," Pelles called George a "bungler" who "'perhaps covered up' after all." Scarcella also "noted that Ms. Pelles' [*sic*] answers were unconvincing, non-responsive or simply false." Later in the report, Scarcella wrote:

It should be noted that the three questions pointing to a possible cover-up in the Superintendent's Office made Ms. Pelles uncomfortable. She may have realized that her previous answers were non-responsive. She went on to state that Mr. George, Principal, is a 'crappy investigator' and a 'bungler' who is 'perhaps covering up.'

Scarcella concluded:

Clearly, if Mr. Nobile had not gone around Region 8 by contacting the state, his allegations would not have come to light. They would have been swept aside by what Ms. Pelles now says was a 'crappy' internal investigation at Cobble Hill. As Mr. George's immediate superior, she must take responsibility for her hands-off supervision of his investigation and for her careless approval of his verbal report.<sup>57</sup>

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<sup>56</sup> Farina was promoted to a Deputy Chancellor position.

<sup>57</sup> At one point during his questioning, Scarcella asked Pelles why she did not test Nobile's claims by conducting an audit of the suspect exams. He suggested that she could have reviewed them for erasures, re-read them to look for inflated scores, and scrutinized the rating sheets to see who scored them. Notably, Scarcella did not have an independent analysis performed; instead, he relied on Nobile to review the exams.

Marcia Lyles

On November 4, 2004, Scarcella interviewed Region 8 Superintendent Marcia Lyles. In contrast to almost all of the other interviews, which Scarcella conducted by himself, then OSI Deputy Director Thomas Hyland was present for the questioning of Lyles. According to the Scarcella report, the Superintendent asserted that she knew nothing about the Cobble Hill cheating allegations before receiving the April 2004, letter from the NYSED.<sup>58</sup> After the letter, she had conversations with Pelles, although the LIS did not tell her the results of George's investigation. Lyles's predecessor, Farina, did not tell her anything about tampering charges at the school.

Carmen Farina

On November 9, 2004, Scarcella interviewed former Region 8 Superintendent, then Deputy Chancellor, Carmen Farina. As with the interview of Lyles, Hyland accompanied Scarcella to his interview of Farina. According to the report, Farina said that she did not remember when she first became aware of "the cheating at Cobble Hill," did not remember her specific conversation with Lyles about George's removal from Cobble Hill, and did not know the tests under investigation were Regents. Scarcella added that Farina "had never heard of the complainant, Mr. Nobile." Scarcella questioned Farina about Pelles's "failure to follow standard reporting procedure" and reported that Farina's answer was that she did not call for an explanation and that she said: "I was at Tweed. I was not her superior."

Other Witnesses

In addition, Scarcella interviewed John Hammond, Jeffrey Slater, and Talisha Sanders – all teachers who had signed the George letter and told Scarcella that they had not seen Capra change grades. Scarcella did not interview Teacher Terrence Crosby who also signed the George letter or Teacher David Smith who, like Kaufman, had left the school. Scarcella's report contained sections relating to Teachers Jill Yamali, Elliot Cohen, and Hector Colon. In sworn testimony at SCI, Yamali, Cohen, and Colon described their interviews with Scarcella. This information can be found later in this report.

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<sup>58</sup> In his handwritten notes, Scarcella indicated that Lyles said she first learned about the allegation after receiving the letter from Leardi. This information is consistent with Lyles's testimony at the George proceeding and at SCI.

### The Regents Examinations

The OSI investigation did not include an independent evaluation of the Regents examinations in question. DAA never reviewed the exams. There was no indication in Scarcella's file that individual witnesses, such as Teacher Vincent Leardi and Teacher Hector Colon, who claimed to have changed grades improperly, were asked to identify the relevant documents. Philip Nobile was the only person mentioned in the OSI report as having looked at the Cobble Hill tests.

Jennifer Bell-Ellwanger, the current Senior Instructional Manager of the DAA for the DOE, informed SCI that the June 2002 and June 2003 Cobble Hill grade distributions alone would not have triggered a review by DAA. According to Bell-Ellwanger, to assess an allegation of grade tampering properly, "rescoring is critical. Maybe the students did deserve the scores – [DAA] could not make an assessment without reviewing the tests."

### Interviews by SCI

#### Louis Scarcella, August 2005

In an interview conducted under oath at the SCI office, Louis Scarcella answered questions about the Cobble Hill investigation that he handled for OSI. Scarcella volunteered the highlights of Nobile's background and said that Nobile was "a very talented investigative reporter" and "a pretty bright individual." Referring to Nobile, Scarcella also said: "I want to say something. In my opinion, in the last year, since I met this man, he has been ... he has been correct in everything he has said." At the same time, Scarcella dismissed George and asserted that the principal "sort of tried to let [*sic*] me believe that this whole thing was a problem between Mr. Nobile and Ms. Capra, U ratings, and there was bickering going on and he tried to tell me that Mr. Nobile was the negative guy in this situation, and it really didn't happen." Scarcella provided few details that were not in his report, but did reveal some significant pieces of information about his Cobble Hill investigation:

- He worked without an OSI investigator partner even though he usually had one ;
- the use of immunity from disciplinary action was not a common practice at OSI – in fact, it had been used only once by a different OSI investigator;<sup>59</sup>

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<sup>59</sup> SCI investigators learned that the other instance in which OSI conferred immunity from disciplinary action upon DOE employees involved a testing problem and had occurred within weeks of Scarcella beginning the Cobble Hill investigation. In that case, test booklets had been given to students as practice exams. That investigation was not focused on discovering cheating or other wrongdoing, but sought to determine how it happened and the scope of the problem.

- he conducted his interviews using questions written out on a piece of paper – though he had never done that before;<sup>60</sup>
- the DOE’s Division of Assessment and Accountability did not re-grade the Regents examinations, although Nobile – sometimes with Scarcella and sometimes by himself – had spent several days at OSI reviewing the exams; and
- Nobile felt that the “cover up” went up as far as Chancellor Klein.

Scarcella testified at the George proceeding. Portions of his testimony are found later in this report.

Theresa Capra, July/August/September/October 2005

In July 2005, Theresa Capra’s attorney learned from the New York State AG’s office that SCI was looking into the Cobble Hill matter and he contacted the assigned SCI attorney to seek an interview for his client. In August 2005, Capra’s attorney provided a binder of documents which SCI investigators reviewed prior to interviewing Capra. She and her lawyer appeared at the SCI office on two occasions – once in September and once in October. Capra gave sworn testimony on both occasions. Capra did not request and did not receive criminal or administrative immunity. She answered all questions posed to her by SCI investigators.

Capra explained that, in May 2004, she received a job offer for an administrative position at a Long Island school.<sup>61</sup> Upon the advice of her CSA attorney, in June 2004, she declined to be interviewed by Scarcella.<sup>62</sup> She provided a copy of a letter she sent to Scarcella outlining her position on the Cobble Hill allegations.<sup>63</sup> Capra resigned effective June 30, 2004. For the next year, she was employed by the school district on Long Island.

Capra described the 50-plus documents in the binder provided to SCI as “essentially a history of Mr. Nobile” dating back to the fall of 2001, when she was a first year assistant principal at Cobble Hill and Nobile came to teach at the school. Capra

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<sup>60</sup> Scarcella testified at the George proceeding that he developed questions in consultation with Nobile. See the transcript at pages 918 and 919.

<sup>61</sup> The offer was extended by the Superintendent pending approval by the school board.

<sup>62</sup> By then, the school board had approved hiring Capra and she had accepted the position.

<sup>63</sup> In this letter, Capra denied any wrongdoing.



identified each document and explained her view of its significance. Capra then spoke about the Regents exams, the grading of them, Scarcella's arrival at the school, her reassignment, her decision not to speak with Scarcella, her resignation from the DOE, and her resignation from an educator position on Long Island so that she could "clear" her name. Capra also discussed each of the teachers involved in the investigation. She mentioned there were some educators who were involved in grading the Regents in 2002 and 2003 whom Scarcella did not interview. As the second interview was ending, Capra denied that she encouraged, solicited, or requested teachers to increase the scores on the Regents exams in an improper manner.

Capra also reported that she and Teacher Elliot Cohen had a personal relationship when they both were assigned to Cobble Hill. At the time of her interview, Capra described her relationship with Cohen as being "personal and tumultuous."

David Smith, December 2005

In an interview conducted under oath at the SCI office, David Smith, a former teacher at Cobble Hill, did not request and did not receive criminal or administrative immunity. He appeared without an attorney. Smith answered all questions posed to him by SCI investigators.

Smith explained that, of his own volition, he sent a letter to George in which he indicated that he did not see any improprieties on Capra's part. He added that when he saw the newspaper articles concerning Cobble Hill, his first thought was that it was the result of disagreements about how to teach a Regents course and retaliation for Capra's "U" rated observations of Nobile. Smith said that Nobile never mentioned that he thought Capra was instructing people to improperly raise the grades. Smith asserted that he never saw Capra pressure people and never heard anyone say that they were pressured. In addition, he never heard of Capra doing anything improper.

Jill Yamali, January 2006

In an interview conducted under oath at the SCI office, Jill Yamali did not request and did not receive criminal or administrative immunity. She appeared without an attorney. Yamali answered all questions posed to her by SCI investigators.

Yamali described her meeting with Scarcella at OSI as being “interrogated, not interviewed.”<sup>64</sup> Yamali provided additional relevant information. She first learned about an allegation of cheating on the Regents exams when George questioned her. Yamali confirmed that she signed the George letter, dated March 24, 2004, which indicated that she had not witnessed grade changing without re-reading and that Capra had not ordered teachers to change grades. She said that she signed it because “I wholeheartedly agreed to what was written on that page.” Yamali described the allegation as “one man’s crusade,” and identified that individual as Nobile who had “issues professionally and personally” with Capra.

Yamali met with Scarcella on two occasions. The first occurred on May 5, 2004, at the school with George present. The setting was informal and she said that Scarcella was friendly and polite. According to Yamali, she told Scarcella it was a “witch hunt” and was “one man’s crusade against the AP.”<sup>65</sup> Yamali explained that Scarcella said that he needed to question her further, that she would be coming to his office, and she could have a UFT representative.

Yamali provided details of her visit to OSI, describing it as her “worst day professionally.” Because Terrence Swords and Elliot Cohen were being interviewed that same day, a UFT employee accompanied all of them to OSI – even though she felt no need for representation. According to Yamali, this time “the climate and conversation was completely different” from the first meeting at the school.<sup>66</sup> Yamali described Scarcella as being hostile, aggressive, and threatening toward her. Yamali explained that Scarcella accused her of lying to him, warned her not to lie again, advised that he knew the answer to the question he was going to ask, and said she had better tell the truth or it could be taken to a criminal level.<sup>67</sup> She understood that she would not be in trouble if she gave him the answer he already claimed to have.<sup>68</sup> According to Yamali, “had [she] been in a different place, in a different time, [she] might have also agreed to something to get [herself] off whatever hook [she] never really thought [she] was on.” She said that she responded “No” when Scarcella asked whether she was aware of any inappropriate

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<sup>64</sup> Yamali also provided copies of notes she made following the OSI interview which detail her recollection of it.

<sup>65</sup> During her testimony at SCI, Yamali explained that she was referring to Nobile’s “crusade” against Capra.

<sup>66</sup> She said that, “to [her] regret,” the OSI meeting had not been tape recorded. The SCI interview was tape recorded.

<sup>67</sup> At the George proceeding, George and Cohen each testified that during separate interviews at OSI, Scarcella threatened to have each removed from his position at the school. See the George testimony at transcript page 2397. See the Cohen testimony at transcript page 2019. Cohen added that Scarcella stated he would place Cohen on the ineligible list. See the Cohen testimony at transcript page 2019.

<sup>68</sup> According to the Scarcella report, Yamali was informed that no disciplinary action would be taken against her with regard to her statement at OSI.

grade changes. Yamali added that she told Scarcella “everything that [she] believed to be true; it didn’t fit with what he was looking for.” Yamali reported that, near the conclusion of the meeting, Scarcella told her: “You’re a very lucky girl Jill. I’m letting you walk out with your job.”

Yamali was a witness for Lennel George at the principal’s disciplinary proceeding. She was questioned under oath on direct examination by George’s attorney and was cross-examined by counsel representing the DOE. Yamali’s hearing testimony was consistent with her statement to George and her testimony at SCI.

Terrence Crosby, January 2006

In an interview conducted under oath at the SCI office, Terrence Crosby did not request and did not receive criminal or administrative immunity. He appeared without an attorney. Crosby answered all questions posed to him by SCI investigators.

Crosby described himself as a friend of Nobile, but said that Nobile never told him that Capra instructed Nobile to improperly grade an exam. According to Crosby, Nobile pointed out to him that neither of them had been present for the Regents scoring. Crosby said that his fellow teachers did not tell him that Capra instructed them to act improperly. Crosby specifically recalled that Colon told him that nothing happened.<sup>69</sup>

Elliot Cohen, April 2006

In an interview conducted under oath at the SCI office, Elliot Cohen did not request and did not receive criminal or administrative immunity. He appeared without an attorney. Cohen answered all questions posed to him by SCI investigators. Cohen reported that he had a professional and personal relationship with Capra, whom he married in early 2006.

Cohen described his experience at OSI as being “coerced, bullied,” and “threatened” by Scarcella.<sup>70</sup> He provided additional details. As Yamali had, Cohen spoke with Scarcella on two occasions. The first meeting lasted about 5 to 10 minutes and took place at Cobble Hill, in George’s presence, in the principal’s office. In response to questions by Scarcella, Cohen denied that there was cheating on the Regents and confirmed that he had signed the George letter which correctly stated that he had not witnessed changing of grades without re-reading and that Capra had not ordered changing of grades.

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<sup>69</sup> SCI obtained a copy of the George letter signed by Crosby.

<sup>70</sup> Cohen lamented that the OSI interview had not been tape recorded. The SCI interview was tape recorded.

Even before appearing at OSI for the second interview, Cohen got a sense that there could be a problem. According to Cohen, the UFT representative said that Cohen and Yamali were in big trouble and that they were not tenured. At OSI, Cohen was the last witness of the day behind Swords and Yamali, and waited about four hours for his turn to meet with Scarcella. Cohen said: “That’s when his interrogation began.” Cohen reported that, when he denied the cheating allegations, “[Scarcella] was not pleased.” Scarcella went on a “horrible” tirade of repeatedly slamming on the table, standing up, going over to Cohen, and threatening him. When Cohen denied the allegations, Scarcella would respond: “Don’t go there.” Rather than offering immunity from disciplinary action, Cohen said that Scarcella advised him: “If [you] do not ‘tell me what I want to hear, I will pull you out right now,’” a reference to removing him from his position with the DOE – as had happened to Capra.<sup>71</sup>

According to Cohen, he “panicked.” Scarcella switched to questions about scoring and Cohen and Scarcella repeatedly disagreed about what was standard procedure and what was cheating. Cohen testified at SCI that he told Scarcella that standard grading procedure was “if the score after the two readers read it, and it went in a pile, was between a specific grade, according to the rubric, you’re to go back and re-check the scores.” Scarcella countered: “No! That is not the standard procedure, that is cheating.’ By his definition.” Cohen said: “How many times am I going to argue back and forth with Mr. Scarcella when he’s slamming on the table telling me ‘No! That’s cheating, that’s cheating, that’s cheating!?’” Cohen added that there “was no winning with Mr. Scarcella,” he “succumbed to [Scarcella’s] pressure” and admitted cheating. However, he testified that, in reality, he had not done so. Cohen reported that Scarcella “coerced, bullied, and threatened [him] into believing that [he] had done something wrong.” Cohen asserted that he “would have told Mr. Scarcella anything to get out of the room and be away from his threats.”

