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SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

HASSAN FARAH, an individual,)
et al.,)
Plaintiffs,)
vs.) No. 11-2-41759-0 KNT
HERTZ TRANSPORTING, INC., a)
Delaware corporation, et al.,)
Defendants.)

TRANSCRIPTION OF RECORDED PROCEEDINGS
TAKEN BEFORE
THE HONORABLE MARY E. ROBERTS

9:22 a.m.
December 10, 2014
Maleng Regional Justice Center, Courtroom 3J
401 Fourth Avenue North
Kent, Washington

TRANSCRIBED FROM FTR RECORDING BY:
Pat Lessard
Washington CCR No. 2104

A P P E A R A N C E S

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ALSO PRESENT: Mr. Dennis Tessier
Mr. Adem Mohamed, Interpreter
Ms. Safia Egal, Interpreter
Mr. Brad Walzer, Bailiff
Ms. Jennifer Marshall, Clerk

1 A F T E R N O O N S E S S I O N

2 December 10, 2014

3 1:30 p.m.

4 THE BAILIFF: Please rise for the jury.

5 THE COURT: Good afternoon.

6 Please be seated.

7 Ladies and Gentlemen of the jury, if you
8 will please give your attention to Mr. Sheridan.

9 PLAINTIFF'S CLOSING ARGUMENT

10 MR. SHERIDAN: Good afternoon.

11 Thank you very much for doing the job that
12 you've done. Everybody was clearly alert, and that's
13 really all we can ask.

14 This is the only opportunity that regular
15 people have a chance of opposing great power and
16 wealth, and these plaintiffs here stood up against
17 discrimination and they asked for accountability.

18 They came to America to escape war. They
19 came to America with some limited education, limited
20 language abilities, and they looked for a new home and
21 found one.

22 And those persons, they're vulnerable. They
23 can exist quite well in an organization that is
24 sensitive and an organization that appreciates what
25 they have to give.

1 And here, for a decade, the Hertz plaintiffs
2 existed in that very environment, where they did their
3 job. They didn't make much money, they didn't have
4 any benefits, but my goodness, they had a place that
5 embraced them and allowed them to pray and wear the
6 clothes that is their custom. Until 2010, when a
7 mid-level manager named Matt Hoehne came in and
8 changed the workplace.

9 Hertz treated the plaintiffs as though they
10 were one person. It's like saying "Those blacks" or
11 "Those Jews." Hertz treated a group of people not as
12 individuals but as one mind.

13 And as you've all seen, the Hertz plaintiffs
14 are individuals. Individual goals, individual lives.
15 They are not, for the most part, related and they're
16 no different than anyone else going to Boeing or going
17 to a church. You may walk in together but you have
18 your own lives.

19 This is about national origin and religious
20 discrimination.

21 They did stand up and the Hertz plaintiffs
22 opposed discrimination. And the thing I couldn't tell
23 you through the whole trial is the union stuff doesn't
24 matter. We're not here to ask you to decide whether
25 there was a breach of the CBA. Who cares?

1 We're here because of discrimination, and
2 now you've been instructed and now you know what the
3 discrimination is. They were bullied, they were
4 suspended and they were terminated.

5 Again, you have to address people as
6 individuals that's all we expect. If I do something
7 wrong, I'm liable, but don't blame everybody that
8 looks like me. And that's what this case is about.

9 It doesn't matter if eight other Somalis
10 returned to the workplace. It doesn't matter. It
11 doesn't matter -- think about -- remember Rosa Parks?
12 She refused to give up her seat on a bus. Other
13 people did. Other persons of color gave up their
14 seats. It didn't diminish them any more. It doesn't
15 mean that she wasn't a victim.

16 It means that not everybody had the courage
17 to stand up against discrimination and this group did.

18 So this whole business about "You could come
19 back to work and grieve," that's not what the law
20 requires. This is not about were they following the
21 union contract. This is about were the defendants
22 discriminating against these plaintiffs? Were they
23 treating them improperly and whether or not the
24 defendants are going to be held liable.

25 So this whole business about fairness that

1 you heard about the workplace, that too doesn't
2 matter. This is not about union equity, this is about
3 fairness at work. Whatever worked for ten years,
4 that's the key to this case.

5 They were hired as who they are. And they
6 went for ten years doing the same exact job that they
7 did every single day and nobody cared. So whatever
8 the workplace was for ten years, that's the workplace
9 that they walked off into on September 30th.

10 So you've heard the instructions now, and
11 I'm going to go through the facts and show you how the
12 plaintiffs have proven their cases individually.

13 And this is important. It's really not what
14 the defendants did. This case isn't about whether
15 they could make the -- whether Hertz could make a
16 group of people clock out for prayer. That doesn't
17 matter.

18 What matters is how they treated the
19 plaintiffs and the road they put them on towards
20 suspension and termination.

21 However long they took their prayer, however
22 long they did ablution, however long it took them to
23 walk to the prayer area, it was the same thing for ten
24 years. None of that matters.

25 So all we're looking for, what you are here

1 to glean is the intent of the defendants. If their
2 intention was discriminatory as defined by the jury
3 instructions, then you should find for each plaintiff.

4 They spent the time talking about whether
5 some -- whether a given plaintiff knew before they
6 said "I'm not clocking out" or before they were sent
7 home. That, again, doesn't matter.

8 This isn't about a union contract. It's not
9 about did they violate the CBA. What matters is why
10 in the world did Hertz put these people in that
11 position? That's what matters.

12 So we're not looking at what's in the
13 plaintiffs' minds on September 30th, October 1st, 3rd
14 and 4th, we're looking at what's in Hertz's minds.
15 Because if national origin or religion played -- was a
16 substantial factor in the decision, you must find for
17 the plaintiffs.

18 The only thing that's important about the
19 contract, and you guys were here for several days
20 before this came out, is that the contract doesn't say
21 the word "prayer."

22 The only thing the contract talks about is
23 Friday prayer. Everybody gets to go, the men get to
24 go to Friday prayer. That's in the contract. The CBA
25 says nothing about prayer.

1 All that stuff about the union negotiating
2 and fighting, that's all behind the scenes. These
3 folks aren't managers. These folks are the people who
4 are making just above minimum wage just going to work.

5 This -- none of that affected them. What
6 affected them was whether they could go to work and do
7 what they've done for a decade.

8 So there's three defendants in this case.
9 The first, of course, is Hertz and they are liable for
10 the acts of their agents under the law against
11 discrimination. Matt Hoehne and Todd Harris, they're
12 liable for aiding and abetting, and that jury
13 instruction we'll go over sometime today.

14 And under the law, Matt and Todd are also
15 the agents of Hertz. So their acts and their
16 omissions and those of the other managers and
17 mid-level managers, they're all -- they're all what
18 makes Hertz liable. And at this point, of course,
19 we're only talking about liability.

20 And the standard, of course, is
21 preponderance of the evidence. So this isn't like a
22 criminal case where a defendant has a liberty interest
23 and we go into the case where the defendant is
24 presumed to be innocent and in order to find that
25 defendant guilty the scales of justice would have to

1 tip all the way beyond a reasonable doubt.

2 This is a civil case where the only thing at
3 issue, ultimately, is money.

4 So you come into it with both sides being
5 exactly equal, which doesn't happen much in life when
6 an individual is against a corporation, but here it
7 does.

8 They walked in like this, equal. And in
9 order to win, all the plaintiffs have to do is
10 convince you that it is more likely than not that
11 national origin or religion was a substantial factor
12 in the decision to terminate or suspend the
13 plaintiffs.

14 This much, that much, and the plaintiffs
15 win. That's all you have to conclude, something over
16 50 percent.

17 The other thing that's important that I
18 couldn't tell you about is direct and circumstantial
19 evidence. So this is not -- we don't live in a world
20 where people use the N word at work, because they know
21 better. We don't live in a world where people reveal
22 what they're really thinking.

23 We have to develop our facts through
24 circumstantial evidence. And what jury instruction
25 number four tells you is that circumstantial evidence,

1 it's based on common sense and experience.

2 So you may reasonably infer something that
3 is at issue in the case. An example is you live in
4 Arizona. You have a sprinkler system but it never
5 rains. You get up in the morning and your grass and
6 your driveway are wet, well, that's circumstantial
7 evidence that -- not that it rained but that your
8 sprinkler went on, right? The same thing here.

9 Use your common sense. Think about what is
10 a good business purpose for doing something. Think
11 about what would a good manager do with these valuable
12 assets? How would they treat them if they were
13 sincere about changing the work environment,
14 instituting a clock-out plan.

15 All of that's fine. It's how they went
16 about it that was discriminatory. That's why we're
17 here.

18 So this is an easy to prove case because
19 when you look at the jury instructions, they're
20 simple. There's only two elements. One is
21 uncontested.

22 The first is that the plaintiff and this
23 is -- you have to do this 25 times -- the plaintiff
24 was suspended or terminated, uncontested, we know
25 that, and that the plaintiff's religion or national

1 origin was a substantial factor in the decision to
2 suspend or terminate.

3 It could be either. Either one, they win.
4 So that is easy to prove in this fact
5 pattern because the facts never quit. What was this
6 about, religious prayer.

7 We start out with pretty much having this
8 very close to winning, but we'll give you the evidence
9 that supports it.

10 What is a substantial factor? It's defined
11 for you. I admit it's not defined perfectly, but this
12 is all you're going to get. Substantial factor means
13 a significant motivating factor in bringing about a
14 decision.

15 And this is key. It doesn't mean the only
16 factor or the main factor in challenging an active
17 decision.

18 Hertz could have had ten reasons for
19 suspending the plaintiffs. If one of them was
20 religion or national origin, the plaintiffs win.

21 There can be a hundred substantial factors.
22 It's not one factor. It's not because of. It's in
23 the mix. Was national origin in the mix? Was
24 religion in the mix when they did what they did?

25 Then, guess what, plaintiffs win.

1 So here's what Mr. Hoehne said when he was
2 asked -- this is key. Remember this. We brought this
3 out earlier in the case that in the world that the
4 defendants are operating in there's ten years where
5 there's an evolution of even clocking out or clocking
6 in for break. Sometime around 2007, they start
7 clocking in and clocking out.

8 Matt Hoehne, Todd Harris and management have
9 called it abuse when somebody does something without
10 clocking out.

11 Except I don't think "abuse" is the right
12 word. They've said "tolerated."

13 But remember what Mr. Babou said on cross,
14 when I called him to the stand? He admitted it was
15 okay to smoke before September 30th.

16 All the testimony is in fact that people
17 smoked. All the testimony is that people drank
18 coffee. People, of course, people went to the
19 bathroom before and after, and I'll get to that in a
20 minute.

21 But Mr. Hoehne said at the outset that he
22 was aware we had abuse. I mean we had some staff that
23 would take breaks that they wouldn't clock out for,
24 and it wasn't just Somali Muslim shuttlers, we had
25 people smoking and not clocking out.

1 The defendants have tried to minimize that
2 number and confuse you by saying "Oh, it's only the
3 shuttlers that apply" but the testimony from both
4 Hoehne and Harris was that this rule applied to
5 everybody. And remember, the rule applied to
6 everybody, they claim, from the 30th.

7 I submit to you there was no rule that even
8 existed before September 30th. It was okay to pray,
9 it was okay to drink coffee. Nobody really cared,
10 because, guess what, the job got done.

11 Nobody told you that they came out to SeaTac
12 because it was falling apart at the seams because the
13 work wasn't getting done. It's a successful, huge
14 operation.

15 For ten years it has been because the Somali
16 Muslims -- that's 50 percent of the workforce -- was
17 doing a fine job.

18 Well, this is really not an issue but you
19 heard the judge read to you that Somalis are the
20 dominant ethnic group in Somalia, they make up 85
21 percent of the population. They share a uniform
22 language, religion and culture. So this is about
23 national origin.

24 So Hertz also knew from the beginning who
25 they were hiring. This isn't a mystery. It's not

1 like somebody sneaks in and pretends that they can
2 speak English and once they get there like, surprise.

3 Hertz knew exactly who they were hiring.
4 They were hiring people who did not -- who spoke
5 little or no English. They were hiring people would
6 needed to pray several times a day. They were hiring
7 people who wore special clothing consistent with their
8 religion, and it was fine. That was a great
9 relationship.

10 They gave them, in return -- think about
11 being Hertz, what a deal. "I can pay these folks just
12 above minimum wage, I don't have to give them any
13 benefits, I don't have to do anything much more than
14 give them a place to pray and they'll stay here
15 forever." Loyal workforce, good deal.

16 Hertz wanted our plaintiffs to be there.

17 And then -- of course, from the Hertz
18 position, it was fine, too. It's okay. I don't
19 necessarily have a lot of education, I hardly speak
20 the language. You'll give me a place to pray, you'll
21 let me dress how I want, I want to work for Hertz.
22 I'm a loyal employee. I show up every day, and they
23 did.

24 There's no testimony about being discipline
25 problems except this general malaise of "they," "they

1 were late," "they took too long." "They this," "they
2 that."

3 If we take away the "they" and put in
4 "blacks" or "Jews" or "Hispanics," it sounds as racist
5 as can be. It's offensive. But that was the
6 testimony through this trial and that is strong
7 evidence of discrimination.

8 So as I said, the issue is how Hertz went
9 about the plan to change the workplace. And they --
10 remember, they kept saying "We're targeting break
11 abuse." They were targeting prayer, all throughout.

12 So this is Exhibit 2. You've seen it a
13 bunch of times. It's the notice that the defense said
14 went up, was posted in English on September 27th.

15 So this is what they say. This is item
16 number four. "All meal periods must be punched
17 including all religious observation. Failure to punch
18 for rest periods will result in progressive discipline
19 up to and including termination."

20 So rest periods aren't defined.

21 For ten years rest periods meant clocking
22 out for your break. Your break. Rest periods never
23 meant prayer because it's always been in addition,
24 always. So if you come up with an English language
25 notice that doesn't say -- that says rest periods and

1 then says "Including prayer," that's a shocker.

2 That's never happened before in the entire time.

3 And it's in English and it's done at the
4 last minute. There's no prior policy.

5 And look at this notice itself. This is
6 what the defendants claim. It was a policy that
7 applied to everything. It applied to coffee breaks,
8 it applied to smoke breaks, and it applied to prayer.
9 But they only wrote the word in "prayer."

10 It's not a neutral policy. It's a policy
11 that targeted prayer. That is direct evidence of
12 discrimination.

13 If you are a company you are smart enough
14 not to say "All the blacks have to stay on this side
15 of the room," you say "We're going to shift, divide
16 the group into two groups," and we'll let that happen.
17 But you don't mention "prayer" if your goal is to be
18 equal and apply it to everyone.

19 Matt Hoehne told us early in the case that
20 he knew -- you know, as I said, we contest there was
21 any abuse, but to the extent they say that there was
22 abuse, Matt Hoehne knew early on that there was other
23 abuse and it's not listed here.

24 This is discriminatory. It is direct
25 evidence of discrimination.

1 So this is what's so frustrating about this
2 case. If I do something wrong, I expect to be
3 punished. I expect to be disciplined. I don't expect
4 to be disciplined because I dress a certain way or
5 pray a certain way.

6 This policy was applied to those Somalis,
7 not to an individual. If I'm late for work, by golly,
8 I should be punished. I should be disciplined. But
9 that's not how this policy was applied. You kept
10 saying these anecdotal statements about, "Oh, yeah,
11 you know, those Somalis, they would take 40 minutes
12 for prayer."

13 Well, you know what, if you were taking 40
14 minutes for prayer, you should be written up, right?
15 That person who was taking 40 minutes for prayer
16 should be written up.

17 If you write up all of us, discrimination.
18 Then my national origin and my religion is a
19 substantial factor in your decision, you are liable
20 for discrimination.

