



STATE OF NEW YORK
OFFICE OF THE STATE INSPECTOR GENERAL
Final Report
March 5, 2010

SUMMARY OF FINDINGS

The Inspector General found that, in approximately 1995, Felix Rosa, then a parole violations unit supervisor for the New York State Division of Parole (“Division”), made sexual advances towards Pamela Menera, a Division court interpreter assigned to Rosa’s unit and subordinate to him. Because the allegations were not officially disclosed until February 2009, some 14 years later, the potential for administrative discipline is foreclosed by the passage of time. Rosa, who at the time the relevant allegations surfaced in 2009 was executive director of the Division and had been nominated to be chairman, withdrew his name from consideration during the pendency of the nomination hearings. The Inspector General also found that Mary Hollander, a Division supervisor to whom Menera reported her allegations in 1995, should have taken action regarding Menera’s initial allegation, but, instead, inappropriately recommended that Menera respond by confronting Rosa directly. Hollander has since retired from state service, precluding any action by the Division.

ALLEGATION

On or about February 5, 2009, Denise O’Donnell, then Deputy Secretary for Public Service and Commissioner of the New York State Division of Criminal Justice Services, requested that the Inspector General investigate allegations of sexual misconduct in or around 1995 by Rosa, then a parole violations unit supervisor. Initially, on January 22, 2009, the allegations were transmitted to the Governor’s office in the form of anonymous letters through Senator John Sampson’s office, while the state Senate was engaged in confirmation proceedings concerning Rosa’s nomination to be chairman. On January 27, 2009, the Governor’s Appointments Counsel, Paul Tsui, attempted to contact Menera, but she declined to speak to him until she consulted a union representative.

On February 5, 2009, CBS TV Channel 2 News in New York City broadcast an interview in which Menera stated directly and through her attorney that Rosa had exposed himself to her, forcibly attempted to touch her body, and sexually harassed her.

SUMMARY OF INVESTIGATION

The Inspector General interviewed Rosa, Menera, and current and former Division employees, including Mary Hollander, Menera’s supervisor at the time of the

alleged assault. Rosa, Menera, and other key witnesses were examined under oath, and their testimony was transcribed.¹ The following represents each witness's account of the events at issue.

Pamela Menera

Menera joined the Division in November 1992 as a court interpreter for Spanish speakers, and met Rosa shortly before being hired. Rosa, who is bilingual, was assigned to confirm that Menera was sufficiently fluent in Spanish to serve as a court interpreter. Thereafter, she and Rosa had virtually no interaction for a period of years. Menera was assigned to work on Rikers Island, but reported one day per week to the Division's offices on 40th Street in Manhattan.

In April 1995, Menera attended a party at a Manhattan pub for a retiring administrative law judge with other Division staff. During the party, she ate and "might have had one or two" alcoholic drinks. At one point, Rosa asked her to dance, and they danced one "slow dance."² Rosa did not act inappropriately at the time but, after the dance, co-worker Margo Soto admonished Menera to "Stay away from him. He's trouble."³ According to Menera, Soto also informed her of a woman named "Maritza" who had worked as an interpreter through an employment agency: "[W]hatever happened, Maritza never, ever worked there again. She rebuffed his advances."⁴ Menera testified that she did not speak, dance, or otherwise interact with Rosa again that evening.

Menera testified that she did not see Rosa again for a period of two or three months. The next time she saw him was at the 40th Street office, where Rosa worked after receiving a promotion to supervise parole officer training. At the time, she had questions about becoming a parole officer and the relevant application, and a co-worker had recommended that she direct her questions to Rosa.

Menera related that she went into Rosa's office and sat down, with her back to the door. Rosa was facing her with his back to the window and a desk between them. Before she had a chance to ask a question, Rosa told her in essence, "I've got it all figured out. We're going to meet. One Wednesday we'll go out to lunch early and we won't come back to work. We're going to go to a hotel." Menera asked Rosa what he was talking about, and he responded, "You don't remember what you told me at . . . the party?" She answered that she did not know what she had told him or what he was talking about, and Rosa said that Menera had told him she wanted to have sex with him. Menera rejoined,

¹ The Inspector General interviewed Menera on two occasions. The first interview was not sworn or recorded while the second interview was under oath and transcribed. Menera's accounts of the relevant incidents were substantially the same in both interviews.