Cohen disputed Scarcella’s closing report which indicated that Cohen admitted cheating after being given immunity from disciplinary action.<sup>72</sup> According to Cohen, Scarcella did not tell him that no disciplinary action would be taken against him, and that the information to the contrary contained in Scarcella’s report was “false.” Cohen said that, instead, Scarcella threatened him: “if you don’t tell me what I want to hear, I will pull you.”

In Cohen’s view, it was apparent that Nobile and Scarcella were “in bed together” and the proof was in Scarcella’s closing report which displayed Nobile’s writing style.

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<sup>71</sup> At the George proceeding, George testified that, during his June 30, 2004, interview at OSI, Scarcella told him that it would be his last day as principal. See the transcript at page 2397.

<sup>72</sup> Scarcella wrote: “This investigator informed Mr. Cohen that no disciplinary action would be taken against him with regard to his statement [at OSI].”

He added that certain words and phrases were “verbatim, I’m sure from Mr. Nobile’s mouth to the paper that Mr. Scarcella filed.” He termed it was “Nobilesque” in nature. As a result, Cohen concluded: “Mr. Nobile wrote the whole thing; there was no impartial investigation done; just a witch hunt.”

Under subpoena, Cohen was a witness for the DOE at the Lennel George disciplinary proceeding. He was questioned under oath on direct examination by the OLS attorney representing the DOE and was cross-examined by George’s counsel. Cohen’s hearing testimony was consistent with his statement to George and his testimony at SCI.

#### Hector Colon, May 2006

During his May 5, 2004, visit to the school, Scarcella spoke with Teacher Hector Colon. According to Scarcella’s Cobble Hill report, Colon “said that he was present during all correction sessions and nothing improper occurred.”<sup>73</sup> Colon also told Scarcella that “he thought cheating [was] a ‘pretty outrageous charge.’”

At the insistence of his attorney, before meeting with Colon, this office confirmed that the “administrative immunity” conferred by OSI was still in effect. No other witness who testified at SCI made that request. Colon did not receive criminal immunity. He answered all questions posed to him by SCI investigators.

During the interview conducted under oath in the presence of his attorney at the SCI office, Hector Colon admitted that he cheated in scoring Regents exams. He repeatedly testified that Capra gave him a pile of exams and told him to “take care of them” or “take care of it” with no further instructions. Colon conceded that Capra never told him to cheat, never told him to find points that were not there, and never told him to get the students to pass. Despite the absence of such an instruction from Capra, Colon concluded that she meant that he needed to give points to pass the students and he did just that.

In his testimony at SCI, Colon claimed that he was not aware of any exams that were read a third time. However, the Scarcella report indicated that Colon said that the scorers “seldom read the paper a third time.”<sup>74</sup>

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<sup>73</sup> Scarcella’s reference to Colon’s statements made at the school is contained in one of the George sections of Scarcella’s closing report.

<sup>74</sup> In his testimony at the George proceeding, Colon acknowledged that he always re-read the exams before he made any changes in the score. Moreover, he did not see any teachers change scores without re-reading the exams. See transcript at pages 1074 and 1075.

Colon acknowledged that he denied the allegations when George questioned him. He signed the George letter, but now said that the contents of it were not true. Colon expressed surprise at the brevity of the meeting with George and said he had expected an “interrogation.” Later, Colon offered Nobile’s interpretation of the George investigation – also espoused by Scarcella – which asserted that the principal’s interview was brief because “he didn’t want to really know” what had happened. Colon asserted that he was untenured and was afraid of retaliation, citing that Nobile had been “U’d,” meaning that Nobile had received an unsatisfactory rating, which could lead to being fired.

Colon met with Scarcella on two occasions. The first was the brief conversation at Cobble Hill during which he denied that cheating occurred. For the second, he went to OSI with a UFT representative. Colon said that initially Scarcella was “a little combative,” adding that “I didn’t want to basically tell on Theresa – Ms. Capra.” However, Colon explained that though it “pained [him] to do it,” he “didn’t want to get in trouble [him]self,” so he was “given immunity and that’s when I told them what really happened.” He testified: “At that point, I had to say, you know what, as long as I have immunity, I got to tell the truth. And that was that.” Yet Colon reported that he told Scarcella the same information that he testified to at SCI: “I did change tests I shouldn’t have. I mean I didn’t follow the rules.”

Colon was a witness for the DOE at the Lennel George disciplinary proceeding. He was questioned under oath on direct examination by the OLS attorney representing the DOE and was cross-examined by George’s counsel. Colon’s hearing testimony contradicted his statements to George during his investigation and to Scarcella when he visited Cobble Hill. Colon’s hearing testimony was, for the most part, consistent with the Scarcella report’s description of Colon’s statement at OSI after being granted immunity from discipline by Scarcella, and with his testimony at SCI where immunity from discipline continued.

#### Lori Mei, June 2006

In an interview at the SCI office, Lori Mei, then the Senior Instructional Manager of the DAA for the DOE, provided information about the scoring of the Regents exams.<sup>75</sup> Mei disputed Scarcella’s definition of cheating. Mei reported that, according to the NYSED regulations, for an exam which was close to a passing score, it was permissible, and in some cases required, to have another reader review it to determine whether there were additional points legitimately due to the student.<sup>76</sup> She described this as a

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<sup>75</sup> Scarcella interviewed Mei at OSI on December 15, 2004. His questions focused on the reporting of cheating allegations and his report did not indicate that they discussed scoring procedures.

<sup>76</sup> This is consistent with the information that Cohen tried to impart to Scarcella. Cohen testified at SCI that exams with grades between 59 and 64 were to be re-checked.

permissible re-score. Mei added that a third read could also lower a student's score, but typically resulted in raising it.

According to Mei, in May 2004, Scarcella asked that the Cobble Hill exams be re-scored, but he later told her not to do so.<sup>77</sup> As best as Mei could recall, Scarcella said that he had enough evidence and did not need her to look at the exams.<sup>78</sup>

#### Theresa Europe, July 2006

Deputy Counsel to the Chancellor Theresa Europe, the head of the Administrative Trials Unit of OLS and the Director of OSI during Scarcella's Cobble Hill investigation, was interviewed under oath at the SCI office.<sup>79</sup> She was asked about the conferral of administrative immunity upon certain teachers in the case.<sup>80</sup> Europe explained that, when the Cobble Hill investigation started, she was returning from a 6 month maternity leave and was not involved in the immunity decision.<sup>81</sup> According to Europe, only the General Counsel – whom she named as Chad Vignola – would have the authority to extend immunity from disciplinary action to a witness and she confirmed that it was a rare occurrence. However, she later reported that Vignola had left his position with the DOE at the end of April 2004; Europe also said that she had not discussed the immunity issue with him.<sup>82</sup>

Europe was aware of the grant of immunity because she had read the drafts of the Scarcella report. She believed she must have discussed the immunity issue with Scarcella – after the fact – or with her deputy, Thomas Hyland, but had no specific recollection of doing so.

Regarding Nobile, Europe said that he “made the Cobble Hill case a full time job.” According to Europe, although he was a complainant, Nobile considered himself “part of the prosecution team” and “wanted to be an integral part of this investigation and he's made himself as such.” Nobile was in frequent contact with her and with the

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<sup>77</sup> Scarcella's report noted that, on May 12, 2004, he contacted Mei to request her assistance in re-scoring the Regents exams.

<sup>78</sup> At SCI, Scarcella testified that Mei told him that she did not have the resources to re-score the exams. However, Mei disputed that claim and asserted that she would have refrained from looking at the exams only upon the instruction of the NYSED or OSI. Officials from the NYSED confirmed that the State did not order a halt to the re-scoring process.

<sup>79</sup> In August 2006, Europe was relieved of her duties as OSI Director.

<sup>80</sup> During the SCI investigation, no one from OSI or OLS offered the same explanation of how administrative immunity came to be conferred in the Cobble Hill matter.

<sup>81</sup> After her interview at SCI, in an e-mail sent to investigators later in the day, Europe reported that she returned from maternity leave on March 15, 2004.

<sup>82</sup> Scarcella's first interviews at the school – when the teachers denied cheating and he first met Nobile – took place on May 5, 2004.

attorney who handled George's administrative proceeding, Edward Rodriguez, by e-mail. Europe agreed to forward her e-mail correspondence with Nobile.

Europe said that, despite his desire to be deeply involved in the report, Nobile was a witness and, as such, "whether we substantiate, whether we unsubstantiate, [he] would have no say in that." Questioned whether Nobile played a role in the writing of the closing report in the Cobble Hill case, Europe responded: "I would have to say no, I can't imagine that he assisted Louis Scarcella in writing that report." Asked whether that would be an acceptable practice at OSI, Europe said: "I don't want to give a blanket answer of no, but a witness assisting an investigator write a report – No – No – No."

#### Christopher Dalton, July 2006

In an interview conducted under oath at the SCI office, OSI Chief Investigator Christopher Dalton reported that he first learned about the grant of immunity in the Cobble Hill case when Europe returned from her interview at this office and asked him about it.<sup>83</sup> He said that he had no discussions with anyone about extending immunity to witnesses in the Cobble Hill investigation.

Dalton had reviewed Scarcella's closing report. He conceded that the sentences which indicated that "as a result of this interview no disciplinary action would be taken against [the witness]" could be defined as immunity. Dalton added that he had never heard of administrative immunity, but he guessed that was what the Cobble Hill witnesses received. He said he was not involved in any case where immunity had been granted by OSI, so he did not know the procedure to be followed. Dalton acknowledged that it was not typical to tell a witness that no disciplinary action would be taken. Dalton said that he did not question Scarcella about having extended immunity because he was "strictly editing" and Scarcella was "dealing more with Thomas Hyland on this report – the investigation, excuse me." According to Dalton, he did not question Hyland about the inclusion of the sentences in the report pertaining to no disciplinary action.

#### Louis Scarcella, July 2006

Scarcella returned to the SCI office for a second interview which was conducted under oath. Scarcella reported that Thomas Hyland and Theresa Europe supervised his investigation of the Cobble Hill matter. He described Dalton's role as an editor who corrected grammar, but not facts, in the closing report. According to Scarcella, bestowing immunity on Cobble Hill witnesses first was raised after his initial interviews at the school on May 5, 2004. He maintained that Chad Vignola had authorized the

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<sup>83</sup> In March 2007, Dalton was promoted to Deputy Director of OSI.



granting of immunity and had given that permission to Scarcella through Europe and Hyland.<sup>84</sup> He also said that, with the exception of Nobile, all the Cobble Hill witnesses who were interviewed at OSI, including Cohen, received immunity. Scarcella acknowledged that he had never conferred immunity in another OSI investigation either before or after Cobble Hill.<sup>85</sup>

Scarcella admitted that he used a list of questions, that were contained in a document sent to Hyland by Nobile, to “aid” his investigation, saying: “I have to use whatever means I have to do my investigation and [Nobile] was the only person I considered was telling the truth and I read this and to a certain degree it did aid me in my investigation.” Scarcella also acknowledged that, after “conferring” with Nobile, he included certain information in his closing report. Additionally, he acknowledged that certain sentences in his closing report matched word for word with sentences in documents written by Nobile. Scarcella denied that Nobile played a role in deciding which witnesses should be interviewed at OSI. However, he described Nobile as “tenacious” and acknowledged that Nobile was a moving force in the Cobble Hill investigation.

Asked whether Nobile had overstepped the boundaries of a complainant, Scarcella said: “I personally believe that Mr. Nobile is a genius and is correct about everything he – all the information he has given me in this case.” Regarding his use of questions provided by Nobile, Scarcella acknowledged that he “could have” used them and also indicated: “Mr. Nobile, in my opinion, was the most honorable man involved in this investigation and everyone else I interviewed were [*sic*] dishonorable – up to Carmen Farina.” Scarcella did not elaborate on Farina’s role, but later testified that Nobile “was out for justice,” meaning that “there was a cover up here” and Scarcella believed that Scarcella was “lied to by people in the Board of Education, including Carmen Farina.” Scarcella also said: “I believe that Mr. Nobile believes that this cover up went right to the Chancellor’s Office. Right to the Chancellor’s Office. Tweed Courthouse.”

#### Thomas Hyland, August 2006

In an interview conducted under oath at the SCI office, Thomas Hyland, who was the Deputy Director of OSI during Scarcella’s Cobble Hill investigation, claimed to have spoken to Chad Vignola about the immunity issue just before Vignola left the general counsel position with the DOE.<sup>86</sup> Hyland asserted that, during a lengthy telephone

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<sup>84</sup> By May 5, 2004, Vignola had left his position as General Counsel.

<sup>85</sup> OSI had used administrative immunity in only one other investigation which involved very different circumstances.

<sup>86</sup> Before becoming Deputy Director of OSI in August 2000, Hyland was employed by SCI as an investigator. Hyland achieved the rank of 1<sup>st</sup> Grade Detective before retiring from the New York City Police Department.

discussion with Vignola about the only other matter where OSI used immunity from disciplinary action, Hyland inquired about the “policy” of using it on future occasions.<sup>87</sup> According to Hyland, Vignola gave permission to confer it “down the road.”<sup>88</sup> Hyland maintained that Vignola “trusted in [his] judgment.” Hyland added, Europe was “down the hall” when he was on the telephone with Vignola and did not take part in the discussion. Moreover, although she was “the boss,” Hyland did not recall any conversation with Europe about Vignola’s immunity decision. Hyland stated that he also did not send an e-mail message to anyone about it and did not know whether he wrote anything down. Hyland did not recall discussing the immunity issue with Vignola’s successor, General Counsel Michael Best. Hyland added that, on the Monday following Vignola’s departure from the DOE, Scarcella went to Cobble Hill to begin his investigation.

Hyland reported that he had Cobble Hill in the “back of his mind,” but did not mention the case to Vignola. Hyland acknowledged that, instead, he extended Vignola’s authority from the prior case where immunity from discipline was used to the Cobble Hill investigation. Hyland reported that he gave Scarcella the go-ahead to tell the Cobble Hill witnesses that no disciplinary action would be taken against them for their statements to OSI. Hyland claimed that, while not a “blanket” or a “free-for-all” policy, at that time, he told “everyone” in the office that immunity was an available tool.<sup>89</sup> According to Hyland, although he had no recollection of discussions with his superiors about extending immunity in the Cobble Hill investigation, he said: “it’s not like me to just say ‘OK go ahead do it,’ you know, and not tell somebody ... but I don’t know, maybe I did.”