21 The timing is outrageous. If you were going
22 to make a decision with such a vulnerable workforce,
23 you have to be sensitive. You have to be human about
24 it. You have to give lots of notice. You have to
25 translate the policy. You have to use discipline

1 gently.

2 Let's say this was done right. What was the
3 right way to do this? The right way to do it was you
4 make a notice, you translate it, you have meetings
5 with Mr. Babou present, and you let it go through the
6 workforce. And you say, "Guys, in a month, we're
7 implementing a new policy."

8 And there will be chatter and there will be
9 discussions, and you have meetings where you talk in
10 both languages. You have somebody translating.

11 And then, if people resist you, you use
12 progressive discipline, because you value the
13 workforce. You simply want to have people do what you
14 want.

15 So if Joe shows up and says "I'm not going
16 to follow it," you will say, "Joe, then we're going to
17 have to give you a verbal warning. If you do it
18 again, we're going to have to suspend you. If you do
19 it again, we'll have to terminate you."

20 Fine. There's no discrimination there. You
21 are treating me with respect and you are giving me the
22 chance to comply with the policy.

23 If you do it on a Friday when Mr. Babou is
24 not there and you implement it in English only on a
25 poster, a little poster on the wall, that's

1 discrimination.

2 You are being insensitive, you are being
3 outrageous. You're being a bad manager, if nothing
4 else. But if you're doing it to a group of people who
5 are in a protected class you are committing
6 discrimination.

7 So if you're treating anybody with respect,
8 you don't do what Hertz did.

9 So Louie Franzese, he comes here and he
10 attends a hand-picked skip level meeting where one
11 white guy basically complains, and according to the
12 defendant that gets this whole thing going.

13 Well, you know what? It was probably going
14 on since Matt Hoehne got there in 2010. We don't
15 really know and we'll never know if this really was a
16 thing that started the timeline rolling. But he
17 doesn't see facts. He basically reacts as though it's
18 true.

19 Which isn't this the problem that we have
20 with racism? Isn't racism about looking at somebody
21 and making decisions before you start that this must
22 be the case?

23 Because you don't -- if you hear an
24 outrageous statement like somebody is taking an hour
25 for lunch, if you're a manager, if it's a white person

1 with a college education you would say "Well, that
2 doesn't sound right. Let's go ahead and let's
3 investigate that. Let's interview that fellow and
4 find out why that is."

5 But here the benefit of the doubt goes
6 against the Somali Muslim personnel.

7 Zaidun Abdallah, he's the one who wrote the
8 letter saying that everyone is being suspended. He
9 didn't know that the practice went on for a decade.

10 My goodness, how is that possible?

11 Upper level management doesn't know that a
12 practice that is being brought to his attention for
13 immediate action has been going on for ten years. Why
14 is it the mid-level managers didn't tell him?

15 The mid-level managers are the ones behind
16 this and they are the ones who are on the hook for
17 their discriminatory activity.

18 So he wants to just make everybody clock
19 out, but, of course, no reference to the collective
20 bargaining agreement or to the last ten years. He
21 doesn't offer -- didn't offer to investigate, only
22 discipline.

23 That's another thing is when you look at
24 that -- you guys are going to get a chance to look at
25 each union level back to them, his letter and the

1 termination letter. His letter isn't offering them
2 any good deal. He's offering -- his letter is saying
3 to them, when they're suspended, "Come back and
4 grieve."

5 He's not going to give them their money
6 back. He's not going to go back to the status quo so
7 this can all be discussed and worked out, even though
8 they've given an unconditional offer of return. He
9 doesn't want that. He then fires them, and we'll get
10 to this soon.

11 You guys kept hearing me talk about why
12 three times, why three times? Now I can tell you.
13 All right.

14 But let me first tell you about David
15 Friedman. When he gets up there, he's the labor guy,
16 right? This is what he thinks -- he's talking about.
17 He says consistent with these representations, this is
18 him communicating to the union.

19 The only thing that management requested of
20 the suspended employees on September 30th and
21 October 5th, I guess it's October 1st, was that they
22 punch the clock before taking paid mini-breaks.

23 He doesn't know that paid mini-breaks aren't
24 part of the discussion at all. As a matter of fact,
25 he doesn't know this.

1 You can't really see it. I thought maybe I
2 could blow it up bigger, but I was a little lame on
3 that.

4 This is Exhibit 38. And this exhibit is
5 Mike Dixon writing on September 30th -- this is the
6 date everybody is sent home and he's writing to Todd
7 Harris and others. And this is what he's saying.
8 This is halfway down.

9 The following employees stated they told
10 Richard they were using their mini-breaks: Hassan
11 Farah, Mohamed Ismail, Mohamed Essa and Sop El.

12 Speaking with Richard, he told them the
13 operation required that they couldn't use their
14 mini-breaks at the time.

15 So Friedman, the labor negotiator, thinks
16 he's talking about mini-breaks. Mid-level management
17 isn't informing him about the truth, either.

18 So again, this is an outrage. Before 9/30
19 no manager mentions prayer.

20 Exhibit 1735 is an April 2009 memo saying
21 that taking unauthorized breaks without clocking out
22 would subject you to discipline.

23 Well, that's fine, right?

24 No, in 2009 everybody is praying without
25 clocking out. This does not mention prayer and it

1 does not apply to them.

2 But guess what? Hertz translates it into
3 Somali and prayer is not on the table.

4 This is a copy. It's Exhibit 1735. From
5 where you're seated, you can't really see. This is
6 the English. This is the Somali.

7 They knew how to do it. They could do it.
8 If that's all they had to do in this situation,
9 there'd be no claim. We wouldn't be here. Everybody
10 would still be employed.

11 The right answer, if there's abuse,
12 discipline any individual. Treat the plaintiffs as
13 individuals. If any individual does something wrong,
14 go get them.

15 Instead, Hertz went after everybody. They
16 sought the harshest punishment and suspension rather
17 than counseling or education, and they used words
18 throughout this testimony like "they" as though this
19 is a group of one mass instead of a group of
20 individuals.

21 When Hoehne arrives in 2010, he doesn't call
22 the plaintiffs by their names. He would talk in harsh
23 tones. He told Ahmed Hirsi that he looked like a
24 terrorist. He entered the women's prayer room for no
25 reason. He banged on the bathroom door and he and

1 others stood outside the prayer area laughing and
2 talking.

3 Now, you've heard 25 people tell a little
4 bit different stories about what happened. You know
5 what? That's because they weren't coached. They are
6 telling the story as they see it.

7 If you ask three people to discuss anything,
8 those three people are going to see things just a
9 little different, remember things a little different.

10 You heard the truth from 25 plaintiffs who
11 believed in their truth. They told you what happened
12 to them. And it's all wrong, the setup. So this is
13 something to think about.

14 And now I want to explain to you about the
15 three-time rule and its significance. The plan --
16 remember you heard Wilson talk about -- we never saw
17 the document, but he admitted that he communicated in
18 March, 2011, with Hoehne and with Harris about
19 insubordination. He said, "I see three scenarios here
20 if we do it right, if we do the Tool Box right." One
21 would be insubordination.

22 That's what's going on here, and the
23 documents and the testimony support it.

24 Exhibit 237 is that back in 2010 Su'di Hashi
25 gets a letter for insubordination, and for some

1 mysterious reason the union -- Hertz just pulls it and
2 takes it away.

3 But this is what it says "On Monday,
4 September 30, 2010, you were given a direct order
5 three times by Matt Hoehne and then you didn't do it,"
6 so blah, blah, blah.

7 But here Hertz says three times but does not
8 terminate. It appears the rule is to say three times
9 for insubordination. But you know what, every
10 defendant denied that. Every defendant said, "No, you
11 don't have to say it three times," and you know what,
12 I agree with it. You don't have to say it three times
13 to find somebody is insubordinate, you just have to do
14 it if you want to terminate them.

15 This is what the Tool Box said. This is
16 Exhibit 1744. "I understand that I must follow the
17 instruction of the dispatchers and managers, and
18 failure to do so will put me at risk of discipline for
19 insubordination."

20 That's fine, right? This is what matters.

21 "If I am asked by a manager three times to
22 do something and warned that my job is at risk and I
23 still do not comply, it's grounds for termination."

24 The setup here, the plan was to set up these
25 people who do not speak English well for

1 insubordination, but I think not everyone was in the
2 loop.

3 So to terminate for insubordination you have
4 to be asked three times to do something. You have to
5 be warned and not comply, and then you can fire
6 people.

7 So the plan is to do just that. Each
8 termination letter -- so remember, you're going to
9 have your package -- we set up your package so you
10 have a picture of each plaintiff followed by the
11 various correspondence that relates to that plaintiff.

12 You're going to be able to look at the
13 picture, you will I hope remember which plaintiff is
14 which, and then look at the letter where it's the
15 termination letter -- it's not the warning and you can
16 come back to work letter. The termination letter says
17 that you're being terminated for insubordination,
18 right?

19 So if you're terminated for insubordination,
20 we know that you had to say that three times.

21 And here's another example of the setup.
22 This is Exhibit 1758. This is Anthony Luchini's, so
23 Tony Luchini writing to Wilson, Matt Hoehne, Harris
24 and all those other guys, you actually heard some of
25 this during testimony, it's on September 30th, this is

1 what he's writing. He's writing Becky and Anna for
2 Saturday's and Sunday's prayers at 6:00 Richard Best
3 has been told to instruct shuttlers three times to
4 punch out before going to prayer.

5 That's the code. That's it. If I get you
6 three times, I can fire you.

7 Why in the world are they trying to punish
8 the Hertz plaintiffs more so than anybody else?
9 Nobody else is treated this way.

10 This is discriminatory. This is a setup.

11 So here's -- this is basically a blocking
12 copy of one of the 25 termination letters. This one
13 happens to be Exhibit 244.

14 And so this is the letter "On Friday
15 September 30th you were suspended pending further
16 investigation."

17 But suspended for what, right? "Suspended
18 for what?"

19 Were they suspended for not putting their
20 ticket in fast enough? Were they suspended for
21 praying? What were they suspended for?

22 Well, it says "We concluded our
23 investigation and found that your actions are in
24 violation of the Western rules," et cetera,
25 specifically insubordination.

1 Then it says due to the severity effective
2 immediately your employment is terminated.

3 That's it. The Tool Box says you have to
4 say it three times if you want to terminate.

5 So if this is just and right, then somebody
6 said to each plaintiff three times, "You need to clock
7 out for prayer and if you don't, I'm warning you, you
8 could be terminated."

9 That had to happen. But it didn't happen
10 once. There's not one piece of evidence that that
11 happened.

12 So this termination is just an abomination.

13 But let's look at elsewhere. How do we know
14 the plan was really what they were doing.

15 Well, before the litigation started and
16 anybody was circling their wagons, they have vendors
17 that go to unemployment to fight your unemployment.
18 So they're fighting the unemployment.

19 And the vendor, who when you see the letter
20 it's Exhibit 154 and 219, it's actually a letter at
21 the bottom of the letter they say "We are authorized
22 on behalf of the company to speak for them."

23 So they are a speaking agent. They are able
24 to talk to the company. This is what they write in
25 each letter "The claimant," and this is Ileys Omar,

1 "was asked three times to punch out that final day
2 when she went to take" -- it's her breaks, but they're
3 wrong -- "and refused each time."

4 That is the crucial language. They're
5 trying to get them for insubordination.

6 What in the world are they doing? This, if
7 you look at the other persons who smoked, also persons
8 of color, all of those persons were given counseling.
9 In a nondiscriminatory environment, that's what you
10 do. You teach people that there's a new policy and
11 you help them fit in with the policy.

12 That wasn't done here. This was a setup for
13 termination, and that is discrimination.

14 So it shows the discriminatory intent of the
15 employer. No manager produced evidence that anyone
16 was told three times. This isn't -- this isn't about
17 like -- you can't be a manager and say in a room, you
18 know, like "There's no place like home," click your
19 heels and you have a happy ending.

20 They had to communicate effectively with a
21 group of people who speak little or no English. If
22 they wanted to terminate them for insubordination,
23 they had to say it.

24 Seriously, what would a reasonable company
25 do? If that's really the game plan, what you do is

1 you have an interpreter present, and you say, "Look,
2 we're done trying to work with you folks. Mr. X, you
3 need to punch out for prayer," Translation,
4 translation.

5 "A month ago we put up a policy, we
6 translated it, and now we're implementing the policy.
7 You've had plenty of notice. You've been able to talk
8 to everybody. The union's in agreement. That's the
9 plan."

10 But that didn't happen. Almost no notice,
11 no notice in Somali. And remember that whole business
12 about some -- you picture this, at a workplace, when
13 I -- imagine, take it away from this being a prayer
14 area for a minute. Make it a bathroom and you've
15 really got to go. And a manager is standing there
16 going like this, "You've got to clock out before you
17 enter the bathroom."

18 Well, you know what, I've never had to do
19 that before, and I'm going to go to the bathroom. I
20 walk past them as they did -- now add to that the fact
21 that you don't speak the language, and all you see are
22 lips moving. You don't know anything. You go and you
23 do what you do.

24 It is discriminatory. It is so
25 disrespectful to treat people as vulnerable as this

1 group of this people in that way and that's what
2 happens.

3 So the message needs to be heard and
4 understood. It has to be said three times. It should
5 have been in Somali and there should have been some
6 lead time for all of this to work.

7 So what did the witnesses say. Well,
8 remember this. So I kept cross-examining the
9 witnesses on, "So that three-time rule, that really
10 matters, doesn't it?"

11 And they kept saying, "No, no, it doesn't
12 matter for insubordination."

13 But they all knew that it mattered for
14 insubordination leading to termination, and nobody
15 wanted to point that out. Because clearly all the
16 documents show that the plan was to make this a
17 termination.

18 And remember Exhibit 38, Harris is writing
19 to the group about -- this is about October 1st, I
20 think, and about noon -- and he says "We're in good
21 shape if we asked the employees to punch out and they
22 were insubordinate."

23 So that's the plan and that is a
24 discriminatory plan. He can't give an order while the
25 plaintiffs are walking to prayer and call that a good

1 plan.

2 So after September 30th, what happens? So
3 what did we hear was going on? Picture this. Picture
4 a workplace where what they wanted was what they said.
5 We want to know how much time everybody is clocking
6 out. So we want you to clock out every time you smoke
7 a cigarette. We want you to clock out every time you
8 pray, every time -- I mean they could have said every
9 time you go to the bathroom, whatever it is.

10 We would expect to see time cards this long,
11 because people clock out for three minutes for a
12 smoke, two minutes for this, five minutes for that.
13 But you will not see one time card in the record that
14 changes after September 30th. Everybody, everybody
15 continues to punch out just as they did before
16 September 30th.

17 That is evidence of a policy that was
18 applied only to the Hertz plaintiffs. If it had been
19 applied universally, we would see that Huka's time
20 punch sheets, Black's and Chung's, all of them would
21 show multiple punch-outs after September 30th, and
22 they don't.

23 So the policy seems to have only existed for
24 three days starting September 30th and then the policy
25 disappears. So discriminatory intent.

1 Here's another one. So this is Harris
2 writing his Derek Jeter email. He's coming up with a
3 form for everybody to talk about what they want --
4 what the statement ought to say so they can defend
5 against anything that happens.

6 Remember what Minerva Mozo-Dominguez said?
7 She said that Richard Bipps told her that Exhibit 2,
8 that's the notice, it only applied to prayer.

9 So that's what the workforce is really
10 knowing. They're targeting the Hertz plaintiffs.
11 They're targeting Somali Muslims. That is
12 discrimination.

13 Remember before -- you heard some lay
14 witnesses say "Oh, yeah, we all had to work. It was
15 so much strain on everybody."

