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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF KING

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MARIA LUISA JOHNSON, CARMELIA DAVIS-RAINES,	)	
CHERYL MUSKELLY, PAULINE ROBINSON, ELAINE	)	
SEAY-DAVIS AND TONI WILLIAMSON,	)	
	)	
PLAINTIFFS,	)	CASE NO.
	)	15-2-03013-2
VERSUS	)	SEA
	)	
SEATTLE PUBLIC UTILITIES, a department of	)	
CITY OF SEATTLE, a municipality, RAY	)	
HOFFMAN, individually, SUSAN SANCHEZ,	)	
Individually, DEBRA RUSSELL, individually,	)	
and GUILMETTE REGAN, individually,	)	
DEFENDANTS.	)	

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Proceedings Before Honorable SUZANNE PARISIEN

KING COUNTY COURTHOUSE  
SEATTLE, WASHINGTON

DATED: AUGUST 16, 2016  
MORNING SESSION  
A P P E A R A N C E S:

FOR THE PLAINTIFFS:

BY: JACK SHERIDAN, ESQ.

FOR THE DEFENDANTS:

BY: PORTIA MOORE, ESQ.,  
ARTHUR SIMPSON, ESQ., ( not present)  
SARAH TILSTRA, ESQ.  
GIANCARLO UREY, ESQ.,

ALSO PRESENT: TED PROSISE and GUILMETTE REGAN

DOLORES A. RAWLINS, RPR, CSR, CRR, CRC, RSA  
OFFICIAL COURT REPORTER FOR KING COUNTY SUPERIOR COURT  
(206) 477-1572  
516 Third Avenue, Room C-912  
Seattle, WA 98104

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P R O C E E D I N G S

(Open court.)

THE BAILIFF: All rise.

Court is in session.

The Honorable Suzanne Parisien presiding in the Superior Court, Department 42, in the State of Washington in and for King County.

THE COURT: Good morning, everyone.

Before we bring in our jurors, any preliminary matters?

MR. SHERIDAN: None from the plaintiffs, Your Honor.

MS. MOORE: No, Your Honor.

THE COURT: Terrific.

MR. SHERIDAN: Your Honor, may I ask a quick question?

THE COURT: Sure.

MR. SHERIDAN: Is sentencing tough?

THE COURT: Yes. I think that all judges would say that that is their least favorite part of the job.

MR. SHERIDAN: Do you have a big range or locked in by the statutes?

THE COURT: Pretty much.

MR. SHERIDAN: That makes it a little --

THE COURT: Yes, not a lot of discretion.

MR. SHERIDAN: Thank you.

THE COURT: As of a couple minutes ago, we were missing

1 three jurors.

2 MS. MOORE: Your Honor, while we are waiting can we talk  
3 about something that is coming up, that is, opening statements.

4 There are a couple of exhibits that I would like to use in  
5 my opening statements that have not been admitted that Mr. Sheridan  
6 objects to. I would be willing to take the risk that I can't get the  
7 documents into evidence.

8 I can give you the numbers so that you can look at them and  
9 make a decision.

10 THE COURT: Sure. What are the numbers?

11 MS. MOORE: The first one is Exhibit Number 115, the  
12 defendants objected to that.

13 THE COURT: I am sorry, Plaintiff's Exhibit 115?

14 MS. MOORE: This is an exhibit that we put in an objection  
15 that we had an objection. We withdraw our objection.

16 THE COURT: You would like to use Exhibit Number 115.

17 MS. MOORE: The defendants don't have an objection to it.

18 MR. SHERIDAN: Thank you.

19 Do you want to do that with the others?

20 THE COURT: Exhibit Number 115 is admitted.

21 ( Exhibit No. 115 received in evidence.)

22

23 MS. MOORE: The next one, Your Honor, all to be in the  
24 defendants' binders.

25 THE COURT: What number is that?

1 MS. MOORE: Exhibit Number 316.

2 THE COURT: I have it, memorandum, 1999.

3 MS. MOORE: Yes.

4 THE COURT: Any objection to Defendant's Exhibit 316?

5 MR. SHERIDAN: I don't have it opened. I thought that we  
6 were going get a list and go through them, my fault.

7 MS. MOORE: I can give you a list. There is only four.

8 THE COURT: If we are going to use them or you would like to  
9 use them in the opening, I would like to deal with the preadmitting of  
10 this -- I wanted to move straight from the jury selection, depending  
11 upon where we are with the morning recess, straight on into the  
12 openings.

13 MR. SHERIDAN: Good plan.

14 THE COURT: Yes.

15 MR. SHERIDAN: Just a second, Your Honor, to pull up the  
16 exhibits --

17 THE COURT: Sure.

18 MR. SHERIDAN: Yes, we have an objection.

19 THE COURT: All right, based on --

20 MR. SHERIDAN: I think that the cover page is a person, who  
21 is not listed as a witness. I think that we have -- I have to check my  
22 objections under the joint statement.

23 MR. MOORE: Your objection is 106, 403, 402, 802, 809, 805.

24 Your Honor, on the first page of that, it lists Toni  
25 Williamson, who is one of the plaintiffs in the case for the first page  
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1 of that. The remaining pages of that are UAR expectations which a  
2 number of witnesses will come in and say that they received.

3 MR. SHERIDAN: Your Honor, this is an important objected to  
4 issue in the case, because we are challenging the authenticity of this  
5 document and whether it was ever distributed.

6 So, yes.

7 THE COURT: All right.

8 MS. MOORE: Your Honor, as I said, I will take the risk, if  
9 I showed these to the jury during the opening statement, they may not  
10 get admitted then Mr. Sheridan can say that I promised the jury  
11 something that I couldn't deliver.

12 MR. SHERIDAN: That is a bit risky for us as well, Your  
13 Honor.

14 We wouldn't want the jury to see -- you know, opening is to  
15 tell what you are going to show and prove. It is not to put in  
16 evidence in advance of laying a proper foundation.

17 We don't object to the counsel saying it, but we object to  
18 counsel showing it. It may have an undue effect on them for the rest  
19 of the trial.

20 THE COURT: Yes.

21 I mean, it on its face it looks like a business record.

22 MR. SHERIDAN: It does, but there has never been a  
23 foundation. Our clients uniformly say that they didn't get it. It is  
24 a contested exhibit as to whether it was ever distributed.

25 MS. MOORE: It goes to the weight not admissibility.

1           His clients will say that they didn't get it. We will have  
2 a number of people coming in here saying that it was distributed to his  
3 clients.

4           THE COURT: Mr. Sheridan, you are interrupting Ms. Moore --

5           MR. SHERIDAN: I apologize.

6           THE COURT: -- throughout. Please don't do that.

7           MR. SHERIDAN: I apologize.

8           MS. MOORE: Thank you, Your Honor.

9           There would be a number of witnesses that will come in and  
10 the plaintiffs' position in this case is that any document, any policy,  
11 anything like this is something that we fabricated -- that SPU  
12 fabricated, all of these.

13           Mr. Sheridan's objections go to the weight. They don't go  
14 to the authenticity or the admissibility.

15           THE COURT: All right.

16           We are not going to clearly get through the four that you  
17 want to. Let me think on that. But I have to say there is a lots of  
18 documents here.

19           I don't know how many of them we are going to be doing the  
20 same thing on, somebody saying I didn't get it, that is not --  
21 absolutely goes to weight. They can say that and it may be that if a  
22 lot of them say it, perhaps it is convincing. I don't know. But we  
23 won't be arguing every policy because someone denies receiving it, it  
24 is not a business record.

25           MR. SHERIDAN: No. That is not -- that is actually not my  
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1 approach. My approach is that we have never seen the witness that  
2 claims it was created and distributed.

3 THE COURT: All the right, let me ponder on this and get the  
4 jurors in here.

5 MS. MOORE: Do you wanted to tell me the other exhibits.

6 THE COURT: Yes. Exhibit Number 316 needs to be ruled on.

7 MS. MOORE: Exhibits 327, 350, and 353.

8 THE COURT: All right. You would like to use all five of  
9 these documents the first one being already admitted in opening.

10 MS. MOORE: Yes, Your Honor.

11 MR. SHERIDAN: I want to speak to Exhibit 327.

12 THE COURT: Exhibits 327, 350, and 353.

13 MR. SHERIDAN: Thank you, Your Honor.

14 THE COURT: Are our jurors ready?

15 THE BAILIFF: Your Honor, we are missing juror number 64.

16 THE COURT: All right, we will get started.

17 THE BAILIFF: All right. Let's hope that we can continue.

18 THE BAILIFF: Juror number 64 did not check in the jury room.

19 THE COURT: All right.

20 THE BAILIFF: Please rise for the jurors.

21 (Members of the jury entered the courtroom.)

22 THE COURT: Good morning, everyone. Hope that you had have  
23 had great evening.

24 A JUROR: Good morning.

25 THE COURT: See, you guys are quick studies. Nice to see

1 you all this morning.

2 We are going to start right away with our second round from  
3 Mr. Sheridan on voir dire. Just, of course, reminding you all that you  
4 are, of course, under oath. Of course.

5 The questions that are asked of you not designed to  
6 embarrass you and I really appreciate all of the candor that you folks  
7 displayed yesterday on some topics that are hard to talk about, like  
8 jobs and things like that. Keep that up.

9 I understand that three jurors have issues to raise with us.  
10 Juror number 48.

11 A JUROR: Good morning. It is hardship regarding my  
12 employment.

13 I am responsible for large organization being out for  
14 four-week period of time due to recent reorganization would indeed be a  
15 problem. I sent a note to my boss last night and indicating that I may  
16 be out until the 9th. There is a signed letter from him indicating  
17 that would be a problem.

18 THE COURT: I appreciate that. I see your letter. I  
19 understand that.

20 A JUROR: I am happy to serve at another time or whatever,  
21 maybe for some other case.

22 THE COURT: We don't usually take letters from employers  
23 saying "we need her. She has to be excused."

24 It is kind of what I said before about inconvenience of your  
25 employer not necessarily or frankly not usually a hardship for a



1 person. So, I understand that.

2 At this point I am not going to excuse you.

3 A JUROR: Thank you.

4 THE COURT: But I appreciate --

5 A JUROR: Thank you for considering.

6 THE COURT: Absolutely.

7 I appreciate your hard work on behalf of your employer.

8 A JUROR: I will be working at night, thank you.

9 THE COURT: Yes, we are not done with this process yet. You  
10 know, I am not going to excuse you right now, but it doesn't mean that  
11 you will be working until 2 o'clock in the morning every night.

12 Juror number 52.

13 A JUROR: Yes, I have a flight that I previously thought left  
14 on the Friday but it turns out I was mistaken it leaves at 5:45 p.m. on  
15 September 8th. I return that Sunday.

16 THE COURT: 5:45 on Thursday, September 8th.

17 A JUROR: Yes.

18 THE COURT: You return on Sunday?

19 A JUROR: Yes, the 11th, I think, yes.

20 THE COURT: All right. I am going to have you stay on for  
21 now.

22 A JUROR: All right.

23 THE COURT: Just because it is so super close and if we had  
24 to theoretically have deliberations happening on Monday, we could do  
25 that, if need be.

1 Just because you are so close to the margin we have come so  
2 far, we are not ready to take our little talons out of you just yet.

3 Juror number 100. Good morning.

4 A JUROR: Good morning, Your Honor. See my microchip is  
5 similar to the first one brought up. I think that it would be a mental  
6 hardship for myself trying to do both of these jobs at the same time.

7 I currently work about 50 to 60 hours a week. I can imagine  
8 that it would be extremely difficult for me to do both of these jobs  
9 well.

10 I would love to serve on this jury for a shorter amount of  
11 time. But unfortunately that is not an option.

12 Currently my husband's financial situation is with his job a  
13 bit in jeopardy.

14 THE COURT: So, your employer does not compensate you?

15 A JUROR: My employer actually does compensate me, which is  
16 not why I am not making an argument for a financial. Although if we  
17 were to become a one-income household, I would.

18 THE COURT: Certainly we will not presuppose to have that  
19 happen to your husbands. I hope that is not doesn't happen. That is  
20 not where we are today.

21 I understand that you obligates and a good employee to do  
22 the work functions and you have to do them outside of the court hours,  
23 and that is hard for you.

24 A JUROR: Yes.

25 THE COURT: Being a conscientious employee and an excellent  
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1 employee it is a hardship. But right now, I am going to keep you on  
2 the jury panel.

3 I appreciate everyone coming forward. Is there anything  
4 else? No. No.

5 I would like you to give our my full attention now to  
6 Mr. Sheridan.

7 MR. SHERIDAN: Thank you, Your Honor.

8 Good morning, again everyone. Thank you for everything that  
9 you have sat through so far. There is a lot more to come.

10 So, I wanted to just clear something up from yesterday. You  
11 heard some discussion from Ms. Moore about getting rid of old people to  
12 save money. That is really not what this case is about. It is about  
13 discrimination against old people.

14 So, persons over 40. So that the question is, is have you  
15 ever heard stereotypes uttered by friends, family, coworkers about old  
16 people, things that -- characteristics, character traits that old  
17 people allegedly have?

18 How about you, ma'am, like what?

19 A JUROR: Juror number 2, I am over 40, which is your  
20 definition, but it is not very generous.

21 MR. SHERIDAN: It is -- sorry.

22 A JUROR: Memory being a big one comes with it.

23 MR. SHERIDAN: Right. Anyone else, other characteristics  
24 that are typically attributed to persons that are older?

25 Juror number 47.

1 A JUROR: Yes. 47.

2 I work in the industry. I am over 40. Daily I have to hear  
3 about I am out of touch. I am not hip on the volume of stuff. I don't  
4 know how to snooze social media tools.