Hyland claimed to have met with Scarcella frequently about the Cobble Hill investigation – either weekly or bi-weekly – but he did not recall specific discussions about the progress of the case. According to Hyland, the regional counsel and the superintendent did not want to reassign Capra and hesitated to follow Scarcella’s recommendation to do so.<sup>90</sup> Hyland did not know how or when Principal George or LIS Pelles became subjects of the investigation, but he asserted that they both “lied.” According to Hyland, he had no role in writing Scarcella’s closing report in the Cobble Hill matter, although he read it.

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<sup>87</sup> To SCI investigators, Vignola denied that this conversation took place.

<sup>88</sup> Hyland initially avoided attempts by SCI investigators to schedule an interview with him. Then, on July 31, 2006, the DOE terminated Hyland’s employment. Thereafter, as investigators were about to serve Hyland with a subpoena to appear and give testimony at SCI, he agreed to be interviewed.

<sup>89</sup> Dalton and Europe both testified at SCI that they were not told about Hyland’s proclamation that immunity was available.

<sup>90</sup> Hyland was referring to Superintendent Marcia Lyles and Regional Counsel Judith Kay. According to Hyland, Scarcella thought it would be easier to conduct the investigation if Capra were out of the building. Ultimately, Capra was reassigned and later resigned.

Hyland was shown the communication dated May 17, 2004, sent by Nobile to Hyland, and asked to compare the wording on page 3 of the document to the wording on page 21 of Scarcella's closing report. He acknowledged that they were exactly the same. Hyland confirmed that he would not have condoned a practice by which a complainant assisted in writing the closing report of the investigation.

Hyland was not aware of an OSI case in which a complainant had given an investigator questions to be asked of the witnesses. Hyland said that, if he learned that a complainant were running an OSI investigation, then he "would stop it immediately." He added that if the investigation had been completed when he learned about the complainant's role, then "the investigator would have a problem with [him]." Specifically, Hyland said that, if "Nobile ran Scarcella and ran that investigation to his own betterment and to his own purposes," then the results would be "tainted, they're tainted without a doubt."

Chad Vignola, August 2006

In a telephone conversation in August 2006, which occurred after Hyland had been interviewed, Chad Vignola denied having the conversation described by Hyland. According to Vignola, following the chain of command at that time, he would not have and did not have direct contact with Hyland. Vignola said that he spoke to Hyland under "rare circumstances" and, in any event, "would not skip" Europe. Moreover, although he did not recall the specific case that raised the issue, Vignola confirmed that immunity was a "rare" occurrence and "blanket" immunity was not authorized by him.

Edward Rodriguez, August 2006

In an interview conducted under oath at the SCI office, Edward Rodriguez, an attorney assigned to the OLS Administrative Trials Unit, explained that, in late March 2006, he was handed the file to represent the DOE at the Lennel George disciplinary proceeding, "literally when the case was about to start to try."<sup>91</sup> During testimony at the George proceeding, Rodriguez learned that Nobile had provided questions which were used by Scarcella and that Nobile had assisted Scarcella in writing the closing report.

Kathy Pelles, February 2007

In an interview conducted under oath at the SCI office, Region 8 LIS Kathy Pelles did not request and did not receive criminal or administrative immunity. She appeared without an attorney. She answered all questions posed to her by SCI investigators.

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<sup>91</sup> Rodriguez originally was hired in the fall of 2005 as an independent contractor and then received a position at OLS as a DOE employee beginning in April 2006.

Pelles acknowledged that she told George to conduct an investigation into the complaint of Regents cheating at Cobble Hill and that she did not report the allegations to Lyles or Farina. Pelles was a witness for the DOE at the George disciplinary proceeding. She was questioned under oath on direct examination by counsel representing the DOE and was cross-examined by George's attorney. Her testimony at SCI was consistent with her testimony at the George proceeding. With respect to Scarcella's report, Pelles disputed the language he attributed to her and asserted that Scarcella twisted her words.

Carmen Farina, February 2007

In an interview conducted under oath at the SCI office, retired Deputy Chancellor Carmen Farina did not request and did not receive criminal or administrative immunity. She appeared without an attorney. She answered all questions posed to her by SCI investigators.

Farina's testimony was consistent with the facts in the Scarcella report.<sup>92</sup> She denied any knowledge of the complaint about cheating at Cobble Hill.

Farina explained that she did not conduct observations of teachers and did not insert herself into the rating process. She denied ordering the dissemination of "U" ratings. Nobile claimed that he received a "U" rating after Farina visited Cobble Hill, briefly observed his class, and made a "face." Farina confirmed that she had been at Cobble Hill – a routine visit similar to those made to other schools – but did not recall the incident perceived by Nobile.

Marcia Lyles, February 2007

In an interview conducted under oath at the SCI office, Region 8 Superintendent Marcia Lyles did not request and did not receive criminal or administrative immunity. She appeared without an attorney. She answered all questions posed to her by SCI investigators.

Lyles was a witness for the DOE at the George disciplinary proceeding. She was questioned under oath on direct examination by counsel representing the DOE and was cross-examined by George's attorney. Her testimony at SCI was consistent with her testimony at the George proceeding, but conflicted with the information in the Scarcella report. Contrary to the Scarcella report, which said that she first learned about the cheating allegation upon receiving the NYSED letter, Lyles testified that she first learned about the Cobble Hill complaint through the Leardi letter. A review of Scarcella's

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<sup>92</sup> Farina did not testify at the George proceeding.

handwritten notes revealed that Lyles accurately indicated that she said the Leardi letter. The reference to the NYSED letter in Scarcella's report was inaccurate.

Lyles also testified at SCI that Pelles informed her that George had investigated the Cobble Hill "charges," but did not substantiate them. This conflicts with the OSI report in which Scarcella wrote that Lyles said: "I received no information on the results of [George's] investigation. [Pelles] never told me [George's] investigation showed no signs of cheating."

Lyles had made the decision to seek discontinuance of George's employment. In her testimony at SCI, Lyles explained that she relied on OLS and signed off on the charges drafted by the OLS attorney. The arbitrator noted in her Decision and Award following George's disciplinary hearing that: "Significantly, Lyles testified that knowing what she did at the time of the hearing, she 'would certainly reconsider' her decision to terminate Principal George."

#### Theresa Europe, March 2007

We offered Theresa Europe the opportunity to give additional testimony and she agreed to do so. Europe acknowledged that she had returned from maternity leave by the end of March 2004, before the Cobble Hill investigation began. However, she asserted that it "wasn't uncommon" that she did not know about every investigation at OSI. Europe explained that her deputy, Thomas Hyland, handled the day-to-day operation of the office; but she and Hyland would discuss important cases as the need arose. Although she got involved with Cobble Hill "at some point," Europe said that Scarcella reported to Dalton and Hyland. Nevertheless, she confirmed that, as the Director, she bore the ultimate responsibility for OSI.

Although Scarcella testified at SCI that he usually worked with a partner in investigations he conducted for OSI – with Cobble Hill being an exception to that practice – Europe testified that it was acceptable for an OSI investigator to conduct one-on-one interviews with both witnesses and subjects. However, she said it was not standard practice for a witness to prepare a list of questions to be asked during an OSI investigation and also said that it was "absolutely not" acceptable for a witness to write the final OSI report. Asked whether it was acceptable to leave a witness with secured evidence, Europe responded: "No – No – No."<sup>93</sup>

Europe said that she was not involved in the conversations about administrative immunity or the use of it. According to Europe, she first learned about the granting of

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<sup>93</sup> During an interview at SCI, Scarcella acknowledged that he allowed Nobile unsupervised access to the Regents exams.

administrative immunity when she read the draft of Scarcella's Cobble Hill report.<sup>94</sup> Europe said that she then questioned Scarcella who told her that OSI was allowed to grant the immunity based on what Chad Vignola had done on a prior case.<sup>95</sup> Europe, who understood that the use of immunity from disciplinary action had been a "one time thing," then contacted Hyland who said that Vignola had authorized him to use it in future cases as needed. According to Europe, Hyland specifically told her that, during a conversation with Vignola, the General Counsel said to Hyland, "I trust your judgment" in making decisions involving the use of administrative immunity.

Europe testified that she supervised the Cobble Hill matter once the findings of the OSI investigation were turned over to the Administrative Trials Unit of OLS. Europe said that she approved the specifications that George was charged with before they were sent to the Region. Europe also reported that there was "constant supervision" of the George trial and that she had "a lot of contact" with Rodriguez during it.

Europe believed that the DOE had proven the case against George, she disagreed with the decision rendered in the George proceeding which dismissed all charges against George, and she blamed the finding on the hearing officer's dislike of Nobile. Asked whether Capra might be removed from the ineligible inquiry list in light of the George decision, Europe said that former Assistant Principal would remain on it because there was "no doubt there was Regents cheating going on."

#### Philip Nobile, May 2007

Through his attorney, Philip Nobile declined the opportunity to be interviewed by SCI investigators.

#### Telephone Records

SCI investigators subpoenaed relevant documentation in an effort to determine the extent of contact between Nobile and Scarcella during the OSI investigation and the OLS prosecution of George. An analysis of Nobile's telephone records revealed 114 calls to Scarcella's telephones between May 2004 and July 2006. An analysis of Scarcella's telephone records revealed 121 calls to Nobile's residence between July 2004 and July 2006.

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<sup>94</sup> Although Scarcella did not use that term, Europe acknowledged that administrative immunity was what the witnesses had received.

<sup>95</sup> Scarcella was referring to the only other case in which OSI had used administrative immunity. That was the matter described by Hyland; it involved a different set of circumstances than those in Cobble Hill.

### **The Lennel George Disciplinary Proceeding**

The preliminary hearing was held on February 17, 2006.<sup>96</sup> The hearing followed on March 30, April 3, 27, and 28, May 1, 4, 9, 10, 15, and 17, June 8, 14, 19, and 22, and July 19, 2006. Scarcella, Colon, Leardi, Nobile, Pelles, Swords, Lyles, Slater, and – under subpoena – Cohen were witnesses for the DOE. The hearing testimony of Cohen, Colon, Pelles, and Lyles generally was consistent with their testimony at SCI. Yamali, George’s CSA representative Marlene Lazar, and George testified on George’s behalf. Yamali’s hearing testimony was consistent with her testimony at SCI. The record closed on August 2, 2006, and the Preliminary Decision was filed on August 9, 2006.

### **The Preliminary Decision**

In August 2006, we received the Preliminary Decision by the hearing officer who heard the testimony in the George matter.<sup>97</sup> Barbara C. Deinhardt, Esq., found in favor of George, dismissed all charges against him, and ordered him to be reinstated as principal at Cobble Hill, without loss of wages or benefits.<sup>98</sup>

### **Questions About the George Prosecution**

On September 6, 2006, DOE General Counsel Michael Best forwarded to SCI an e-mail message, dated August 30, 2006, which he had received from Nobile. The message began: “As I predicted, Mr. George won his case.” Nobile then disparaged the prosecution of the George charges, referring to “inadequate and incompetent preparation, blinkered and amateurish strategy, slipshod to the point of unprofessional lawyering.” He raised the possibility of “prosecutorial misconduct” and said that he “would like to see the Commissioner of Special Investigation [*sic*] look at the prosecution’s files and read the hearing transcripts.” Nobile noted Rodriguez’s failure to “consult” with him, “the originator and encyclopedist of the cover-up case,” in preparing for the hearing.

We noted Nobile’s correspondence with Best; however, SCI already was reviewing the entire Cobble Hill matter from its inception through the George proceeding.

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<sup>96</sup> Then OLS attorney Rodney Pepe-Souvenir, who was involved in the drafting of the charges in the George case, represented the DOE at the preliminary hearing.

<sup>97</sup> The final Decision and Award was issued on November 10, 2006. SCI received it in December 2006.

<sup>98</sup> Following negotiations between his attorney and the DOE, George ultimately agreed to be assigned as principal to a school other than Cobble Hill.

OLS Correspondence with Philip Nobile

SCI investigators reviewed the communications, primarily by e-mail, which Philip Nobile engaged in with OLS, including messages to Europe, Rodriguez, and General Counsel Best. Nobile's correspondence with OLS was extensive; below are some of his communications.

His interaction with OLS included the following, which occurred before the Scarcella report was finalized:

- May 10, 2005 – in a faxed letter to Europe, Nobile claimed that the cover-up led all the way to the office of the Deputy Chancellor and he advised Europe that if he was not satisfied with the results at OSI, then he would bring his complaint to SCI.<sup>99</sup>
- May 11, 2005 at 1:11 p.m. – in response, Europe e-mailed Nobile to inform him that his “personnel [*sic*] feelings” about George and Pelles were “not relevant.” She also informed him: “The decision to discipline or not is based solely on the facts of the investigation and not whether the complaining witness is “satisfied.” Europe encouraged Nobile to file a report with SCI.<sup>100</sup>
- May 12, 2005 at 8:52 p.m. – in a response to Europe's e-mail, Nobile asserted that if he was “not satisfied” that Europe's office “has acted in good faith in disciplining Mr. George and Ms. Pelles,” he would go to SCI.<sup>101</sup> Nobile stated that “OSI got the case in the first place only because [he] smelled a coverup in the school and the Region” and contacted the State.<sup>102</sup>
- May 13, 2005 at 7:37 a.m. – Europe sent an e-mail to Nobile informing him that OSI investigated and did reports, but did not handle the discipline of any employee. The decision to discipline or not was made by the Region in consultation with OLS. She again encouraged Nobile to contact SCI if he felt that his complaint had been mishandled.<sup>103</sup>

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<sup>99</sup> In his testimony at the George proceeding, Nobile acknowledged that he was referring to Farina. Asked whether that was a threat, he said: “No, that was a fact.” However, he acknowledged that he did not bring his complaint to SCI. The transcript at page 1741.

<sup>100</sup> Nobile did not do so.

<sup>101</sup> In reply, Europe again encouraged Nobile to contact SCI. He did not do so.

<sup>102</sup> The OSI investigation began as a result of the Leardi letter.

<sup>103</sup> Nobile did not do so.



- May 14, 2005 at 3:08 p.m. – in an e-mail to Europe, Nobile claimed that he was a “whistleblower” and that George was retaliating against him. He claimed that two “U”s he received in the 2002-2003 school year were “mere power plays.”<sup>104</sup> In the same message, he asserted that, in May 2003, he told George that Capra had tampered with the 2002 Regents.<sup>105</sup> Nobile wrote that, after his January 26<sup>th</sup> memo, George and Capra combined to give him “four consecutive U’s [*sic*].” He alleged that this was retaliation.<sup>106</sup>
- May 20, 2005 at 7:45 a.m. – in an e-mail to Europe, Nobile inquired about the “timetable” for the decision about discipline in the Cobble Hill case and how he would be informed about it.
- May 20, 2005 at 8:38 a.m. – Europe replied to Nobile and reminded him that his “role in this matter” was “complainant.” She noted that her office was “under no obligation” to provide him with a “timetable.”
- May 20, 2005 at 4:52 p.m. – in an e-mail to Europe, Nobile requested to be kept informed “as a matter of courtesy, not obligation,” and asked her to reconsider her decision not to do so. He said that he had spent many hours helping OSI to make the case and risked his career “to blow the whistle.” He also noted that he had “not leaked this juicy [*sic*] scandal to the press.”

