

1 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

2 IN AND FOR THE COUNTY OF KING

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4 ALONCITA MONROE,)

5 Plaintiff,)

6 vs.) No. 15-2-11126-4 SEA

7 CITY OF SEATTLE,) MORNING SESSION

8 Defendant.)

9 -----

10 VERBATIM REPORT OF PROCEEDINGS

11 -----

12 Heard before: The Honorable John P. Erlick

13 Date: December 13th, 2016,

14 Time: 9:00 a.m.

15
16 APPEARANCES:

17
18 Jack Sheridan, Attorney at Law, on behalf
19 of the Plaintiff;

20 Joshua Johnson, Sarah Tilstra and Denise
21 Ashbaugh, Attorneys at Law, on behalf of the
22 Defendant.

23
24 Reported and Transcribed by:

25 Michael P. Townsend, Official Court Reporter

1 P R O C E E D I N G S

2 (The following occurred in
3 the absence of the jury:)

4 THE COURT: Good morning. Please be seated. We
5 are on the record in the matter of Aloncita Monroe
6 versus City of Seattle, this is King County Cause No.
7 15-2-11126-4, Seattle. Counsel are present outside
8 the presence of the jury. Good morning. All right.
9 So I received the email with respect to the
10 plaintiff's intent on calling Dr. Vandenbelt. Mr.
11 Sheridan, my understanding is that the plaintiff, at
12 this time, has chosen not to call Dr. Vandenbelt.

13 MR. SHERIDAN: That is true.

14 THE COURT: All right. Mr. Johnson?

15 MR. JOHNSON: I would just say that I think your
16 Honor saw the email, those aren't part of the record,
17 but I prepared a motion last night to address what we
18 thought should be done with Dr. Vandenbelt. Mr.
19 Sheridan sent an email this morning that was,
20 essentially, the proposed order I would have asked
21 for from the Court, so I don't think it is an issue.
22 The brief was filed, it is a matter of record. I
23 have courtesy copies if anyone wants to see.

24 THE COURT: I think we have it via email. If you
25 would like me to read it, I would be happy to.

1 MR. JOHNSON: I think there is no need. I wanted
2 to make a record it was filed and I think the issue
3 is resolved.

4 THE COURT: All right. Thank you, Counsel.

5 MR. JOHNSON: Thank you.

6 THE COURT: Does this address, in any way, the
7 issue of the admissibility of Dr. Vandenberg's
8 report, or is that already in?

9 MR. SHERIDAN: It's already in.

10 MR. JOHNSON: We would not, in any way, object to
11 the admission of the report.

12 THE COURT: Okay. All right. So I worked on the
13 depositions last evening, and my observation is
14 almost all of the designations, to me, appear to be
15 cumulative.

16 MR. SHERIDAN: Plus, everyone has testified by
17 now.

18 THE COURT: Everyone has testified and we have
19 gone over this, so I actually made rulings, but I
20 excluded 90 percent of it on cumulative.

21 MR. SHERIDAN: I think we wanted to at least have
22 you consider one on Mr. Chinn.

23 THE COURT: I did, I ruled on all of these.

24 MR. SHERIDAN: Okay. But we would bring it --

25 THE COURT: Here is how I would propose: So I

1 ruled both substantively and on cumulation. I got to
2 the point where I said, "I have heard this testimony,
3 I have heard it several times, I don't think it
4 benefits the jury now." I think that the Court has
5 -- unfortunately, when these were designated, we
6 hadn't heard the testimony. We have now heard the
7 testimony, I'm reading this and it looks like it is
8 the exact same testimony that we heard. So I'm going
9 to return this and what I'm going to do is, I'm going
10 to ask -- this is all plaintiff's -- well, they are
11 both designations.

12 MR. SHERIDAN: That is true.

13 THE COURT: But plaintiff would have the right to
14 call these witnesses under I guess 30(b)6 or -- and
15 43, assuming that they are managing agents. But what
16 I'm going to do is, I'm going to ask you to request
17 leave of the Court before you read any of this into
18 the record and designate what you want to read in the
19 record and why you want to read it into the record.

20 MR. SHERIDAN: Will do.

21 THE COURT: All right. Why don't I return it at
22 this time, and if you will just share this with Mr.
23 Johnson and Ms. Ashbaugh, please.

24 MR. SHERIDAN: Sure. And your Honor has made
25 changes?

1 THE COURT: I did. "S" means sustained, "O" is
2 overruled.

3 MR. SHERIDAN: So we'll run these through the
4 scanner and give you guys copy.

5 MS. ASHBAUGH: Can we address that, since I
6 actually didn't see what was given to the Court, that
7 you can re-do this?

8 MR. SHERIDAN: Of course.

9 MS. ASHBAUGH: Thank you.

10 MR. SHERIDAN: May I have one moment, your Honor?

11 THE COURT: Certainly.

12 MR. SHERIDAN: Okay. Thanks.

13 THE COURT: So are you giving it to Ms. Ashbaugh
14 first, or --

15 MR. SHERIDAN: I was going to have it scanned
16 first and then send it to Ms. Ashbaugh.

17 THE COURT: All right. Ms. Ashbaugh, does that
18 work for you, or did you want to see it first?

19 MS. ASHBAUGH: I'm fine if they copy it and give
20 it to us. I would like the opportunity, since I
21 haven't seen what was actually given to the Court,
22 that we see it before we address anything.

23 THE COURT: Okay. We actually have the jury
24 here, so they are really prompt this morning. I
25 would love to get started, if we can.

1 MR. SHERIDAN: We are ready.

2 MR. JOHNSON: We are ready, as well.

3 THE COURT: Okay. Let's bring in the jury,
4 please. So Mr. Jensen is our first witness?

5 MR. SHERIDAN: Yes, he is, and he is in the
6 courtroom.

7 THE COURT: Very good.

8 (The following occurred in
9 the presence of the jury:)

10 THE COURT: Good morning. Please be seated.
11 Thank you all for your punctuality. So I finished
12 with the history of the courthouse, but the one thing
13 I didn't mention, Mary reminded me, is the windows.
14 How did we end up with windows? Well, some time, I
15 think, in the mid 1970's, before I was even an
16 attorney, some judge decided that -- he felt that
17 they should cover the windows, and it is unclear as
18 to why. The two reasons that we heard are, one,
19 energy savings, but the other was, is the jurors were
20 getting distracted because they were looking out the
21 windows. So almost all of the windows in all of the
22 floors were covered with metal coverings. And this
23 floor was spared because this was the jail. So they
24 didn't cover it because we had bars instead of metal
25 coverings. In fact, if you look behind you, you will

1 see the bars right over on the windows directly
2 across from us. And that's, as you can see, part of
3 the old jail. It is now work release, so they still
4 have the bars. We don't have any bars, but there has
5 been a movement among the judges to take down that
6 metal covering. And they -- it is an expense, it is
7 money that the County really doesn't have. We would
8 rather increase the juror pay, if we have the money,
9 but we don't have that money, so you are still
10 getting your \$10 a day. But we still have our
11 windows, like I said, we like our windows in this
12 courtroom, it brings some natural light in here.
13 That's how we ended up with windows and very few of
14 the other courtrooms do. Now we are going to turn to
15 matter at hand, that's the case of Monroe versus the
16 City of Seattle. The plaintiff will be calling her
17 next witness at this time. And Mr. Sheridan, if you
18 would like to call plaintiff's next witness.

19 MR. SHERIDAN: Thanks, your Honor. Plaintiff
20 calls Scott Jensen, who is in the courtroom.

21 THE COURT: Thank you, Counsel. Mr. Jensen, if
22 you would please come to the stand. Please raise
23 your right hand to be sworn.

24 (Witness sworn.)

25 THE COURT: Thank you. Please be seated. Mr.

1 Jensen for the record, would you please state your
2 full name, spell for us your last name and give us
3 your contact address.

4 THE WITNESS: My name is Scott Jensen, spelled
5 J E N S E N. My contact address is 700 Fifth Avenue,
6 Suite 3900, Seattle Washington, 98134.

7 THE COURT: Thank you. Counsel?

8 MR. SHERIDAN: Yes.

9 Whereupon,

10 SCOTT JENSEN,
11 Having been first duly sworn, was called as a witness
12 herein, and was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. SHERIDAN:

15 Q. Good morning.

16 A. Morning.

17 Q. Mr. Jensen, with whom are you employed?

18 A. The City of Seattle Department of Transportation.

19 Q. All right. How long have you been there?

20 A. Ten years this January.

21 Q. Okay.

22 MR. SHERIDAN: Your Honor, this is also a witness
23 associated with the defense. We'd ask for permission
24 to lead the witness.

25 THE COURT: All right. Any objection for

1 leading?

2 MR. JOHNSON: No objection.

3 THE COURT: Okay. You may lead.

4 MR. SHERIDAN: Thanks, your Honor.

5 Q. All right. Mr. Jensen, you are a safety officer?

6 A. Correct.

7 Q. And how long have you been doing that?

8 A. Approximately 14 years.

9 Q. All right. And have you done -- before you began the
10 process of doing a fit for duty with Ms. Monroe on
11 February 8th, 2013, about how many fit for duties had
12 you done?

13 A. Approximately twelve.

14 Q. So twelve in 14 years?

15 A. I have been in the safety profession for 14 years,
16 and with the City of Seattle doing safety for ten
17 years.

18 Q. All right. And you follow the procedures when you do
19 these fitness for duties?

20 A. Yes, I follow procedures.

21 Q. Are you familiar with the procedures?

22 A. Yes.

23 Q. All right. And I'm going to show you Exhibit 5 now.

24 If you look to your left, there is a book open to page
25 -- to Exhibit 5. You are also going to see it on your

1 screen and on the big screen, so we are going to talk
2 about that for a little while.

3 A. All right.

4 Q. All right. Okay. So is this the policy that you
5 follow?

6 A. Yes.

7 Q. All right. And it is a policy for conducting urgent
8 fit for duty medical examinations; right?

9 A. Yes.

10 Q. And it is the policy that you followed on the day
11 that you came down at Mr. Jackson's request and began
12 talking to Ms. Monroe; correct?

13 A. Yes.

14 Q. All right. Let's take a little bit -- look at this
15 policy. It seems like it has -- it says, "Applies to
16 city employees in all positions." Would you agree with
17 that?

18 A. I would agree.

19 Q. All right. And then, on item 1, it expects the
20 employees to report to work each day as scheduled to be
21 alert, et cetera. That's one of the policies that is
22 being enforced through this procedure and policy;
23 right?

24 A. Correct.

25 Q. All right. It says -- and it says that under 2 that,

1 "The City will conduct a fit for duty under the
2 following circumstances," and one of them is an
3 employee's behavior, speech, or experience causes a
4 supervisor to suspect the physical or psychological
5 condition may be impairing the employee's ability
6 satisfactorily perform work with reasonable skill and
7 safety. And is that your understanding of the policy,
8 sir?

9 A. Yes.

10 Q. All right. Did you receive any training in how to do
11 this policy?

12 A. Yes.

13 Q. Who trained you?

14 A. I received training from the city-wide fit for duty
15 and drug test coordinator.

16 Q. Who is that?

17 A. Pam Beltz.

18 Q. Pam Beltz?

19 A. Yes.

20 Q. All right. How long was your training?

21 A. Each training session was three hours.

22 Q. And how many sessions were there?

23 A. I have been to three training sessions.

24 Q. So you received nine hours of training in doing this?

25 A. Correct.

1 Q. All right. And was that nine hours of training on
2 doing a fit for duty or in being a safety officer?

3 A. It was specific to the fit for duty program and its
4 procedures.

5 Q. How long ago did you get that training?

6 A. I would have to refer to my training director to
7 specifically answer the last date I took that course.

8 Q. Would you say it was closer to the beginning of your
9 ten-year term with the City or closer to today?

10 A. Again, I would have to refer to my training records.

11 Q. Okay. Let's take a look at the procedures, and if
12 you will turn your page there to "procedures," and
13 we'll put it up on the screen. All right. And so this
14 is basically the procedure for conducting urgent fit
15 for duty exams; correct?

16 A. Correct.

17 Q. All right. So basically, the procedure begins with
18 the supervisor; right?

19 A. Correct.

20 Q. And the supervisor receives a report or observes an
21 accident, injury, or employee's behavior, speech,
22 appearance. That's what keys this procedure to begin;
23 right?

24 A. Correct.

25 Q. And in this particular case, you learned from Mr.

1 Jackson that he had a person that he wanted you to come
2 down and see; right?

3 A. That's correct.

4 Q. Mr. Jackson worked in what department?

5 A. At that time, it was the traffic signs and markings
6 division.

7 Q. Before that day, did you know Mr. Jackson?

8 A. Yes.

9 Q. How long had you known him?

10 A. Since hired at the City of Seattle.

11 Q. So basically the entire ten years you knew him?

12 A. I worked with him, correct.

13 Q. When did you work with him?

14 MR. JOHNSON: Objection, your Honor, relevance.

15 MR. SHERIDAN: Goes to bias, your Honor.

16 THE COURT: I will allow it to this extent.

17 MR. JOHNSON: Sure, I think we are tracing on
18 some areas, but we are not there yet.

19 THE COURT: I agree.

20 Q. So when did you work with him?

21 A. Could you elaborate on when --

22 Q. You said you worked with him; right? I didn't say
23 it, you said it.

24 A. Yes, he worked for the same department that I was in.

25 Q. Were you in a supervisory chain of command?

1 A. No.

2 Q. But what department was that?

3 MR. JOHNSON: Objection, vague.

4 MR. SHERIDAN: He said --

5 THE COURT: I thought he said he worked with him,
6 same department.

7 MR. JOHNSON: I didn't know which witness he was
8 asking about, Mr. Jackson or Mr. Jensen.

9 THE COURT: It would have been the same
10 department, so overruled.

11 Q. Go ahead.

12 A. Could you ask the question again?

13 Q. Yeah. You said you worked in the same department as
14 Jackson; right?

15 A. The Seattle Transportation Department.

16 Q. Okay. More broadly, got it. All right. And before
17 that day, had you interacted with him on any safety
18 issues?

19 A. Yes.

20 Q. Just training or real events?

21 A. I conducted training for staff in his division. We,
22 in the safety division, do safety audits on the crews.
23 And we went over any results from those safety audits.

24 Q. Did you train him on how to do a fitness for duty?

25 A. No.

1 Q. Do you know whether he has had training in that area?

2 A. I don't know.

3 Q. All right. Okay. So going back to Exhibit 5, under
4 "procedures," it says that, "One of the jobs of a
5 supervisor is to take necessary action to prevent
6 injury or harm to an employee." Would you agree that's
7 a policy -- I mean, a procedure?

8 A. Yes.

9 Q. And under three, "Secures and protects any evidence
10 of alcohol, drugs, et cetera." That's another
11 responsibility of the supervisor; right?

12 A. Correct.

13 Q. And then, "When possible, contacts management rep to
14 validate the observations." In Ms. Monroe's situation,
15 do you know if Mr. Jackson contacted the management rep
16 to validate his observations?

17 A. In this situation, there was no supervisor for the
18 traffic shop dispatchers, they reported directly to the
19 manager of the division. So in this case, he was the
20 management representative.

21 Q. I see. And then it says, "Second supervisor or
22 safety staff will validate or invalidate observations
23 with the first supervisor." And was that you in this
24 case?

25 A. Yes, that would be me.

1 Q. All right. And then it says -- the next section,
2 under 6 says, "The supervisor consults with the
3 department designated coordinator or city-wide safety
4 unit." Did the supervisor -- did Jackson do that in
5 this case?