5 MR. SHERIDAN: How about, like in your job, does anybody  
6 ever challenge --

7 A JUROR: This is at my job.

8 MR. SHERIDAN: How about you, ma'am, juror number 46?

9 A JUROR: 46, the speed that we work at, it is not quite as  
10 fast as our younger counterparts.

11 MR. SHERIDAN: Ma'am, how about you?

12 A JUROR: Keeping up with the industry, I am also working on  
13 software and --

14 MR. SHERIDAN: Juror number 38.

15 A JUROR: Yes, if you are not doing the latest thing.

16 MR. SHERIDAN: How about you, juror number 84?

17 A JUROR: Keeping up with the job and maintaining the  
18 qualities expected in the job.

19 MR. SHERIDAN: How about the commitment to the job, anybody  
20 hear challenges to that?

21 A JUROR: Coasting not doing the work hard enough.

22 MR. SHERIDAN: All right. Fair enough. I am sorry, juror  
23 number 38.

24 A JUROR: Consider retired in place as a stereotype.

25 MR. SHERIDAN: So, is there any one here who thinks that if

1 those ideas are in the hands of persons in power, they act on them,  
2 that that would be wrong? Can we agree that would be wrong?

3 Juror number 2?

4 A JUROR: Yes.

5 MR. SHERIDAN: All right. I hate those kind of questions,  
6 everybody goes, yes, we deal with it. All right.

7 How about we have an attorney in the room, juror number  
8 55 --

9 A JUROR: Yes.

10 MR. SHERIDAN: -- you said that -- did you say that your  
11 firm actually works with the City.

12 A JUROR: My former firm. Three months ago I quit the law  
13 firm life and went in-house.

14 MR. SHERIDAN: Wow, all right.

15 When you were on the outside, did you work on behalf of the  
16 plaintiffs or the defendants, or both?

17 A JUROR: It was regulatory counsel, mostly, a different  
18 context.

19 MR. SHERIDAN: Have you had any kind of attorney-client  
20 privilege with the City of Seattle.

21 A JUROR: I have not personally.

22 MR. SHERIDAN: All right.

23 How about anybody -- thank you -- anybody here have business  
24 dealings with the City, contracts with the City, juror number 31.

25 A JUROR: Yes, my current firm does capital commitment for  
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1 the Seattle Public Utilities.

2 MR. SHERIDAN: They get actually paid by Seattle Public  
3 Utilities?

4 A JUROR: Correct.

5 MR. SHERIDAN: Your Honor, I think that that may meet the  
6 criteria for employee bias, just to see if anybody has an objection.

7 MS. MOORE: Objecting to that, Your Honor. There is no  
8 evidence that this juror can't be fair.

9 THE COURT: Juror number 31, is your compensation at all  
10 tied to contracts that your employer may have with SPU?

11 A JUROR: I am paid via those contracts. I don't have like a  
12 bonus or something like that. I am not in, say, the sales.

13 Was that your question?

14 THE COURT: No. I am trying to understand whether, as you  
15 are a contractor --

16 A JUROR: I am a consultant, yes.

17 THE COURT: -- consultant.

18 A JUROR: My firm is hired by many different people including  
19 the City. So I work on drainage projects primarily, CSO projects.

20 I do design work. My firm is paid in this case by Seattle  
21 Public Utilities.

22 THE COURT: When you say "my firm," are you having an  
23 ownership interests in that firm?

24 A JUROR: It is a large employee owned firm so technically,  
25 yes, we are --

1 THE COURT: I can barely hear you, I am sorry. I need you  
2 to speak up.

3 A JUROR: It is a large employee owned firm, yes.  
4 Technically, I have a small stake in the firm.

5 THE COURT: You have done work on SPU contracts?

6 A JUROR: Yes.

7 THE COURT: I am going to grant the motion and excuse juror  
8 number 31.

9 Can I please have you put your number down back on your seat  
10 and head down to the jury assembly room.

11 Thank you for your service, I appreciate that.

12 A JUROR: Sure.

13 MR. SHERIDAN: Thank you for your candor too.

14 Anybody else do business with the City?

15 How about -- under the Washington Law Against  
16 Discrimination, the plaintiffs, if they win, if you find liability,  
17 they can get damages, the damages include lost wages, and also  
18 emotional harm damages. I want to talk to you for a minute about the  
19 emotional harm.

20 The damages that they can get include non-medical damages,  
21 like payments, dollar payments for fear, humiliation, for stress, all  
22 non-medical, without medical testimony.

23 Anybody here who feels like they have a real problem with  
24 giving money for non-medical damages like emotional harm, fear,  
25 humiliation and anxiety?

1 Anybody?

2 Number juror number 9, how about you?

3 A JUROR: No, not really. I am okay.

4 MR. SHERIDAN: Do you think that you are okay?

5 A JUROR: Yes.

6 MR. SHERIDAN: In your mind do you have a ceiling where you  
7 say, "I could give a buck, but even if the facts support it a lot more  
8 I couldn't give more than that"?

9 A JUROR: It is a hard question, because the ceiling is here,  
10 right, the sky.

11 MR. SHERIDAN: Right.

12 A JUROR: Nowhere.

13 MR. SHERIDAN: Look, what we want to know is that you will  
14 deliberate with your fellow members of the jury, just honestly try to  
15 come to a fair dollar amount.

16 That you are not going in with any preset ideas that, you  
17 know, if somebody wants more than 25,000 I am not going to give it. I  
18 will never give a million, right?

19 A JUROR: Yes. I would definitely deliberate.

20 MR. SHERIDAN: All right.

21 Anybody else feels like they have any issues with the  
22 deliberating?

23 Anybody feel like they have in their heads their own maximum  
24 that they could never give?

25 Juror number 48.



1 A JUROR: I have been involved in corporate situations where  
2 I am aware of some of the payouts. At times I have felt that they  
3 excessive, yes.

4 MR. SHERIDAN: But -- so take yourself into the jury room  
5 deliberating, could you consider every option and give it a fair shot  
6 and not feel like "I have a maximum in my own head. I don't care what  
7 the judge's instructions say I am going to follow my maximum"?

8 A JUROR: I would follow the judge's instruction, but I also  
9 have some general guidelines in my head that I think would be  
10 reasonable based off the person's life of employment, the position that  
11 they had, and what the cases were that were people that were directly  
12 under my responsibility at some point in time that there was a decision  
13 made and I felt that the payout was excessive for the lengths of time  
14 that the person was employed with the organization.

15 MR. SHERIDAN: All right.

16 But see, what you have just talked about is length of time  
17 as though that there is a connection between what your fear damages are  
18 and lengths of employment. I am asking a different question.

19 I am asking if the jury -- if the plaintiffs win they are  
20 going to be asked to put a dollar value on something like fear.

21 Do you feel like if the judge instructs you about this, you  
22 feel like that you can honestly deliberate with the jury without  
23 saying, you know, look, I have got my own decision. I have my own  
24 experience. I am not going to deviate from that.

25 A JUROR: I don't have a personal dollar amount of fear, if  
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1 that is your question.

2 MR. SHERIDAN: That is fine. Do you feel like that you  
3 could be fair?

4 A JUROR: I think that I would be fair. I also think that I  
5 would be opinionated.

6 MR. SHERIDAN: I expect that there would be 12 other people  
7 in there that would have opinions. That is all right.

8 But you don't have any hesitation about deliberating with  
9 the jury, with your fellow jury members and trying to come up with  
10 something fair?

11 A JUROR: No.

12 MR. SHERIDAN: Fair enough.

13 Anybody have any concerns about non-medical damages that we  
14 haven't talked to you about?

15 All right.

16 Let's see, ma'am, what is your number with the -- juror  
17 number 61, tell me a little bit about you.

18 A JUROR: What do you mean?

19 THE COURT: I can barely hear you. I am so sorry. I am  
20 going to need you to stand and speak up for us.

21 Thank you so much.

22 A JUROR: Can you be more specific.

23 MR. SHERIDAN: Yes.

24 What do you do for a living?

25 A JUROR: Right now I am not working. I am taking care of my

1 brother.

2 MR. SHERIDAN: You have sat here today and yesterday and  
3 haven't been asked many questions. Do you have any concerns about  
4 sitting as a juror in this case?

5 A JUROR: No, I don't.

6 MR. SHERIDAN: All right.

7 Thank you. Ma'am, how about you, what is your number?

8 A JUROR: Juror number 63.

9 MR. SHERIDAN: How about you? I think that you have spoken  
10 once or twice. Have you had any concerns about sitting as a juror in  
11 this case?

12 A JUROR: No, I don't.

13 MR. SHERIDAN: Juror number 57, we haven't spoken to you too  
14 much.

15 How about you, do you have any concerns about sitting as a  
16 juror in this case?

17 A JUROR: No.

18 MR. SHERIDAN: Then I think that, ma'am, what is your  
19 number?

20 A JUROR: Juror number 53.

21 MR. SHERIDAN: Could you tell us what you do for a living?

22 A JUROR: Payroll administrator at the Bill and Melinda Gates  
23 Foundation.

24 MR. SHERIDAN: Have you heard anything today that makes you  
25 think that you might not be a good fit in this case?

1 A JUROR: No, sir.

2 MR. SHERIDAN: You will be able to follow the judge's  
3 direction and not have any concerns?

4 A JUROR: Correct.

5 MR. SHERIDAN: Great.

6 So, the City is represented by two different law firms, the  
7 City's attorney's office and Davis Wright Tremaine, which is a big  
8 Seattle law firm.

9 Does anybody have any business relationships with Davis  
10 Wright Tremaine?

11 Juror number 55, who you know?

12 A JUROR: We -- yes, Davis Wright Tremaine represented my  
13 company and they currently do --

14 MR. SHERIDAN: They represented your company?

15 A JUROR: Yes.

16 MR. SHERIDAN: They provide legal advice to your company?

17 THE JUROR: I am a consumer of my legal advice at that  
18 company.

19 MR. SHERIDAN: I think that we are back in the implied bias  
20 here, Your Honor.

21 MS. MOORE: Your Honor, Davis Wright Tremaine is a large law  
22 firm as Mr. Sheridan said.

23 Do you want me to inquire?

24 THE COURT: Why don't you go ahead and do that, counsel.

25 MS. MOORE: Ma'am, have you ever met me.

1 A JUROR: I have not.

2 MS. MOORE: Have you heard about me.

3 A JUROR: No, I don't know your name. I don't remember.

4 MS. MOORE: I told you what my name was.

5 A JUROR: Yes.

6 MS. MOORE: I am Portia Moore, by the way.

7 Is there anything that you have heard today that makes you  
8 feel that you couldn't be fair and unbiased?

9 A JUROR: There is not.

10 MS. MOORE: would you listen to the judge's instructions and  
11 apply the judge's instructions.

12 A JUROR: Yes.

13 MS. MOORE: Thank you, ma'am.

14 THE COURT: I don't see a cause, counsel.

15 MR. SHERIDAN: All right. Just to put in the record, I  
16 think that under 4.44.180 (4) standing in the relationship of guardian  
17 and ward and attorney-client.

18 I don't know, it is a big firm.

19 THE COURT: All right. Let me ask you, do you -- which  
20 group within the firm offers you advice?

21 A JUROR: We currently work with their financial advice  
22 providers on their finance team. Some people, gosh, Jim Gray -- I  
23 don't know what division he works in.

24 MS. MOORE: Neither do I.

25 A JUROR: All right. Well -- it is not related to our

1 employment issues.

2 THE COURT: All right.

3 MR. SHERIDAN: Are you satisfied?

4 THE COURT: I am, thank you, counsel.

5 MR. SHERIDAN: All right.

6 Let's see, what is your number?

7 A JUROR: Juror number 27.

8 MR. SHERIDAN: Have you heard anything today that makes you  
9 feel uncomfortable about sitting as a juror in this case?

10 A JUROR: I don't think so.

11 MR. SHERIDAN: You think not.

12 A JUROR: I think so.

13 MR. SHERIDAN: What have you heard that makes you feel  
14 uncomfortable?

15 THE COURT: I need you to speak louder, sir, I am so sorry.

16 A JUROR: I am not sure that I have enough information on  
17 this subject to be an effective juror.

18 MR. SHERIDAN: We haven't told you anything about the case.  
19 You will hear all of the facts from us.

20 The judge will filter what you get to hear. She will  
21 instruct you on the law.

22 Do you think that there is anything about this setting that  
23 makes you feel like you might have a hard time being a juror?

24 A JUROR: Well, hold on a minute. I am thinking.

25 MR. SHERIDAN: All right. Take your time.

1 A JUROR: I think that I can proceed.

2 MR. SHERIDAN: All right. That is all I have, Your Honor.

3 THE COURT: Terrific.

4 Ms. Moore.

5 MS. MOORE: Your Honor, Ms. Tilstra will do the next round.

6 THE COURT: Of course, go ahead, counsel. This is  
7 Ms. Tilstra, folks, from the City of Seattle.

8 MS. TILSTRA: I may have introduced myself briefly  
9 yesterday, I am Sarah Tilstra, assistant attorney counsel for the City  
10 of Seattle.

11 Unfortunately my glasses broke on the ride in on to Seattle.

12 THE COURT: It is going to be a long four weeks, counsel.

13 MS. TILSTRA: I have a backup pair at home, but not here.  
14 If I am looking at your number, it would be really great if you could  
15 hold it up for me.