16 Well, Richard Best testified that during
17 prayer, the other -- he didn't have the other people
18 do anything, because he thought it was unfair.

19 Well, his motives may not have been
20 egalitarian, but I will say that that's what he said.
21 And as our two plaintiffs who took the stand in
22 rebuttal said that that was the case. When people
23 prayed, everybody else did their thing. That's fine.

24 Louie Franzese said that the company was
25 doing just fine. It's a big, successful operation.

1 It's been doing just fine for a decade.

2 If things were bad because of the Hertz
3 plaintiffs bottling up the process, he would have been
4 out here for a whole specific purpose, right? To have
5 Harris's head or Hoehne's head. He wasn't here for
6 that.

7 Everything was working fine for a decade.

8 So Babou admitted to smoking. It was
9 permitted before 9/30. Black said that he was
10 permitted -- he said that even though smoking was
11 permitted, you didn't do it in front of a manager to
12 show respect, but then he also admitted that he smoked
13 with other managers, I guess Mr. Babou.

14 The Harris investigation of this, remember,
15 everybody sent home for investigation. If one were
16 employed at a company as large as Hertz, one would
17 expect an investigation to be conducted by an
18 impartial third party, either internal or external.
19 One would not expect Harris to be the guy who does the
20 investigation.

21 One would also expect to see some kind of
22 report. Fact finding, probably interviewing all
23 sides.

24 It didn't happen here. Harris doesn't have
25 a report to show us. There's nothing out there

1 because Harris didn't want an investigation that was
2 objective. He didn't want to solve a problem, he
3 wanted to terminate a group of people.

4 So what about bathroom breaks? When you
5 think about it, if you tell me I can't smoke, I can
6 get through the day. If you tell me I can't have a
7 cup of coffee, I can get through the day. If you tell
8 me I can't take a bathroom break, I can't get through
9 the day. I've got to take my bathroom break.

10 Well, that's how it is with prayer. You
11 can't say "I'm not going to pray." You've got to
12 pray. It's your religion. It's why you joined Hertz.

13 It is inconceivable that the Hertz
14 plaintiffs got put in a position where somebody is
15 standing in front of them telling them "Don't go to
16 pray."

17 It's ridiculous, it's ludicrous, and it's
18 offensive.

19 So what happened then? So the system -- the
20 whole thing happens, and then Tracey Thompson from the
21 union, she winds up getting on the radio and TV and
22 stuff. And she says that no one was disciplined for
23 smoking, and then all of a sudden things happened.

24 So you know how I read you that part, that
25 transcript from Babou at the very end? The reason I

1 read it to you is because this is what I think. I
2 think there was a meeting on or about the 27th talking
3 about prayer, because that's all the focus is.

4 I don't think anybody mentioned coffee. I
5 don't think they mentioned smoking. I don't think
6 they mentioned anything, cell phones.

7 I think afterwards, that's when the meeting
8 happened, and that's why I read this testimony to you,
9 because that testimony could lead you to conclude --
10 he doesn't come out a hundred percent and say, "Oh,
11 yeah, you're right," but his testimony does lead to a
12 reasonable conclusion that the meeting happened after.

13 And I hope you took good notes.

14 Hoehne admitted that the policy applied to
15 everyone. Thompson stated on the radio that this was
16 happening. And then, on the 21st, Harris sent that
17 email where he talks about Thompson and the media
18 release.

19 So all of a sudden -- now keep in mind that
20 they have one email showing that somebody monitored
21 smoking before the 25th. Nobody is disciplined before
22 the 25th.

23 And then this is the October 21st email
24 where he says, "I had the pleasure of catching part of
25 Tracey Thompson's radio interview," her comment was

1 that she was in the airport recently and employees
2 were smoking while not clocking out, therefore, Hertz
3 must be targeting prayer only.

4 But for whatever reason, it's not until the
5 25th, a couple days later, is when the first person is
6 disciplined for smoking. So here's the verbal
7 warning.

8 And again, it's not insubordination, but a
9 month later? It seems like a month later, if
10 everybody knows that there's a policy that prohibits
11 me from smoking, you could have written me up for
12 insubordination because people would have told me at
13 all these huddles, right?

14 Well, these guys, who are not Somali and not
15 Muslims, they only get verbal warnings. They're not
16 sent home.

17 So it just doesn't make sense. It does not
18 make sense.

19 Now, lunch, in early 2011. If you go back
20 to 2011, they were really complaining, the company at
21 that time was complaining about taking your whole half
22 hour. When you look at that Tool Box there's some
23 stuff on that list that has to do with really the nuts
24 and bolts of the workplace.

25 But it does point out that -- there was

1 testimony about the point system and how you could get
2 points for doing almost anything.

3 So for more than a decade no one ever
4 disciplined. No one was ever disciplined for
5 anything, coffee breaks, any of it.

6 When asked, Manager Babou was asked on
7 September -- before September 30th, "Had you been
8 allowed to pray without clocking out?" and the answer
9 was "Yes."

10 So here's -- the plan simply is 9/27 they're
11 going to do the post. They'll hold meetings saying
12 that you need to clock out. Babou's not working on
13 Friday and they'll suspend the Somalis if they don't
14 clock out.

15 Here's the problem with the plan. The
16 posting is only done in English. There's no organized
17 huddles. The plaintiffs -- hardly any plaintiffs say
18 they actually attended a huddle.

19 Where's the record here of anybody in
20 attendance? You have managers still working there
21 who are basically saying, "Well, you know, I wouldn't
22 start the meeting until everybody was there," but, you
23 know, there's just no evidence.

24 Twenty-five people, most of them said that
25 they were not at such a huddle. I think you can

1 believe that.

2 Managers gave no warnings that the prayer
3 began. As prayers begin, managers just wait and let
4 people pray, and then they say "You're going to get
5 investigation."

6 So the three-time rule was simply messed up.
7 It wasn't done well by the employer. But you can see
8 in the documentation that it's talked about over and
9 over again.

10 The second plan, this is another thing. If
11 you hear -- there's three different justifications for
12 what they did. Harris said he hears from those
13 meetings in New Jersey, with the New Jersey managers,
14 that there's hour-long lunches. This is Harris. And
15 he says he only focused on prayer because that's the
16 only issue raised at the meeting. But of course,
17 Hoehne had known that, according to Hoehne, it wasn't
18 just prayer.

19 The second justification is that -- so
20 remember, hour-long prayer. Hoehne testifies that he
21 would disagree that the length of prayer was why this
22 was being implemented. He said it had nothing to do
23 with length. We wanted every break to be clocked in
24 and out as it had been posted in February, as it had
25 been posted, I think, in the summer. And that week of

1 September, we posted it again.

2 So he's saying it's not because there was
3 people -- people were praying too long. It's -- which
4 contradicts Harris.

5 And the third justification comes through
6 the labor manager who says basically that he thought
7 the reason that they were doing this was so they could
8 calculate how many breaks or how much time actually
9 was added up on the paid mini-breaks.

10 So when you have three different
11 justifications, that's circumstantial evidence of
12 discrimination.

13 So another problem with the plan is he said
14 we were aware of abuses. We've discussed that.
15 Another problem with the plan this insubordination
16 claim falls apart for the reasons already discussed.

17 Another problem was the media got ahold of
18 the story and the defendants then got caught applying
19 the rules to only one group of people. So they had to
20 then modify the plan and that's when he starts being
21 disciplined for smoking.

22 The shift huddle thing, again, I leave that
23 to you. You got to look the witnesses in the eyes and
24 hear them testify. But there are no sign-up sheets.

25 Before and after the plaintiffs were sent

1 home, there's no -- nobody chasing around coffee
2 drinkers, cigarette smokers or bathroom breakers, as
3 one would expect if the plan is being applied evenly.

4 So the other thing that's real important
5 here is that throughout this Hertz "they" being used,
6 and it's really important that you treat each
7 plaintiff as an individual.

8 Each -- each plaintiff has their own story
9 to tell, their own background and their own
10 experience. And they deserve individual treatment
11 here, as they did at work.

12 So after the suspension there's really no
13 meaningful investigation. And then there's the --
14 there's the unconditional return to work. Take a real
15 close look at that letter, because you heard one of
16 the defense senior managers say that, "Well, I wasn't
17 going to agree to that because it was conditional."

18 But it is an unconditional return to work.
19 Let's return to work, put it in the status quo, let
20 the union talk to you, and we'll be done with this.

21 But Hertz didn't want that. They terminated
22 this group of people.

23 So the unemployment was an issue we've
24 already discussed. And the big thing is Mr. Hoehne
25 said at the outset that this policy applied to

1 everybody, and that's why people are getting written
2 up in October because of the clock.

3 So they knew, Harris and Hoehne knew that it
4 was applied to everybody. And that the only people
5 who cannot go to a break are the plaintiffs, because
6 when they have to pray they really have to pray.

7 So quickly, the people who are plaintiffs
8 started at different times. They didn't start at the
9 same time. They started on different days. They
10 lived different lives. They lived in different parts
11 of the community. They go to separate places to pray.

12 But Ali Abdi, he started at Hertz in 2006.
13 He'd been doing the same thing the whole time. You
14 may recall he doesn't have very good English skills.

15 But when he reported in at 6:00 a.m., you
16 know, he thought that he was just going to work like
17 any other day, and he was sent home without any
18 adequate communication. His English is very sparse.

19 Muna Mohamed who testified from Nebraska,
20 she also -- she's been there since 2008. And she
21 started working at 6:00 a.m., and again she was sent
22 home without understanding why.

23 Asha Farah, who started work on August 1999,
24 she has some English skills. But again, she went to
25 work without anticipating anything dramatic and was

1 sent home.

2 Su'di Hashi, she's been there since 1998.

3 And the next group starting at 10:00 a.m.,
4 Mohamed Ismail has been there since 1999. Had worked
5 for them in Atlanta.

6 Hali Abdulle, she's been there since 2007.

7 Hani Huseen's been there since 2009.

8 Dahir Jama since January of 2000.

9 Hassan Farah has been there since 2002, and
10 Zainab Aweis, she's been there since 2008.

11 Marian Muse since 2007.

12 Fardowsa Arden since 2006.

13 And the next shift includes Ileys Omar who's
14 been there since 2007 -- she's really the only English
15 speaker.

16 And Ahmed Hirsi, who is the person who was
17 called a terrorist, has been there since 2008.

18 Asli Mohamed since 2004.

19 Murayad Abudallahi since 2008.

20 On October 1st, Saalim Abubakar. Remember,
21 his deposition had to be stopped because he has
22 diabetes and had low blood sugar. His testimony was a
23 little all over the place and that's just part of the
24 conversation that one must have with people when
25 English is an issue.

1 And one of the things I wanted to point out
2 is did you notice when I called the last two witnesses
3 to the stand, and with an interpreter there was still
4 challenges in communicating effectively. Something as
5 simple as what time was it versus how many times did
6 you pray? With an interpreter it was still an issue.

7 So imagine if you don't have an interpreter
8 and you're trying to communicate on very short notice
9 with your workforce.

10 Ibrahim Salah since 2003.

11 Farah Geedi, he's been there since 1997. He
12 speaks no English. Did just fine all that time until
13 September 30th, or in his case October 1st, 2011.

14 Mohamud Hassan, he speaks -- Mohamud Hassan,
15 he speaks English but in a deceptively good way,
16 meaning that it's easy to think he knows more than he
17 really understands. And that's another issue, right?

18 So if you are a sensitive employer and you
19 value the workforce, you have to be patient with folks
20 who don't speak English that you decided to hire.

21 Ahmed Hussien, he again speaks a little bit
22 of English, 1997.

23 And Marian Mumin since 2007.

24 The next group is Abdi Abdulle, since 1998
25 he's been there.

1 Fouzia Mohamud since 2006.

2 Marian Ali since 1999.

3 All of these people have been there a long
4 time and been able to get along with the skills that
5 they had at the time of hire for ten years.

6 So you should find that national origin
7 and/or their religion is a substantial factor in the
8 decision to suspend them and terminate them.

9 Thank you very much.

10 THE COURT: So it is 2:25.

11 Who is doing the -- oh, there you are. I
12 thought it was probably going to be you, Mr. Filipini.
13 I didn't realize you were even in the room.

14 Do you want to start for 20 minutes or do
15 you want to wait until 3:00 o'clock?

16 MR. FILIPINI: I'd rather wait until 3:00
17 o'clock.

18 THE COURT: Okay. Members of the jury, we
19 need to be sure and take a break at 2:45, and I don't
20 want to criticize Mr. Sheridan for cutting his closing
21 short, and I'm sure you don't, either.

22 So we're a little ahead of schedule.

23 We're going to take an extra long break now
24 so that Mr. Filipini can start at 3:00 and not be
25 interrupted.

1 THE CLERK: Please rise.

2 (Recess.)

3 THE COURT: The Court is in session.

4 Are you all set, Counsel?

5 MR. FILIPINI: Yes, your Honor.

6 THE COURT: Sorry I didn't know you were in
7 the room before.

8 MR. FILIPINI: It's hard to see that corner.

9 THE BAILIFF: Please rise for the jury.

10 THE COURT: Please be seated.

11 Members of the jury, if you'll give your
12 attention to Mr. Filipini, please.

13 MR. FILIPINI: Thank you, your Honor.

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1 DEFENSE CLOSING ARGUMENT

2 MR. FILIPINI: Well, folks, it's been many
3 weeks since I last had the opportunity to address you.

4 I do want to say, as counsel did from the
5 start, thank you very much. You've been very
6 attentive throughout, asked excellent questions and
7 you're all still here and I appreciate that.

8 I would ask that you listen to me just a
9 little bit longer here so that I can walk you through
10 what we've seen here and why you should reach a
11 verdict that's fair to the defense.

12 You may recall that during opening argument
13 I had a theme of plaintiffs' choices. You know, this
14 wasn't a case about who the plaintiffs are, it's a
15 case about the choices that each made.

16 So these were the points I made, you know.
17 They chose to take prayer breaks, each plaintiff, in
18 addition to regular rest breaks. They chose to refuse
19 to clock out for those paid prayer breaks, and then
20 chose to reject Hertz's offer to return to work.

21 And the result of that, of course, is a
22 demand for preferential treatment that no one else
23 received. We believe that the evidence has borne this
24 out.

25 And in fact, I want to address, coming out

1 of the case, something that counsel said in his
2 opening, that this was a group decision or treated
3 those people all the same.

4 The evidence has demonstrated that this was
5 a person-to-person individualized determination with
6 respect to the suspensions and the separations from
7 employment.

8 It's not a case where one Italian did
9 something and Hertz said "Get rid of all the
10 Italians."

11 It is a case where, on a person-by-person
12 basis, a conscious choice or choices was made by each
13 that resulted in first their suspensions and secondly
14 their separations from employment.

15 I also want to say, before I get going, that
16 plaintiffs are certainly entitled to respect. They
17 have mine. There's no doubt about that. They have
18 overcome a lot to be here.

19 I hope that you saw in our questions and our
20 conduct that's beyond -- beyond question.

21 I nevertheless, of course, have a duty to
22 represent my clients in my arguments here to you
23 today. It's not what this case is about. And you,
24 likewise, have a duty to apply the law to the case at
25 hand.

1 I want to talk a bit about a few items that
2 we've heard from plaintiffs throughout the case and
3 here again today.

4 First I want to talk about the plan. If you
5 remember, the plan is to get rid of the Somalian
6 Muslims from the workforce.

7 Well, I guess I would say I hope we're
8 better at renting cars than we are at discriminating,
9 because this plan had some really fatal flaws in it.

10 First, we left the choice in the plaintiffs'
11 hands. We offered everybody the opportunity to come
12 back to work, to clock from the beginning. If you did
13 so, no consequences would be suffered.