6 A. No.

7 Q. Do you know why he didn't do that?

8 A. I fulfilled that role.

9 Q. Say again?

10 A. I fulfilled that role.

11 Q. Okay.

12 THE COURT: Mr. Jensen, I'm going to ask -- would
13 you mind just speaking up a little bit, because we
14 have jurors at the end of the box that I want to make
15 sure can hear you. So if you would project your
16 voice a little bit more, I would appreciate it.
17 Thank you.

18 Q. So it says, "The supervisor consults with department
19 designated fit for duty safety coordinator or city-wide
20 safety." So you were the department designated fit for
21 duty safety coordinator; right, at that time? No. 7?
22 I'm sorry, No. 6.

23 A. Yes, I fulfilled that role.

24 Q. All right. Then it says, "Department FFD coordinator
25 provides advice and answers questions about FFD policy

1 and procedures or responds in person as necessary."

2 You responded in person; right?

3 A. Yes, I responded in person.

4 Q. All right. Then it says, back to the supervisor, No.
5 8 documents, "Observations" on the City of Seattle
6 behavior observation form. And that form is -- we are
7 going to talk about that, but in this particular case,
8 Mr. Jackson did fill out such a form; correct?

9 A. That's correct.

10 Q. All right. And then it says, "In the presence of
11 management witness, meets with employee and presents
12 the behavior observation form documenting the
13 supervisor's observations." That didn't happen in this
14 case, did it?

15 A. Could you ask that question again, please?

16 Q. Yes. The policy -- the procedure says that, "In the
17 presence of the management witnesses --" I'm sorry,
18 "Documents observations, and in the presence of a
19 management witness, meets with employee and presents
20 the behavior observation form documenting the
21 supervisor's observations." That didn't happen in this
22 case; correct?

23 A. I do not recall if the specific behavior observation
24 form was presented to the employee. But the behaviors
25 being observed were communicated to the employee.

1 Q. But it's true, is it not, that the purpose of the
2 form is so there is a written record of what it is that
3 is supposedly being observed; correct?

4 A. Correct.

5 Q. And so the employee can actually look at the form and
6 respond to the items that are written down; right?

7 A. Correct.

8 Q. And that didn't happen in this case, did it?

9 A. The employee had the opportunity to respond to the
10 behaviors that were communicated to her in this
11 meeting.

12 Q. Well, if you don't show the form, then, how is there
13 a record of what was communicated?

14 A. It was communicated verbally to the employee.

15 Q. Not by the supervisor; right? You say you talked to
16 her; correct?

17 A. Both Mr. Jackson and myself talked to Ms. Monroe.

18 Q. All right. And then it says, under 9-A, "If the
19 employee could receive discipline as a result of the
20 incident arranging for opportunity for the employee to
21 consult with most readily available union
22 representatives," and it says "Weingartden." And did
23 that happen in this case?

24 A. Yes.

25 Q. All right. And she was given a chance to call her

1 union; right?

2 A. That's correct.

3 Q. All right. Then it says -- now, this is No. 10, it
4 says, "Employee responds to being shown a description
5 of the behavior as documented in the observation form
6 by doing the following," provides an explanation. This
7 didn't happen, did it?

8 A. I do not recall if the behavior observation form was
9 specifically presented to her, but all of the
10 observations that were documented on the behavior
11 observation form were communicated to her and Ms.
12 Monroe had the opportunity to provide an explanation to
13 respond to them.

14 Q. Well, the idea of the form is, it is a systematic way
15 of going through each of the alleged behaviors so they
16 could be responded to and documented; correct?

17 A. Correct.

18 Q. Because there is a section on the form where the
19 supervisor is supposed to fill out what she says in
20 response; right?

21 A. Correct.

22 Q. So every item that is listed as an abnormal behavior
23 should then have a response, assuming the employee is
24 responding point-by-point, that should be on the form;
25 right?

1 A. There is a section -- but the response was also
2 documented and notes being taken.

3 Q. All right. Let's look at No. 11 under "supervisor."
4 And it says, "Documents the employee's response and
5 explanation given and consults with the department
6 coordinator." So it is your testimony that we could
7 look to the observation form and see what Ms. Monroe's
8 responses were at that meeting; right?

9 A. You could, correct.

10 Q. All right. And then, No. 12 is, "Evaluates all
11 information and decides in consultation with the
12 department coordinator if --" or, "City-wide safety if
13 urgent fit for duty exam is warranted." I gather that
14 happened; right? You and Mr. Jackson decided that it
15 was warranted?

16 A. Correct, based on our conversation with Ms. Monroe,
17 the observations made and the explanations, we decided
18 that moving forward with a fit for duty was warranted
19 in this case.

20 Q. And you had not interviewed any witnesses; correct?
21 Besides Mr. Jackson? You hadn't talked to anyone else?

22 A. I personally did not interview anybody else.

23 Q. Got it. Every piece of information about Ms. Monroe
24 was given to you by Mr. Jackson; correct?

25 MR. JOHNSON: Objection, misstates the witness's

1 testimony.

2 MR. SHERIDAN: I can ask it a different way.

3 Q. Every information about other witnesses was given to
4 you by Mr. Jackson; true?

5 A. That is true, but I also observed the behaviors that
6 were reported to Mr. Jackson.

7 Q. And you have documented them in the form, or you
8 didn't actually fill out the form?

9 A. Mr. Jackson actually filled out the observation form,
10 but I also documented the behaviors and notes that I
11 took.

12 Q. Got it. So then, No. 13 is, "If the decision is to
13 conduct the medical exam, ask the employee to sign. If
14 the employee is reluctant to sign, advise that failure
15 to cooperate with the process can be considered
16 insubordination." Did you tell her that?

17 A. I told her that numerous times.

18 Q. All right. And she signed the form anyway; right?
19 She signed the form saying no?

20 A. She signed the refusal line, but it was not
21 immediately after being presented the form.

22 Q. Got it. All right. So let's take a look now at
23 Exhibit 71, if we can. And so you have books to your
24 left, if you want to see it in paper as opposed to on
25 the screen, feel free. Otherwise, you can just look on

1 the screen. 71 is the form; right? The form you're
2 looking at right now dated 2-8-13, that's the employee
3 acknowledgment; correct? 71 is in a different book, I
4 think.

5 A. I will go off this, then.

6 MR. JOHNSON: May I just approach the witness a
7 little bit to point to him where the other --

8 THE COURT: You may, unless he wants to look at
9 the screen.

10 Q. The screen is fine. Is that okay with you?

11 A. I'm fine with the screen.

12 Q. All right. So basically, this is the form that
13 ultimately she signed; correct? Let's go down to the
14 bottom and take a look?

15 A. Yeah.

16 Q. That's it; right?

17 A. Correct.

18 Q. Okay. And she signed it at what point in the
19 process?

20 A. I would have to refer to my notes to speak on the
21 specific time she signed it.

22 Q. Take a look at Exhibit 328, if you would. This is
23 not admitted, don't put that up. Take a look at
24 Exhibit 328 in the book.

25 MR. JOHNSON: May I approach the witness to help

1 him with that?

2 THE COURT: You may.

3 MR. JOHNSON: Thanks. I'm showing the witness
4 what's been marked as Exhibit 328.

5 Q. Is that your handwriting?

6 A. Yes.

7 Q. Are these the notes you took on that day?

8 A. Yes.

9 Q. Did you take them contemporaneous with the meeting,
10 or at a later time in the day?

11 A. I took them as the process occurred.

12 Q. And these are basically notes that you kept in the
13 usual course of business; correct?

14 A. Correct.

15 Q. All right. And they were accurate at the time you
16 made them?

17 A. Correct.

18 MR. SHERIDAN: Plaintiff offers 328.

19 MR. JOHNSON: No objection, your Honor.

20 THE COURT: 328 is admitted.

21 MR. SHERIDAN: Let's put that up on the screen.

22 Q. All right. So 328, is that your handwriting?

23 A. Yes.

24 Q. All right. So I notice on the top, the pen ink is
25 black; right?

1 A. Yes.

2 Q. And then, let's go down to the very bottom. The pen
3 ink is black for that, too; right? But all the ink
4 between is blue. Why is that, that you have two
5 different pen entries?

6 A. I can't provide a specific answer why two pen colors
7 were used.

8 Q. Is it fair to say you made the top entry and bottom
9 entry at a later time?

10 A. I don't recall.

11 Q. Is it fair to say you didn't make it on the 8th?

12 A. I don't recall.

13 Q. Okay. Can you think of any reason why you would
14 switch pens between the start of the meeting and the
15 end of the meeting?

16 A. I typically carry a bunch of pens on me.

17 Q. Okay. All right. Let's talk about it. Looking at
18 the first section, I see you have a date for each of
19 the entries; is that right?

20 A. A time.

21 Q. I'm sorry, a time; is that right?

22 A. Correct.

23 Q. So this is basically your time line at the moment;
24 right?

25 A. Correct.

1 Q. All right. Let's look under observations. These are
2 your observations or Mr. Jackson's observations?

3 A. Those were my observations.

4 Q. All right. So you saw her eyes glazed, wandering and
5 unfocused; right?

6 A. Correct.

7 Q. You didn't write "dilated" because you didn't see
8 dilated; right?

9 A. I do not recall seeing dilated eyes.

10 Q. All right. And then you write, "Asking question over
11 and over again." What was the question she kept
12 asking? Wasn't it, "Why am I here? What's this all
13 about?"

14 A. Honestly, I don't recall the specific question that
15 was being asked over and over. But there was a
16 question being asked repetitively.

17 Q. Okay. And then you said, "Leaning back and forth on
18 the chair." So basically leaning back, leaning
19 forward, she's basically got that document in front of
20 her to sign; right?

21 MR. JOHNSON: Objection, assumes facts not in
22 evidence.

23 THE COURT: Sustained.

24 Q. Well, she's at the desk when she's leaning back and
25 forth; right?

1 A. She was leaning back in the -- leaning back and forth
2 in the initial meeting with Paul Jackson and myself.

3 Q. Were you at a desk or not?

4 A. We were sitting at a desk.

5 Q. All right. She's sitting in one of these chairs that
6 swivels; right?

7 A. I believe it swivels.

8 Q. Okay. And then you write -- what's that word that's
9 in yellow there? Something about talking to herself,
10 started -- is that "started"?

11 A. I believe it is "stating."

12 Q. "Talking to herself --" go ahead and read that
13 sentence.

14 A. "Stating her -- talking to herself and singing with
15 the rest of the ladies.

16 Q. Did she tell you she was singing and talking to
17 herself?

18 A. If I recall correctly, when we asked about the
19 observation of her talking to herself at her desk, she
20 attributed it to singing with the rest of the ladies in
21 the office.

22 Q. Okay. All right. "Glassy-eyed." Isn't that how
23 people look when they are about to cry?

24 A. Yeah.

25 Q. Okay. Take a look at -- let's look at that again and

1 down to the 10:33 line. So she basically is given the
2 opportunity to call the union; correct?

3 A. She was provided many opportunities to contact the
4 union.

5 Q. Okay.

6 A. And our HR director also contacted the union on
7 behalf of her.

8 Q. Okay. And I notice that the 10:33 entry, we had
9 shown you Exhibit 71 that had the signature. Could you
10 go back to that, 71 real quick? And just put the
11 signature up. Thanks. That's it. And could you blow
12 that hand-written part up a little bit? Yeah, a little
13 bigger. That's great. Move it up. Perfect. So she
14 writes, "As of 10:33 a.m., on administrative leave."
15 That's what you told her; right, at about 10:33?

16 A. I don't recall if she was placed on administrative
17 leave at 10:33.

18 Q. Let's go back to your hand-written notes, Exhibit
19 328. And let's look at the 10:33 entry. What did you
20 write there?

21 A. Would you like me to read it out --

22 Q. Yeah, would you please read that, 10:33.

23 A. "I entered, asked if call was completed. Aloncita
24 Monroe stated she only spoke with Laura and the front
25 desk. I informed her she has two more minutes."

1 Q. Two more minutes to contact the union or you were
2 going to proceed without union representation; right?

3 A. Could you ask that again, please?

4 Q. You were telling her she had two more minutes to
5 contact the union, or you were going to proceed without
6 union representation; correct?

7 A. We would move forward with the process.

8 Q. Meaning you were going to escort her to a facility,
9 you and Mr. Jackson, and take her urine and have her
10 examined?

11 A. No, we would not do that without her consent.

12 Q. She had to sign the form within two minutes; right?
13 One way or the other, you are in or you are out?

14 MR. JOHNSON: Objection, argumentative.

15 THE COURT: Sustained.

16 Q. Isn't it true that you told her she had two minutes,
17 basically, to make either contact with the union or to
18 sign the form?

19 MR. JOHNSON: Objection, misstates the witness's
20 testimony.

21 THE COURT: Sustained.

22 Q. What is the two minutes for? Two minutes to do that?

23 A. To complete the contact to the union representative.

24 Q. What was the rush? It was early in the morning;
25 right?

1 A. At that point -- if I could scroll up in my notes.

2 Q. Please.

3 A. A significant amount of time had already passed.

4 Q. 8:45? So that's it?

5 A. Yes.

6 Q. Because you thought enough of your time had passed?

7 A. Not that it was enough of my time, but there is a
8 sense of urgency with fit for duties. And
9 specifically, in the policy itself, it says that -- I
10 would have to refer to it to get the exact language,
11 but contacting union representatives cannot hold up the
12 process.

13 Q. Let's look at 10:43. Isn't it true that you told her
14 that if she refuses, her decision cannot be reversed?
15 That's what you told her; right?

16 A. I told her that and if she signed the refusal line
17 and was placed on administrative leave at a later date,
18 she would not be able to come back and take the test.

19 Q. You were trying to scare her; right?

20 A. Not at all.

21 Q. Well, you were willing to violate the procedure by
22 telling her that, weren't you?

23 MR. JOHNSON: Objection, argumentative.

24 THE COURT: Sustained.

25 Q. Well, let's look at the procedure. All right. Look

1 at 7-D. Let's put up that.

2 MR. JOHNSON: I will instruct the witness is free
3 to look at as much of the procedure as he would like.

4 MR. SHERIDAN: Let's not have Counsel talk to the
5 witness, please.

6 Q. So let's look to 70 -- oh, just 7, just 7, yeah,
7 that's it. And you see how it says, "If the employee
8 --" got to bring it up higher for D. Yeah, that's it.
9 "If employee provides no response or refuses, caution
10 the employee that refusal to cooperate constitutes
11 insubordination, which will subject the employee to
12 discipline up to, including termination of employment
13 and allows employee -- and allows the employee
14 opportunity to reconsider." That's what the policy
15 says; right?

16 A. That's what it reads.

17 Q. So the policy envisions that you tell her it could be
18 insubordination because you want her to reconsider;
19 right?

20 A. Yes, and in this case, she was allowed to reconsider
21 and the decision reported to me is that she was going
22 to reconsider and go for the fit for duty.

23 Q. Not at that moment; correct?

24 A. Not at that moment.

25 Q. At that moment, you told her, "If you don't sign, or

1 if you sign no, this cannot be reversed;" correct?

2 A. Correct.

3 Q. Okay. So she appeared to you to be scared, didn't
4 she?

5 A. No.

6 Q. She actually needed to go to the restroom because she
7 had a problem?

8 A. No.

9 Q. It's true, is it not, that -- let's see, this is --
10 let's go take a look at Exhibit 102. This is the
11 observation form. That's Mr. Jackson's handwriting;
12 correct?

