

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

STEPHEN CHAUSSEE,)
)
 Plaintiff,)
)
 vs.) SUPERIOR COURT NO. 11-2-01884-6
)
STATE OF WASHINGTON,)
)
 Defendant.)

THE HONORABLE GARY R. TABOR PRESIDING

Testimony of Vernon Day
March 17-18, 2014
2000 Lakeridge Drive SW
Olympia, Washington

Court Reporter
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Certificate No. 2023
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Olympia, Washington

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2

VERNON G. DAY, having first been duly sworn,
appeared and testified as follows:

3

4

5

DIRECT EXAMINATION

6

BY MR. SHERIDAN:

7

Q. Good morning.

8

A. Good morning, sir.

9

Q. Please state your full name and your current address.

10

A. Vernon G. Day, 17436, Southeast 257th Street, Covington,
Washington 98042.

11

12

Q. And are you retired from the ferries?

13

A. Yes, I am.

14

Q. When did you retire?

15

A. May 31st, 2013.

16

Q. All right. And before you retired, what position did you
hold?

17

18

A. Senior port engineer.

19

Q. All right. And as a senior port engineer, what were your
responsibilities in a nutshell?

20

21

A. The last eight years I was in the ferry system I was managing
Eagle Harbor repair facility. Before that I was a
preservation project engineer working for the port engineers
office.

22

23

24

25

Q. Okay. All right. And did you have any human resource person

1 who was -- whose job it was to help you?

2 A. Several.

3 Q. Anybody in particular that was a signed to you?

4 A. Jackie Beddo.

5 Q. Okay. And during what years was she assigned to you?

6 A. Probably 2008 to 2013.

7 Q. Okay. She was friends with Jack Nannery, wasn't she?

8 A. Don't know that.

9 Q. Okay. Jack Nannery worked where?

10 A. He was assigned to the carpentry shop at Eagle Harbor.

11 Q. Let's just nail down the chain of command if we can. During
12 the time that you were the senior port engineer, to whom did
13 you report?

14 A. Paul Brodeur and Steve Vonheeder.

15 Q. Okay. And who was in charge of the ferries then?

16 A. David Mosely.

17 Q. All right. And what was his job title?

18 A. Assistant secretary of transportation.

19 Q. All right. And to whom did he report?

20 A. I believe it was Lynne Peterson.

21 Q. Did he report to Paula Hammond?

22 A. At first he did, yes.

23 Q. Oh, okay. And then she left.

24 A. Correct.

25 Q. And was she the secretary?

1 A. Yes.

2 Q. Of transportation?

3 A. Yes.

4 Q. Oh, okay. Okay. And between you and Mr. Mosely was there
5 anybody assigned in the chain of command?

6 A. Between Mosely and myself?

7 Q. Right.

8 A. Yes, Paul Brodeur.

9 Q. Okay. How do you spell Brodeur?

10 A. B-r-o-d-e-u-r.

11 Q. And what was his job title?

12 A. Director of maintenance preservation engineering.

13 Q. All right. And below him was?

14 A. Several people.

15 Q. Okay. And to who -- did you report directly to him?

16 A. I did.

17 Q. All right. And you were the senior. All right. And who were
18 your direct reports in say 2008-2009-2010.

19 A. It was R.J. Kelly.

20 Q. All right. And what was his job title?

21 A. Port engineer.

22 Q. And can you tell me who his direct reports were.

23 A. Nancy Adams reported also to me directly as parallel to R.J.
24 Kelly.

25 Q. What was her job?

1 A. Project engineer.

2 Q. Okay. What's her name again?

3 A. Nancy Adams.

4 Q. Okay. Anyone else?

5 A. Below R.J. Kelly and Nancy Adams was the two general foreman.

6 Q. Okay. And who were the two general foremen?

7 A. Bob Orr.

8 Q. And?

9 A. It was Gene Shawley for a while, and then he retired. Then it
10 was Steve Carpine.

11 Q. Okay. All right. And where was Steve Chaussee in this chain
12 of command?

13 A. He was foreman of the carpenter shop.

14 Q. And that was under?

15 A. Under Bob Orr and Steve Carpine, Gene Shawley.

16 Q. All right. Got it. Okay. So there came a time when you
17 learned that it a whistleblower complaint had been filed,
18 correct?

19 A. Yes.

20 Q. And the way you heard about the whistleblower complaint being
21 filed is somebody from the -- is it attorney auditing,
22 investigative office? What's the name of that organization?

23 A. SAO, State Auditor's Office.

24 Q. All right. And do you call it SAO?

25 A. Correct.

1 Q. So somebody from the SAO actually came on to the work site
2 without notice and seized a computer, right?

3 A. Correct.

4 Q. And that person, do you remember the name of that person?

5 A. Larene Barlin.

6 Q. Okay. All right. And was that in about May of 2008?

7 A. Correct.

8 Q. Okay. And whose computer was seized?

9 A. It was the terminal lead man's computer in the carpentry shop,
10 and mostly Jack Nannery used it, but there was other people
11 used it also.

12 Q. All right. And before that happened in March of 2008 isn't it
13 true that Mr. Chaussee complained to you about Jack Nannery
14 basically going home early to play baseball?

15 A. Yes.

16 Q. I should say coach baseball, right?

17 A. Coach, correct.

18 Q. All right. And he did that at a meeting in March of 2008, did
19 he not?

20 A. That's correct.

21 Q. All right. And at that meeting Mr. Kelly was present, was he
22 not?

23 A. Yes, he was.

24 Q. And also Mr. Gillespie, right?

25 A. Correct.

1 Q. And Mr. Chaussee expressed a concern about -- would this be a
2 wrong thing to say that Nannery was stealing time?

3 A. In so many words, yes.

4 Q. Okay. And you understood that that was the concern, right?

5 A. Yes.

6 Q. All right. You would agree with me that if somebody is
7 stealing time from the State, that's a terminable offense,
8 right?

9 A. Correct.

10 Q. Meaning you can be fired for that, right?

11 A. Yes.

12 Q. And you understood that, right?

13 A. Yes.

14 Q. All right. And you told Mr. Chaussee that you were going to
15 do something about it, right?

16 A. Yes.

17 Q. You told him you had the resources, and you were going to
18 investigate, right?

19 A. Correct. I was going to assign somebody. I wasn't myself.

20 Q. All right. And it's your testimony that you assigned Mr. Orr
21 to go check up on the allegation, right?

22 A. That's correct.

23 Q. Now, Mr. Orr was -- what was the plan to check on that
24 allegation?

25 A. I directed Bob Orr to go up and visit the baseball fields to

1 see if Jack Nannery was there early playing baseball or
2 coaching, and I told him if he needed the overtime to go ahead
3 and use that resource.

4 Q. Tell him to bring a camera?

5 A. I did not.

6 Q. Did you tell him to pull his time sheets to see if he was
7 claiming work time that he should have been at work?

8 MR. DIAZ: Objection. Lack of foundation.

9 THE COURT: I'll overrule that. You can ask that.

10 A. Could you repeat that.

11 Q. (By Mr. Sheridan) Did you tell Orr to pull his time sheets,
12 Jack Nannery's time sheets?

13 A. I did not.

14 Q. Well, how would you know, like, let's say he actually went out
15 there and he saw -- he saw Nannery coaching a game, maybe
16 Nannery was coaching a game on a vacation day, right?

17 A. Correct.

18 Q. Wouldn't you need to have time sheets to know whether he was
19 doing anything wrong?

20 A. Yes.

21 Q. But it's true, is it not, that it's your testimony that Orr
22 went out there and didn't see anything, right?

23 A. Correct.

24 Q. Nobody was playing ball the day that Orr went out there,
25 right?

1 A. I don't know if anybody was playing ball or not, but he didn't
2 see Jack Nannery.

3 Q. All right. And you never sent him out again, right?

4 A. I didn't say how many times to go out there. I just sent him
5 out there to check. I think he went two or three times.

6 Q. Isn't it true that there's not a shred of paperwork that would
7 back up what you say that you sent Mr. Orr out there?

8 A. Not that I'm aware of.

9 Q. So in this investigation that you did you didn't write
10 anything down; is that right?

11 A. We wrote several things down on the investigation, but that
12 particular day I did not.

13 Q. Okay. When you're talking about the investigation now you're
14 talking about the investigation that you later did of
15 Mr. Nannery after the Auditor's Office issued its report,
16 right?

17 A. Yes.

18 Q. Well, I'm talking about 2008, a year earlier. In 2008 you
19 never had anybody do anything besides what you've just
20 described in order to investigate the allegation that
21 Mr. Nannery was stealing time, correct?

22 A. No.

23 Q. You're agreeing with me.

24 A. Yes.

25 Q. All right. And it's true that you never wrote -- there's not

1 even an e-mail between you and Nannery -- I'm sorry. There's
2 not even an e-mail between you and Mr. Orr talking about what
3 he did, when he did it, and what he found, correct?

4 A. Not an e-mail, no.

5 Q. Because nothing was ever written down, right?

6 A. Not in an e-mail, correct.

7 Q. And it's also true that Mr. Chaussee had complained about this
8 problem more than once to you.

9 A. Once that I'm aware of when he came up to the office. That
10 was the first time I was aware of it.

11 Q. So it's your testimony today that Mr. Chaussee never
12 complained to you face to face, we'll say, about Nannery and
13 taking time off for baseball.

14 A. No.

15 Q. You're agreeing with what I just said.

16 A. When he came up to the office is when I was aware of it.

17 Q. All right. It's true, is it not that, Mr. Gillespie said to
18 you in the March 2008 timeframe that it's like Nannery's got a
19 second job coaching baseball?

20 A. I don't know if he used those words.

21 Q. But he communicated to you his concern, correct?

22 A. Correct.

23 Q. All right. And did you consider this to be a serious
24 allegation? Somebody stealing?

25 A. Yes.

1 Q. All right. Did you go -- let's see. Your chain of command at
2 the time was Paul Brodeur. Did you go to Mr. Brodeur and say,
3 you know, Mr. Chaussee reported to me that Mr. Nannery is
4 stealing time. I think this is something we should
5 investigate?

6 A. I brought to his attention that this incident happened.

7 Q. You mean you told Mr. Brodeur that Mr. Chaussee had said that
8 Jack Nannery is stealing time or words to that effect?

9 A. Basically I said he was accusing him of coaching baseball on
10 company time.

11 Q. And Mr. Brodeur must have then instituted an investigation,
12 correct?

13 A. Yes.

14 Q. Wait a minute. In 2008?

15 A. Not in 2008, no.

16 Q. Not until after the State issued its whistleblower
17 investigation report, correct?

18 A. Yes.

19 Q. So you mean for that whole year knowing that there was an
20 allegation that Mr. Nannery was stealing time, Mr. Brodeur
21 also did nothing to investigate, correct?

22 A. I think the whistleblower investigation started soon after
23 that.

24 Q. Well, March 2008 is when this conversation happened, correct?

25 A. Yes.

1 Q. And then it's May 2008 that the whistle -- that the computer
2 was seized, right?

3 A. Yes.

4 Q. All right. You also knew though, did you not, that Jack
5 Nannery had been found taking -- using a government truck to
6 go to baseball? You knew that.

7 A. Several people were using government trucks when I came over
8 there.

9 Q. Okay. And including Mr. Nannery.

10 A. Correct.

11 Q. Mr. Nannery, isn't it true that Mr. Nannery was actually
12 observed taking the -- I guess it must be a magnetized logo
13 off the side of the truck?

14 A. Not that I'm aware of.

15 Q. You're aware that Mr. Nannery was seen with like baseball
16 equipment in the back of the truck, right?

17 A. I heard rumors that somebody saw a truck up at the ball field
18 with soccer balls in the back of it.

19 Q. Okay. With Nannery's truck?

20 A. No idea. Nannery's coaching baseball, not softball.

21 Q. And you must have sent people out to investigate that, right?

22 A. When I first heard about the trucks, I took all the trucks
23 away from people who were using vehicles for commuting.

24 Q. Okay. And so then the computer gets seized. At that point
25 you learn that pretty much now the State is investigating

1 whether Nannery is stealing time, right?

2 A. Yes.

3 Q. Is it true that at least one instance it was known that
4 Nannery was at work in his baseball uniform?

5 A. Not that I'm aware of.

6 Q. You never heard that?

7 A. No, sir.

8 Q. All right. So let's see. You found out that Mr. Nannery was
9 being investigated on time that it was -- at the time that the
10 computer was seized. And fair to say that you understood he
11 was being investigated at that time for stealing time?

12 A. One of the things, yes.

13 Q. All right. So as of April 1st, you knew that the very same
14 allegation that Mr. Chaussee had raised to you face to face in
15 March was now being investigated by the State auditor, correct?

16 A. No. April 1st?

17 Q. Yep.

18 A. First I was aware of it was May 2008.

19 Q. You're claiming that the first time that you -- oh. Oh. Did
20 I say April 1st?

21 A. Yes, sir.

22 Q. My mistake. All right. Let me do that again. It's true that
23 at the time that the computer was seized in May of 2008, from
24 that point forward you were aware that Mr. Nannery was being
25 investigated for the very same misdeeds that Mr. Chaussee had

1 brought to your attention in March 2008.

2 A. One -- some of the items, yes.

3 Q. All right. There was also an allegation that Mr. -- that
4 Mr. Nannery was using his computer for personal reasons, right?

5 A. Correct.

6 Q. All right. So here's what we know then in March of 2008 is
7 when Chaussee reports. All right. Now, it's also true, is it
8 not, that between March 2008 when Steve Chaussee told you that
9 Nannery was stealing time and the time that the computer was
10 seized, no one else came to you to tell you that Nannery was
11 basically playing baseball when he should have been working?

12 A. That's correct.

13 Q. So it -- would you agree with me it would be a natural
14 extension for you at the moment that the computer's being
15 seized to connect the fact that the only person who's told me
16 before today of this allegation is Steve Chaussee? Perhaps
17 he's the whistleblower.

18 A. Don Gillespie was with Steve Chaussee when they told me. They
19 both came up to my office.

20 Q. So what then you're saying is you could narrow it down to two
21 people, right?

22 A. Anybody could be a whistleblower.

23 Q. I understand that. But would you agree with me that at that
24 moment you connected the fact that in March Steve Chaussee
25 made this report with Don Gillespie being present, and in May

1 the computer's seized for the very same reason, you considered
2 the possibility that one or both of those fellows could be the
3 whistleblower.

4 A. Possible.

5 Q. You're agreeing with me you considered it as a possibility.

6 A. It's a possibility.

7 Q. All right. And as a matter of fact, you wanted to know who
8 the whistleblower was, right?

9 A. No.

10 Q. Well, would you agree with me that you understood at the time
11 that whistleblowers were allowed to be concealed, that their
12 identities were supposed to be concealed, right?

13 A. Yes, sir.

14 Q. That had been your training, right?

15 A. Yes.

16 Q. Every year you'd gotten a little package that describes what
17 the whistleblower program is and in that package you read
18 every year that the identity of whistleblowers was not
19 supposed to be revealed.

20 A. Correct.

21 Q. All right. Yet isn't it true -- let's see. Do you know the
22 name -- is it Seibert? Who's he?

23 A. David Seibert is a journeyman that works in the lock shop at
24 Eagle Harbor.

25 Q. It's fair to say you were going to tell us at some point you

1 actually got a hold of the whistleblower complaint, right?

2 A. The reporting form, correct.

3 Q. Right. And you were going to tell us that at some point you
4 realized that it was -- you recognized the handwriting, right?

5 A. I perceived that I did recognize it, yes.

6 Q. And whose handwriting did you perceive it was when you saw
7 this?

8 A. Don Gillespie's.

9 Q. And this is in June of 2009, correct?

10 A. Yes.

11 Q. So it's true, is it not that, that from March 2008 until June
12 2009 you had no idea who the whistleblower was?

13 A. That's correct.

14 Q. All right. So it's true, is it not, then that in June 2009 --
15 strike that. It's true, is it not, that in May 2009 you did
16 your own whistleblower investigation, right?

17 A. Correct.

18 Q. Okay. And at the time you began the investigation you didn't
19 know who the whistleblower was.

20 A. Correct.

21 Q. All right. All right. So let's talk about the summer of
22 2008. It's true, is it not, that Steve Chaussee was in your
23 chain of command in the sense that you could do his
24 performance evaluations?

25 A. We don't do performance evaluations.

1 Q. Umm. But there are performance evaluations in his file, right?

2 A. Before I got there, I understand there were.

3 Q. Okay. And you were aware that he had been with the ferries
4 for many years at the time you got there, right?

5 A. Yes.

6 Q. And you were aware that he basically had been a foreman for,
7 what, nine years by that time?

8 A. Pretty close to nine years, yes.

9 Q. All right. And what year did you get there?

10 A. Full time in 2005.

11 Q. Okay. So from 2005 to 2008 he worked under your leadership,
12 right?

13 A. Not directly, but yes.

14 Q. All right. And from -- during that period of time you never
15 saw to remove him from his position, did you?

16 A. No.

17 Q. All right. And during that time Jack Nannery was also there,
18 correct?

19 A. Correct.

20 Q. All right. And it's true, is it not, that beginning in the
21 summer of 2008 you started to find terrible problems with
22 Mr. Chaussee's performance; is that right?

23 MR. DIAZ: Objection. Lack of foundation.

24 THE COURT: Well, I'll allow the witness to answer
25 yes or no.

1 A. Before two -- no. Before.

2 Q. (By Mr. Sheridan) Before when?

3 A. Before 2008.

4 Q. So you had serious problems with his performance before 2008?

5 A. I had performance issues before 2008.

6 Q. Well, you took no action on them.

7 A. Yes, we did.

8 Q. Oh, going what, 2005, something like that?

9 A. 2007.

10 Q. Well, you didn't have any -- what did you give him in 2007?

11 A. He had a verbal warning.

12 Q. Okay. Verbal warning. All right. Have you ever given out
13 verbal warnings to other people?

14 A. Yes.

15 Q. So in 2008 you actually started putting things in writing,
16 correct, for Mr. Chaussee, written expectations, that kind of
17 stuff?

18 A. No.

19 Q. Okay. It's true, is it not, that in 2008 you counseled him
20 several times?

21 A. Yes. We -- we did.

22 Q. All right. And then in 2009 you actually moved to demote him,
23 correct?

24 A. I didn't. I didn't move to demote him. I just basically
25 recommended to my -- my boss that there was issues with Steve

1 Chaussee and Jack Nannery and there should be some discipline.

2 Q. Okay. But it's true, is it not, that the reason you justified
3 demoting Mr. Chaussee in the summer of 2009 was that you
4 claimed he failed to properly watch Nannery's stealing and to
5 catch him.

6 A. One of the issues.

7 Q. All right. You claimed that the main reason that for demoting
8 him was that he didn't do enough to catch Nannery when Nannery
9 was stealing time.

10 A. That was one of the issues.

11 Q. It's true, is it not, that you responded to questions at a
12 deposition in this case, did you not?

13 A. I did.

14 Q. All right. And isn't it true that at the deposition you said
15 the reason you were demoting him in the summer of 2009 was
16 because of how he addressed -- how he failed to catch
17 Mr. Nannery in terms of his stealing time?

18 A. Yes.

19 Q. Okay. And at the time that you gave that statement you were
20 under oath, right?

21 A. Yes.

22 Q. Okay. Now, it's true, is it not, that because Mr. Nannery was
23 engaging in misconduct that was a terminable offense,
24 Mr. Chaussee had no ability to discipline him?

25 A. That's not true.

1 Q. Well, if Mr. Chaussee told you that the guy was stealing, it
2 would either be at your level or a higher level that he would
3 have to be disciplined because it's a terminable offense,
4 correct?

5 A. Yes.

6 Q. Okay. The so Mr. Chaussee could do nothing to catch him
7 because his stealing was off site, right?

8 A. No.

9 Q. Well, let's see. You actually got to see the documents
10 associated with the whistleblower investigation, correct?

11 A. Which document?

12 Q. Well, let's take a look. Okay. I'm handing you -- thank you.
13 I'm handing you --

14 May I approach the witness, Your Honor?

15 THE COURT: You may.

16 MR. SHERIDAN: Thanks.

17 Q. (By Mr. Sheridan) I'm handing you Exhibit 171 which has been
18 marked for identification. I'll take these away to get them
19 out of your way. And I want you to take a look at that
20 document and tell me whether that is the 800 pages that you
21 received in June of 2009 regarding the whistleblower
22 investigation conducted by the State.

23 A. Yes.

24 Q. All right. And you actually read that, didn't you?

25 A. I reviewed the whole package, yes.

1 Q. And in reviewing the package you saw that there were a bunch
2 of photographs, correct?

3 A. Correct.

4 Q. And photographs that proved that Nannery was not at work; he
5 was playing baseball, right?

6 A. I couldn't tell you the times that these photographs were
7 taken.

8 Q. You mean even though the time is indicated, you don't think
9 they're necessarily right?

10 A. They could be.

11 Q. Okay. So you're questioning whether or not they are accurate,
12 correct?

13 A. Yes.

14 Q. All right. And you have no reason to believe that they're not
15 accurate, correct?

16 A. Yes.

17 Q. You're agreeing with me.

18 A. Yes.

19 Q. And also contained in that package are time sheets, right?

20 A. Yes.

21 Q. And those time sheets basically, if you connect time sheets
22 with the photographs, you can see that Jack Nannery is
23 claiming to work an eight-hour day on a day when he's playing
24 baseball, right?

25 A. There's no time indicated on the time sheets, just hours.

1 Q. Okay. But enough evidence in order to convince the State that
2 he was stealing time, right?

3 A. No.

4 Q. Oh. The State didn't determine that there was reasonable
5 cause to believe that he was engaged in improper governmental
6 action?

7 A. By looking at the time sheets and the pictures, eight hours,
8 if he flexed his time, he could be legitimate.

9 Q. But his time wasn't allowed to be flexed, was it?

10 A. Yes, it was.

11 Q. Interesting. Tell me about that. What makes you think his
12 time was flexible?

13 A. It has been in the past, and I have the ability to flex
14 people's time.

15 Q. So what you're telling us now under oath, did you tell this to
16 the investigators?

17 A. Yes.

18 Q. Did you tell the investigators -- this would have been between
19 May 2008 to 2009. Did you tell them that I am authorized to
20 flex Jack Nannery's time, and I did so?

21 A. I don't say "I." I said his time was flexed is what I said.

22 Q. And you told that to them.

23 A. I think that was on the entrance meeting we had.

24 Q. Okay. All right. And you read the final report, did you not?
25 That was issued by the Auditor's Office.

1 A. The whistleblower report?

2 Q. Yeah.

3 A. Yes.

4 Q. Okay.

5 MR. SHERIDAN: I'm going to approach witness if I
6 may, Your Honor.

7 THE COURT: You may.

8 MR. SHERIDAN: With Exhibit 65. Your Honor, I do
9 not believe this is objected to so I'll offer it into
10 evidence.

11 THE COURT: What's the defense position?

12 MR. DIAZ: Just double checking on the exhibit, Your
13 Honor. No objection.

14 THE COURT: Exhibit No. 65 is admitted.

15 (Plaintiff's Exhibit No. 65 is admitted.)

16 Q. (By Mr. Sheridan) All right. Why don't you take a moment to
17 look at it.

18 A. (Witness complies.)

19 Q. And let's get it up on the screen. Oh, you did. Very nice.

20 All right. I'm under "Assertions and Results." And do you
21 see how it says there under "A lead carpenter at the
22 Washington State Department of Transportation is using state
23 resources for personal benefit and gain"? Do you see that
24 there?