14 So that would be a potentially fatal flaw in
15 the plan right from the start.

16 We failed to apply this plan prospectively.
17 We hired three known Somali Muslims on October 21st
18 and the shuttler workforce is back up to 50 percent
19 Somali Muslim.

20 If you agreed to clock, you kept your job.
21 Fifteen employees exploited this giant loophole in the
22 plan. And, of course, we had not and hired a Somali
23 Muslim general manager to replace Todd Harris.

24 Obviously, I'm being sarcastic there. There is no
25 plan for all of the reasons that I've laid out just

1 now.

2 You might remember this from my opening
3 slide deck. This was the SeaTac management structure
4 in the fall of 2011. And as the case went on, we
5 brought each of these folks to you to tell you what
6 happened, with the exception of you didn't hear from
7 Robby Najjar and Becky Steele.

8 Everyone else there, we brought here, some
9 from different parts of the country, to tell you what
10 happened in their own words and explain the events in
11 question.

12 You also heard from Lou Franzese, David
13 Freidman, people above this two level -- I'm sorry,
14 levels of the local SeaTac management.

15 And you also heard from the hourly employees
16 at the bottom, coworkers of the plaintiffs when they
17 were here, who we asked to come in and testify to
18 simply what they understood -- we actually subpoenaed
19 to come in and testify to what they saw back then,
20 what they knew.

21 That was Richard Best, Richard Bipps, James
22 Kidd, Nancy Chaves, Minerva Mozo-Dominguez, Alfonso
23 Black, Girma Seifu and plaintiffs called Adem Huka.

24 So we've got former employees in this mix.
25 Lou Franzese doesn't work for Hertz anymore. Tony

1 Luchini, a school teacher in Maine, doesn't work for
2 Hertz anymore.

3 We've got out-of-state witnesses that we
4 brought in. Counsel has questioned their motives
5 throughout, including today, asking them questions
6 when they were here, the hourly employees, "You need
7 this job, don't you?"

8 You know, if this is a plan, there's a word
9 for this sort of a plan. It's a conspiracy.

10 If this is a plan, counsel is trying to sell
11 you on a bicoastal top-to-bottom conspiracy to cover
12 alleged shifting justifications, saying that what --
13 when everybody came in and told you what happened
14 under oath, that they were all in on it.

15 You have to find that these are the folks
16 that were in on the plan or the conspiracy to cover up
17 the plan. And, of course, I submit that is not the
18 case.

19 I think it's important, one of the
20 instructions that Judge Roberts gave to you is the
21 difference between evidence and argument.

22 So let me point to the sentence I'd like you
23 to focus on.

24 "However, it is important for you to
25 remember that the lawyers' remarks, statements and

1 arguments are not evidence."

2 And we showed you evidence on every point
3 that we raised in our opening statement.

4 The operational and morale problems from
5 prayer break abuse. The efforts to fix it, including
6 in the 2011 collective bargaining negotiations and
7 afterwards.

8 The origins and benefits or virtues of the
9 clocking rule. Plaintiffs' refusals to clock for
10 prayer. And even enforcement of the clocking rule
11 from September 30th onward.

12 I would contrast that with plaintiff's case
13 which hinges on largely counsel's arguments,
14 mischaracterizations of the evidence that's in the
15 record.

16 I want to point out three of those for you.
17 It's on a slide.

18 So first we have the media coverage argument
19 and that one is that Hertz only began enforcing the
20 clocking rule with respect to coffee and smoke breaks
21 in late October after media coverage of an interview
22 with union officials.

23 Well, our managers and coworkers -- just
24 remember, argument versus evidence -- our managers and
25 coworkers testified that it was evenly applied from

1 September 30th.

2 Plaintiffs have no personal knowledge to
3 dispute that. When the plaintiffs came up in their
4 case in chief we asked each one "Did you see any
5 violations on or after September 30th?"

6 "Did you see anybody fail to clock out for a
7 smoke break on or after September 30th?"

8 "Did you see anybody fail to clock out for a
9 coffee break on or after September 30th?"

10 No. There's no evidence in the record from
11 the plaintiffs on that.

12 They weren't there afterwards, so the
13 speculation as to what happened post September 30th is
14 just that. It's argument as to what occurred as
15 opposed to evidence, by calling employees who've been
16 there from that time frame to ask them what happened.

17 They called Adem Huka. That is an employee
18 who was there from that time frame.

19 But Mr. Huka testified that he clocked for
20 smoke breaks starting on September 30th, with the
21 exception of walking from clean to dirty. He's a VSA.
22 We completely concede we had that exception for VSAs.

23 The shuttler rule, by the way, the clocking
24 rule -- I'll talk about that in a little bit -- it
25 didn't apply to VSAs. The VSAs' collective bargaining

1 agreement changed around the same time.

2 It gets you to the same result. Folks were
3 expected to clock out for everything starting on
4 September 30th, which he testified he did, with one
5 exception, walking from clean to dirty. Because VSAs
6 could still work while they were walking from clean to
7 dirty with a cigarette hanging out of their mouth, but
8 we even repealed that out of an abundance of caution.

9 Plaintiffs -- so that's the evidence, right?
10 That's the arguments that they'd like to make off of
11 the evidence.

12 They argue that, "Well, no one was
13 disciplined before October 25th when Mr. Huka was
14 disciplined."

15 But there's no evidence that anybody broke
16 the rule before October 25th.

17 So, again, it's circumstantial argument
18 looking at a point that this is the first disciplinary
19 letter we issued. There's no evidence that anyone
20 actually broke the clocking rule between
21 September 30th and October 25th.

22 Evidence in the record from coworkers, from
23 managers is to the contrary.

24 You've got -- so contrast that argument
25 again with Mr. Luchini's spot check of five smokers on

1 October 13th. That's Exhibit 1766.

2 I also want to mention that you won't get a
3 copy of this, so if there's any exhibit that I mention
4 that you want to remember, it's probably good to take
5 a note of it. I will say each one a couple times --
6 not that you need to write it down, but just in case
7 you want to.

8 But Mr. Luchini's spot check of five smokers
9 on October 13th -- that's Exhibit 1766 -- there is
10 again, no reason to -- take a look at it -- there's no
11 reason to send that email if in fact we didn't impose
12 the clocking rule across the board until sometime in
13 late October after media coverage.

14 And then Exhibit 20. That is Todd Harris's
15 October 21 email that, for some reason, plaintiffs
16 like -- I'd love it if I had a time machine, I would
17 send Todd back to write that email.

18 It actually says -- read what it says -- it
19 proves, when he hears Ms. Thompson's interview, that
20 clocking was already happening.

21 What he encourages his troops to do is make
22 sure to document it, make sure to do those spot checks
23 so that we have evidence, just in case we ever need
24 it. And it turns out, we did.

25 So, again, the contrast between evidence and

1 argument on the media coverage argument.

2 The second one I want to point out is the
3 smokers argument. And that one, of course, is that
4 Hertz knew we had rampant smoke break abuse, you know,
5 prior to September 30th but we focused only on prayer.

6 Well, if you listen to plaintiffs' direct
7 exams, you know, I got the sense that we primarily ran
8 a smoking lounge and every once in a while we'd move a
9 car or rent a car to folks.

10 But we asked each plaintiff two questions
11 when they were up there and we had a chance to cross
12 examine. What evidence they had of any violations on
13 or after September 30th, none.

14 And then we asked who were the smokers among
15 the shuttlers in 2011? And from out of smoke came
16 four names -- well, from zero to four names, depending
17 on the plaintiffs -- out of 60 plus shuttlers.

18 There's no evidence that the smoke breaks
19 were at all disruptive, let alone on a comparable
20 scale to half the workforce praying in addition to
21 their taking their full clocked rest breaks.

22 Two of the four names of smokers that folks
23 could identify from back in 2011 are themselves Somali
24 Muslims. It can't help a case that it hinges on
25 whether defendants discriminated based on religion or

1 national origin.

2 And the other two, Alfonso Black and Girma
3 Seifu, we called them as witnesses. They showed up
4 and they told you that they smoked during their breaks
5 at the airport since September 30th.

6 Counsel tried the time card argument, right?
7 The piece where you put up the time cards and say,
8 "Well, shouldn't I see a bunch of small breaks?"

9 Mr. Seifu said, "No, I smoke during my
10 breaks. I smoke during my lunch break, my rest
11 breaks, my clocked breaks. I smoke before work. I
12 smoke after work."

13 So again, it's contrasting the evidence that
14 you heard versus inferences and arguments that should
15 be taken, for instance, off of Mr. Seifu's time card,
16 which doesn't show a bunch of tiny little punches.

17 He showed up and said -- explained to you
18 why.

19 The third one that I want to get into is the
20 insubordination argument. And that is, of course, to
21 get rid of the plaintiffs, Hertz disregarded its three
22 warnings rule for insubordination.

23 Well, Jeff Wilson, the author of -- a line
24 level manager, the author of the Tool Box in question,
25 who is on his own to describe the collective

1 bargaining argument, took it on himself, after it
2 comes in, to train the shuttlers on what it said.

3 He came and explained what he wrote. You
4 know, it's two sentences. The first one is actually
5 insubordination policy, the second one, the three
6 times is very serious -- it's his understanding; I
7 don't dispute it -- but nothing suggesting that, and
8 in fact he told you it doesn't require three times for
9 insubordination.

10 The managers who suspended the plaintiffs
11 testified they understood that insubordination means a
12 refusal to follow management directive one time.

13 And that's true. And I have more points to
14 illustrate why it's true.

15 But I do just want to take a break and
16 mention that every plaintiff in this case was told to
17 clock out in a shift huddle, many in one-on-one
18 conversations, sometimes right before entering the
19 prayer room and sometimes before, earlier in the day.

20 Many of them had multiple forms of those
21 communications. A memo was posted. The message got
22 out there, for what it's worth, even if you believe
23 that there was some three times rule for it, each
24 plaintiff got three plus -- three plus times.

25 But of course, Mr. Franzese, who had

1 nationwide responsibility for the policy, he confirms
2 that one refusal was enough. He showed it was a
3 terminable offense. That's Exhibit 1076. That's the
4 Western rules.

5 If any rule was disregarded here, that's the
6 one that was disregarded. It's a terminable offense.
7 Nevertheless, after confirming that the plaintiffs
8 were insubordinate, we offered them another chance.

9 So there was a rule that was disregarded
10 here, it's that.

11 And, of course, the plaintiffs'
12 insubordination argument ignores that three or 30
13 times wouldn't have made a difference. It is
14 indisputable that they rejected our offer to return to
15 work.

16 So a bit of a smoke screen, a bit of a
17 distraction. But in any event, I think you can find
18 your way through by contrasting the actual evidence in
19 the case versus arguments by plaintiffs.

20 Now the burden remains with the plaintiffs
21 at all times. And frankly, it can be enough for us to
22 come in and just poke holes in their case like I've
23 done for the last ten to 15 minutes. That's all
24 that's required.

25 But that's not how I try cases. I want you

1 to understand what actually happened. You deserve
2 that. You've been here for seven weeks. I know that
3 folks have different decision-making styles. Some of
4 you may really want to go through everything and be
5 comfortable on how the facts were sequenced. I'm
6 going to show you all that. I'm going to take you
7 through it.

8 Keep in mind, I don't think you need to get
9 down in the weeds to decide this case. There are
10 fatal flaws that they cannot possibly overcome, but
11 let's, nevertheless, walk through what we've learned.

12 All right. So I put this up in opening.
13 This is the clocking timeline. And we started -- I
14 told you about how in 2007 I took you all the way up
15 to the 20th when the plaintiffs' employment ended.

16 What I'd like to do today -- several of
17 you had good questions. The juror question on how
18 things sequenced and how different pieces you heard
19 about the timing of them, how they interacted.

20 So we broke this down into two smaller
21 timelines. I'm going to take you from 2007 up to
22 September 8th, 2011. That is the date of what I call
23 the headquarters skip level with the corporate skip
24 level.

25 And then the next slide is going to take you

1 from September 27th through October 21, the days that
2 the rule comes into effect or it's announced, all the
3 way through the hiring of the first post-plaintiff
4 replacements.

5 Okay. So 2007, you know, the time clock
6 starts to be used for breaks, and I've put up a couple
7 goal posts here and then I'll tell you what these are.

8 2010 is the shuttler labor contract
9 negotiations.

10 1892, 1862, 1735, those are documents that
11 evidence historical issues with prayer abuse.

12 So 1892 is an email from Todd Harris
13 documenting a conversation that he had with some of
14 the plaintiffs, actually, and others.

15 1862, 1735, some emails reporting in to Todd
16 Harris evidences of folks refusing to clock out for
17 prayer prior to 2010.

18 Of course, Mr. Harris in particular, but
19 some of the other managers as well and the coworkers,
20 came in and told you about the long-standing issues in
21 this time frame. Which we haven't spent a lot of time
22 focusing on it, but the evidence is certainly in
23 there.

24 The contract negotiations in late 2010 and
25 then in January 2011 the new collective bargaining

1 agreement begins.

2 Briefly on the contract negotiations. What
3 does the evidence show? The union proposes unclocked
4 prayer in addition to rest break time. The status
5 quo, basically. That, as everybody on both sides say,
6 that's what was happening.

7 They proposed the status quo. Hertz rejects
8 that. The final language in the collective bargaining
9 agreement is Hertz's, and I want to show you that
10 language.

11 Here it is. The company will provide
12 ten-minute paid rest breaks as described by the state.
13 The employee must clock in and out for all rest and
14 meal breaks. The employee's allowed to take several
15 mini-breaks for every four hours that total ten or
16 more minutes and will be considered to have received
17 the ten-minute scheduled rest break.

18 There is no carve-out for prayer. Proposed
19 by the union, rejected by Hertz, didn't make it into
20 the final document.

21 There was something that came out of the
22 negotiations that addressed prayer, the mini-break.
23 That was created at the suggestion of the union as a
24 way to accommodate prayer, if, indeed, we were now
25 going to be confining prayer to break times, an open

1 issue discussed at the negotiations.

2 This is the exchange that I had with
3 Ms. Omar on the topic, the union steward. She in fact
4 was vocal at the negotiations saying that she was a
5 member of the union's bargaining team. That prayer
6 took three to four minutes I believe was the numbers
7 given, two to four minutes, perhaps. And that this
8 mini-break would work.

9 On direct examination and on cross she
10 refused to agree that the mini-break was created for
11 prayer. And this was towards the end of my
12 cross-examination of her when I reminded her of her
13 prior sworn testimony that indeed -- I won't read the
14 entire thing -- but everybody could use the mini for
15 prayer, the mini time to pray, which they would not be
16 clocking out.

17 All the other people, if they take the ten,
18 they will clock out, but if you take the minis, you
19 don't clock out. You can use it to pray or whatever
20 you want to do.

21 Exactly. That's our point. You can
22 actually -- remember, we had an agreement with the
23 union that you didn't have to clock out for minis, so
24 long as they weren't abused, because it does split up
25 your break and we wanted you to have the ability to

1 actually use your minis, not be running to the time
2 card clock.

3 And, again, confirming that the parties did
4 discuss this. The expectation coming out of the
5 negotiations is that prayer would now be part of break
6 time, rather than in addition. We made an additional
7 accommodation to allow that to happen.

8 The union explains at the ratification
9 meeting that prayer is part of and not in addition to
10 break time.

11 Mr. Kidd came in. He's a member of the
12 union bargaining committee. We subpoenaed him to get
13 him here. He came in and told you, "Yes, it was
14 explained at the ratification meeting."

15 MR. SHERIDAN: I'm sorry to object, your
16 Honor, but I think counsel is making reference to
17 things not in the record with Kidd.