13 A. Correct.

14 Q. All right. I want to look at -- did you read this
15 the day it was filled out?

16 A. Yes.

17 Q. All right. So presumably, you can read this
18 handwriting. All right. So under No. 1, it says,
19 "Employee involved in an accident, injury, incident, or
20 exhibits behavior which causes supervisor to question
21 the employee's ability to perform the job with
22 reasonable safety. Describe." And then let's blow
23 that up and see if you can read it. And take a look at
24 the book, too, on 102, if that helps you. The goal is
25 to read it. If you have to go half-way across the

1 screen to see it, we can blow it up big. Yeah. Could
2 you make that out?

3 A. It appears to be a poor scan. If I could be shown a
4 paper copy.

5 Q. This is what we got from the City.

6 MR. SHERIDAN: City have a better copy?

7 MR. JOHNSON: I believe so. Hold on one moment.
8 Just one moment, there is definitely a better copy of
9 this exhibit. That is not the way it was given to
10 Mr. Sheridan. It is attached to the investigation
11 report. Here it is. If you go to -- I'm sorry,
12 that's his notes.

13 MR. SHERIDAN: Wait, no, he is right. Your
14 Honor, I would like to direct the witness to Exhibit
15 346, Bates stamp 5176.

16 MR. JOHNSON: That is the copy I was thinking of.
17 Thank you, Mr. Sheridan.

18 THE COURT: I'm sorry -- oh, I have it here.

19 MR. SHERIDAN: 346, it is Bates stamp 5176.

20 THE COURT: Thank you, Counsel.

21 Q. And so that's as good as it gets. Okay. All right.
22 Is that any better for you, sir, or are you still
23 looking? Take your time.

24 A. Okay.

25 Q. All right. Let's try to go through it. Under No. 1

- 1 it says -- is that "exhibits"?
- 2 A. I believe so.
- 3 Q. Read it as best you can.
- 4 A. "Exhibits strange behavior, talking to herself."
- 5 Q. Is that "looking"?
- 6 A. "Looking skyward."
- 7 Q. Okay.
- 8 A. "Gazing, sitting and staring at computer monitor."
- 9 Q. Okay. And then under "other," look under No. 2.
- 10 What is that, talking to herself; right?
- 11 A. Correct.
- 12 Q. And how about under "other" below that, below,
- 13 "Reaching for support." Back something, swaying
- 14 something, dancing?
- 15 A. I would say, "Pacing back and forth."
- 16 Q. Pacing? Okay. Then look at I, it says "other,"
- 17 "Eyes are glassy"?
- 18 A. Correct.
- 19 Q. Now, let's look at No. 5, and see if you can read
- 20 that into the record for us.
- 21 A. "Works at a very slow and unproductive pace,
- 22 excessive mistakes, does not follow instructions,
- 23 verbal or written, eyes glassy, talks to herself,
- 24 pacing back and forth."
- 25 Q. All right. Would you agree with me that making

1 mistakes, being unproductive, those are performance
2 issues?

3 A. Yes, those would be performance issues.

4 Q. And, "Not following instructions, written and verbal,
5 performance issues?"

6 MR. JOHNSON: Objection, lack of foundation.

7 THE COURT: Overruled.

8 A. Yes, those would be performance issues.

9 Q. All right. So under your training, isn't it true
10 that if you believe that there might be something going
11 on that involves disability and accommodation, you are
12 supposed to contact the ADA coordinator?

13 MR. JOHNSON: Objection, lack of foundation.

14 THE COURT: Overruled.

15 A. Can you ask that again, please?

16 Q. Sure. It is true, is it not, that if you think
17 something is happening as you are doing the observation
18 that may involve disability or accommodation, you are
19 supposed to contact the ADA coordinator?

20 A. I do not recall exactly if that was part of the
21 training.

22 Q. Okay. All right. Take a look at 7-C in Exhibit 5.
23 7-C. And let's blow that up. This is the policy that
24 you are supposed to follow; right?

25 MR. SHERIDAN: Objection, your Honor.

1 Argumentative.

2 THE COURT: Overruled.

3 Q. Why don't you go ahead and read that to the jury.

4 A. 7-C states, "If supervisor suspects employee may have
5 an on-going, non-urgent medical condition that prevents
6 the employee from performing his or her job, consults
7 with department ADA coordinator."

8 Q. And that's what you are supposed to do if that's what
9 you thought was happening; right?

10 A. Correct.

11 Q. Okay. Go ahead, please.

12 A. On the next section it says, "If employee provides no
13 response or refuses to cooperate, cautions the employee
14 that refusal to cooperate constitutes insubordination."

15 Q. You also didn't observe her, like, swatting flies or
16 anything like that; right?

17 A. Not specifically swatting flies.

18 Q. And you didn't write anything down like that -- or
19 I'm sorry, you didn't write this, Mr. Johnson, Jackson
20 wrote this; right, the observation form?

21 A. That he was swatting flies?

22 Q. Yeah, there was nothing in there that talked about
23 her trying to -- waiving her hands over her head or
24 anything?

25 A. No, I did not see that.

1 Q. All right. Now, let's go back to the observation
2 form again, Exhibit 102. All right. Let's look under
3 employee's explanation, if given. Blow that up, if you
4 could and let's see, what does she say? Read that to
5 the jury.

6 A. "Other explanation, if given." It says, "Others sing
7 in the office and I'm supposed to look at monitor."

8 Q. Okay. And that's all that Jackson wrote down
9 regarding her response; right?

10 A. On this form, correct.

11 Q. And her words weren't slurred; correct?

12 A. I did not specifically recall if her words were
13 slurred, I would have to look back at my notes.

14 Q. Okay. And you see that if you look at the form, do
15 you see speech slurred, do you see how that's not
16 checked?

17 A. Yes.

18 Q. Do you see, also, "Difficult to understand," you see
19 how that's not checked?

20 A. Yes.

21 Q. You were having a conversation with her, were you
22 not?

23 A. Yes.

24 Q. Okay. So much so that you felt that she was
25 competent to sign a legal form waiving -- or waiving

1 her rights to a fitness for duty exam; right?

2 A. Can you elaborate on waiving rights?

3 Q. Well, she signed the fitness for duty acknowledgement
4 saying, "No, I want union representation," or words to
5 that effect; correct?

6 A. She wrote that on the form, but she also did contact
7 her union rep.

8 Q. That's not the point I'm asking, I'm asking, you felt
9 she was competent to sign the form, she knew where she
10 was, you didn't feel like it would be an unfair abuse
11 of her because she is having some kind of a fit or
12 something, you felt she was competent to sign the form?

13 A. Yes.

14 Q. Based on your observations, got it. Okay. Now, it's
15 true, is it not, that when Mr. Jackson met with you, he
16 told you that she was a new employee and was a recent
17 accommodation from SPU?

18 A. Yes.

19 Q. You knew she was there as an accommodation because
20 Jackson told you?

21 A. Yes, he informed me of that.

22 Q. All right. And yet you didn't call Mr. Brim at that
23 point, either; correct?

24 A. I did not call Mr. Brim.

25 Q. You knew Mr. Brim was the ADA coordinator for SDOT;

1 right?

2 A. She was not the ADA coordinator.

3 Q. Who was?

4 A. Doreen Young.

5 Q. Doreen Young was? In what year?

6 A. 2013.

7 Q. Hmm. How do you know that?

8 A. I made the call to Karen Brown, and in my notes it
9 says that, "And she contacts Doreen Young," and, "It
10 was just an assignment from HR," or assigned task to
11 that HR rep.

12 Q. Well who told you that?

13 A. Specifically, I do not recall who told me that.

14 Q. Okay, okay. And are you familiar with whether or not
15 Mr. Brim was involved in this case as the ADA
16 coordinator?

17 MR. JOHNSON: Objection, vague, as to this case?

18 THE COURT: Overruled.

19 Q. Do you know, sir?

20 A. To my knowledge, Mr. Brim was not involved.

21 Q. All right. Thanks. Okay. Let's go back, and she
22 said words to you during her discussions with her, Ms.
23 Monroe basically said words to the effect that this is
24 deja vu, as you were telling her you wanted to have a
25 fitness for duty; right?

1 A. She alluded to the fact that she had been through
2 this, but that came much later than when it was first
3 presented to her that a fit for duty was going to be
4 moved forward with.

5 Q. Let me be clear. She alluded to what, to having an
6 earlier fit for duty; right?

7 A. The words "fit for duty" were not specifically
8 spoken. It was something along the lines, "I have been
9 through this before."

10 Q. And you understood she was talking about a fit for
11 duty, did you not?

12 A. Again, that's all she told myself and Jackson is that
13 she had been through this before.

14 Q. I'm actually asking you a direct question, I'm asking
15 you whether you understood her to mean a prior fit for
16 duty.

17 MR. JOHNSON: Objection, vague, as to time.

18 THE COURT: As to when or if he understood?

19 MR. SHERIDAN: Right.

20 THE COURT: Overruled, I will allow it.

21 Q. You can answer.

22 A. I can assume that that's what she meant.

23 Q. Okay. All right. Let's look at Exhibit 332, please.
24 And this is the time line you created, it is all typed
25 up; right?

1 A. Yes.

2 Q. So it's the email -- that's the cover sheet from you
3 to Mr. Jackson and Evan Chinn, that's dated February
4 11th; correct?

5 A. The email is dated February 11th.

6 Q. All right. And then look to the first page of the
7 time line. That's a product you created; correct?

8 A. Correct.

9 Q. And when you created it, did you create it on or
10 about the 11th?

11 A. I can't speak specifically when I typed it up. It
12 would have been -- I believe the 8th was a Friday, so
13 it would be between Friday and Monday.

14 Q. Okay. And did anybody ask you to create it?

15 A. No.

16 Q. Okay. All right. Looking at the 9:05 entry, this is
17 where you document that you and Mr. Jackson discuss
18 that Ms. Monroe was a new employee and a recent
19 accommodation from SPU; right?

20 A. That is correct.

21 Q. All right. Now, let's go down to 10:40. And you
22 write, "10:40, Jackson and I presented Monroe the
23 authorization form to sign. Monroe became visibly
24 frustrated and began to say she had been through this
25 process before and they did not follow procedures."

1 She said that?

2 A. Yes.

3 Q. So this was not an inference, you understood that she
4 was talking about this process to mean the fitness for
5 duty; correct?

6 A. I would assume so, yes.

7 Q. All right. And then she said, at the last sentence,
8 "Monroe responded saying she could not go through this
9 and signed the refusal box;" right? That's what
10 happened?

11 A. Correct.

12 Q. All right. Now, at 10:45, it is true, is it not,
13 that you placed her on administrative leave
14 immediately?

15 A. Correct.

16 Q. So at this point, from your perspective, she had
17 signed the document saying no, and you had placed her
18 on administrative leave; right?

19 A. Correct.

20 Q. There was nothing more to be done, you were done with
21 your job, she was going home; right?

22 A. That is not true.

23 Q. Well, it is true, is it not, that at this moment, you
24 believed that there was nothing else to do?

25 A. No, we wanted to make sure that she had safe

1 transportation home, so we began making arrangements
2 for her to get home safely.

3 Q. Okay. All right. But from that perspective, you
4 didn't think she was taking a urinalysis or a fit for
5 duty at that moment, she was done, she waived her
6 right?

7 A. She signed the refusal box, so no.

8 Q. Okay. And so basically, the plan was, you were going
9 to take her to get her personal belongings, and then
10 she was going to go, preferably, with somebody driving
11 her; right?

12 A. Yes.

13 Q. All right. And did you escort her to go get her bag?

14 A. No.

15 Q. Did you -- did Mr. Jackson do it, to your knowledge?

16 A. To my knowledge, yes.

17 Q. Did you go with him?

18 A. No.

19 Q. All right. And then, after that, there came a time
20 where she went to the bathroom; right?

21 A. Yes.

22 Q. Did you hear Jackson pounding on the bathroom door?

23 A. At certain times after she entered the ladies' locker
24 room restroom, I did hear him knock on the door.

25 Q. Did you do anything about that?

1 A. No.

2 Q. Did you consider it to be abusive?

3 A. No.

4 Q. Let me ask you this -- please go ahead.

5 A. It was appropriate just due to the fact the locker
6 room in this building is large, it goes back a ways, it
7 has lines of lockers. We did not know where she was
8 located inside the locker room. So for her to hear the
9 knocking, it was appropriate.

10 Q. I guess my question is, why did you care? She was
11 done with the process, she was just going to leave.
12 Why did you even care?

13 A. I cared because I wanted to make sure that, one, she
14 is okay, and that she is arranging for a safe ride
15 home.

16 Q. All right. And those were your two concerns. Okay
17 and arranging for a safe ride; right?

18 A. Yes, at that point.

19 Q. It's true, is it not, that when someone is going to
20 take a urinalysis test, you are not allowed to leave
21 their side?

22 A. Correct, but this was after signing the refusal that
23 she was not going to take the test.

24 Q. So it didn't matter to you if she left your vision;
25 correct?

1 A. No, it mattered because I wanted to make sure that
2 she was arranging for a ride home, even if it meant
3 that one of us took her home.

4 Q. Okay. So since you informed her she was placed on
5 administrative leave immediately, did you take her
6 badge?

7 A. No.

8 Q. Mr. Jackson took her badge; right?

9 A. Correct.

10 Q. You didn't see when he did it?

11 A. Not that I recall.

12 Q. All right. And it's also true that if somebody is
13 taking a urinalysis, you don't actually let them use
14 the restroom; correct?

15 MR. JOHNSON: Objection, foundation, assumes
16 facts not in evidence.

17 THE COURT: Sustained.

18 Q. Let's look at Exhibit 11-A of Exhibit 5, please. Why
19 don't you read into the record what that says. This is
20 your procedure again; right?

21 A. "If substance abuse is suspected, ensures employee is
22 not left unsupervised, does not visit restroom nor
23 consume any products containing alcohol or controlled
24 substances until the fit for duty medical exam has been
25 completed."

1 Q. So you let her go to the bathroom because, in your
2 mind, this wasn't going to happen; right?

3 A. Correct, she had signed the refusal and was not going
4 to go for the fit for duty exam.

5 Q. You had basically left the area by this time and gone
6 into an office; correct?

7 A. I was, I remained in the building.

8 Q. Okay. I understand, but you left the area, meaning
9 you were not trying to have your eyes on her at this
10 point?

11 A. No, but she was also in the women's locker room with
12 the door closed.

13 Q. There was only one way out; right?

14 A. Yes.

15 Q. But she did leave; right?

16 A. After -- again, I would have to look at my notes, a
17 period of time. I could only guess that she had left
18 the building.

19 Q. Okay. But it was your job to make sure she didn't
20 leave without getting a ride; right?

21 A. You know, I can't hold an employee under arrest, I
22 can't detain them. If they choose to leave the
23 building in front of me or sneak out, they are going to
24 do it, I can't physically stop them. I can provide
25 them the resources, I can give them ideas, but if they

1 are going to leave, they leave.

2 Q. You were not worried that she was impaired and
3 therefore a danger to herself or others if she was
4 driving; correct?

5 A. I was concerned.

6 Q. Well, if you were concerned, you would have followed
7 the procedures and dialed 911; correct?

8 MR. JOHNSON: Objection, argumentative.

9 THE COURT: Overruled.

10 Q. Let's go to 7-D, if we can, of Exhibit 5. All right.
11 Why don't you read into the record that part that says,
12 "If an employee exhibits."

13 A. With the asterisk?

14 Q. Yes, please.

15 A. "If an employee exhibits behaviors which would
16 prevent him or her from driving safely and refuses
17 transportation and/or insists objection driving own
18 personal vehicle, inform employee that appropriate law
19 enforcement agency will be notified and, if necessary,
20 calls 911."