25 A. Yes, sir.

1 Q. This is a document that you got back in May of 2009, right?

2 That's right, isn't it?

3 A. Yes.

4 Q. You got a draft in April, right?

5 A. Correct.

6 Q. Okay. All right. So it says below that -- would you read
7 what it says below that into the record, please.

8 A. They found reasonable cause to believe an improper
9 governmental action occurred.

10 Q. All right. And then they go through here and explain how they
11 captured the internet history, and the next paragraph below it
12 says the employee is a voluntary baseball coach, and it says
13 the buses that transport -- let's skip down. Okay. Go to the
14 next page. So on the next page you can see that they analyzed
15 the time sheets, the ferry logs, other documentation, and they
16 found the following hours over two, four, six, seven days,
17 right?

18 A. Yes.

19 Q. Okay. Now, if you'll make that a little higher. Okay. You
20 see this section here? It says, "The employee stated an
21 unwritten agreement allows employees to flex their schedules,
22 including working through lunch and breaks, and then taking
23 that time at the end of the day." Then it says, "The
24 Department stated that this may have been a practice in the
25 past, but did not believe it was happening now. The employee

1 stated on the above dates in question he flexed. The employee
2 has nothing in writing approval of those days."

3 Aren't you the department that stated that this may have
4 been practice in the past? Isn't -- aren't those your words?

5 A. In the -- I had not flexed his time until 2009, but that was
6 in the past before I got there.

7 Q. Okay. But when you got -- you just told the jury that you
8 flexed his time. Isn't it true that you told the auditors the
9 opposite?

10 A. I flexed his time in 2009, but in the past it's been flex
11 time, and I didn't even realize he was flexing his time. It's
12 been an ongoing process that I was aware of.

13 Q. Well, these dates aren't 2009. They're 2008. Right?

14 A. Yes.

15 Q. So it's true that in 2008 the Department, meaning you, stated
16 that this may have been the practice in the past but didn't
17 believe it was happening now. That's what you told the
18 auditors, right?

19 A. Yes.

20 Q. So what you're saying just now under oath about flexing his
21 times, that's just not true, correct?

22 MR. DIAZ: Object to the form of the question.

23 THE COURT: That's argumentative.

24 MR. SHERIDAN: It is. I withdraw it.

25 THE COURT: Okay.

1 MR. SHERIDAN: Is this a good time for lunch, Judge?

2 THE COURT: It is.

3 Ladies and gentlemen, we are going to take the noon
4 recess. So I need to remind you of those cautions that
5 you've heard several times that I know you have down, but I
6 have to state it on the record anyway.

7 Mr. Day, you can go ahead and step down if you like.

8 Remember, you're not to discuss this case or allow
9 anyone to discuss it with you or in your presence. You're
10 not to read, view or listen to anything that might be in
11 the media about this case. You're not to have any contact
12 with the attorneys, with anyone that's assisting them or
13 with anyone that might be a witness in this case. You
14 should talk to folks of that questions about your schedule
15 only in a limited way, and that is you can tell them you
16 are a juror in a civil case that may last through Thursday
17 or perhaps even -- that's next Thursday, a week from this
18 week, or maybe even through Monday of the next week, but
19 other than that, you may not tell them anything about this
20 particular case. Don't do any investigation.

21 I want you all to drive safely, have a safe lunch. The
22 sun was shining a minute ago. At least it's not raining.
23 So be careful. I'd like to start again at 1:30. So I'll
24 have the bailiff take you back at this time. You are
25 excused for lunch.

1 Counsel, if you'll remain in session, please.

2 MR. SHERIDAN: Yes, Your Honor.

3 (Jury exits.)

4 THE COURT: You can be seated if you like.

5 Well, other than our informal sidebars as the jury was
6 asking questions, I don't believe there's anything that
7 needs to be put on the record about them unless there's
8 something that I'm overlooking.

9 MR. SHERIDAN: Nothing from us, Your Honor.

10 MR. DIAZ: Nothing from the State, Your Honor.

11 THE COURT: Okay. There are two things that occur
12 to me. First of all, I'm not sure I was on the record, but
13 I believe that I stated that Mr. Day had appeared in other
14 cases before me, and I'm mistaken about that. That's not
15 the individual I was thinking of. So I wanted to correct
16 the record for that. Probably should have kept my mouth
17 shut before without being sure about things.

18 And secondly, something I had forgotten to bring up, and
19 that was in the last several cases that I've had in which
20 there are voluminous exhibits, I found that it's helpful if
21 we prepare a list of those exhibits to go to the jury room.

22 MR. SHERIDAN: Okay.

23 THE COURT: That would only be admitted exhibits,
24 but I've found that the clerk can do that pretty quickly.
25 So before this case goes to the jury, we'll prepare such a

1 list for you to look at, and it's just helpful for the jury
2 if they're looking for a particular document.

3 Is there anything else we need to mention before we
4 recess?

5 MR. SHERIDAN: Nothing from us, Your Honor.

6 MR. DIAZ: Nothing from the State, Your Honor.

7 THE COURT: Okay.

8 MR. DIAZ: Thank you.

9 MR. SHERIDAN: Thank you.

10 THE COURT: Have a good lunch.

11 (A recess was taken.)

12

13 (Jury enters.)

14 THE COURT: Please be seated.

15 Always glad to see all the jurors back.

16 We're going to press on. Continue, Mr. Sheridan, with
17 your direct examination of Mr. Day.

18 MR. SHERIDAN: Thank you, Your Honor.

19 Q. (By Mr. Sheridan) Okay. All right. Now, just before the
20 break we were talking about your testimony about flex time,
21 and what I'm going to ask you to do is open up that auditor's
22 whistleblower file if you would to page 203, and you'll note
23 that the pages are marked -- are you familiar with that, sir?

24 A. No, sir, I am not.

25 MR. SHERIDAN: May I help the witness, Your Honor?

1 THE COURT: You may.

2 Q. (By Mr. Sheridan) Not that one. It's this number.

3 Okay. And this is one of the documents that was contained
4 in the whistleblower file that you reviewed, was it not?

5 A. Yes, sir, it was.

6 Q. And let's just look at that particular document. And you see
7 that it is a -- it's basically work -- the working papers of
8 the investigator, is it not?

9 A. Correct.

10 Q. All right.

11 MR. SHERIDAN: And may I give the Court a copy of
12 this?

13 THE COURT: You can, although I have a bigger copy I
14 guess.

15 MR. SHERIDAN: Yeah. As long as you got it. Right.
16 And we're going to mark this as an exhibit if I may.

17 And Your Honor, so you can see where I'm going, I'm
18 looking at page 203, the paragraph under the chart.

19 Q. (By Mr. Sheridan) Sir, let's start you on page 200 if we can.
20 And this is -- so these are working papers that -- that you
21 received from your chain of command you said sometime in June
22 of 2009, right?

23 A. I had not seen those in 2009, no.

24 Q. Well, when did you get a copy of that complete file, that 800-
25 page file?

1 A. I got that in June of -- if that was in it I don't remember
2 it, but June of '09.

3 Q. Okay. And when you received that file, you actually reviewed
4 it, correct?

5 A. I looked through it; that's correct.

6 Q. All right. And as a matter of fact, you later testified that
7 because you thoroughly reviewed it, you were able to discern
8 that some of the handwriting in the actual whistleblower
9 complaint was not Mr. Chaussee's, right?

10 MR. DIAZ: Object to the characterization
11 "thoroughly reviewed it." I've heard no other testimony
12 about thoroughness of anything, Your Honor.

13 THE COURT: Well, I think there may be some issues
14 in that regard so let's break it down and ask some specific
15 questions.

16 Q. (By Mr. Sheridan) You read each page, did you not?

17 A. I looked at each page.

18 Q. And when you looked at each page, you looked at with
19 sufficient thoroughness you were able to glean the fact that
20 some of the handwriting was not Mr. Chaussee's, right?

21 A. I looked at the whistleblower reporting report. That's when I
22 made that decision.

23 Q. And when you received this document, you received it as part
24 of your -- your job, right? It was given to you by somebody
25 in your chain of command.

1 A. Yes, sir.

2 Q. Who gave it to you?

3 A. It came from the HR department. I think Jackie Beddo
4 delivered it to the port engineers, and I don't know if it
5 came to my Seattle office or my Eagle Harbor office. I get
6 mail pick up in both places, but I know I got it around the
7 10th of June of 2009.

8 Q. And you were authorized to receive it, right?

9 A. Yes, sir.

10 Q. And when you reviewed it, these -- so it's fair to say you
11 reviewed all 800 pages.

12 A. I looked at everything, yes; that's correct.

13 Q. All right. So the document itself is -- it's a public
14 document, is it not?

15 A. Yes.

16 Q. It's part of the State's records, right?

17 A. Yes, sir.

18 Q. And it's your understanding that they have a duty to keep
19 records such as that, right?

20 A. (Nodding).

21 Q. All right. And you recognize this package as being a package
22 that you received on or about June 10th, 2009, right?

23 A. Yes.

24 MR. SHERIDAN: So Your Honor, just for today we're
25 going to offer just those three pages, Exhibit 172, which

1 is pages 200 -- it's four pages, 200 to 203.

2 THE COURT: Any objection?

3 MR. DIAZ: No objection.

4 THE COURT: All right. And what's the new exhibit
5 number then?

6 MR. SHERIDAN: It's Exhibit 172, Your Honor.

7 THE COURT: Okay. Exhibit 172 is admitted.

8 (Plaintiff's Exhibit No. 172 is admitted.)

9 Q. (By Mr. Sheridan) Okay. All right. And if you'll make it a
10 little bigger actually so it's readable.

11 So these are working papers dated February 17th, '09, it
12 appears. I'm sorry. No. February 10th, '09, in the upper
13 right-hand corner, right?

14 A. Yes.

15 Q. Okay. And it begins by saying on May 6th the State officers
16 -- Auditor's Office opened an investigation into the assertion
17 that lead carpenter at the ferry terminal was using state
18 resources, and then it goes on to describe some of the events.
19 And let's now -- let's ask if you'll just page through that
20 and get to the last page, the end of the chart. And sir, if
21 you'll turn to page 203, which is the last page of the chart.

22 Okay. Put that up a little higher. Higher. Higher.

23 Nope. Other direction. That's good. Thank you.

24 Okay. So this is what is written in there: "The employee
25 stated there is an unwritten gentleman's agreement that

1 employees that work at different ferry terminals or locations
2 can flex their schedule such as working through lunch and
3 breaks and taking that time at the end of the day." And it
4 goes on to say he stated that there's nothing in writing, but
5 that it's always been the standard. Then he says the employee
6 stated that if anything was put in writing, the Department
7 would have to pay overtime.

8 Now, this is one of the documents that you received on June
9 10th, right?

10 A. Yes.

11 Q. Okay. Now, would you do us the favor and read that next
12 sentence, please. It begins "the senior."

13 A. "The senior port engineer at Eagle Harbor stated this may have
14 been a practice in the past but was not aware of it happening
15 now and the union contract specifically states the employee
16 gets 15 minutes leeway at the beginning and end of the work
17 day."

18 Q. Okay. I'm going to read this back and tell me if you agree
19 this is accurate. "The senior port engineer at Eagle Harbor
20 stated this may have been a practice in the past, but was not
21 aware of it happening now, and the union contract specifically
22 states the employees get a 15-minute leeway at the beginning
23 and end of the work day."

24 That -- is that an accurate statement to your
25 understanding, sir?

1 A. Yes.

2 Q. And as a matter of fact, who was the senior port engineer at
3 the time?

4 A. That was me.

5 Q. Okay. So when you testified before that you allowed flex
6 time, you would agree with me that that's not what you said to
7 the interviewers during the investigation.

8 A. Not for this particular individual.

9 Q. Mr. Nannery, you mean.

10 A. Correct.

11 Q. Okay. Now, it's true, is it not, that at different times
12 throughout the last couple of years you have claimed different
13 levels of knowledge about who the whistleblower was; is that
14 right?

15 A. Could you rephrase that, please.

16 Q. Yeah. It's true, is it not, that in effect your testimony has
17 changed over time as to what you knew and when you knew it as
18 to who the whistleblower was?

19 A. Correct.

20 Q. Okay. It's true, is it not, that on January 31st, 2013, you
21 were deposed?

22 THE COURT: Did you answer that question?

23 A. I was deposed, yes.

24 Q. (By Mr. Sheridan) Do you remember the specific date?

25 A. I do not.

1 Q. Okay. Then we might as well move to publish these so we can
2 talk about them.

3 MR. SHERIDAN: Your Honor, I move to publish the
4 Thursday January 31st deposition of Mr. Day and volume two
5 of May 23rd, 2013.

6 THE COURT: All right. We'll publish those.

7 MR. SHERIDAN: Your Honor, we have copies for the
8 Court.

9 THE COURT: You want to hand the witness the
10 original then.

11 MR. SHERIDAN: Yes, Your Honor. If I may.

12 THE COURT: I have to take a moment and sign this.

13 MR. SHERIDAN: All right.

14 THE COURT: All right. There you go.

15 MR. SHERIDAN: Thanks, Judge.

16 Q. (By Mr. Sheridan) All right. I'm going to hand you the
17 originals of both of your depositions, and then we'll talk a
18 bit about them as we go. At the time of your first deposition
19 you were -- you were the -- were you the senior port engineer?

20 A. That's correct.

21 Q. Okay. So back on January 31st, 2013, you were under oath,
22 were you not?

23 A. That's correct.

24 Q. Okay. And turn to page ten of your deposition if you would.

25 A. (Witness complies.)

1 Q. I'm going to just read you the question and ask you to read
2 the answer. Beginning at line eleven. "Okay. And I'm not --
3 throughout this deposition I'm not going to ask you the name
4 of the whistleblower, okay, but let me ask you this: Do you
5 know who the whistleblower is?" And what do you say?

6 A. I said, "I do not."

7 Q. Okay. Then on -- on January 31st, the same day that you were
8 deposed, you actually met with counsel, did you not?

9 A. Yes. That's correct.

10 Q. All right. And is it fair to say that after your deposition,
11 your sworn testimony where you said that you did not know who
12 it was, you actually wrote a declaration that indicated that
13 the complaint was handwritten and "Mr. Chaussee has
14 distinctive handwriting. I did not recognize the
15 whistleblower complaint handwriting as Mr. Chaussee's." Did
16 you write that?

17 A. Yes.

18 Q. Okay. And in this declaration --

19 MR. SHERIDAN: And may I approach the witness? I
20 guess I should have it marked, right?

21 THE COURT: You should.

22 MR. SHERIDAN: Yes. Let me do that.

23 Q. (By Mr. Sheridan) Okay. I'm going to hand you your
24 declaration. And at the time that you wrote this you were
25 employed with the city, right?

1 A. That's correct.

2 Q. Okay.

3 A. State.

4 Q. The state. I mean -- I'm sorry. And I'm just going to ask
5 you if you would to read paragraph 14 into the record for us.

6 MS. YOUNG: Excuse me. What's the number this has
7 been marked as?

8 THE COURT: It's 173.

9 MR. SHERIDAN: Yes. Sorry.

10 Q. (By Mr. Sheridan) Okay. Go ahead.

11 A. You want me to read the whole paragraph?

12 Q. Yes, please.

13 A. My recommendation made in June 2009.

14 Q. Read slowly, please.

15 A. Sorry. "My recommendation made in June 2009 that Chaussee be
16 disciplined was not based on any perception that Chaussee was
17 an anonymous whistleblower who filed the complaint with the
18 state auditor over a year earlier in May of 2008. I had and
19 have no knowledge that Chaussee filed the whistleblower
20 complaint or participated in any investigation by the state
21 auditor. At the conclusion of its investigation, the State
22 Auditor's Office provided a copy of the anonymous
23 whistleblower complaint to the Department along with its
24 report in May 2009. The complaint was handwritten.
25 Mr. Chaussee has distinctive handwriting. I did not recognize

1 the whistleblower complaint handwriting as Chaussee's. Most
2 importantly, I understand that no employee may be retaliated
3 against for making a whistleblower complaint or participating
4 in any investigation of a whistleblower complaint. I declare
5 under penalty of perjury under the laws of the State of
6 Washington that the foregoing is true and correct."

7 Q. Okay. Thank you. And then you were deposed again, right? By
8 me.

9 A. Yes, sir.

10 Q. In May of 2013, right? And you actually have it in front of
11 you. Let's grab that. Okay. What's the date of that
12 deposition?

13 A. May 23rd, 2013.

14 Q. All right. And at that deposition it's true, is it not, that
15 you claimed to be able to identify the handwriting in the
16 whistleblower complaint, and you said it was Gillespie's?

17 A. I said it appeared to be Gillespie's handwriting.

18 Q. Okay.

19 Could you put 216 up on the screen for me, please.

20 Okay. And you were under oath then too, right?

21 A. That's correct.

22 Q. Okay. And it's true, is it not, that you actually said you --
23 in response to the question, is that -- looking at the first
24 page -- did you put it up? Okay. All right. Let's -- let's
25 -- what exhibit number is that? 216. 216.

1 And just so you have it in front of you.

2 MR. SHERIDAN: If I may approach again.

3 THE COURT: You may.

4 Q. (By Mr. Sheridan) I'm going to give you two things at once.
5 That's 216 which has been admitted, and that way you can
6 actually be looking at the deposition transcript, okay?

7 All right. So the first page of this whistleblower
8 reporting form is actually the form that a person who is
9 filing a whistleblower complaint would submit, correct?

10 A. Yes.

11 Q. And let's move it up now. Thank you. Okay. Stop.

12 And under "contact information," that has been redacted; is
13 that right?

14 A. Yes. It appears to be.

15 Q. All right. And then the bottom part talks about -- it lists
16 the names of basically the chain of command, and you thought
17 that was Gillespie's handwriting, didn't you?

18 A. It appeared to be his printing, yes.

19 Q. Did you -- are you aware that Mr. Gillespie's testified this
20 morning?

21 A. Yes, sir.

22 Q. Okay. And you're aware that he's testified under oath that
23 that's somebody else's handwriting, right?

24 A. I have no idea. I didn't hear his testimony.

25 Q. Okay. Well, let's compare. Let's go now to page two. Let's

1 look at number one and look at number two. Would you agree
2 with me that the handwriting on page one looks different than
3 page two?

4 A. The printing looks larger than on page two.

5 Q. Okay. All right. Let's look at the way that Nannery's
6 written, n-a-n-n-e-r-y. Now let's go to the first page. And
7 you see there's a little, like, angle on the A, and the E is
8 written like a half of an eight?

9 A. Yes.

10 Q. Now let's go to the second page. And do you see the E is
11 written like it's small on this one?

12 A. Yes.

13 Q. All right. Would you agree with me that those handwritings
14 don't appear to be the same?

15 A. They look different on this, yes.

16 Q. And when you say "this," it's the very document that you claim
17 you had in June of 2009, right?

18 A. Yes.

19 Q. All right. And it's the very document that you have looked at
20 repeatedly at these various depositions and during your
21 declaration testimonies, right?

22 A. I looked at this and I looked at the time sheets.

23 Q. Okay. And as you looked at -- as you look at this today you
24 would agree with me, would you not, that the handwriting on
25 page one looks different than the handwriting on page two?

1 A. That's correct.

2 Q. All right.

3 Put that back up again, please.

4 Now, okay. So you read this entire report, did you not?

5 Complaint.

6 A. Back in 2009 I looked at it, yes.

7 Q. All right. You don't know what month you looked at it, right?

8 It could have been June. It could have been December.

9 A. It was June 2009.

10 Q. That's what you say?

11 A. Yes, sir.

12 Q. But isn't it true that when you were at your deposition you

13 had a different answer?

14 A. That's correct.

15 Q. All right. Let's take a look at that answer. Okay. If you

16 would, sir, turn to page 54 of your deposition. Do you have

17 that, sir?

18 A. Yes, sir.

19 Q. All right. And just if you would just for context purposes,

20 let's start at the top of page 54, and you're asked the

21 question: "Isn't it fair to say that you were actually given

22 this report," which is this report," that's marked as Exhibit

23 2 only about a month before that?" And you said? Look at

24 line six and go ahead and read it.

25 A. "No."

1 Q. Okay. And then the question was asked: "How far in advance
2 of signing this document did you get the report?" And you
3 said on line 13?

4 A. I said, "I believe I saw this back somewhere's back in 2009."

5 Q. All right. And then I asked you, "But you can't tell if it
6 was December or June. You don't remember." And you said?

7 A. I didn't remember.

8 Q. No. What did you say?

9 A. "Correct."

10 Q. You said "correct." So again, now we're in your deposition
11 testimony in May 2013, and you don't remember when you got the
12 report. Well, we'll call it the complaint. And when you were
13 testifying at your deposition were you testifying as
14 accurately as you could?

15 A. That's all I could remember, yes, sir.

16 Q. Okay. And I gather your memory's changed.

17 A. I had a chance to review all the documents, yes.

18 Q. Okay. All right. And then you actually said that you
19 believed that it was Mr. Gillespie's handwriting, right?

20 A. That's correct.

21 Q. Okay. All right. Now, you now claim that you received that
22 report in June of 2009?

23 A. That's correct.

24 Q. All right. And you received it from the HR department?

25 A. Through the port engineer's office, yes.

1 Q. And you read every page including the whistleblower's
2 complaint, right?

3 A. I looked at every page.

4 Q. Okay. And what did you do with it after you were done reading
5 it? The 800 pages.

6 A. I turned it back over to the port engineer's office, Paul
7 Brodeur.

8 Q. You gave it to your boss.

9 A. I believe I did.

10 Q. All right. And let's look at the first page of the report,
11 and actually that's actually another exhibit we've got to pull
12 up. It's Exhibit 74.

13 Do I have the first book with you there, sir? I think
14 there's no objection to this.

15 MR. SHERIDAN: Your Honor, I believe there's no
16 objection to Exhibit 74 so we'll go ahead and offer it.

17 MR. DIAZ: No objection.

18 THE COURT: All right. Exhibit 74 is admitted.

19 (Plaintiff's Exhibit No. 74 is admitted.)

20 Q. (By Mr. Sheridan) And sir, we have been breaking up this big
21 800-page exhibit just for ease of looking. So this should be
22 the same first page that you have here as the first page of
23 the report. All right. There you go. All right. And go
24 ahead. So that's in June 5th, 2009 transmittal letter from to
25 Kathy Flynn Mahaffey. Who's she?

1 A. She was an HR supervisor of the HR department in Seattle.

2 Q. Okay. And when you say "the HR department," you mean for
3 Ferries?

4 A. That's correct.

5 Q. All right. So do you know to whom she reported to in those
6 days?

7 A. I do not.

8 Q. All right. But was she matrixed to you? Did you have access
9 to her?

10 A. Yes.

11 Q. And so she's transmitting this 800-page document to -- or I'm
12 sorry. Let's go to the signature page. All right. Julie
13 Cooper is somebody working at the Auditor's Office, right?

14 A. I have no idea.

15 Q. Okay. Well, you recognize "special investigations
16 coordinator" there?

17 A. I see the title, yes.

18 Q. All right. And this is the -- you received this document,
19 right? From HR.

20 A. Yes.

21 Q. All right. And you recognize the name Tracy Aga?

22 A. Yes, I do.

23 Q. Because she was one of the investigators, right?

24 A. That's correct.

25 Q. Now let's go up to the top there, first page. And you see how

1 the heading is "Washington State Auditor's Office," right?