18 THE COURT: Overruled.

19 MR. FILIPINI: He testified that Mohamed
20 Hassan, one of the plaintiffs, was actually the
21 interpreter at the ratification meeting.

22 And I want to make one point before I move
23 on from the collective bargaining agreement, that
24 plaintiffs have noted many times that ten dollars an
25 hour, no fringe benefits, there's an attendance point

1 policy that applies to all shuttlers. It comes from
2 the collective bargaining agreement.

3 The agreement -- you have it, it is
4 Exhibit 24. You can look at that.

5 It's not something that Hertz did to focus
6 on Somali Muslims. It's negotiated with the union.
7 It applies to every hourly employee you saw here. Not
8 Mr. Best or Huka, they are covered by different
9 collective bargaining agreements, but all the
10 shuttlers are covered by the same rules.

11 Okay. So a new collective bargaining
12 agreement comes out and Mr. Wilson trains on breaks
13 under the new CBA.

14 1744, in February -- 1744 and 45 are
15 Mr. Wilson's trainings back in February. They
16 actually were two sides of the same document.

17 As he came in and testified, he explicitly
18 trained people that the break language meant that
19 prayer was to be part of breaks. And when you look at
20 it, when you get to that point, plaintiffs -- many of
21 the plaintiffs initial everything else on the form,
22 but not that.

23 He later in the month issues verbal warnings
24 to several plaintiffs for praying on the clock. That
25 is -- Exhibit 1746 contains six of them. 1887 is the

1 one for Ms. Omar, separated out simply because I
2 questioned her about it separately.

3 And, you know, again, there can be no real
4 dispute that those warnings were issued for prayer.

5 Ms. Omar testified she asked Mr. Wilson to
6 write "prayer" on there. Well, if you weren't praying
7 when you got it, why would you ask for "prayer" to be
8 written on there?

9 Her point is that he refused to do it. I
10 get that, but it nevertheless demonstrates that indeed
11 she was praying at the time.

12 The times off the floor confirm, if you look
13 at the individual times, confirm that it was during
14 prayer. It's part of Jeff Wilson's efforts in
15 February to get compliance with the provisions of the
16 collective bargaining agreement that came out and
17 Hertz's efforts to end this problem that had been
18 going on for quite some time and to comply with the
19 deal that was struck at the table in order to do that.

20 April 2011. The union confirms that prayer
21 is to be done during break time. That came in through
22 Todd Harris's testimony.

23 Mr. Wilson reached out to Cetrus Tucker,
24 tried to get her to confirm his understanding. He
25 wasn't at the negotiations but to confirm that prayer

1 is to be done during break time not in addition.

2 She didn't get back to him. Mr. Harris
3 called her and did have a conversation that he relayed
4 to you that Ms. Tucker confirmed that prayer was to be
5 done during break time.

6 Mr. Wilson goes to Ms. Omar, the shop
7 steward, and said "Here's what Cetriss says."

8 Ms. Omar says, "No, not the case."

9 So Jeff goes back to training, Exhibit 1748.
10 He tried it again. Between April and June he trains
11 again on breaks under the new collective bargaining
12 agreement. That's Exhibit 1748.

13 Then in August, Mr. Abdallah has a skip
14 level meeting -- and I'll talk about Mr. Wilson's post
15 in a minute -- who was a Muslim employee in
16 attendance, he testified.

17 Mr. Abdallah is himself a Muslim. The
18 reason he knows a Muslim employee was in attendance
19 was because when they discussed break abuse, that
20 person said "I agree it's happening, but I'm a Muslim,
21 and not me. I am punching out for my breaks and it's
22 having an impact on the rest of us."

23 And he hears at that skip level that the
24 employees are taking their prayer breaks in addition
25 to the full clocked rest breaks. He hears about the

1 sometimes excessive length of the prayer breaks. And
2 he hears about customer service and morale issues.

3 He takes that information -- it is the first
4 time he heard about it. He's the general manager for
5 Oregon, for Washington, for Alaska at the time. He's
6 on the road a lot. He just started in February 2011.
7 It's the first time he heard about it. He's not at
8 the facility a lot.

9 I think you saw him and he's eminently
10 credible, I hope you found. When he hears about it he
11 goes to Todd and says "You've got to fix this. What
12 you should do is implement a clocking rule."

13 He had prior experience with clocking.
14 Clocking -- he explains why clocking works. The
15 reasons that he told you. It provides objective data.
16 The numbers don't lie. It gives you -- if you're
17 clocking for all your rest break time, then you can
18 see how much time you're actually taking, the manager
19 checks time cards every week, they can coach you on if
20 you're taking too much and you need to limit it down
21 to the ten to 15 minutes provided under the collective
22 bargaining agreement.

23 That's the story of Hassan Hassan. That's
24 what happened with Mr. Hassan. He's one of the two
25 Somali Muslims who complied from the start. When

1 Mr. Babou saw his time cards after September 30th, he
2 saw that he was continuing to pray in addition to rest
3 breaks, but he had the data.

4 He had a conversation with Mr. Hassan and
5 said, "Hassan, to be clear, the clocking rule's
6 purpose is to make sure that you're confining any
7 personal activity to the break time, including
8 prayer."

9 Hassan said "I get it," and he's complied
10 going forward.

11 And, of course, the rest of the reasons for
12 the clocking rule is that -- one of the things
13 Mr. Abdallah said is it ends any consternation about
14 who is taking more time, who is taking less time. The
15 data tells you what it is, and you can go from there.

16 Mr. Wilson posted another memo on prayer.
17 I'm sorry -- that prayer should be on break time on
18 August 2011. That's Exhibit 1884.

19 There were additional efforts throughout the
20 year, one more guidepost of our efforts to gain
21 compliance short of being here today.

22 And then, of course, on September 8th, we
23 have the skip level meetings that called it saying --
24 I won't go through it again, but the prayer break
25 abuse concern comes up, essentially the same things

1 Mr. Abdallah had heard this time from a completely
2 different group of employees.

3 So let's look -- remember I said it, I broke
4 this down for you, the next one September 27th through
5 October 21.

6 Okay. So I'll talk a little bit about
7 September 27th. Harris convenes a manager meeting.
8 Wilson drafts a post, a clocking memo. That's
9 Exhibit 1.

10 There's been much ado about the manager
11 meeting. When was it? Was it after media coverage in
12 late October or was it back on 9/27/11?

13 Harris, Wilson, Commes, Luchini and Babou
14 gave the exact date, 9/27/2011.

15 In the cross of Mr. Babou and in prior
16 deposition counsel tried to suggest that it was
17 sometime after media coverage in late October. That
18 makes no sense. As the evidence showed it was in
19 force from 9/30 across the board. Indeed Mr. Wilson
20 posted the first memo that night.

21 And you've seen counsel's questioning style.
22 I would ask you how you all feel you would do if you
23 went in ice cold like Mr. Babou, never been in a
24 deposition before, don't know what you're there to
25 talk about, and counsel is driving at when was this

1 meeting? Was it after the media coverage or
2 beforehand?

3 He goes home, he looks at his email, he sees
4 that indeed it was 9/27/2011, the same as the other
5 witnesses, the management witnesses testified to.
6 Including Mr. Harris and it was his meeting.

7 I want to say something about this memo and
8 the one that comes up, you know, the next day that's
9 posted.

10 You know, it says "prayer," right?
11 Exhibit 1 and Exhibit 2 both say "prayer." They don't
12 say "smoking." They don't say "coffee" or any of the
13 other things, "cell phone" or "have a snack," that one
14 person might do with their break time.

15 Well, I think it's obvious that that was the
16 long-standing problem that we were trying to address.
17 It's the impetus behind the rule. That's what was the
18 elephant in the room, but we applied it evenly going
19 forward.

20 And also, we wanted to be crystal clear. We
21 didn't want any confusion about whether or not prayer
22 was included in this.

23 As counsel has pointed out, there were times
24 in the past when we didn't put that. But then we
25 can't win. If we mention it in the memo, it's direct

1 evidence of discrimination if we mention "prayer."

2 If we don't mention it, like back in the
3 April 2009 memo, then nobody knows what we're talking
4 about. So the company can't win in that scenario.

5 But in any event, you don't have to work --
6 again, that's argument versus evidence. The evidence
7 came in that that was the problem we were addressing.
8 Nevertheless, it was evenly enforced across the board.

9 So let's look at -- okay, 9/28, Mr. Luchini,
10 he posts and hands out the clocking memo. He posts it
11 in several places, the dispatch booth, shuttler break
12 room, he handed it out to certain individuals. He
13 conducts -- that's Exhibit 2, by the way, the one that
14 was posted on the 28th. 8:00 a.m. shift huddle, 4:00
15 p.m. shift huddle.

16 Goes through the contents of the memo, lets
17 people know, "We're serious, you're going to have to
18 clock out for everything."

19 There's evidence, and I'm not going to list
20 it all here, but of individual coaching by Mr. Luchini
21 and Best on the 28th.

22 Mr. Best, he could not remember if it was
23 the 28th or the 29th -- he knew it was before the
24 30th -- talks about how he spoke with plaintiff Su'di
25 Hashi who expressed she was unhappy with the rule

1 enforcement and intended to ignore it.

2 9/29, more of the same. 8:00 a.m. Luchini
3 shift huddle. 4:00 p.m. Luchini shift huddle.
4 Individual coaching by Luchini and Best as folks are
5 coming by the dispatch area, out on the floor.

6 "Tomorrow you're going to have to clock.
7 Tomorrow you're going to have to clock for everything.
8 Tomorrow you're going to have to clock."

9 Okay. 9/30. Obviously, quite a bit.

10 What I'm trying to list for you here in all
11 of these little call-out boxes is not only the notice
12 that we gave, but any other evidence that demonstrates
13 that plaintiffs indeed had notice and knowledge of
14 what was expected of them during the days in question.

15 So 5:00 to 6:00 a.m. Best reminded them to
16 clock. He couldn't remember -- he said it was
17 sometime between 5:00 and 6:00, but he started at 5:00
18 and it was before 6:00.

19 So 5:00 to 6:00 a.m. for the folks that were
20 working at that time, he gave them a reminder to clock
21 when they came by the dispatch area.

22 At 6:00 a.m. three of the plaintiffs,
23 Mr. Abubakar, Geedi and Salah, actually received a
24 warning that they would need to clock out for their
25 prayer. They weren't observed necessarily -- I mean

1 they hadn't refused that, but they received a warning
2 that they would need to do it, because there was the
3 fact they had prayed without clocking out but that
4 wasn't confirmed at the time.

5 Again, showing that it was individualized
6 determination. Steps were taken only when we were
7 certain that there had been a refusal to follow the
8 clocking rule.

9 7:15. Asha Farah's voicemail to the union.
10 I'm going to come back to that one.

11 8:15. Mr. Luchini's shift huddle.

12 10:00 a.m. Ms. Omar talks to Su'di Hashi.
13 Su'di Hashi -- Ms. Omar testified Su'di Hashi came to
14 her when she -- when Ms. Omar began work at 10:00 a.m.
15 and said "They're sending people home for not clocking
16 out for prayer."

17 She calls the union at the time. Not a
18 voicemail, a telephone conversation with the union
19 about the issue.

20 1:15. Another Luchini shift huddle. Goes
21 through the memo, tells everybody to clock out.

22 3:30. The union comes out on-site, meets
23 with shuttlers. We know two folks they met with,
24 Ms. Omar and Mr. Hassan Farah. Neither of them could
25 remember other attendees, that's fair.

1 But they came out and met with the shuttlers
2 who were there.

3 4:15. Shift huddle by Mike Dixon. Again,
4 goes through the memo, tells folks what the
5 expectation is.

6 And then throughout the day -- again, I
7 didn't list them all out -- Luchini, Dixon, Hoehne and
8 Best all testified to conversations they had with
9 folks, sometimes right before entering the prayer
10 room, reminding them one last time to clock out for
11 prayer.

12 And then in the evening, when I cross
13 examined Ms. Huseen, she told me that most of the
14 plaintiffs met that night -- I actually had to read
15 her deposition on it -- but met that night at the
16 Somali Community Center with Cetrus Tucker from the
17 union to discuss what was going on.

18 Okay. So what I've done here -- I just want
19 to walk you through this briefly.

20 Mr. Sheridan had done this during the course
21 of the testimony, right? So these are the start times
22 on the days in question.

23 I came over here and I want to show you when
24 folks were suspended on, you know, each day in
25 question. And then I'm not going to walk you through

1 each individual plaintiff. I tried to pick one from
2 each group to just demonstrate the evidence in the
3 record that they certainly understood what was
4 expected of them, and indeed made a conscious decision
5 not to comply.

6 Muna Mohamed's testimony is if you're going
7 to pray, Richard Best called after you "Where are you
8 are going?"

9 She responds to him, "I'm going to pray."

10 At that point, he said, "Punch out if you're
11 going to pray."

12 Best -- after hearing this from Richard,
13 "You didn't punch out."

14 "I didn't punch."

15 Tony Luchini testimony about Ms. Mohamed.
16 He said that she told him "Like I told him, with us,
17 that's not okay."

18 The voicemail from Asha Farah. So you've
19 seen this before; I just want to point out a couple of
20 pieces on it. It's left at 7:15 in the morning, and
21 we'll come back to that in a minute.

22 It's clear evidence that the understanding
23 from the plaintiffs what they were asked to do and
24 they weren't going to do it.

25 They're coming -- "So if you're religious,

1 you have to punch out anytime you're praying. So this
2 morning, yesterday, they came, wherever they say, 'You
3 guys, you have to, if you're religious, you have to
4 punch out anytime you are praying.'

5 "They don't care. We don't care. We
6 praying, they have to send us home."

7 And the transcript of that voicemail is
8 Exhibit 1893, if you want to review it back in the
9 jury room, but that's 1893.

10 I also want to talk about the testimony that
11 came in with respect to this. I showed you that
12 voicemail on the opening, you'll remember. It was one
13 of my opening slides.

14 So on direct, Ms. Farah testifies that that
15 message was left at 1:30 or 1:40 p.m.

16 Mr. Groshong crosses her and says "Wasn't it
17 left at 7:15 in the morning?"

18 She says "No."

19 He asked "Why does the message start with
20 'Good morning'?"

21 She claims she said "Good morning" anytime
22 before 4:00 p.m.

23 Redirect suggested it could be 7:15, 8:30 or
24 1:30 p.m., still unwilling to confirm that indeed it
25 was left in the morning at the very start of the day

1 before she had interactions with all of these
2 plaintiffs.

3 She was suspended at 1:40 p.m., of course,
4 hours after leaving this message.

5 So go and look -- if you have any question
6 that that was left at 7:15 a.m., look at Exhibit 1773.

7 You won't have seen that before. That is
8 the cover voicemail. We got this from the plaintiffs'
9 union pursuant to a subpoena. That's the voicemail
10 from Cetris Tucker's voicemail system.

11 On cross-examination, Mr. Groshong confirmed
12 her telephone number -- that's on there -- and it says
13 it was left -- I think it says it was left at 7:14
14 a.m. in the morning.

15 So again, that is the cover email for the
16 message itself which conclusively establishes my view
17 that it was left at 7:14, 7:15, in the morning.

18 Another point with Ms. Farah -- so there's
19 the voicemail, but also testimony that came in from
20 the record. "You know, Tony was standing in front of
21 the dispatch with his hands like, in front of the
22 prayer area, like he was trying to stop people and to
23 correct."

24 "Was he saying anything?"

25 "He was saying, yes, go back and punch out."

1 So again, demonstrating knowledge of the
2 rule.

3 Ms. Farah was suspended at the same time as
4 six other plaintiffs who all entered, according to
5 their testimony -- from several of them actually --
6 entered the prayer room together, were in there
7 together, and were suspended at the same time.