21 Q. So which was it? Did you -- did the employee not
22 exhibit behavior that would prevent him from driving
23 safely, or did you not think that she was exhibiting
24 behavior that prevented her from driving safely?

25 A. She was exhibiting behavior that I felt would affect

1 her ability to drive safely.

2 Q. Then why didn't you call 911?

3 A. Well, there was a point where the decision was made
4 to allow to go for a fit for duty. We were waiting for
5 her to come out of the locker room. During a check, we
6 found that she was no longer in there. We did a search
7 of the building, we asked her co-workers which car she
8 drove and whether it was there, and the car had left.
9 And we did not have specific enough details to provide
10 law enforcement an accurate description of her vehicle;
11 make, model, her license plate number.

12 Q. Instead of banging on the door, you could have sent
13 in a female to pick her up; right?

14 MR. JOHNSON: Objection, argumentative, states
15 facts not in evidence.

16 THE COURT: Overruled.

17 A. Could you ask that again, please?

18 Q. Yeah. Instead of Jackson banging on the door, you
19 could have just grabbed one of the women employees and
20 sent that person in to check on her, but you didn't do
21 it; right?

22 A. We could have.

23 Q. But you didn't; right?

24 A. No.

25 Q. Wouldn't you agree that would have basically been a

1 more polite way of treating Ms. Monroe than Jackson
2 banging on the door?

3 A. Well, he was checking on her, and she was on the
4 telephone with, to my knowledge, her union
5 representative, who was also in contact with our HR
6 department.

7 Q. Let's go back to your hand-written notes, 328. Let's
8 look at the bottom entry at 10:43. I notice in this
9 version of your notes, you don't write anything about
10 Jackson banging on the door; right?

11 A. Correct.

12 Q. Because isn't it what really happened is, you and Mr.
13 Jackson let her go because she was on administrative
14 leave and then the call came in saying she has changed
15 her mind; right?

16 A. That's not correct.

17 Q. Well, if the call had come in before she left,
18 somebody would have been in front of the door and she
19 couldn't have gone out without somebody seeing;
20 correct?

21 A. Can you ask that again, please?

22 Q. It is true, is it not, that if the call had come in
23 -- was it from Chinn?

24 A. Which phone call?

25 Q. How did you hear that there was a reconsideration?

- 1 A. I believe it was through Evan Chinn to Paul Jackson.
- 2 Q. You didn't hear it from Jackson; correct?
- 3 A. About?
- 4 Q. So basically, what Jackson says to you is, he gets a
5 call from Chinn saying that there has been a
6 reconsideration, she can take the test; right?
- 7 A. Correct.
- 8 Q. Okay. And that's what he tells to you -- he tells
9 you; right?
- 10 A. Correct.
- 11 Q. And by that time, she is already gone; correct?
- 12 A. That's not correct.
- 13 Q. Well, if she wasn't already gone, then, wouldn't one
14 of you have been in front of the door to make sure she
15 didn't leave?
- 16 A. No.
- 17 Q. Isn't it true that the only reason you left the door
18 unattended, the bathroom door, is because you had
19 already been done, you felt like she was gone, and that
20 was it?
- 21 A. No, we were waiting for her to come out.
- 22 Q. The reason you didn't call 911 is because you
23 accepted that she was already gone and you realized you
24 messed up by letting her go?
- 25 A. No.

1 Q. It's true -- so how come you didn't write down that
2 Jackson was banging on the door in this version?

3 A. I didn't think writing that Jackson knocking on the
4 door, checking, was significant enough.

5 Q. You heard the phone ring and you knew that, at some
6 point, Jackson was on the phone with the union rep;
7 correct?

8 A. Correct.

9 Q. And you didn't write that down in this version,
10 either, did you?

11 A. Correct.

12 Q. And also, you knew that Jackson basically said to the
13 union rep, "It's too late;" correct? You heard that;
14 right?

15 A. I did not hear that.

16 Q. You did not hear that?

17 A. No.

18 Q. Where were you when Jackson was on the phone that you
19 did not hear that?

20 A. I was inside Jackson's office.

21 Q. Okay. So you weren't watching the door, then?
22 Jackson was?

23 A. Jackson was at the door talking on the telephone,
24 that was inside the locker room?

25 MR. SHERIDAN: No further questions.

1 THE COURT: Thank you, Counsel. Mr. Johnson,
2 cross?

3 MR. JOHNSON: Thank you, your Honor.

4 CROSS EXAMINATION

5 BY MR. JOHNSON:

6 Q. How are you this morning, Mr. Jensen?

7 A. Doing well, thanks.

8 Q. So Mr. Sheridan had a chance to ask you a couple
9 questions about your background. I'm going to follow
10 up on some of that really quickly because I think there
11 are some things that the jury may not have heard. So
12 your current position at SDOT is what?

13 A. My current position is I'm a safety and health
14 supervisor.

15 Q. So who do you supervise?

16 A. I supervise six senior safety and health specialists.

17 Q. And when did you start that job as supervisor?

18 A. August of 2016.

19 Q. And before you started that job, just a few months
20 ago, what was your job?

21 A. Before supervisor?

22 Q. Yes.

23 A. Senior safety and health specialist.

24 Q. Okay. So you are now the supervisor of the sort of
25 person you once were; is that accurate?

1 A. That's correct.

2 Q. Okay. And were you a senior safety and health
3 specialist during the fit for duty incident we have
4 been talking about?

5 A. No, I was a safety and health specialist.

6 Q. Okay. So it goes safety and health specialist,
7 senior safety and health specialist, and then
8 supervisor?

9 A. That's correct.

10 Q. So you were a safety health specialist, and Mr.
11 Sheridan first asked a question I would have asked,
12 which was, at the time, in February of 2013, when you
13 had the fit for duty situation involving Ms. Monroe,
14 about how many fit for duties had you done at that
15 time?

16 A. Approximately twelve.

17 Q. How many have you done since then?

18 A. I would say approximately three or four, for my
19 department directly, but I was also the acting fit for
20 duty coordinator for the City of Seattle for a period
21 of time after Pam Beltz left her position where I
22 fulfilled that role for five or six fit for duties with
23 other departments.

24 Q. How did you first learn about -- actually, one more
25 question just about the background. The policy Mr.

1 Sheridan had you look at, Exhibit 5, that says at the
2 top - I will probably botch this, but the policy for
3 urgent fit for duty examinations. Are you familiar
4 with a version of the examination other than the urgent
5 exam?

6 A. Yes.

7 Q. And what's that?

8 A. Um, a situation -- I will give an example, you know,
9 somebody clearly has a knee that's hurting, it's
10 affecting their ability to do their job, let's say they
11 are a concrete finisher, and when they kneel down, you
12 can clearly see they are in pain, but they are not
13 doing anything about it, they are not taking action.
14 It's a less urgent situation where you can schedule a
15 time for the employee to go see a City doctor to see if
16 they are okay, whether the injury is actually
17 preventing them from doing their position.

18 Q. Okay. And what -- that kind of fit for duty exam,
19 does it have a different name?

20 A. Non-urgent fit for duty.

21 Q. Okay. So how did you first learn about the fit for
22 duty situation involving Ms. Monroe?

23 A. I was contacted by my co-worker, Craig Doll, who
24 received a call from Paul Jackson reporting that there
25 may be a fit for duty situation at the traffic shop.

1 Q. Okay. So when did you first speak to Mr. Jackson
2 directly that day?

3 A. When I arrived at the traffic shop.

4 Q. Okay. So you get -- you're notified by a co-worker
5 that there is a situation. What did you do when you
6 received that notification?

7 A. I confirmed to my co-worker that I would respond to
8 the location and assist Paul Jackson.

9 Q. Okay. And where were you at, at the time?

10 A. I was at another facility, 714 South Charles Street.

11 Q. How far is that away from the traffic shop that we
12 have been talking about?

13 A. Approximately two miles.

14 Q. Okay. So between the time you learned from your
15 co-worker there was a situation at the traffic shop and
16 your arrival, how much time had passed?

17 A. Approximately fifteen minutes.

18 Q. When you went to the traffic shop, what did you bring
19 with you?

20 A. I brought my work bag, I carried the documents for
21 fit for duties, also CDL post-accident tests,
22 reasonable cause. So I brought the personnel rules,
23 the policy, the observation forms, the physician
24 findings forms and the employee fact sheet.

25 Q. And I think Exhibit 102 was the poorly scanned

1 version of the observation report. Can we bring that
2 up on the screen, please, Mr. McLure? When you said
3 you brought the form, obviously -- well, shouldn't say
4 obviously, it wasn't filled out at the time, but you
5 brought a blank version of that form; is that correct?

6 A. Correct.

7 Q. And you also brought -- can you pull up Exhibit 379.
8 This one is blank. Is this one of the forms you
9 brought with you?

10 A. Yes.

11 Q. Then Exhibit 209, Mr. McLure, which I believe has
12 been admitted. Do you recognize that, Mr. Jensen?

13 A. Yes.

14 Q. And what's that?

15 A. That's the health care professional's findings and
16 recommendations form. That's the document that we
17 provide to the physician when we do arrive at the
18 clinic.

19 Q. Okay. You mentioned a physician. You have done fit
20 for duty exams before. Have there been times when you
21 didn't meet with a physician at the facility?

22 A. No.

23 Q. It's always been a physician?

24 A. Yes.

25 Q. You mentioned the forms, I think you mentioned the

1 policy that Mr. Sheridan spoke about. Did you mention
2 a personnel -- I'm sorry, I want to focus --

3 A. Yes, there is also a personnel rule.

4 Q. Can you show Exhibit 205, Mr. McLure. Is that the
5 rule you are referring to, Mr. Jensen?

6 A. Yes.

7 Q. Okay. And forgive me for being a poor listener, did
8 you say any other forms you brought with you?

9 A. There is also an employee fact sheet.

10 Q. Mr. McLure, can you bring up Exhibit 6, please, for
11 just a minute. Let Mr. McLure blow that up for you.
12 Is that the document you are talking about?

13 A. Yes.

14 Q. Is that something you brought with you?

15 A. Yes.

16 Q. Okay. Did do you that just in Ms. Monroe's case?

17 A. I bring them to all fit for duty situations.

18 Q. Okay. When did you arrive at the traffic shop?

19 A. Referring to my notes, 9:05.

20 Q. When you say your notes, are you talking about the
21 hand-written document that Mr. Sheridan has been
22 showing or the typed document?

23 A. The hand written.

24 Q. Can we bring that up on the screen? That's Exhibit
25 328, Mr. McLure. Okay. And Mr. Sheridan pointed out

1 that the color of the pens changed. Do you have any
2 reason to believe that you wrote anything on this form
3 other than when you were sitting in the traffic shop
4 that day?

5 MR. SHERIDAN: Objection, that's leading.

6 THE COURT: Sustained.

7 Q. Did you -- when did all of the writing on this form
8 get written down?

9 A. The morning I was at the traffic shop.

10 Q. Okay. Thank you. I think you have explained the
11 color of the pens well enough to the jury's
12 satisfaction. So you arrived at the traffic shop at
13 9:05, according to your notes. I'm curious, your notes
14 all have the time stamps on them. Can you tell the
15 jury more about why that is?

16 A. I create a time line of events, so I can refer back
17 to when certain things happened, when I arrived, when
18 we met with the employee, when forms were provided. It
19 documents the events in a detailed manner.

20 Q. Okay. So, for example, I will just take one at
21 random, the 9:15 -- I guess there is two 9:15's, poor
22 choice. The second of the 9:15 a.m. entries. When did
23 you write that down?

24 A. As it was occurring.

25 Q. Okay. And that would be true of all the entries that

1 have a time stamp on your notes?

2 A. Correct.

3 Q. Okay. Then Mr. Sheridan also asked you about Exhibit
4 332, which I will call it your typed time line, if that
5 description makes sense to you. Does it, Mr. Jensen?

6 A. Yes.

7 Q. Okay. So your typed time line, you said that
8 February 8th was a Friday, and if you can bring up
9 Exhibit 332, Mr. McLure, the email on the front of it,
10 blow that up for Mr. Jensen. That email comes at 9:45
11 a.m., so I think we know your time line was done by
12 9:45 a.m. Does that help you remember better when it
13 was actually prepared?

14 A. Yes.

15 Q. When was it prepared, your typed time line?

16 A. Between Friday afternoon, on Friday, or Monday
17 morning between seven and 9:45.

18 Q. Okay. You think you worked over the weekend on it?

19 A. No.

20 Q. Okay. So let's go back to your hand-written notes,
21 Exhibit 328. You just had that open in front of you,
22 Mr. Jensen. I can't tell what you're looking at, might
23 want to make sure we are following along together. So
24 Mr. Sheridan asked you about Mr. Jackson telling you
25 that the employee that you were dealing with was an

1 accommodation from SPU. At the time that Mr. Jackson
2 was telling you this, did you know anything about Ms.
3 Monroe at all?

4 A. I did not know who she was --

5 Q. Okay.

6 A. -- at that time.

7 Q. And explain more to the jury about what you mean when
8 you say you tried to contact HR regarding details of
9 accommodation.

10 A. I tried to contact our HR department to see if the
11 accommodation could be, in any way, associated with the
12 behaviors that were observed, whether it was medical,
13 and that -- again, that the accommodation would be --
14 would reasonably explain what was being observed by her
15 co-workers.

16 Q. Okay. And Mr. Jensen, if we can, I don't know if we
17 can pull this off. Is the binder in front of you open
18 to your notes, the hand-written ones?

19 A. Yes.

20 Q. So Mr. McLure, why don't you bring up on the screen
21 his type-written time line so we can make it easy for
22 Mr. Jensen to refer to both. I don't need them side by
23 side, he can keep his hand-written notes there with him
24 and we may have to flash back to them every once in a
25 while, but just so it is easier for Mr. Jensen to look

1 back and forth. And taking a look at your 9:15 a.m.
2 entry on your time line, can you tell the jury more
3 about what you meant, "By tried to contact HR to find
4 details of accommodation"?

5 A. This again, not specifically what the accommodation
6 was, but rather the accommodation would explain the
7 behaviors and if a fit for duty is warranted based on
8 what the accommodation is.

9 Q. Okay. And what did you learn?

10 A. Um, Evan Chinn, the HR director, said that it would
11 not explain the behaviors observed. And if warranted,
12 move forward with a fit for duty examination.

13 Q. Okay. So the decision hadn't been made yet at that
14 point?

15 A. No.

16 Q. Tell us more about what happened when you met Mr.
17 Jackson at the traffic shop when you arrived.

18 A. Um, I arrived at the traffic shop, Jackson, I
19 believe, was in the dispatcher's office. He departed
20 the office and we met in his office. And that's when
21 he mentioned that there was strange observations being
22 observed of Ms. Monroe, and that she was a recent
23 accommodation from SPU.

24 Q. Okay. Hold on for just a moment, I'm going to grab
25 something that might explain better to the jury where

1 you are moving around. And I will ask for the jurors'
2 indulgence letting me know where I can place this and
3 see it reasonably well. I don't think we can pull out
4 the easel. Can the jurors see it when it is here?
5 Okay. Let's pretend that didn't happen. Jurors in the
6 back, does it need to be lifted up? Okay. Pardon me,
7 I should have done it beforehand.

8 MR. JOHNSON: I'm going to grab the easel, with
9 your Honor's indulgence.

10 THE COURT: That's fine.

11 MR. JOHNSON: Any thoughts on the location so I'm
12 not blocking the view? Mr. Rose, are you okay? Ms.
13 Rutherford, do you object to losing your view of Mr.
14 Jensen? Jurors, can you see that? I have it right
15 side up finally.