2 A. Yes.

3 Q. Okay. So you -- it's fair for you to surmise that Ms. Cooper
4 is somebody who works at the Auditor's Office writing this
5 letter, right?

6 A. Yes.

7 Q. So let's now look at what she said. She says, "Enclosed are
8 the work papers you requested for whistleblower 08046." And
9 08046 is the number that's stamped at the bottom of every one
10 of those pages of the 800-page document, right?

11 A. Yes.

12 Q. Because that's the case number for this case, right?

13 A. Correct.

14 Q. Now, look what she says. First thing she says is this: "In
15 accordance with RCW 40.402(sic) pages 49 through 53 have been
16 withheld as they indicate the identity of the whistleblower."
17 You saw that, right?

18 A. Yes.

19 Q. You read that, right?

20 A. Yes.

21 Q. And you understood that the intention was to withhold those
22 pages, right?

23 A. I didn't read verbatim. I saw this page here.

24 Q. How long did you have that in your possession?

25 A. The investigative report?

1 Q. The 800 pages.

2 A. Probably about a week.

3 Q. All right. And you spent that time looking at it, right?

4 A. Off and on, yes, sir.

5 Q. All right. So -- and you got it from your HR department who
6 also received that letter, right?

7 A. Yes.

8 Q. And the letter was addressed to somebody in your HR
9 department, right?

10 A. Yes.

11 Q. And after you were done with it, you gave it to your boss
12 Mr. Brodeur, right?

13 A. Yes.

14 Q. All right. So now let's go back to the whistleblower
15 complaint if we can. And remember, pages 49 and 53 have been
16 withheld. Do you see that? Make a note of that if you would,
17 sir, in your head.

18 A. Yes.

19 Q. Thanks. Now let's go ahead and take a look at that complaint.
20 It's 216 is the defendant's version. And sir, do you have --
21 did I take that back from you?

22 MR. SHERIDAN: May I approach again, sir?

23 THE COURT: You may.

24 Q. (By Mr. Sheridan) And just for ease of reference, we're going
25 to work off of 216. If you look at the bottom of page -- of

1 the first page of the whistleblower complaint, okay. Whoops.
2 I'll let you figure that out while we talk about it.

3 So you have the whistleblower complaint in front of you,
4 and I'm going to ask you if you would to look at the page
5 number on that first page at the bottom. What's the number
6 there?

7 A. 49.

8 Q. That's the first number that she said in her cover letter was
9 being withheld, right?

10 A. Yes.

11 Q. All right. And then what's the last number she said? "We're
12 withholding pages 49 through"?

13 A. I believe it's 53.

14 Q. All right. Let's go to the next page at the bottom. And
15 that's page 50, right, the second page?

16 A. Yes.

17 Q. All right. That's one of the ones that she tells you is being
18 withheld too, right?

19 A. Correct.

20 Q. Let's go the next. And this one's hard to read. It's kind of
21 cut off, but it looks like the top of a five. Let's go to the
22 next. And that looks like, what, page 52?

23 A. Correct.

24 Q. And let's go to the last page. Page 53, right?

25 A. Yes.

1 Q. So you knew that she told you she was withholding those pages,
2 right?

3 A. I did not.

4 Q. Well, let's see. You shared this document with your boss
5 Mr. Brodeur, right?

6 A. Yes.

7 Q. And did he tell you that, "My goodness, this is a document we
8 got by mistake. We shouldn't have this"?

9 A. No, he did not.

10 Q. Did anyone from HR point out it's a document that should never
11 be produced to you?

12 A. No.

13 Q. But you read it anyway knowing in your mind, you tell us, that
14 as of -- as of May 23rd, 2013, you believed that document --
15 that was the handwriting of Mr. Gillespie, right?

16 A. Yes.

17 Q. And is it your testimony today you believed that all along?

18 A. Yes.

19 Q. So if you believed it all along, you knew that you were
20 basically violating the whistleblower statute, right?

21 A. I didn't re-read that cover page like that. I just -- it was
22 part of the package I was told to review.

23 Q. Well, you had training every year that whistleblowers were
24 supposed to be anonymous, right?

25 A. That's correct.

1 Q. You knew that it was wrong to receive anything that would
2 identify them, correct?

3 A. Yes.

4 Q. And so not only did you receive it, you kept it. You reviewed
5 it and you passed it on to your boss Mr. Brodeur, correct?

6 A. Yes.

7 Q. Because you wanted to identify the whistleblower in any way
8 you could.

9 A. No.

10 Q. Okay. You also read other sections of the 800-page document,
11 did you not?

12 A. I looked at all of them, yes.

13 Q. All right. All right. I'm handing the witness what's been
14 marked as Exhibit 174 for identification.

15 And sir, this is page 47 and 48 of the 800-page package.
16 Would you just verify for me it is in fact page 47 and 48 from
17 the 800-page package.

18 A. That's correct.

19 Q. All right.

20 MR. SHERIDAN: Your Honor, I'm going to offer this
21 exhibit at this time.

22 THE COURT: It's Exhibit 174. Any objection?

23 MR. DIAZ: No objection.

24 THE COURT: Exhibit 174 is admitted.

25 (Plaintiff's Exhibit No. 174 is admitted.)

1 MR. SHERIDAN: All right. Let's go ahead and put
2 that up on the screen if you would.

3 Q. (By Mr. Sheridan) All right. So this -- these two pages are
4 also pages that you received you say sometime in June, June
5 10thish?

6 A. 2009, correct.

7 Q. 2009. All right. So before you received this package you had
8 no idea who the whistleblower was, right?

9 A. That's correct.

10 Q. And it's today you claim that -- that the -- you thought the
11 whistleblower was Gillespie because of the handwriting,
12 correct?

13 A. That was my opinion, yes.

14 Q. All right. And this is a document that's dated May 6th, 2008,
15 and you reviewed that, did you not?

16 A. Yes.

17 Q. All right. Now let's see what happens on that day. So these
18 are, again, investigator's notes, are they not?

19 A. They are.

20 Q. All right. So this is what she says: "On May 6th, 2008," and
21 you're reading this in June of 2009. It says, "a meeting was
22 held on this date between Senior Investigator Larene Barlin,
23 Senior Investigator Sandra Miller, the whistleblower, and
24 another state employee who had additional information to share
25 with the investigators." Right ?

1 A. Yes.

2 Q. So it's fair to say that by June 10th you knew that there was
3 another person meeting with the investigators besides
4 Mr. Gillespie even if you believed that Mr. Gillespie was the
5 whistleblower, right?

6 A. Yes.

7 Q. Okay. So let's take a look at this now. Let's see what you
8 knew and when you knew it. In 2008 in March you met with
9 Chaussee, Kelly and Gillespie, and you say heard for the first
10 time that Chaussee believed that Nannery was basically leaving
11 work early but getting paid for the whole day, stealing time.

12 A. That's right.

13 Q. Okay. Now, in 2009 you say on June 10th is when you got the
14 800-page whistleblower investigator file, right?

15 A. Yes.

16 Q. All right. And so on the 10th -- and I mean, you probably
17 didn't read the whole thing in a day, right? You held it for
18 at least a week.

19 A. That's correct.

20 Q. So sometime between the 10th and the 17th you learned two
21 things you say. First you learned that Mr. Gillespie's
22 handwriting appeared on the -- on the whistleblower complaint,
23 right?

24 A. It appeared to be his handwriting on it . I just surmised that.

25 Q. And you also learned that the whistleblower, who now you

1 thought was Gillespie, met with the investigators with another
2 state employee who had additional information, right?

3 A. I'm not sure what she meant by that statement to be honest
4 with you.

5 Q. Well, I didn't say the statement. They wrote it.

6 A. That's what I mean. I don't know what she meant by that.

7 Q. Okay. Well, tell me, let's go through this and tell me what
8 part of the sentence you don't understand. She said a meeting
9 was held on this date. That's May 6th. You understand that,
10 right?

11 A. I didn't meet with them on May 6th.

12 Q. No, no, no, no. This is her note from 2008, right?

13 A. Yes.

14 Q. All right. And so you -- and you reviewed this document,
15 right?

16 A. Yes.

17 Q. Okay. So you knew on June 10th, 2009, or that week after,
18 that not only was Gillespie likely the whistleblower, but they
19 also met -- the investigators met with Gillespie and another
20 person on May 6, 2008, right?

21 A. Yes.

22 Q. Okay. All right. Okay. And as far as you knew by -- that
23 just went out. As far as you knew the -- on June 10th -- and
24 by June 10th you 'd already conducted your internal
25 whistleblower investigation, right?

1 A. Yes.

2 Q. So you knew in May. In May you'd already made the decision
3 that Chaussee was responsible, right? And you were going to
4 start talking about disciplining him.

5 A. There were some issues with Chaussee, that's correct.

6 Q. All right. So -- okay. So let's -- oh, and let's just fill
7 in some other blanks. If you would turn to 235 of the big
8 pile. Are you there?

9 A. Yes, I am.

10 Q. All right. It's a true statement, is it not, that you had
11 your entrance meeting with Nannery and the investigators from
12 the State on or about May 29th, 2008?

13 A. True.

14 Q. Okay. Nannery was present, right?

15 A. That's correct.

16 Q. All right. And at that meeting they basically outlined what
17 the charges were against him, correct?

18 A. They did.

19 Q. Including the argument that -- the allegation that he had
20 basically left work early to go play baseball and then charged
21 for an eight-hour day.

22 A. Yes.

23 Q. All right. Then I'd like you to turn to 234 of that book.
24 And it's true, is it not, that on April 1st, 2009, that's when
25 the exit meeting took place?

1 A. That's correct.

2 Q. All right. And this exit meeting was attended by you,
3 Mr. Nannery, the investigators, and was there a representative
4 of the union there?

5 A. There was an acting steward. I think he was acting at the
6 time. The carpenter steward.

7 Q. And at that -- at that meeting basically the investigators
8 notified you and Mr. Nannery that they'd reached their
9 conclusions and they actually handed you a draft of the final
10 whistleblower report. If you need to refresh your
11 recollection, go ahead and use that to do so. When you're
12 done, just look up, and then I'll ask you a question.

13 A. (Witness complies.)

14 Q. And did that help refresh your recollection?

15 A. Yes.

16 Q. All right. And is it true that on April 1st, 2009 at the exit
17 meeting you actually received the draft of the whistleblower
18 report? And if you need further refreshment, turn it to page
19 254.

20 A. (Witness complies.) Okay.

21 Q. All right. And so you would agree with me that on April 1st
22 you actually got a draft of the report that outlined both the
23 liability for Mr. Nannery and other things.

24 A. Yes.

25 Q. All right. And so it's fair to say, is it not, that by April

1 1st, 2009, you knew that Nannery had claimed that you had said
2 it was okay to -- to flex time?

3 A. I think the mindset on that whole thing was it's past
4 practice. I actually authorized flex time for his 2009
5 baseball schedule, but I think flex time has happened for many
6 years there.

7 Q. But 2008 is when he was found to have committed wrongdoing,
8 right?

9 A. Right.

10 Q. So what you're saying is after you learned that he committed
11 wrongdoing in 2008, you went ahead and then said everything he
12 -- that if he were to do the same thing today, it's okay?

13 A. I think that shop for years -- within the shop --

14 Q. Please just answer my question. Is that a yes or a no? Did
15 you say in 2009 that the things that he was written up for
16 stealing in 2008 were now okay?

17 A. Flex time was okay, yes.

18 Q. All right. And did you tell your bosses you were doing that
19 for Nannery?

20 A. Yes.

21 Q. All right. And it's true, is it not, that Mr. Nannery only
22 received, what was it, a week's discipline?

23 A. I think he was on the beach for one week, that's correct, and
24 demoted.

25 Q. All right. And it's true, is it not, that he was subsequently

1 fired by Mr. Mosely, right?

2 A. My thought is he retired.

3 Q. Wasn't he threatened with termination or retirement?

4 A. That's possible. I know he did retire. He wasn't fired.

5 Q. Okay. All right. And do you know when that was?

6 A. I do not.

7 Q. Okay. So let's just nail down in May when was the -- when the
8 final report came out.

9 Is that Exhibit 64 or 65? I think it might be 65.

10 (Talking with assistant).

11 Do you have the first -- plaintiff's first books in front
12 of you?

13 And Exhibit -- you got that up there? Does it show the
14 date?

15 All right. So what's the date of the actual final
16 whistleblower report?

17 A. 11 May, 2009.

18 Q. May 11th. Okay. Now, let's talk a little bit about this
19 investigation you folks did on your own.

20 MR. SHERIDAN: May I have one moment, Your Honor?

21 THE COURT: Okay.

22 MR. SHERIDAN: Thank you.

23 THE COURT: Ladies and gentlemen, while they're
24 looking for what they're looking for, sometimes I tell
25 stories. Tell you about judges and robes. I've always

1 worried that when I come up these three steps to get on the
2 bench I may trip over my robe and fall flat on my face.
3 That hasn't happened yet in 18 years, but it surely could.
4 Let me tell you about a judge that did have a circumstance
5 with his robe.

6 Judge Gerry Alexander, who later left here and went to
7 the Court of Appeals and then went to the Washington
8 Supreme Court, was the chief justice of the Washington
9 Supreme Court until he retired three years ago. But when
10 he was in the old courthouse and was a relatively new
11 judge, he walked into the courtroom with a jury sitting
12 there, and the door closed on his robe. That was a little
13 embarrassing. So he did the best he could to try to turn
14 the doorknob and open door. It was locked. And so then he
15 tried to fish under his robes to find his keys, in his
16 pocket, that took a little doing, and he discovered he did
17 not have his keys. So I'm told that's where he started
18 telling stories to the jury, and he sent someone around the
19 back hallway to ultimately open the door so that he could
20 go about his business.

21 If we have a chance during lulls, I might tell you some
22 more stories about judges and robes, but I think we're
23 ready to continue now.

24 MR. SHERIDAN: Thanks, Judge. We're going to look
25 at Exhibit 71 which I understand has not been objected to

1 so we'll offer Exhibit 71.

2 Q. (By Mr. Sheridan) And what is 71?

3 THE COURT: Let me make sure there is no objection.

4 MR. DIAZ: No objection.

5 THE COURT: All right. Exhibit 71 is admitted.

6 (Plaintiff's Exhibit No. 71 is admitted.)

7 Q. (By Mr. Sheridan) All right. And the heading is "Nannery
8 fact-finding report by Vern Day and Jackie Beddo," right?

9 A. Correct.

10 Q. What's the date of this report?

11 A. June 19th, 2009.

12 Q. June 19th?

13 A. Correct.

14 Q. June 19th, '09. And this is the Beddo/Day report. And who
15 drafted this report?

16 A. Jackie Beddo.

17 Q. And let's take a look at -- if you'll go to first
18 "background." So it says "background, the employee is Jack
19 Nannery." Is that because the subject of the investigation
20 was Jack Nannery?

21 A. It appears to be, yes.

22 Q. All right. And then it says "timeline, date of auditor's
23 official whistleblower investigation March 6, '08, date of
24 fact-finding May 11th." You agree with those dates, right?

25 A. Yes, I do.

1 Q. Then it says days of interviews beginning May 14th. These are
2 interviews conducted by you and Ms. Beddo, right?

3 A. Correct.

4 Q. And they're the work force, correct?

5 A. The carpenter shop.

6 Q. So basically people like Gillespie were interviewed then,
7 right?

8 A. Correct.

9 Q. So let's just get that. So May 14th through June 2nd. So on
10 May 11th, 2009, the final whistleblower report came out,
11 right? The state one.

12 A. Yes.

13 Q. And then within a couple of days you and Ms. Beddo were
14 actually conducting interviews of the carpenter shop, right?

15 A. Yes.

16 Q. All of the potential whistle blowers were in there, weren't
17 they, in your mind?

18 A. Possibly.

19 Q. Because you had said that the two people that you -- that had
20 spoken to you about the very same issue that got Mr. Nannery
21 in trouble, those were people in the carpenter shop, right?

22 A. I never said either whistleblower. I didn't say either one of
23 them were whistleblowers.

24 Q. Okay. Okay. The well, but what was the timing -- you've now
25 got a completed report. There's 800 pages of work done by the

1 State Auditor's Office that leads to a conclusion that
2 Mr. Nannery engaged in improper governmental action, right?

3 A. Right.

4 Q. So why did you think you needed to do anything else other than
5 discipline Mr. Nannery?

6 A. Because my director told me to.

7 Q. Your director meaning?

8 A. Paul Brodeur.

9 Q. Mr. Brodeur told you to. Did he tell you why he thought you
10 needed to do your own internal investigation now?

11 A. Yes, he did.

12 Q. And why did he say that?

13 A. He wanted to find out why this particular incident happened
14 where somebody was using unauthorized time on computers and
15 time on time sheets.

16 Q. So he wanted to know why somebody like Mr. Nannery could get
17 away with that?

18 A. Correct.

19 Q. Okay. Did you just cut to the -- and you conducted an
20 investigation, right?

21 A. Jointly, yes.

22 Q. But you told us you had flex timed anyway, right? So wasn't
23 that the answer? "Boss, I believe in flex time. There's no
24 problem here."

25 A. You can have flex time and still abuse it.

1 Q. Well, did you believe he abused it?

2 A. Not until they had the findings.

3 Q. Well, all right. But so as of May 11th, 2009, you believed
4 Mr. Nannery had engaged in a terminable offense, correct?

5 A. That's what the auditors found, yes.

6 Q. What did you believe?

7 A. I believe what the auditors found.

8 Q. Then you must have recommended his immediate termination.

9 A. I did not.

10 Q. As a matter of fact, you didn't recommend discipline at all,
11 did you?

12 A. I recommended that both Steve Chaussee and Nannery be
13 disciplined.

14 Q. Okay. You recommended that the person who did it, who
15 actually committed the offense, and the person who you
16 believed may have been the whistleblower, be disciplined.

17 A. No.

18 Q. Well, let's see. As of May you had no idea who the
19 whistleblower was, right?

20 A. Correct.

21 Q. You still -- let me ask you this: Do you agree or disagree
22 with the statement that you said to Mr. -- you asked
23 Mr. Seibert who the whistleblower was in May of 2009?

24 A. I did not.

25 Q. Do you agree or disagree with the statement that you asked

1 Mr. Gillespie who the whistleblower was in May 2009?

2 A. I did not.

3 Q. All right. And that was -- that would be because it would be
4 wrong to know, right?

5 A. Correct.

6 Q. You had no business knowing, right?

7 A. The whistleblowers are protected.

8 Q. Right. But yet when you actually got the complaint, you made
9 no effort to protect that whistleblower by pulling that
10 document, assuming you get it then.

11 A. I did make an attempt to protect them.

12 Q. What was that attempt?

13 A. When Jack Nannery requested this 800-page investigation, they
14 were going to give it to him, and I cautioned HR that they
15 should look at it. There's an issue with the handwritten
16 whistleblower reporting form in there which could lead to
17 somebody identifying the handwriting.

18 Q. You told them that in what month?

19 A. It's an e-mail to Jackie Beddo and HR.

20 Q. Did you think that Jack Nannery should have that 800-page
21 report?

22 A. I said if he gets that report, he possibly could do the same
23 thing I did, look through it and maybe surmise who the
24 whistleblower may be.

25 Q. Didn't Mrs. Beddo actually suggest that Mr. Nannery needs to

1 see that 800-page package?

2 A. Correct.

3 Q. She suggested that in June, right?

4 A. I don't know what the date was.

5 Q. Well, can you tell us why it would be that if a person has
6 actually stolen that Ms. Beddo and you are discussing how
7 Mr. Nannery needs to see the 800-page package?

8 A. As far as I know it's public information.

9 Q. Well, but why did you guys have to be the ones to give it to
10 him?

11 A. Because he requested it through the Washington State Ferries.

12 Q. Isn't it true that you didn't believe that he should have been
13 disciplined?

14 A. That's not true.

15 Q. Isn't it true that the reason he wasn't terminated for a
16 terminable offense is because you totally disbelieved the idea
17 that he should have gotten in trouble for going to coach
18 baseball?

19 A. No.

20 Q. Isn't it also true that in fact you were mad at the guy who
21 turned him in?

22 A. That's not correct.

23 Q. Well, you can't explain to us why if you weren't mad at the
24 guy, why it was that you only gave two weeks punishment to
25 Mr. Nannery.

1 A. I have no authority to give anybody any type of discipline.
2 It's all done at the director's level.

3 Q. All right. You also knew when you had that 800 pages in your
4 hand, you also knew that mixed in with the photographs were
5 time sheets, right?

6 A. Yes.

7 Q. All right. Let's have you turn in the 800-page document,
8 let's have you turn to pages 17 and 18. I'm sorry. 117 and
9 118. All right. Are you there?

10 A. Yes, sir.

11 Q. All right. And these are handwritten time sheets, are they
12 not?

13 A. Correct.

14 Q. And if you go -- page forward or back, they're right mixed in
15 with the -- the photographs, right?

16 A. Yes.

17 Q. Okay. So when you reviewed that, and you reviewed the
18 whistleblower complaint, you reviewed the documents behind it,
19 you concluded, did you not, that the whistleblower had
20 submitted both photographs and time sheets?

21 A. No, I did not.

22 Q. Well, you knew that the photographs came from the
23 whistleblower, right?

24 A. Yes.

25 Q. And you knew that the time sheets came from the whistleblower,

1 did you not?

2 A. As far as I know that when the State auditors are there, they
3 said they could get their own copies of the time sheets.

4 Q. Uh-huh. Okay. Do you know why they would have redacted some
5 of the parts of pages 18 and 19?

6 A. I do not.

7 Q. All right. Well, it's true, is it not, that you knew that
8 Mr. Gillespie could not get time sheets? Wasn't authorized.

9 A. That's not true.

10 Q. It's not? Isn't it true that the only person -- you'd have to
11 be at Mr. Chaussee's level to actually get time sheets in
12 order to pass them on to the auditor, right?

13 A. No.

14 Q. Okay.

15 MR. SHERIDAN: Your Honor, we've marked for
16 identification a copy of the arbitration transcript. I
17 have a copy for the Court here, and we've given a copy to
18 the other side.

19 THE CLERK: 175.

20 Q. (By Mr. Sheridan) You testified --

21 MR. SHERIDAN: May I approach the witness again?

22 THE COURT: I was nodding, but I'm not sure what I'm
23 nodding at. There's no motion on the -- before the Court.

24 MR. SHERIDAN: Oh. To publish. If I may.

25 THE COURT: Is there any objection?

1 MR. DIAZ: Yes. We would object to the extent that
2 it's a full transcript from -- well, no objection.

3 THE COURT: Okay.

4 MR. SHERIDAN: Thank you.

5 THE COURT: Then I guess I'll allow you to publish
6 that, although I'm not sure whether we call it publishing
7 or not.

8 MR. SHERIDAN: That's why I had it marked as an
9 exhibit. I'm not sure either.

10 THE COURT: We're talking about Exhibit No. 175.

11 MR. SHERIDAN: May I proceed?

12 THE COURT: You may.

13 Q. (By Mr. Sheridan) So you attended an arbitration regarding
14 Mr. Chaussee, did you not?

15 A. I did.

16 Q. And when was that arbitration?

17 A. I don't know when the dates were.

18 Q. Okay. Look at the first page there. It will tell you.

19 THE COURT: By the way, we're 15 minutes away a from
20 break time.

21 MR. SHERIDAN: Okay.

22 A. Three June 2011.

23 Q. (By Mr. Sheridan) Okay. All right. All right. So there's an
24 arbitration hearing on June 3rd, 2011. And you were called to
25 testify, were you not?