16 If I don't get to all of you who raised your hands today,  
17 don't feel offended. I am working with a limited amount of time. I am  
18 trying to get the information that I can.

19 I wanted to follow up on juror number 23.

20 A JUROR: Yes.

21 MS. TILSTRA: Is it Ewanchuk?

22 THE JUROR: Yes.

23 MR. SHERIDAN: I think that you said yesterday in response  
24 to some questions that you felt that an all white jury or a jury  
25 composed of mostly white people could render a fair verdicts, but it

1 not be perceived as fair.

2 Is that correct?

3 A JUROR: I did state that because here we have a  
4 discrimination case. I am just, you know, again thinking of the bias  
5 and --

6 THE COURT: I can barely hear you.

7 A JUROR: I am looking at a group of ladies here. If they  
8 were looking at a completely white jury, that there might be a  
9 perceived perspective of unfairness. That is just a perspective of  
10 mine.

11 I think that with regards to ethnicity, diversity is beyond  
12 the color of our skin. It is actually age. It is culture. It is  
13 origin of the country that you are from. There are many things that  
14 come into play in regards to diversity and decision-making.

15 I would hope at the end of the process, once the jury is  
16 basically identified, that if it is, let's say all, quote, white, that  
17 perhaps there are other cultural differences that are actually taken  
18 into consideration.

19 MS. TILSTRA: All right. You mentioned perception. There  
20 can be a difference between the truth and perception; correct?

21 A JUROR: Correct.

22 MS. TILSTRA: Because there is a perception it doesn't  
23 necessarily mean that it is a reality of the situation; is that  
24 correct?

25 A JUROR: Correct.



1 MS. TILSTRA: You are an HR professional.

2 A JUROR: Yes, I am.

3 MS. TILSTRA: Can you give a little sense --

4 A JUROR: I oversee compensation and benefits for North  
5 America and I deal with -- we have 2500 employees in the US and Canada.

6 I advise managers and give guidance to HR partners.

7 MS. TILSTRA: Are you a managerial level?

8 A JUROR: Yes, ma'am.

9 MS. TILSTRA: In the managerial role do you expect people to  
10 follow basic codes of ethics and integrity and avoid conflicts of  
11 interest?

12 A JUROR: Yes, I do and that is part of our policies.

13 MS. TILSTRA: Is everything, to follow up on what you said,  
14 that is policy is everything that is prohibited at work written down?

15 In other words, let's say that there is a general policy,  
16 dress appropriately when you are at work. Somebody comes in and in a  
17 bikini and Speedo.

18 Then they say, "well, the policy doesn't say that I couldn't  
19 wear the bikini or speedo."

20 That is prohibited about dressing professionally, would you  
21 agree with that?

22 A JUROR: For some companies, maybe, yes. It is all  
23 dependent upon the companies. That is the thing.

24 If I am working for a bikini company, it is not  
25 inappropriate.

1 MS. TILSTRA: Fair enough.

2 If one is working for a non-bikini company, let's add that  
3 to the hypothetical, would you agree that that's prohibited by general  
4 code of dressing?

5 A JUROR: Yes.

6 MS. TILSTRA: And how about professional dressing?

7 A JUROR: Yes.

8 MS. TILSTRA: Do you think that employees make excuses for  
9 their behavior by stating that they don't know anything?

10 A JUROR: Sometimes they do.

11 MS. TILSTRA: Have you encountered that at your work?

12 A JUROR: I have.

13 MS. TILSTRA: Can you give me an example.

14 A JUROR: Sometimes when I have had employees that haven't  
15 read the handbook or haven't heard something, maybe they have not taken  
16 training or informed or given guidance by their managers, like, I  
17 didn't know that, that happens. It is not uncommon.

18 MS. TILSTRA: Have you ever made -- when we perceived to be  
19 a legitimate decision about the employment that was misperceived about  
20 unfair or bias approaches --

21 A JUROR: I made decisions, but I haven't had anybody to make  
22 an accusation that my decisions are unbiassd or unfair.

23 MS. TILSTRA: Does any one think that it would be okay to  
24 show up in a bikini or a Speedo if it is not specifically prohibited?

25 Anyone else have any thoughts about that?

1 we did talk a little bit yesterday about implicit bias and  
2 rendering a fair verdict.

3 we were a little bit worried that with all of this  
4 discussion about the implicit bias and fairness that you all would be  
5 concerned that you might not be fair to the defendant -- to the  
6 specific people who made the decisions.

7 I just want by a show of, I guess, paddles as Ms. Moore  
8 would say, can we all agree that we will follow the law, the legal  
9 instructions that the judge provides; correct?

10 All right. The judge would give you instructions at end of  
11 the case and those would be the instructions that would be applicable.

12 So we are concerned that because of the concerns that you  
13 expressed, people mentioned feelings about guilt, worries about  
14 unconscious bias, that you might give the benefit of the doubt at each  
15 and every stage of this trial to the plaintiffs.

16 What I need to ask you about these feelings that would  
17 become more important if these feelings would become more important  
18 than the actual burden of proof in this case.

19 Raise your paddles if you understand that this is a civil  
20 case and allegations have been made that the plaintiffs and their  
21 lawyer are accusing SPU of discrimination?

22 All right. Raise your hands if you realize that these are  
23 allegations there hasn't been a single bit of proof or evidence  
24 submitted to you yet. All right.

25 This is where I am going.

1 I need to know if there are folks out there that would favor  
2 these plaintiffs here more than the defendants simply because the  
3 plaintiffs are people of color. Please raise your hands if you think  
4 that you would likely do that, or raise your paddle, all right.

5 So there is the no evidence of proof presented and the  
6 opening statements, the judge will tell you, that they are not  
7 evidence. The evidence starts with the first witness, which hopefully  
8 we will get to today and the documents that are presented to that  
9 witness.

10 Do we all agree on that? Yes? All right.

11 So that the plaintiffs need to build their case from step  
12 one, from ground zero, no evidence having been presented yet, brick by  
13 brick, step-by-step.

14 What I need to know by a show of hands, or paddles, who will  
15 likely start the plaintiffs at about 50/50, starting it even, even  
16 starting maybe separate to ahead at that point of zero proof because of  
17 your concerns about implicit bias or guilt or favoring of the  
18 employees?

19 Is there any one who thinks that? Juror number 11, why is  
20 that?

21 A JUROR: I just -- some of those conversations that we had  
22 yesterday about the -- how the courage to be able to bring, you know,  
23 issues that you have against the employer as well as raise -- I mean,  
24 there is a variety of different things that kind of swirl in this pool  
25 that would lead me to favoring for the plaintiffs to start off.

1 MS. TILSTRA: I appreciate your candor, juror number 8. You  
2 are nodding.

3 A JUROR: Yes, to expound more on that, that they have --  
4 they believe they have a very strong case, obviously.

5 We have come to this point to the trial, all of the  
6 negotiations that went on prior to this and the offers that were made  
7 by the City or SPU they have said no to.

8 They feel so strongly in their story and in their stories  
9 and their experience that they want to institutionalize the change.

10 They want SPU to go through a change via through high  
11 findings, expensive fines, whatever. They want their stories told,  
12 because they want change.

13 So naturally, I am going to lean very closely -- I am going  
14 to listen really hard and I am going to feel very strongly about those  
15 stories. Then it is the defense, it is your job then to pick that  
16 apart and break it down and show how that is coincidental to their  
17 stories or whatever.

18 You will have a really tough road with the defense -- you  
19 will have a really tough road to break down all of these stories of  
20 these people that I feel so strongly in their experiences that they are  
21 here today.

22 MS. TILSTRA: Has anyone else feel similarly to juror number  
23 8 or 11? Juror number 71.

24 A JUROR: I don't know if I have anything to add to what the  
25 last juror just said. I agree with her very much.

1 MS. TILSTRA: Juror number 98?

2 A JUROR: Yes.

3 So, I haven't had any experience to the color. I have had  
4 experience in my job where I have had someone above me kind of cause me  
5 to feel fear, just because they were just very stronger. They were  
6 just like really tough.

7 So I was always kind of nervous with what I did around them.

8 MS. TILSTRA: All right. I am sorry I think that I have --  
9 thank you, juror number 98.

10 Juror number 65?

11 A JUROR: Very similar to what those folks said, it is --  
12 many times people feel wronged. When they do, they sometimes let it go  
13 or take some small steps towards bringing it to somebody's attention  
14 and leave it there.

15 The fact that they have come this way like some others have  
16 said there is probably something there. We cannot start with zero,  
17 because at zero you admit that there is nothing there. We have to  
18 start some where.

19 If it was zero, that would mean that they have taken no  
20 steps, probably, you know, sending one e-mail or one message that they  
21 have been wrong and bringing us to the court, they have taken lots of  
22 steps to come here, that means that it can't be started at zero.

23 MS. TILSTRA: Does anyone else? I think that I saw another  
24 number or two.

25 Juror number 53.

1 A JUROR: I agree with everything that juror number 8 just  
2 said. I see SPU as the corporation that is going to have to prove to  
3 me that these women -- --

4 MS. TILSTRA: I asked a little earlier about burden of  
5 proof. The judge will give you instructions that will state that the  
6 plaintiffs have the burden of proving their case.

7 A JUROR: Right.

8 MS. TILSTRA: I am trying to understand from the folks that  
9 raised their paddles how you are synthesizing.

10 THE COURT: Ms. Tilstra, we did a little bit of the  
11 preliminary jury instructions and it was properly swifter than I might  
12 ordinarily have done. That was because we were working through a lot  
13 of hardships, we had people coming in groups.

14 I want to give you folks a small discussion about burden of  
15 proof, because I don't think that I did that yesterday. I think that  
16 maybe it doesn't, you know, Ms. Tilstra, this is my time not yours.  
17 Then you can explore further.

18 So, let me just say in deciding this case you will be asked  
19 to apply a concept called the burden of proof. That is the phrase that  
20 we use. Of course, everyone knows from watching all of the great TV in  
21 a criminal case that the burden is beyond a reasonable doubt. That is  
22 not the burden in a civil case. It is certainly not going to be the  
23 burden in this case.

24 So burden of proof refers to the measure or the amount of  
25 proof required to prove a fact. In this case it is the proof by a

1 preponderance of the evidence. What preponderance of the evidence  
2 means is that you must be persuaded considering all of the evidence in  
3 the case by a proposition is more probably true than not.

4 During your deliberations you have got to apply the law I am  
5 going to give to you, to the facts that you find to be true. It is  
6 your duty to accept the law from my instructions regardless of what you  
7 personally believe that the law is or what you think it ought to be.

8 You are to apply the law that you received from me to the  
9 facts and in this way decide the case.

10 So, I want you to keep that in mind. I have heard a lot of  
11 folks talk about, you know, things that may or they believe may have  
12 happened, you know.

13 I think that juror number 8 talked about what was offered to  
14 them or settled or things like that. Here they are.

15 All I will say is that you shouldn't assume anything at all  
16 about what happened before with regard to formal processes before with  
17 these parties. It is not going to be before you. It won't be in  
18 evidence.

19 It is not appropriate to consider it or make assumption s  
20 about what you think may or may not have happened before.

21 So that is all I am going to say. I am going to let  
22 Ms. Tilstra finish up her questioning of you.

23 MS. TILSTRA: Thank you, Your Honor.

24 How much more time do I have?

25 THE COURT: I just took about two minutes of your time.



1 Your time was going to be ending at 10:06. So, I am now going to give  
2 yo 10:08, not that I am counting.

3 MS. TILSTRA: All right. I won't want to go past that.

4 Judge Parisien has clarified the burden of proof a bit.

5 So, I believe was it juror number 65 that you -- thank you.

6 How does that -- does that change or affect your earlier  
7 statement at all?

8 A JUROR: Absolutely, without evidence it doesn't matter how  
9 hard they worked to get here.

10 I am not going to start thinking about the judgment in that  
11 sense.

12 I think that the question I was answering maybe a little bit  
13 different in the sense that you said "should we start at zero," in the  
14 sense of well as if it is a clean slate.

15 I would say it is not a clean slate because they brought the  
16 case.

17 But in the sense that there is burden of proof, some  
18 evidence to show that there is a case, yes, I guess we are actually on  
19 zero for that.

20 MS. TILSTRA: Right.

21 I want to know if going -- before you have heard any of the  
22 evidence, you have not heard any of the evidence.

23 It doesn't start until witness number one, hopefully this  
24 afternoon, before you have heard any of the evidence, if you are  
25 already predisposed to believe that, to favor the plaintiffs more than

1 the defendants or whether you would -- whether it is a clean slate in  
2 your mind?

3 A JUROR: No, I haven't -- like you said -- heard anything so  
4 technically it is a clean slate.

5 MS. TILSTRA: Juror number, is it 53? Yes, thank you.

6 How does Judge Parisien's comments --

7 A JUROR: I absolutely agree with everything that the judge  
8 said and would add that the evidence and the facts not presented. But  
9 there is a predisposition on my part that I am going to be empathetic  
10 with what I see as the victim in this case. It is just a knee-jerk  
11 reaction.

12 MS. TILSTRA: All right. I would like to go to a different  
13 topic now.

14 Raise your number now, please, if you or your spouse is  
15 either currently or has ever been --

16 A JUROR: I haven't heard the question.

17 MS. TILSTRA: -- been in a union. If you or your spouse has  
18 currently or now, or has been in a union, number 23.

19 A JUROR: I was actually 14 working for Able's Food, working  
20 in the stadium back then. I didn't know what a union was back then,  
21 didn't know what labor relations would have been at that time.