8 It's incredible to suggest that the folks
9 that we've gone through so far didn't have notice of
10 what was expected of them.

11 Mr. Farah -- so I'm moving down to -- sorry,
12 Todd -- 4:45 p.m., this group of individuals here.
13 Hassan Farah, this was some of the testimony that came
14 in, "Did you subsequently ask them what they were
15 talking about with Tony?"

16 "When we started work, I was told the people
17 who came in the morning, they were sent home. And I
18 said 'Why?'"

19 "If you're going to pray, punch out."

20 Then there was a question. "In fact, more
21 than one worker told you they had been suspended that
22 morning following their refusal to punch out for
23 prayer, correct?"

24 "I don't remember how many, but I actually
25 heard that news and I heard from the employees."

1 So again, for the next group of folks that
2 were suspended, clearly, we didn't take the time and
3 go down through everybody, but tried to pick some
4 highlights from each group, clear evidence that, you
5 know, folks had notice and an understanding of what
6 was required.

7 7:15 p.m., three individuals are suspended.
8 You might remember this from my cross, Ms. Omar never
9 conceded that she had understood, even when suspended
10 nine hours and 15 minutes after starting her day,
11 speaking English, being the shop steward, never
12 conceded that she had understood what was happening at
13 the time she was suspended. And this was my question
14 and her answer.

15 I said to her, "So after seeing the memo
16 posted at dispatch," she admitted seeing it that day.
17 After talking to Ms. Hashi when she came in, Su'di
18 Hashi told her people were being sent home for
19 refusing to pray. That was at 10:00 a.m.

20 "After talking with Ms. Tucker on the
21 telephone right after that, after talking with
22 Ms. Tucker in person at 3:30 at the facility, and
23 discussing the options of just clocking out and filing
24 a grievance, is it still your testimony that you did
25 not understand Hertz wanted you to clock out for

1 prayers?"

2 "Yes."

3 Okay. 10/1. Mr. Best reminds folks at 6:00
4 a.m. to clock out for prayer, these three individuals
5 who had started by that point. And at 1:15 p.m. Anna
6 Commes testified she held another shift huddle meeting
7 and covered the memo.

8 Mr. Abubakar, Geedi and Salah were suspended
9 at 6:30 in the morning. Remember, they had all
10 received warnings the day before saying "You're going
11 to need to clock out for prayer."

12 They weren't suspended. Weren't noticed it
13 would happen because the managers didn't confirm that
14 somebody had told them directly beforehand that they
15 needed to do so, so just got a warning that you may
16 have failed to comply.

17 Well, they did. They were not clocked out
18 for prayer, but they weren't given a directive
19 beforehand, so they just got a warning for failure to
20 comply.

21 We'll focus here -- I'll just bring up
22 Mr. Hassan -- he had mentioned in his deposition and
23 declaration sworn prior testimony that Anna Commes
24 told him before praying to punch out for prayer. He
25 denied those at trial, emphatically.

1 Mr. Abubakar -- I apologize, I got one out
2 of order. Mr. Hassan was 1:40 p.m.

3 So back up to 6:30. Mr. Abubakar, when he
4 came to work on September 30th -- so that's the day
5 before he was suspended on 10/1 -- "When you came to
6 work on the 30th, you understood that Hertz was going
7 to expect you to clock out for all rest breaks,
8 including prayer."

9 "That's what Hertz wants, but I was taking
10 ten minutes, and I was also praying. So the answer to
11 that question is 'Yes.' Like I answered, the answer
12 is 'Yes.'"

13 Nobody was suspended on 10/2, so we'll jump
14 ahead to 10/3.

15 Mr. Luchini has another shift huddle.
16 Abdiaziz Abdulle is the only person suspended on the
17 that day. Admits that Matt and Tony stood outside the
18 prayer room and asked if he was clocked out, but he
19 claimed that he thought they were talking about lunch.

20 I submit to you that it's not credible to
21 believe that, particularly at that point. This has
22 been going on now and more and more of the workforce
23 is departing. Plaintiff after plaintiff testified
24 that "I didn't know." It's 50 percent of the
25 workforce. "I didn't notice they were gone."

1 Ms. Huseen testified that most of us met on
2 the night of the 30th at the Somali Community Center
3 with Ms. Tucker. Again, I would ask you to keep that
4 in mind when evaluating the credibility of the
5 witnesses.

6 10/4. Another Luchini shift huddle. Marian
7 Ali and Fouzia Mohamed were suspended that day at
8 1:40 p.m.

9 Ms. Ali's testimony: "You attended a
10 meeting with Mr. Luchini and Mr. Hoehne at 12:30 on
11 your last day of work."

12 "It was around 12:30. I came to the
13 dispatch. There were some other shuttlers and Matt
14 was saying 'I want to tell you, anybody who is leaving
15 the floor should punch.'"

16 Okay. So an investigation was conducted
17 from the 30th to the 11th. Mr. Harris testified about
18 this. You may recall my exchange with Todd, it went
19 over a couple days. And of all of the things that
20 you've had to sit through, possibly the most painful
21 was when Todd and I had -- I had to lay the foundation
22 through Todd for the admission of various exhibits,
23 none of which we displayed to you or showed.

24 I apologize. One of the roles that a
25 witness plays is not only to offer testimony but also

1 to -- we have to get our exhibits in through the
2 witness. And he'd already been on the stand for many
3 hours at that point, and I didn't want to, after
4 getting these in, blow them up and have him walk
5 through there.

6 But I do want to point them out to you, and
7 you might want to make notes on there if you have any
8 questions or you want to look at what Mr. Harris was
9 considering the reports from his managers from the
10 employees when he upheld the suspensions. Okay?

11 So these are subject to the limiting
12 instruction. So it's not evidence that the contents
13 in those documents are true, but it's important for
14 you to see if you still have any questions about what
15 information Todd relied on as a decision-maker.

16 And the test, Ladies and Gentlemen, is
17 whether he had a reasonable belief that the
18 information sent to him was true. And indeed, there
19 had been an insubordination event. Look at those
20 emails if you have any questions at this point.

21 He testified that, you know, chronologically
22 these are kind of the way that it breaks down. We've
23 got 9/30 to 10/04, the managers' statements are coming
24 in as folks are being suspended. They're quite
25 detailed, if you actually want to look at them.

1 And, you know, there was an interesting one.
2 In the closing arguments counsel said none of those --
3 there was no attendance kept at any of the meetings,
4 right?

5 Well, one of the items that Todd relied on,
6 Exhibit 1819, does have a record of huddle attendance.
7 I believe it was the huddle that Mike Dixon and Matt
8 Hoehne were at. It lists all the shuttlers who were
9 there.

10 Then after Todd gets the manager statements,
11 he goes and gets the employee statements.

12 So it was suggested that Todd -- remember
13 that Derek Jeter email -- if I had a time machine, I
14 would like the one email he wrote -- I don't love that
15 one. It caused counsel to suggest that he was simply
16 looking for employees to sign up. You know, sign this
17 version of what happened.

18 Here's why, as Mr. Harris testified, he
19 wrote that on 10/4 based on what he understood to be
20 the facts from his managers. But then what I would
21 like you to do is go look at Exhibit 1882 and 1883.
22 The managers go out and collect statements from the
23 employees.

24 Compare the Derek Jeter email to what we
25 have back. Night and day. Folks told us often, in

1 many, several pages of handwritten statements, what
2 they knew about the clocking rule, what they observed,
3 what they saw. These are the inputs that Todd had,
4 not at all biased on the way they came in or
5 predetermined what they were going to say. So, again,
6 if you have any doubts, I would encourage you to look
7 at those.

8 And, of course, there's an employee survey
9 result at 1880. I think it's three or four questions
10 I believe Jeff Wilson and Mr. Babou may have posed to
11 the employees about when they heard about various
12 things, including the rule of clocking.

13 You'll find something interesting in those.
14 Some folks say "Oh, I knew about this the whole time,
15 that I was supposed to clock out, I knew about this
16 the whole time I was here. I learned about it when
17 the CBA was negotiated."

18 And as Ms. Minerva Mozo-Dominguez testified
19 yesterday, I think, the memo on the 27th and 28th for
20 the majority of the workforce was not that big of a
21 deal. They already were limiting their personal
22 activities to their rest break time and they were
23 clocking for it.

24 So it's not surprising that for some of them
25 when the question was posed "When did you learn that

1 personal activities are in rest break time?" they
2 answered, "When I got hired. When that new CBA came
3 into effect with Section 3.06." It's not
4 controversial for many of our employees.

5 Okay. Hertz's offer to return -- that is
6 on -- I'm sorry, a bit past that.

7 So the investigation concludes, right? On
8 10/11, Mr. Harris testifies he didn't see any reason
9 to overturn the suspensions that had been done by the
10 line managers, the various line managers, so I didn't
11 recommend to Mr. Abdallah, his boss, that I do that.

12 Mr. Abdallah came in, regardless, and told
13 all of the plaintiffs -- actually, more than the
14 plaintiffs, the 34 suspended shuttlers at the time --
15 that they could have their job back, right?

16 So I'm sure you will look over this
17 letter -- this is from my opening -- well, except I
18 put Exhibit 58. It's obviously not just 58. This is
19 one of the letters that was sent, but they're all the
20 same. There's 24 more of these various exhibits.

21 You know, the first sentence "I want to make
22 clear that we're not denying you the opportunity to
23 pray while at work.

24 "Second, Hertz does not intend to dock your
25 pay including those you use for prayer, praying at

1 paid breaks.

2 "Third, we expect you to follow the
3 instructions of your managers when they ask you to
4 clock out," and explains here this is why we're doing
5 this. We have to have a way that we can track how
6 much break time folks are taking and be fair in the
7 distribution of break time among our employees.

8 This is later in the letter, but this is
9 just something that he told you on the stand, but just
10 to bring it up. You know, he said that "You have
11 until October 18th to sign it. If you don't sign it,
12 you will be let go for these reasons."

13 He strongly urged them to consult with their
14 union. And he also told them "We will immediately
15 return you to you work. You're free to use the
16 grievance procedure of the contract to pursue any
17 disagreement you have with such requests or unpaid
18 suspension."

19 And he testified that he's got experience
20 with that process. That's our process, right? We're
21 a unionized environment. If somebody is suspended or
22 let go or there's some event in which you're unpaid
23 for a stretch, if that's overturned, either through
24 negotiations between the parties, you know, it's a
25 multi-step grievance process -- it's in the CBA, if

1 you want to look at it -- or because an arbitrator
2 overturns it at the end, it's make whole. You get
3 your money back.

4 That's the process that's applied to all
5 shuttlers, as he testified to. So he was simply
6 sticking with the practice that he follows for all
7 suspensions.

8 Plaintiffs reject Mr. Abdallah's offer the
9 next day. Here it is in Exhibit 59, if you want to
10 look at it again -- it's one of 25. This isn't
11 unconditional. It has a pretty significant condition
12 on their offer to return.

13 "Get rid of that -- don't apply that rule to
14 us that you're applying to everyone else and then
15 we'll come back to work."

16 You heard us ask each of the plaintiffs
17 why -- I'm sorry, two questions -- did they agree with
18 its content and was it missing anything? Right?

19 I want to have you understand, because
20 you've had to sit here for many weeks and maybe wonder
21 "Why do they ask these questions?"

22 So all that I can think of that may have
23 been head scratchers, I'm going to try to walk you
24 through.

25 So why do we ask each plaintiff, "Did you

1 agree with the contents? Is it missing anything?"

2 Because it doesn't mention a lack of notice,
3 a lack of knowledge or a lack of understanding, an
4 argument created for this litigation.

5 Back at the time, it's not -- there's a lot
6 in there. It violated this law, it violated that law,
7 it doesn't say that. That wasn't the position that
8 the plaintiffs were taking at that time.

9 It's important for purposes of the
10 litigation to try to get around the insubordination.
11 Not the argument that they took at all at the time.

12 The union files a grievance on 10/17. That
13 grievance challenged the suspensions and it challenged
14 the enforcement of the clocking rule, an avenue
15 available to the plaintiffs to challenge us. It was
16 good enough for eight shuttlers who returned to work,
17 seven of whom are still employed. Mr. Harris
18 testified one left recently, clocked without problem
19 going forward.

20 Plaintiffs' employment ends on the 20th. We
21 give them a couple of days past the deadline.

22 And new shuttlers are hired on the 21st.
23 And of course, the point I want to point out to you is
24 that we hired three known Somali Muslims on the 21st.
25 We knew they were practicing Muslims because they had

1 been vehicle service attendants. Hired the very day
2 after the plaintiffs left to help fill in the
3 unexpected gap caused by the departure of the
4 plaintiffs.

5 So I want to now walk you through the jury
6 instructions briefly.

7 Okay. So you are going to have to
8 determine -- to establish the claim, you're going to
9 have to determine that Hertz suspended or terminated
10 the plaintiffs and that national origin or religion
11 was a substantial factor in the decision to suspend or
12 terminate the plaintiff. And of course, plaintiffs
13 bear the burden of proof on that on each factor by a
14 preponderance of the evidence.

15 I have to address something that counsel
16 said in opening remarks. Now a substantial factor
17 suggests it could be one in ten or it could be any
18 factor.

19 Look at Judge Roberts's instruction on what
20 substantial factor equals. It's not one in ten. It's
21 not any factor.

22 It's very clear to me that there's no factor
23 here. But nevertheless, I think it's important that
24 you follow the judge's instructions as given.

25 So the substantial factor, right? Remember,

1 you have to show that religion or national origin was
2 a substantial factor -- let's focus first on the
3 suspensions.

4 And so here's why -- I don't know that
5 you've seen this yet, but I'll skip ahead a little
6 bit. So you're going to get a verdict form, right?
7 And you're going to be asked to fill this out.

8 And this is the verdict form and it's going
9 to break this down for you. You know, did Hertz
10 prove -- I'm sorry, did name of plaintiff prove by
11 preponderance of the evidence that Hertz suspended him
12 or her?

13 Then, did they prove by a preponderance of
14 the evidence that national origin or religion was a
15 substantial factor in the decision to suspend him or
16 her? That's the suspension piece.

17 Then -- I'm sorry, there's two more. Then
18 if you find that these two happened, then did Todd
19 Harris separately aid and abet? And if you find that
20 these two happened, did Matt Hoehne separately aid and
21 abet?

22 So these four cover suspension. Same idea
23 down here with termination. Four questions on
24 suspension, four questions on termination.

25 I'm going to come back and walk you through

1 that in a minute, but you wouldn't have had the
2 context for what I want to talk to you about if I
3 didn't show that to you, I don't think.

4 Okay. All right. So let me just say
5 something now on this. Did plaintiff prove by a
6 preponderance of the evidence that Hertz suspended him
7 or her?

8 Yes, we suspended the plaintiffs, so we're
9 not contesting that. So you won't hear anything
10 further from me on that, we suspended the plaintiffs.

11 Okay. So let's look at was religion or
12 national origin a substantial factor in the
13 suspensions, so question two.

14 The evidence shows that the sole reasons
15 that we suspended the plaintiffs is their refusal to
16 clock out for break activity like everyone else.

17 You need to look no further than the two
18 Somali Muslims who complied from the start, who kept
19 their job. The eight who returned. The five who were
20 out on leave. And the new hires since.

21 Everybody that has managed with the rule has
22 kept their job. They have not received any
23 discipline, regardless of their skin color, their
24 national origin, their religion, anything.

25 As long as you complied with the rule, you

1 kept your job. So there's no evidence it was any
2 factor, let alone a substantial factor.

3 I talked to you about the reasonable belief
4 of the decision-maker that matters, right? So that's
5 the prism that I'd like you to use when you're
6 assessing whether Mr. Harris in upholding the
7 suspensions, or the line managers who did the
8 suspensions, you know, was there insubordination.
9 That's going to be part of your decision-making
10 process, which I would understand.