² A co-worker who attended the party characterized the dance as "a little seductive." See testimony of Margo Soto.

³ At a number of points in her testimony, Menera indicated to the Inspector General that she was paraphrasing others' statements.

⁴ The Inspector General was unable to locate any "Maritza" or anyone with knowledge of such an individual.

“You’re wrong. You’re crazy.” Menera described Rosa’s demeanor as “arrogant” and “cocky.”

Rosa then got out of his seat, walked behind her and closed the door, and stood on her left side. According to Menera, “He said, ‘I want to show you what you do to me,’” and “standing right next to me,” he exposed himself. When she attempted to leave, Rosa grabbed her, and attempted to slide his hands down her pants, commenting that her pants were too tight to do so. Menera alleged that she managed to pull away and ran out of Rosa’s office, concerned about Rosa “doing something to try to make me lose my job because I had rebuffed his advances.”

Menera immediately went directly to Mary Hollander, a Division supervisor. She told Hollander that “the most bizarre thing, something just really crazy happened, and I’m really worried.” Menera informed Hollander that Rosa had exposed himself to her, but did not ask Hollander to file a grievance or a report nor did Hollander offer such assistance. Menera informed the Inspector General that she told Hollander of Rosa’s actions because she was only a provisional employee at the time, and “just wanted to make sure [Hollander] knew what had just happened in case anything happened down the line.” Menera testified that she did not “remember being dissatisfied, I just . . . wanted to be covered. I wanted her to know.” She did not wish to complain further explaining “I just want to be protected in case he tries to do anything.” She did not recall Hollander asking her if she wanted to pursue the matter further.

Menera informed the Inspector General that, although she was unsure of the time frame, when she subsequently reported to the 40th Street offices on other Wednesdays, Rosa harassed her. She testified that she could not remember all of the incidents, but recalled that he followed her once to her car, and “kept on annoying [me] about going out with him.” Menera testified that although she could not recall the number of harassing instances, she remembered admonishing Rosa “I have. I go home every night to my children. Leave me alone. I do not go out. I don’t want to go out with you. I don’t want anything to do with you.” According to Menera, Rosa responded, “It’s women like you” and “Who do you think you’re kidding?”

Menera reported that, after some time, she felt “really disturbed,” and spoke to Hollander again about Rosa’s behavior, complaining that she did not know what to do. Instead of reporting Menera’s allegations as provided in the Division’s policies or taking any other formal action, Hollander suggested that Menera should agree to go to lunch with Rosa, to make clear her lack of interest and tell Rosa to cease this behavior. Menera testified that based upon Hollander’s advice, one day when Rosa called, she accepted his invitation to lunch, but advised Rosa, in effect, “We’re just going to lunch.”

At lunch, she told Rosa that she did not want to go out with him. Again, Rosa responded with “disrespectful” comments: “Women like you, you like to bring men to a certain point and then leave them” and “You’re a woman who’s used to getting a lot of attention. I would never fall into that. You think I would belittle myself to talk to you when all those other men are talking to you or fawning over you?” After lunch, Rosa and

Menera walked back to the office and Menera told him to leave her alone. Rosa appeared angry. Nevertheless, he made no further efforts to contact her. Menera then asked Hollander for permission to cease working at 40th Street on Wednesdays, which request Hollander granted. Some months later, Menera saw Rosa again when she happened to be at the 40th Street office. At the time, Rosa, who was being considered for promotion, approached Menera and said “You’d better hope I don’t get that position because I’ll have you under the desk.” Finally, Menera recalled encountering Rosa within the last two years at a commissioner’s retirement party. They did not converse but, as Rosa was leaving, he walked by her and said, “Cuidate.” Menera explained that this word can mean either “watch yourself” or “take care of yourself,” and she remembered “getting scared all over.”

Menera testified that, at various times, as Rosa continued to be elevated to higher positions of responsibility and authority, she informed a number of current and former Division employees about Rosa’s conduct, including Margo Soto, Tracie Aulet, Maria Walton, and Doreen Kostner:

So, over time I would make – I would tell people because he kept ascending, he was moving up. People would make comments in the office, and you know: I don’t know, he was in IG – I mean Internal Affairs, and I would – time went by, you know, you comment to people: This is the guy that’s in the IG’s office. And I told my other supervisor. There were only a few people at first, and over the years more and more people come up to me, asked me: “I heard something about you and Felix Rosa.” “Yeah, it happened a long time ago”

Menera reported that when she related the incidents to Aulet, she responded that Menera’s complaint did not surprise her, as she had seen Rosa flirting with women in the hallway and stairwell.