1 A. That's correct.

2 Q. All right. And you were under oath there too, were you not?

3 A. Yes.

4 Q. All right. Would you turn to page 185, please. And this is
5 -- these are different attorneys talking to you, and I'm going
6 to ask to look at line 14 if you would. And I'm going to read
7 you the question, and you see how your name is up on the top
8 there, Vernon Day?

9 A. I do.

10 Q. This is your testimony, would you agree?

11 A. Yes.

12 Q. Okay. So we're on page 185, and the question asked by the
13 lawyer on line 14 is: "If an employee, whether he has any
14 role in somebody's timecards or not, or in the supervision
15 chain, wouldn't you want them to report that to the employer?"
16 And you said?

17 A. "Well, actually not unless you would not have actually any
18 access to Jack Nannery's time sheet. He's in a separate
19 office. He a separate work area. I mean, it's not his
20 function to audit somebody else's time. He basically ensures
21 his time is put together and down to the foreman. It's a
22 foreman's job to audit the time."

23 Q. And who was the foreman?

24 A. Steve Chaussee.

25 Q. So when you testified under oath on June 3rd, 2011, you've

1 testified that Gillespie didn't have access to Nannery's
2 timecards, right?

3 A. Not at the shop level; that's right.

4 Q. So when you looked at that 800-page pile of documents and you
5 saw mixed in with the photographs handwritten time sheets, you
6 immediately concluded that Nannery couldn't have put those in.
7 It had to be a foreman. It had to be Chaussee, correct?

8 A. No.

9 Q. Well, you knew that they couldn't be acquired by Jack -- by
10 Mr. Gillespie, right?

11 A. They -- if you went to the staff aid's office, they have files
12 of time sheets there that anybody can get a copy.

13 Q. But you know what when you testified on June 3rd, 2011, you
14 didn't say that, did you?

15 A. Not at the shop you can't get them. He's in a separate shop
16 from Steve's. If he went down there, it's a different story.

17 Q. All right. Didn't actually have any access. This is what you
18 said, is it not? That Mr. Gillespie would not have actually
19 any access to Jack Nannery's time sheet, right?

20 A. Right.

21 Q. And that was a true statement at the time?

22 A. Right. But I realized if you went to a staff aid you could
23 get a copy.

24 Q. You realized that, what, in the last two minutes?

25 A. Pardon?

1 Q. When did you realize you could get a copy from somewhere else?

2 A. I just realized it, yes.

3 Q. All right. Would you turn to Exhibit 71, please. I should
4 help you. We're looking at Exhibit 71, which is the June 19th
5 Beddo/Day whistleblower report, right?

6 A. Yes.

7 Q. All right. And okay. In this report -- could you put that
8 back up on the screen, please.

9 All right. It contains a narrative section, and it
10 contains allegations, and go to the next page if you would.
11 And it contains a fact section. And then under "conclusions."
12 For the first conclusion -- this is both you and Ms. Beddo
13 jointly concluding this, right?

14 A. Correct.

15 Q. It says, "After interviewing Foreman Chaussee and Vessel Lead
16 Man Adam Olson, Day and Beddo agree that Nannery's laptop was
17 rarely left in the carpenter shop office. Therefore, the air
18 card would have been put into use as internet connection
19 available through a cable."

20 So --

21 THE COURT: I think it says "would not."

22 MR. SHERIDAN: "Would not have been put into use as"
23 -- yes -- "as internet" -- thank you -- "connection and is
24 available through a cable."

25 Q. (By Mr. Sheridan) And then going down to the bottom paragraph

1 concerning his login and password being written down in the
2 shop for other carpenter shop employees to use, 5 of the 15
3 employees interviewed agree both are available to them. So
4 what did you conclude in this investigation regarding whether
5 Mr. Nannery improperly used the internet?

6 A. Basically the -- each person assigned a computer has their own
7 password.

8 Q. Okay?

9 A. And you should not share that password with anybody else. So
10 in this particular case Nannery had his password written down
11 somewhere in the foreman's office that several people could
12 use that computer.

13 Q. So did your findings then disagree with the findings of the
14 auditor?

15 A. No.

16 Q. So you felt that he actually did improperly use the internet.

17 A. Nannery did, yes.

18 Q. Okay. Now let's look at the next section. The next section
19 talks about the baseball coaching, and let's go down to --
20 let's go down to the last page where the signatures are. And
21 can you tell us in your own words what you concluded regarding
22 Mr. Nannery's improper use of time by going to play baseball
23 when he should have been at work.

24 A. From the auditor's report it appears that he had eleven and a
25 half hours of time that they couldn't account for on his time

1 sheet, and 35 to 45 hours of internet use, unauthorized use on
2 a computer.

3 Q. Did you agree with the auditor that he had stolen that time?

4 A. I did.

5 Q. All right. Yet you're telling us now that you signed that in
6 June of 2009, and also at the same time you gave him the right
7 to flex so he could do that very thing, right?

8 A. Yes.

9 Q. Okay. So --

10 A. Not to steal time, to flex time to be able to coach baseball.

11 Q. Okay. So it was -- it was your view then, was it not, that
12 what he did wasn't that serious because you allowed him to do
13 it again?

14 A. No. It was serious. It was stealing time, but flexing time
15 is not serious as long as you put your time in.

16 Q. Okay. All right.

17 MR. SHERIDAN: Would this be a good time to break,
18 Your Honor?

19 THE COURT: We're about five minutes before, but
20 that's all right. Let me see counsel at sidebar before we
21 take that break.

22 Excuse us for just a moment, ladies and gentlemen.

23 (Side-bar conference held outside hearing of jury.)

24 THE COURT: Ladies and gentlemen, before I excuse
25 you I just would like to keep you informed of what's taking

1 place. We're going to allow that we discontinue the
2 testimony of Mr. Day and substitute another witness who has
3 some time constraints.

4 The name of that witness? Mr. Sheridan.

5 MR. SHERIDAN: Leah Maurseth.

6 THE COURT: All right. And because she's from out
7 of town and she is here and needs to finish today if
8 possible, we're going to allow her testimony after the
9 break. Mr. Day will then be recalled at a later time, and
10 I realize that means you haven't been able to ask
11 questions. You'll get that chance at the appropriate time.
12 But I wanted you to know that now instead of coming in cold
13 and finding out that Mr. Day isn't on the stand any longer.

14 Okay. Before I excuse you let me remind you that you're
15 not to discuss this case and do not share your notes with
16 any other juror. We'll be in recess for the afternoon
17 recess, about 15 minutes. Be in recess.

18 (A recess was taken.)

19
20 *****

21 Maurseth testimony

22 *****

23
24 THE COURT: Mr. Day, if you will resume the stand.
25 You are still under oath.

1 THE WITNESS: Yes, sir.

2 THE COURT: Mr. Sheridan, continue your direct
3 examination, please.

4 Q. (By Mr. Sheridan) We're going to go back to Exhibit 71. Let's
5 see if you have that. Please turn to 71. And when we broke
6 off, we were looking at the last page.

7 MR. SHERIDAN: Can I just take a quick look at the
8 witness's exhibit?

9 THE COURT: Sure.

10 Q. (By Mr. Sheridan) All right. So this document in the last
11 section we were talking about the claim related to
12 Mr. Nannery's time sheets. You write in the last section that
13 -- or you or Ms. Beddo write, "This hatred of Nannery extends
14 to lock shop lead man Gillespie and journeyman Dave Seibert,
15 although their reasons seem to be somewhat different."

16 What hatred are you talking about?

17 A. I believe that stems from all the years that Jackie Beddo
18 worked at Eagle Harbor knowing the history of the facility.
19 She was also a staff aid and our clerk before she became the
20 superintendent there so she worked there many years before she
21 went over to HR in Seattle. So she has a history of those
22 people.

23 Q. Okay. So you're saying you didn't write that piece.

24 A. That's correct.

25 Q. All right. And then it's written, "Gillespie definitely

1 aligned with Foreman Chaussee while Seibert keeps to himself
2 although he works with Gillespie every day."

3 Can you tell me why is this relevant to a disciplinary
4 issue.

5 A. You'd have to ask Jackie Beddo. I'm not sure what she was
6 driving at, but that's where we know for a fact that Steve and
7 Don are probably pretty good friends, and Dave Seibert does
8 keep to himself a lot.

9 Q. All right. And then she writes, "During our interview" -- or
10 somebody writes, "During our interview Gillespie reports
11 bullying behavior by Nannery with no witnesses." Well, the
12 terminal -- at a terminal Nannery -- Nannery allegedly told
13 Gillespie I know who something with me and I never forget it.
14 And he held the door -- allegedly held the door of the
15 carpentry shop. Can you tell me why was this important to you
16 in your investigation?

17 A. I know for a fact that Don Gillespie had mentioned that --
18 that Jack Nannery used to pull alongside the road, and I think
19 Don described it as giving him the stink eye when he went by.
20 As far as being -- holding the door closed, I have no idea if
21 that happened or not.

22 Q. Okay. It's true, is it not, that -- that you thought that
23 Nannery was intimidating to other employees?

24 A. Yes, sir.

25 Q. I mean, you told that to the investigators, right?

1 A. I did.

2 Q. So it wasn't a surprise that Gillespie or anyone else was
3 intimidating by Nannery, right?

4 A. Right.

5 Q. Okay. All right. Let's take a look at some other notes. And
6 is it true that with regard to the 800-page document you don't
7 really know which pages in there are pages supplied by the
8 whistleblowers -- the whistleblower and which pages were
9 supplied based on rest of the investigation?

10 A. True.

11 Q. Okay. Okay. Would you take a look at Exhibit 61, please.
12 All right. And what is Exhibit 61?

13 A. Looks like Tracy Aga is talking to Jack Nannery.

14 Q. And this is basically part of the 800-page file that you
15 received, is it not?

16 A. I don't recall reading that particular one.

17 Q. Why don't you look at page 226 of the 800-page document to see
18 if it's in there.

19 A. So what's your question again?

20 Q. First I want you to identify the document. That's one of the
21 documents that you received on or about June 10th with the
22 investigative file. And if you look in the lower left-hand
23 side corner you can see it's page 226 and identified as WB
24 08046.

25 A. I have not read this particular memo here.

1 Q. You did look at it though, right? It's one of the things you
2 looked at.

3 A. I don't remember it at all.

4 Q. You have no memory of it at all?

5 A. Not this particular page I do not.

6 Q. Why don't you open up the big book and go to page 226 to see
7 if looking at it in the context of the other pages refreshes
8 your recollection.

9 A. No, sir, it does not.

10 Q. Let's look at Exhibit 75.

11 MR. SHERIDAN: Your Honor, it's my understanding 75
12 has not been objected to so we'll offer it.

13 MR. DIAZ: No objection.

14 THE COURT: All right. Exhibit 75 is admitted.

15 (Plaintiff's Exhibit No. 75 is admitted.)

16 Q. (By Mr. Sheridan) All right. Do you have that in front of you
17 now, sir?

18 A. Yes, sir, I do.

19 Q. Did you have a moment to look at it?

20 A. I have read it, yes.

21 Q. And this is basically an e-mail exchange between you and
22 Jackie Beddo dated June 10th, right? Or you're CCed on it.

23 A. I'm just CCed on it.

24 Q. All right. And if you would go down, Ashley, to the finished
25 reading section. Right there. A little higher.

1 Okay. So this is her writing to -- is it Flynn Mahaffey,
2 Colleen Flynn Mahaffey and Paul Brodeur, right?

3 A. Correct.

4 Q. That's your boss and the head of HR, right?

5 A. Yes.

6 Q. She says that she finished reading, turned over to Vern and
7 these are my thoughts. And this is basically she had just
8 finished reading the 800-page document that's to your right,
9 correct?

10 A. So she states in here, yes.

11 Q. And she turned it over to you on or about the 10th, sometime
12 on or before the 10th, right?

13 A. Yes, sir.

14 Q. And she says, "Questions for Nannery: Has he seen the entire
15 report? If not, he needs to."

16 Do you know why there was a desire that he should see the
17 entire 800-page report?

18 A. I do not.

19 Q. Okay. Well, did you agree that he needs to?

20 A. I was never asked even.

21 Q. Okay. All right. And then she goes and talks about some of
22 the other issues regarding this. And she writes under number
23 five, "Whoever took the pics, how do we know the camera dates
24 and times are true?" It says, "A newspaper is used in many
25 photos to corroborate. The pics are telling, Nannery in his B

1 ball uniform at games, his white SUV at games, his white SUV
2 at home. He states he drives his black truck occasionally
3 too."

4 So is it fair to say that you and other managers at the
5 Ferries as of June 10th were questioning the accuracy of the
6 findings of the auditor's report that came out in May?

7 A. She may have, yes.

8 Q. And you did as well, right?

9 A. No.

10 Q. Okay. Let's look at Exhibit 78. And it's my understanding
11 these also were not objected to.

12 MR. DIAZ: No objection.

13 THE COURT: Exhibit 78 is admitted.

14 (Plaintiff's Exhibit No. 78 is admitted.)

15 Q. (By Mr. Sheridan) And just take a moment to look at it. Tell
16 us what it is.

17 A. This is an e-mail I sent to Jackie Beddo and Kathleen Flynn
18 Mahaffey and Paul Brodeur to caution that I had found that
19 whistleblower report in the 800-page investigation. And like
20 we've discussed before, I said Jack Nannery may be able to
21 come up with the same thoughts I came up with as I reviewed it.

22 Q. And you write here, "I would caution you that even when SAO
23 made the effort to remove any mention of the whistleblower's
24 name and address throughout the report, there's still one
25 issue to consider. In reading through the whole report,

1 there's a handwritten copy of the whistleblower's initial
2 filing." You wrote that to Beddo, the head of HR, Mahaffey
3 and to your boss Brodeur, right?

4 A. Correct.

5 Q. And is it fair to say nobody did anything with that?

6 A. That I don't know.

7 Q. Well, you never were asked to give it back, right? Or to pull
8 it or destroy it.

9 A. I turned the whole report back in.

10 Q. All right. Let me ask you this: Do you see how the font is a
11 little different in the last part there? This would
12 definitely be a serious problem.

13 A. Yes.

14 Q. Do you know why the font is a different size than the rest?

15 A. I do not.

16 Q. Well, are you sure this was even made on June 16th, 2010? And
17 nine.

18 A. As far as I know, yes.

19 Q. Okay. This is the only piece of evidence that you have that
20 in any way corroborates your claim that you -- that the
21 document -- the 800-page document actually contained the
22 whistleblower report, right?

23 A. As far as I know, yes.

24 Q. There's nothing else out there. As far as you know, there's
25 never been anybody writing anything above you or below you in

1 the chain of command to discuss the fact that the
2 whistleblower report was inadvertently released along with the
3 other 790 something pages, right?

4 A. Right.

5 Q. So this is your only evidence that -- that you actually had
6 the report back in 2009, right?

7 A. Correct.

8 Q. And you can't explain why -- it's -- you say you wrote this,
9 right?

10 A. I drafted that e-mail, yes.

11 Q. And you can't tell us why there's a totally different font at
12 the end.

13 A. I do not know what it is.

14 Q. Okay. All right. Can you also explain to us why you would
15 write something -- would you agree to me that this is really a
16 big deal within your business, to have in your possession a
17 whistleblower handwritten report?

18 A. I think that I probably looked at this 800-page report more
19 thoroughly than most people did. It's rather boring, but we
20 do have to deal with -- we have to protect the whistleblowers.
21 And a whistleblower to me I think it's something that's
22 bringing something to my attention I need to fix, but he needs
23 to be protected or she needs to be protected, and my e-mail to
24 the HR was saying hey, this could be an issue.

25 Q. Well, my question isn't so much about the fact that you wrote

1 this. I mean, even though it's two different fonts. My
2 question is where are all the e-mail responses? Nobody
3 responded by e-mail, correct?

4 A. I believe Jackie Beddo did. She said that should have been
5 redacted.

6 Q. Well, isn't it true that this is a big deal to -- I mean,
7 you're not protecting the whistleblower if you're releasing
8 the whistleblower's handwritten complaint right?

9 A. I agree.

10 Q. And you told us that that was real important to you, right?

11 A. It's important.

12 Q. So one would think there would be a whole bunch of e-mails
13 exchanged talking about what are we going to do. Maybe we
14 should destroy it. Maybe we should give it back. Maybe we
15 should contact the SAO and ask them for advice. None of that
16 happened, did it?

17 A. That's correct.

18 Q. It's true, is it not, that either the document wasn't really
19 included in the 800 pages or you really wanted to have that
20 document?

21 A. When I got the whole report, 800 pages, that form was in there.

22 Q. If that were the case, wouldn't you expect that it would still
23 be in there today?

24 A. Yes.

25 Q. Because it's a public record, right?

1 A. Correct.

2 Q. And it must be sitting there for everybody to look at at the
3 -- what would it be? At the Auditor's Office, right?

4 A. Right.

5 Q. Okay. Let's look at Exhibit 85 if we can.

6 A. I don't have Exhibit 85.

7 Q. I'm sorry. Let's swap. Okay. And what is 85?

8 A. That's an e-mail I drafted to Paul Brodeur.

9 Q. All right. All right. And this is an e-mail that you talked
10 to -- this had to do with disciplining Mr. Nannery, right?

11 A. This was an e-mail that I drafted Paul Brodeur after Jack
12 Nannery talked to me down in the carpenter shop.

13 Q. It's true, is it not, that basically after the SAO report came
14 out and it was established that he had engaged in improper
15 governmental action by stealing time, you negotiated with him
16 to try to come up with a discipline that he would like?

17 A. That's not true.

18 Q. Well, isn't this -- doesn't this letter recount your
19 discussions with him?

20 A. This is what he quoted to me, and I quoted it to my boss.

21 Q. All right. This is a July 16th letter from -- e-mail from you
22 to Paul Brodeur, right?

23 A. Correct.

24 Q. And it's a document that was created for a business purpose at
25 or around the time of the and date of the e-mail, right?

1 A. Yes.

2 Q. Okay.

3 MR. SHERIDAN: Plaintiff offers Exhibit 85 into
4 evidence.

5 MR. DIAZ: No objection.

6 THE COURT: Exhibit 85 is admitted.

7 (Plaintiff's Exhibit No. 85 is admitted.)

8 Q. (By Mr. Sheridan) Okay. So you write to Paul, "Paul, per our
9 discussion this morning I did in fact go down to the carpenter
10 shop and have a private conversation with Jack."

11 That's Jack Nannery, right?

12 A. Correct.

13 Q. And as of July 16th, let's see, Mr. Chaussee had not been
14 demoted yet, right?

15 A. That's correct.

16 Q. Because he was demoted in September.

17 A. Correct.

18 Q. All right. And it says, "I asked him to please clarify his
19 statement he made to me yesterday. Jack said that he would be
20 more than willing to go back to the tools in order to promote
21 harmony in the shop. He realizes that Chaussee is the root
22 cause of all dissension in the shop. He further stated if
23 Chaussee were placed by Jon Envelodson, that Steve could be
24 assigned to the lock shop with Gillespie. He does have a good
25 working knowledge of the lock shop."

1 These are proposals by Mr. Nannery to you, right?

2 A. Yes. He just told him. Not that I did much. I just
3 forwarded it to Paul Brodeur, but that was his thoughts.

4 Q. His thoughts on both discipline for Chaussee and discipline
5 for him, right?

6 A. His thoughts, that he had been demoted at that time either.

7 Q. And he says this would also save face -- this is you writing
8 now, right? Or is this you writing what he's saying? "This
9 would also save face with the rest of the rank and file and
10 not cause any problems. And I think this would work."

11 Is that your voice?

12 A. That's Jack Nannery's words, but that was my voice. I said it
13 probably would work if that came to be.

14 Q. So Jack Nannery's proposing a solution both for his discipline
15 and Chaussee's, and you're agreeing with him.

16 A. No, I'm not.

17 Q. You're not agreeing with him. It says, "Jack also asked that
18 when a temporary lead position opened up due to a vacation
19 that he be considered set up to fill in, and I told him I
20 didn't see a problem with that." Right?

21 A. Correct.

22 Q. So even though he's being -- he's been found to have engaged
23 in conduct that's a terminable offense, you're negotiating
24 with him as to what the discipline should be, and you're also
25 saying to him, and if there's an out-of-class opening, we'll

1 give it to you.

2 A. I don't evoke any discipline on anybody. That's at the
3 director's level. And if somebody were missing or on
4 vacation, Jack Nannery has the seniority to step up to lead
5 man from journeyman.

6 Q. You didn't see a problem with it, right?

7 A. No. He would still be in the shop.

8 Q. But basically it's fair to say that by July -- July 16th,
9 2009, you were pretty much willing -- ready and willing to
10 forgive Jack Nannery and move Mr. Chaussee and demote him.

11 A. That's not correct.

12 Q. Let's look at 89. All right. Let's look at Exhibit 89. And
13 this is -- tell us what this document is. Is it a memo?

14 A. It is a memo, yes.

15 Q. And who drafted it?

16 A. I did.

17 Q. And what's the date of it?

18 A. It is July 21st, 2009.

19 Q. And what's the subject?

20 A. Subject is carpenter shop lead change.

21 MR. SHERIDAN: Plaintiff offers Exhibit 89.

22 MR. DIAZ: No objection.

23 THE COURT: Exhibit 89 is admitted.

24 (Plaintiff's Exhibit No. 89 is admitted.)

25 (Phone rings.)

1 MR. SHERIDAN: My sincere apologies, Your Honor.
2 Boy, that's bad.

3 THE COURT: There was once a judge who had a
4 cellphone go off, and he didn't know whose it was, and he
5 says, "Whose cellphone was that? And somebody timidly
6 said, "It's mine." And he said, well -- the judge said,
7 "Well, it's mine now."

8 MR. SHERIDAN: That is a constant concern for all of
9 us lawyers, Your Honor.

10 THE COURT: All right. Proceed.

11 MR. SHERIDAN: Thanks, Judge. And that's all by my
12 associate that got me in trouble. So I feel bad. Okay.
13 And I hope he does.

14 So plaintiff offers Exhibit 89.

15 THE COURT: I've admitted that.

16 MR. SHERIDAN: Okay. Thanks. I was shaken there
17 for a minute.

18 Q. (By Mr. Sheridan) So let's put it up on the screen. And why
19 don't you explain to the jury what this is and what the effect
20 was.

21 A. Basically Bill Cleland that was being assigned Jack Nannery's
22 old position as lead man.

23 Q. All right. And where was Jack Nannery going?

24 A. I don't recall. I suspect that he may have been disciplined
25 and put on the beach. I can't verify that.

1 Q. That was the one-week suspension?

2 A. Correct.

3 Q. When he come back, where did he come back to?

4 A. Journeyman position.

5 Q. All right. Where?

6 A. Carpenter shop.

7 Q. So that was basically consistency with his proposal. His
8 proposed discipline, right? Chaussee left, he went up.

9 A. I don't think he mentioned anything about being put on the
10 beach for a week.

11 Q. Agreed. But what about location wise? Is this consistent
12 with his proposal?

13 A. Well, he was busted from lead man and he came back as a
14 journeyman. That's the only place he would go.

15 Q. Exhibit 95 is already admitted. Let's take a look at that.
16 All right. Do you have that in front of you?

17 A. Yes, sir, I do.

18 Q. And this is basically one of the drafts of the discipline
19 letters that was ultimately sent to Mr. Chaussee, right?