16 Q. Okay. All right. So Mr. Jensen, --

17 MR. JOHNSON: If your Honor would permit, can he
18 step down?

19 THE COURT: That's fine.

20 Q. Do you recognize what you're looking at, Mr. Jensen?

21 A. Yes.

22 Q. Okay. What is it?

23 A. That's the floor layout of Sunny Jim traffic shop.

24 Q. Okay. And you said you arrived at the traffic shop.
25 Where did you come in?

1 A. I arrived at this entry.

2 Q. Okay. And where was it that you made contact with
3 Mr. Jackson?

4 A. Well, this right here is the dispatcher's office. I
5 walked down this hallway, there is a window here where
6 you can view in to the dispatcher room. He was
7 standing in this general location. He exited out of
8 the door right here, and then we made our way to his
9 office, which is this room.

10 Q. Okay. And so I don't have to keep dragging you out
11 and having you point at the screen, just help the jury,
12 you mentioned that Ms. Monroe was given the opportunity
13 to make some telephone calls to her union; is that
14 correct?

15 A. Correct.

16 Q. Where did she make those calls?

17 A. That would be in this room here, between Jackson's
18 office and dispatch.

19 Q. Okay. And what is the significance -- I know you saw
20 Mr. Jackson in the dispatch office, you just testified,
21 but what else is significant about the dispatch office?

22 A. Um, it's an open layout. There are many windows
23 viewing directly inside.

24 Q. Sure. Maybe I'm asking a horrible question. Did you
25 know where Ms. Monroe worked, like, where her office

1 was?

2 A. Yes, you could see in to the office to her desk.

3 Q. And which office was that?

4 A. Dispatch.

5 Q. I think probably everyone knew that, but I wanted to
6 make that point. So you have Mr. Jackson's office, the
7 office where she made the calls. Is anyone in that
8 office? Is it occupied?

9 A. At the time, it was the office of a training
10 coordinator, and that training coordinator spends fifty
11 percent of her time in that office and fifty percent of
12 the time at the Seattle Municipal Tower. And at that
13 time, that training coordinator was not in her office.

14 Q. Okay. And the womens' locker room you have been
15 speaking of, where is that?

16 A. This would be the womens' locker room, that's the
17 mens'.

18 Q. Show the jury where the entry way is. Just -- this
19 is probably obvious, but so we can --

20 A. Right.

21 Q. Okay. So you walk in to an open entry way, then you
22 have to make a 90-degree turn to your right to use the
23 women's' room; is that correct?

24 A. Correct.

25 Q. Mens' room is on the left?

1 A. Correct.

2 Q. And from -- does the diagram correctly show where the
3 door is to Mr. Jackson's office?

4 A. Yes,

5 Q. From that door, assuming it is open, I don't know if
6 it is glass, can you see to the entry way of the locker
7 rooms?

8 A. Um, from that doorway, you can view -- so this is an
9 opening in the wall, there is no door here, you can
10 view to this entry area.

11 Q. Okay. And, for example, during the time that Mr.
12 Jackson was on the telephone in the -- I mean, the
13 locker room phone was in his hand, could you see if you
14 were in the right position in his office? Could you
15 see him?

16 A. Yes.

17 Q. Okay. And the space that's in between Mr. Jackson's
18 office and the locker room, can you just describe
19 what's in this space? Is it cubicals; is it cluttered,
20 is it --

21 A. It's an open commons area. Right here, there is a
22 kitchen, this is vending machines right here. There is
23 tables that -- the occupancy, I would say, is around 40
24 people. This is used often as a training room,
25 depending on the type of training, that would influence

1 how the table layout was at the time. But it is an
2 open commons area.

3 Q. And you already described to the jury the door that
4 you entered through. Do you know of other ways in or
5 out of the traffic shop?

6 A. Yes, there is multiple exits out of this building.
7 So you can go through this doorway, down the hallway
8 here, and then there is an exit out to the parking lot.
9 If you continue further south, there is an exit right
10 here, to the south end of the building. If you go to
11 the north end of the building, there is an exit here,
12 that's the loading docks. I don't think it is
13 reflected on here, but there is a garage door access
14 here and the exit door right there, also.

15 Q. Okay. You showed the jury briefly where the parking
16 lot was. That's just at the top of this document, is
17 that what you showed?

18 A. Yes. Parking is in this area on the west side of the
19 building between the building and Airport Way.

20 Q. Okay. Mr. Jensen, I may drag you back out here to
21 show a few more things, but I think that gives the jury
22 a good overview. And now I'm going to ask you some
23 more questions. So I think we have taken the jury to
24 the point where Mr. Jackson has seen you come in, you
25 walked together to his office, and he tells you what?

1 A. When Jackson and I walked in to his office?

2 Q. Yes.

3 A. He tells me who the employee is, again, what the
4 observations were made and also the comment about being
5 an accommodation from SPU.

6 Q. Okay. The form that Mr. Sheridan had you look at,
7 Exhibit 102, the observations form, do you recall, at
8 what point, you started having Mr. Jackson fill it out?

9 A. I don't recall the specific time he was asked to
10 start filling it out.

11 Q. Mr. Sheridan asked you why -- I should back up. In
12 addition to Mr. Jackson's observations of what he had
13 seen, did he tell you what others had seen?

14 A. Yes, there were two other dispatchers in the office
15 with Ms. Monroe who also reported the same
16 observations.

17 Q. Okay. And we'll see if Mr. Sheridan allows this
18 testimony. What did Mr. Jackson relay to you about
19 what they had seen?

20 A. Again, that she was getting up, wandering kind of
21 aimlessly around the office, staring at the ceiling,
22 talking to herself.

23 Q. Mr. McLure can we switch the feed, I think we are
24 getting our own feed on the screen -- I think we're
25 getting Mr. Sheridan's feed on the screen. I'm sorry,

1 I misunderstood, I didn't know we had one with
2 highlighting on it. Okay. So Mr. Sheridan asked you
3 why you didn't talk to -- I'm skipping ahead of myself.
4 Who -- according to Mr. Jackson, who had first observed
5 Ms. Monroe's behaviors?

6 A. I don't recall specifically which dispatcher first
7 observed.

8 Q. But it was one of the dispatchers?

9 A. It was one of the two.

10 Q. Okay. And he described what they relayed to you?

11 A. Correct.

12 Q. And Mr. Sheridan asked why you didn't talk to them,
13 is there a reason?

14 A. Um, privacy reasons, um, also, you know, it's
15 something I wanted to observe myself.

16 Q. When you say "privacy reasons," can you elaborate on
17 that?

18 A. Typically, you want to respect people's privacy when
19 these fit for duties are occurring. We don't want to
20 bring them in to the process, it should be a supervisor
21 management safety representative and the employee type
22 meeting.

23 Q. Whose privacy are you respecting by doing that?

24 A. The employee being observed.

25 Q. Okay. Thank you, Mr. Jensen. So after Mr. Jackson

1 shared with you the observations that he had seen and
2 perhaps began filling out the form, what did you do
3 next? Feel free to refer either to your notes or a
4 time line, if that helps.

5 A. Well, I made the call to Evan Chinn to check in about
6 the accommodation. And he made the comment of moving
7 forward with a fit for duty, if it was warranted. I
8 also contacted Pam Beltz who, at the time, was the
9 city-wide fit for duty coordinator. And the reason I
10 do that is to get doctor availability. The City has a
11 few contracted clinics that we can take employees to to
12 conduct the fit for duty examinations. And in that
13 same conversation, I also, um, mentioned the behaviors
14 that were being reported, the wandering around the
15 room, talking to herself, staring at the ceiling. And
16 also, the employee's name. And Ms. Beltz stated that
17 she was familiar with this employee, that at Seattle
18 Public Utilities, she had gone through a fit for duty
19 previously, and they observed similar behaviors, and it
20 resulted in a positive drug test result.

21 Q. Okay. Was that news to you?

22 A. That was news to me.

23 Q. Had anyone else told you that before?

24 A. No.

25 Q. Okay. Did you share that information with Mr.

1 Jackson?

2 A. No.

3 Q. Okay. Did you share that information with anyone at
4 SDOT at some point during that day?

5 A. No.

6 Q. Okay. You -- so you made those calls, you already
7 testified about what you learned from Mr. Chinn. So
8 what was your next step?

9 A. The next step was, as I mentioned, contacting Ms.
10 Beltz and also notifying Mr. Chinn that we would be
11 meeting with the employee and doing an observation. My
12 supervisor, my manager at the time, was Rodney Maxie.
13 I always keep my supervisor in the loop with what's
14 going on, the events. And then we went to the dispatch
15 office, Mr. Jackson went and got Ms. Monroe, and we had
16 a conversation with Ms. Monroe about the behaviors
17 being observed, that we were concerned. We asked if
18 there was any explanation behind why she would be
19 acting that way. We did not receive a clear
20 explanation. But at the same time, I did see what the
21 others were reporting, when you are talking to her she
22 was swaying back and forth in her chair, she was
23 staring at the wall behind us, there wasn't a direct
24 view to us. And after that conversation, seeing what
25 others had observed, and the responses we received, we

1 made the decision that moving forward with the fit for
2 duty would be warranted.

3 Q. Okay. The conversation you just described, where did
4 it take place?

5 A. It took place in Mr. Jackson's office.

6 Q. Okay. And where was everyone during that
7 conversation?

8 A. As far as Ms. Monroe, myself and Mr. Jackson, we were
9 sitting in a meeting room table inside his office.

10 Q. Okay. And how was it a circular table, rectangular
11 table?

12 A. I believe it was a circular table.

13 Q. And how were you spaced around the table?

14 A. Even, triangular.

15 Q. Was anyone standing during this time?

16 A. No.

17 Q. Okay. And that's where you observed the behaviors
18 you were talking about with Ms. Monroe?

19 A. That's correct.

20 Q. I think you told the jury what it is that you were
21 seeing. You said that, "We made the decision to
22 proceed with a fit for duty." You had, at that point,
23 done a dozen fit for duty exams, you have done many
24 more since. Have there been times when a manager says,
25 you know, "I want you to come look at a fit for duty

1 situation" and you make a different decision?

2 A. Yes, many occasions that will be the case.

3 Q. Can you maybe describe -- maybe, I don't know, your
4 favorite occasion to the jury?

5 MR. SHERIDAN: Objection, relevance. 403, also.

6 THE COURT: Overruled, I will allow it.

7 A. Yeah, an incident of a manager/supervisor requesting
8 a fit for duty would be a motor vehicle collision.
9 Somebody drives by a parked vehicle too closely, clips
10 the mirror of it, and the manager will think that
11 that's so ridiculous that they want the person drug
12 tested, they want a fit for duty, but there are no
13 observations or signs of impairment, it is just a
14 mistake being made. So that would be a case where, you
15 know, I would call -- a call requesting assistance with
16 PD, but if there is no observations to support the
17 belief that they are impaired in any way. A fit for
18 duty wouldn't occur.

19 Q. Okay. So when you say, "We made the decision," if
20 you had felt a fit for duty was not appropriate, what
21 would have happened?

22 A. I would not have allowed it to be moved forward with.

23 Q. Is there anyway Mr. Jackson could have made it happen
24 if you didn't want it to go forward?

25 A. No.

1 looks when they are about to cry?" I think you might
2 have said yes. Did you feel like Ms. Monroe was about
3 to cry?

4 A. I didn't feel she was about to cry. You know, we
5 were very cordial, all three of us together. And
6 typically, when you do these fit for duties, it is very
7 stressful. It is stressful for me, it is stressful for
8 the employee and the manager. And this situation, it
9 was unusually calm and --

10 Q. Someone coughed, you said -- what was the last part,
11 unusually?

12 A. Calm and relaxed.

13 Q. And who was unusually calm and relaxed?

14 A. Ms. Monroe.

15 Q. Okay. You -- when did you first use the words, "Fit
16 for duty" with her, if you did, I'm sorry?

17 A. After I made the observations and determined that we
18 would be moving forward with a fit for duty, I asked
19 Ms. Monroe if she was familiar with the fit for duty
20 program at the City of Seattle.

21 Q. What was her response?

22 A. Her response was no, she was not familiar with it,
23 which I was surprised after being told by the fit for
24 duty coordinator that she had gone through one at her
25 employment at Seattle Public Utilities.

1 Q. The documents that you brought with you, how did you
2 use those with Ms. Monroe?

3 A. I pulled them out, I -- since she said she was
4 unfamiliar with the fit for duty program, I explained
5 what it meant to be fit for duty, the program itself,
6 what the process entails, independent evaluation from a
7 physician to make the determination, whether an
8 employee is fit for duty, and also that we would be
9 moving forward with this process.

10 Q. You mentioned her right to union representation?

11 A. Yes, many times. I offered her the opportunity to
12 contact her union, I even provided the telephone number
13 and her union representative's name. The first two or
14 three times I was not given a response from Ms. Monroe
15 on whether she wanted to contact the union. And I
16 continued to move forward with the process explaining
17 the program. And towards the end of the initial
18 conversation, I brought out the employee consent form
19 for her to sign, I presented it to her, I asked if she
20 would like to read it or have it read out loud to her.
21 She opted to have it read out loud to her, so I read
22 the consent form word for word to her. And after
23 reading that form, I asked her if she had any questions
24 about anything I read on the consent form or the
25 program in general, and she did not. And again, I

1 asked her if she would like to contact her union rep
2 after being presented that form and read to her.
3 That's when she did opt to contact her union
4 representative and go in to the middle office there.

5 Q. And that's a good point to stop and ask a few
6 follow-up questions. During the time that you were in
7 Mr. Jackson's office observing Ms. Monroe reading the
8 forms, as you described, all the things you just
9 described to the jury, did Ms. Monroe, at any time,
10 say, "I have a medical condition"?

11 A. No.

12 MR. SHERIDAN: Objection, leading.

13 THE COURT: Overruled.

14 A. No.

15 Q. Did she say -- did she offer any explanation for the
16 behaviors that you were describing to her?

17 A. No. She made them out to be just normal behavior.

18 Q. Okay. Mr. McLure, can you bring up Exhibit 325,
19 please.

20 MR. JOHNSON: I would offer its admission while
21 Mr. McLure is bringing that up. I don't know if we
22 -- I could be wrong.

23 THE COURT: I show this as a withdrawn.

24 THE CLERK: 325 is withdrawn.

25 MR. JOHNSON: I'm told that -- hold on a second,

1 your Honor, I think I may have made a boo boo. Hold
2 on. Let me take a peek at Exhibit 108. No, that's
3 not the one. Okay. I'm going to have to -- just one
4 second, your Honor, I'm going to see if I can find it
5 quickly. If not, I will move on. I won't be able to
6 ask about that because I can't find it.

7 Q. So Ms. Monroe, at this point, has gone next door to
8 the training office to make telephone calls. How long
9 was she in there?

10 A. I would say approximately twenty minutes total.

11 Q. What was happening during that twenty minutes, from
12 your perspective?

13 A. From my perspective and understanding, she was making
14 telephone contact with her union.

15 Q. Okay. And did you or Mr. Jackson do anything to
16 check on her progress?

17 A. Yes, about ten minutes after leaving, Jackson's
18 office, I went in the room to check on her, see if she
19 had made contact with the union, and if I recall
20 correctly, she was just holding the telephone receiver
21 in her hands, and she responded to me saying she wanted
22 to continue making contact to her union, so I left back
23 to Mr. Jackson's office.