22 I had no clue at that time.

23 MS. TILSTRA: That is the extent of your union  
24 participation?

25 A JUROR: Yes.

1 MS. TILSTRA: Juror number 32.

2 A JUROR: Washington State Nurses Association, a union,  
3 for -- I am very new to the union.

4 We just make sure that the labor relations with the employer  
5 are on point, we don't get overworked, take care of patients safely.

6 Money is not the focus, the patient is.

7 MS. TILSTRA: Have you ever held a leadership in the union,  
8 like shop steward -- I don't know what the equivalent is for the --

9 A JUROR: No, ma'am.

10 MS. TILSTRA: -- negotiator or anything like that?

11 A JUROR: No, ma'am.

12 MS. TILSTRA: Have you filed a grievance?

13 A JUROR: No, it came close, but no.

14 MS. TILSTRA: Came close, what were the circumstances?

15 A JUROR: As I mentioned yesterday, I was accused of being  
16 intoxicated or on drugs at work by someone that I worked with.

17 Management took it to the next level.

18 MS. TILSTRA: All right.

19 Juror number 38.

20 A JUROR: I was an engineer at Boeing represented by the  
21 SPEEA Union, also a supervisor at Boeing during SPEEA strike.

22 MS. TILSTRA: You were in both sides of it?

23 A JUROR: Both ends.

24 MS. TILSTRA: When you were in SPEEA did you hold any  
25 leadership positions?

1 A JUROR: No.

2 MS. TILSTRA: Going down, juror number 46 --

3 A JUROR: 46, also the Washington State Nurses Association  
4 as a registered nurse.

5 MS. TILSTRA: Is that current or former?

6 A JUROR: Current.

7 MS. TILSTRA: How long have you been in that union?

8 A JUROR: In this union for four years.

9 MS. TILSTRA: Any leadership experiences?

10 A JUROR: No.

11 MS. TILSTRA: I will go on down, juror number 48.

12 A JUROR: My husband was in a union earlier in our marriage.  
13 I, personally, have fought against unions in instances. It was the  
14 UAW.

15 MS. TILSTRA: All right.

16 Juror number 71.

17 A JUROR: I have been in the union for 20 years as a teachers  
18 union, a couple. I have been on various -- it is a big part of our  
19 life professionally.

20 It -- also, I have been on some committees that have dealt  
21 with hours and other work place issues.

22 MS. TILSTRA: Can I go down the line, juror number 67?

23 A JUROR: Mine was when I was 20 working in the grocery  
24 stores.

25 MS. TILSTRA: Great.

1 Juror number 63.

2 A JUROR: I was a baker at Safeway. They are part of the  
3 union.

4 MS. TILSTRA: Is that back at home or current?

5 A JUROR: Yes.

6 MS. TILSTRA: Juror number 61.

7 A JUROR: I was part of the union when I was working for  
8 Macy's.

9 MS. TILSTRA: What did you do as the Macy's sales associate?  
10 were you involved in the leadership of that team at all?

11 A JUROR: No.

12 MS. TILSTRA: Thank you.

13 Juror number 57.

14 A JUROR: Teamsters Union for Boeing currently.

15 MS. TILSTRA: How long have you been?

16 A JUROR: Three years Teamsters Union.

17 MS. TILSTRA: Any leadership?

18 A JUROR: I am not involved in the union or anything just a  
19 member.

20 MS. TILSTRA: Thank you.

21 Juror number 52.

22 A JUROR: Previously in the musicians union while I was  
23 working for Seattle 5th Avenue Theater.

24 I don't know if it benefited me at all, as far as I can  
25 tell, I was part of it.

1 MS. TILSTRA: What instrument did you play?

2 A JUROR: I played saxophone, base clarinet and clarinet and  
3 flute for the production of the Music Man.

4 MS. TILSTRA: Very cool. That was just for that one?

5 A JUROR: Yes, a week.

6 MS. TILSTRA: All right, shortest union membership ever.

7 Juror number 50.

8 A JUROR: Both my husband and I are teachers. We both belong  
9 to the unions, in conjunction with our specific campuses, no previous  
10 unions, short of the wage strike on my husband's part.

11 No positions of leadership.

12 MS. TILSTRA: All right.

13 Juror number 72, you will say the teachers union.

14 THE JUROR: Yes.

15 MS. TILSTRA: Give me a sense if you could --

16 A JUROR: Wage strike within the school district last year  
17 against the State being in contempt of the McCleary case and all of  
18 that business.

19 MS. TILSTRA: Were you involved?

20 A JUROR: Not myself, the State.

21 MS. TILSTRA: Yes, but you were involved in the higher --

22 A JUROR: No, just the ground level.

23 MS. TILSTRA: Great.

24 Juror number 75?

25 A JUROR: Represented by the nursing union. I am a nurse.

1 MS. TILSTRA: What is your level of involvement there?

2 A JUROR: Just represented, not I am a member.

3 MS. TILSTRA: Thank you.

4 Raise your hands, please, if you feel that an employer  
5 should always give an employee warning or a second chance before firing  
6 or disciplining them?

7 All right, juror number 5.

8 A JUROR: I think that employees should get a warning if they  
9 did something wrong.

10 Telling them just, "you are fired," I know that I would like  
11 to have a second chance if I did something wrong, especially if I  
12 didn't know that I was doing something wrong.

13 MS. TILSTRA: Does it depend in your mind on what the reason  
14 is?

15 A JUROR: Yes.

16 If it is something very, very serious that they, like you  
17 were told right at the beginning, "don't ever do this. This is grounds  
18 for firing," then a warning is not necessary.

19 But for smaller things, I think that a warning would be a  
20 good thing.

21 MS. TILSTRA: I think that I maybe saw another one, juror  
22 number 2.

23 A JUROR: Similarly, I think that in general people should  
24 get the benefit of a warning when there is a problem at work.

25 We talked about knowing all of the rules, maybe, and the  
Dolores Rawlins, RPR, CSR, CCR, CRR, CRC, RSA, Official Court Reporter

1 policies and in the place, I wasn't aware of that.

2 To your second point about is there ever a case where  
3 warning wouldn't be, I think that, yes.

4 I work in the health care. If somebody, you know, killed a  
5 patients or something, really, I think that --

6 MS. TILSTRA: Did you say killed a patient?

7 A JUROR: Yes. If they caused a death in the patient,  
8 something real egregious, there is certain things that we have to sign  
9 off on, to say that we understand we will never do these things, or,  
10 you know, but in general, I think that absolutely. Warnings are a good  
11 part of correct culture or our culture.

12 MS. TILSTRA: Any one on this side of the room?

13 Juror number 61.

14 THE COURT: I cannot hear you.

15 A JUROR: I think that some other people have said that  
16 everyone deserves a second chance. There are instances where it should  
17 be automatic.

18 MS. TILSTRA: Did I see any other hands?

19 Juror number 65.

20 A JUROR: So, in some cases, like if it is financial theft or  
21 stealing property or things like that, they should be given a second  
22 chance. They should be terminated.

23 But for most performance issues and stuff like that, it is  
24 not just giving them a second chance. I think that they should be  
25 supported, put into a program, for a little bit where they can actually



1 come back to the normal expected performance.

2 MS. TILSTRA: That is all right.

3 I see you nodding, over there, sir.

4 A JUROR: 47, basically he said exactly what I was going to  
5 say.

6 If it was a performance issue, most of the time that you  
7 don't know. I would hate if I was terminated for, "you know, the last  
8 six months you haven't been doing your job." But, you know, that lets  
9 me know.

10 If I walk out of the building with a computer and take it to  
11 the car or leak sensitive information or, you know, break my NDA or  
12 something, that should be immediate.

13 MS. TILSTRA: Juror number 97.

14 A JUROR: I just wanted to add that I think that from my  
15 experience organizations, especially larger organizations have tabled  
16 offenses or should have some formal document that lists offenses that  
17 can result in immediate termination and/or suspension.

18 MS. TILSTRA: All right.

19 Juror number 98 -- 67.

20 A JUROR: I think that open communication in the employment  
21 is very important, so people know that they are doing wrong.

22 Of course, a theft offense, you should get fired. Most  
23 offenses you should be warned and one-on-one meetings with your manager  
24 so that you are aware of everything.

25 MS. TILSTRA: What are examples of offenses that you think

1 are --

2 A JUROR: Showing up late -- I mean.

3 MS. TILSTRA: That you think are disciplinary offenses  
4 without taking a second chance?

5 A JUROR: Something like taking a computer, threatening a  
6 fellow coworker, you know, just extreme situations like that.

7 MS. TILSTRA: All right. Thank you.

8 Any one on this sides, juror number 50.

9 A JUROR: I just think that it really depends that any  
10 incident should be documented.

11 MS. TILSTRA: Juror number 52.

12 A JUROR: I guess I kind of seconds what most people are  
13 saying, it really depends upon the offense. There are obviously some  
14 things that do warrants termination on the spot.

15 But I also think that it is important for employees to --  
16 employers to invest in employees that have learned from their mistakes.  
17 It depends upon what they did.

18 MS. TILSTRA: All right. Was there anyone else in the box  
19 here that I didn't call on that raised their hand that has something to  
20 add that hasn't been already discussed?

21 All right.

22 I am interested in moving things along. I think that I  
23 might be done.

24 THE COURT: All right.

25 We are going to just do a little bit of math here.

1 MS. TILSTRA: Thank you.

2 THE COURT: We will get, start moving people from the  
3 gallery to -- quick math, all right.

4 MS. MOORE: Your Honor, I am sorry, I don't mean to  
5 interrupt you, are we going to be making cause challenges.

6 THE COURT: No, remember I said that we will be doing them  
7 right on the spot.

8 MS. MOORE: As people are seated.

9 THE COURT: No, as they were being questioned, just now as  
10 Mr. Sheridan did with one of his jurors with regards to a conflict with  
11 SPU.

12 Do you -- if you have cause challenges they should have been  
13 made before but I will allow you to go back in.

14 MS. MOORE: Based on the questions that we just had --

15 THE COURT: Right, cause challenges are made as the  
16 questions are unfolding, right there on the spot with an option for  
17 Mr. Sheridan to try to pose questions of them.

18 So just as he did, what would you like to raise, Ms. Moore?

19 MS. MOORE: Your Honor, we would move to excuse juror number  
20 8.

21 THE COURT: All right.

22 MS. MOORE: Juror number 11.

23 THE COURT: One at a time.

24 Juror number 8, your basis for that?

25 Thank you.

1                   What is your basis for that, counsel?

2                   MS. MOORE: In response to questions from the co-counsel  
3 juror number 8 said that he was leaning towards the plaintiffs very  
4 strongly that he --

5                   THE COURT: I can barely hear you, Ms. Moore.

6                   MS. MOORE: I am sorry.

7                   THE COURT: I heard the first part.

8                   MS. MOORE: This juror said that he leans very closely  
9 towards the plaintiffs and that SPU had a, quote, really tough road.  
10 It was a really tough road for the defense.

11                   Based on that, Your Honor, we think that this juror cannot  
12 be fair, will not start at -- both sides will not start at the same  
13 plane.

14                   THE COURT: Mr. Sheridan, do you want to ask some questions?

15                   MR. SHERIDAN: Yes, thank you very much.

16                   THE COURT: Go ahead.

17                   MR. SHERIDAN: Number 8, you are in the hot seat. Here is  
18 the question, the judge will instruct you, tell you what the law is,  
19 right?

20                   A JUROR: Yes.

21                   MR. SHERIDAN: Can you put aside whatever biases that you  
22 come in with, listen to the facts, listen to the judge's instructions  
23 and render a fair verdict.

24                   A JUROR: I will do my best.

25                   MR. SHERIDAN: Do you think that you can be fair?

1 A JUROR: Yes.

2 MR. SHERIDAN: All right.

3 THE COURT: Let me say one other thing, folks, one of the  
4 instructions that I will give is that organizations, such as the City,  
5 or a hospital, or a corporation, are treated under the law equally with  
6 individuals.

7 Is that something that everyone can understand?

8 That is the law treats all parties equally. Is that a yes?

9 Any one find that kind of hard to wrap your head around, you  
10 are uncomfortable with?

11 Or can you accept that as the law?

12 Raise your hand if that concept is going to be difficult for  
13 you? All right.

14 Did you want to further question the juror?

15 Go ahead, Ms. Moore, please.

16 MS. MOORE: Yes.

17 Juror number 8, if you were in my position and trying to  
18 pick a jury that was fair and unbalanced, would you have any concerns  
19 about you sitting on this jury.

20 A JUROR: Yes.

21 MR. SHERIDAN: Your Honor, I object. That is not a fair  
22 question, not the law.

23 THE COURT: No, it is totally fair.

24 MS. MOORE: Go ahead, ma'am.

25 A JUROR: I put a lot of thought into this last night and

1 lost a lot of sleep over it, that the plaintiffs' side would want me on  
2 this jury, that the defense would have a very tough time. They have a  
3 tough road.

4 MS. MOORE: Is there anything that you think that you can do  
5 that would change the way that you felt?

6 A JUROR: You know, I have been 40 years steeped in the  
7 racial politics and have a very strong feeling about the non-white  
8 struggle in this country. It is really hard to put aside so many close  
9 friends, so many stories that resonate in my life to put that aside to  
10 be absolutely unbiased --

11 MS. MOORE: I appreciate your candor. Your Honor, I renew.

12 A JUROR: I have to be terribly honest.

13 THE COURT: Thank you for your honesty and your service so  
14 far.

15 I will have you put down your placard and head down to the  
16 jury assembly room. Thank you very much.

17 MS. MOORE: Juror number 11 is the next juror that would  
18 excuse for cause.

19 This juror said that he favored the plaintiffs from the  
20 start, regardless of the law. He has personal knowledge of people who  
21 were fired and that he would favor the employer in general.