Scarcella’s report on the Cobble Hill investigation was dated May 25, 2005. After the results of Scarcella’s investigation were reported by the press on July 1, 2005, Nobile sought to have the investigation re-opened.<sup>107</sup>

#### Michael Best

- July 11, 2005 at 12:47 p.m. – Nobile sent an e-mail to Best complaining about Pelles, Lyles, and Farina. He concluded: “Just as I went to NYSED when I felt a coverup at Cobble Hill, I intend to go to the Special Commissioner about the unfinished business in OSI’s report.”

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<sup>104</sup> Nobile attempted to support his claim by stating that neither Capra nor George wrote him up again, but he failed to add that he requested that he not be observed because of his wife’s illness.

<sup>105</sup> In other documents, Nobile claimed that his “report” was in April 2003.

<sup>106</sup> Nobile also referred to a letter to the Chancellor, dated May 13, 2004, from Howard Solomon, Director of the UFT’s Grievance Department, who wrote: “Philip Nobile, a teacher at The Cobble Hill School of American Studies has been subjected to a course of harassment by Assistant Principal Theresa Capra, in violation of Article 23. The Principal, Lennel George, and the Superintendent, Marcia Lyles, have not taken adequate steps to resolve this situation.”

<sup>107</sup> The article, on page 1 of the Metro or “B” section of the New York Times, was entitled, “Principal Hid Fraud on Tests In Brooklyn, Officials Say.”

Nevertheless, I prefer to do the least damage. If OSI reopens the investigation to answer the unanswered questions, I see no need to contact Mr. Condon.”<sup>108</sup> OSI did not re-open the investigation. Nobile never contacted SCI.

- July 11, 2005 at 7:41 p.m. – Best replied that he had forwarded Nobile’s e-mail to Special Commissioner Condon.
- July 11, 2005 at 8:17 p.m. – Nobile e-mailed Best to inform him: “The Chancellor and I have issues to discuss independent of the current investigation -- like whistleblower protection, the ubiquity of scrubbing that he condemns, and a better system of reporting corruption so that Tweed is not kept in the dark about criminal matters.” Nobile asked whether the Chancellor would meet with him and whether they should seek Commissioner Condon’s permission. Nobile asked Best for a response to his inquiry about the propriety of allowing Pelles, “a disgraced LIS who covered up a crime,” to continue her supervision of the school. He concluded the message: “Since the [New York] Times is interviewing me tomorrow for a lengthy story, I would appreciate a response before 2:30pm [*sic*].”
- July 12, 2005 at 2:41 p.m. – Best responded to Nobile that a meeting was inappropriate given that the matter had been referred to SCI.<sup>109</sup> He also pointed out the substantial protections in place for whistleblowers.

When Best declined to engage in a colloquy with Nobile about Pelles, Lyles, and Farina, Nobile questioned Lyles directly. He also used her as a conduit to George.

- July 21, 2005 at 2:04 p.m. – Nobile e-mailed Lyles, attached a copy of the April 4, 2004, letter he wrote to her at the direction of the NYSED, and then questioned her about her interaction with Pelles and Farina with respect to the Cobble Hill Regents allegations.
- July 21, 2005 at 2:47 p.m. – Lyles responded by thanking Nobile for a copy of the letter.
- July 25, 2005 at 1:31 p.m. – Nobile sent an e-mail meant for George to Lyles and asked her to pass it on to him. Nobile’s message to George referred to the OSI report and he wrote: “The final report of the Office of Special Investigation is now public. The question of credibility is settled.

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<sup>108</sup> Richard J. Condon is the Special Commissioner of Investigation for the New York City School District.

<sup>109</sup> SCI was already reviewing the entire Cobble Hill matter. SCI did not open a case on Best’s referral.

Neither OSI nor Superintendent Marcia Lyles believed your claim of innocence. What remains is your apology, not only for your retaliation but also for your attempt to frame me as a false accuser.”

Nobile also looked to pursue the case against Capra.

- September 12, 2005 at 6:14 p.m. – Nobile e-mailed Best to ask whether Capra would face 3020-a charges and “suppose[d]” that her resignation would not “innoculate [*sic*]” her from a hearing on her license.
- September 12, 2005 at 6:26 p.m. – Best responded that licensing was a NYSED issue and the process for removal was “outside the DOE’s jurisdiction.”
- September 12, 2005 at 7:50 p.m. – in a reply e-mail, Nobile thanked Best and said that he could not get a straight answer from the NYSED. He then asked for clarification of another matter: “Why did Kathy Pelles get a slap on the wrist when Mr. George got the guillotine?”

As the George proceeding neared, Nobile continued to bombard OLS with e-mails.<sup>110</sup>

#### Theresa Europe

- March 7, 2006 at 8:35 p.m. – Nobile sent an e-mail to Europe notifying her that he “just heard the news from Lou [Scarcella]: you are suddenly taking over the Cobble Hill case and [Scarcella] is to testify on Thursday. This timing is worrisome. Surely, you have not had time to prepare a strong prosecution.” As an example, Nobile pointed out: “you have not interviewed any witnesses or discussed strategy with your main expert -- me. I am the author of the cover-up theory. I showed Lou [Scarcella] where the bodies were buried and helped to put the argument together. I can guide you through our best evidence and help you counter Mr. George’s lies.” Nobile also asserted that Europe was “not an ardent advocate of the Cobble Hill case.” He added: “If the New York Times had not forced the BOE’s hand at the last minute, Mr. George would have received tenure and probably ducked termination. ... [Europe] also stopped the investigation with Dr. Marcia Lyles and Deputy Chancellor Carmen Farina.”

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<sup>110</sup> We did not determine whether Nobile engaged in e-mail correspondence with former OLS attorney Rodney Pepe-Souvenir who originally handled the George matter.

- March 7, 2006 at 9:00 p.m. – Europe responded that Nobile was “again making incorrect assumptions regarding the prosecution as well as investigation.”
- March 9, 2006 at 8:58 p.m. – in an e-mail to Europe, Nobile reported that he was “still worr[ie]d about the prosecution.” He offered to “connect all the dots [for Europe] -- just as I did for Lou [Scarcella].” Nobile claimed to have even more information than was in the Scarcella report. He concluded with: “P.S. How did the first day [of the hearing] go? Can you send me the opening statement?”<sup>111</sup>
- March 12, 2006 at 6:20 p.m. – Europe responded that she was surprised that Nobile had more to add to the investigation given his “countless” sessions with Scarcella. She asked him to speak again with Scarcella or, if he preferred, to contact SCI. Nobile did not contact this office.
- March 24, 2006 at 4:43 p.m. – Nobile wrote to Europe: “May I ask why I haven’t been informed about the hearings and my appearance? What’s the big secret?” At 6:13 p.m., Europe responded that there was no secret and he would be notified when he was needed.
- March 24, 2006 at 7:56 p.m. – in reply, Nobile inquired about speaking directly to the arbitrator rather than only answering questions posed by the lawyers. He informed her: “Anyhow, I plan to lay out my coverup argument, which was good enough to persuade your office to terminate Mr. George in the first place, whether or not it comports with your approach.”
- March 27, 2006 at 10:43 a.m. – Europe answered: “I know you are obsessed with this case but you are beginning to sound like this cause of getting Mr. George terminated as [*sic*] become a full time project for you.” She also informed Nobile that Eddie Rodriguez had been assigned to the case.
- March 28, 2006 at 5:39 p.m. – Nobile told Europe that his “testimony will be smooth and persuasive.” He offered to give Rodriguez a “quick backgrounder ... a vivid picture of the chronology and characters, burnish the smoking guns, and fill in some missing pieces.” After recommending steps that needed to be taken, Nobile concluded the message: “This is the kind of brainstorming we should be doing, especially in light of Mr. Rodriguez’s late entry.”

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<sup>111</sup> The opening statements did not occur until March 30, 2006.

- March 29, 2006 at 10:11 a.m. – Europe wrote to Nobile and advised him not to send additional e-mails, but to telephone her or Rodriguez.
- Saturday, May 6, 2006 at 3:35 p.m. – Nobile sent Europe an e-mail expressing concern about the prosecution. He complained about Rodriguez’s preparation of Nobile’s testimony and that Rodriguez had not responded to 13 of his e-mails. He again asserted that he had new information and questioned who had or had not been called as a witness. He ended: “This is not zealotry. This is simple justice.”
- Sunday, May 7, 2006 at 6:45 p.m. – in her response, Europe noted that Rodriguez had spent two hours with Nobile preparing for his testimony and planned an additional four to five hours before he took the stand. Europe warned Nobile that the defense would paint him as having an “ax to grind” with George. She again asked Nobile “to stop with the emails as you may jeopardize this case further. Just because you label something as ‘work product’, [*sic*] doesn’t mean it is.”
- May 7, 2006 at 9:39 p.m. – Nobile wrote to Europe: “I welcome the zealotry attack. I guarantee that it will boomerang.”

Edward Rodriguez

- April 3, 2006 at 7:09 a.m. – Rodriguez wrote to apologize to Nobile for not returning his telephone call, but added that Nobile’s testimony was weeks away.
- April 14, 2006 at 6:07 p.m. – Nobile e-mailed Rodriguez a “Work product in prep. for Mr. George’s hearing (1)” message offering strategy to establish Nobile’s credibility.<sup>112</sup>
- April 14, 2006 at 11:25 p.m. – Nobile e-mailed Rodriguez “Work product in prep. for Mr. George’s hearing (2).” In this message, Nobile referred to page numbers which correspond to the actual Scarcella report. In his prior message on April 14<sup>th</sup>, Nobile referred to page numbers on the Scarcella report which had been “Bates stamped” by Rodriguez on or about March 30, 2006, for use at the George proceeding. Rodriguez said that he did not give this marked copy of the report to Nobile and did not know how

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<sup>112</sup> In this message, Nobile referred to his “original tampering accusation” as occurring in May 2003; however, according to the Scarcella report, that conversation with George occurred in April 2003. In his testimony at the George proceeding, Nobile said that he reported the cheating to George in April or May 2003.

Nobile knew about the stamped pages. Rodriguez did not meet Nobile in person until May 8, 2006.

- Saturday, April 15, 2006 at 10:28 a.m. – Nobile e-mailed Rodriguez “Work product in prep. for Mr. George’s hearing (3).”
- April 15, 2006 at 2:49 p.m. – Nobile e-mailed Rodriguez “Work product in prep. for Mr. George’s hearing (4)” including items (1) through (7). The message ended: “To be continued ...”
- April 15, 2006 at 11:17 p.m. – Nobile e-mailed Rodriguez “Work product in prep. for Mr. George’s hearing (4) cont.” which included items (7 cont.) and (8).
- April 18, 2006 at 2:07 p.m. – Nobile e-mailed Rodriguez “Work product for Mr. George hearing” containing item (9), “Elements of cover-up cont.”
- April 18, 2006 at 2:56 p.m. – Nobile e-mailed Rodriguez “work product for Mr. George hearing” containing item (11).<sup>113</sup> The message ended: “Surely, this element of the cover-up is the smoking howitzer.”
- Saturday, April 22, 2006 at 4:32 p.m. – Nobile e-mailed Rodriguez “work product for Mr. George hearing” containing item (12), “THE FLAWED METHODOLOGY OF MR. GEORGE’S INVESTIGATION,” section (a), “The missing notes.”
- April 22, 2006 at 5:28 p.m. – Nobile e-mailed Rodriguez “work product for Mr. George hearing” containing section (b), “The missing report.”
- April 22, 2006 at 6:01 p.m. – Nobile e-mailed Rodriguez “work product for Mr. George hearing” containing section (c), “The Missing Ms. Capra,” and section (d) “Mr. George’s failure to audit Regents exams.”
- Sunday, April 23, 2006 at 11:26 a.m. – Nobile e-mailed Rodriguez “Re: work product for Mr. George hearing” containing section (e), “Mr. George’s odd interrogation technique.”
- April 23, 2006 at 1:01 p.m. – Nobile e-mailed Rodriguez “work product for Mr. George hearing” containing item (13), “THE BACKDATED TEACHER LETTERS,” section (a) and section (b).

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<sup>113</sup> Rodriguez reviewed his e-mail messages from Nobile, but could not locate one containing an item (10).

- April 26, 2006 at 11:29 p.m. – Nobile e-mailed Rodriguez “work product for Mr. George hearing” with his thoughts about “Re: Mr. George’s Motive.”
- May 11, 2006 at 4:16 p.m. – in an e-mail to Rodriguez, Nobile questioned the argument by George’s defense counsel for “inclusion” of Nobile’s file because his credibility was in question.<sup>114</sup> Nobile wrote: “In what sense is my credibility at issue? Zeal maybe, but credibility? Doesn’t that imply that some of my claims have been previously unfounded or contradicted?” He suggested that Rodriguez reargue exclusion of the file and offered ideas.<sup>115</sup>
- May 11, 2006 at 6:01 p.m. – Nobile e-mailed Rodriguez: “Hope the honeymoon is not over.” Later, he added: “With more preparation and brainstorming I feel that I could have been a better witness.” He also wrote: “You’re the lawyer, of course. But I’m the expert. You’ve got a lot of other cases on your plate. I’ve made this one and lived it laser-like for two years.” He concluded with: “I have slamdunk questions for Mr. George’s cross-examination and possible arguments and gambits for your summation. You have already received some suggestions in my emails. But we’ve never discussed them. We should.”
- Sunday, May 14, 2006 at 4:44 p.m. – Nobile e-mailed Rodriguez: “As part of my witness preparation, especially for the all important cross tomorrow, I should be aware of which documents of mine are in evidence. Why be surprised by Mr. George’s fiesty [*sic*] counsel who is out to destroy my credibility?”

#### The Prosecution Team

- Sunday, July 2, 2006 at 10:03 p.m. – in a “Dear Prosecutorial Team” e-mail to Rodriguez, Best, and Europe, Nobile wrote: “I hear that the BOE’s case against Mr. George has not gone well and that you will probably lose. Hard to believe granted the amount of incriminating evidence.” Later in the message, he said: “Cross-examining Mr. George should have been a lay-up for Eddie [Rodriguez]. Apparently, he did not

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<sup>114</sup> Nobile began his testimony at the George proceeding on May 9, 2006.

<sup>115</sup> In his response that same day at 5:01 p.m., Rodriguez explained that the colloquy at the hearing was about “discoverability” of his file, not “inclusion.” He reminded Nobile that he was prosecuting the matter and Nobile was a witness.

do the job. If all of you were serious about winning, Eddie would have asked me to help him prepare his cross of Mr. George (without violating confidentiality of course) and he would have called me to rebut Mr. George's inevitable direct testimony perjury." The communication abruptly ended: "If the opportunity for me to rebut...was blown"

- July 2, 2006 at 10:55 p.m. – Nobile's previous message to Rodriguez, Best, and Europe continued: "let's not blow the final [sic] argument.... If you want to pluck victory from defeat, you will consult me in depth as the expert on the cover-up. With all respect, nobody I've spoken to has been impressed with Eddie's [Rodriguez] performance." Nobile then provided examples of what he considered Rodriguez's shortcomings. He concluded the correspondence: "I could go on, but you've got my drift. Prove your good faith. Consult me at this final stage. Or lose a slamdunk case."
- July 3, 2006 at 1:35 p.m. – Europe responded to Nobile's e-mail: "This will be the final communication from this office. Eddie [Rodriguez] has worked very hard on this case and while you may not be impressed by his efforts, I have been very happy with Eddie's hard work and dedication not just on this case, but on all his cases."