Menera stated to the Inspector General that, years after the incidents, Maria Walton had heard from someone about Menera’s incident with Rosa, and approached Menera:

And Maria was very upset. She was very upset about the way Mary had handled it, she was upset about the whole thing that had gone unreported and unresponded [sic] to and that he was continuing – I remember her saying to me something to the effect: This is a man that’s moving – goes up, up, up, and nobody has ever reported this . . .

Walton asked Menera if she would mind if Walton spoke to Rosa’s supervisor. Menera testified that she was initially concerned, and did not “want to start . . . I was always afraid of something happening because of this. I just didn’t want to talk – you know,

really give my name.” Walton proposed speaking to Rosa’s supervisor without providing Menera’s name, and Menera consented.⁵

Felix Rosa

Rosa joined the Division in 1987 and was employed as a parole revocation specialist in the early 1990s. He was assigned to both the 40th Street offices in Manhattan, and Rikers Island. From 1993 to 1996, he worked as a senior parole officer in the training unit, supervised by Laurie George. Rosa acknowledged having received sexual harassment training by the Division.

Rosa first met Menera when he was asked to “certify” that she adequately translated Spanish and English. He did not see Menera frequently, but when he did see her, it was mostly at Rikers Island. Rosa testified that he danced with Menera at a retirement party, but did not recall details such as the location, duration of the party, or everyone who attended. Although people were drinking and dancing and Rosa was “sure” he had a drink, he did not recall whether he had two or more alcoholic beverages and asserted he was “not particularly” intoxicated. He did not remember if he and Menera had a drink together.

Rosa recalled dancing at least two dances with Menera and described them as “a very suggestive and erotic dance. We were basically rubbing up against each other.” Other than the dancing itself, neither he nor she displayed any affection such as touching or kissing. He did not recall anyone commenting on the dancing then or afterwards, but testified he would not “be surprised if there were people who remember the party” and the dancing. After the final dance with Menera, they “went [their] separate ways” and he had no recollection of suggesting that they go anywhere else. He did not remember telephoning Menera at later dates.

Rosa encountered Menera “soon after” the party, though he could not recall exactly how soon thereafter: “It could have been a couple of days, could have been a couple of weeks.”⁶ He explained that Menera came to his office on the third floor of the 40th Street offices by herself, where he was alone. She walked into his office and shut the door. Rosa described the interaction between himself and Menera as follows:

She walked in. I know we started a conversation. I’m not exactly sure what the conversation was about, but I know she had closed the door. At that point, I walk up to her and we kiss, and then she stands up and we hug and kiss and touch. She touches me and I touch her on her body. At some point during this, she says, “You know what? You’re married. We really shouldn’t be doing this.” My response was, “Are you sure? We could make it work out.” She

⁵ As discussed herein, subsequent to Menera’s revelation, Walton advised Laurie George, Rosa’s supervisor, to monitor Rosa’s behavior.

⁶ As noted, Menera testified that she visited Rosa’s office two or three months after the party.

says, “No, I really don’t want to do this.” I basically go back to my – behind my desk. We finished the conversation, and she walks out.

Menera exited the office at some point, but Rosa stated, “I don’t know that she left immediately after I retreated or anything . . . She didn’t go running out of my office. I believe we finished talking, and she opened the door and walked out.” Rosa testified that he never stopped Menera from leaving in any way, and that he did not try to undo Menera’s pants. He did not recall making comments about her pants being tight, and stated that neither he nor Menera removed her pants or any other clothing. He believes his hands “went down to her hips.” He did not take off any of his clothing, and never undid his pants, removed his pants, or pulled his pants down. He explicitly denied exposing himself to Menera. When asked if Menera had tried to undo his pants or get her hands in his pants, Rosa testified that he remembered her touching him, and “going down further, below my belt buckle.” He testified that “she was responsive” to him.

Rosa averred that Menera and he had not exchanged e-mails between the party and their encounter in his office, and that nothing had contributed to his decision to approach and kiss Menera that day other than the provocative nature of their dancing at the party. He recalled that he had approached and kissed her without invitation. When asked if he felt it was welcome, he testified, “By her response, yes[,]” and did not “recall being neither rebuffed, nor invited [sic]. I went up, and I did kiss her, and she responded.” He added that “nothing specific . . . nothing that . . . I can say was definitive. . . . There was . . . a flirtatious nature about her, and you sort of felt that, but you knew that it wasn’t just you.”