20 A. Ultimately, yes.

21 Q. All right. Why don't you take a look at the -- the section
22 marked "confidential" on the second page and tell me if this
23 is something you drafted.

24 A. I had nothing to do with this document at all.

25 Q. Do you know who drafted it?

1 A. I do not.

2 Q. All right. Let's go to the -- let's go the to the page that
3 says considering -- "Considering all the above negative
4 behavior, the following code of conduct violations are
5 alleged." It's on the last page. And it lists
6 insubordination. Did you discuss the claim -- charge of
7 insubordination for Mr. Chaussee with anyone?

8 A. I did.

9 Q. And who did you talk to about that?

10 A. Paul Brodeur.

11 Q. All right. And that was your idea, wasn't it?

12 A. What's that?

13 Q. Insubordination as a charge.

14 A. Yes.

15 Q. All right. And the idea that -- the idea of threats of act of
16 violence, that was your idea too?

17 A. Repeat that please.

18 Q. Yeah. If you look under "insubordination," there's a red line
19 there that says "threats of acts of violence." Can you make
20 that out? It might be easier to see on the screen than on the
21 page itself.

22 A. It's been lined out.

23 Q. Yeah. So if you look up on the screen it's pretty big. See
24 that?

25 A. Yes.

1 Q. Was that your idea as a charge too?

2 A. No. That was HR.

3 Q. And that would have been Beddo?

4 A. Yeah. Probably HR or AG.

5 Q. And how about discourteous to others, that was your idea too?

6 A. Yes.

7 Q. And poor work performance, was that your idea too?

8 A. Yes.

9 Q. All right. And it turned out -- would you turn to page 109.

10 Would you turn to page 109, please. That's also admitted.

11 THE COURT: When you say "page 109," you mean

12 Exhibit 109?

13 MR. SHERIDAN: Am I saying that? Yes. It's

14 exhibit. Thanks, Judge.

15 Q. (By Mr. Sheridan) All right. This final version, did you have
16 input into the final charges?

17 A. I did not.

18 Q. Okay. Looking at the charge on the second page, it says

19 "Insubordination. Your failure to keep investigatory
20 interview confidential."

21 What was it that Mr. -- Mr. Chaussee allegedly did wrong?

22 A. This is when Jackie Beddo and I were doing the interviews at
23 -- for the carpenter shop at Eagle Harbor. Each person
24 interviewed, we told them that the interview would be
25 confidential.

1 Q. Right.

2 A. And we told that to Steve. I think Steve was the first one
3 interviewed, and basically when at a later date Don Gillespie
4 came up for his interview and he brought a bunch of paperwork
5 up pertaining to the questions that we asked during the
6 interviews.

7 Q. Okay. What did that tell you?

8 A. That told us that Steve and Don had a conversation about what
9 Steve's interview was about.

10 Q. Okay. And that was the charge, right?

11 A. That was one of them, yes.

12 Q. All right. And that charge, this whole process became part of
13 a union action, right? A union grievance.

14 A. Yes, sir.

15 Q. All right. And it's true, is it not, that the insubordination
16 charge was just dropped before arbitration.

17 A. That I don't know.

18 Q. But you testified at the arbitration, right?

19 A. Correct.

20 Q. And you talked about this.

21 A. I talked about a lot of things, yes.

22 Q. Including this.

23 A. Yes.

24 Q. All right. And then this charge of insubordination, it's
25 true, is it not, that Mr. -- that Mr. Nannery was provided

1 with the complete chart of everybody's answers to that
2 investigation?

3 A. That's hearsay. I don't know that for a fact.

4 Q. If he was, would you think that would be inappropriate?

5 A. I think it would be.

6 Q. As a matter of fact, wouldn't it engender a lot of hostility
7 since you've admitted he is an intimidating fellow?

8 A. I agree.

9 Q. And let's see. Ms. Beddo, would she have authority to release
10 such a document to him if you know?

11 A. I don't know her procedure over there in HR.

12 Q. Okay.

13 THE COURT: Counsel, I think we're going to wrap it
14 up for the evening.

15 MR. SHERIDAN: Okay.

16 THE COURT: So we're going to stop testimony for
17 right now.

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1 March 18, 2015

2 (Jury enters.)

3 THE COURT: Please be seated.

4 Good morning everybody. Ladies and gentlemen of the
5 jury, I understand you were here in plenty of time raring
6 to go. We actually started two and a half minutes early
7 because you were standing in the hallway and looked like
8 you were ready to come in. So we're going to press on.
9 We're still in the direct examination of Mr. Day.

10 Please continue that, Mr. Sheridan.

11 MR. SHERIDAN: Thanks, Your Honor.

12 Q. (By Mr. Sheridan) All right. Mr. Day, when we left towards
13 the end of the day yesterday you had just been testifying
14 about whether you knew that the chart that was -- that had the
15 names and interview questions from the investigation that you
16 and Ms. Beddo did, whether that had been given to Mr. Nannery,
17 and you said that that was hearsay and you didn't know, right?

18 A. That's correct.

19 Q. Okay. But in fact, you did know, did you not?

20 A. I did not.

21 Q. Okay. I'm going to show you Exhibit 91 which has been marked
22 for identification and ask you if this is an e-mail with your
23 name on it.

24 A. It is.

25 Q. All right. And this is an e-mail string between Mr. Gillespie

1 and Ms. Beddo, right?

2 A. That's correct.

3 Q. And she basically -- and you were copied on it, correct?

4 A. Yes, sir.

5 Q. All right.

6 MR. SHERIDAN: Plaintiff offers Exhibit 91.

7 THE CLERK: It's been admitted.

8 Q. (By Mr. Sheridan) All right. Let's put that up on the screen.

9 All right. And so this begins with an e-mail from Don
10 Gillespie to Ms. Beddo indicating that he was informed that
11 responses to the questions given during the investigation were
12 given to Mr. Nannery, and go up to the next one if you would.
13 All right. And she says, "Thanks for the inquiry. Let me
14 check." And up to the next. And then she says -- several
15 days later he writes to her again and asks if she's found out
16 anything, and then let's go to the top.

17 All right. This is the one where you were copied. Do you
18 see your name on that?

19 A. Yes, sir, I do.

20 Q. And she says in the second paragraph, "Jack was supplied with
21 a copy of the spreadsheet containing information obtained
22 during the interview. The spreadsheet contains questions
23 asked at the interview, carpenter shop employee names and
24 answers, mostly yes or no."

25 So in fact that was produced to Mr. Nannery on or about

1 July 27, 2009, right?

2 A. Yes. I didn't realize that was.

3 Q. But you were copied on it so you knew it at the time, right?

4 A. At the time, yes, sir.

5 Q. And it's fair to say you did nothing about that, right?

6 A. No.

7 Q. You're agreeing with me you did nothing.

8 A. Yes.

9 Q. Okay. All right. Let's look at Exhibit 109, which is also
10 admitted. All right. And this is the September 1st, 2009
11 letter notifying Mr. Chaussee that he's being demoted, right?

12 A. Yes, sir.

13 Q. All right. And in this letter, this basically outlines what
14 the alleged things that he did wrong were, correct?

15 A. Correct.

16 Q. All right. And this is actually the final product. We saw
17 some drafts yesterday, but this is the one that actually went
18 out, right?

19 A. Correct.

20 Q. Let's take a look at the charge.

21 So Ashley, if you'll take us to the charge.

22 All right. And that's your -- the first one is rule one,
23 insubordination, your failure to keep the investigatory
24 interview confidential, right?

25 A. Yes.

1 Q. All right. And that -- that interview, it's true, is it not,
2 that when you went through and interviewed all the people in
3 the carpenter shop, you promised them that their information
4 would be kept confidential?

5 A. We asked them to keep the conversations confidential.

6 Q. So you didn't promise that you would keep it confidential; you
7 just didn't want them talking about it.

8 A. Correct.

9 Q. And so after the interviews were over you felt that it was
10 perfectly okay to release the confidential information?

11 A. I didn't release it.

12 Q. Well, would you agree with me that your organization released
13 it?

14 A. Correct.

15 Q. All right. All right. And it's true, is it not, that the
16 insubordination charge was later dropped?

17 A. I don't recall.

18 Q. All right. And this poor work performance is the second
19 thing, and it says that your job duties specify your
20 supervision and management of your workers and verifying the
21 accuracy of their timecards. Do you see that it says that,
22 "their timecards"?

23 A. Yes.

24 Q. All right. Let's look at attachment two if we can. And why
25 don't you turn to it if you would. So attachment two is a job

1 analysis, is it not?

2 A. Yes.

3 Q. And it's for a -- it says "job title, utilities supervisor."

4 What's that? Under "job title."

5 A. I have no idea what it means.

6 Q. Okay. And it says "trades floor person," right? And it talks
7 about physical demands are medium. Do you see that?

8 A. Yes.

9 Q. This is not a job description, is it?

10 A. It's a job analysis.

11 Q. This is something that that's utilized when one is trying to
12 accommodate a disabled person and evaluate whether they can do
13 the essential functions of the job, is it not?

14 A. It is.

15 Q. So you in -- in deciding what Mr. Chaussee had done wrong, you
16 did not attach a copy of his job description that sets out his
17 job duties; instead a job analysis that had a completely
18 different purpose was attached as evidence, right?

19 MR. DIAZ: Object to lack of foundation. It's
20 assuming that Mr. Day attached anything to this letter
21 which he's already testified to he had no responsibility in
22 preparing or authoring.

23 THE COURT: Okay. I don't want argument in front of
24 the jury right now.

25 MR. DIAZ: Thank you.

1 THE COURT: You've made an objection, which is that
2 this assumes facts that are not in evidence. I'm not sure
3 there's been a foundation laid for all that you just posed
4 in that question. Could you break that down.

5 MR. SHERIDAN: I'll re-ask, yeah.

6 Q. (By Mr. Sheridan) All right. So you helped analyze and you
7 worked with your team and Ms. Beddo to come up with the
8 charges against Mr. Chaussee, right?

9 A. Yes.

10 Q. All right. And so in doing that you came up with a charge
11 that he had failed somehow to do his job when it came to
12 monitoring time sheets, right?

13 A. Correct.

14 Q. All right. And you -- your evidence to support that is this
15 job analysis, right?

16 A. No, not always. There was a job description also.

17 Q. Job description.

18 A. Correct.

19 Q. Let's look at the job analysis if we can, and attachment to.
20 This is what you said you relied on in the letter, right? And
21 that's why it's attached.

22 A. No, I didn't.

23 Q. But it's your understanding that that was the agreement of the
24 management that this is what would be relied on.

25 A. I believe they also looked at the job description for foreman

1 also.

2 Q. Wouldn't you think it would be attached if they relied on it?

3 A. Yes.

4 Q. Okay. All right. So let's look at --

5 Ashley, if you'll pull up the section that talks about --
6 it's right above essential job function.

7 So looking at -- we're in job description now, okay? And
8 it says, "directs and instructs" -- you got to go up higher,
9 Ashley. Yeah. Keep going. Keep going. Keep going. Keep
10 going. Okay. We'll start there and then can come down.

11 Job description. And then coming down to the second page,
12 the next page. Go ahead. You see it says one of the job
13 descriptions at the last sentence is request purchase orders,
14 researches products and materials, uses computer, phones,
15 places order, complete timecards, checking for accuracy
16 clarity and completeness.

17 Did Mr. Chaussee complete timecards?

18 A. He audited the time sheets.

19 Q. Well, it doesn't say audited time sheets there.

20 A. Correct.

21 Q. So when you said he -- to audit a time sheet means that you
22 actually do sort of an examination into whether or not there's
23 truth behind the entries, right?

24 A. Correct.

25 Q. All right. And you say now that he needed to audit them, but

1 this as your evidence does not say he needed to audit them,
2 right?

3 A. Not in the job analysis, correct.

4 Q. Okay. And with regard to this issue, you actually
5 participated at a -- at an arbitration pertaining to this
6 issue, right?

7 A. Yes.

8 Q. And you got to testify about this issue, right?

9 A. Correct.

10 Q. And as a result, Mr. Chaussee was reinstated; is that right?

11 A. Yes.

12 Q. Okay. So let's take a look at -- and is there any other place
13 that Mr. Chaussee in this letter is notified of any other
14 evidence supporting the demotion decision regarding his need
15 to audit timecards?

16 A. What am I referring to, Counselor?

17 Q. Say again?

18 A. Which letter are you referring to?

19 Q. It's Exhibit 109, please.

20 A. They address time sheets under the determination.

21 Q. And you mean in Exhibit 109.

22 A. Correct.

23 Q. All right. Let's take a look. Tell us where you're looking.

24 A. Under "determination."

25 Q. What paragraph?

1 A. Second paragraph.

2 Q. All right. And it says ...

3 A. It states that he would audit time sheets for accuracy.

4 Q. Well, so this is basically the decision by your boss, right?
5 Mr. Brodeur's decision, right?

6 A. Yes.

7 Q. But you would agree with me that even though he says that in
8 his determination, the evidence he provides as attachment two
9 doesn't say that.

10 A. Correct.

11 Q. Okay. And looking at this paragraph, it's the second
12 paragraph.

13 A. Under "determination," correct.

14 Q. Right. I'm going to start with the third line, middle of the
15 page right after the word "spreadsheet." He writes,
16 "Mr. Nannery took leave for 13 of 45 games leaving 32 days
17 where Mr. Nannery may have flexed his time but did not account
18 for it in his time sheet." You see that there?

19 A. Yes, I do.

20 Q. So that's 32 days, right? Not eleven hours, but 32 days,
21 correct?

22 A. Yes.

23 Q. All right. And so, I mean, in fact, you understood that his
24 actions were more serious than they were even found to be as a
25 result of the State auditor's report. Right?

1 A. No.

2 Q. Well, those 32 days were unaccounted for, right?

3 A. If you flexed your time correctly you can get 32 days with
4 minimum amount of time being abused.

5 Q. With no time being abused if you do it right, right?

6 A. Absolutely. They found under investigation that he had eleven
7 and a half hours of time.

8 Q. Meaning that they could prove using ferry tickets and mileage
9 charts eleven and a half hours, right?

10 A. Right.

11 Q. And this whole business about him being able to flex his time,
12 is it still your stance that it was okay for him to flex his
13 time in 2008?

14 A. Actually, at Eagle Harbor there, most of the flex time is run
15 at the shop level, and several shops flex their time. I don't
16 micromanage that far down, and it comes to an advantage for
17 management at times, and flex time is done right, you don't
18 abuse time.

19 Q. Well, let's look at Exhibit 124. And this is a document you
20 generated, isn't it?

21 A. Correct.

22 Q. And it's dated December 11th, 2009, correct?

23 A. Yes.

24 Q. And this is a document that you created in the usual course of
25 business and distributed to work force.

1 A. Yes.

2 Q. All right.

3 MR. SHERIDAN: Plaintiff offers Exhibit 124.

4 MR. DIAZ: No objection.

5 THE COURT: Exhibit 124 is admitted.

6 (Plaintiff's Exhibit No. 124 is admitted.)

7 Q. (By Mr. Sheridan) And this is basically your direction
8 regarding flex time to the work force, right?

9 A. Yes.

10 Q. Let's look at the first paragraph, Ashley. All right. It
11 says -- a little higher up, please. No. Other direction.

12 It says per the 2009 collective bargaining agreement, the
13 State and metal trade unions, et cetera, states, "When flex
14 time's adopted at the option of the employee and concurrence
15 of management, the regular day shall be 6:15, no later than
16 6:45, and be an eight and a one-half hour day."

17 That was -- that was the rule, right?

18 A. I changed the rule, yes.

19 Q. You changed it from what?

20 A. They had flex time agreed to by unions where part of the crew
21 can start at 6:15 and part of em start at 7 clock with the
22 agreement that the shops could evenly split the work force
23 between 6:15 and 3:30 we would agree to flexing the time. It
24 got to the point later on where almost everybody was starting
25 at 6:15 and only one or two people starting at seven so the

1 work force was dimensioned -- diminished totally by the time
2 the first crew had left. So in order to bring it back into
3 alignment, I said everybody starts back at the same time.
4 Which the unions rebuffed and I had to go back to the 6:15
5 again.

6 Q. But in fact, Mr. Nannery after he served his one week off, he
7 continued to flex time, right?

8 A. Just during baseball season.

9 Q. And he got in trouble again for again misrepresenting his
10 time, right?

11 A. In 2009?

12 Q. In 2010.

13 A. Not that I'm aware of.

14 Q. You didn't know that? Did you know if he was fired?

15 A. He retired.

16 Q. Did you know if he was threatened with firing?

17 A. I think he was.

18 Q. Okay. And that was because he did the same thing again, right?

19 A. I don't think so.

20 Q. Do you think he was taking sick leave and improperly taking
21 sick leave for baseball?

22 A. I can't prove that.

23 Q. Well, is that what you understand?

24 A. It's possible.

25 Q. You don't -- as you stand there as a manager can you tell us

1 whether that was the allegation by your company, the State?

2 A. I don't know.

3 Q. Okay. All right. Let's look at Exhibit 113. And tell me
4 when you're there.

5 A. I'm there.

6 Q. And this is basically a letter from Paul Brodeur, correct?

7 A. That's correct.

8 Q. And it's pertaining to the grievance that had been filed, and
9 it's dated, what, October 12th, 2009, right?

10 A. Correct.

11 Q. All right. And this -- this is a letter that basically
12 outlines the State's position regarding the grievance that's
13 in response to the discipline that was imposed on
14 Mr. Chaussee, right?

15 A. Yes.

16 MR. SHERIDAN: Plaintiff offers Exhibit 113.

17 MR. DIAZ: There is an objection, and we'd like to
18 have a sidebar.

19 THE COURT: I would.

20 Ladies and gentlemen, if you'll excuse us, please.

21 We're going to have a sidebar. I think you know how to
22 relax so do that, please.

23 (Side-bar conference held outside hearing of jury.)

24 THE COURT: All right. Ladies and gentlemen, we're
25 ready to continue. Thank you for relaxing and visiting.

1 Q. (By Mr. Sheridan) All right. Let me ask you this: Did
2 Mr. Chaussee attend a predisciplinary hearing?

3 A. I believe he did.

4 Q. All right. And were you present?

5 A. No, sir.

6 Q. And were you informed about what he said?

7 A. I don't believe I was.

8 Q. Well, let me ask you if you think this is a true statement:
9 Do you know whether Chaussee kept a vacation calendar in the
10 shop?

11 A. Yes, he did.

12 Q. Was it your view that it was his responsibility when signing
13 time sheets to check the calendar against the time sheets that
14 he was signing to make sure they were -- they accurately
15 depicted the employee's work schedule?

16 A. I would think so, yes.

17 Q. Okay. So do you know if that was the basis for the demotion
18 that he didn't check the calendar?

19 A. I do not.

20 Q. All right. And would you agree that the basis for the
21 demotion was what was contained in the demotion letter?

22 A. Can you rephrase that, please.

23 Q. Sure. We've been talking about the demotion letter. We went
24 through the attachments, right?

25 A. Yes.

1 Q. Would you agree with me that the basis for the demotion is
2 outlined in the demotion letter and there are no other issues
3 that were considered besides what was in the demotion letter?

4 A. I think the foreman's issues were also considered.

5 Q. To the extent they were in the demotion letter, right?

6 A. Yes.

7 Q. So everything that had to do with the basis for demotion was
8 contained in that letter.

9 A. It should have been, yes.

10 Q. All right. Thanks. Let's take a look at Exhibit 134. All
11 right. And this is an e-mail from Jackie Beddo to you dated
12 May 11th, 2010, isn't it?

13 A. Correct.

14 Q. All right. And could you just give us a general understanding
15 of what this is about, without quoting it.

16 A. It appears that Joy Goldenberg, they were trying to build a
17 timeline it appears.

18 Q. Okay. And could you tell us who is Joy Goldenberg.

19 A. She works in the communications department.

20 Q. Of what organization?

21 A. Washington State Ferries.

22 Q. Okay. And is that -- does that mean she deals with the media?

23 A. Correct.

24 Q. All right. And so it appears that you were contacted to
25 clarify some facts regarding the Nannery and Chaussee issues?

1 A. Yes, I was.

2 Q. All right. And you in fact responded and gave your
3 understanding of the facts, right?

4 A. I think I did respond to some of her questions.

5 Q. Okay. And it's contained in this document, right?

6 A. There was more to this I believe.

7 Q. Okay. Well, it's -- it's what we got. So plaintiff's going
8 to offer Exhibit 134.

9 MR. DIAZ: No objection.

10 THE COURT: Exhibit 134 is admitted.

11 (Plaintiff's Exhibit No. 134 is admitted.)

12 Q. (By Mr. Sheridan) Okay. So she's writing to you and she says,
13 "Thanks for the walkthrough this morning." Was that because
14 you sort of gave her a thumbnail understanding of what the
15 chronology was?

16 A. Yes. Some of the questions she had, correct.

17 Q. And then she asked you to put -- take a look at that and
18 correct me if I'm wrong. And she writes as the first bullet,
19 "It appears that when Don and Steve came to you" -- about Jack
20 falsifying his time sheets -- "Jack was no longer working for
21 Steve since he was a lead in the terminal." And did you
22 answer that question?

23 A. Yeah. She still worked for Steve.

24 Q. Let's go up to the top and see the answer. You say, "When Don
25 and Steve came to my office to discuss the falsifying of

1 Nannery time sheets, Nannery was still working for Steve as a
2 terminal lead person." That's what you wrote, right?

3 A. Yes.

4 Q. And then she asked what spurred the Washington State Ferry
5 parallel investigation, and you responded the parallel
6 investigation was due to the original whistleblower
7 information which raised concerns on the foreman's performance
8 in the particular shop, work assignments, time sheet auditing,
9 attitudes towards others, et cetera, right?

10 A. Correct.

11 Q. And so what you're telling her here is you're telling her two
12 things, right? You're agreeing that Don and Steve, that's Don
13 Gillespie and Steve Chaussee, came to your office to discuss
14 the falsifying of Nannery's time sheets. That's the March
15 2008 timeframe you're talking about, right?

16 A. They came talking about playing baseball, correct, or coaching
17 baseball.

18 Q. All right. And then when you talking about the parallel
19 investigation, you're saying that it was due to the original
20 whistleblower information, and then you're saying which raised
21 concerns on the foreman's performance of this particular shop.
22 And you're talking here about Chaussee, right?

23 A. Yes, sir.

24 Q. All right. And so it's -- you are telling her that after you
25 read the report of Nannery's misconduct, that's what made you

1 think we need to do another investigation, right?

2 A. No.

3 Q. Please explain.

4 A. Paul Brodeur directed us to run a parallel investigation after
5 we got the results from the SAO office.

6 Q. All right. And that's your direct report. I mean, you're his
7 direct report.

8 A. Correct.

9 Q. All right. Got it. And when you received that direction,
10 it's true, is it not, that from the outset Mr. Brodeur
11 instructed you to focus on what -- and did Chaussee do
12 anything wrong?

13 A. Actually, he told us to look at everything that SAO provided
14 and look at the activities of the shop and Eagle Harbor total.

15 Q. Okay. Well, Chaussee was specifically discussed by
16 Mr. Brodeur with you, correct?

17 A. Yes.

18 Q. Okay. He wanted you to see if Chaussee did anything wrong in
19 not properly documenting, right?

20 A. Not so much documenting. Did he do anything wrong. How was
21 his performance.

22 Q. All right. Let's look at Exhibit 140 if we can. And this is
23 an e-mail exchange between you and the Public Records Act
24 fellow, right?