11 Todd testified about the multiple avenues of
12 communications used: The memos, the shift huddles,
13 the one-on-one meetings, the final reminders. We had
14 communicated in English with this workforce for years.
15 This is an easy item to understand. Punch for prayer,
16 punch for breaks.

17 There was no new technology. It's the same
18 punch card they had been using. Now we weren't asking
19 them to go a different location. It was located at
20 the dispatch booth they had been using since 2007 to
21 punch for rest and meal breaks and in and out at the
22 beginning of the day.

23 And most importantly, if you look back in
24 time, you look at their letter to us, which is the
25 best evidence in the case on it, there was no claim of

1 a lack of understanding or notice at the time. No
2 plaintiff said -- we asked each one -- "Did you say
3 anything to Tony, to Matt, to Anna when they suspended
4 you that you didn't understand why you were being sent
5 home?"

6 I think you've seen all the plaintiffs.
7 None are shrinking violets. If you didn't understand
8 why you were being -- what was happening, you would
9 have said something. "Why?" "What?"

10 Some of them said "Is this part of the
11 contract?" which I'm going to get to in a minute.

12 But when we crossed them on it, it wasn't
13 "Yeah, I said 'What? I'm supposed to punch out for
14 prayer?'"

15 So why did I show you and have my team ask
16 all of those contract questions, right? We, I don't
17 know, 25 times, put up pieces of testimony.

18 Usually we had to cross-examine them and
19 bring in prior depositions because they wouldn't agree
20 in court, most of them, that they believed that
21 clocking out violated the collective bargaining
22 agreement.

23 It's not a waiver of our claim. I agree
24 with that. However, a belief that they had at the
25 time that prayer violated their collective bargaining

1 agreement demonstrates it is a conscious choice.

2 I don't care what the reason was why
3 somebody refused to clock out. There could have been
4 other ideas in their head. You would at least have
5 one common reason from all 25 plaintiffs.

6 But you can't say "I'm not doing this
7 because it violates my collective bargaining
8 agreement." Oh, by the way, no one will know what
9 we're talking about.

10 No. It demonstrated a conscious choice that
11 the plaintiffs had. It turns out to be an incorrect
12 choice. I've showed you the language of the
13 collective bargaining agreement. We've testified what
14 was covered.

15 They're not labor lawyers, I get that.
16 That's not my argument. It is that it was a conscious
17 choice that each made on the belief that what we were
18 asking them to do violated the collective bargaining
19 agreement.

20 That's enough, Ladies and Gentlemen. That's
21 not evidence that they were suspended because of
22 national origin or religion. It truly was a choice
23 that each of them made to refuse to clock.

24 We talked a little bit about the impetus for
25 the clocking rule. I think that's important to keep

1 in mind when you're evaluating suspensions and, of
2 course, the terminations after that, the questions
3 you'll be asked.

4 You know, it's inherently nondiscriminatory.
5 It arose out of concerns for customer service, for
6 operational efficiency, for fair treatment to all
7 shuttlers. You heard from coworkers about the burdens
8 that the extra breaks and the excessive breaks were
9 having on everybody else.

10 And actually, you know, counsel, I think,
11 had it in his slide that Mr. Best said that they
12 didn't have to keep working. What Mr. Best testified
13 to is that he couldn't in good conscience, as a
14 dispatcher, continue to ask the non-Somali Muslim
15 shuttlers to keep moving.

16 But they did keep moving cars. They did do
17 it. And he said that they did do it. And then you
18 saw shuttlers come in and testify that they kept
19 moving vehicles.

20 So the impact that it had on everybody, I
21 think the clocking rule speaks for itself, what it
22 does, why we put it into place.

23 And keep in mind, of course, that we're
24 running a business here. There's nothing wrong with
25 expecting employees to actually work during working

1 hours. There's nothing discriminatory about that.

2 Now it's probably easiest if I actually keep
3 this verdict form up for you.

4 So you're going to be asked "Did they prove
5 by a preponderance of the evidence that Hertz
6 suspended him or her?"

7 Yeah, we did.

8 "Did they prove by a preponderance of the
9 evidence that national origin or religion were a
10 substantial factor in suspension?"

11 No way. That should be a "No."

12 Okay. And obviously, I'm going to talk a
13 little bit about aiding and abetting. But if you find
14 that nothing happened, then Todd and Matt couldn't
15 have aided and abetted in anything.

16 And let's come down to the termination, that
17 it was proved by a preponderance of the evidence that
18 they were terminated.

19 We do very vigorously dispute that. We do
20 not agree that the plaintiffs were terminated here.
21 And let me tell you why.

22 Each plaintiff rejected a sincere offer to
23 return to work. We know it's sincere because eight
24 folks came back. Seven are still working there today.

25 We had clearly explained by that point what

1 would happen if the offer was rejected. Nobody
2 claims -- although they do contest whether they had
3 notice on the days in question -- nobody says, "I
4 didn't understand Mr. Abdallah's letter."

5 It was translated for them. If they had any
6 concerns, they knew by that point what was expected
7 and said they're not going to do that.

8 There was a refusal to agree to comply, even
9 with the ability to do the grieve which is the
10 standard for a unionized workforce. And that hinders
11 our ability to manage the workforce as Mr. Abdallah
12 testified to.

13 It is our opinion that, our view, that they
14 essentially resigned at that point. Mr. Abdallah had
15 told them what would happen. They had refused it.

16 Sending them a letter to confirm the obvious
17 is no different than sending a letter accepting
18 somebody's resignation or if somebody abandons their
19 job.

20 Eventually, you have to send them a letter
21 saying "You're terminated."

22 So you're going to be seeing -- I think it's
23 a question of semantics that "Yeah, they got a letter
24 that said terminated." They're in there. You're
25 going to see 25 of them.

1 My point is that plaintiffs forced our hands
2 by that point.

3 I believe that you should have no problem
4 putting "No" in the box of whether or not Hertz
5 terminated them.

6 Let's talk about the next question. They
7 proved by a preponderance that national origin or
8 religion was a substantial factor. Again, the
9 evidence shows that the sole reason is their refusal
10 to clock for break activity like everybody else.

11 We're running a business here, as I just
12 said a moment ago. And not to beat a dead horse, but
13 you need look no further than that the two Somali
14 Muslims who complied from the start, the eight who
15 returned, the five who were on leave -- one of those
16 was plaintiff Muna Mohamed's sister who complied and I
17 believe still works there today -- and all of the new
18 hires since.

19 National origin or religion had nothing to
20 do with the separations from employment or the
21 suspensions. It is all about the choices that the
22 plaintiffs made.

23 Zaidun's letter makes clear, if there was
24 any confusion stemming from the days in question --
25 there was not, but his letter made clear what our

1 concern was. It was clocking. We're not telling you
2 you can't pray. It's clocking. Simply clock and come
3 back.

4 And finally I remind you that the decision
5 to let plaintiffs go was Mr. Abdallah, who is himself
6 a Muslim, who I believe testified very credibly he did
7 not want to do this.

8 So I'm going to just have a few minutes
9 left. I want to explain aiding and abetting. It's a
10 little different. Let me walk you through that.

11 So this is the jury instruction on aiding
12 and abetting. And you'll notice -- and so these are
13 separate claims against Todd and Matt. You're going
14 to notice that it's the same first two factors as the
15 claim against Hertz.

16 Obviously, if you find "No" on either of
17 those -- I'll show you on the jury verdict form what
18 you can do -- you can't aid and abet something that
19 you don't find happened, right? So if there's no
20 discrimination by Hertz, Mr. Harris and Hoehne can't
21 aid and abet that.

22 If you did find that, then you would also
23 have to find by a preponderance of the evidence that
24 they separately aided and abetted a decision in order
25 to discriminate against the plaintiffs on the basis of

1 their national origin or religion.

2 So let's talk briefly about Matt Hoehne.

3 Let me show you what that looks like.

4 So you're going to come to the jury verdict
5 form, and those are after each, right? Did we
6 suspend, did we prove -- did the plaintiffs prove by a
7 preponderance of the evidence that national origin or
8 religion is a substantial factor.

9 Then these are the two aiding and
10 abetting -- did the two aiding and abetting. It's the
11 same term for the two aiding and abetting.

12 Okay. Mr. Hoehne. He had -- look at
13 this -- okay? Did Mr. Hoehne separately aid and abet
14 Hertz's decision to terminate?

15 Of course, as I explained, there was no
16 decision by Hertz to discriminate here, so you
17 shouldn't even have to get to these aidings and
18 abettings other than to fill in "No."

19 But Matt didn't have any role in the
20 clocking rule, in its creation, in its application.
21 He didn't terminate anyone. Keep that in mind.

22 Mr. Abdallah terminated them, he told you,
23 no role with Mr. Hoehne.

24 He suspended four of the plaintiffs, but the
25 evidence is he was simply assisting Mr. Dixon who was

1 called in as this emergent situation was going on.

2 It wasn't even a workforce that he typically
3 managed. Matt helped him out by attending the shift
4 huddle and working with him afterwards, and he did
5 suspend four plaintiffs. But those suspensions were
6 investigated and upheld by Todd and HR.

7 Matt is a man who kept Ramadan on two
8 separate occasions, once with several plaintiffs and
9 once with Shuaib, our current GM, who again, is
10 himself a Somali Muslim.

11 I don't know why plaintiffs have focused so
12 much of their case on Matt. But you have to buy into
13 a conspiracy theory, the plan, the slide that I showed
14 you before, a whopper of a conspiracy theory to find
15 Matt liable here for the suspensions or for
16 terminations of anyone.

17 Similarly Todd Harris. There is no evidence
18 that Todd did anything. Again, there's no decision to
19 discriminate by Hertz so you didn't even need to get
20 to this. But Todd didn't terminate anyone, it was
21 Mr. Abdallah. Todd didn't suspend anyone.

22 He upheld the suspensions based on his
23 reasonable belief following investigation conducted
24 with the assistance of human resources. I encourage
25 you to look at the inputs he had, those exhibits, if

1 you have any questions.

2 The discriminatory bias claim against Todd
3 makes no sense. He grew the workforce during his
4 tenure to 50 percent plus Somali Muslims twice: Once
5 before the events at issue and then after the events
6 at issue to the time that he left in 2014.

7 Twice he was the man in charge that -- and
8 Matt Hoehne under him -- that grew the workforce to 50
9 percent Somali Muslims. It makes no sense.

10 And in fact, I'm not aware of any plaintiff
11 testifying to a bias by Todd or any actions from which
12 one could even infer bias as opposed to the testimony
13 concerning Mr. Hoehne.

14 So my last slide I'm going to show you,
15 Ladies and Gentlemen -- well, you'll see, too, we
16 don't have them here, but on your actual form they'll
17 give you instructions. You know, if you say "No" to
18 this, "Go to question five."

19 If you say "No" to this, "Stop. You're
20 done."

21 So I couldn't possibly fit them on here and
22 have you read this -- the text would be too small.
23 But that will guide you through.

24 My point is you won't have to answer "No" to
25 everything. "No" is in certain spots in the form and

1 you can move on to the next question.

2 So I showed you this during opening, right?
3 And it used to have a title that said "Accommodations
4 to Muslim employees," I believe it said.

5 These are the things we've done over the
6 years that have been talked about extensively.
7 They're not in dispute.

8 In fact, they are hailed by plaintiffs as
9 positives. There were two more that I forgot but that
10 plaintiffs, you know, in the course of their case
11 actually reminded me of, but of course we allowed
12 folks to wear their traditional garb or their clothing
13 required by their religion.

14 And as I sat here and listened to seven
15 weeks of testimony, I realized we tolerated years of
16 prayer on the clock. And what strikes me about it,
17 and I hope that you are of the same mind and what I
18 think the evidence has borne out is that while these
19 are all accommodations that were made, there is
20 another way to look at all of this. And that is "No
21 good deed goes unpunished."

22 When I sit here and I hear that all of
23 these, in particular the fact that folks weren't
24 disciplined for violating a rule that was laxly
25 enforced, was openly addressed, tried to be resolved

1 in the CBA negotiations, still got nine months
2 approximately without discipline for continuing to
3 violate that, it's being used as a sword against us.

4 And, you know, "No good deed goes
5 unpunished." It says it itself. I don't have to tell
6 you any more on that. We all know what that means.

7 You have the opportunity here today to make
8 tomorrow, at this point, to make sure that that's not
9 the case, right? That a good employer who has treated
10 its Muslim employees well, its Somali employees well,
11 is not punished when it did nothing wrong.

12 So I thank you for your service, Ladies and
13 Gentlemen of the jury, and I respectfully request that
14 you deny the plaintiffs' claims.

15 Thank you.

16 THE COURT: Thank you, Mr. Filipini.

17 Members of the jury, Mr. Sheridan is going
18 to have an opportunity in a couple of minutes for
19 surrebuttal. I suggest that we all stand up a bit and
20 stretch before he does.

21 MR. SHERIDAN: I just need a moment to set
22 up, your Honor.

23 THE COURT: Yes.

24 Please be seated.

25 MR. SHERIDAN: All right. Okay.

1 So I want to take this opportunity to
2 discuss some of the things raised by the defendant.

3 First of all, the idea that no good deed
4 goes unpunished perhaps is a truism but, you know, the
5 good deeds existed until Matt Hoehne got there, until
6 2010, and that's why the plaintiffs worked there for
7 ten years.

8 The defendants say that plaintiffs' choices,
9 plaintiffs made choices, but this case is not about
10 the plaintiffs' choices, it's about what the defendant
11 did and what the defendant thought.

12 It's not about preferential treatment. It's
13 the company got a benefit. The company would not have
14 hired and kept the Somali Muslim plaintiffs in this
15 case if they were not good employees. They're there
16 to make money. They were making money. They were
17 making a profit.

18 And also, the plaintiffs were getting the
19 benefit that they cared about. It was a great
20 relationship. Not perfect, but great.

21 So the behavior was not person to person.
22 The behavior was treating the plaintiffs as a fungible
23 group.

24 The defendants said that the choice was in
25 the plaintiffs' hands, but what choices? They could

1 come back after being suspended and denied pay?

2 If you're a manager making a couple hundred
3 thousand a year, you can go for a week without pay.
4 If you're making minimum wage, a week or a month or
5 whatever it is is a terrible sacrifice.

6 There was no offer that they were going to
7 put them back to the status quo. And they were fired
8 for not signing the agreement that said "You have to
9 agree to come back and clock out."

10 Well, that's the whole point. These guys
11 didn't do anything wrong.

12 If you didn't do anything wrong -- imagine
13 being a kid in school and your teacher unfairly tells
14 you to do something and you know you didn't do it
15 wrong, you go home and tell your parents.

16 In Washington State, if you didn't do
17 something wrong and you're being bullied, you stand up
18 and you can file a lawsuit and that's what's happened
19 here.

20 So they don't have to cave in to
21 discrimination. They offered to return
22 unconditionally. Unconditionally.

23 So as to people supporting their actions,
24 Hertz witnesses, a conspiracy. You don't need a
25 conspiracy.

1 You folks remember the VA? The VA was
2 nationwide -- there was a whole -- people could have
3 called it a conspiracy. It was a bunch of managers at
4 different locations who kept their mouths shut when
5 they couldn't keep up with the appointment list. It's
6 not a conspiracy; it's just a bunch of people acting
7 in their interest.

8 Here you have a bunch of people at the lower
9 level just acting in their interest. They work for
10 Harris and Hoehne and they're going to act in their
11 interest.

12 At the top level, I really think the
13 managers didn't know what was going on because they
14 weren't told.

15 So what's missing? The defendants say the
16 media coverage evidence. The plaintiff asked "Did you
17 see anyone clock out for smoke breaks after 9/30?"