With regard to the incident with Menera, Rosa claimed it “felt more consensual and mutual than one leading the other,” and that Menera had been flirtatious, but was not just with him. Rosa did not recall discussing her clothing with her during their interaction in his office, nor suggesting that Menera and he go to a hotel. Rosa claimed that when Menera ultimately rebuffed him, he did not feel angry or disappointed, and understood “[s]he doesn’t want to. I have to respect that.”

Rosa saw Menera a few times at work after the kissing incident, but did not recall having lunch with Menera. He never asked her out, never asked her to get coffee, and he did not recall talking to her near her car. Rosa denied having ever said that he would have Menera “under the desk” if he assumed Hollander’s previous position as deputy chief, and did not believe he had ever even applied for that job. Rosa further testified he did not know the name “Maritza,” and that he believed that Menera was the only full-time translator.

Rosa testified that, after the incident with Menera in his office, no one ever mentioned her allegations, and it was not until his nomination to be Division chairman some 14 years later, that Menera’s allegations publicly surfaced. He recounted his various promotions and positions of prominence during these 14 years, and the public exercise of his duties and responsibilities, none of which generated any disclosure, or

even conversation with him by anyone concerning Menera's allegations. Rosa asserted that he withdrew from contention for the position of chairman of the Division out of concern for his family. He currently serves as an area supervisor.⁷

Margo Soto

Margo Soto has been employed by the Division for 22 years, mostly as a parole officer, but also served as a revocation specialist from 1990 to 1995. Soto knows both Menera and Rosa through work. Soto related that she and Menera socialized outside of work and were friendly, but they have not seen each other regularly in a long time. Soto characterized her relationship with Rosa as friendly, but only as co-workers who did not socialize outside of work. Soto informed the Inspector General that she spoke to Rosa for the first time in about ten years when he called her in or about February 2009 to say that the Governor's office wanted to speak to her regarding Menera's allegations and asked that she contact the Governor's office.

Soto recalled the party at which Menera and Rosa danced. Everyone at the party was "drinking . . . having a nice time . . . laughing, joking, talking." Soto further relayed that "when [Menera] was dancing with [Rosa], she was – and I say this not to incriminate anybody – but she was flirting." Soto also described Menera's dancing as "a little seductive," adding, "I said, 'Don't do that. He's dangerous.'" When Menera responded, "Well, what are you talking about?" Soto answered, "He's married. He's got a kid" but added, "I'm just playing with you." Menera then said, "Oh, I'm sorry! I didn't mean it!" and "I'm so glad you told me." Soto claimed that, because Menera "took it so seriously," she responded, "Well, I'm just joking with you!"

When questioned as to what she meant by "He's dangerous," Soto posited that she "really didn't mean anything. I was just teasing her. And I was telling her he's married and he's got a baby." Soto related that she did not possess any information about Rosa that would have led her to use the word "dangerous," reiterating that "it was meant in the sense that he was married and had a kid" and that she had merely been teasing Menera. Soto added that she did not recall ever having heard any other allegations that Rosa had harassed anyone and did not recall any employee named "Maritza."

Soto testified that, although she could not recall the year, much less the date, she noticed one day that Menera seemed uncharacteristically "quiet" and "aloof," and asked her what was wrong, to which Menera responded that Rosa had exposed himself to her. Soto claimed that, while she could not remember details about Menera's allegations about Rosa exposing himself, she did recall Menera explaining that she had been in a room alone with Rosa and had fled the office. Soto believed that she and Menera were in the Manhattan Division office for this conversation, but was not sure. She could not recall any details that would reflect how long after the alleged incident Menera complained to her. Soto stated she was "surprised" and "shocked" by Menera's accusation, and recalled that Menera seemed "adamant" and "angry."

⁷ According to the New York State Electronic Personnel System, Rosa's civil service title is Supervising Parole Officer.

Soto asserted that she counseled Menera to report the incident to a supervisor. Soto recalled that Menera told her that she did report the incident but, “She just didn’t want to pursue it.” Soto was not sure to which supervisor Menera reported the incident, but opined that “it might have been Mary Hollander.” Soto further could not recall the amount of time that elapsed between the conversation in which Menera made her initial allegations against Rosa and the conversation in which Menera informed Soto that she was not going to pursue the matter.