24 Q. Okay. And what happened next?

25 A. Waited another ten minutes, and again, I entered and

1 the telephone receiver was just resting on the table.
2 And Ms. Monroe was looking at the ceiling and I asked,
3 "Are you okay with your attempts to contact the union?"
4 And I believe she got a hold of a union employee named
5 Luara, and she was okay, Ms. Monroe said she was okay
6 to move forward with the process. And she exited the
7 center office area and we reconvened, actually, at a
8 table in that commons area. There was nobody in there,
9 it was just the three of us, we were sitting at the
10 table. And the consent form was presented to her
11 again, and at that point you could tell that her mood
12 was changing, she became frustrated, she made comments
13 such as, "I can't --" or they -- I would have to check
14 my notes.

15 Q. Go ahead.

16 A. Um, yeah, she became visibly frustrated and said that
17 she had been through the process before and they had
18 messed it up, that her doctors had her medications all
19 messed up. And I tried to get her to elaborate on what
20 the process was, who were they and, you know, the
21 intent of the fit for duty or what would happen is that
22 the employee would go to the independent physician and
23 possibly contact any other physician prescribing
24 medications and get help and straighten everything out.
25 And again, I presented her the form, said, "We need to

1 move forward with the process," and she had the form in
2 front of her. And I watched the pen bounce back and
3 forth between the acknowledgment and consent line and
4 the refusal line. And it stopped on the refusal line
5 and she signed it. When she was doing that back and
6 forth, I did remind her again of, you know, the
7 consequences with refusing to a fit for duty. It
8 clearly says that it's considered insubordination and
9 it may result in disciplinary action up to termination.
10 And that was before she signed it. And she signed it
11 saying she can't go through with it again and she was,
12 at that point, notified that she was placed on
13 administrative leave and we began discussing
14 arrangements for her to get a ride home.

15 Q. Let me ask a few follow-up questions. That's a lot
16 of information. At any time up to the point where she
17 signed the form, had you discussed with her how she
18 would actually be transported to the medical facility
19 if she agreed to do the fit for duty exam?

20 A. Yes, it would be myself and Paul Jackson transporting
21 her and the clinic identified was on First Avenue
22 South, which is approximately a mile, mile and a half
23 away from the traffic shop.

24 Q. Okay. Up until the time when she signed the consent
25 form, did Ms. Monroe express any -- how shall I say it,

1 was she bothered by the way she would be transported to
2 the medical facility?

3 MR. SHERIDAN: Objection as to what she was
4 thinking as opposed to what she was saying.

5 THE COURT: Sustained.

6 Q. Did Ms. Monroe say or do anything to you to indicate
7 that she was uncomfortable with the way that you were
8 proposing she would be transported to the medical
9 facility?

10 A. She did not.

11 Q. Okay. You -- you said that you met her in the common
12 area outside of Mr. Jackson's office. Did you say you
13 were at one of the tables?

14 A. Correct.

15 Q. Were you seated?

16 A. Yes.

17 Q. Where was Ms. Monroe?

18 A. She was also seated.

19 Q. Where was Mr. Jackson at the time?

20 A. He was also seated.

21 Q. Okay. At the same table?

22 A. Correct.

23 Q. Was anyone -- how close were you to Ms. Monroe?

24 A. Um, three feet.

25 Q. What about Mr. Jackson?

1 A. I would say approximately three feet, too.

2 Q. Okay. You mentioned that Ms. Monroe's mood changed
3 when you presented her with the consent form again.
4 Did she seem fearful to you?

5 A. I don't know if I could speculate as fear, but
6 definitely frustrated, anxiety.

7 Q. Okay. At the time that she had finally signed the
8 form, you have seen the form, you see that Ms. Monroe
9 has written on it requesting union representation as of
10 10:33 a.m. Do you know when she signed that form?

11 A. At 10:43.

12 Q. Okay. So how do you explain the discrepancy, Ms.
13 Monroe wrote "10:33" you wrote "10:43"?

14 A. I don't know, I don't know why she wrote "10:33" on
15 the form.

16 Q. Did you question her about that? Did you actually
17 look at what she had written on the form?

18 A. I don't recall questioning her, but I -- you know, I
19 was surprised because she had said that she contacted
20 the union, she was ready to move forward.

21 Q. Okay. Once you had the signed consent form in your
22 hand, I wanted to ask, I think you said you presented
23 that form to her?

24 A. Correct.

25 Q. Did Mr. Jackson touch that form at any time prior to

1 her signing it?

2 A. I don't believe so.

3 Q. Okay. And she signed the form, now what happens?

4 A. After signing the form, again, she was placed on
5 administrative leave and Paul Jackson walked with her
6 to her desk and collected her belongings at the same
7 time.

8 MR. SHERIDAN: I'm going to object at this point.
9 I don't think there is any personal knowledge
10 established here.

11 THE COURT: Sustained. Lay a foundation, please.

12 MR. JOHNSON: Yeah.

13 Q. Let's just describe, so you -- it was you who said,
14 "You are on administrative leave;" is that correct?

15 A. Correct.

16 Q. And then what did Mr. Jackson and Ms. Monroe do?

17 A. Went to her office.

18 Q. Okay. And could you see them the entire time they
19 were in her office?

20 A. No.

21 Q. Okay. So they walked -- you could see them heading
22 in the direction of her office; is that correct?

23 A. Yes.

24 Q. How long were they there?

25 A. I would estimate three minutes.

1 Q. And when they came back, what did you see?

2 A. Um, I recall seeing that Paul Jackson had a badge in
3 his hands.

4 Q. And what else?

5 A. That's it.

6 Q. Was Ms. Monroe carrying anything?

7 A. I don't recall.

8 Q. Okay. Why did you understand that Ms. Monroe was
9 collecting her belongings? You wrote that in your time
10 line at 10:45, "Effective immediately, and Jackson
11 escorted her to her desk to grab belongings." How did
12 you know that that's what was happening?

13 A. That was what was communicated to Ms. Monroe.

14 Q. By whom?

15 A. Either myself or Mr. Jackson.

16 Q. And once she came back, what happened once the three
17 of you were together again?

18 A. Then we began discussing how she was going to get
19 home.

20 Q. Was that the first time you discussed that issue with
21 her?

22 A. Yes.

23 Q. And what did you say?

24 A. I communicated that we feel that she cannot safely
25 drive home, that we did not want her driving her

1 personal vehicle home. We asked did she drive to work,
2 and she did. And she made the comment that her sister
3 was nearby and that she could come pick her up. And
4 Ms. Monroe went in to the womens' locker room at that
5 point to, what I believe, is call her sister and
6 arrange for a ride home.

7 Q. When Ms. Monroe went into the bathroom, did she run?

8 A. No.

9 Q. Did she say that she had an urgent need to use the
10 bathroom for any reason?

11 A. No.

12 Q. Okay. Your understanding of why she was going to the
13 bathroom was?

14 A. To call her sister.

15 Q. Okay. And did you know, at the time, that there was
16 a telephone in the locker room?

17 A. Yes, I have seen a land line phone in the mens'
18 locker room across before.

19 Q. Okay. The last entry on your -- the 10:45 entry on
20 your time line, the last sentence is, "I called Beltz
21 notifying her." Can you explain more to the jury about
22 that?

23 A. So up to that point, SDHR, the city-wide fit for duty
24 coordinator, was under the assumption that we were
25 moving forward with the fit for duty and Ms. Beltz had

1 made contact with the First Avenue U.S. Healthworks
2 clinic to arrange for a doctor. So the clinic was
3 expecting us to arrive, the doctor was on staff, and
4 that call to Ms. Beltz was to notify her that the
5 employee had refused the fit for duty and to cancel our
6 arrival at the clinic.

7 Q. Okay. After Ms. Monroe went into the bathroom, was
8 the conversation -- how soon after her going into the
9 bathroom did the conversation in which Mr. Jackson was
10 on the phone outside the womens' locker room? How much
11 time passed between those two events?

12 A. How long -- can you ask that again, please?

13 Q. Sure. Terrible question. Between the time when she
14 went in the bathroom and time you were aware that Mr.
15 Jackson was on the telephone on the locker room
16 telephone, how much time was that?

17 A. At least ten minutes, if I was to estimate, after her
18 injury.

19 Q. Okay. Up to that ten minutes, had you or Mr. Jackson
20 done anything to check on Ms. Monroe?

21 A. No. After Ms. Monroe entered the locker room, I
22 would estimate within five minutes, an intercom page
23 came in the building saying that a phone call was made
24 for Ms. Monroe on line 1. And I believe she took the
25 telephone call while inside the locker room before

1 Jackson spoke on the phone.

2 Q. Okay. The next entry on your time line says, "HR
3 called Jackson, informed us that the union and HR
4 agreed to allow Monroe to reverse her decision on
5 refusing the FFD." Can you describe to the jury what
6 happened between, let's say, the page over the intercom
7 that you just described where Ms. Monroe's name was
8 paged on line 1, and this time at 11:00 when HR is
9 informing Mr. Jackson that she can take the fit for
10 duty?

11 A. So it was the union that was calling on the land line
12 at the traffic shop, and a conversation was made with
13 Ms. Monroe and the union. And I believed that union
14 was also in contact with our HR department, and the
15 decision was made to allow Ms. Monroe to reverse her
16 decision, change her mind to move forward with the fit
17 for duty. And that call came from our HR department to
18 Mr. Jackson of the reversal. When Mr. Jackson informed
19 me that the fit for duty was going to move forward, Pam
20 Beltz actually was stepping onto a flight, and right as
21 I made that last call to her, cancelling the doctor.
22 She says, "Well, if anything comes up, I can't take
23 your call, I will be on a flight." And so I actually
24 called Moses, who is the manager at the Healthworks
25 clinic and said, "Hey, is the doctor that was

1 initially, originally available to do the fit for duty
2 still on staff, and will he or she be there for the
3 next couple hours?" And Moses confirmed that that
4 doctor was still available. So at that point, it was
5 my understanding and Paul Jackson's understanding that
6 the fit for duty was back on, and we began waiting for
7 Ms. Monroe to come out of the locker room.

8 Q. The telephone call with the union, were you aware
9 that Mr. Jackson was on the phone outside the locker
10 room?

11 A. Yes.

12 Q. Did you see him on the phone?

13 A. Yes.

14 Q. Did you see him the entire time he was on the phone?

15 A. No.

16 Q. Okay. Were you aware that he was on the phone?

17 A. Yes.

18 Q. How?

19 A. I heard him.

20 Q. Okay. And describe Mr. Jackson's voice that you were
21 hearing?

22 A. He was talking in his normal voice.

23 Q. And how would you describe Mr. Jackson's normal
24 voice?

25 A. He is a louder person.

1 Q. Okay.

2 A. Opposite of me.

3 Q. Sorry, please finish what you were saying.

4 A. He is a loud person, his voice carries well.

5 Q. Could you hear every word he was saying?

6 A. Not every word.

7 Q. Okay. You could hear, did you have an understanding
8 of what he was talking about just based on what you
9 could hear?

10 A. Yeah, my understanding was that he was on the phone
11 with the union and the union was telling him that an
12 agreement was made to allow Ms. Monroe to reverse her
13 decision on the fit for duty. And I heard Paul say
14 that, you know, "If that's the decision made, it has to
15 come from my chain of command, so you know, my
16 management, my HR needs to contact me to inform me that
17 the decision was changed."

18 Q. Did you hear Mr. Jackson say the words, "It's too
19 late," or, "Too late"?

20 A. I did not hear that.

21 Q. Did you hear Mr. Jackson raise his voice above the
22 loud volume that you say is his normal voice?

23 A. No, I did not hear that.

24 Q. Okay. Did you ever see Ms. Monroe again after she
25 went into the locker room?

1 A. I did not.

2 Q. Okay. Is it possible that Mr. Jackson had a
3 conversation with Ms. Monroe that you didn't know
4 about?

5 A. Possibly.

6 Q. Okay. And when?

7 A. Ms. Monroe was in the locker room for a period of
8 time, and based on the time line here in front of me,
9 around 49 minutes. And, you know, we would do
10 check-ins, you know, knock on the door, and I just
11 cracked it open enough to say, "Hey, are you in there,
12 are you okay?" And when Paul did a check, I don't know
13 if any conversations may have happened.

14 Q. Did you do at least one of those checks?

15 A. Yes.

16 Q. Did you receive a response from Ms. Monroe?

17 A. Yes.

18 Q. Okay. So when you checked on her during that time,
19 you knew she was there, she responded in some way?

20 A. Yes.

21 Q. Okay. Given what you have said about Mr. Jackson's
22 voice, what do you believe about whether Mr. Jackson
23 had a conversation with Ms. Monroe that you didn't know
24 about?

25 A. Could you ask that again?

1 Q. You had said it was possible that Mr. Jackson, during
2 one of those check-ins at the door, had a conversation
3 with Ms. Monroe and you described earlier Mr. Jackson's
4 loud voice, his normally loud voice. Do you think a
5 conversation happened that you weren't aware of?

6 A. Not any --

7 MR. SHERIDAN: Objection. By definition, he is
8 not able to answer that question.

9 MR. JOHNSON: I suppose that's true, your Honor.
10 How about if I withdraw that question?

11 THE COURT: All right.

12 Q. Do you have any reason to believe that Mr. Jackson
13 had a conversation with Ms. Monroe other than the one
14 with Ms. Monroe, other than the telephone conversation
15 we have talked about?

16 A. Not beyond, "Are you in there, are you okay?"

17 Q. All right. And did there come a time when someone
18 checked on the door and there was a response?

19 A. Yes. During one of Mr. Jackson's checks, he did not
20 receive a response from Ms. Monroe.

21 Q. What happened?

22 A. Um, he went to the dispatch office and asked one of
23 the other dispatchers who were females to enter the
24 female locker room to see if she was in there.

25 Q. Okay. And what did he find out?

1 A. They could not locate her.

2 Q. Then what did you do?

3 A. We looked around the building, checked the sign
4 manufacturing area, the warehouse. Could not find her.
5 I went into the dispatch office and asked if any of the
6 dispatchers knew what kind of car she drove. They said
7 they did, and that her car was no longer out there.
8 But they also mentioned that they did see it this
9 morning.

10 Q. So at the time that you finally had confirmation that
11 Ms. Monroe's car was gone, how much time had passed
12 between the last time Ms. Monroe confirmed she was
13 still in the locker room and then?

14 A. Ten minutes, approximately.

15 Q. So you don't know for sure when she left?

16 A. No.

17 Q. What time did you leave the traffic shop?

18 A. At 12:10 p.m.

19 Q. Okay. Did your involvement with Ms. Monroe end after
20 February 8th?

21 A. No, there were two fact-finding meetings afterwards,
22 and an unemployment hearing.

23 Q. Okay. And we'll only talk about the fact finding
24 meetings. Who was at the first fact-finding meeting?

25 A. Are my fact-finding meeting notes available?

1 Q. Yes, they are. Mr. McLure, can pull up Exhibit 386,
2 which has not been admitted yet?

3 MR. JOHNSON: I will ask Mr. Sheridan if he
4 objects to its admission.

5 MR. SHERIDAN: What exhibit is that?

6 THE COURT: 386.

7 MR. SHERIDAN: May I have one moment, your Honor?

8 THE COURT: Certainly.

9 MR. SHERIDAN: Thanks.

10 MR. JOHNSON: You will have it on your screen in
11 front of you. It's also in one of those binders, if
12 we don't get it on the screen.

13 MR. SHERIDAN: I missed if the witness has
14 authenticated the handwriting.

15 THE COURT: On 386, he has not.

16 Q. Do you see it in front of you, Mr. Jensen, on your
17 screen?

18 A. Yes.

19 Q. Is that your handwriting?

20 A. Yes.

21 Q. Are those your notes from first fact-finding meeting?

22 A. Could you scroll to the top, please?

23 Q. Why don't you pull up just because these are three
24 pages, by what I have. Why don't you pull out the
25 binder, Mr. Jensen, because we can't show you all the

1 pages at once.