22 THE COURT: Mr. Sheridan, do you want to pose questions for  
23 this juror?

24 MR. SHERIDAN: Yes.

25 Juror number 11, we all come in with bias. The question is  
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1 can you listen to the facts and follow the judge's instructions and  
2 render a fair verdict?

3 The idea of whether or not you come in favoring somebody,  
4 everybody comes in here and favoring somebody.

5 Can you put that aside and deliberate and listen to what  
6 other people have to say and not be rigid in your views and render a  
7 fair verdict?

8 A JUROR: I will do my best, but I have a bias from my past  
9 history of knowing individuals who work for the City of Seattle and  
10 some other Seattle City Light in the past. There is built up  
11 animosity, if you will, that is there.

12 MR. SHERIDAN: If the judge is going to instruct you -- you  
13 haven't heard a thing yet.

14 A JUROR: Absolutely.

15 MR. SHERIDAN: Let's say that the plaintiffs totally fail in  
16 their proof and don't convince you that they are really are victims of  
17 discrimination, would you render a verdict for them no matter what?

18 A JUROR: No.

19 MR. SHERIDAN: All right.

20 If you will listen to the facts, you will listen to what the  
21 judge last to say in terms of the instructions, you will apply the  
22 facts to the law and render a verdict?

23 A JUROR: Yes.

24 MS. MOORE: Circumstances, I appreciate and I know that it  
25 is tough to be on the hot seat like this.

1 But you said that you had a predisposition. You said that a  
2 couple times during -- over the last two days. I am going to ask you  
3 the same question.

4 If you were in my spot, representing SPU, would you have  
5 concerns about having yourself on a jury?

6 A JUROR: I would, yes.

7 THE COURT: I am going to thank and excuse juror number 11  
8 for cause.

9 The same instructions apply to you, sir. I will have you  
10 have you put your cards back on the seat and head down to the jury  
11 assembly room.

12 Thank you for all of your time today and yesterday as well.

13 MR. SHERIDAN: Your Honor, we want to lodge our objections  
14 to this juror's dismissal.

15 THE COURT: Certainly.

16 MS. MOORE: Your Honor, one more, I apologize.

17 THE COURT: Yes, they are done in a different way.

18 MS. MOORE: Juror number 53, Your Honor.

19 This juror states that he has a predisposition towards  
20 plaintiffs, would favor them from the start, even after you gave your  
21 instruction as to what they were supposed to do.

22 So, we would need to exclude juror number 53 for cause.

23 THE COURT: Mr. Sheridan.

24 MR. SHERIDAN: Juror number 53, again, can you listen to the  
25 judge's instructions and can you put aside any bias that you may have



1 and fairly deliberate with your co-jurors and make a decision?

2 A JUROR: I believe so.

3 MR. SHERIDAN: Do you have any concerns that you wouldn't be  
4 fair to the defendants once the evidence is presented?

5 A JUROR: I have concerns, yes.

6 MR. SHERIDAN: Tell us what are those concerns.

7 A JUROR: I feel like I would be -- I would have hesitations  
8 in a -- I feel like it would be a twist ending, if I heard evidence  
9 that would change my current state of mind.

10 MR. SHERIDAN: You feel that you are rigid in your views  
11 that you wouldn't change?

12 A JUROR: I would be very open to listening to the facts and  
13 the evidence and the witnesses. But I would be surprised with if my  
14 mind was changed.

15 MR. SHERIDAN: All right.

16 So you put us all in a difficult place, right. Because we  
17 are picking a jury here who can be fair and impartial after they hear  
18 the evidence, go into that deliberation room and take the evidence and  
19 make a decision based on that and the facts as stated by the court.

20 Do you really think that you can't do that?

21 A JUROR: I think that I -- --

22 MR. SHERIDAN: You have to be able to say one way or the  
23 other, yes or no.

24 A JUROR: I think that I could.

25 MR. SHERIDAN: Let me push you a little further.

1 A JUROR: All right.

2 MR. SHERIDAN: So in fairness to the defense, right --

3 A JUROR: Yes.

4 MR. SHERIDAN: -- you have to be able to say that you will  
5 or you won't. If you can't say one or the other I will have to agree  
6 with the defendants.

7 A JUROR: Yes, I would be open to it. I would.

8 MR. SHERIDAN: All right.

9 MS. MOORE: Juror number 53, you were hesitating. It was  
10 hard for you.

11 You said in response to questions -- I will quote you -- you  
12 are going to have to prove to me, meaning my client -- was going to  
13 have to prove to you that we didn't do anything wrong.

14 Is that the way that you feel now?

15 A JUROR: No. I think that both sides equally need to prove  
16 their case.

17 MS. MOORE: Do you feel, I am going to ask you the same  
18 question that I asked the other two jurors. Do you think that,  
19 honestly, if you were in my position, that you would be comfortable  
20 having you sit on this jury?

21 A JUROR: Yes.

22 MS. MOORE: I would renew my motion for cause.

23 THE COURT: All right. I have one follow up question for  
24 you, then we will rule on this.

25 You said that it would have to be a plot twist for you, I  
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1 think that is the words that you said, a reversal or a plot or -- I  
2 forgot what you said.

3 A JUROR: Yes.

4 THE COURT: -- plot twist that you would have to feel for  
5 the defendant.

6 A JUROR: Right. I wouldn't see it coming.

7 THE COURT: You wouldn't see it coming?

8 A JUROR: Yes.

9 THE COURT: I am going to grant the motion for challenge for  
10 cause.

11 MR. SHERIDAN: We have an objection.

12 THE COURT: Right. Thank you.

13 Put your number down on the jury bench, and head on down to  
14 the jury assembly room.

15 MS. MOORE: Again, I apologize.

16 THE COURT: All right. Waiting for the new math.

17 THE BAILIFF: I am preparing it.

18 THE COURT: Hardest job in the courtroom, numbers every  
19 where, people moving around, in the meantime, stand up, turn around,  
20 stretch, do the Hokey Pokey, down-ward dog, low cobra.

21 Folks, when I call you, everyone have your shoes on and all  
22 kind of ready to go. You laugh, people are -- when I tell them to  
23 move, they say, "I don't have my shoes on."

24 I am going to start calling folks and asking you to assume a  
25 spot in our jury box, all right.

1           So we will start with juror number 16, may I please have you  
2           come and sit in seat number 1. That is you, my friend. You will be  
3           right over here, seat number 1.

4           Juror number 23, can I please have you in seat number 3.

5           Juror number 27, have you in seat number 4, please.

6           Juror number 32, seat number 7.

7           Juror number 38, seat number 8.

8           Juror number 46, seat number 10.

9           Juror number 47, seat number 11.

10          Juror number 48, seat number 12.

11          Juror number 50, seat 13.

12          Juror number 52, seat 14.

13          Whenever you are ready, Mr. Sheridan.

14          MR. SHERIDAN: All right. Plaintiffs would like to thank  
15          and excuse juror number 9.

16          THE COURT: Thank you, so much, juror number 9, for all of  
17          your time and attention. You can just put your placard down and head  
18          on back down to the jury assembly room.

19          May we please have juror number 55 in seat number 9 -- I am  
20          sorry, yes, seat number 9.

21          Whenever you are ready, Ms. Moore, are you handling it?

22          MS. MOORE: Yes. Thank you, Your Honor.

23          The defense would like to thank and excuse juror number 6.

24          THE COURT: Juror number 6, thank you for all of your  
25          thoughtful attention. We will have you back down to the jury assembly

1 room. Thank you very much.

2 Juror number 57, please, I will have you assume that seat.

3 MR. SHERIDAN: Plaintiffs would like to thank and excuse  
4 juror number 55.

5 THE COURT: Thank you, juror number 55. Please leave your  
6 cards there. Thank you.

7 I will have juror number 61 please come and assume that  
8 seat.

9 MS. MOORE: Your Honor, the defense would like to thank and  
10 excuse juror number 2.

11 THE COURT: Thank you for your time and attention, juror  
12 number 2.

13 We will have juror number 63 in seat number 2.

14 MR. SHERIDAN: Could I just have the jurors all hold up your  
15 cards for a second, make sure that I have everybody right.

16 All right.

17 Your Honor, is the peremptory only exercised to the persons  
18 in the box?

19 THE COURT: Yes.

20 MR. SHERIDAN: Then I need a moment, Your Honor.

21 THE COURT: All right.

22 MR. SHERIDAN: May I have you hold them up again, please.  
23 Plaintiffs would like to thank and excuse juror number 32.

24 THE COURT: Juror number 32, thank you so much for your time  
25 and attention. We will have you head back down to the jury assembly

1 room.

2 And can I please have juror number 65, please, in seat  
3 number 7.

4 MS. MOORE: I am sorry, Your Honor, the defense would like  
5 to thank and excuse juror number 52.

6 THE COURT: Juror number 52 thank you so much for your time.  
7 We will have you head back down to the jury assembly room.

8 Please may I have juror number 67 in seat number 14.

9 MR. SHERIDAN: Plaintiffs would like to thank and excuse  
10 juror number 48.

11 THE COURT: Thank you for all of your time, juror number 48.  
12 I am sure that your employer will be happy. All right.

13 Juror number 71, please.

14 MS. MOORE: Your Honor, the defense would like to thank and  
15 excuse juror number 71.

16 THE COURT: Juror number 71, thank you so much. That was the  
17 world's quickest dance, right?

18 Juror number 72, please.

19 MR. SHERIDAN: Again I apologize, hold up your cards again  
20 one more time.

21 May I have a moment to confer?

22 THE COURT: Sure.

23 MR. SHERIDAN: Sir, I would like, what is your number,  
24 again? Juror number -- plaintiffs would like to thank and excuse juror  
25 number 27.

1 THE COURT: Juror number 27, thank you so much for hanging  
2 with us for a couple days. Good luck to you. We will have you first  
3 floor on the jury assembly room. Thank you very much.

4 We will now please seat juror number 75 in seat number four.

5 MS. MOORE: Your Honor, the defense would like to thank and  
6 excuse juror number 23.

7 THE COURT: Thank you.

8 Juror number 23, thank you so much for your service.

9 Juror number 79.

10 Folks, we have our jury panel.

11 For everyone else, everyone actually, thank you so much for  
12 your service. You guys have been terrific. We really appreciate it.

13 I hope that you enjoyed your limited time here.

14 Maybe there is something interesting downstairs awaiting.

15 We will see you again, hopefully. Take care. Leave your  
16 cards right on the chair, please. Head back on down to the jury  
17 assembly room.

18 (Remaining jurors left the courtroom.)

19 THE COURT: Terrific, congratulations. Lucky ducks. Lucky,  
20 I mean it.

21 Just because the experience would be so rewarding I know it,  
22 any way I will have my clerk now have you stand and take your oath.

23 (Clerk swore in the jurors to try the case.)

24 THE COURT: Terrific. It is perfect timing. We will have  
25 you folks retire to the jury room.

1 Now you don't have to go back downstairs for the breaks. Go  
2 right to the jury room. We will have you come back and when you return  
3 you will be moving straight in.

4 The court will have preliminary instructions for, just a few  
5 that I haven't given yet that I will -- we will move into the opening  
6 statements.

7 Have a great 15 minute break.

8 As I will tell you a million times, please don't discuss the  
9 case amongst yourselves or any of the issues that have been discussed  
10 in this case, don't do any outside research on your own. Don't engage  
11 in any social media communication about the case or the issues .

12 A JUROR: Your Honor, may we go down to the jury assembly  
13 room to get our lunch from the fridge?

14 THE COURT: Sure.

15 We typically don't let the jurors leave the jury room for  
16 shorter breaks. This is your one opportunity for the short break to go  
17 downstairs.

18 A JUROR: I can wait until lunch.

19 THE COURT: You don't have to. Typically, for the shorter  
20 breaks that you don't need to. Have a great break everyone.

21 Leave your cards right on the chairs.

22 Thank you so much.

23 (Members of the jury left the courtroom.)

24 THE COURT: So, you have the five documents that you still  
25 would like a ruling on, it sounds like.



1 MS. MOORE: Yes, Your Honor, please.

2 THE COURT: Mr. Sheridan --

3 MR. SHERIDAN: I have to open them up.

4 THE COURT: Why don't we do this, I have a few more minutes,  
5 316, 327, 350 and 353, actually four, the first one that you stipulated  
6 to because it was your exhibit.

7 MR. SHERIDAN: Did we talk about 316 -- we talked about it.

8 THE COURT: You folks have talked about it and I will look  
9 at it, and deal with it. They are still pending, the rest of them,  
10 327, 350, 353.

11 Anything else to put on the record before we take a break?

12 MS. MOORE: May I run to the bathroom.

13 THE COURT: Of course, I am going to give you a full 15  
14 minutes.

15 THE CLERK: Should we mention number 64, no show for the  
16 record?

17 THE COURT: Yes, juror number 64 did not appear for today.  
18 She or he is excused by default.

19 MR. SHERIDAN: That was easy.

20 (Court was recessed. )

21

22 (Open court.)

23 THE BAILIFF: All please rise.

24 THE COURT: All right. Be seated, everyone.

25 So, Mr. Sheridan, I have looked at all of the exhibits,

1 Exhibits 316, 327, 350 and 353. Please feel free to put your objection  
2 to them on the record.

3 MR. SHERIDAN: Sure, thank you, Your Honor.

4 The ones that are identified by the defendant are about the  
5 only ones that we are objecting to on ER 901 grounds because we really  
6 do have a beef about whether or not these are documents that really  
7 were created in the usual course of business at about the time that  
8 they say that they were.