Mary Hollander

Mary Hollander, who is now retired from the Division, met Menera in about 1990 when Menera applied to work as an interpreter for Spanish-speaking parolees. Hollander testified that they became friendly when Menera would come to her office in Manhattan, and have become closer in recent years. Hollander recalled the retirement party at which Menera danced with Rosa. Hollander claimed she was unsure if she learned at the time or had been told recently, but had some awareness that Soto had informed Menera not to dance with Rosa because he was “dangerous.”

Hollander met Rosa in the late 1980s when he was a parole officer, and later hired him as a parole revocation specialist. She described their relationship as “friendly, but not friends.” Hollander described Rosa as “extremely bright . . . articulate He was well thought-of.” They saw each other occasionally, sometimes once a week and sometimes once a month. Hollander described Rosa as “personable” with “a bit of a swagger . . . some flirtation . . . a certain arrogance, but I never took it as unusual. He was never inappropriate with me, and I never heard of him being inappropriate with anybody else . . . until this event with Pam [Menera].” Despite her knowledge of Menera’s allegations, Hollander admitted that she is “still fond of Felix,” though she has not seen him in years.

Hollander only had a “vague recollection of specifics” of Menera’s complaint due to her memory, the passage of time, and “going through [her] own Hell” with her job. Menera came to her “on the same day [as the incident] . . . in 1995 . . . it must have been in the spring or early summer . . . telling me what Felix had done upstairs in his office. She had gone upstairs . . . to inquire about taking the parole officer’s test.” Menera told Hollander that Rosa had exposed himself – “literally, dropped his pants.” Hollander vaguely recalled Menera saying that Rosa had done something else, though she did not recall any details, and that Menera said that she had rebuffed Rosa and fled the room. Hollander recalled that within a short time after the initial incident, Menera told her that Rosa had threatened her, saying words to the effect of, “You’d better hope I don’t get [Hollander’s job] because you’ll be under my desk.” Hollander stated that she believed what Menera had told her: “Pam might be a lot of things. She’s not a liar, and she’s not an exaggerator.”

Hollander described Menera as “shocked” and “a bit scared” when they spoke following the initial incident. She clarified that Menera appeared not to be so much distressed about the incident itself as she was afraid that Rosa would retaliate. Hollander

felt that Menera “just didn’t want for it to ever happen again.” Moreover, because “it was known that Felix had some kind of contacts . . . Her main concern was, ‘Oh, my G-d. Is he going to come after my job?’”

Hollander testified that she and Menera “both agreed that this is something that should be dealt with head-on.” She noted that she had “no knowledge that Felix had ever done anything like this – ever doing anything inappropriate.” If she felt otherwise, she “probably would have taken different action.” Menera “didn’t want to write it up. I agreed with her . . . but [said], ‘You’ve got to make it end.’” She took exception to any implication that she had tried to prevent Menera from reporting the incident to anyone as “an absolute lie. I would never, ever, ever do something like that. . . . So don’t ever let anyone put words like that in my mouth.” Hollander further averred,

Somebody does something to me that I don’t like, and I’m going to take control of the situation, and I’m going to make it cease and desist. End of story. Pam wanted to do that, too. And she and I both thought that the best thing to do would be for Pam to confront Felix and discuss this thing, and see what it was about – see where it was going to go – and see that it would never happen again. And I believe that is what happened. I think that Pam did meet with Felix at some point.

At the time of the incident, Hollander did not supervise Rosa and, accordingly, did not possess the power to remove him. The Division did not employ a sexual harassment specialist at the time, and neither she nor Menera considered bringing the issue to the police, noting:

The way I viewed it, sometimes good people do stupid things, or inappropriate things – and I realize that this was extremely, extremely inappropriate – but when in your mind, and in your prior knowledge of somebody, you don’t think they’ve ever done anything, definitely, of this nature . . . It just seemed like, maybe, a bad day. . . . Why does somebody do something like that?

Similarly, Hollander never considered contacting anyone from an employee assistance unit: “I think I might have told Pam . . . she could do whatever she wanted to do.” Hollander stated that she felt she had no responsibility to pursue the situation against Menera’s wishes who had specifically said that she did not want to proceed further. “This was a decision – a mutual decision.” Hollander had a vague recollection that Menera confronted Rosa, and told her something after that confrontation, but could not recall any specific details.