#### Michael Best

- August 30, 2006 at 9:18 p.m. – Nobile e-mailed Best to complain about the loss in the George proceeding. He wrote: "So how to explain the failed prosecution? Inadequate and incompetent preparation, blinkered and amateurish strategy, slipshod to the point of unprofessional lawyering." Nobile noted that he would like to see SCI look at the prosecution's file and review the transcripts. He then proposed a series of questions that should be posed to Rodriguez. He concluded the message: "In sum, a slam-dunk case was botched, so badly that questions are raised about its professionalism at best and integrity at worst."
- September 6, 2006 at 8:32 a.m. – Best forwarded the matter to Special Commissioner Condon. He indicated that he intended to inform Nobile of that action, but would not respond further.



### The Transcripts

As part of our review of the Cobble Hill matter, SCI obtained and reviewed the transcripts of the George disciplinary proceeding and compared the testimony of the witnesses to the information contained in the Scarcella report.<sup>116</sup>

#### Jeffrey Slater's Testimony

Slater was a witness for the DOE at the Lennel George disciplinary proceeding. He was questioned under oath on direct examination by the OLS attorney representing the DOE and was cross-examined by George's counsel. In his direct testimony, Slater acknowledged that, in May 2004, there was a "lot of tension and friction in the [History] department" at Cobble Hill.<sup>117</sup> During cross-examination, Slater acknowledged that, in February or March 2004, George questioned him and, thereafter, he signed the George letter. Slater testified that he told George the truth and that the letter reflected his true statements. Slater also confirmed that he told George that he did not see Capra change grades on the Regent's exams and that he did not see anyone else change Regents grades.<sup>118</sup>

#### Louis Scarcella's Testimony

Scarcella was a witness for the DOE at the Lennel George disciplinary proceeding. He was questioned under oath on direct examination by the OLS attorney representing the DOE and was cross-examined by George's counsel. Scarcella acknowledged that George gave him the George letters, signed by the teachers whom the principal had questioned, before Scarcella spoke to teachers. He testified: "Mr. George gave me each individual letter, so I - - yes, I had their names."<sup>119</sup>

During cross examination, Scarcella acknowledged that Nobile was "very active" in his investigation.<sup>120</sup> Scarcella testified that he spoke with Nobile "many" times during his investigation and met with Nobile a "[n]umber of times."<sup>121</sup> He admitted that he did not record each meeting on his log and the log represented the minimum number of times that Scarcella and Nobile met.<sup>122</sup>

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<sup>116</sup> This was not in response to Nobile's e-mail to Best. SCI already was reviewing the entire Cobble Hill matter.

<sup>117</sup> The transcript at page 1958.

<sup>118</sup> The transcript at pages 1959 through 1961.

<sup>119</sup> The transcript at page 793.

<sup>120</sup> The transcript at pages 895 and 896.

<sup>121</sup> The transcript at page 904.

<sup>122</sup> The transcript at page 905.

Scarcella admitted that he prepared his “checklist for cover-up” in consultation with Nobile.

“Did you do it in consultation with anyone else?”

“Yes.”

“Who?”

“Mr. - - Mr. Nobile.”<sup>123</sup>

Scarcella acknowledged that he and Nobile created the document “during the investigation” and that Scarcella used it for “questions.”<sup>124</sup>

Scarcella also admitted that he prepared his final report in consultation with Nobile.

“Did you prepare [the final report] in consultation with anyone else?”

“Yes.”

“With whom?”

“Mr. Nobile.”<sup>125</sup>

Scarcella testified that Nobile did not write the report, but assisted in writing sections of the report.

“And did he write any sections of this report?”

“He - - I - - no, he didn’t write any sections of it, but he - - he assisted me in writing some sections of it, yes.”<sup>126</sup>

Also during cross-examination, Scarcella admitted that, “From what I understand - - from what I learned” there was nothing wrong with graders looking for additional points on at Regents exams that had been marked in the 60s.<sup>127</sup>

#### Vincent Leardi’s Testimony

Vincent Leardi was a witness for the DOE at the Lennel George disciplinary proceeding. He was questioned under oath on direct examination by the OLS attorney representing the DOE and was cross-examined by George’s counsel. Leardi was not asked about much of the information attributed to him in the Scarcella report. On one point, Leardi’s testimony was inconsistent with the account described in that report. In that document, Scarcella wrote that “Leardi said that the required third read was not practiced.” On cross-examination at the George proceeding, Leardi testified that the

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<sup>123</sup> The transcript at page 918.

<sup>124</sup> The transcript at page 919.

<sup>125</sup> The transcript at pages 919 and 920.

<sup>126</sup> The transcript at page 921.

<sup>127</sup> The transcript at page 838.

“person would...grade it, then give it to me and then I would give it to...the next person.”<sup>128</sup> Also during cross-examination, Leardi confirmed that he did not change a student’s grade without re-reading an essay.<sup>129</sup>

Later, during cross-examination, Leardi testified that during the 2003-2004 school year, he took medication which made him “more aggressive” and “very angry.” He did not know whether these emotions were a product of the condition or the medication.<sup>130</sup>

### Terrence Swords’s Testimony

Swords was a witness for the DOE at the Lennel George disciplinary proceeding. He was questioned under oath on direct examination by the OLS attorney representing the DOE and was cross-examined by George’s counsel.

During re-cross-examination, Swords testified that he “had not been asked to change the grades of Regents exams.”<sup>131</sup> Swords added that he “had never -- not witnessed Theresa [Capra] or anyone else changing the grades of Regents exams.”<sup>132</sup> Swords also acknowledged that it was “a standard practice” for people to “hand each other essays to re-read and to change the -- the grades of an essay. And I had done that myself.”<sup>133</sup>

Swords’s testimony differed from the account described in the Scarcella report with respect to Nobile’s complaint to George that Capra was a cheater. In the section of the Scarcella report relating to the third interview of George, Scarcella wrote:

Shortly after the verbal exchange between Mr. Nobile and Mr. George occurred, Mr. Nobile said that he told Mr. Terry Swords, then UFT Chapter Leader at Cobble Hill, about the exchange. Mr. Swords confirmed Mr. Nobile’s claim to this investigator. Mr. Swords said that in April 2003 Mr. Nobile told him about the meeting with Mr. George. Mr. Swords said that Mr. Nobile told Mr. George that Ms. Capra was a “cheater” and that Mr. George’s reply was, “I don’t want to hear that.”<sup>134</sup>

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<sup>128</sup> The transcript at page 1114.

<sup>129</sup> The transcript at page 1119.

<sup>130</sup> The transcript at page 1124.

<sup>131</sup> The transcript at page 1900.

<sup>132</sup> The transcript at page 1900. Swords also testified that he graded exams in June 2002. He added that he was not 100% certain that he graded exams in June 2003. See the transcript at pages 1885 and 1886.

<sup>133</sup> The transcript at page 1900.

<sup>134</sup> On March 8, 2004, Nobile sent an e-mail to Swords in which he asked Swords to “email [Nobile] saying that I told you about this conversation (PN: ‘and she cheats on Regents’ LG ‘I didn’t hear that.’) contemporaneously [sic]. I won’t use this back-up unless I’m challenged.” Swords testified that he responded to this message, but no such documentation was produced at the hearing. SCI was unable to locate a response.

During cross-examination, Swords testified that he “didn’t need Mr. Nobile to tell [Swords] about that discussion because [Swords] was -- or that exchange, because [Swords] was present.”<sup>135</sup> Told that Nobile had testified in a manner consistent with the Scarcella report and then questioned whether he could be mistaken, Swords testified: “I’m sorry to say that I could not be mistaken. I’m certain of it.”<sup>136</sup>

The arbitrator of the George hearing described Swords’s testimony at that proceeding as follows:

I find that the Department did not prove by a preponderance of the evidence that George “ignored” Nobile’s “attempts to alert him to grade tampering.” There were significant differences between the version of events given by Nobile and those described by Swords. Unlike Philip Nobile, who clearly had a vendetta against Capra and George, I found Swords to be a thoughtful and careful witness. In light of his testimony, it appears that at the time that Nobile brought up some question about Regents grading in the Spring of 2003, George was busy and distracted and essentially told Nobile that he didn’t have time to talk to him. As discussed [elsewhere in the arbitrator’s decision], Nobile was constantly complaining to George about Capra and her treatment of him. If the incident took place as Swords described, George may well have assumed that this was just one more in this series of complaints by Nobile and brushed it off in his preoccupation with other matte[r]s.<sup>137</sup> If Nobile had made his accusation as directly and clearly as he states he did, why wouldn’t George have responded as directly as he did when Nobile raised the accusation in February 2005 [*sic*]?<sup>138</sup>

#### Lennel George’s Testimony

George testified in his own behalf at his disciplinary proceeding. He was questioned under oath on direct examination by his attorney and was cross-examined by counsel representing the DOE. George denied the charges against him. George also testified that during his first interview at OSI, Scarcella threatened to have him removed from the school. George testified: “[Scarcella] said to me, ‘well, do you know today is your last day as a principal?’”<sup>139</sup> Testimony from the CSA representative, who was present for George’s interview with Scarcella at OSI, confirmed Scarcella’s behavior and comment.<sup>140</sup>

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<sup>135</sup> The transcript at page 1862.

<sup>136</sup> The transcript at pages 1864 and 1865.

<sup>137</sup> According to Swords’s testimony at the proceeding, the verbal exchange in question, if it occurred, took place on a workday. According to Nobile’s testimony at the proceeding, the exchange happened in George’s office on a Saturday.

<sup>138</sup> This should be 2004. This excerpt is from page 17 of the arbitrator’s final decision.

<sup>139</sup> The transcript at page 2397.

<sup>140</sup> During cross-examination at the George proceeding, Scarcella testified that he did not make that statement to George. See the transcript at pages 915 and 916.

Later in the proceeding during cross-examination by Edward Rodriguez, George testified that Swords “openly said” that he “hate[d] [Capra’s] guts.” Rodriguez responded: “I think he told us that, as well.”<sup>141</sup>

### Philip Nobile’s Testimony

Philip Nobile was a witness for the DOE at the Lennel George disciplinary proceeding. He was questioned under oath on direct examination by the OLS attorney representing the DOE and was cross-examined by George’s counsel.

#### “Scrubbing”

On direct examination, explaining his January 26, 2004, memo to George, Nobile testified: “We were coming up on January Regents.... And having witnessed the massive cheating that went on in -- in June of 2003, I didn’t want my colleagues to be pulled into this same scheme.”<sup>142</sup>

Nobile also gave his definition of “scrubbing.” He said: “Scrubbing, as indicated, you know, by the normal definition of scrub, is to erase the lower score and to change it to a passing score. That’s what I meant when I said in which failures are scrubbed into passers.”<sup>143</sup> Asked why it was of concern to him, Nobile answered: “Because this is what I had witnessed at at least two separate grading sessions in 2002 and in 2003. And I wanted it to stop.”<sup>144</sup>

On cross-examination by George’s attorney, regarding Capra’s cheating in June 2003, Nobile asserted that he “did her hand [*sic*] a stack of failed exams to Mr. Colon for scrubbing.”<sup>145</sup> Nobile admitted that was all he personally saw with respect to conduct by Capra.<sup>146</sup> Nobile later testified that he did not look at those exams.<sup>147</sup> Nobile also acknowledged that he did not hear Capra “specifically” direct Colon, “the scrubber in chief,” to erase scores and raise the failing grade to a passing grade. Nobile testified that he heard: “here, Hector, take care of these.”<sup>148</sup>

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<sup>141</sup> The transcript at page 2455.

<sup>142</sup> The transcript at page 1155. The actual document was dated 2003 in error. The memo did not mention “massive cheating.” In his testimony at the George proceeding, Nobile acknowledged that he did not witness Capra cheat or direct other scorers to cheat.

<sup>143</sup> The transcript at page 1158. Nobile referred to scrubbing as a “pejorative term” that was separate from a review of scores between 60 and 64 “to see if any points are missed.”

<sup>144</sup> The transcript at page 1158.

<sup>145</sup> The transcript at pages 1652 and 1653.

<sup>146</sup> The transcript at page 1766.

<sup>147</sup> The transcript at page 1766.

<sup>148</sup> The transcript at page 1653.

Erasures

On re-direct by DOE attorney Rodriguez, Nobile testified that “you could say that I was an expert in recognizing erased red pencil marks.”<sup>149</sup>

Lennel George

Nobile testified that he and George “had a very good relationship...[Nobile] felt that [George] had a sympathetic ear and that [Nobile] could trust [George], especially since [George] took [Nobile] into [George’s] confidence vis-a-vis Ms. Capra on a number of occasions.”<sup>150</sup> Nobile also testified: “I think [George] trusted me more than he trusted [Capra].”<sup>151</sup>

“I don’t want to hear that”

In his testimony during the DOE’s case at the George proceeding, Nobile offered a version of the “I don’t want to hear that” exchange with the principal “in April or May of 2003” which differed from both the account attributed to Swords in the Scarcella report and from Swords’s testimony at the George proceeding.

Nobile testified on direct examination:

I lived in -- four blocks away from the school and I often drifted over to Cobble Hill on Saturdays to do a little business here or there. And Mr. George and I were very friendly at that point, and I would drop into his office, sometimes alone, sometimes with Mr. Swords, and we’d just sit around and chat about things. One of the things that we chatted about was Ms. Capra, who was a thorn in both mine and Mr. Swords’ [*sic*] side, in this period.

And I remember specifically that I was alone having this conversation with Mr. George, and I was talking in the aftermath of Ms. Capra’s U that she had given me the previous March, and the kind of hostility that she was showing, and basically talking about my disagreements with her as a supervisor. I was sharing this information and Mr. George would share his thoughts about her with me. He told me he was not a big fan of Ms. Capra’s, that he had problems with her, too, and that he would make sure in the year-end report that these problems that Swords and I and other faculty were bringing him would be in her final report. And I remember just before I said she was a Regents cheat, I was saying, you know, I disagree with a -- a lot of her ideas, and if you think she’s a good supervisor, you should know she’s a Regents cheat.<sup>152</sup>

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<sup>149</sup> The transcript at page 1792.

<sup>150</sup> The transcript at pages 1784 and 1785.

<sup>151</sup> The transcript at pages 1788 and 1789.

<sup>152</sup> The transcript at pages 1219 and 1220.