9 THE COURT: E-mail and two company policies.

10 MR. SHERIDAN: They aren't there four documents.

11 THE COURT: Four documents, Exhibit 316 is the policy.  
12 Exhibit 327 appears to be, as does Exhibits 350 and 353 is an e-mail  
13 from Ms. Sanchez?

14 MR. SHERIDAN: The e-mail, we are taking the same position  
15 because of the factual issues.

16 But I think that emails are generally routine products. But  
17 the other ones we actually have authenticity objection, bona fide  
18 authenticity objection.

19 I feel as though that the defense counsel can do what I am  
20 doing, which is say what it is that you want to say, but putting in a  
21 document and showing to the jury which could be unduly prejudicial  
22 effect.

23 THE COURT: Ms. Moore, I assume that all four of those  
24 documents will have some one coming in on the defense side to the  
25 authenticity and the fact that they are regularly kept in the course of

1 business.

2 MS. MOORE: Numerous business --

3 THE COURT: I looked at them. They appear to business  
4 record, which you did can do, which is cross-examine on the production  
5 and authenticity. That would go to the weight. But they are standard  
6 business records exception to the Hearsay Rule, Exhibit Numbers 316,  
7 327, 350 and 353, are here by admitted.

8 ( Exhibit Nos. 316, 237, 350 and 353 received in evidence.)

9  
10 THE COURT: Now that they are admitted they can be used in  
11 the opening.

12 MS. MOORE: Thank you, Your Honor.

13 THE COURT: Anything else before we bring the jurors back  
14 in?

15 MR. SHERIDAN: I need to turn to the equipment and get it  
16 ready.

17 THE COURT: I will mention to them about the side-bar and  
18 breaks and note taking.

19 Ms. Moore, do you have something?

20 MS. MOORE: No, I just wants to show this to Mr. Sheridan.

21 THE COURT: All right.

22 MS. MOORE: I am going to ask that Mr. Sheridan let us know  
23 at noon what the next witnesses will be for tomorrow.

24 MR. SHERIDAN: Fair enough. I meant to give you that at 9  
25 o'clock this morning. Remind me, I will get it right to you.

1 MS. MOORE: Just so that you know, Rhonda Howe, she has  
2 relapsed. I don't think that Ms. Howe will be available this week.  
3 She has to go back to the ER.

4 MR. SHERIDAN: I am glad that you have a liberal view of the  
5 business records, because she was one of my people to get stuff with.  
6 And the first witness we are calling in is Sumitani is basically  
7 standing by to get documents in for the business records.

8 THE COURT: I assume that you have no objection to that;  
9 depends upon what they are.

10 MR. SHERIDAN: City auditors records that are objected to on  
11 the hearsay grounds. I have to lay the business records foundation.

12 THE COURT: Sure.

13 I don't know who people are. I know that you are folks are  
14 highly skilled professionals, and will be able to do your very best  
15 efforts to get the documents until accordance to the rules.

16 It sounds like there may be some accommodation for Ms. Howe,  
17 who is ill.

18 MS. MOORE: Yes, Your Honor.

19 Thank you so much.

20 THE COURT: Yes.

21 All right. Let's get our jurors back.

22 MR. SHERIDAN: Judge, do we go past 12 o'clock to be done?

23 MS. MOORE: I thought that yours is 45 minutes?

24 MR. SHERIDAN: 45 minutes.

25 THE COURT: That is a long time for an opening.

1 MR. SHERIDAN: I usually am done in 45 minutes.

2 THE COURT: We won't make them sit through two openings and  
3 go that far past lunch. I would, but I get in trouble doing that.

4 MS. MOORE: So I know that mine is an hour to an hour and a  
5 five minutes.

6 THE COURT: That is long.

7 MS. MOORE: I know.

8 THE COURT: That is really long. I am not telling you folks  
9 how to try your cases, but this case is going to be finished when we  
10 said that it would be finished.

11 MS. MOORE: I understand.

12 THE COURT: All right. Fair enough.

13 THE BAILIFF: Ready for the jurors, Your Honor?

14 THE COURT: Yes, please.

15 THE BAILIFF: All please rise for the jurors.

16 (Members of the jury enters the courtroom.)

17 THE COURT: Everyone.

18 welcome back.

19 I am going to give you folks just a brief overview of what  
20 is going to happen next, also some preliminary instructions that I  
21 didn't get to deliver to you yesterday. Then we will move right into  
22 Mr. Sheridan's opening statements.

23 So, as you know I did talk about this earlier. It is your  
24 duty as a jury to decide the facts in this case, based upon the  
25 evidence that is going to be presented to you during the trial.

1 Evidence is a legal term and it includes such things as  
2 testimony of the witnesses, documents or other physical objects.

3 One of my jobs as a judge is to decide whether or not  
4 evidence should be admitted during this trial.

5 What that means is I have to decide whether or not you will  
6 be able to consider evidence offered by the parties. For example, if a  
7 party offers a photograph as an exhibit, I will decide whether it is  
8 admissible. Don't be concerned about the reasons for my rulings. You  
9 must not consider or discuss any evidence that I do not admit or that I  
10 tell you to disregard.

11 The evidence in this case may include testimony of  
12 witnesses, or actual physical objects, such as papers, photographs, or  
13 other exhibits. Any exhibits that are admitted into evidence will go  
14 with you to the jury room, when you begin your deliberations.

15 When witnesses testify, please listen very carefully.

16 You will need to remember testimony during your  
17 deliberations because testimony will rarely, if ever, be repeated for  
18 you.

19 The lawyers' remarks, their statements, their arguments are  
20 intended to help you understand the evidence and apply the law.

21 However, the lawyers' statements -- just the ones that you  
22 are about to hear in the openings -- are not evidence or the law.

23 The evidence is the testimony and the exhibits. The law  
24 will be contained in my jury instructions. You must disregard anything  
25 that the lawyers say that is at odds with the evidence or the law in my

1 instructions.

2 Our State constitution prohibits a trial judge from making a  
3 comment on the evidence. For example, it would be improper for me to  
4 express my personal opinion about the value of a particular witness'  
5 testimony.

6 I will not intentionally do so. But if it appears to you  
7 that I have indicated my personal opinion concerning any evidence, you  
8 must disregard that opinion entirely.

9 You will hear objections made by the lawyers during trial.  
10 Each party has the right to object to questions asked by another lawyer  
11 and may have a duty to do so.

12 These objections should not influence you. Do not make any  
13 assumptions or draw any conclusions based on a lawyer's objections.

14 We talked about the burden of proof before, so I won't go  
15 over it too much again. The burden of proof is the preponderance of  
16 the evidence and that means that you must be persuaded considering all  
17 of the evidence in the case that a proposition is more probably true  
18 than not true.

19 Now, one of the things that I want to talk to you about is  
20 that you may hear or on occasion see us take something up at the  
21 side-bar. That is just a way of keeping things that are not resolved  
22 yet out of the jury's listening so that you don't hear things that you  
23 shouldn't. Don't be concerned at all with matters that occur at the  
24 side-bar.

25 Sometimes what we will have to do, if there are bigger

1 issues, that will take more time and involve more legal arguments by  
2 the attorneys, we may excuse you back to the jury room.

3 I want to let you know that I consider your time to be more  
4 important than the parties' time, more important than my lower bench's  
5 time, more important than the witnesses' time and more important than  
6 my time.

7 I will do everything within my power to make sure that when  
8 you are here from 9 o'clock to 4 o'clock -- perhaps 4:30 on some days  
9 if we are right in the middle of the witness, I may let them go a  
10 little longer -- I will make sure that I make sure that every moment of  
11 your time is used very, very well.

12 Sometimes it is a good use of our time to excuse the jury,  
13 so we can resolve things between us. Then have you come back in and  
14 the issue would be resolved.

15 I will try to keep your time in the jury room other than, of  
16 course, regular breaks and lunches, to an minimum, but that might  
17 happen.

18 Similarly, there may be some times where I might tell you,  
19 mostly towards the end of the trial, where we are working on the jury  
20 instructions, maybe you will come in an hour late or an hour early,  
21 giving us times to work on things. I will let you know that any time  
22 that I excuse you folks to the jury room we are using that time well.  
23 we are not wasting your time. I will not allow that to happen.

24 So one of the things that is also important you will get a  
25 note pads. Those pads are used by you to take notes. But you don't



1 have to take notes. I am not ordering you to take notes. I am not  
2 telling you that you have to take notes. It is totally up to you.

3 Your juror number would be on the front page of your note  
4 pad. You have to take notes if you choose to take notes on this pad  
5 only and not on any other paper. You must not take your note pad from  
6 the courtroom or the jury room for any reason.

7 When we recess during the trial, please place your notebook  
8 on your chair. At the end of the day, the note pads must be left on  
9 your chair.

10 While you are away from the courtroom or the jury room no  
11 one else will read your notes. You must not discuss your notes with  
12 any one or show your notes to any one until you begin deliberating on  
13 your verdict. This includes other jurors.

14 During deliberation you may discuss your notes with the  
15 other jurors or show your notes to them. You are not to assume that  
16 your notes are necessarily more accurate than your memory. I am  
17 allowing you to take notes to assist you in remembering clearly, but  
18 not to substitute for your memory.

19 You are also not to assume that your notes are more accurate  
20 than the memories or the notes of the other jurors.

21 After you have reached a verdict your notes will be  
22 collected and destroyed by the bailiff. No one will be allowed to read  
23 them.

24 You will be allowed to propose written questions to the  
25 witnesses after the lawyers have completed their questioning.

1           You may ask questions in order to clarify the testimony, but  
2 you are not to express any opinion about the testimony, or argue with a  
3 witness.

4           If you ask any questions, remember that your role is that of  
5 a neutral fact finder not an advocate.

6           Before I excuse each witness I will offer you the  
7 opportunity to write out a question on a form provided by the court.  
8 Do not sign the question. I will review the question with the  
9 attorneys to determine if it is legally proper.

10          Counsel, I should point out that the side-bar at that  
11 purpose I will only have one person, so that is how we do it.

12          MS. MOORE: That is fine.

13          MR. SHERIDAN: That is fine.

14          THE COURT: There are questions that I may not ask or will  
15 not ask in the wording submitted by the juror. Don't be surprised if  
16 your question doesn't get asked. There may be reasons why I don't ask  
17 that question. Don't be surprised if I slightly modify your question,  
18 if I don't ask a question or rephrase it.

19          Don't attempt to speculate as to the reasons and do not  
20 discuss this circumstance with the other jurors.

21          By giving you the opportunity to propose questions, I am not  
22 requesting or suggesting that you do so.

23          It will often be the case that a lawyer has not asked a  
24 question, because it is legally objectionable or because a later  
25 witness may be addressing that issue.

1           Throughout the trial you must come and go directly from the  
2 jury room. Do not remain in the hall or the courtroom as witnesses and  
3 parties may not recognize you as a juror. You may accidentally  
4 overhear some discussion about this case.

5           I have instructed the lawyers, the parties -- there are a  
6 lot of parties in this case. I have instructed all of them and the  
7 witnesses not to speak to you during the trial. It certainly isn't a  
8 way to be rude to you at all. It is just that the trial has to be  
9 based on the evidence and the complete appearance of fairness.

10           Please, don't expect folks to talk to you in the hallway, or  
11 if they see you out having lunch to give you a big hi. That is not  
12 appropriate. Just don't expect that.

13           So, it is very essential to a fair trial that everything  
14 that you learn about in this case comes to you in this courtroom and  
15 only in this courtroom.

16           You must not allow yourself to be exposed to any outside  
17 information about this case. Do not permit any one to discuss or  
18 comment about it in your presence. You must keep your mind free of  
19 outside influences so that your decision will be based entirely on the  
20 evidence presented during the trial and on my instructions to you about  
21 the law.

22           Until you are dismissed at the end of the trial, you must  
23 avoid outside sources, such as newspapers, magazines, online, logs, the  
24 internet, radio or television broadcast, which may discuss either this  
25 case, though probably not, or issues involved in this trial.

1           During the trial do not try to determine on your own what  
2           the law is, do not seek out any evidence on your own.

3           Do not consult any dictionaries or any other research  
4           materials. Do not conduct any research including, of course, on the  
5           internet about any information, issue or people involved in this case.  
6           So, as jurors, you are officers of this court.

7           As such, you must not let your emotions overcome your  
8           rational thought process. You must reach your decision based on the  
9           facts proved to you and on the law given to you.

10          At this point we are going to have the attorneys begin. We  
11          will have Mr. Sheridan do his opening statement. After that we will go  
12          to lunch.

13          Then when you return the defense will present the opening  
14          statements and then it will be the plaintiffs' turn to start presenting  
15          evidence and testimony as part of their case.

16          As you know, any time that there is a witness here that  
17          either party calls, the other party, of course, gets the opportunity to  
18          cross-examine that witness.

19          Once all of the cross examination and redirect examination  
20          by the lawyers is done, then you folks will have an opportunity, if you  
21          would like to take it, to write down your written questions for the  
22          witnesses.

23          All right.

24          With that, please give your full attention to Mr. Sheridan.

25          MR. SHERIDAN: Thank you, Your Honor.

1 Good morning.

2 well, we have a lot to go through, but I am not going to  
3 take that long. But I did want to say that the jury questions that you  
4 have been just told about, they tend to be the best questions asked in  
5 the trial, better than the lawyer questions. If you have got one,  
6 don't hesitate to ask.