2 A. What number is that?

3 Q. 386. Do you have that, Mr. Jensen?

4 A. Yes.

5 Q. Are those your notes from the first fact-finding
6 meeting?

7 A. Yes, those are my notes.

8 MR. JOHNSON: Any objection?

9 MR. SHERIDAN: I would ask for more foundation on
10 when they were made, a business record.

11 MR. JOHNSON: Sure.

12 THE COURT: All right.

13 Q. Mr. Jensen, when did you take these notes?

14 A. I took these notes as the meeting occurred.

15 Q. And did you -- so, for example, there are what looks
16 like statements attributed to certain people. Did you
17 write those statements as they occurred?

18 A. Yes, I indicated who made the statements by their
19 initials.

20 Q. Okay. Would you keep these notes as part of your
21 regular records for any fit for duty situation that you
22 were involved with?

23 A. Yes, these would be part of my file.

24 MR. JOHNSON: I will offer their admission again.

25 THE COURT: 386 is offered.

1 MR. SHERIDAN: We are in that same situation
2 about if it is offered for the truth, there is double
3 hearsay in here. So I would object on that ground,
4 hearsay and double hearsay. Like the Hitsman report.

5 THE COURT: All right. So are you objecting to
6 its admission, or are you asking for there to be a
7 limiting instruction?

8 MR. SHERIDAN: I'm objecting so there will be a
9 limiting instruction. Actually, could I have a brief
10 sidebar, because I do have to raise some things.

11 THE COURT: Sure.

12 (Sidebar held.)

13 THE COURT: Okay.

14 MR. SHERIDAN: This is different than Rutheford's
15 notes because she's the decision maker, she's not a
16 decision maker and hasn't made any connection that
17 these hand-written notes were used by the decision
18 makers. So it is not admissible for a bunch of
19 reasons, that would be one of them.

20 MR. JOHNSON: He can establish they were provided
21 to Mr. Hitsman. He can also use them to refresh his
22 recollection.

23 THE COURT: He can, but that wouldn't make them
24 admissible.

25 MR. JOHNSON: They are also a prior recorded

1 recollection, so he can read them into the record, at
2 a minimum.

3 MR. SHERIDAN: Well, that's -- the prior recorded
4 recollection only happens if the person cannot
5 refresh their recollection, and then --

6 THE COURT: It still doesn't get admitted.

7 MR. JOHNSON: It gets read.

8 THE COURT: I think it does get read in.

9 MR. SHERIDAN: I think only section that applies
10 gets read in, not the whole thing.

11 THE COURT: Also, see prior recollection.

12 MR. JOHNSON: These note were also provided to
13 the union as part of the grievance process, which I
14 know we can't get into.

15 THE COURT: Right, but that's not -- that's not
16 part of this. All right. Prior recollection.

17 MR. JOHNSON: It is --

18 MR. SHERIDAN: It is one of the hearsay
19 exceptions.

20 THE COURT: 801.

21 MR. SHERIDAN: It is recollection recorded.

22 MR. JOHNSON: Your book is different than mine,
23 your Honor. Pretty sure it is in 801. Okay. Yeah,
24 that's it.

25 THE COURT: 803-18.

1 MR. SHERIDAN: Yeah, 803-18.

2 MR. JOHNSON: Yeah, 803-18(a)5. That sounds
3 familiar. If Mr. Sheridan has the same book as you,
4 you need to move forward a few pages, your Honor.
5 803-18.

6 THE COURT: Okay. All right. Recorded
7 recollection.

8 MR. SHERIDAN: It doesn't overcome the hearsay.

9 THE COURT: One second, please.

10 MR. JOHNSON: May be read into evidence. Won't
11 may be read into evidence. It is also present-sense
12 impression, he is recording them as he is writing
13 them down.

14 THE COURT: No, that means I'm not --

15 MR. JOHNSON: Perceiving.

16 MR. SHERIDAN: So there is a bigger problem here
17 because the first question is, if he wanted to say,
18 "Joe said at the meeting," that would still be
19 hearsay, because he is not receiving it for notice,
20 because he is not a decision maker. So all of that
21 is hearsay, and then when he writes it down, it is
22 double hearsay. So none of this --

23 THE COURT: I think the only thing that's
24 admissible is Monroe's statements.

25 MR. JOHNSON: Or Ms. Jacobs, on her behalf.

1 She's hear agent.

2 THE COURT: Right.

3 MR. SHERIDAN: I would be --

4 MR. JOHNSON: I could --

5 MR. SHERIDAN: I would say that's hearsay, but I
6 would say his statement and our statement are no
7 problem, but Jacobs is still -- that would be
8 hearsay.

9 THE COURT: I would allow Jacobs. Okay.

10 MR. JOHNSON: Thank you, your Honor.

11 THE COURT: Thank you, Counsel.

12 (End of sidebar.)

13 Q. So I think we established, instead of showing the
14 jury your notes, you can refer to them either in the
15 binder or on the screen. I wanted to ask, first of
16 all, you had asked -- I think my question originally
17 was who was at the meeting, you asked, "Can I see my
18 notes?" Having seen your notes, who was at the
19 meeting?

20 A. Lisa Jacobs, who is a union representative with Local
21 17. Paul Jackson, Mary Rutherford, Dale Hitsman,
22 myself and Ms. Monroe.

23 Q. Okay. And what date was that meeting?

24 A. February 13th, 2013.

25 Q. So five days after the incident?

1 A. Yes.

2 Q. Okay. And what your Honor has just directed me is,
3 we don't want you to testify about what anyone said
4 except yourself, Ms. Monroe, or Ms. Jacobs. So I will
5 try to ask you questions that will avoid those topics,
6 but maybe can you help me out, as well. Did Ms.
7 Monroe, herself, speak at the meeting?

8 A. Yes.

9 Q. Did she offer her account of events?

10 A. Yes.

11 Q. What sticks out to you about her account of events?

12 A. Um, --

13 Q. You can refer to your notes as much as you need, Mr.
14 Jensen. I believe that to the extent you need to, you
15 can even read what she said based on your notes to the
16 extent they help you do so.

17 A. First, she made mention of, "Here we go again, this
18 is deja vu, been through this before." And that was
19 not mentioned in the initial meeting with Ms. Monroe,
20 not until later on. And she also felt that she was
21 under intimidation and duress. And at no time do I
22 feel that myself or Paul Jackson were intimidating her
23 in any way, which I was surprised to hear.

24 Q. Was there -- I see a place in your notes that seems
25 to suggest, "I don't trust them." Is that something

1 that Ms. Monroe said that she had stated during the fit
2 for duty process?

3 MR. SHERIDAN: Objection, leading.

4 THE COURT: Sustained.

5 Q. Is there anything else that Ms. Monroe said that
6 stands out to you as being inconsistent with what you
7 witnessed on February 8th?

8 MR. SHERIDAN: Your Honor, I would just like to
9 raise that, procedurally, the witness is now
10 refreshing his recollection and should not be
11 testifying from the document.

12 MR. JOHNSON: I thought we agreed it was recorded
13 recollection, he can read --

14 THE COURT: Right, I think that's a writing to
15 refresh memory and recorded recollection.

16 MR. SHERIDAN: Right, he is at the stage where it
17 is determining whether he can refresh his
18 recollection.

19 Q. Mr. Jensen, --

20 MR. JOHNSON: Your Honor, let me know if this
21 question meets your approval.

22 Q. Based on what you've written down here, would you
23 tell the jury what Ms. Monroe said at the meeting?

24 MR. SHERIDAN: I'm going to object because he
25 should be testifying based on his memory. We should

1 see if he has refreshed it by looking at the
2 document.

3 MR. JOHNSON: I'm not trying to refresh his
4 recollection, I'm trying to have a recorded
5 recollection into the record.

6 THE COURT: All right. I think we are confusing
7 writings to refresh recollection under 612.

8 MR. SHERIDAN: Right.

9 THE COURT: And recorded recollection under 803-H
10 and 5.

11 MR. SHERIDAN: Right, A-5. 612 is proper
12 procedure. If it turns out he can't remember, then,
13 go to 803, and --

14 THE COURT: I don't think --

15 MR. SHERIDAN: That question can be entered.

16 THE COURT: I don't think that's correct,
17 Counsel. I will allow him to use 803(a)5 and refer
18 to the recorded recollection.

19 MR. JOHNSON: Would you like him to read the
20 words that are on the document, or can he translate
21 his own shorthand and code so the jury can understand
22 it better?

23 MR. SHERIDAN: Your Honor, may I, just to make a
24 record, say that for that rule to apply, first, it
25 has to be established that he has no memory and it

1 can't be refreshed. That's what the rule says.

2 THE COURT: All right. Under foundation
3 requirements, the witness now has insufficient
4 recollection to testify about the matters fully and
5 accurately. The plaintiff's objection is sustained.
6 Foundation must be laid for lack of specific memory
7 regarding what Ms. Monroe said.

8 MR. JOHNSON: Okay.

9 Q. Do you remember -- I think I asked you already what
10 do you remember about what Ms. Monroe said?

11 A. I remember that what she was saying was not what
12 actually happened the day at the traffic shop. I
13 remember accusations were made of Paul Jackson and
14 myself that were not accurate.

15 Q. Okay. And what accusations about you or Mr. Jackson
16 were not accurate about what happened on February 8th?

17 A. That the consent form was forced on her, that we used
18 intimidation techniques to get her to do the fit for
19 duty.

20 Q. Did she offer any explanation at that meeting for her
21 behavior that day?

22 A. No. I remember she was asked about -- or asked to
23 give an explanation of why she behaved the way she did
24 that day, and her response was giving her side of the
25 story about what happened in the meeting with Paul

1 Jackson and I, not why her behavior was -- or what her
2 behavior was attributed to. And I remember that she
3 was asked again, "How would you attribute the
4 observations in your behavior?" And she did not have
5 an answer for it.

6 Q. Okay. Do you -- did Ms. Monroe, during that meeting,
7 mention that she suffered from depression?

8 A. Not that I recall.

9 Q. Did she mention she suffered from anxiety?

10 A. Not that I recall.

11 Q. Did she bring up any medical condition?

12 A. No.

13 Q. Other than saying that she felt intimidated and that
14 the form itself was forced upon her, did she have any
15 specific complaints about what you or Mr. Jackson had
16 done that day?

17 A. No.

18 Q. Did she say that she had urinated in her pants?

19 A. No.

20 Q. What did she say about how she got home that day?

21 A. If I remember correctly, she, in that meeting, said
22 that she did drive home.

23 Q. Okay. Did you have another fact-finding meeting with
24 Ms. Monroe?

25 A. Yes, there was a second fact-finding meeting.

1 Q. And when was that?

2 A. Again, I would have to refer to my notes for the
3 exact date, but it was shortly after the first one.

4 Q. Okay. Let's bring up your notes, which are Exhibit
5 345. They haven't been admitted, and I'm certain that
6 Mr. Sheridan will have the same objection, so we'll try
7 to follow the same ground rules. We'll only talk about
8 what Ms. Monroe or Ms. Jacobs said, we'll assume they
9 were there. Do you have those in front of you, Mr.
10 Jensen?

11 A. Yes.

12 Q. And you can look at them in the exhibit binder, too,
13 if that helps with Exhibit 345. You can look at more
14 of the -- who was at that meeting?

15 A. To my recollection, the same group that was in the
16 first meeting.

17 Q. Was Mr. Jackson there?

18 A. Yes.

19 Q. Okay. Did -- what was the subject of that meeting?
20 What was different about that meeting versus the first
21 one?

22 A. The questions were more detailed towards Ms. Monroe.

23 Q. Okay. In what way?

24 A. Specifically, was she under the influence of
25 anything, and what was it.

1 Q. And what was Ms. Monroe's response to those
2 questions?

3 A. That she took over-the-counter sinus tablets and a
4 sleeping pill the previous night.

5 Q. Did she say, "I was behaving strangely because I took
6 the medications that --"

7 MR. SHERIDAN: Objection, leading.

8 THE COURT: Overruled.

9 A. I do not recall that she attributed these medications
10 to her behavior.

11 Q. Okay. Did she mention that she suffered from
12 depression?

13 A. No.

14 Q. Did she mention that she suffered from anxiety?

15 A. No.

16 Q. Did she say she had a disability?

17 A. No.

18 Q. Did anything else stand out about what Ms. Monroe or
19 Ms. Jacobs said to you that day with respect to what
20 you recall of what happened at the traffic shop on
21 February 8th?

22 A. In this meeting, she did, she mentioned that she
23 didn't inform anybody that she was leaving.

24 Q. So she admitted at this point that she left without
25 telling anyone?

1 A. Yes.

2 Q. Okay. Did she address again how she had gotten home?

3 A. Her sister had come picked her up.

4 Q. Okay. Was that different than what she said at the
5 first meeting?

6 A. Yes, in the first meeting, she said that she drove
7 home.

8 Q. Okay. And at the end of the second page of your
9 notes, there is a reference to Ms. Monroe's bladder.
10 What did Ms. Monroe say that day about that topic?

11 A. That she went to the locker room, started to get hot
12 flashes, had an issue with controlling her bladder, and
13 had nowhere else to go.

14 Q. Do you recall, was she saying that, "I had urinated
15 in my pants out of stress," or was she just talking
16 about a medical issue that was coincidental to the
17 events?

18 MR. SHERIDAN: Objection, leading.

19 THE COURT: Well, it's not leading because he is
20 -- well, I will sustain the objection. Why don't you
21 rephrase it.

22 MR. JOHNSON: Sure.

23 Q. Describe just to the jury what she was saying about
24 -- I mean, you read from your notes, but what was she
25 communicating about why that was an issue?

1 A. She had to go to the locker room because she was
2 having issues with controlling her bladder.

3 Q. Okay. Other than attending the two fact-finding
4 meetings, did you -- well, let me ask this: Why were
5 the fact finding meetings occurring?

6 MR. SHERIDAN: Objection, foundation.

7 THE COURT: Sustained.

8 Q. Do you know why the investigation was occurring?

9 A. It's part of the process, the fact findings and
10 getting the employee's account of events.

11 Q. Who did you understand to be leading the
12 investigation?

13 A. It would have been Dale Hitsman, the --

14 Q. Was Mr. Hitsman at both of those fact-finding
15 meetings?

16 A. Yes.

17 Q. Did do you anything else to assist Mr. Hitsman in his
18 investigation?

19 A. Just provided my notes.

20 Q. Okay. Did you have any role in recommending or
21 considering what discipline Ms. Monroe would receive?

22 A. No.

23 MR. JOHNSON: Okay. No further questions, Mr.
24 Jensen. Thanks.

25 THE COURT: Thank you, Mr. Johnson. Mr.

1 Sheridan?

2 MR. SHERIDAN: Yes, thanks, your Honor.

3 REDIRECT EXAMINATION

4 BY MR. SHERIDAN:

5 Q. All right. So I just want to verify that you said
6 this: Your testimony, did you say that Chin said the
7 disability would not explain the behavior observed?

8 A. That's correct.

9 Q. Chin said the disability would not explain the
10 behavior observed?

11 A. The accommodation.

12 Q. Now you're saying accommodation, but you just said,
13 under oath, "disability" and you said it before, did
14 you not?

15 MR. JOHNSON: Objection, Mr. Sheridan said that,
16 he is not under oath.

17 THE COURT: Why don't you rephrase, Counsel.

18 Q. When you testified and your lawyer asked you what was
19 said, you said Chin said the disability would not
20 explain the behavior observed. That's what you said;
21 right?