Questioned about George's response, Nobile testified: "he said, I don't want to hear that."<sup>153</sup> Asked what happened next, Nobile said: "I abruptly changed the subject."<sup>154</sup>

During cross examination about that Saturday exchange in April or May 2003, Nobile testified that Swords – who sometimes participated in the "Saturday colloquies" – was "not with [him]" when he told George that Capra was a Regents cheat.<sup>155</sup> However, Nobile later added that he "recorded this I thought dramatic revelation with Mr. Swords contemporaneously.... So I have specific memory."<sup>156</sup>

### Capra's Bias

In his direct testimony, Nobile said: "And I had asked [George] if he would remove [Capra] as my supervisor in terms of observing me ... her bias was so obvious and mean-spirited."<sup>157</sup> After explaining that Capra subsequently observed him, Nobile also said: "So I immediately went to Mr. George and said that his -- he was not keeping his promise. ... That she would not observe me alone."<sup>158</sup> Later he recounted an exchange with George about "the scandal basically" and he testified: "and he said to me, you know, Mr. Nobile, as I was on the way out the door, this -- this wouldn't have happened if you had just gotten along with Ms. Capra. And I replied to him, this may not have happened if you had kept your promise. That is, to keep her off my back -- to keep her from supervising, to keep her from harassing me."<sup>159</sup> Under questioning by the hearing officer, Nobile reiterated this exchange with George. He added: "and you know, there's some truth to that statement [that this wouldn't have happened if he had just gotten along with Capra]. Because whistleblowers are not born. Whistleblowers are made."<sup>160</sup>

The Scarcella report did not address Capra's purported bias against Nobile, although Nobile raised the issue in various e-mail communications described elsewhere in this report.

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<sup>153</sup> The transcript at page 1220.

<sup>154</sup> The transcript at page 1221.

<sup>155</sup> The transcript at pages 1669 and 1670.

<sup>156</sup> The transcript at page 1677. Nearly one year later, on March 8, 2004, Nobile sent an e-mail to Swords in which he asked Swords to "email [Nobile] saying that I told you about this conversation (PN: 'and she cheats on Regents' LG 'I didn't hear that.')(contemporaneously [*sic*]. I won't use this back-up unless I'm challenged." Swords testified that he responded to this message, but no such documentation was produced at the hearing. SCI was unable to locate a response.

<sup>157</sup> The transcript at page 1199.

<sup>158</sup> The transcript at page 1202.

<sup>159</sup> The transcript at page 1248. On page 14 of her decision dismissing the charges against George, the hearing officer wrote: "The charges against George were made by Philip Nobile, a teacher who was motivated by vindictiveness against Theresa Capra."

<sup>160</sup> The transcript at page 1802.

### His View of Capra

On cross-examination, Nobile testified: “[Capra] had psychological problems with older men which came out in a number of expressions at the school.”<sup>161</sup>

### Immunity

Nobile raised the issue of giving witnesses immunity from disciplinary action in communications with the State and Hyland. He told Hyland: “As Chapter Leader, I sought to protect [Colon] and other brothers and sisters seduced into Ms. Capra’s grade-changing scheme by seeking some form of immunity. I consulted NYSED, the UFT, and the OSI. Assured by your investigator that no harm would come to cooperative witnesses.” However, in his direct testimony at the George proceeding, Nobile said: “I was seeking immunity for them with -- with the State, with the union, and later on -- well, okay -- with the State and the union....”<sup>162</sup>

In his report, Scarcella indicated that some of the witnesses were told that there would be no disciplinary action taken against them with respect to the information they provided to OSI, but he did not explain the origin of that action.

### Scarcella

On cross-examination, Nobile was questioned about his interaction with Scarcella. He acknowledged that it was George who gave Scarcella his name.<sup>163</sup> Nobile denied corresponding with Scarcella – including e-mail messages – unless he was sending him a document from the case.<sup>164</sup> Nobile admitted speaking with Scarcella more than once by telephone. He said “maybe” they spoke more than 10 times, but he answered, “I don’t recall” when asked whether it was more than 20 times.<sup>165</sup> Questioned about his assistance to Scarcella in the investigation, Nobile testified:

I advised him on what -- the general tenor of the case, the layout of the case, what questions might be useful to what people, I would inform him of things like the relationships between people. As much information as I could possibly impart about the case, based on my inside knowledge.<sup>166</sup>

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<sup>161</sup> The transcript at page 1785.

<sup>162</sup> The transcript at page 1551.

<sup>163</sup> The transcript at page 1730.

<sup>164</sup> The transcript at page 1733. We were not able to obtain information from Scarcella’s e-mail account because he had deleted all his messages. Nevertheless, some of the correspondence sent to other recipients, for example Europe, showed that Scarcella had been copied on certain messages or had messages forwarded to him.

<sup>165</sup> The transcript at pages 1733 and 1734. An analysis of Nobile’s telephone records revealed 114 calls to Scarcella’s telephones between May 2004 and July 2006. An analysis of Scarcella’s telephone records revealed 121 calls to Nobile’s residence between July 2004 and July 2006.

<sup>166</sup> The transcript at page 1734.



Asked whether he was consulted by Scarcella as the OSI investigator was writing the report, Nobile said:

May have, he may have. We -- I had talked to him about my views prior to that at, you know, on the phone. He may have called me as he was writing the report to check on something here and there.<sup>167</sup>

Nobile denied writing the report.<sup>168</sup> He testified that he read the Scarcella report after it was released to the New York Times and the press.<sup>169</sup> Nobile acknowledged that Scarcella revealed to him what other witnesses had said. Nobile testified: "At some point when we were working on the investigation and I was giving him leads, yes, I was aware of some of the testimony."<sup>170</sup> Nobile answered, "Oh, yes," that he worked on the investigation with Scarcella, although he was not being paid by the DOE to do so.<sup>171</sup> Nobile asserted: "I was the whistle blower and the expert on the case, and I was giving Mr. Scarcella leads."<sup>172</sup>

#### The Nobile – Cohen e-mail Exchange

As proof of Capra's misconduct, Nobile – and Scarcella – placed a great deal of significance on an e-mail communication Nobile had with Elliot Cohen.<sup>173</sup> Nobile created this document, addressed to the NYSED and dated March 27, 2004, which consisted of a compilation of e-mail messages from June 2002, between Nobile and Cohen. Cohen wrote in one message: "the whole thing is a sham. Their essays were terrible all around and received points when they should have gotten ZERO." Nobile responded: "I wasn't paying attention to other essay corrections and gave no extra points myself." According to Nobile's document, in turn, Cohen wrote: "Then you are BLIND as a bat b/c the crimes that committed [*sic*] were obscene."

However, in his testimony at the George hearing, Cohen explained how Nobile's interpretation of the exchange was wrong. Arbitrator Deinhardt agreed with Cohen's account. On pages 21 and 22 of her final decision, she wrote:

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<sup>167</sup> The transcript at page 1735. An analysis of Nobile's telephone records revealed 114 calls to Scarcella's telephones between May 2004 and July 2006. An analysis of Scarcella's telephone records revealed 121 calls to Nobile's residence between July 2004 and July 2006.

<sup>168</sup> The transcript at page 1735.

<sup>169</sup> The transcript at page 1762.

<sup>170</sup> The transcript at page 1763. None of the interviews at OSI was under oath; therefore, Scarcella interviewed, but did not take testimony from the Cobble Hill witnesses.

<sup>171</sup> The transcript at pages 1763 and 1764. The question posed to Nobile by George's attorney referred to the DOE as the Board of Education.

<sup>172</sup> The transcript at page 1764.

<sup>173</sup> This was Scarcella's "tenth matter" in his third interview with George conducted on September 14, 2004.

A great deal was made by Nobile, Scarcella and the Department about the allegedly damning impact of the emails that Nobile had shared with George on April 16, after George had been instructed to discontinue his investigation. Scarcella concluded that George had improperly presented teacher Elliot Cohen as a credible witness even though he knew from these emails that he was a liar (since Cohen had told George he had not cheated and the emails proved he did). In typical Nobile verbiage, Nobile accused George of “knowingly handing over counterfeit goods to the Chancellor’s investigator” (when he produced Cohen and his letter for Scarcella).

However, Cohen’s explanation of the emails is a reasonable one. Yes, he thought that what they had done in the grading “was a crime,” that the students’ “essays were terrible all around and received points when they should have gotten ZERO,” that “the whole thing was a sham.” The reason, however, was not that they had cheated, but rather that the scoring rubric mandated that they give points even if the student “isn’t coherent in their explanation, does not address the topic, things of that nature,” (T.2026) The DOE guidelines direct that a zero could be given only if the answer “fails to address the task, is illegible or is a blank paper.” Thus the students were in essence getting points for writing down “any old garbage,” as inelegantly described by Capra, even if Cohen would have given them a zero or no credit in his own classroom.<sup>174</sup> It was this scoring rubric and its effect that Cohen thought was “obscene,” “ridiculous,” giving the students “a favor.” This is not a smoking gun that George should have interpreted as an indication that there had been cheating, as alleged by Nobile.

### The Final Decision and Award

On December 19, 2006, SCI received Deinhardt’s 25-page Final Decision and Award. On pages 23 and 24 Deinhardt wrote:

Just as Principal George’s investigation was not as aggressive as it should have been, perhaps in part because of his skepticism about Philip Nobile, it appears that Investigator Scarcella’s investigation may have been skewed by his relationship with Nobile. As Scarcella himself noted, he had “never come across a witness like [Nobile] before.” Nobile was extensively involved in shaping the investigation and the conclusions and he was convinced from the beginning of George’s guilt.<sup>175</sup> Yet Nobile was a person who wanted to use the accusation of cheating to bring down Capra and George and anyone who disagreed with him.

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<sup>174</sup> In an e-mail from Capra to Nobile, dated May 29, 2002, Capra asks that Nobile and the other teachers focus on getting the students to the grade of 65 and suggests teaching the students to do the essays first before the multiple choice. She added: “In a pinch, they can get points from writing any old garbage down...”

<sup>175</sup> The emphasis was in the arbitrator’s original text.

(As he told George, “the whole thing” i.e. “the scandal,” could have been avoided if only George had kept his promise to keep Capra from supervising him, to keep her from harassing him, to keep her off his back. T.1248)) When a teacher “suggested to [Nobile] that he resign as Chapter Leader of the UFT due to his obvious disconnect with the staff, he left [her] a threatening message on [her] answering message about going to the press with Regents ‘cheating’ scandal information and admonishing [her] that any action [she] might take against him, such as asking him to step down as Chapter Leader, would act as a boomerang that would come back to get [her].”<sup>176</sup> (R. Ex. 14) Even the messages Nobile sent to the DOE Legal Department make clear his predilection for threatening retribution against anyone who disagrees with him.

Yet this is the person with whom Scarcella consulted and on whom he relied. It was Nobile who helped him develop the “cover up” check list and the questions to ask George. It was Nobile who assisted him in the writing of the report. And Scarcella continues to believe that Nobile has proven correct in every detail. Nobile appeared at the hearing as a frustrated investigative journalist. In his letter of May 17 to Thomas Hyland, Scarcella’s supervisor, he referred to the investigation as “my snowballing expose.”

### **Philip Nobile – a History of Complaints**

On March 27, 2004, Nobile sent an e-mail message to the NYSED alleging improprieties in Regents grading at Cobble Hill, but the matter was not referred to this office and did not reach the Region until early April.<sup>177</sup> On April 12, 2004, Judith Kay, Counsel for Region 8, forwarded the April 4, 2004, “Leardi letter” to this office. SCI referred the allegation to OSI. Although it was the Leardi letter which started the OSI investigation, Nobile ultimately became known as the complainant in the matter which OSI – Scarcella – investigated. This was not the first time or the last time that Nobile made allegations against supervisors and colleagues.

### **Before Cobble Hill – Pre-Capra**

On June 11, 2001, while assigned as a substitute teacher at Washington Irving High School in Manhattan, Nobile filed a complaint with SCI alleging that he was

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<sup>176</sup> This refers to Teacher Rebecca Ostro. More details about this interaction between Nobile and Ostro are described later in this report.

<sup>177</sup> Representatives from the NYSED were unable to indicate with certainty when and how Nobile first contacted their office. The March 27, 2004, e-mail was the first record of contact which was maintained by the NYSED. Nobile failed to report this complaint to SCI.

removed from the classroom days before final grades were due because he would not improperly inflate student grades.<sup>178</sup> At the time of his complaint, Nobile was in the process of being terminated. Nobile ultimately received an “S” rating from Washington Irving and, in September 2001, received a teaching position at Cobble Hill.

#### At Cobble Hill – the Capra Years

After Nobile was assigned to Cobble Hill, he frequently complained about Assistant Principal Capra directly to Capra, to Principal George, and to others.

- October 28, 2002 – in a letter to Capra, Nobile questioned the students’ preparation for the Regents.<sup>179</sup>
- December 14, 2002 – in an e-mail message to George, Nobile complained about Capra’s treatment of him.<sup>180</sup>
- March 10, 2003 – Nobile was observed by George and thereafter he received a “U” rating.<sup>181</sup>
- March 11, 2003 – Nobile was observed by Capra and thereafter he received a “U” rating.
- March 11, 2003 – Nobile wrote to Capra regarding her observation of his class and his expected “U” rating. In that e-mail, in an effort to deflect Capra’s criticism of his lecture style, Nobile included an Instant Messenger communication that he had with a student about his teaching method.<sup>182</sup>

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<sup>178</sup> We referred this matter to OSI which, in turn, sent it to DAA. From there, it went back to the Superintendent’s Office. SCI investigators were unable to determine the outcome of Nobile’s complaint. However, the subject of the allegation informed SCI investigators that no one ever spoke to her about it and she was not disciplined.

<sup>179</sup> This letter also was copied to George. There was no mention of Regents cheating.

<sup>180</sup> Nobile complained that Capra told him to have his tests include all Regents questions and he did not comply. There was no mention of Regents cheating.

<sup>181</sup> In correspondence sent on May 14, 2005, to Deputy Counsel to the Chancellor Theresa Europe, Nobile claimed that, in March 2003, George gave him a “U” rating because then Superintendent Carmen Farina had “looked at [his] lesson (handout) and expressed discontent.” Nobile added that “[George’s] crash reappearance in my classroom later the same afternoon and his unscheduled observation can only be explained as an effort to appease Ms. Farina who was known to want more U’s [sic] distributed at Cobble Hill.” In her testimony at SCI, Farina said that she did not insert herself into the rating process and denied ordering the dissemination of “U” ratings. Nobile informed Europe that he was a probationary teacher who received two “U” ratings in two days, but then was not monitored for the rest of the term. According to Capra, Nobile asked George not to have Capra review him because of his wife’s illness. George granted Nobile’s request.

<sup>182</sup> Nobile claimed that the student initiated the correspondence; however, the issue of his teaching technique was raised by Nobile.