7 This case is Johnson versus the City of Seattle. It involves  
8 seven plaintiffs. It is a discrimination case brought under the  
9 Washington Law Against Discrimination, which is the State law not a  
10 federal law.

11 We will prove that the City is liable for age and/or race  
12 discrimination against these plaintiffs, retaliation against five of  
13 the plaintiffs, who signed a petition alleging that the City's  
14 practices were discriminatory.

15 The adverse action in the case is that SPU, Seattle Public  
16 Utilities, terminated Louisa Johnson and Toni Williamson. They  
17 suspended Carmella Davis-Raines and Lynda Jones. And threatened  
18 causing them to retire and quit Elaine Seay-Davis, Pauline Robinson and  
19 Cheryl Muskelly were put on administrative leave.

20 No one stood up to stop them. Before making payment  
21 arrangements for years, they were basically sent -- disciplined for  
22 making payment arrangements that was within the policy. There was no  
23 misconduct. There were no allegations of fraud. Remember that there  
24 were no allegations of fraud.

25 Supervisors bought in in this case, and said, yes, you are  
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1 not allowed to make payment arrangements on your own account or the  
2 account of friends and family, except for Beverly Flowers, who you will  
3 hear from who was a supervisor who interviewed and said "that wasn't  
4 the policy for me."

5 We will show you other examples of real misconduct but by  
6 other persons, not the plaintiffs.

7 We are seeking damages for lost wages called front and back  
8 pay, that is the lost wages to the trial and the lost wages into the  
9 future and emotional harm, non-medical damages for stress, fear and  
10 humiliation. The plaintiffs are all elder workers and they are persons  
11 of color between the ages 41 and 62 at the time of the discrimination.

12 We have gone through those names with you already. They  
13 have been long-term employees.

14 They are some of the most senior -- what is called UAR,  
15 utility account representatives at SPU, more than 10 years all of them,  
16 some much more than that.

17 They -- before this was called SPU it was called the Solid  
18 Waste Organization. Some of them worked there as customer service  
19 representatives doing essentially the same thing.

20 They work in what is called the call center. Picture this,  
21 a call center occupies the entire 31st floor of the Municipal Building.  
22 Picture a room with more than a hundred cubicles and each cubicle has a  
23 desk and on each desk there is a -- two screens, a headset and a  
24 telephone.

25 They spend their entire day answering customers' requests.

1 That is what they do for a living. That is what they have been doing  
2 all these years. So it is basically a customer service job. The pace  
3 of work is staggering.

4 There are seven supervisors present at the call center. The  
5 supervisors keep the pace moving, 20 seconds or less between phone  
6 calls. If a phone call comes in, if you are on too long, the  
7 supervisor may tell you, "I have to have you move along and get to the  
8 next one."

9 20 seconds you have. You have to type up what the notes are  
10 and do whatever you have to do the next call can come in.

11 There is a supervisor who has the ability to control,  
12 basically, funnel certain types of calls to you.

13 So they can basically say that "today you are the person who  
14 is going to handle garbage and all of the calls coming to you for  
15 garbage." It may be less work. It may be a lot more work. But it it  
16 is at the discretion of the supervisors. They get between 1900 and  
17 2500 calls per day.

18 So that the composition -- SPU has its own composition as  
19 far as what is the average age of people and what is the racial  
20 make-up. But at the call center there is a concentration of older  
21 workers and persons of color.

22 The training policies, not so much. It is mostly on-the-job  
23 and word of mouth. You heard during voir dire questions about are  
24 there written policies, did you follow them. Ou will find that there  
25 were no policies. The plot thickens. I will tell you about it in a

1 minute.

2 Mostly the UARs will create their own little books, over the  
3 years, as I said, some of these people have been here years and years.  
4 They have their own little books where they do what they did over and  
5 over again.

6 There came a time when they were told that they had to get  
7 rid of them. You won't see those books because they have all been  
8 destroyed on that entire floor as far as I know.

9 One guideline, here is the purpose of the call center:  
10 People call because they want things done. Your job is to negotiate  
11 with the customer, and it has been for 20 years, so that they won't  
12 lose their service. You want to avoid cancellations.

13 People call with all sorts of different needs. They are  
14 customers are people who have water, sewer, storm drainage, sewer  
15 services with the City, because they wound up doing customer service  
16 for Seattle City Light electricity too.

17 So, here is the rule: Customers are any one with an  
18 account, including employees, friends, families and it has been okay  
19 for 20 years to work on those accounts, 20 years.

20 The rule is don't do anything on your own account, you would  
21 not do for a customer. Obviously, you can't give yourself a benefit  
22 that you wouldn't be able to give a customer if they called on the  
23 phone. If somebody wants a payment arrangement, meaning that they want  
24 to spread out the payment over three payments, if you can do it for a  
25 customer, under their policies, you could do it for yourself, your



1 friends and your family.

2 This discrimination and retaliation case is about  
3 allegations by the City that the plaintiffs made improper adjustments  
4 to their own accounts and to the accounts of their friends and family.  
5 Making these adjustments has been the rule and the practice for more  
6 than 10 years.

7 So what an account adjustment is, you make a payment  
8 arrangement so that the person can pay their bill in the smaller  
9 payments. Customers are billed every other month, customers can call,  
10 cancel and restart a payment arrangement. Customers can ask for  
11 penalties to be waived. They are routinely granted. There is no need  
12 to go to the supervisor.

13 If I have a \$10 penalty because I have a late payment I call  
14 these guys, I say, "can you guys forgive the penalty?"

15 Their job is to say yes and forgive it.

16 If they did it for a person -- they also have a window that  
17 you can come up and pay your bill. It was a routine practice for  
18 people, including managers, to come up and say I have a payment  
19 arrangement, sure you can. Can I have a penalty waived, sure you can.

20 As long as you don't do something for yourself, friends or  
21 family that you wouldn't do for any other customer, it has never been a  
22 problem.

23 So, why would SPU management discipline innocent employees?

24 You will hear evidence that SPU had not created internal  
25 controls and that the State Auditor was complaining about it since

1 about 2009 or before, saying "SPU, you need to have internal controls.  
2 You need to show us policies that say that you have ways of managing  
3 the people who handle the money."

4 In 2010, two supervisors were caught stealing and they were  
5 fired. They actually engaged in fraud and theft. They really did.

6 Later, because five of the seven plaintiffs signed a  
7 petition in 2012, opposing the policy that you will hear about in a  
8 minute, they also received special treatment and discipline. We will  
9 prove that race and age was a substantial factor in those decisions.

10 Now, there are two timelines. The first timeline is the  
11 timeline of the plaintiffs. They are just doing their job. Back in  
12 2000 or 1999 or 1995, they would handle thousands of calls a day -- I  
13 mean, a year. Of those calls, when they come in, let's say one or two,  
14 let's say your sister calls and says "hey, can I have a payment  
15 arrangement? Sure, you can," because there is no policy that says that  
16 you can't. It has been the practice. It has always been.

17 So, until 2012 there was no issue. What you are going to  
18 hear is that they got disciplined in 2013 for things that happened 10  
19 years earlier. 10 years earlier. We will tell you why in a minute.

20 The second timeline begins with the State Auditors'  
21 examination of SPU failure to have in place internal systems.

22 So that the City is a municipality. They are the defendant.  
23 And as the judge said earlier, they are sort of -- they are the person  
24 on the other side of the case.

25 Their administration of the City is overseen by the mayor  
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1 and the City Council.

2 City government is divided into departments. We are focusd  
3 on SPU, Seattle Public Utilities and Seattle City Light. The managers  
4 that are relevant to this case, Ray Hoffman, he was the SPU director.  
5 He is the one who imposed all of the discipline. He retired right  
6 after this case was set for trial in August.

7 Kelly Enright, customer service director at Seattle City  
8 Light, we will be calling her for comparison.

9 Guilemette Regan is the person who did all of the  
10 investigations that we are talking about.

11 Debra Russell, she is the director of the call center. She  
12 is the one who, in a typical situation, if a person in the call center  
13 did something wrong, she would typically be the one to administer  
14 discipline or recommended it up the chain of command.

15 what you will find in this particular case she is cut out of  
16 the loop. All discipline against the plaintiffs has nothing to do with  
17 her. She is out of the loop. It involves Ms. Regan, Mr. Hoffman and  
18 Ms. Sanchez. The person who usually would be the person who impose  
19 discipline is cut out of the loop in this case.

20 The other one is Charlene MacMillan-Davis, she is the labor  
21 relations person. You will see e-mails between her and the other  
22 people -- "well, shouldn't we have a policy. Shouldn't we put this in  
23 the policy -- shouldn't we put in the UAW expectations manual for  
24 2012?"

25 She is like, "let's not put it in yet. Let's not put the  
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1 policy down." You will find that there is no policy until March 2012.  
2 That is because they create a policy to send to the auditor. We have a  
3 policy, look, that of course is not the problem. That is the  
4 prerogative. There is no procedure implementing it for another year.  
5 I will tell you about that in a minute.

6 So Ray Hoffman, a Caucasian man, from 2001 to 2009 he was  
7 the SPU Director of Corporate Policy and Performance. He oversaw the  
8 utilities external government relations legislative affairs, risk  
9 management. It was his job to keep the company out of trouble.

10 One of the things that he did was get involved in  
11 contracting. So he, basically, was involved in the negotiations of the  
12 contract. In January 2009 he is announced by the mayor as being  
13 appointed acting director of SPU.

14 He says that he is at a meeting in 2011 -- and this is  
15 revealing. Of course these are smart people, so they are not going to  
16 reveal much.

17 He says, "it appears many of the longest term employees" --  
18 talking now about the UARs the plaintiffs -- he is saying this to his  
19 peers.

20 "It appears that the longest term employees do not have the  
21 enthusiasm and commitment necessary to provide desired response to the  
22 customers."

23 He is complaining about the older workers. Hoffman knows  
24 the call center has mostly persons of color.

25 What you are going to hear is all of this discipline that is  
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1 going to come about, it is focused on the call center.

2 only the SPU call center, the equivalent people that are  
3 Seattle City Light employees aren't disciplined. It is focused on the  
4 persons in the call center, which is mostly persons of color and mostly  
5 older persons.

6 Hoffman says that he knows it. He admits that he knows it.  
7 He said, "I knew that the composition of the contacted center employees  
8 had more people of color than their distribution in the City population  
9 than in some other divisions. When he agrees to focus his  
10 investigation on the call center, that's where we will show you that he  
11 is a person who is engaged in discrimination.

12 Guilemette Regan is a Caucasian woman. She joined SPU in  
13 2000. She is the director of Risk and Quality Assurance.

14 She then winds up stepping into the shoes of Hoffman, doing  
15 the same thing, which is her job is to keep the company out of trouble.

16 She makes a statement that she believes that this is -- she  
17 is talking to the City Auditors. You will hear about that in a  
18 second.

19 She says that she believes that there are groups of  
20 clusters -- again, this is the people who are in the call center. She  
21 says, clustered by race, African American, Filipino, white American who  
22 exchange favors for each other.

23 She says -- this off the top of her head. She is not  
24 presenting evidence that this is true. She is saying this because she  
25 doesn't know that it is going to get written down. That is how she

1 views the person in the call center clusters of people by race.

2 At her deposition, she is sitting across from these people,  
3 these plaintiffs, she says under oath she really can't tell what color  
4 they are. But when she was with the City Auditor she sure knew who the  
5 persons of color were.

6 In 2009 the State Auditor, the State Auditor -- remember,  
7 this there is a City Auditor and a State Auditor. This is the State  
8 Auditor that is auditing the City of Seattle.

9 They issue of report findings that SPU has paid hundreds of  
10 thousands of dollars to a vendor long after the contract expired. It  
11 turned out that this is the same area of responsibility that  
12 Mr. Hoffman had before he was appointed to the higher position.

13 So, in 2009 he also -- they also say, "wake up, SPU, we have  
14 identified that you have key control problems. We have found no  
15 supervisory review of account adjustments in place."

16 They have given them notice. "You have a weakness in  
17 overseeing your money and how people handle it." That is in 2009.

18 So then in 2010, in October a fellow named Joe Phan, a  
19 supervisor not working in a call center or some place else. He  
20 actually steals a thousand bucks. They catch him by accident.

21 By the end of the year, the supervisor named Sharon Howard  
22 also stole money. They both get fired in 2010, but this exposes the  
23 weakness, the lack of internal control. There is a lot of media  
24 coverage through this.

25 It is important that you understand that all of this is not

1 happening in a little closet. It is happening in a fish bowl. The  
2 media is on this, lack of internal controls, the State Auditor is, the  
3 City Auditor and the City Council. There is a lot of focus and  
4 pressure on SPU management to come up with a solution.

5 So this is what happens. In 2011 they asked the City  
6 Auditor to help them in a fraud investigation. Keep that in mind, a  
7 fraud investigation, meaning we are looking for people who are  
8 stealing.

9 In March of 2011, Hoffman signs the CS 106 policy, which is  
10 the policy that they never had before, which says that "you shall not  
11 work on your own account, account of friends or family." It is put in  
12 writing, but it is a policy without a procedure. It is not  
13 distributed.

14 The defense is going to say, "we had it up on his website.  
15 You could have accessed it." But you will find that there was no  
16 training on it, no policy announcement. It doesn't really matter,  
17 because most of the things that the plaintiffs allegedly did happened  
18 five or 10 years earlier, long before the policy.