Maria Walton

Maria Walton joined the Division in 1985, and after approximately ten years of employment, she was appointed a deputy chief in of the parole violations unit where among other things, she was responsible for arranging Menera's translation schedule. Walton characterized her relationship with Menera as friendly, and reported that they had lunch together with others. For the most part, their friendship was limited to work or work-related social events, such as retirement parties.

Early in Walton's tenure at the parole violations unit, Menera informed Walton of an incident wherein Rosa had made sexual advances to her. Menera related that Rosa had stopped her on the street, and at one point pursued the idea of going to a hotel for sex. Menera told him she was not interested, but he continued to pursue her. Finally, Rosa tried to "entice her into a sexual tryst." Menera told her that when she responded that she was not interested, he exposed himself to her.

Walton asked Menera if she wanted to lodge a formal allegation against Rosa, but Menera was "adamant" that she did not want to do so. Menera expressed to Walton her fear of losing her job because Menera was initially a contract employee, not civil service or in any other way tenured, and was afraid of Rosa. Menera informed Walton that she had spoken to supervisor Mary Hollander, but did not feel she received the necessary support.

Walton asked Menera for permission to share Menera's report with Rosa's supervisor at the time, Laurie George of staff development. Menera agreed, and Walton told George about the incident for "some extra vigilance." Walton reported that George "was shocked to hear of [the incident]."

Additional Witnesses

The Inspector General interviewed Tracie Aulet and Doreen Kostner, whom Menera claimed she had informed of the alleged incident with Rosa or other incidents. The Inspector General attempted to locate the individual Menera referred to as an interpreter named "Maritza," through various means including the employment agency used by Division, but the agency had no records of any "Maritza." The Inspector General also interviewed other Division employees who worked closely with Rosa, including supervisor Laurie George and four members of the Division's administrative staff, with regard to Menera's allegations, and additionally, to determine whether a pattern of inappropriate behavior existed.

Tracie Aulet, a former parole aide, now lives in Florida. Aulet informed the Inspector General that she had only vague recollections of Menera's allegations in the mid-1990s. She did not recall how she had responded to the allegations.

Doreen Kostner, currently an area supervisor, was a revocation specialist when she met Menera several years ago. Rosa was the senior parole officer who trained her for

her first Division position as a parole officer. She characterized their relationship as “only work.” Between five and eight years ago, Menera told Kostner that Rosa had exposed himself to her. Menera told Kostner that she had complained to her supervisor (whom Kostner recalled was Mary Hollander), but her supervisor had told her not to pursue the issue. Kostner informed the Inspector General that she has not heard anything else negative about Rosa.

Laurie George, currently an area supervisor, met Rosa when he was a parole revocation specialist, and she later supervised Rosa when he became a classroom instructor in the training unit. George testified that Rosa was a very competent employee, and she never observed any inappropriate behavior by Rosa.

George acknowledged that when she became Rosa’s supervisor, fellow employee Maria Walton informed her that a female employee had complained that Rosa had exposed himself to her. George informed the Inspector General that although Walton noted that the complainant did not wish to pursue the matter administratively, she wanted George to “keep an eye on him.” George testified she was very surprised by the allegations. Though George acknowledged that quality in Rosa, she noted that he always received excellent evaluations as a trainer.

Kathie Older, an administrative assistant to former executive director Martin Cirincione, testified that she worked “side by side” with Rosa during her tenure with Cirincione. Older testified that Rosa had never acted inappropriately towards her, nor has she witnessed inappropriate behavior by him towards others. She stated that she “finds it hard to believe . . . [Rosa] is like a brother – I can’t imagine him acting in that way.”

Karen Rossi, a former Division employee, testified that she worked with Rosa when she served as secretary to former executive director Anthony Ellis, and Rosa was Ellis’s assistant. Rossi testified that Rosa never acted inappropriately.

Mary Leonard, a Division employee since 1985, currently reports to the Assistant Director of Personnel. From August 1998 until July 1999, she worked with Rosa at the Division’s Albany headquarters when he was an area supervisor. At the time, she held the title of Keyboard Specialist II. Leonard testified that she was shocked when she heard rumors that Rosa had exposed himself to someone 14 years ago in New York City, and found them very difficult to believe. Leonard characterized Rosa as a “great supervisor, always respectful.” Leonard averred that he was always professional. She never observed Rosa acting inappropriately, nor had he ever acted inappropriately towards her.