25 A. Part of it, yes. It was Norman Dizon --

1 Q. Dizon is the public records guy?

2 A. Correct.

3 Q. And then who's Jean Baker?

4 A. She is now underneath David Mosely. She takes care of the
5 admin part of the Washington State Ferries.

6 Q. All right. And then you wrote -- you wrote -- basically this
7 has to do with Bob Orr and his investigation, right?

8 A. Correct.

9 Q. All right.

10 MR. SHERIDAN: Plaintiff offers Exhibit 140.

11 MR. DIAZ: Objection. Subject to an order.

12 Sidebar.

13 THE COURT: We need to have a sidebar about that.

14 Excuse us, ladies and gentlemen.

15 (Side-bar conference held outside hearing of jury.)

16 THE COURT: Ladies and gentlemen, I've indicated
17 that I will allow admission of this exhibit. However, I've
18 ordered that certain material be deleted, and I think
19 they're taking just a moment to do that.

20 MR. SHERIDAN: Yes. Thanks, Your Honor.

21 THE COURT: Again, if I delete material, you're not
22 to speculate about what that was or what it was about.

23 You want to go on to something else or you want to wait
24 until that's completed?

25 MR. SHERIDAN: I think she's got it.

1 THE COURT: All right.

2 MR. SHERIDAN: So again we offer Exhibit 140.

3 THE COURT: Well, with the --

4 MR. SHERIDAN: With the redaction as discussed.

5 THE COURT: With the redactions, I'll allow it if
6 that's properly redacted.

7 MR. DIAZ: Before it's published we would like to
8 see the document.

9 THE COURT: Okay.

10 MR. SHERIDAN: That's fine with us. Go ahead. Take
11 a look at the screen.

12 MR. DIAZ: Oh. Okay.

13 THE COURT: And I'll not look at it unless you have
14 concerns.

15 Ladies and gentlemen, while they are working on that, I
16 guess I'll give you another robe story. Judge Hewitt Henry
17 was a long-time judge here in Superior Court. He's passed
18 on, but I'm told that he was once assigned to be a visiting
19 judge in another county. Superior Court judges often have
20 to go to other counties to hear matters as visiting judges.
21 In any event, I'm not sure what county that was, but in the
22 courtroom where he was presiding there was a standing pit.
23 And a standing pit is a place for a judge if they want to
24 stand up to step down into that pit so they won't be so far
25 above the bench. You can probably see this coming. He

1 didn't think much about it until he rolled his chair over
2 and two of the wheels of his chair fell off into that pit.
3 I'm told that his robe was already wrapped up in those
4 wheels, and so it jerked his head over to the side and he
5 couldn't do anything, couldn't flail his arms, couldn't do
6 anything except say "Somebody get me out of here." And so
7 I'm told that a couple of burly bailiffs went over and
8 lifted Judge Henry out of that standing pit. And so the
9 punch line for all that is I know that was a pitiful story.

10 But judges and robes sometimes bring about situations
11 that might have a little humor. Perhaps I'll have time to
12 tell you some other matters. We'll see how that all works
13 out as we move along.

14 Are we ready to go?

15 MR. SHERIDAN: Yes. Good story.

16 Q. (By Mr. Sheridan) All right. It's admitted?

17 THE COURT: Yes. If everybody's agreed on the
18 redaction that I talked about.

19 MR. SHERIDAN: Yeah.

20 THE COURT: Okay.

21 (Plaintiff's Exhibit No. 140 is admitted.)

22 Q. (By Mr. Sheridan) Okay. So this is an e-mail that you sent on
23 May 17th, 2010 to Ms. Jean Baker and Norman Dizon and others,
24 right?

25 A. Correct.

1 Q. All right. And so in this letter -- in this e-mail you
2 basically confirm that there are no records of Bob Orr's
3 investigation of Mr. Nannery, right?

4 A. He just gave me a verbal that he didn't find Jack Nannery up
5 there.

6 Q. All right. And nobody asked you why it was that you didn't
7 document your alleged investigation by Mr. Orr, right?

8 A. Correct.

9 Q. Your management never questioned why it wasn't documented.

10 A. They did not.

11 Q. All right. Let's take a look at Exhibit 143. And this is an
12 e-mail string about the same time, May 20th, 2010.

13 A. Correct.

14 Q. All right. And I see there's a reference that this -- that
15 we'll address before admission. But looking up towards the
16 top of the e-mail string, and let's start with Steve Reemeth
17 (phonetic) to Mr. Brodeur and CC Vern Day. Could you tell us
18 who's Steve Reemeth.

19 A. I don't know what his title is.

20 Q. Okay. He works -- he basically works at the governor's
21 office, doesn't he?

22 A. I believe -- in Olympia some place, yes.

23 Q. All right. And this is an e-mail exchange with you and -- I'm
24 sorry. An e-mail exchange regarding the issue of whether or
25 not -- or the actions taken regarding Mr. Nannery to be more

1 general.

2 A. Yes.

3 Q. All right. And so this would have been a document that you
4 would have received, right?

5 A. I got CCed on it, correct.

6 Q. All right. And it was created on or about May 20th, 2010,
7 correct?

8 A. Yes.

9 Q. And it's basically -- it's business related. It's
10 communications among management at the state, right?

11 A. Yes.

12 Q. All right.

13 MR. SHERIDAN: Your Honor, we want to offer this
14 into evidence, but note that there's a need for a change in
15 light of the Court's recent ruling. So we -- I propose
16 that we offer it, but only show the first page until
17 corrections can be made to the second page.

18 THE COURT: I'll see counsel at sidebar again.

19 Ladies and gentlemen, this is getting to be something
20 you're very familiar with. You do your thing and we'll do
21 ours. Excuse us for a minute.

22 (Side-bar conference held outside hearing of jury.)

23 THE COURT: All right. Ladies and gentlemen, if I
24 could have your attention again. We are going to proceed.
25 I am going to allow the admission of Exhibit 143. Counsel

1 and I have talked about redactions. However, I believe
2 that we don't have to make those redactions just this
3 moment because what's going to be shown doesn't require any
4 redactions.

5 MR. SHERIDAN: All right. Thanks, Judge.

6 Q. Let's go ahead and put that up on the screen. And so Mr. Day,
7 I'm going to talk to you about the -- the e-mail on the top.
8 That's the one. And this is from David Mosely, right?

9 A. Correct.

10 Q. And he's what, two levels up above you? In the chain of
11 command.

12 A. More than that.

13 Q. Tell me what the chain of command is again.

14 A. There's David Mosely, and underneath him they have two
15 assistants, one for the -- the operations, and one is for the
16 admin. Then come down, it's Paul Brodeur is the director.

17 Q. Right. Okay. So it's not Mosely and Brodeur?

18 A. In the operations side it is. There was no assistant there
19 for a long time. Jean Baker was the admin.

20 Q. All right. So Mr. Mosely's writing to Reemeth and Brodeur and
21 others. He's saying that another factor was the softness of
22 the SAO report. It was not a definitive fraud finding. For
23 example, they say things like "We question 11.5 hours were
24 improperly charged to the state over a year and we believe an
25 improper governmental action occurred." Not that we believe

1 fraud occurred. So it was mushy. Did you agree with that?

2 MR. DIAZ: I would object to a foundation.

3 THE COURT: I'm going to sustain the objection. I
4 don't believe that's a proper question. If you'll ask
5 another question.

6 MR. SHERIDAN: Sure.

7 Q. (By Mr. Sheridan) Well, let me ask you this in a general way:
8 As you sit here today, was it your view that the SAO
9 investigation was mushy?

10 A. Yes.

11 Q. Okay. And so you believed that because the SAO investigation
12 only said improper governmental action and didn't say fraud,
13 it wasn't enough, right?

14 A. I think the problem with the whole investigation, when you
15 have people signed out in the terminals, there's no way to
16 justify really when they start or when they quit. It's on the
17 honor system.

18 Q. Right. It's because so nobody could have known -- it's really
19 hard to prove that Nannery did anything wrong because he was
20 on the honor system, right?

21 A. I think their basis was they're checking the trip tickets and
22 the time he took the trips on the ferry boats.

23 Q. So what they could do is if they didn't have him taking a
24 ferry and having the trip tickets and having his mileage log,
25 it was really hard to prove how many times he actually engaged

1 in misconduct, right?

2 A. I don't know how they conducted their investigation. That's
3 my surmising of it.

4 Q. But you read the report, right?

5 A. I did.

6 Q. All right. And at the time you read the report you understood
7 what the evidence was even if you don't as you sit here today,
8 right?

9 A. Yes.

10 Q. But your sense was that the problem with this, this report,
11 you're agreeing with Mr. Mosely here that the -- the SAO
12 report was weak, right?

13 A. They determined that he had 35 to 45 hours of unauthorized
14 computer use and probably eleven and a half hours of time they
15 could not account for.

16 Q. All right. And even though they found improper governmental
17 action, they didn't find fraud, and you felt like if they're
18 not going to find fraud, what am I going to do, right?

19 A. No.

20 Q. You're disagreeing with me.

21 A. It's their investigation.

22 Q. And as a matter of fact, isn't it true that all the
23 investigators can find is whether there's improper
24 governmental action under the definition of improper
25 governmental action?

1 A. Correct.

2 Q. So they're not criminal investigators, right?

3 A. No.

4 Q. They're not trying to find out if they can prove criminal
5 fraud, are they? To your knowledge.

6 A. Not that I am aware of.

7 Q. But so on the one hand one of the reasons you only gave
8 Mr. Chaussee a week off and busted him once was because you
9 thought this was weak.

10 MR. DIAZ: Objection. Foundation.

11 THE COURT: I'll sustain that objection.

12 Q. (By Mr. Sheridan) Well, you did think the SAO investigation
13 was weak, didn't you?

14 A. You said Chaussee.

15 Q. Oh, thank you. Okay. So the reason that you only gave
16 Nannery or recommended that Nannery get a week off and busted
17 down one level is because you felt that the SAO investigation
18 was weak.

19 MR. DIAZ: Objection. Foundation.

20 THE COURT: I'm going to overrule that objection.

21 I'd allow the witness to answer.

22 A. I had no decision-making process on what he got for his -- for
23 his --

24 Q. (By Mr. Sheridan) But there's already evidence in the record
25 about how you recommended it.

1 A. I recommended discipline, but I didn't say what the discipline
2 was.

3 Q. But having said that, and having admitted just now that it was
4 the honor system, you -- you also recommended that
5 Mr. Chaussee be busted two levels for not monitoring
6 Mr. Nannery properly, right?

7 A. No.

8 Q. Well, you didn't recommend that he be busted down two levels?

9 A. I did not.

10 Q. Did you recommend one level?

11 A. No, sir.

12 Q. Well whose idea was it to bust him two levels?

13 A. That was between my boss Paul Brodeur and the SAO. Actually,
14 it was the Attorney General's Office.

15 Q. So who at the Attorney General's Office was involved in that
16 decision?

17 A. Mr. Pelton is one of the people I believe. I wasn't privy to
18 that conversation.

19 Q. Well, Mr. Pelton only provides legal advice, right? He
20 doesn't make administrative decisions.

21 A. I have no idea.

22 Q. Well, have you ever gotten legal advice from a lawyer at the
23 State?

24 A. I have not.

25 Q. Okay. Well, so your boss decided to bust him down two levels,

1 and your boss decided to only give Nannery a week off and a
2 one-level bust, right?

3 A. Correct.

4 Q. And nobody focussed on whether you did anything wrong. Is
5 that true?

6 A. Not that I'm aware of.

7 Q. You were never investigated for having told Mr. Nannery --
8 Mr. Chaussee that you would take care of it, that you had
9 resources and you would investigate. Nobody said you fell
10 short, did they?

11 A. No, sir.

12 Q. As a matter of fact, your -- it wasn't that you were the one
13 who made the decision to -- you were the one who did the
14 investigation finding that Mr. Chaussee fell short, right?

15 A. One of the people.

16 Q. Okay. You and Ms. Beddo. Got it. All right.

17 Let's take a look at Exhibit 47, please.

18 A. 147?

19 Q. Yes, please.

20 It's true, is it not, that after Mr. Nannery was demoted,
21 his pay was not reduced?

22 A. That's correct.

23 Q. That went on for like a year until somebody at the higher
24 organization discovered that, right?

25 A. Yes, sir.

1 Q. So after he was supposedly being punished by being demoted,
2 it's true, is it not, that typically if you're demoted, you
3 lose money?

4 A. That's correct.

5 Q. But he was allowed to keep his money, correct?

6 A. For a time being, that's correct.

7 Q. All right. And who's David Neils if you know?

8 A. HR director. He's actually supervisor for the HR department.

9 Q. So he's with the Department of Transportation, not with
10 Ferries, right?

11 A. Correct.

12 Q. All right. And it's true, is it not, that what happened was
13 the higher level folks at the Department of Transportation got
14 wind that Nannery was still getting paid full, right?

15 MR. DIAZ: Objection. Foundation.

16 THE COURT: Sustain that objection. Ask a different
17 question.

18 MR. SHERIDAN: Sure.

19 Q. (By Mr. Sheridan) Well, do you have knowledge whether the --
20 the Department of Transportation-level human resources
21 intervened to stop the overpayment to Mr. Nannery?

22 A. I don't know where it started.

23 Q. Okay. Well, on Exhibit -- you received Exhibit 147, did you
24 not?

25 A. 147. Yes, I did.

1 Q. And this is a letter that was sent by David Neils to
2 Mr. Nannery on or about May 25th, 2010, right?

3 A. Yes.

4 Q. And it's a document that you received in the usual course of
5 business, right?

6 A. Correct.

7 MR. SHERIDAN: Plaintiff offers Exhibit 147.

8 MR. DIAZ: No objection.

9 THE COURT: Exhibit 147 is admitted.

10 (Plaintiff's Exhibit No. 147 is admitted.)

11 Q. (By Mr. Sheridan) All right. And so Mr. Neils is writing to
12 Mr. Nannery saying that you got this letter of discipline on
13 July 20th, 2009 saying that you were suspended and being
14 demoted. Then he writes, "You were served your suspension and
15 you were demoted from your lead position. Your rate of pay"
16 it says "was inadvertently left unchanged instead of being
17 reduced."

18 And when you reduce somebody in position, it's the local
19 human resources organization that actually fills out the
20 paperwork, is it not?

21 A. I'm not sure.

22 Q. All right. Well, you would typically sign off on something
23 saying a guy's gotten reduced in position, right?

24 A. No.

25 Q. Who does?

1 A. It's probably a function of admin.

2 Q. And admin would be Ms.?

3 A. Probably Jean Baker's group.

4 Q. And who's that?

5 A. She's in charge of admin.

6 Q. And admin at the state level or admin at the local level?

7 A. Local level.

8 Q. So Ms. Baker you're saying is the person who probably did it.

9 A. She is over the budget, correct.

10 Q. And Ms. Beddo, she has nothing to do with payroll you're
11 saying, right?

12 A. She's in HR. I don't believe she would have.

13 Q. Okay. And let's look at Exhibit 156.

14 MR. SHERIDAN: Can we have one moment, Your Honor?

15 THE COURT: Yes.

16 MR. SHERIDAN: All right. That's all we have.

17 Thanks.

18 THE COURT: All right. Cross-examination.

19 MR. DIAZ: If it please the Court, if I may have a
20 moment.

21 THE COURT: Sure.

22 MR. DIAZ: To get everything in front of me.

23 THE COURT: All right. Ladies and gentlemen, I'll
24 tell another story while I'm giving him a little time.

25 You've had to go through several sidebars today, and I do

1 appreciate your patience. I've explained to you that
2 that's the more efficient way. If I had to send you out of
3 the room, it would take longer.

4 Well, there was a trial some time ago that I was
5 conducting in which I had to send jurors out a number of
6 times in a row. And I could see that some of them were a
7 little upset about having to leave and come back in, and so
8 I was trying to soothe them, and I said, "I hope you don't
9 feel like yo-yos." My thinking was, you know, a yo-yo goes
10 down and comes up and they were going out and coming in.
11 And I was about to say that's just part of how things work.
12 But I don't think that I said that. In any event, I was
13 excusing them again, and as they were walking out, one of
14 the male jurors said loudly enough that everybody in the
15 courtroom heard him, he said, "I don't think it's us that's
16 the yo-yo." And so obviously he was a little upset.

17 I don't want you to be upset. I want us to each do what
18 we need to do to get through this trial, and if you'll just
19 bear with us, we would appreciate that.

20 Mr. Diaz, are you ready to go?

21 MR. SHERIDAN: If it please the Court, ladies and
22 gentlemen.

23 CROSS-EXAMINATION

24 BY MR. DIAZ:

25 Q. Mr. Day, we've spent a couple hours having some testimony over

1 the course of the past two days, and what I'd like to start
2 off with is first we've talked about the location where you
3 were working at, Eagle Harbor, and also the fact that you were
4 senior port engineer. But we really don't know anything about
5 the facility at Eagle Harbor. Could you just advise the
6 jurors what is at Eagle Harbor.

7 A. Okay. Eagle Harbor is a maintenance facility over on
8 Bainbridge Island, and we have nine shops over there. They're
9 all different types of crafts. We do repairs on Washington
10 State ferries when they come in to lay up, emergency repairs
11 when they break down. We're on call 24/7, 365. We also do
12 repairs on all the terminals. Take anywheres from carpentry
13 work like we're talking about the carpentry shop right now to
14 plumbing, pipe fitting, welding, electrical. Anything that
15 could possibly break down, we respond to those type of needs.

16 Q. And how many employees at the time of your retirement -- and I
17 believe you had said it was May 31st of 2013. Do you know how
18 many employees were working at and out of the Eagle Harbor
19 terminals?

20 A. We usually run around 115 to 120 individuals.

21 Q. And you had testified just a moment ago regarding nine shops.
22 Can you tell us what are those specific nine shops if you
23 know.

24 A. Okay. There's weld shop, shore gang. We have the lock shop,
25 the insulation shop, electrical shop, pipe shop, sheet metal

1 shop, carpenter shop and machine shop. Nine.

2 Q. And at one point in time was the lock shop part of the
3 carpentry shop?

4 A. That's correct. They're still in the same union, but now it's
5 a separate shop with its own foreman, but for a long time it
6 was part of the carpenter shop but in a separate location.

7 Q. Now, as far as the nine shops, can you advise the jurors how
8 many of those shops have foreman within the shops.

9 A. When I left, every shop had a foreman.

10 Q. And that would be a foreman for each of the specific shops?

11 A. Correct.

12 Q. And then we've heard some testimony about a general foreman.
13 During the time -- and let's try to focus on the 2008 to the
14 2009 time period if you would, please. Were there any general
15 foremans that were a step above the shop foremans?

16 A. Correct. There are two general foremans at Eagle Harbor. One
17 general foreman has terminals. The other general foreman has
18 vessels.

19 Q. Can you again just explain to the jurors the terminology. And
20 one was you talked about terminals and the other vessels. Can
21 you explain what you mean by that.

22 A. Terminals is when you go down to the dock. There's a terminal
23 there with terminal people. They take your money. They give
24 you tickets. They park your car, stage your cars. We usually
25 have two or three drive-on slips depending on how big the

1 terminal is. Basically buildings that we maintain, ticket
2 booths that we maintain.

3 For vessels, that's the ferries we have, all the way from
4 the big ones to the small ones, and we maintain those once a
5 year in the lay-up in Eagle Harbor, and we also do work
6 sometimes when they're laid up in the commercial shipyard.
7 And then we are on call 24 seven. Every time there's a
8 breakdown, we are expected to respond to it. We have the best
9 experience in Puget Sound on what could be wrong with a
10 breakdown, and when we dispatch a crew out, or several -- we
11 could do several crews -- we expect them to have the right
12 equipment, tools, parts, to go out there and fix that vessel.
13 So to make the first run in the morning and get it back on
14 line.

15 Q. Do you have any knowledge as to the number of terminals that
16 are within the Washington State ferry system that the location
17 at Eagle Harbor would have been responsible for doing work at?

18 A. We're responsible from terminals from all the way down in
19 Tacoma, Point Defiance, all the way up to the San Juan
20 Islands.

21 Q. And do you know how many specific terminals there are?

22 A. I think there's 19.

23 Q. And how many vessels at the time of your retirement?

24 A. 23.

25 Q. Now, how would work be doled out if any, between these shops

1 that were located at Eagle Harbor in relationship to the needs
2 at terminals or vessels?

3 A. All work is generated through work requisitions. They come
4 from vessels, port engineers, terminal engineers. They're all
5 put into a database, and they basically get forwarded to the
6 general foremen. The general foreman screens all the work
7 requisitions, makes the determination what shops are needed to
8 fulfill that work requisition, and he in turn rolls out that
9 work requisition to the actual shop that's going to do the
10 work, and it could be a multiple shops. It could be three or
11 four different crafts involved with one repair.

12 Q. Now, again, I'm just a lay person so I don't know when you
13 talk about several different crafts what you mean. Can you
14 explain when you say three different crafts what you're
15 referring to.

16 A. Okay. A good example, let's say there's a crack developed in
17 the car deck of a Washington State ferry, and we can't get to
18 it because it's up in the overhead. So the vessel general
19 foreman he would call the carpenter shop. They in turn would
20 building staging. We'd call a shore gang. They would take
21 the paint off and prep the area, and the weld shop would
22 actually do the welding, make -- effect repairs. The shore
23 gang would in turn come back and prep and paint the damaged
24 area, and the carpenter shop would take the staging back down.
25 So there was three crafts in one repair.

1 Q. In the example you have just given, is there a need for these
2 crafts to communicate and to coordinate efforts in order to
3 complete performance of a request?

4 A. Coordination's the biggest part of having joint crafts work.
5 Because one craft may have to perform his function before the
6 other craft can do their work. So everything has to be
7 coordinated, and we're still running against a timeframe. For
8 a vessel, if it's at nighttime we're doing a repair, that
9 boat's going got to answer the bell first thing in the
10 morning. So coordination between crafts is very essential.

11 Q. And who would go about coordinating between the crafts if you
12 know, with the example you gave of the three -- the three
13 individual crafts you mentioned?

14 A. The general foreman would be the point of contact, but
15 basically the foremen have to talk with each other to make
16 sure they're all on the same page, so who's going to do what,
17 what do we need, what's the timeframe we're looking at, can we
18 get an early tie-up. So a lot of coordination to try to
19 effect repairs.

20 Q. Now, what's your understanding within each of these individual
21 shops that break down the -- I guess positions beyond or below
22 a foreman position.

23 A. The largest shops will usually have two lead men per shop.
24 One lead man has vessels, just like the general foreman, and
25 one lead man will have terminals. On a smaller shop we just

1 have one lead man does everything, vessels and terminals.

2 Q. And within carpentry shop, say, during the time period of 2008
3 to 2010, how many lead men, if you know, were there?

4 A. There were two in the carpenter shop and one in the lock shop.

5 Q. And in reference to the carpentry shop, you had given an
6 example of lead men is one terminal, one vessel. Is that how
7 it was -- the make-up was at Eagle Harbor at this time?

8 A. Yes.

9 Q. And do you recall in 2008 who the lead men were within the
10 carpentry shop?

11 A. 2008 it would be Jack Nannery and John Envelodson.

12 Q. And Jack Nannery, what was his position within the carpentry
13 shop?

14 A. Terminal lead.

15 Q. And Mr. Envelodson?

16 A. Vessels.

17 Q. And do you know how many other individuals worked as staff
18 within the carpentry shop in 2008 beyond the foremen and the
19 two lead people you've mentioned?