22 A. I meant the accommodation.

23 Q. But you said the disability; right?

24 A. But I am unaware of disability.

25 Q. Well, you have basically reversed saying

1 "accommodation," did you not?

2 MR. JOHNSON: Objection, your Honor
3 argumentative.

4 THE COURT: Sustained.

5 MR. SHERIDAN: Okay.

6 Q. And I just want to talk about one other thing. Did
7 you testify to this jury that you heard Mr. Jackson is
8 on the other side of the room, on the phone with the
9 union rep, and you could hear him talk; right? That's
10 what you are telling the jury?

11 A. I heard bits and pieces of conversations.

12 Q. Are you testifying to this jury that you heard him
13 say he needed to get back, he needed to check on
14 whether he could -- whether she could have a second
15 chance, or words to that effect?

16 A. I heard Mr. Jackson say that if the decision to
17 reverse her refusal was made, that it needs to come
18 from his management.

19 Q. All right. And you know you are under oath; right?

20 MR. JOHNSON: Objection, your Honor.

21 THE COURT: Argumentative.

22 MR. SHERIDAN: Yes, it is, okay. So, your Honor,
23 I'm -- we are going to try to set this up so that can
24 you see the screen, but it doesn't come up here.
25 Okay.

1 Q. You gave testimony, sworn written testimony in this
2 case, did you not?

3 MR. JOHNSON: Sworn written testimony? I'm
4 sorry, I missed that.

5 Q. Do you understand my question?

6 A. I do not.

7 Q. Okay. I'm going to have this marked as the next
8 exhibit in order. Can we arrange to have the screen
9 show what's on -- but not up there. Okay.

10 THE CLERK: Exhibit 117, do you have a copy for
11 the judge?

12 THE COURT: I have it on the screen.

13 MR. SHERIDAN: Thanks, Judge. Thank you. I'm
14 going to approach the witness, if I may?

15 THE COURT: You may, Counsel.

16 THE BAILIFF: Can I move this monitor so it is --

17 MR. SHERIDAN: Yes, I would say --

18 THE BAILIFF: I'm not sure how good their eyes
19 are, but --

20 MR. SHERIDAN: Oh, that was nice. May I
21 approach?

22 THE COURT: Yes.

23 Q. So I'm handing you the declaration of Scott Jensen,
24 that was signed on the 4th day of November, 2016. This
25 is your sworn statement; is it not, sir? Do you need

1 to review it to know if that's your sworn statement,
2 sir?

3 A. Just looking at it. Yes, that's my signature.

4 Q. You gave that statement under oath, did you not?

5 A. I believe so.

6 Q. All right. Look at page 5. You wrote, "I declare
7 under penalty of perjury that the foregoing is true and
8 correct." You wrote that; right? Page 5.

9 A. That's correct.

10 Q. All right. And then that's your signature at the
11 bottom; is it not?

12 A. Yes, that's my signature.

13 Q. All right. Now, I'm going to ask you, I want to
14 again confirm that you just told this jury that you
15 could hear Mr. Jackson across the room and you could
16 hear him say words to the effect that he needed to
17 check with the union; right? I mean, check with Mr.
18 Chinn?

19 A. Yes.

20 Q. Okay. But you said something totally inconsistent
21 under oath in this declaration, did you not? I'm going
22 to have you, if you would, would you read out loud what
23 you swore to in paragraph 15.

24 A. On which page?

25 Q. It is on page 5, paragraph 15. Begins with, "I

1 cannot." Go ahead and read that.

2 A. "Although I could not hear the words --"

3 Q. Please read louder.

4 A. "Although I could not hear the words he was saying, I
5 could hear the tone of his voice did not change during
6 the conversation."

7 Q. So that was the last sentence, I would ask you to
8 read the whole paragraph.

9 A. Paragraph 15?

10 Q. 15, please.

11 A. "I cannot recall if Mr. Jackson returned with Ms.
12 Monroe to his office or if he came back alone. At some
13 point, however, she entered the womens' locker room at
14 the traffic shop. She was there for a substantial
15 period of time. Mr. Jackson went several times to
16 check on her from there. I was in Mr Jackson's
17 office."

18 Q. Well, "From where I was," go ahead.

19 A. "From where I was in Mr. Jackson's office, I could
20 hear that Mr. Jackson, at some point, was talking
21 outside of a locker room door. Although I could not
22 hear the words he was saying, I could hear tone of his
23 voice did not change during the conversation."

24 Q. So on November 4th, 2016, it was your testimony that
25 you could not hear the words he was saying; correct?

1 A. Yes.

2 MR. JOHNSON: Objection to the characterization
3 as testimony, your Honor.

4 THE COURT: Overruled.

5 Q. Correct?

6 A. Yes.

7 Q. But today, you are suddenly saying that you do recall
8 him saying something very specific; correct?

9 A. Yes, I recall him making that comment I mentioned.

10 Q. You are not claiming that your memory got better
11 between November and today, are you?

12 A. No.

13 MR. SHERIDAN: No further questions.

14 THE COURT: Thank you, Counsel.

15 MR. JOHNSON: Two quick follow-ups, your Honor.

16 THE COURT: Pardon?

17 MR. JOHNSON: I have two quick pieces of
18 follow-up.

19 THE COURT: Go right ahead.

20 MR. JOHNSON: Okay.

21 RECROSS EXAMINATION

22 BY MR. JOHNSON:

23 Q. Mr. Jensen, the statement you were just looking at
24 that Mr. Sheridan was showing to you, did you write
25 that statement?

1 A. I did not.

2 Q. Who did?

3 A. I believe you did.

4 Q. That's correct. Did you notice the part when you
5 were signing it that said -- Mr. Sheridan can bring it
6 back up on the screen the way it was before, sorry. I
7 actually have this, I can just pull it out. There it
8 is. Did you notice the part that said, "Although I
9 could not hear the words that he was saying" when you
10 were signing it at the time, this document that I
11 wrote?

12 A. I may have not looked at it that closely.

13 Q. Okay. Your memory is that you could hear what Mr.
14 Jackson was saying or at least?

15 MR. SHERIDAN: Objection, outside -- sounded like
16 it was going to be leading, but maybe not.

17 THE COURT: Go ahead.

18 Q. Your memory is that you could hear at least a portion
19 of what Mr. Jackson was saying?

20 MR. SHERIDAN: Objection, leading.

21 THE COURT: Sustained.

22 Q. Could you hear what Mr. Jackson was saying, at least
23 in part?

24 A. That comment I had mentioned, yes.

25 Q. Okay. And let's have -- switch the feeds to our

1 feed. Just pull up your notes really quickly. This is
2 Exhibit 328. This is the hand-written notes. And Mr.
3 Jensen, those will come up on the screen in front of
4 you. I believe -- tell the jury what you wrote at --

5 MR. SHERIDAN: Whoa, whoa.

6 THE COURT: Those are admitted.

7 MR. SHERIDAN: That's admitted? Oh, oh, okay.

8 Oh, yeah, sorry.

9 Q. Do you have those in front of you, Mr. Jensen?

10 A. Yes.

11 Q. Read the first of the 9:15 a.m. entries to the jury.

12 A. "Tried to contact HR regarding details of
13 accommodation."

14 Q. Why didn't you write "disability" there?

15 A. Because I was not aware of a disability.

16 Q. Did Mr. Chinn discuss a disability with you?

17 A. No.

18 Q. Okay. Let's have Exhibit 332 back up on the screen.
19 And look at the entry for 9:15. There you go. In the
20 highlighting is what I would have wanted. Why did you
21 write "accommodation" and not "disability"?

22 A. Because a disability was never mentioned to me. It
23 was reported as an accommodation.

24 MR. JOHNSON: Okay. Thank you very much, Mr.

25 Jensen. I have no further questions.

1 THE COURT: Mr. Sheridan?

2 MR. SHERIDAN: Very briefly.

3 REDIRECT EXAMINATION

4 BY MR. SHERIDAN:

5 Q. So the document that you swore under oath was true,
6 are you now saying it was not accurate?

7 A. I do remember hearing that comment that I mentioned
8 earlier.

9 Q. And that's -- this document that you swore was true,
10 it's a document filed in the Court; correct?

11 A. Correct.

12 MR. SHERIDAN: No further questions.

13 THE COURT: Mr. Johnson.

14 MR. JOHNSON: Nothing further.

15 THE COURT: Members of the jury, this is your
16 opportunity to ask Mr. Jensen questions. Spelling of
17 the last name is J E N S E N. First initial is S, as
18 in Scott. Today's date is 12-13-16. Juror No. 6 is
19 wearing a green plaid shirt. Counsel, please?

20 (Sidebar held.)

21 THE COURT: Okay.

22 MR. SHERIDAN: That's fine.

23 MR. JOHNSON: The last one might call for
24 speculation, I guess, because --

25 THE COURT: Do you object to the last one?

1 MR. SHERIDAN: What is it saying? No, relevance
2 and speculation.

3 MR. JOHNSON: I would be okay with -- sorry.
4 Is it all right if I make a --

5 THE COURT: Yeah.

6 MR. JOHNSON: Change this part? This is
7 speculative, obviously, but --

8 THE COURT: Okay.

9 MR. JOHNSON: I would say yes as modified.

10 THE COURT: Okay.

11 MR. JOHNSON: And three is a no, yeah?
12 Speculation, we agreed?

13 THE COURT: Okay. All right. Are you good with
14 that?

15 MR. SHERIDAN: Yes.

16 THE COURT: Okay.

17 MR. JOHNSON: Oh, great.

18 MR. SHERIDAN: Is there a --

19 MR. JOHNSON: I would caution the witness about
20 how to answer that because I don't want him
21 inadvertently violating the Court's order. I just
22 think it is such a danger area, basically inviting my
23 witness to -- he has been cautioned about the order.

24 THE COURT: Why don't I ask him, "After this
25 incident, when did you learn --"

1 MR. JOHNSON: About what?

2 THE COURT: About Jackson's behavior.

3 MR. JOHNSON: I'm not sure I understand what you
4 are proposing, your Honor. I don't know that this
5 witness actually does know. He probably does, I
6 frankly don't know the answer. If you wanted to ask,
7 "Were you aware that Mr. Jackson was transferred into
8 a different position around the same time --"

9 THE COURT: Well, that doesn't -- that's not the
10 -- all right. Why don't we get that issue.

11 MR. JOHNSON: So 2 and 3 are okay, the first one,
12 "When did you hear," I don't even know if he did
13 hear, your Honor. We obviously have no idea if he
14 knows that. I'm very afraid his answer would
15 inadvertently --

16 THE COURT: Could ask him, "At some point, did
17 you hear --"

18 MR. JOHNSON: You could ask him, "Did you hear,"
19 or, "Did you know then," you can ask, "When did you
20 know," that's fine.

21 THE COURT: About what?

22 MR. JOHNSON: About his transfer to --

23 MS. ASHBAUGH: The new assignment.

24 THE COURT: Okay.

25 MR. JOHNSON: How will that read now, just to be

1 clear?

2 THE COURT: "When did you hear about Jackson's
3 reassignment to a non-supervisory position?"

4 MR. JOHNSON: Can we first ask did you and when?

5 THE COURT: Uh-huh.

6 MR. JOHNSON: Do it that way.

7 THE COURT: Okay.

8 MR. JOHNSON: I want to place on the record, I
9 think we'll still put down if we have objection to
10 that question, just because I'm afraid, although he
11 has been cautioned, will open the door. So I would
12 not have anything asked about that at this point.

13 THE COURT: All right. Thank you.

14 (End of sidebar.)

15 THE COURT: Mr. Jensen, I have a few questions
16 from the jury. I will ask you the questions, if you
17 would be good enough to direct your responses to the
18 jurors. First question is, "When the fit for duty
19 exam is presented to an employee, is there a time
20 limit as to which they need to report to the medical
21 facility from the job site?"

22 THE WITNESS: There is not a specific time line
23 that that's identified as far as reporting. It just
24 says treat it as being urgent.

25 THE COURT: "Were you aware of Mr. Jackson's

1 reassignment to a non-supervisory position?"

2 THE WITNESS: No.

3 THE COURT: "Did you see any strange behavior in
4 the dispatch office when you entered Sunny Jim?"

5 THE WITNESS: When I first entered the building,
6 I did not know which dispatcher it was. I just saw
7 that Paul was in the office, he saw me and he exited
8 the office.

9 THE COURT: "Who is Karen Brown?"

10 THE WITNESS: Karen Brown was my co-worker.
11 She's a senior safety and health specialist. Is now
12 retired.

13 THE COURT: "From your experience at work, have
14 other workers refused to take the FFD test?"

15 THE WITNESS: Not at SDOT. I have never had
16 anybody refuse the test, but Pam Beltz has
17 communicated to me that nobody --

18 MR. SHERIDAN: Objection, hearsay.

19 THE COURT: It would be hearsay, Counsel.
20 Correct, Mr. Johnson?

21 MR. JOHNSON: I wouldn't object if Mr. Sheridan
22 wants to limit him from saying that, I would ask what
23 does he know.

24 THE COURT: Okay. Sustained. So do you have
25 personal knowledge of other workers refusing to take

1 the FFD test? In other words, not something that
2 others have told you?

3 THE WITNESS: I have no personal knowledge of
4 somebody refusing a fit for duty test.

5 THE COURT: Those are the questions from the
6 jury. Mr. Sheridan, follow-up?

7 MR. SHERIDAN: Yes two brief ones.

8 REDIRECT EXAMINATION

9 BY MR. SHERIDAN:

10 Q. So when you came in to the space, you couldn't tell
11 from looking into dispatch which person Mr. Jackson was
12 identifying; correct?

13 A. No.

14 Q. Not physically, he pointed it out to you?

15 A. Correct.

16 Q. All right. And then, with regard to fitness for duty
17 exams, pretty much people either confess or take the
18 test; right, in your experience?

19 A. No, they consent to go for the exam, or they have the
20 option to refuse.

21 Q. But, I mean, based on your own experience, people
22 either take the test or confess; right?

23 A. No.

24 MR. SHERIDAN: Okay. All right. Nothing
25 further.

1 THE COURT: Mr. Johnson?

2 MR. JOHNSON: I have one question, Mr. Jensen.

3 RECROSS EXAMINATION

4 BY MR. JOHNSON:

5 Q. In a typical fit for duty exam, how quickly from the
6 time you start speaking to the employee until the time
7 you are in the doctor's office?

8 A. Approximately 30, 40 minutes.

9 MR. JOHNSON: Thank you. No further questions,
10 your Honor.

11 THE COURT: Anything further, Mr. Sheridan?

12 MR. SHERIDAN: No, your Honor.

13 THE COURT: All right. Are you asking this
14 witness be excused, Mr. Sheridan?

15 MR. SHERIDAN: Yes.

16 THE COURT: Any objection, Mr. Johnson?

17 MR. JOHNSON: None at all.

18 THE COURT: Mr. Jensen, you may step down, you
19 are excused at this time. Members of the jury, we'll
20 take our noon recess. It will be a full noon recess
21 today for an hour and a half. If I could have you
22 return no later than 1:30. Please remember the
23 rules, avoid all contact with attorneys, parties,
24 witnesses. Do not talk about this case, no
25 investigation or research. You may leave your

1 notebooks on your chairs and I hope you have a good
2 lunch. We'll see you when you return. Jury is
3 excused.

4 (The following occurred in
5 the absence of the jury:)

6 THE COURT: Counsel, I have a meeting, so we'll
7 need to recess this matter. If I could have you back
8 at 1:25, we'll address any issues at that time.

9 (Adjourned.)

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