Jessica Mariani, who worked for Rosa as an administrative assistant from approximately 2004 through 2007, never witnessed or heard of Rosa ever acting inappropriately. Acknowledging that Rosa “can come off as arrogant,” she testified that he had always had the “utmost respect for me,” and that they had a “good working relationship.” Mariani heard rumors of the allegations against Rosa, but found them,

“hard to believe,” and averred that she had never heard about any issues with an interpreter named “Maritza.”

Nicole Plantz, currently a program aide, testified that, two years ago, she reported to Mariani for approximately one year. Plantz also worked closely with staff who reported to Rosa. Asked if she had witnessed or experienced any inappropriate behavior by Rosa, Plantz testified, “No, he’s always been very professional.” Although Plantz recalled hearing of an allegation against Rosa shortly after she was first hired, she was not aware of any details. She testified that she has never witnessed Rosa acting unprofessionally, and was unaware of any allegations regarding a translator named “Maritza.”

Kathy Wilson, a Division employee for 15 years, reported to Felix Rosa as his Executive Assistant from 2006 – 2009 when he held the title of Executive Director. Wilson also worked with Rosa from 2003 – 2006, as his assistant when he was the Director of Clemency with Division’s Executive Clemency Bureau. Wilson testified that she had heard the allegations about Rosa and does not believe them. She characterized Rosa as respectful, very kind, and fair, and informed the Inspector General that she had never heard of or witnessed Rosa acting inappropriately. According to Wilson, Rosa was disliked by some parole personnel, mainly the union, because he could be arrogant at times. Wilson also testified that she has been to social gatherings with Rosa and he has always been nice and a pleasure to be around. Finally, Wilson testified that she did not know of a woman named “Maritza.”

FINDINGS

The critical alleged events in this matter transpired 14 years ago in a closed room with only Menera and Rosa present. Notably, given the lack of other direct witnesses, even if these circumstances had occurred recently, the case would distill to a determination of credibility and require analysis of any circumstantial corroborative evidence. As the relevant events occurred well over a decade ago, conclusive findings are even more elusive as memories have necessarily faded and the possibility of developing other potential evidentiary sources has been practically foreclosed. The Inspector General finds Menera’s account credible and supported, at least circumstantially, by others to whom Menera had reported her allegations, including Hollander. Nevertheless, despite the wide publicity of Menera’s instant allegations, no other women have raised similar allegations, nor have women who worked with Rosa complained of behavior remotely similar to that alleged by Menera. On the contrary, they described his conduct as professional and respectful. For purposes of both administrative discipline and criminal prosecution, it appears that the period of limitation has expired.⁸ However, the publication of Menera’s allegations resulted in Rosa’s removal of his name from consideration as chairman, and his relinquishing of his executive position in the agency.

⁸ Based upon Menera’s allegations, it would appear that misdemeanor charges could have been filed, the prosecution of which would have had to be commenced within a two-year statute of limitations. In general, administrative discipline must be charged within one year of the date of the alleged misdeed.

The Inspector General finds that, even accepting Rosa's account, which cannot conclusively be deemed incredible, his actions were inappropriate and unacceptable. Though not Menera's direct supervisor, he was senior to her and she had approached him seeking information about employment in the Division in a position subordinate to him. According to Rosa, during work hours in a government office without consent, he approached, kissed and touched Menera. By his own testimony, Rosa did not know whether his advances would be welcome. Though he may have believed, as Soto did, that Menera was flirting with him at the party, some time had passed, and the two were in the workplace. Were the events in question not time-barred, the Inspector General would have recommended that the Division consider appropriate discipline. Due to the passage of time, that option is now foreclosed.

Though Menera testified of concern that she might lose her job if Hollander or, later, Walton took steps to pursue her complaint officially, she nevertheless informed a number of others about the incident, including those two supervisors. Unsurprisingly, others learned of her account, and rumor spread until the allegations against Rosa suddenly surfaced publicly over a decade after the alleged events occurred. The Inspector General cannot fail to observe that such disclosure coincided with Rosa being considered for appointment as chairman of the Division.