- March 13, 2003 – according to Nobile, in this post-observation meeting, Capra told him that he should think about finding another school in September.<sup>183</sup>
- April or May 2003 – Nobile claims to have told George that Capra was a Regents cheat to which George responded: “I don’t want to hear that.”<sup>184</sup>
- June 24, 2003 – in a letter to George, Nobile responded to his “U” rating of March 10, 2003. Nobile referred to a “post-observation conversation one Saturday at school,” but did not allege or mention cheating.<sup>185</sup>
- June 26, 2003 – in an e-mail message to Capra after the Regents was scored, Nobile questioned his change of courses to be taught in the following semester.<sup>186</sup>
- September 10, 2003 – Nobile wrote to George requesting that George ask Capra to “get off [his] case and let [him] teach.”
- September 30, 2003 – Nobile wrote to George complaining about Capra. According to Nobile, Capra rated one of his lessons as unsatisfactory and advised him that if she wrote up her observation, the lesson would be rated unsatisfactory.
- December 18, 2003 – George observed Nobile’s class and gave him a satisfactory rating. He memorialized his findings in a document dated January 7 and signed by Nobile on January 8, 2004.
- January 6, 2004 – Capra observed Nobile’s class and found that his “lack of preparation resulted in a wasted instructional period.”<sup>187</sup> Capra noted her observations in a letter dated January 9, 2004.<sup>188</sup> In a document dated April 14, 2004, Nobile wrote that in their post-observation meeting regarding the observation of January 6, 2004, Capra advised Nobile that

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<sup>183</sup> Nobile reported this conversation in a document accusing Capra of harassment, dated April 14, 2004.

<sup>184</sup> At the George proceeding, Nobile testified that, as a result of George’s response, he did not make a report to the principal about allegations relating to Capra’s handling of the Regents grading in June 2003. See the transcript at page 1658.

<sup>185</sup> The June 2003 Regents was administered about one week earlier.

<sup>186</sup> There was no allegation of cheating.

<sup>187</sup> Nobile’s wife passed away in December 2003.

<sup>188</sup> On January 14, 2004, Nobile’s refusal to sign the observation letter was noted. Nobile’s harassment complaint of April 14, 2004, referenced Capra’s January 6, 2004, observation of him, and noted that “the fix was in.” Nobile wrote: “Prevented from U-ing me, Ms. Capra planned the next worst thing -- a negative letter-to-file.”

she was going to observe him four times during the semester and visit his room frequently.

- January 6, 2004 – Nobile wrote to George to complain that Capra had observed him on that day even though George had agreed that Capra would no longer conduct the classroom observations of Nobile.
- January 8, 200[4] – in an e-mail exchange between Nobile and Cohen, Nobile stated he just wanted Capra off his back and her actions would “boomerang.”<sup>189</sup>
- January 8, 200[4] – in a correspondence from Nobile to George, Nobile complained about receiving a “U” rating.<sup>190</sup>
- January 9, 2004 – Capra documented her January 6, 2004, observation of Nobile.
- January 20, 2004 – in a letter to “the Capra Delegation,” Nobile wrote that Capra had no plans for dropping Regents scores at the school.<sup>191</sup> Nobile asked that George not permit Capra to observe him alone.
- January 26, 200[4] – in a letter to George, Nobile suggested a procedure whereby he, as the UFT Chapter Leader, would be in charge of overseeing the Regents scoring.<sup>192</sup> He claimed that members of the Social Studies Department had expressed concerns to him about the marking of Regents exams in the recent past.
- February 10, 2004 – Nobile received a “U” rating from Capra. She prepared a letter documenting her reasons.<sup>193</sup>
- February 20, 2004 – Nobile wrote to George to grieve Capra’s January 9, 2004, letter to his file, which was based on her “unauthorized observation” of his class on January 6, 2004.

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<sup>189</sup> This e-mail message incorrectly referenced the year as 2003.

<sup>190</sup> This e-mail message incorrectly referenced the year as 2003.

<sup>191</sup> There was no mention of Regents cheating. Nobile did not specify the composition of the Capra Delegation.

<sup>192</sup> This memo was incorrectly dated 2003.

<sup>193</sup> A post-observation meeting was held on February 11, 2004.

- February 25, 2004 – in a letter to George, Nobile claimed that, for the past two academic years, Capra had systematically directed the changing of Regents grades during correction sessions in her office.<sup>194</sup> Nobile stated that he was present at these sessions, but did not take part in changing grades.<sup>195</sup> He added that exams close to the passing grade of 65 were set aside. He claimed that the essay and DBQ scores, which allowed for some subjectivity, were erased and raised to achieve a passing grade.
- March 3, 2004 – at a Step I grievance hearing regarding Capra’s January 6, 2004, letter to Nobile’s file for which he received a “U” rating, Nobile stated that there was an “understanding” that Capra would not visit his classroom. George denied Nobile’s grievance and stated “[a]ssuming *arguendo*” that there was an “understanding,” neither Nobile nor the Administration had the authority to make such an arrangement.<sup>196</sup>
- March 6, 2004 – Nobile wrote an e-mail to Charles Friedman, UFT representative, to memorialize a conversation that Nobile and Friedman had with George, in which they attempted to persuade George not to allow Capra to observe Nobile.<sup>197</sup>
- March 9, 2004 – in a letter to George, Nobile claimed that Capra created an atmosphere where honest correction was discouraged.<sup>198</sup>
- March 24, 2004 – Capra gave Nobile a “U” rating.<sup>199</sup>
- March 26, 2004 – in an e-mail message to George, Nobile wrote: “Clearly, Ms. Capra’s two recent unsatisfactory observations are part of her plan to drive me out of Cobble Hill and the profession. I predicted this

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<sup>194</sup> Nobile failed to report any of this alleged activity to SCI. Nobile made this verbal allegation to George on February 24<sup>th</sup> and George instructed Nobile to make his complaint in writing.

<sup>195</sup> Teacher Terrence Crosby testified at SCI that Nobile reminded Crosby that Nobile and Crosby had not been present for the scoring of the Regents.

<sup>196</sup> The emphasis was in the original text.

<sup>197</sup> Nobile asked Friedman to confirm that George had agreed to monitor Capra’s observations of Nobile, in part, because Nobile’s wife was ill.

<sup>198</sup> Nobile also stated that, in June 2003, he informed Capra that a student had cheated. In June 2003, there was an e-mail exchange between Nobile and Capra pertaining to that allegation. However, at that time Nobile did not allege any scoring irregularities.

<sup>199</sup> A post-observation conference with Nobile was held on March 25, 2004. The “George letter,” which indicated that each teacher who signed it had told him that he/she had not witnessed any changing of grades without re-reading by teachers and that Capra had not ordered teachers to change grades, was dated March 24, 2004.

in September and mentioned it to you again in January when you reversed your decision to monitor her pre-obs, post-obs and obs to protect me from her all too obvious bias. At that time, in Ms. Levy's office, you stated that a year end Unsatisfactory was a 'very remote' possibility.<sup>200</sup> Well, it doesn't seem so remote any longer."

- March 27, 2004 – George gave Nobile a "U" rating.<sup>201</sup>
- March 27, 2004 – Nobile sent an e-mail to the NYSED alleging cheating on the scoring of the Regents at Cobble Hill.<sup>202</sup>
- March 29, 2004 – Nobile sent an e-mail to the NYSED claiming to have "further information about cheating in June 2003."
- March 31, 2004 – Nobile wrote to inform the NYSED about the George letter which the principal had the teachers sign.
- April 4, 2004 – Nobile wrote to Lyles claiming he felt there was a "cover-up" regarding his allegation of Regents cheating.<sup>203</sup>
- April 4, 2004 – Nobile sent the "cover-up" communication to the NYSED, but re-dated it April 5, 2004.<sup>204</sup>
- April 14, 2004 – Nobile wrote a complaint alleging harassment by Capra.
- April 15, 2004 – Nobile wrote to inform George that Leardi told him that Capra wanted certain teachers excluded from the grading sessions. Nobile also claimed that Leardi did not want to publish his e-mail address.<sup>205</sup>
- April 16, 2004 – Capra observed Nobile and gave him a "U" rating.

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<sup>200</sup> Reesa Levy was then an assistant principal at Cobble Hill.

<sup>201</sup> This observation date cannot be accurate because March 27, 2004, was a Saturday.

<sup>202</sup> Nobile failed to report any of this alleged activity to SCI.

<sup>203</sup> Nobile failed to report any of this alleged activity to SCI. April 4, 2004, is the date of the Leardi letter.

<sup>204</sup> On April 6, 2004, a representative from the NYSED wrote to inform Lyles that Nobile had alleged scoring concerns pertaining to the June 2003 Global History and Geography Regents and the June 2003 United States History and Government Regents.

<sup>205</sup> On April 7, 2004, in a letter to George, Leardi said that it seemed that George wanted the issue of Regents cheating "to go away." On April 12, 2004, Region 8 faxed the "Leardi letter" to SCI. On April 15, 2004, OSI received the "Leardi letter" from SCI.



- April 16, 2004 – in a letter to George, Nobile claimed that the principal had Nobile’s “eyewitness testimony that Ms. Capra operated a massive grade-changing scheme in 2002 and 2003....”<sup>206</sup> In the same document, Nobile accused George and Capra of setting him up with a year-end “U” that would strip him of his teaching license.
- April 18, 2004 – in a letter to George, Nobile stated that he was working with the union to gain immunity for teachers.
- April 20, 2004 – in an e-mail from Nobile to the NYSED, entitled “Coverup at Cobble Hill,” Nobile wrote: “had you not stepped in, my allegation would have died at the Region level.”
- April 29, 2004 – in an e-mail to Nobile, Leardi stated that he attempted to contact Capra to give her an “opportunity to explain her intent and interpretation of the situation.”
- April 30, 2004 – in a memo to George and Pelles, Nobile complained about his February 10, 2004, unsatisfactory observation by Capra.
- April 30, 2004 – at a Step I grievance hearing regarding Capra’s February 10, 2004, observation of Nobile for which he received a “U” rating, Nobile’s grievance was denied.
- May 5, 2004 – Capra conducted an informal observation of Nobile’s classroom.<sup>207</sup>
- May 6, 2004 – in a letter to Nobile, Capra documented her May 5<sup>th</sup> observation of him and noted that Nobile had ignored her previous recommendations.
- May 6, 2004 – Nobile wrote three letters to George. In one, Nobile wrote that, in October 2003, Nobile asked George not to have Capra observe him and George agreed, but that, in January 2004, George permitted Capra to observe him.<sup>208</sup> Nobile asserted that George “without warning” had

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<sup>206</sup> Nobile’s testimony at the George proceeding contradicted this written claim.

<sup>207</sup> On this date, Scarcella appeared at Cobble Hill and conducted “informal” interviews with George and the teachers. He first met Nobile on this date.

<sup>208</sup> Nobile also stated that he was grieving Capra’s March 24, 2004, observation.

“unleashed Ms. Capra” on him. In a second letter, Nobile accused Capra of retaliating against him and George of cooperating with her.<sup>209</sup> In the third document, an amended version of the second, Nobile elaborated upon his accusations against Capra.<sup>210</sup>

- May 8, 2004 – Nobile wrote an e-mail to the NYSED stating: “Principal and AP Capra know that they are guilty.”
- May 10, 2004 – in a letter to George, Nobile stated he was amending his May 6<sup>th</sup> letter of grievance pertaining to Capra’s April 15, 2004, observation and advised George “[i]f you do not immediately remove Ms. Capra as my supervisor, you are collaborating in her corrupt retaliation.”
- May 11, 2004 – Jill Bloomberg, Regional Instructional Specialist for Region 8, reviewed Nobile and, in a document dated May 17, 2004, she gave him a “U” rating.
- May 11, 2004 – in a letter to Capra, Nobile referred to Capra’s May 6<sup>th</sup> letter regarding informal visit to his classroom the previous day.<sup>211</sup> He concluded this letter with: “Finally, your effort to U me out of the school system will boomerang. Count on it.”<sup>212</sup>
- May 13, 2004 – the UFT requested an investigation claiming that Nobile had been subjected to harassment by Capra and that George and Lyles had not taken adequate steps to resolve the situation.
- May 13, 2004 – Nobile wrote to the NYSED claiming that “[George] orchestrated a coverup as Ms. Capra orchestrated the crime.” Nobile stated he would be going to talk to Scarcella about George.

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<sup>209</sup> Nobile also stated that he was grieving Capra’s April 15, 2004, observation.

<sup>210</sup> In the caption of the third letter, Nobile wrote that he was grieving Capra’s April 15, 2004, observation. Nobile added that the document was amended and submitted May 10<sup>th</sup>.

<sup>211</sup> “First, you are a **cheat**.... Second, you are **cruel**. According to your email dated March 12, 2003, you ordered me to produce twelve lesson plans overnight on the day that I was out at Sloan Kettering with my terminally ill wife .... Third, you are **dishonest**. You told me that you would observe my HAM 5 class during 6<sup>th</sup> period on March 10, 2003. Instead you jumped the gun and observed me 4<sup>th</sup> period when you knew I was unprepared.... Fourth, you are an **unfair and poisonous manager**.... As Mr. Vince Leardi, one of your favorite teachers, emailed the Principal on April 7, 2004: ‘It also seems like the history dept. bears all the burden of U observations and that many of them are for personal reasons.’... Fifth, you are **unfit** to be an Assistant Principal.” The emphasis was in Nobile’s correspondence.

<sup>212</sup> Two days later, Capra was removed from the school.

- May 13, 2004 – Capra was removed from her position at Cobble Hill and reassigned to the Region.
- May 17, 2004 – in a communication to Hyland, Nobile provided questions that he stated George should be asked. In addition, Nobile claimed that George intended to “destroy [his] career.”
- May 18, 2004 – Europe sent an e-mail message to Lyles and Pelles which indicated that it appeared that Nobile would receive a “U” and be discontinued.<sup>213</sup> Europe also stated that Nobile was claiming that the administration was now retaliating for him being a “whistle blower.” Europe requested that the matter be looked into to ensure that there was no retaliation.
- May 18, 2004 – Nobile wrote to George regarding George’s April 16, 2004, observation of Nobile.<sup>214</sup> Nobile said that he welcomed “the Principal’s unsatisfactory rating because it reveals his naked retaliation against a whistleblower.”
- May 18, 2004 – Mei wrote to Pelles and Lyles advising them that she had arranged to have the US History and Global Regents exams scored.<sup>215</sup>
- May 18, 2004 – in a string of e-mails which followed Mei’s May 18, 2004, message, Europe wrote to Pelles, Mei, and Lyles and asked: “Are you looking into whether Mr. George intends on firing Nobile. Timing would really be bad for us as it would look like a straight case of retaliation. Please let me know.”<sup>216</sup>
- May 25, 2004 – George signed an Annual Professional Performance Review and Report on Probationary Service of Pedagogical Employee form which indicated that the principal had given Nobile a “U” rating for the 2003-2004 school year.<sup>217</sup>

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<sup>213</sup> This was sent at 11:09 a.m. Europe also copied this e-mail to Best and Scarcella.

<sup>214</sup> Nobile copied this letter to UFT Representative Charles Friedman. Capra, not George, observed Nobile on April 16, 2004.

<sup>215</sup> Mei also copied this e-mail to Scarcella and Europe. According to Mei, at Scarcella’s instruction, she did not have the exams re-scored.

<sup>216</sup> This was sent at 12:56 p.m. Europe also copied this e-mail to Scarcella.

<sup>217</sup> George’s signature on the front of the document was dated May 25, 2004. The back of the document, which indicated that the principal had recommended discontinuance of probationary service and denial of certification of completion of probation for Nobile, also was dated May 25, 2004.