20 A. 13.

21 Q. And is there a classification as to those positions, the other
22 remaining 13 that would have been within the carpentry shop?

23 A. They were journeyman, and at one time we had an apprentice
24 assigned also temporarily.

25 Q. Now, when you reference the term journeyman, can you just

1 define, if you know, what a journeyman is.

2 A. Journeyman is a skilful employee that should have knowledge of
3 all aspects of the carpentry trade skilful.

4 Q. And the individuals in 2008 that were staff or employees of
5 the carpentry shop, you know whether or not they were members
6 of any union?

7 A. They were.

8 Q. And do you know the individuals that these individuals were
9 members of?

10 A. At that time it was the metal trades union.

11 Q. And do you have any knowledge whether or not the metal trades
12 union had any form of a contract with the Washington State
13 ferries or the Department of Transportation concerning the
14 workers that worked at Eagle Harbor?

15 A. They did.

16 Q. Now, you had testified yesterday in response to a question on
17 direct examination regarding that at some time in your tender
18 at Eagle Harbor that there had been State-provided vehicles or
19 trucks, and that they were taken away. Do you recall that
20 testimony?

21 A. I do.

22 Q. Can you just advise the jury what type of trucks that you were
23 referring to and when these were taken away.

24 A. When I was asked to go over to Eagle Harbor in 2005 there was
25 a -- there were many vehicles at Eagle Harbor. A lot of them

1 are used for going out to terminals, doing repairs, weld
2 trucks, pipe trucks. But there were a lot of vehicles that
3 were considered AR vehicles, which you can get from the DOT.
4 Those are vehicles that were turned back in for high mileage
5 by other state agencies, and the manager before me rented a
6 bunch of those old trucks, and they were brought over to Eagle
7 Harbor, and several people -- supervisory people using them as
8 commuting vehicles part time.

9 Q. And do you know when specifically these trucks were removed
10 from personal use?

11 A. One of the directions I received from my boss when I first
12 went to Eagle Harbor is to stop the use of all state vehicles
13 for commuter purposes.

14 Q. All right. But do you know which year that was?

15 A. 2005.

16 Q. Now, you had also testified yesterday in regards to the
17 hierarchy or the chain of command above your level. Who were
18 you a direct report to in your position there at Eagle Harbor?

19 A. Paul Brodeur.

20 Q. And do you recall what his actual classification or position
21 title was?

22 A. When I first went in 2005 he was not director. He came later.
23 John Christiansen was the acting director when I first went
24 over there until Paul Brodeur got the position as director.

25 Q. And do you recall which year Mr. Brodeur became the director?

1 A. I do not.

2 Q. Now, we've been discussing a State Auditor Office
3 investigation that began in 2008. Do you have any knowledge
4 whether Mr. Brodeur was the director in 2008?

5 A. He was.

6 Q. And we've heard the term "appointing authority." Do you
7 understand that term?

8 A. No, sir.

9 Q. Do you know whether Mr. Brodeur had the -- in his position the
10 authority to discipline workers who worked at Eagle Harbor?

11 A. Yes.

12 Q. And did you have the authority to discipline workers who
13 worked at Eagle Harbor?

14 A. I could give verbals out, yes, and written warnings.

15 Q. Okay. Can you elaborate what you do mean you can give verbals
16 out. What does that mean?

17 A. Basically in somebody was not towing the line, I can go up and
18 counsel the person, you know, say, you know, you need to get
19 your act together, things of that nature. Depending on what
20 the infraction was. R.J. Kelly, he was my second in command.
21 He can give verbal warnings. We can give written warnings
22 depending on the severity of the issue. But we're not allowed
23 to put anybody on the beach, take their pay away or fire em.
24 We just basically work within Eagle Harbor so we have some
25 authority. Even the foreman have authority to give written

1 and verbals at their level.

2 Q. Now, you use the term put someone "on the beach." I'm not
3 familiar with that term. Can you define it.

4 A. That's putting the person out of work for one week without pay.

5 Q. And did you have the power to do that?

6 A. I did not.

7 Q. That would have to go to someone above your level.

8 A. Paul Brodeur would be the first person that could do that.

9 Q. Now, we've had some discussion through direct examination of
10 yourself regarding the term "flex time." What is your
11 understanding, if you have one, of flex time?

12 A. Flex time is used probably by most shops at that level. It
13 can be done at the foreman's level. Some people work four
14 ten-hour days. Some people start at 6:30. Some people
15 basically can start at six depending on what the circumstances
16 are. I normally don't micromanage down that far. Example
17 with Jack Nannery, the reason he got flex time, he was
18 contributing to coaching juvenile kids at Kingston. I thought
19 it was a worthwhile thing, and my impression that he was
20 getting an hour of flex time to do that.

21 Q. And then I'm a little confused. What is flex time? Does that
22 mean we'll give you an hour free and you can leave?

23 A. No. Flex time is to the advantage of management and the
24 shops. A good example of flex time, when you're sending
25 people all the way up to Anacortes or San Juan Islands to do

1 the work, we can flex the time. We can put em on four ten-
2 hour days. That way it takes four hours to get there, and
3 basically you spend most of your time on the road so what we
4 try to do is work four tens. You get more hours out of the
5 day, and there's times when we'll actually put people up in
6 motels in order to work up in that area to get the work done.
7 A lot of shops start their lead men at 6:30. A good example
8 of why that's beneficial to management is I had mentioned
9 earlier about rolling work requisitions out from the general
10 foreman to the shops. That gives them a half hour to figure
11 out what crews they're going to need, where they're going to
12 go and what type of work it is. So seven o'clock when the
13 other group gets there ready to go to work, they have the work
14 assignments rather than sitting around for a half hour waiting
15 for the lead men to assign work.

16 Q. All right. I don't think we're quite connecting as to flex
17 time. Does that alter a standard work period, say, for an
18 example, the day starts at eight a.m. for most employees, and
19 it ends at five p.m. with an hour lunch break, so they work an
20 eight-hour shift. How would that relate if you're allowing
21 flex time?

22 A. So flex time they would instead of leaving at 3:30, they leave
23 at three o'clock. Start one half hour and leave one-half hour
24 early. They still put in their eight hours.

25 Q. The situation if an employee is flexing, they're still working

1 an eight-hour shift.

2 A. Absolutely.

3 Q. To earn their compensation.

4 A. Yes.

5 Q. Flex time -- in this situation you describe Mr. Nannery that
6 flex time was being allowed to coach youth baseball. Did that
7 mean that his hours were different or he worked less time?

8 A. His hours were different.

9 Q. It was your understanding that the flex time that Mr. Nannery
10 had been permitted did not allow him to go coach baseball on
11 state time?

12 MR. SHERIDAN: Objection. Leading.

13 THE COURT: I'll overrule that. You may answer.

14 A. That's correct.

15 Q. (By Mr. Diaz) Now, you're aware of the investigation that was
16 conducted by the State Auditor's Office concerning
17 Mr. Nannery, which began in 2008; is that correct?

18 A. Yes.

19 Q. And how did you gain any knowledge or awareness that an
20 investigation was being commenced?

21 A. When Larene showed up at the Eagle Harbor facility, the State
22 Auditor's Office inspector, Larene Barton.

23 Q. So someone from the State Auditor's Office appeared at your
24 location.

25 A. That's correct.

1 Q. And that was at Eagle Harbor.

2 A. Yes.

3 Q. And did you actually meet with this individual at Eagle Harbor?

4 A. Yes, I did.

5 Q. And upon meeting with this person were you advised concerning
6 the nature of this contact or this meeting?

7 A. Yes, I was.

8 Q. And what was your understanding, if any, of the nature of this
9 -- of this meeting?

10 A. Basically there was a whistleblower report received, SAO, and
11 they were going to look into Jack Nannery's functions at Eagle
12 Harbor, and they were going to confiscate his computer.

13 Q. And were you present during any confiscation of any work
14 computers at Eagle Harbor by this individual?

15 A. Yes. I actually escorted Larene down to the carpenter shop to
16 see if his computer was in the foreman's office.

17 Q. Now, I need to get what I would call a lay of the land. Can
18 you describe for us the location of the carpentry shop in
19 relationship to your office, your location.

20 A. Okay. I'm up on water side on second floor, and the carpenter
21 shop is down on shore side of the first floor adjacent to the
22 parking lot.

23 Q. Now, not having been there I need to have you give a further
24 description. So if I came to your location, is the carpentry
25 shop in a separate facility or building from your location?

1 A. It's in the same main building.

2 Q. And you said the carpentry shop is on the ground floor?

3 A. Ground floor, yeah, adjacent to the parking lot. It would be
4 on the north, northeast side.

5 Q. Are there any other shops within the same building which
6 contained your office?

7 A. Yes.

8 Q. And what other shops are in that building?

9 A. It's the electric shop, sheet metal shop, lock shop,
10 insulation shop, pipe shop and machine shop.

11 Q. And are there other shops located elsewhere at Eagle Harbor?

12 A. Yes. There's two satellite shops, the weld shop and the shore
13 gang shop.

14 Q. Do you have any idea of how large of a facility size-wise,
15 area-wise, that this Eagle Harbor facility is?

16 A. Not off the top of my head I do not.

17 Q. Now, when you -- when you accompanied Ms. Barlin, you said
18 that you went to confiscate a computer; is that correct?

19 A. That's correct.

20 Q. And where was the computer located?

21 A. It was in the foreman's office of the carpenter shop.

22 Q. And at the time who was the foreman of the carpentry shop?

23 A. Sheave Chaussee.

24 Q. And so where did you first meet with Ms. Barlin?

25 A. She met in my office. She came up to my staff aid, introduced

1 herself and she came into my office.

2 Q. And was there anyone else with her at that time?

3 A. No, sir.

4 Q. Was there any one in your office besides Ms. Barlin and
5 yourself when you met?

6 A. No.

7 Q. So walk us from your office then to the computer location.

8 THE COURT: Counsel, we're going to stop here to
9 take our morning recess.

10 Ladies and gentlemen, we have some things to do outside
11 your hearing regards to all the sidebars we had. So we'll
12 be at work for a while during the break. I anticipate the
13 break will be twenty minutes instead of 15. It might be a
14 little longer or a little shorter.

15 In any event, as you break, I need to remind you do not
16 discuss this case among yourselves. Don't share any notes
17 that you have with anyone else. I'll ask that the bailiff
18 go ahead and take the jury to the deliberation room at this
19 time.

20 Counsel, if you'll remain in session.

21 Mr. Day, can you step down if you'd like.

22 (Jury exits.)

23 THE COURT: You may be seated.

24 Counsel, I'm looking in my notes as to sidebars. I
25 believe we had at least three. And the first was in regard

1 to proposed Exhibit 113, and there was an objection by the
2 defense to that exhibit being admitted, and I indicated
3 that I would not admit it at this time unless Mr. Day
4 indicated that he had something to do with what was being
5 discussed in that. I was told that there is another
6 witness that would be more appropriate that is on schedule
7 to be called as a witness. In any event, I indicated that
8 there could be a question asked about whether or not
9 Mr. Day was involved in this. I don't think that question
10 was actually asked. I think you moved on.

11 Is there anything else I need to put on the record about
12 that sidebar?

13 MR. SHERIDAN: Just that it was -- the
14 representation by the defense was that Paul Brodeur was
15 going to be testifying and so I figured he's the author of
16 the document, I'll just use it then.

17 THE COURT: Okay. Another sidebar was in regard to
18 Exhibit 134, and that was a defense objection that the name
19 King 5 and the name of a reporter appeared on several
20 places in that document. There had previously been a order
21 *in limine* by the Court that said we were not going to be
22 getting into a King 5 investigation. I indicated that I
23 would allow the document to be admitted so long as
24 references to the reporter by name or to King 5 were
25 redacted or removed. I understood that that took place.

1 There was a short period of time when everybody was looking
2 at the plaintiff's computer, and later when that was shown
3 on the screen I believe those redactions had been made.

4 Finally, we had a hearing in regard to Exhibit 143, and
5 again, there was some reference to King 5. There was also
6 a reference to an attorney general's opinion about the
7 matter, and I ordered that those things be redacted. I'm
8 not sure that those redactions have been made to the
9 original document. I would indicate that counsel assured
10 me that that would happen before 143 where is presents
11 today the jury. I did allow its admission with the
12 redactions and the portion of that document that was put up
13 on it's screen by the plaintiff did not contain materials
14 that needed to be redacted.

15 Does anybody need to put anything on the record about
16 either of those other two sidebars that I've related to?

17 MR. SHERIDAN: With regard to -- is it 113?

18 THE COURT: 113 was not admitted. It's 134 and 143.

19 MR. SHERIDAN: With regard to 134, I thought 134 was
20 admitted. Oh. Okay. All right. Yeah. So that's right.
21 Your Honor, I didn't think that your ruling prohibited us
22 from talking about the fact that there was media coverage,
23 simply from getting into details about the King 5 report.
24 I think it was -- it was based on an objection to one of
25 our exhibits. So I've kind of feel like this has now been

1 broadened as though we're going to live in a vacuum and
2 pretend King 5 wasn't asking questions throughout this time
3 because frankly, that's some of the stuff that motivated in
4 our view action by the defendant over time. So I hope -- I
5 hope your ruling isn't -- isn't that strict and that it
6 really deals with what they moved for in their -- in their
7 briefing.

8 THE COURT: You can raise the issue. I've told you
9 that a motion *in limine* is interlocutory. My understanding
10 was we were not going to get into the facts regarding a
11 King 5 investigation. I don't know what media was involved
12 or what the relevance would be of the media being involved,
13 so you can raise that issue at an appropriate time.

14 MR. SHERIDAN: Okay. I guess what I would just ask
15 is that the Court reconsider whether this stuff needs to be
16 redacted because we've never -- I don't think the Court
17 ruled that we're pretending that there was no media
18 coverage. I think the Court ruled that we're not to be
19 getting into the King 5 investigation. So this seems like
20 it's overprotective and much beyond what the Court had
21 ruled. And we don't -- of course obviously we don't need
22 to deal with it now, but I would ask that we deal with it
23 before the end of trial.

24 THE COURT: I ruled based on what I understood at
25 the time. If you need clarification, you make a motion,

1 and I'll rule on that.

2 MR. SHERIDAN: It's a deal. Okay.

3 And then the other thing is on 143, I guess I should say
4 for the record again that -- that the -- so what we did in
5 order to accommodate the defendants and follow the Court's
6 ruling is when we presented this multipage e-mail to
7 Mr. Day we didn't go below the -- about the halfway mark
8 which begins thanks Paul fraud is a terminable offense
9 because within that little block it says is a statement it
10 appears that a lighter road was taken and the AGO, meaning
11 the Attorney General I've been told, said that it was
12 defensible. I just wanted to point out to the Court that
13 the "said it was defensible" has never been objected to on
14 the basis of attorney-client privilege, and that the
15 defense had -- in the joint statement they have noted their
16 objections to every piece of evidence we put in, but
17 they've never objected to this on -- on attorney-client
18 privilege grounds. So we were hearing this for the first
19 time with regard to this piece, and so we wound up having
20 to forego about the fraud is a terminable offense piece.
21 Additionally, again below it has the King 5 thing on it
22 too. So these little things are kind of creeping in at the
23 last minute in front of the jury that are being, we think,
24 raised for the first time. So that's what I wanted to say.

25 MR. DIAZ: If it please the Court --

1 THE COURT: You want to put something on the record?

2 MR. DIAZ: Yes, we would. Again, anything dealing
3 with Jack Nannery, and now we're into a new investigation
4 that was occurring in 2010, and we had objected and brought
5 motions *in limine* to restrict testimony and/or documentary
6 evidence regarding Mr. Nannery in response to or -- excuse
7 me -- based upon Evidence Rule 404(b) and also the other
8 405 depending on exactly what they're trying to get into as
9 far as accusing someone of a crime, discussion of crimes,
10 bad acts. And again, we've tried to narrow the scope of
11 this case to Mr. Chaussee and not Mr. Nannery. We
12 understand Mr. Nannery was the subject of a whistleblower
13 complaint and State Auditor Office investigation, in 2008
14 was disciplined for that conduct in 2009. Now we're here
15 trying to open up another wound and scratch at while we see
16 that people have mentioned that earlier findings of the
17 SAO, but the relevance, we do not believe there is any
18 relevance to whether Mr. Chaussee was demoted, which was
19 effective September 1st, 2009, and what happened with
20 Mr. Nannery is a whole separate issue. And so we just keep
21 broadening up the scope of this trial so we have to focus
22 on the bad acts of someone who's not a party or even --
23 well, not a party or subject of this actual lawsuit.

24 THE COURT: Okay, folks, I do my best to try to keep
25 up with where we're going. I have indicated that I want to

1 limit the issues to those that are specifically what
2 everyone understands, and I do not want to have a trial
3 within a trial as to other issues unless there is some
4 relevance. I think I've ruled *in limine* based upon my
5 understanding in several regards. If someone wants to
6 re-visit or make new objections, I'm not saying you can't
7 do that. I did say that I'd like you to give me advance
8 notice instead of doing it at a sidebar if it's something
9 we haven't talked about before. We'll just take this as it
10 comes. I've ruled based upon my understanding of where we
11 are in each of these matters that were raised by objection.
12 I'm not at this point going out into other areas. The
13 State has said we might object as to some other
14 information. If you feel that's appropriate, do so. The
15 plaintiff has indicated that you believe that some of these
16 areas are relevant. If you want to raise that issue, do
17 so.

18 Let me just take this opportunity to say that I'm always
19 concerned about time. A older, wiser judge told me when I
20 first became a judge you take any time period that an
21 attorney gives you and double it, and you might be
22 accurate. I'm not saying that that's true. However, it's
23 quite clear, Mr. Sheridan, that I was led to believe that
24 Mr. Day would be a witness yesterday. He started just
25 before noon, and you can't blame it on the

1 cross-examination that you took on direct examination up
2 through almost break time today. We are now started with
3 cross. I don't know how long this is going to go, but it
4 appears to me that your -- Mr. Sheridan, your original
5 estimate that you'd finish your case today is very
6 optimistic, and I doubt that that's going to happen. On
7 the other hand, as long as we're within the time period
8 that I've set forth to finish by Thursday, that's fine.
9 But I want everybody on notice that if I get concerned that
10 we're not moving along, we'll have a discussion about that.

11 So anything else I need to discuss before we take our
12 break?

13 MR. SHERIDAN: We don't have anything beyond that,
14 Your Honor.

15 MR. DIAZ: Not from the State.

16 THE COURT: Okay. Then we're going to be in break
17 as far as you're concerned for about twelve minutes. That
18 will be until about 10:43.

19 MR. SHERIDAN: All right. Thank you.

20 MR. DIAZ: Thank you.

21 (A recess was taken.)

22 (Jury enters.)

23 THE COURT: Please be seated.

24 Mr. Diaz, please continue your cross-examination.
25

1 MR. DIAZ: If it please the Court, ladies and
2 gentlemen.

3 Q. (By Mr. Diaz) Now, Mr. Day, when we took the morning recess we
4 were discussing you were accompanying a Ms. Barlin down to the
5 carpentry shop to go look for a computer. Whose computer were
6 you looking for?

7 A. Jack Nannery's computer.

8 Q. And where was Mr. Nannery's computer located at that time?

9 A. We weren't sure, but we went down to the carpenter shop
10 foreman's office because both lead men work in the same
11 office, and he has a standing desk within the foreman's
12 office.

13 Q. And when you say the foreman's office, who was the foremen of
14 the carpentry shop on that date?

15 A. Steve Chaussee.

16 Q. And how large of an office are where he referring to?

17 A. It's really quite small. Just room for three people.

18 Q. And did you find a computer that was there for the use of
19 Mr. Nannery?

20 A. Yes, we did.

21 Q. And was it located within the office?

22 A. It was in the foreman's office, correct.

23 Q. And once you were at that location, was there anyone present
24 in the foreman's office?

25 A. I don't remember.

1 Q. And once you were there, what did you do in regards to any
2 computers that were located?

3 A. Jack Nannery's computer, I unplugged it and closed it up and
4 turned it over to Larene Barlin.

5 Q. Can you describe for the jurors the type of computer that
6 you're referring to.

7 A. It was basically a laptop computer.

8 Q. And when you disconnected it, what did you have to do to
9 disconnect it?

10 A. The internet connection and the power.

11 Q. And then what did you do with it once it was disconnected?

12 A. I turned it over to Larene Barlin.

13 Q. Did Ms. Barlin, did she request anything further of you on
14 that date in regards to the computer or anything in regards to
15 Mr. Nannery?

16 A. I don't recall that day. I know I had to sign a form that she
17 did take the computer from our facility.

18 Q. And how long were you actually with Ms. Barlin on that date if
19 you recall?

20 A. Probably about 45 minutes.

21 Q. Do you recall anything further about your meeting with her on
22 that date?

23 A. I believe she said that she would be back at a later date to
24 continue the process.

25 Q. Now, we've had marked as Exhibit No. 249, which is a two-page

1 document that is part of what's been marked as Exhibit 171,
2 which has been marked but not offered, but 171, can you just
3 refresh everyone's memory what Exhibit 171.

4 A. That's the State Auditor's whistleblower investigative
5 package.

6 Q. And yesterday during direct examination several exhibits had
7 been admitted from -- documents contained within that
8 investigation file. I'd like to have you -- and I'm going to
9 hand you what's been marked as 249, and if you can look into
10 the notebook there are two page numbers that are indicated on
11 the exhibit. Are those located also within 171?

12 A. They are.

13 Q. Now, what has been marked as Exhibit 249, do you -- are you
14 mentioned within the document? Are you mentioned within --

15 A. Yes, I am.

16 Q. And 249 consists of two pages?

17 A. Yes.

18 Q. And does it indicate the nature of this document, what this
19 concerns?

20 A. Yes, it does, special investigation.

21 Q. And does it indicate on the first page the source, what it
22 concerned?

23 A. Could you rephrase that, please.

24 Q. If you look at the top of Exhibit 249, does it indicate a
25 source?

1 MR. SHERIDAN: Your Honor, just to speed this up we
2 have no objection to the admission of that document.

3 MR. DIAZ: We would offer 249 then.

4 THE COURT: All right Exhibit 249 will be admitted.
5 (Defense's Exhibit No. 249 is admitted.)

6 MR. DIAZ: Thank you, Your Honor.

7 Q. (By Mr. Diaz) 249, Mr. Day, is this regards your meeting with
8 Ms. Barlin on May 14th, 2008?

9 A. Yes.

10 Q. And during that meeting with Ms. Barlin did she request any
11 time records or time sheets of Mr. Nannery?

12 A. Yes, she did. She talked about the time sheets, correct.

13 Q. If you turn to page two of Exhibit 249, next to last
14 paragraph, would that refresh your memory in regards to any
15 conversations regarding time sheets?

16 A. She said she would be able to get those from the headquarters
17 office, the time sheets.

18 Q. All right. Did it say something more within that paragraph
19 regarding time sheets?

20 A. I showed her a copy of a time sheet, yes. And she asked for
21 the listing codes for the time sheets, and a copy of the union
22 contract.

23 Q. And did you offer to give her copies of Mr. Nannery's time
24 sheets?

25 A. I did.

1 Q. And did she accept that offer?

2 A. No, she said she could get those from the headquarters office.

3 Q. And when you testified yesterday on direct examination in
4 regards to the stack of papers which had been identified as
5 Exhibit 171, were there time sheets contained within that
6 exhibit?