19 So, it was sent to the State Auditor as proof "now we have a  
20 policy," all right.

21 SPU wanted the City Auditor to be an independent verifier of  
22 Joe Phan's unauthorized transactions. Basically, now, the SPU says  
23 come on City Auditor "help us figure out the fraud problem."

24 There is the March thing, but there is no roll out.

25 There is also something called UAR expectations. Picture  
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1 this, if you work as a UAR in the call center, periodically, maybe once  
2 every 10 years or so, you get a sort of booklet. The booklet says all  
3 of the things that you are supposed to do: Don't come in late, don't  
4 use the internet. It is the kind that any one of us working a big  
5 organization would see.

6 Well, there is a March UAR expectations that has a signature  
7 page that it turns out that the defense claims that Toni Williamson  
8 signed.

9 We will just ask you to wait until this is all over to make  
10 a decision for yourself. But, in fact, there is no 2011 expectations  
11 issued until August of 2011.

12 So, this will be kind of a fun side issue as to is it her  
13 signature or is it not?

14 In April 2011 a Caucasian manager working under Mr. Hoffman,  
15 he is found to have improperly treated women subordinates to such a  
16 degree that Mr. Hoffman says "I wanted him out. I wanted him fired."

17 Hoffman says, "well, I am going to let him resign. I am  
18 going to give him agreement. I am even going to give him a letter of  
19 reference." That is how he treats a Caucasian comparator, who nobody  
20 disagrees that he did something wrong, terribly wrong.

21 Now, there is no progress now on internal controls. By May  
22 2011 the City then has to hire this person. They are telling the third  
23 parties, State and the City Council, "we will bring in an outside  
24 forensic examiner, because we don't really have the qualifications to  
25 look into this stuff."



1           So they hire Lynda Saunders in May 2011, and then within a  
2 month they fire saunders and they tell her to shred her documents. She  
3 starts working on the case and they start -- they tell her to get out,  
4 we are done with you, they don't replace her, after having said that  
5 they needed an outside investigator, Guilemette Regan becomes the  
6 investigator.

7           Now, remember, now -- remember she is reporting that the  
8 chain of the Hoffman. She is going to decide who has done what wrong  
9 and make recommendations.

10           There is no outside forensic investigator, but there is  
11 still at this time seattle auditors have, basically, they are still in  
12 the loop. There is an Ethics Department where they also do an  
13 investigation.

14           They say to her, they say, "Guilemette Regan, we don't want  
15 ethics messing with this. Let me get my investigation done. Let me  
16 get my recommendations for discipline done. Then we will let ethics  
17 in."

18           Ethics doesn't do any concurrent investigation. There is no  
19 oversight and then what happens is that they decide that the Seattle  
20 auditor ought to be out of the picture, too.

21           So all of this big investigation, it is basically carried on  
22 internally by Guilemette Regan; who is writing the reports for who did  
23 what wrong, thee decides that these seven plaintiffs, five of them  
24 having signed a petition. She decides that, yes, they entered -- they  
25 benefited themselves and what you are going to hear and you will hear

1 Pauline Robinson, one of the earlier witness of the plaintiffs, to find  
2 that she did something wrong. They went back to 2001 and 2002 and  
3 said, "well, you know, you forgave a penalty on your daughter's account  
4 for \$10" or something like that. That is what these people were fired  
5 for, things going back to that far, disciplined but things going back  
6 that far.

7 So 1999, expectations, this is one of the things that you  
8 get to evaluate the factually. You will see e-mails from Guilemette  
9 Regan to the auditors back and forth and notes of the auditors saying  
10 we can't find a policy there is no policy. There is no policy saying  
11 that you can't work on friends' and families' accounts. We will follow  
12 the ethics code, which generally says "don't do anything to benefit  
13 yourself."

14 Then they find a policy, back in 1999, there was a UAW, a  
15 10-page or 8-page or 6-page document. There is one line that says, "go  
16 to your supervisor if you want to do something on your own account" in  
17 1999.

18 Guess what? After that there is a UAR policy that is more  
19 updated that doesn't contain that language, the City hangs its hat on  
20 that as the basis for prohibiting people from -- in 2011, 2012, 2013  
21 they are looking now to 1999 some obscure policy that nobody knows  
22 about, that is unsigned, have people signed receipts when they get the  
23 policy. There is not one person signed that. They said that they got  
24 the 1999 policy. We challenge whether it is even authentic. Any way,  
25 it doesn't fit their theory.

1           what you will also -- by July, Toni Williamson, she does  
2 sign a policy in 2010 that does not contain the prohibition that was in  
3 the 1999 policy.

4           So there is -- the only evidence that we have as to whether  
5 or not the UAR expectations document contained a prohibition about  
6 friends, family and yourself. They have to go back to 1999 -- that you  
7 will hear that they ignored the fact that there is a 2009 policy that  
8 doesn't say that. They hung their hat on the prior policy.

9           So, this is what happens. This is the big news.

10           Remember the State Auditor is saying that "you guys don't  
11 have internal controls." The City Auditor is saying the same thing.  
12 The council is asking them questions. The newspapers are talking.  
13 Now, Joe Phan in November of 2011 steals a million. He actually stole  
14 it before, but they didn't catch it until November 2011. But the press  
15 doesn't know, but the City knows that in November. Nobody knows yet.  
16 In 2012, February, Regan tells the City Auditor to stop doing quality  
17 assurance.

18           In March, a month later is when the Phan million dollars  
19 hits the newspapers. SPU needs action. They are getting bad press.  
20 Everybody wants to know "what the heck are you guys doing this kind of  
21 theft is occurring?"

22           In March of 2012 it gets even worse. Glenn Amy, who is one  
23 of the computer guys who works for the City. He uncovers a little  
24 computer glitch. Here is the glitch. These guys are working on the  
25 screens and taking notes. Everything that they do, they have a code,

1 you can look at the screen and tell who made the entry.

2 unless, if you forgive a \$10 fee, for example, you would put  
3 in a zero and there would be a record that you forgave the fee. All of  
4 the clients are totally traceable.

5 But here, if you put in a negative 10, the computer glitch  
6 makes no record of who did it.

7 So according to Mr. Amy -- you will hear him testify -- it  
8 could be millions. People could put in any number that they want.  
9 They can forgive things. They can actually create their own income.

10 The City does nothing about this in terms of accountability.  
11 But what you will hear is that they quietly fixed it. But they also,  
12 then, basically said that the Seattle auditors, you guys are out of the  
13 picture now. We don't want you guys doing quality control any more.  
14 We will do it all ourselves. Guilemette Regan has carte blanche to do  
15 whatever she wants.

16 In March of 2012, the City Auditor had done a report saying  
17 that we think that, you know we are about ready to issue this report  
18 saying that you guys have a lack of controls. They, basically, stopped  
19 before they issue the report, stopped working on it, because more  
20 important things have happened.

21 The City Auditors dropped the ball until 2014. This report  
22 that would have said the City SPU doesn't have any type of  
23 accountability or controls was delayed for two years, shelved. The Amy  
24 problem was fixed over time.

25 But there was no investigation, no questions about who is  
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1 responsible, no attempt to determine was there a theft.

2 Right?

3 That issue is sitting right on top of the issue involving  
4 our clients, which is there is another newspaper article in April.  
5 Regan now is going to do the investigation on her own.

6 Saunders is out, no replacement.

7 Ethics is out.

8 The City Auditor is out. No replacement. Enright does  
9 nothing for SCL. The head of Seattle City Light, she is doesn't punish  
10 her employees. She says "if something happens, we will fix this."  
11 There is counseling. She admits that there is no written policies  
12 either.

13 In July 2012, remember, March 2011 is when CS 106 gets  
14 pushed out. July 2012 is when there is finally a policy. You will see  
15 talking points. These talking points basically say, well, we have a  
16 new policy, guys. It is for the UARs to train them. We have a new  
17 policy. From now on you have to go to the supervisor. If you wanted  
18 access to the accounts of friends, family and friends and yourself, not  
19 until July of 2012.

20 In the fall of 2012 our clients are seeing employees marched  
21 off the floor for alleged fraud, but really all they were doing was  
22 most of them. I mean there really was some fraud, but most of them  
23 were accessing their own accounts or accounts of friends and family  
24 being told what they were doing going back a decade was wrong.

25 So, Ms. Regan writes every investigation. You will get to  
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1 see them. She gets after people going back 10 years in December of  
2 2012, because this is happening. Five of the seven signed a petition  
3 saying CS 106 is unfair. "We think it is discriminatory against  
4 persons of color."

5 Around the same time somebody at SPU decides to take a copy  
6 of CS 106, just a one-page copy, December 2011 and this is in December  
7 2012 and they start handing it out to the employees at their desk  
8 saying, "you sign it."

9 The employees sign it in December of 2012, then they go  
10 missing. Presumably they will be placed in the personnel file, but for  
11 whatever reason SPU starts to think that they don't want that to be  
12 signed in December.

13 We went through a long process and you will hear about that  
14 trying to obtain copies of these signatures in 2012. We got some of  
15 them, but we don't have all of them. Many that you will see. The  
16 people who signed them were Guilemette Regan and her staff in December  
17 of 2012.

18 So there is the petition, which I have already talked about.  
19 In 2013, now, what happens is that in December 2012 all of the  
20 plaintiffs are talked to by Guilemette Regan. She brings them in and  
21 she says, "you know you did this wrong, you did that wrong. No  
22 documents, no nothing." They are just telling them "you did this  
23 wrong. You did this wrong. You are on administrative leave" or  
24 whatever, that is how they hear about it.

25 They have no notice. They have no real opportunity to talk  
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1 about it. They are told that they accessed their own account, several  
2 times over 10 years or whatever, or they accessed friends and family.  
3 Nobody is accused of fraud. No, they are saying, well, if you waived  
4 the penalty that is getting a benefit. That is stealing from us.

5 But under their own policy you will hear, even if the policy  
6 as it exists today, if you go to the supervisor and say "it is okay to  
7 do it. It is okay. It is the same thing that you would do for  
8 everybody else." They were disciplined and fired for it.

9 So they are terminated and all of this, as I said, they go  
10 back 10 years, no fraud.

11 Pauline Robinson is one of the plaintiffs. She retired  
12 because she feared termination. She met with Ms. Regan and she had  
13 transactions -- creation of a payment arrangement on her daughter's  
14 account and another on account belonging to go a friend going back to  
15 2001 and 2002, 2003, 2005. Not accused of fraud. The other plaintiffs  
16 have the same story. This one is a \$10 penalty and getting terminated.

17 who gets off? Supervisors.

18 We will show you comparator evidence, supervisors,  
19 basically, they are the people who bought in. People who did the same  
20 things, if you are a supervisor, there is not a lot -- regardless of  
21 your race, the supervisors are treated more favorably.

22 And there is also people who are like people under 40, who  
23 get one day off for doing other things.

24 Debra Russell, Debra Russell, the boss, she is the one in  
25 charge. She engages in real ethical violations with the contractor,  
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1 giving a benefit to the contractor.

2 She is not caught. She is not African American and not  
3 Asian. She has to pay back over two thousand dollars. She is allowed  
4 to retire without discipline.

5 Then, she testifies -- we have these things called  
6 depositions, where we can talk to somebody under oath. It gets typed  
7 down. She testifies in a deposition.

8 Mr. Hoffman and Guilemette Regan are there listening to her.  
9 After that, she gets a letter saying, "boy, had I known that you did  
10 this, I would have fired you, had you not retired." But that is it, no  
11 discipline.

12 what does the City get out of it?

13 They -- after this happened, with all of this discipline,  
14 these were all big news items, look what the City is doing. They are  
15 punishing the wrong doers.

16 The whole Joe Phan million dollar things that is the way  
17 that the City gets out of it. In fact, they are going after older  
18 workers and persons of color. They are also getting rid of five of the  
19 people, who signed the petition.

20 So, we will present the damages on this as well. We will  
21 show that that is a substantial factor in their adverse actions race  
22 and age. These people lost money and we have an expert coming in to  
23 testify about what their lost wages -- they lost their sense of pride  
24 in themselves. They have lived with stress, fear and humiliation. We  
25 will ask you to put a dollar value on that.



1 Thank you very much.

2 THE COURT: Folks, since we don't have time to do the  
3 opening statements of Ms. Moore in its total, we are going to have you  
4 excused a little early for lunch. We will see you back at 1:20.

5 You will come right up here and to the jury assembly room  
6 here in my courtroom and have a terrific lunch.

7 Of course, as always don't discuss the case amongst with  
8 yourself or with anyone else. Have a great lunch and don't do any  
9 research outside on the recess.

10 Have a great lunch. Please retire to the jury room.

11 THE BAILIFF: Please rise for the jurors.

12 (Members of the jury left the courtroom.)

13 THE COURT: Anything to discuss before we break?

14 MR. SHERIDAN: No.

15 THE COURT: All right.

16 MR. SHERIDAN: I will give Ms. Moore the list for tomorrow.

17 THE COURT: All right. See you back at 1:30. We will have  
18 a great lunch.

19 MS. MOORE: Your Honor, is your courtroom locked?

20 THE COURT: It typically is.

21 MS. MOORE: would it be all right if I stay in here.

22 THE COURT: We can't do that, but you can stay until noon  
23 today and take care of that.

24 Some days we can if there is something really that you need  
25 to work on. We can also look around for other -- this is a high

1 vacation time. My guess is that there are probably jury rooms that  
2 aren't being used.

3 If you guys want me to see that I can get something, I will  
4 see what is available.

5 MS. MOORE: That would be great.

6 THE COURT: Thank you.

7 THE BAILIFF: All please rise. Court is in recess.

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10 (Court was recessed.)

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