- September 29, 2004 – George sent a letter to District 8 indicating that Nobile completed his probation on September 1, 2004.<sup>218</sup> Attached was an Annual Professional Performance Review and Report on Probationary Service of Pedagogical Employee form which indicated that the principal had given Nobile a satisfactory rating for the 2003-2004 school year.<sup>219</sup>

#### At Cobble Hill – Post-Capra

##### Threats to a Teacher

On June 22, 2004, Rebecca Ostro, a female teacher at Cobble Hill wrote a letter to George complaining about Nobile. Specifically, she said: “When I suggested that he resign as Chapter Leader of the UFT he left a threatening message on my answering machine about going to the press with Regents ‘cheating’ scandal information, and admonishing me that any action I take against him ... would act as a boomerang that would come back to get me.”<sup>220</sup>

##### Intimidating Tactics Toward the New Assistant Principal

After Capra was removed from the school, Suzane Thomas replaced her as an assistant principal at Cobble Hill. In January 2006, Thomas informed SCI investigators that Phillip Nobile had been harassing her since October 2005, by sending several defaming letters about her to the school staff, the Region, and others. Thomas asserted that Nobile began these actions after she placed a letter in his file and also gave him a “U” rating in an observation report. The assistant principal informed investigators that, each time she tried to supervise or reprimand Nobile, he retaliated with a barrage of letters defaming Thomas to the school staff.

Thomas also reported that one incident of harassment involved the administration of the January 24, 2006, Global History and Geography Regents examination (“GHG Regents”). According to Thomas, on January 26, 2006, Nobile informed her that he had conducted an investigation and knew that an 18-year-old male student at the school (“Student A”) was inappropriately given extra time to complete the January 24, 2006, GHG Regents, as an English as a Second Language (“ESL”) Student, when Student A was not an ESL Student. Thomas stated that Nobile claimed that he had spoken to

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<sup>218</sup> George’s signature on the front of the document was dated June 15, 2004. The back of the document, which indicated that the principal had recommended certification of completion of probation for Nobile, was dated “9/ /04.”

<sup>219</sup> Lyles determined that there was not enough documentation in Nobile’s file to support George’s end of the year unsatisfactory rating of Nobile.

<sup>220</sup> Nobile made this same assertion to Capra.

several teachers, knew that Student A had passed the English Regents, and that Student A should not have been given the extra time to complete the exam.<sup>221</sup> According to Thomas, Nobile demanded an updated list of ESL eligible students and then showed her a list that he claimed was not up-to-date. Thomas said that Nobile proclaimed: “How is it that you have enough time to give me two observations, but you don’t have the time to update this list?” Nobile advised her that he would report the results of his investigation to the NYSED. Thomas added that, on January 27, 2006, Nobile told her, “I conducted an investigation and you were right,” and informed her that he would not make a report to the NYSED.

According to Thomas, she reported Nobile’s actions to this office because she was concerned that she was experiencing the same kind of retribution from Nobile that ended the career of her predecessor, Theresa Capra.<sup>222</sup>

#### Observations of Nobile

- November 3, 2005 – Thomas observed Nobile and rated him “S” for satisfactory.
- January 17, 2006 – Thomas observed Nobile and rated him “U.”<sup>223</sup>
- November 22, 2006 – Thomas observed Nobile and rated him “U.”<sup>224</sup>
- December 20, 2006 – Thomas observed Nobile and rated him “U.”
- March 1, 2007 – Cobble Hill Principal Kenneth Cuthbert observed Nobile and rated him “U.”
- May 7, 2007 – a designee sent by LIS Pelles observed Nobile’s classroom performance and, in a report dated May 9, 2007, rated him unsatisfactory.

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<sup>221</sup> Thomas said that ESL students are identified by taking the English as a Second Language Aptitude Test (“ESLAT”). A student who is identified as ESL eligible is entitled to ESL services for up to one year after coming off of the ESLAT list. Thomas said that ESL eligible students are allotted extra time to take a Regents exam.

<sup>222</sup> Thomas said that she was in contact with the CSA and was considering filing a grievance against Nobile. Thomas did not file a grievance concerning Nobile. The current Cobble Hill principal, Kenneth Cuthbert, relieved Thomas of her duty to supervise Nobile to avoid further problems.

<sup>223</sup> On the resulting written observation report, dated January 24, 2006, Nobile inserted a handwritten entry meant for Cobble Hill Principal Cuthbert: “Ken – Here’s the retaliatory U.” Nobile refused to sign the observation report.

<sup>224</sup> Nobile refused to sign the observation report.

### The New Principal

In an interview with investigators conducted under oath at the SCI office, Principal Kenneth Cuthbert, George's successor at Cobble Hill, testified that Nobile had repeatedly asked to be removed from Thomas's supervision. Cuthbert acquiesced and Nobile is no longer observed by and does not report to Thomas.

### Conclusions

The SCI review has concluded that the OSI investigation was flawed from its inception. The investigator was unsupervised and acted as an agent of a complainant. In reality, no witness provided credible evidence to support the accusations concerning Capra and George.

The SCI investigation found no evidence of a cover-up by Region 8 officials, specifically Lyles and Farina.

The SCI investigation also found that the OLS prosecution of George detrimentally relied upon the faulty findings of the Scarcella investigation and report.

Based on our extensive review of the Cobble Hill matter, we drew a number of specific conclusions.

### The OSI Investigation

#### Scarcella

In his Cobble Hill investigation, Scarcella made a number of investigative missteps. Scarcella did not question Nobile's credibility and was biased from the onset. In the end, Scarcella based his findings on Nobile's predetermined conclusions rather than the evidence.

- When Scarcella first met Nobile at Cobble Hill on May 5, 2004, Nobile claimed that he had been "rated satisfactory until" he made a complaint of Regents tampering against Capra. Although this assertion was easily verifiable, Scarcella either failed to do so or ignored the fact that Nobile previously had received unsatisfactory observations.
- Scarcella allowed Nobile to direct the investigation.

- Scarcella embraced Nobile's idea to give teachers "administrative immunity" to get them to give him the answers he wanted even though OSI had never used it before under these circumstances.
- Scarcella used questions fashioned by Nobile to interrogate witnesses who already had denied that cheating took place and had denied misconduct on Capra's part.
- Scarcella never had the exams in question reviewed by DAA.
- There is no evidence in the Scarcella file to indicate that he had Leardi or Colon identify any of the exams that purportedly had been changed.
- Scarcella allowed Nobile unsupervised access to the scored Regents exams.
- Scarcella allowed Nobile to assist him in writing parts, if not all, of the Scarcella report.
- In his report, Scarcella arrived at a number of conclusions which were not supported by evidence.

#### Europe and Hyland

As illustrated by these missteps, supervisors at OSI completely failed in their oversight of Scarcella and the Cobble Hill investigation. In addition, Scarcella's use of administrative immunity apparently was authorized by no one higher than Hyland without the approval of General Counsel.

#### OLS – the George Prosecution

OLS charged George and later prosecuted him, despite the fact that the OSI investigation failed to provide credible evidence of a cover-up by the principal.

#### Nobile's Whistleblower Assertion

As noted in his e-mail communications cited in this report, Philip Nobile frequently referred to himself as a whistleblower. We have determined that he did not meet the statutory requirements to obtain whistleblower status.

- Nobile did not report his allegations of cheating and of a cover-up to one of the enumerated agencies in the whistleblower law;

- Nobile's report was not timely; and
- Nobile was not subjected to retaliatory conduct after reporting his complaint.

To be considered for whistleblower status, information must be reported to the New York City Commissioner of Investigation ("DOI"), a New York City Council Member, the New York City Public Advocate, or the New York City Comptroller. Because SCI is part of DOI, matters can be reported there, as well.

The timing of Nobile's report indicates that he was not "blowing the whistle" on a corruption problem at Cobble Hill. If you believe that the April or May 2003, verbal report to George occurred, 10 or 11 months after the June, 2002 Regents exams were administered and scored, then Nobile already had received a "U" following an observation by Capra in March 2003.<sup>225</sup> Nobile admitted that fact while describing his purported exchange with the principal in his testimony at George's disciplinary proceeding. Nobile also had received a "U" from George following an observation in March 2003.<sup>226</sup>

Nobile's written complaint of "Regents cheating" at Cobble Hill, eight months after the June 2003 Regents exams were administered and scored, resulted from his belief that he was in danger of having his employment terminated. In January 2004, Nobile believed that Capra intended to observe him several times before the end of the school year.<sup>227</sup> In early February 2004, Capra observed Nobile for which he received a "U."<sup>228</sup> To keep his job, Nobile took on his nemesis, Assistant Principal Theresa Capra, who dared to challenge his fitness as a teacher.

#### Philip Nobile

Nobile served as the complainant, the investigator, the document examiner, the author of the report, and the liaison to the NYSED. He attempted to serve as the expert witness, the lead prosecutor, assistant to the arbitrator, and advisor to the Chancellor.

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<sup>225</sup> On March 11, 2003, Capra observed Nobile and rated his classroom performance "U."

<sup>226</sup> On March 10, 2003, George observed Nobile and rated his classroom performance "U."

<sup>227</sup> Nobile received a letter to his file from Capra, dated January 9, 2004, which referred to Capra's January 6, 2004, observation of his class. The letter indicated that Nobile's "lack of preparation resulted in a wasted instructional period."

<sup>228</sup> Nobile also received a "U" rating from Capra relating to an observation conducted on February 10, 2004.



Nobile – the admitted “author of the cover up theory” – maintained that George buried the Regents cheating allegation. However, Nobile had failed to disclose this purported misconduct for two years. Nobile’s claimed verbal report in April or May 2003, either never occurred or was so mired in his constant complaints about Capra that George missed it. Nobile also blamed George for ignoring the allegation during the period between Nobile’s written complaint in February 2004, and the Leardi letter in April 2004. Had George actually been involved in a cover-up, however, he would not have voluntarily disclosed all the witnesses, including Nobile, to Scarcella.

Nobile successfully manipulated Scarcella and, for all intents and purposes, ran the OSI investigation. Although Nobile would not admit it in his testimony at the George proceeding, Scarcella acknowledged in his testimony that Nobile wrote portions of the OSI Cobble Hill report. In his testimony at the George proceeding, Nobile attempted to minimize his contact with Scarcella as evidenced by his memory of only 10 telephone calls when, in reality, there were hundreds of calls between Nobile and Scarcella.<sup>229</sup>

Based on Scarcella’s report, George was demoted and later charged pursuant to the New York State Education Law. Nobile turned his attention to the George prosecution, expecting to be accepted by the OLS attorneys in the same way that he had been embraced by Scarcella. However, he met resistance. Despite inundating OLS – the “prosecution team” of which he considered himself a member – with his plans to win the case against George, his overtures repeatedly were rebuked. As was his pattern when he felt threatened, Nobile, in turn, threatened to go to SCI.<sup>230</sup> OLS personnel were not intimidated and they repeatedly advised him to contact SCI. But Nobile never contacted this office.

Had Nobile known or reasonably believed that there was cheating at Cobble Hill in 2002 and 2003, he was obligated to report that information to SCI directly and without undue delay. Nobile did not do so; instead, he raised his claim only after receiving a letter to his file which indicated that he lacked preparation for class and receiving an unsatisfactory observation. Even then, Nobile did not contact SCI.

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<sup>229</sup> See the transcript at pages 1733 and 1734. An analysis of Nobile’s telephone records revealed 114 calls to Scarcella’s telephones between May 2004 and July 2006. An analysis of Scarcella’s telephone records revealed 121 calls to Nobile’s residence between July 2004 and July 2006.

<sup>230</sup> In addition to his allegations about Capra, George, Pelles, Lyles, Farina, and Rodriguez, Nobile filed or threatened to file complaints against a supervisor at his assignment before Cobble Hill – Washington Irving High School – and against the assistant principal who replaced Capra. Nobile also left a threatening message on the answering machine of a teacher who suggested he should step down from his union representative position. According to this teacher, Nobile admonished her that any action she took against him ... would “act as a boomerang that would come back to get [her].”

### Cheating

If the cheating at Cobble Hill was massive and widespread, then the teachers who denied that it occurred would have been the most vulnerable. Yet all of the teachers who appeared at SCI without representation and testified under oath without immunity denied that they cheated or that Capra said or did anything wrong.

Colon, a teacher who received administrative immunity from Scarcella and then admitted to wrongly changing scores, would not appear at SCI without being granted a continuation of the administrative immunity.

Every official accused of wrongdoing by Scarcella and Nobile who appeared at SCI did so without representation and testified under oath and without immunity. This included Capra, but not George, whom SCI did not attempt to interview.

Through his attorney, Philip Nobile declined to be interviewed by SCI.

There was no credible evidence in the OSI investigative case file to conclude that grade inflation by exam scorers occurred at Cobble Hill in 2002 and 2003. There was no credible evidence in the OSI investigative case file to conclude that Theresa Capra directed teachers to manipulate Regents scores. None of the witnesses, whether interviewed at OSI or in testimony at SCI or the George proceeding, said that they saw Capra cheat or heard her direct anyone else to cheat. Colon attempted to assert that she did; but in the end, he admitted that he changed scores of his own accord.

### A Cover-Up

We agree with the hearing officer that Lennel George did not engage in a cover-up. He conducted an investigation at the direction of his supervisor. When Scarcella began his investigation, George provided the names of the witnesses who signed the George letter, as well as others – including Kaufman, Leardi, Swords, and Nobile.

Pelles was not involved in a cover-up.<sup>231</sup> She directed George to investigate Nobile's complaint.

Lyles did not know about the cheating allegation until the Leardi letter which spawned the OSI investigation. She was not involved in a cover-up.

Farina had been promoted and was not informed of the allegations about Cobble Hill. She was not involved in a cover-up.

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<sup>231</sup> Pelles received a letter to her file, dated July 6, 2005, which informed her that she “did not adequately advise the principal, Lennel George ... to follow established DOE policy and report the allegations to OSCI and/or OSI.”

The Outcome

While presiding over George's day in court, the hearing officer gave Nobile his day in court as well.<sup>232</sup> After listening to all the witnesses testify under oath and reviewing the documentary evidence, the hearing officer cleared George of Nobile's allegations.

George returned to his position as a principal – at a school other than Cobble Hill. Capra remains on the DOE ineligible inquiry list and unemployed. Nobile attained tenure and remains assigned to Cobble Hill.<sup>233</sup>

We refer our findings for your information and appropriate action.

We are also forwarding our findings to the State Education Department for whatever action it deems appropriate. Should you have any inquiries regarding the above, please contact Special Counsel Eileen C. Daly, the attorney assigned to the case. She can be reached at (212) 510-1407. Please notify Ms. Daly within 30 days of receipt of this letter of what, if any, action has been taken or is contemplated regarding this report. Thank you for your attention to this matter.

Sincerely,

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RICHARD J. CONDON  
Special Commissioner  
of Investigation for the  
New York City School District

RJC:RAL:ECD:gm  
c: Michael Best, Esq.

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<sup>232</sup> Nobile declined the opportunity to be interviewed by SCI for this investigation.

<sup>233</sup> We have been informed by the DOE that Nobile has been reassigned as a result of an unrelated investigation.