18 Of course, that doesn't make sense,
19 everybody is suspended, so they couldn't answer "Yes"
20 to that.

21 But in fact, no one was disciplined until
22 after the media coverage on 10/21. The first person
23 who is disciplined, Mr. Huka, was on 10/25.

24 So now he's an exception, the defendants
25 say. So remember, oh, it's the VSAs, that didn't

1 matter.

2 Well, they can't have it both ways. If the
3 rule didn't apply to VSAs then Huka would not have
4 been punished, right?

5 If the rule applied to VSAs through
6 September 30th then Huka did something wrong. He's a
7 VSA. So you can't have it both ways.

8 The spot checking of smokers, there's only
9 one email in the evidence that talks about spot
10 checking.

11 Except that they said Exhibit 20 proves that
12 you need to document, however -- this is real
13 important -- the discipline only follows the media
14 release, right? That's important.

15 So with regard to the smokers, because the
16 defendant didn't look for smokers, the defendant isn't
17 going to find smokers. Remember, they knew where the
18 smokers were and remember they kept saying it's a
19 small group.

20 If you are applying a policy consistently
21 across the board, then if there's really only a couple
22 of smokers then that would be easy to check. If
23 there's only a few coffee drinkers that would be easy
24 to check. There's no effort to check until after the
25 media release, and then they implement this

1 discipline.

2 The time cards is, you look at the return to
3 Hertz demand, Hertz basically said that "We want you
4 to return so we can monitor whether there's prayer
5 abuse, whether there's break abuse." But the time
6 cards don't show that, so that really does matter.

7 This is the most important thing that was
8 said. Here's what the defendants said. The
9 defendants said on insubordination -- well, you know,
10 they tried to blow off the three times rule, but then
11 this is what the defendants said, "Everyone was told
12 at the shift huddles, there were memos."

13 So insubordination, the three-time rule, the
14 argument goes, was met by the fact that we had all of
15 these huddles, memos, et cetera.

16 But if that's the case, then Huka, Black and
17 Chung would have been insubordinate, right?

18 If that's how you're counting, if you're
19 counting by huddle meetings, by memos, then these guys
20 were insubordinate. You can't have that both ways.

21 But none of them were written up for
22 insubordination, so clearly, you would have to say to
23 somebody three times, you would have to say it in
24 order for there to be insubordination.

25 This actually exposes the weakness in the

1 defendants' case. You cannot -- if you add in what
2 counsel said is you could add in the shift huddles,
3 the memos, et cetera, if you get your three times.

4 But then if that were the case, then we
5 really know that this rule was only being applied
6 against Somali Muslims, because Huka, Black and
7 Chung -- he got punished a month later, he got
8 punished a couple months later, and Chung also got
9 punished later than October 25th.

10 So these guys had plenty of notice. Not one
11 of them was written up for insubordination.

12 So go back and punch out. You know, what
13 Tony did, when you think about it, was humiliating.
14 The idea that somebody is standing in front of the
15 prayer area and trying to stop you as you're going to
16 pray is just humiliating. It is -- if you are a
17 Somali Muslim and you're walking into prayer and
18 somebody is blocking you, that would be so totally
19 offensive and wrong.

20 So focusing on the clocking timeline, the
21 defendants say prayer abuse evidence it exists, and
22 they talked a lot about it. But again, that's all
23 happening at high levels. These are folks who go to
24 work every day and clock in and clock out. This has
25 nothing to do with them.

1 If the mini-breaks were the new rule, then
2 it would have been applied to everyone, but it wasn't.
3 It was only applied to prayer.

4 The defense makes the claim that it's not --
5 oh, be careful with some of the testimony about what
6 was discussed between the union and the company,
7 because defense counsel's arguments are not evidence.
8 If you didn't hear it in the evidence, it didn't
9 happen.

10 Oh, there's talk about Mohamud Hassan doing
11 the interpreting. You heard him testify, he is not a
12 fluent person, so that's a problem in itself.

13 In February 2011, the Tool Box, if you clock
14 out for prayer and it's been decided by February, then
15 there would have been discipline. So if this Tool Box
16 really was the plan, then from February to September
17 we would have seen people disciplined but we didn't,
18 because it was not -- there was no requirement to
19 clock out for prayer. And remember, various witnesses
20 said "We monitor time cards."

21 So why would you need the huddles on
22 September 30th if everybody knew since February 2011
23 they had to clock out for prayer? You wouldn't need
24 to have a huddle. You wouldn't need to put up a
25 notice, because there was notice. But that's just not

1 the case.

2 So the August skip level, you know, I really
3 do think that Mr. Abdallah, he really didn't get the
4 information he needed. The idea that he went forward
5 with the suspension and terminations was because he
6 didn't know who he was dealing with. He didn't know
7 that the plaintiffs were ten-year long-term employees
8 who had done a fine job for the company. He didn't
9 know that the policy of not having to clock out for
10 prayer was in existence.

11 So I don't really think you can blame him.
12 I think we blame mid-level management.

13 At the 9/27 management meeting, the defense
14 says that we contest whether there was such a meeting.
15 We don't. We agree there was a September 27th
16 meeting, but what we say is the smoker and cell phone
17 meeting happened after the media coverage.

18 And again, it's circumstantial evidence, but
19 it's strong circumstantial evidence, the idea that it
20 wasn't until 10/25 after the media release of the
21 first person is punished.

22 And remember, Huka said -- his own testimony
23 was "I was told by Matt I could smoke." So he's
24 smoking every day from September 30th, but he's not
25 punished until after the media release, right?

1 So how could the company have won? How
2 could they have avoided this? They could have just
3 treated the plaintiffs like human beings, given them
4 notice, treated them with respect, and really sought
5 to give them an opportunity to address what was the
6 surprise new rule.

7 So they could have just slowed down, they
8 could have translated the written and the verbal, and
9 they could have done -- you know, what defense counsel
10 is basically arguing is that we're dealing with an
11 educated population who speaks English and this is
12 what we could do. But that's really not the case
13 here. We have a valuable population who is challenged
14 in English.

15 So why give the three plaintiffs a warning
16 on September 30? I think they just bungled the plan.
17 No plan is perfect. The idea that three people got
18 warned and then got fired doesn't make sense, but
19 three of the plaintiffs got a warning. It just
20 doesn't seem to fit the plan, their plan.

21 The idea that there's a conscious decision
22 not to comply again is the wrong focus. The focus of
23 the Washington law against discrimination is whether
24 national origin is a substantial factor, religion is a
25 substantial factor in the decision. It doesn't matter

1 what the plaintiffs are thinking, it's what the
2 company did.

3 So how do you verify what a worker
4 understands if you don't take the time to find out?
5 And that's what the problem was, of course, that you
6 have this stuff happening really fast in English and a
7 workforce that really can't keep up with that. That's
8 discrimination.

9 As to Ileys Omar, the defendant argued that
10 Ms. Omar should have understood about clocking out
11 because she was there for many hours. But you recall
12 that Ms. Omar brought the contract to one of the
13 managers to try to show him that this isn't what the
14 contract says, so she did not ever believe that the
15 contract said what was happening. And if the shop
16 steward doesn't understand, right, she's being
17 sincere, "This is the contract. Show me where it says
18 that," then how could the workforce understand?

19 But it doesn't matter anyway, because again
20 the focus is on the defendant, on what the plaintiffs
21 knew or didn't know.

22 The assumption is that those Muslims must
23 know what is going on. This is kind of weird. The
24 defendants can't say that they actually gave the
25 notice that they were supposed to give, but they say,

1 "Don't blame management. Those Somalis, they talk.
2 They must have talked."

3 So the idea that there's constructive
4 knowledge justifying a disciplinary act, the idea that
5 you can say "Well, you must have known, therefore, you
6 are insubordinate," that's just not what their own
7 policies say. There's no such thing as grapevine
8 notice.

9 The evidence admitted for Harris, again,
10 remember these are self-serving statements done by the
11 same guy who was the proponent of the action. The
12 Derek Jeter email tells us a lot about Mr. Harris.
13 He's trying to write what the evidence should look
14 like.

15 And then one of the sections of the email
16 says -- this is the HR manager talking -- "I'm not
17 sure if the lawyers will want something from the
18 employers in their own words." So clearly somebody
19 got involved after he wrote the Derek Jeter email, and
20 the product that you have is based on that.

21 But where are the statements from the Somali
22 Muslims explaining their side? Where is the statement
23 from Ileys Omar, the person who can read and write
24 English, asking her what she thought, right?

25 If you're doing an impartial investigation,

1 you want to get both sides, not just the side that
2 supports your position.

3 So remember, it would have been very easy to
4 get statements from people who were victims. So the
5 other thing to remember, it's not substantive
6 evidence.

7 The return to work demand letter, remember,
8 it's a threat, "If you don't sign, you're fired."
9 It's not an offer to "Come back and let's try to
10 figure out what went wrong," because frankly
11 Mr. Abdallah doesn't know what went wrong.

12 But the plaintiffs did nothing wrong. They
13 may not have known that he was affirming the bullying
14 tactics -- I think he didn't know that he was
15 affirming the bullying tactics of Harris and Hoehne.

16 So the idea that the letter written by the
17 union doesn't mention lack of notice doesn't matter.
18 The union wrote it. At least the letter mentions
19 discrimination.

20 New hires, new Somalis hired, perhaps in
21 anticipation of litigation, it gives the defendants
22 something to point to.

23 The substantial factor test, they say it's
24 not as broad, but you get to read it. It says it does
25 not mean the only factor or the main factor, that's

1 what your instruction says. There could be a hundred
2 substantial factors.

3 And you'll read it yourselves.

4 So why were they suspended? They say for
5 refusal to clock out, but they were suspended and
6 terminated for insubordination, not for failing to
7 clock out. The smokers who were disciplined did not
8 clock out. They didn't clock out, and they were only
9 given a warning. There was no refusal since no
10 adequate notice.

11 Okay. And as to termination, each plaintiff
12 rejected, they said, rejected a sincere offer. But
13 the measure is not that eight people came back. I
14 mean if eight people that are sitting in the back of
15 the bus stayed in the back of the bus, that doesn't
16 mean there's not discrimination. There was an
17 unconditional return to work, and you'll get to see
18 it.

19 So these letters that went out with the idea
20 that you needed to sign, they only went to Somali
21 Muslims. They didn't go to the rest of the workforce.
22 There was no blanket effort to educate the workforce,
23 it was only focused on Somali Muslims.

24 As to aiding and abetting, oh, yes, they
25 did. You read the instruction, you'll see that these

1 fellows fit in it. Their names are on every email,
2 they were in every meeting, and they were in the chain
3 of command above persons like Wilson and others.

4 So the reason that Abdallah terminated
5 everybody is because he was not given the necessary
6 information from Harris and Hoehne, so therefore, they
7 aided and abetted.

8 Thank you very much.

9 THE COURT: Thank you, Mr. Sheridan.

10 Okay. Ladies and Gentlemen of the jury, the
11 next thing we're going to do is select the three
12 alternates, and then I'll tell you what the
13 requirements of the three alternates will be.

14 I don't know if you can see them.
15 Ms. Marshall is grabbing things out of an envelope.

16 THE CLERK: Juror 14 and one.

17 THE COURT: We need three.

18 THE CLERK: Oh. And three.

19 THE COURT: Okay. One and three and 14.

20 So everybody but the three alternates -- I
21 know it's always disappointing when people are the
22 alternates, and I always hate to say, "Don't worry,
23 somebody might get sick."

24 So the three of you who are alternates,
25 we're not going to have you come back tomorrow morning

1 to begin deliberating, but you need to continue to
2 follow my orders to refrain from talking to anybody
3 about the case or doing any research about the facts,
4 the law or the individuals involved until you hear
5 from us that a verdict has been reached.

6 Because there's always the possibility that
7 someone will have an emergency arise and we need to
8 call an alternate in, which is, of course, why we have
9 the alternates. And if that happens, we'll want you
10 to come in having not been tainted by anything.

11 So that's the plan. And in case I don't see
12 the alternates again, I can't tell you how much I
13 appreciate your time and effort in a lengthy case, and
14 I'm sure it's disappointing to think that you might
15 not be able to be involved in the deliberations, but I
16 also know that you understand why we do this.

17 So for the rest of you, Karen is going to
18 take you back into the jury room in a moment. We're
19 going to have you return in the mornings to begin your
20 deliberations. That will give us an opportunity to
21 get all the exhibits and the instructions into the
22 jury room for you.

23 So you should arrive tomorrow at about 8:50
24 and either Karen or Brad, if he's back, will come and
25 get you so that you can begin that process.

1 And now is the time where we'll have you
2 come on Fridays as well, because although I'll be
3 doing other things in the courtroom you won't be in
4 the courtroom while you're deliberating.

5 Okay. Any questions about the scheduling
6 and what's to happen tomorrow?

7 Okay, good. We'll see you in the morning.

8 THE BAILIFF: Please rise.

9 THE COURT: Please be seated.

10 MR. SHERIDAN: Thank you, your Honor.

11 Do we have to be here for the swearing in
12 tomorrow?

13 THE COURT: No. No swearing in tomorrow.

14 MR. SHERIDAN: Oh.

15 THE COURT: So you don't have to come to it
16 because it's not going to happen.

17 MR. SHERIDAN: Okay. I thought --

18 Don't you usually swear them in?

19 THE COURT: No. I swear them in at the
20 beginning.

21 MR. SHERIDAN: Oh, you don't at the end?

22 THE COURT: No.

23 MR. SHERIDAN: Loss of memory. Sorry.

24 THE COURT: That's okay.

25 So are the exhibits all under control?

1 MR. SHERIDAN: We heard everything is ready.

2 THE COURT: Everything is ready to go.

3 Good.

4 So as I said before, remain so that we can
5 find you. Make sure Karen knows how to reach each of
6 you, which I'm sure she does by now, even though she's
7 not here.

8 THE CLERK: You had mentioned in your
9 closing, Mr. Sheridan, that you admitted all the
10 exhibits.

11 I looked through them and Exhibit 120 which
12 is Hali Abdulle is not.

13 MR. SHERIDAN: I'm sure counsel would --

14 MR. FILIPINI: No objection, your Honor.

15 THE COURT: Thank you so much for catching
16 that, Jennifer.

17 MR. SHERIDAN: Good job.

18 THE COURT: That's above and beyond the call
19 of duty.

20 MR. SHERIDAN: Yes, well done.

21 THE COURT: So Exhibit 120 is admitted.

22 (Admitted Exhibit No. 120.)

23 THE COURT: So 15 minutes so that we can get
24 you here if we need you. As I said, if it's just a
25 question, I'm happy to do that on the phone. We'll do

1 it on the record in the courtroom, but you all can be
2 on the phone.

3 If it's a verdict, I don't necessarily want
4 you here, but we'll wait 15 minutes and then take the
5 verdict.

6 And of course I want you here.

7 MR. SHERIDAN: Thank you.

8 MR. FILIPINI: Thank you.

9 THE COURT: Thank you.

10 And we may still have weeks left, right?

11 MR. SHERIDAN: We'll find out.

12 And your Honor, can we put this back where
13 it was in that spot out of the way?

14 THE COURT: Yeah.

15 MR. SHERIDAN: We don't want to disassemble
16 it until we know what the ruling is going to be.

17 THE COURT: That's fine.

18 And we have something in the morning
19 tomorrow, but we don't have anything during the day,
20 so it's --

21 THE CLERK: Just one matter in the morning.

22 THE COURT: I think we have two matters in
23 the morning.

24 THE CLERK: One was stricken.

25 THE COURT: Which one was stricken?

(Proceedings recessed at 4:35 p.m.)

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