Pursuant to Executive Order #19, initially issued by Governor Mario Cuomo in 1983 and extended by Governor David A. Paterson on June 18, 2008, by Executive Order #9,

The head of each department, agency, board, commission or other entity under the jurisdiction of the Executive Branch shall:

Issue a strong statement defining and prohibiting sexual harassment in the workplace. The policy statement should inform employees of their rights of redress, and the availability of complaint resolution channels and assistance with incidents of sexual harassment. The policy statement should make clear that sexual harassment is considered a form of employee misconduct and that sanctions will be enforced against individuals engaging in sexual harassment and against supervisory and managerial personnel who knowingly allow such behavior to continue.

As directed in the Governor's Executive Order, the Division's policies have, since before the time period at issue here, prohibited sexual harassment in employment and employment discrimination based upon sexual harassment. The Division's current Policy on Sexual Harassment in the Workplace requires that allegations of harassment be reported to the Office of EEO/Diversity Management to conduct an investigation.

The Inspector General finds that supervisor Mary Hollander should have reported Menera's allegation pursuant to the Division's procedure when Menera complained initially, and that she acted in a manifestly inappropriate manner in recommending that

Menera confront Rosa directly after Menera complained a second time. Under these circumstances, Menera's disinclination to pursue a formal complaint should not have been deemed dispositive because Hollander was responsible to the Division itself, given the egregious nature of the complaint, risked harm to Menera or another woman, as well as liability to the Division by failing to report Menera's allegations. Were Hollander still employed by the Division, the Inspector General would recommend that she receive appropriate sexual harassment training and, possibly, discipline. While Walton did take limited steps to address Menera's allegations, and may have been critical of Hollander's failure to respond appropriately, she too should have reported the allegation properly through the official mechanism provided by the Governor's Executive Order and Division policy.

* * *

The response by Division of Parole Chairwoman Andrea Evans to the Inspector General's findings is reproduced on the following pages, and includes a request to redact the names of current Division employees from this report. As the report indicates, there were many such individuals who provided relevant and extensive testimony in this investigation, and were aware that our investigations ultimately result in a public report. Accordingly, we will abide by our usual practice of including the names of all our witnesses.



STATE OF NEW YORK
EXECUTIVE DEPARTMENT
DIVISION OF PAROLE
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ALBANY, NEW YORK 12206

DAVID A. PATERSON
GOVERNOR

ANDREA W. EVANS
CHAIRWOMAN & CEO

December 18, 2009

Joseph Fisch
State Inspector General
Agency Building 2
Albany, NY 12223

Dear Inspector General Fisch:

Thank you for allowing me to review the draft report that has been prepared following your investigation into the allegations made against Mr. Felix M. Rosa, an employee of the Division, regarding his behavior with another Division employee in 1995.

I am deeply troubled by the egregious conduct described in the report and the lack of support and protection that should have been afforded the victim. It is especially troublesome that at least two supervisors were aware of the allegations and failed to take necessary action, in violation of both Division policy and Executive order # 19, which was in effect when the incidents took place.

As you note, the passage of time precludes the possibility of disciplinary action in this matter. However, I assure you, as chairwoman of the Board of Parole and chief executive officer of the Division of Parole that this type of conduct will not be tolerated and that any form of sexual harassment or other misconduct by Division employees will be dealt with swiftly and appropriately.

The Division's current zero-tolerance policy on sexual harassment is considerably more robust than the practices that existed over 15 years ago, when the incidents chronicled in your report occurred.

Currently at the Division of Parole, all new employees are provided with orientation materials that fully describe the Division's sexual harassment policy. All new parole officers must complete an eight-week basic peace officer course that includes a segment specifically addressing sexual harassment.

Additionally, the Division is requiring every employee in every region of the State to receive updated sexual harassment training. So far this year, 1,726 of the 2,019 agency employees have completed a program offered through the Division's Staff Development unit in conjunction with the Office for Prevention of Domestic Violence.

In order to protect the privacy of some of the individuals who contributed information during your investigation, I respectfully request that the names of people currently working for the Division of Parole have their names redacted from the report.

Finally, it is my expectation and directive that staff within the Division who hold management positions immediately pursue appropriate disciplinary and corrective action when they either observe or are made aware of sexual harassment or any other proscribed employment activity.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrea W. Evans". The signature is written in a cursive style with a prominent initial "A".

Andrea W. Evans