7 A. Yes, there were.

8 Q. Now, Mr. Day, after meeting with Ms. Barlin and she now has a
9 laptop computer, did she take anything else with her from the
10 site on this meeting date?

11 A. I think I did provide her a copy of the union contract and the
12 time -- the time sheet codes.

13 Q. And what are time sheet codes?

14 A. They're when people document their time there's different
15 codes for different functions. One is for straight time,
16 overtime, penalty time, things of that nature. There's
17 several. There's two pages of codes for any particular action
18 that somebody would take working for Washington State Ferries.

19 Q. Now, in your position as senior port engineer, what were your
20 typical dealings with the forepersons in the individual shops?

21 A. I tried to attend foremen's meetings we have every week just
22 to keep up the pace. But one of my functions that I said I
23 would do when I took over the facility at Eagle Harbor that I
24 would visit each shop every day, check on people, check with
25 the foremen, make an appearance, and same with I usually try

1 to get on every vessel every day. Past practice the managers
2 never left their office. And I tried to keep the finger on
3 the pulse so to speak. If there's any issues at that level,
4 it's easier to talk to me down in their own area rather than
5 come up to the main office. So I tried to interface pretty
6 much on a daily basis with all the foremen and lead men as
7 well as with the journeymen.

8 Q. Now, as the senior port engineer, did you ever set any type of
9 expectations of personnel who would be employed or working at
10 the facility at Eagle Harbor?

11 A. Oh, absolutely.

12 Q. And did you have any expectations as to supervision that
13 foremans would be conducting of people that they were
14 supervising?

15 A. Absolutely.

16 Q. And what were those expectations?

17 A. Basically to treat people fairly, don't call people names,
18 keep a positive attitude, work with the people, check on
19 people. You know, I pretty much insisted there's work out on
20 vessels, they go out there and check on people's work, keep an
21 idea where they are at as far as progress, urge the foremen to
22 get out in the field, different terminals, to check on the
23 people working out there, and look at new work if needed be.
24 Basically be hands on, don't stay in the office all day.
25 Especially interface with all the other crafts. You got to be

1 able to coordinate the efforts on multiple craft jobs.

2 Q. Do you have any knowledge whether the foremen or forepersons
3 that were working at Eagle Harbor during again the time period
4 of 2008-2009, whether there was any expectation that they
5 would be involved in working with employee time sheets?

6 A. Yes.

7 Q. And what were those expectations?

8 A. Employees do their time usually about once a week. They
9 basically monitor time on a daily basis along with the lead
10 men, but they also have to audit time sheets once the
11 journeyman turn their time sheets in. Basically the lead men
12 will look at them and make sure they're correct, and then they
13 go to the foremen's level, and he will also audit the time
14 sheets, and from that step they go up to the general foreman.
15 They again will verify what the foreman has signed by
16 initialling it, and it basically comes to management where
17 R.J. and myself will audit them also.

18 Q. Now, you're using the term "audit." Can you define your
19 meaning of the term "audit."

20 A. At my level I can't verify that this work requisition goes to
21 that many hours. I don't track hours. But we verify the
22 accuracy of the codes and the time. When it first started
23 there, all the time hours are added up manually. Surprised my
24 people can't add correctly. Make sure the time is correct.
25 We'd make sure the codes are correct and make sure that

1 they're ready to be submitted to payroll.

2 Q. Now, you've used a few more terms again. Specifically when
3 you say codes are correct, what's the purpose of checking a
4 code?

5 A. Okay. Basically a code is if you work straight time is one
6 code. Overtime is another code, call-back time, sick leave.
7 There's several codes for any type of function. Dirty pay is
8 a type of code. If you work with insulation is a type of
9 code. If you work with asbestos, that's a type of code. So
10 there's many codes with the type of job function.

11 Q. And the time sheets that we're first referring to, when
12 they're being completed or information's being inputted on to
13 the time sheet, where are the time sheets kept?

14 A. They're kept down in each individual shop.

15 Q. When you say in each individual shop, is there a location
16 within the shop you would find time sheets?

17 A. Every shop has their own method of keeping track of time when
18 I first got there, and I think in 2008 or so we started
19 looking at converting things to computers electronically, make
20 it a little simpler so hopefully get rid of the handwritten
21 time sheets and everything's inputted into a computer, and the
22 computer was set up so the program would automatically add
23 their time. Basically it made it simpler, and much faster
24 time to create the time sheets, get ready for audit.

25 Q. Now, back in 2008 was there a location on a time sheet for the

1 person's name, an employee's name and also signature lines?

2 A. Correct.

3 Q. And was it a requirement of the employee to --

4 MR. SHERIDAN: Objection. Leading.

5 THE COURT: I'll overrule that. You may ask the
6 question.

7 Q. (By Mr. Diaz) Was there a line for signatures of employees?

8 A. Correct.

9 Q. And prior to a time sheet being submitted after completion,
10 was it to your knowledge signed by an employee?

11 A. Not always.

12 Q. Was there any other signature lines on a time sheet?

13 A. There was for the foreman also.

14 Q. And when you say the foreman, which foreman are you alluding
15 to?

16 A. Each shop foreman has to verify the signature of time that the
17 individual journeyman signed.

18 Q. And how would a foreman certify the time that a person's
19 putting on a time sheet?

20 MR. SHERIDAN: Objection. Misleading. He said
21 "verify."

22 THE COURT: I'm going to allow the question.
23 Overruled.

24 A. Basically the foreman should know exactly what type of work is
25 being done within his shop. He has access to all the work

1 requisitions so he's able to verify the work.

2 Q. (By Mr. Diaz) Is there any expectation that the information
3 contained on time sheets that are being submitted is accurate?

4 A. We hope they're accurate, correct.

5 Q. Have you had situations where a foreman had a question about
6 the accuracy of time sheets and that was drawn to your
7 attention?

8 A. Normally if there's a question like that, it's usually brought
9 up to the general foreman level. That's the next step after
10 foreman.

11 Q. And so is your answer that has not been brought to your
12 attention?

13 A. No, it has not, other than when Steve and Don Gillespie came
14 up they had questions about Jack Nannery's time, and then
15 that's how this whole investigation started.

16 Q. Well, let's move on then to what you've just mentioned about
17 Mr. Gillespie and Mr. Chaussee coming to your office about
18 Mr. Nannery. At that time were any time sheets presented to
19 you during that meeting?

20 A. No, they were not.

21 Q. Was there any discussion regarding time sheets during the
22 meeting?

23 A. I just remember that they had questioned Mr. Nannery's playing
24 -- or coaching baseball during working hours.

25 Q. Now, Mr. Day, do you have any recollection of the date of the

1 meeting that we are alluding to regarding Nannery,
2 Mr. Gillespie and Mr. Chaussee?

3 A. I think it was the middle of May of 2008.

4 Q. If the meeting with the exhibit that you have with Ms. Barlin
5 was May 14th of 2008, was the meeting with Mr. Chaussee and
6 Mr. Gillespie prior to that or after May 14th of 2008?

7 A. It was -- I met with her after. After I met with Don and
8 Gillespie and Steve Chaussee.

9 Q. But as you sit here today you have no direct recollection as
10 to specific dates.

11 A. I don't.

12 Q. Is that due in part to the fact that we're approximately 7
13 years after these --

14 MR. SHERIDAN: Objection. Leading and
15 argumentative.

16 THE COURT: That would be a leading question.
17 Rephrase.

18 Q. (By Mr. Diaz) Do you know how much time has elapsed since the
19 March-to-May time period of 2008 to the current date?

20 A. Yes, I do.

21 Q. And how long -- how much time?

22 A. Seven years.

23 Q. And in fact you've also been retired for almost two years?

24 A. Correct.

25 Q. I neglected to ask, and I don't recall you being asked, but

1 how long did you actually work for Department of
2 Transportation?

3 A. 23 years.

4 Q. And how long of that was spent with the Washington State
5 Ferries?

6 A. 23 years.

7 Q. Now, we started to discuss a meeting that sometime in 2008
8 where there was Mr. Gillespie and Mr. Chaussee present, and
9 Mr. Nannery was brought up during the meeting. Do you recall
10 what the purpose of the meeting was?

11 A. They basically had concerns about Mr. Nannery coaching
12 baseball on company time.

13 Q. Do you know if there was any discussion during the meeting
14 about splitting the lock shop from the carpentry shop?

15 A. At that particular meeting I don't recall, but there had been
16 a topic of conversation for quite a while.

17 Q. Now, when we refer to splitting the lock shop from carpentry
18 shop, do you understand what I'm asking or referring to?

19 A. No. You need to explain that to me, please.

20 Q. Well, was -- you've testified earlier that now there's nine
21 shops at Eagle Harbor, one of them being the lock shop.

22 A. Correct.

23 Q. Was there a discussion regarding the lock shop previous to
24 your retirement about a new foreman for the lock shop and
25 reorganization within the lock shop?

1 A. Yes.

2 Q. And when did that first commence?

3 A. I don't know exact date, but it's been on the -- it's been a
4 topic of discussion for a couple years with the unions.

5 Q. Now, when Mr. Nannery was brought up during this meeting, do
6 you recall who was present and the location of this meeting?

7 A. The meeting happened in my office, and I believe with Nannery.
8 He brought a union steward with him.

9 Q. All right. I'm not sure we're on the same wavelength at the
10 moment. You had described a meeting with Mr. Chaussee,
11 Mr. Gillespie, and yourself. Do you recall that?

12 A. That meeting, yes. I thought you were talking with Larene.

13 Q. No. I'm asking now -- that meeting, where did it take place
14 that Mr. Gillespie is present, Mr. Chaussee and yourself?

15 A. In my office with R.J. Kelly.

16 Q. So R.J. Kelly, he was also present.

17 A. Correct.

18 Q. Was there anyone else present?

19 A. No, not that I know of.

20 Q. And that occurred in your office?

21 A. Yes.

22 Q. And I had asked earlier whether any time sheets were brought
23 to the meeting. Was there any other documentation brought
24 fought meeting to be as part of the discussion regards to
25 Mr. Nannery?

1 A. Not that I recall.

2 Q. Were any photos presented to you showing Mr. Nannery in any
3 baseball garb?

4 A. Not that I recall.

5 Q. Were you provided any specific dates as to Mr. Nannery and any
6 of the allegations regarding him coaching baseball on state
7 time?

8 A. I was not.

9 Q. And do you recall who led the discussion, if anyone, in
10 regards to Mr. Nannery?

11 A. At that meeting?

12 Q. Yes, sir.

13 A. I basically told Steve Chaussee and Don Gillespie that I would
14 look into their allegations. I said I had the time and
15 resources and the money to expend for overtime to do that.

16 Q. All right. But the person who brought to your attention
17 Mr. Nannery, do you recall who that was?

18 A. Who brought Mr. Nannery's -- to my attention?

19 Q. Correct.

20 A. I think it was Don Gillespie.

21 Q. Now, when you said that you could look into it, what did you
22 mean by "look into it"?

23 A. I basically assigned Bob Orr, my terminal general foreman, to
24 look into it.

25 Q. And again, what do you mean by "look into it"?

1 A. I directed him to go up to the ball field and check on their
2 allegations, see if Jack Nannery was playing or coaching
3 baseball on company time.

4 Q. And when did you direct or instruct Mr. Orr to do what you've
5 just testified to?

6 A. I believe it was the same day.

7 Q. And do you have any knowledge whether or not Mr. Orr did what
8 you requested?

9 A. Yes. He verbally told me that he did go up there and didn't
10 find anybody.

11 Q. Did you after having this meeting with Mr. Chaussee,
12 Mr. Gillespie, did you go down to look at time sheets?

13 A. I did not.

14 Q. And why did you not go look at time sheets?

15 A. I normally get a chance to look at time sheets usually once a
16 week when they come up for auditing. Time sheets are normally
17 filled out not on a daily basis so they usually try to get
18 them filled out prior to them being reviewed and submitted.

19 Q. Now, is it your recollection that your assignment to Mr. Orr
20 to go look into it, was that prior to the meeting that you had
21 with Ms. Barlin on May 14th of 2008?

22 A. Yes, it was.

23 Q. And do you know how long prior to the meeting with Ms. Barlin
24 on May 14th of 2008 this occurred?

25 A. I think it was in March.

1 Q. And when you say -- you believe it was in March. March of
2 2008?

3 A. Yes.

4 Q. And do you have a recollection of when Mr. Orr reported back
5 in relationship to Ms. Barlin in May 14th of 2008?

6 A. I do not.

7 Q. Yesterday afternoon during direct examination Exhibit No. 71
8 was admitted, and the notebook that is in front of you right
9 now, does that have tab 71? Not that one, but -- that's
10 through -- okay. So I need to grab a different notebook.

11 Mr. Day, I would ask if you would turn to Exhibit No. 71,
12 which is a five-page document entitled "Nannery fact-finding
13 report by Vern Day and Jackie Beddo." Have you gotten to
14 Exhibit 71?

15 A. Yes, sir.

16 Q. Now, you had testified yesterday that Ms. Beddo put together
17 the report but you did sign this.

18 A. Correct.

19 Q. And on page four of Exhibit 71 under "fact, continued," is
20 there a reference to Mr. Orr in regards to baseball?

21 A. Page four?

22 Q. On page four.

23 A. Yes, there is.

24 Q. And can you read to the jurors that first paragraph.

25 A. "Last baseball season Bob Orr terminal general foreman states

1 that he was urged by Foreman Chaussee and lock shop lead man
2 Gillespie to go to the baseball field on game days. They
3 printed a list of home games in Kitsap County and witnessed
4 Nannery coaching during working hours. Orr did visit two of
5 the games, but Nannery wasn't present. For the third home
6 game he specifically asked that Nannery stay in the yard,
7 which he did."

8 Q. And so you were asked on direct examination whether there was
9 any reference to Mr. Orr ever having conducted any inspections
10 or going to look for Mr. Nannery. Does this refresh your
11 memory as to representations from Mr. Orr during the
12 fact-finding process?

13 A. Yes.

14 Q. And this report was dated by yourself on what date?

15 A. Nineteen June 2009.

16 Q. And that date, was that prior to, if you recall, the demotion
17 of Mr. Chaussee?

18 A. It was.

19 Q. I'd like to have you turn to -- and it's going to be the --
20 unfortunately the other notebook, Exhibit No. 81.

21 A. I'm there.

22 Q. In Exhibit No. 81 is a one-page document.

23 A. Correct.

24 Q. And the document, that was created during the fact-finding
25 investigation by yourself and Ms. Beddo?

1 A. Correct.

2 Q. Now, why did you conduct a fact-finding investigation with
3 Ms. Beddo back in May of 2009?

4 A. I was directed to by my director.

5 Q. And when you say "by my director," is that Mr. Brodeur?

6 A. Paul Brodeur, correct.

7 Q. And what was your understanding of the purpose of your
8 investigation?

9 A. My boss Paul Brodeur was concerned why this happened and what
10 was happening within the carpenter shop to have something of
11 this magnitude come up.

12 Q. When you make terms like "this magnitude," we need to again
13 explain what you're alluding to. What are you referring to?

14 A. Basically I think his concern was why was somebody falsifying
15 their time or actually abusing company time. The problem
16 being that people were out in the field and is there enough
17 supervision out there. So he was concerned looking at all
18 aspects of the carpenter shop to see if there's any -- any
19 problems there.

20 Q. Now, in Mr. Nannery's -- in his position as a terminal lead,
21 was he restricted to work there at Eagle Harbor or did he also
22 work elsewhere?

23 A. He mostly worked in the field. He was a lead man, but he was
24 considered also a working lead. He did some work and also
25 supervised journeymen out in the field.

1 Q. When we say he was "out in the field," what does that mean?

2 A. That means he's at -- could be at any terminal from, you know,
3 Point Defiance to down in Tacoma all the way up to the San
4 Juan Islands. Wherever there's a Washington State ferry
5 terminal, he would be able to go there.

6 Q. Now, how would a foreman be able to check the whereabouts of a
7 terminal lead if they're in the field?

8 A. Normally we require the shops each day to provide us with a
9 list of work that's going on in the boats and in the field,
10 and he would have the opportunity if he wanted to spot check
11 on a certain individual or certain job, he has the ability to
12 go out there and do that.

13 Q. All right. Now, when you say do a spot check, who's "he"?

14 A. The foreman, or it could be a lead man.

15 Q. And so is there an expectation that a foreman of a shop at
16 Eagle Harbor if need be would have the ability to leave the
17 location at Eagle Harbor to check on either crews or work
18 projects that are in process?

19 A. Yes.

20 Q. Is there any requirement for a foreman to receive permission
21 to leave the facility at Eagle Harbor in order to go check on
22 a crew or a project?

23 A. No.

24 Q. Would a foreman have to alert you and ask for permission to
25 leave the facility prior to doing so?

1 A. No.

2 Q. Do you have any knowledge whether or not the foreman and lead
3 men working out of the various crafts or shops at Eagle Harbor
4 had cellphones?

5 A. Yes. They most all of them had cellphones.

6 Q. And do you know whether or not the Department of
7 Transportation or the Washington State ferry system provided
8 those cellphones?

9 A. Yes, we did.

10 Q. And those phones were provided for work purposes?

11 A. Yes. And after-hour call-outs.

12 Q. And do you know whether any knowledge whether Mr. Chaussee had
13 a state-provided work phone?

14 A. Yes, he did.

15 Q. And when I say "work phone," I don't mean in his office. I'm
16 referring to a cellphone type.

17 A. A cellphone, correct.

18 Q. And do you have any knowledge whether Mr. Nannery also had
19 been provided a state cellphone?

20 A. Yes, he did.

21 Q. Now, during the course of this fact-finding investigation that
22 was conducted by yourself and Ms. Beddo, Exhibit No. 81 shows
23 answers to a list of questions. Do you see that?

24 A. Yes, sir.

25 Q. Who prepared the questions that appear on Exhibit 81?

1 A. Jackie Beddo prepared all the questions, and I added one
2 question.

3 Q. All right. So now that as we're looking at Exhibit 81, which
4 questions -- and if you would just for the jury read the
5 question that was prepared by Ms. Beddo.

6 A. She questioned Nannery's -- anybody know Nannery starts at
7 6:30 a.m.

8 Q. Mr. Day, you'll need to speak up so that our court reporter
9 will be able to hear you.

10 A. First question was does Nannery start work at 6:30 a.m. Does
11 Nannery take lunch breaks. Does Nannery have flex time for
12 baseball season. Did Nannery have a kissler agreement to flex
13 time. Does the laptop stay in the shop. Knowledge Nannery
14 during work day. Laptop log-in password written in shop.
15 Nannery demeans employees. Is Chaussee a good foreman.
16 Nannery practices favoritism.

17 Q. Are those all of the questions?

18 A. Yes, sir.

19 Q. Now, Mr. Day, a moment ago you had testified that there was a
20 question that you prepared that appears on the chart and that
21 Ms. Beddo had prepared the other questions. Which question
22 did you prepare?

23 A. Is Chaussee a good foreman.

24 Q. And why did you prepare that question?

25 A. The simple fact that we've had a lot of problems with the

1 foremen down in that shop. People had complaints about him.
2 People were being called names, talked down to, intimidated,
3 bad attitude. Basically not cooperate with the other shops.
4 And so my goal on that question was to find out what the
5 people in his shop thought of Steve.

6 Q. Now, you heard some testimony in regards to whether or not
7 Mr. Chaussee had made statements about "I don't care" and "I
8 don't give a shit."

9 A. Correct.

10 Q. Were you present during any point in time where comments of
11 that nature were made by Mr. Chaussee?

12 A. Several times.

13 Q. And do you recall if in regards to this fact-finding
14 investigation if any statements similar to that were made by
15 Mr. Chaussee?

16 A. They were during our investigation.

17 Q. And in fact, the question that you've placed on this form was
18 created after he had made those statements.

19 MR. SHERIDAN: Objection. Leading.

20 THE COURT: That is a leading question.

21 Q. (By Mr. Diaz) At what point in time -- strike that.

22 Now, Mr. Day, do you have a recollection of meeting with
23 Mr. Chaussee in regards to the fact-finding investigation?

24 A. Our fact-finding investigation?

25 Q. Yes.

1 A. He was the first one we interviewed.

2 Q. And when you say he was the first one you interviewed, the
3 first one out of all of the people whose names appear on
4 Exhibit 81?

5 A. Correct.

6 Q. And was the statement made by him that "I don't give a shit,"
7 "I don't care any more," was that made during that interview?

8 A. Yes, it was.

9 Q. And after those statements were made in relationship to the
10 statements, when did you create the question that appears on
11 Exhibit 81?

12 A. That was when the foremans being put together with Jackie
13 Beddo I had her add that question before we interviewed
14 anyone.

15 Q. Why did you have her add it to the questions?

16 A. She showed me the questions when she's putting them together,
17 and I said I want to add one more question to that before we
18 start our interviews.

19 Q. Was the question added prior to meeting with Mr. Chaussee or
20 after?

21 A. Before.

22 Q. So if you've asked Ms. Beddo to ask that question to Exhibit
23 81, what were the concerns that you had in asking that that be
24 added?

25 A. I've had quite a few complaints from the personnel in the

1 carpenter shop about Steve's attitude and demeaning and
2 talking down to people, and I thought that would be a proper
3 question to ask each individual as we interviewed all the
4 people in the carpenter shop.

5 Q. And there were individuals during the interview process who
6 did not wish to answer that question?

7 A. Correct.

8 Q. As there were people who did not wish to answer some of the
9 other questions.

10 A. That's correct.

11 Q. Did you have any role in finalizing or completing Exhibit 81?

12 A. I did not.

13 Q. And after having participated in the interview process and
14 then the document that's been admitted as Exhibit 71, the
15 fact-finding report, did you see this document in a completed
16 form?

17 A. Yes, I did.

18 Q. And when was that?

19 A. I don't recall exactly when it was.

20 Q. Was it in relationship to completion of the fact-finding
21 report?

22 A. It was before that.

23 MR. SHERIDAN: Objection. Leading.

24 THE COURT: I'll overrule that. You may answer.

25 A. It was before that.

1 Q. (By Mr. Diaz) Now, do you have any direct knowledge whether or
2 not this questionnaire was turned over to Mr. Nannery?

3 A. I wasn't aware of it, but I saw in testimony it was turned
4 over to him.

5 Q. But you were not the person that turned it over to him?

6 A. I was not.

7 Q. Now, there was a question of you regarding Exhibit No. 81 in
8 the questions that were made whether or not they were
9 confidential at the time questions were being asked and
10 answers were given. What was your understanding of the
11 confidentiality?

12 A. That each individual got interviewed, that would stay within
13 my office. They weren't allowed to discuss that amongst each
14 other.

15 Q. And was it your office where the fact-finding interviews were
16 conducted?

17 A. That's correct.

18 Q. And did you learn at any time whether or not any of the
19 individuals interviewed had discussed outside of your office
20 the nature of the investigation?

21 A. We did.

22 Q. And what did you find?

23 A. That when Don Gillespie was called for his interview, he
24 brought a bunch of documentation that we had talked to Steve
25 Chaussee about prior to Don coming to my office.

1 Q. And did you inquire of Mr. Gillespie how he was aware of the
2 subject matter of the interview?

3 A. I did.

4 Q. And what were you told by Mr. Gillespie?

5 A. He said he had talked to Chaussee.

6 Q. Now, I'm going to hand to you, and I know we don't have much
7 space, another notebook of exhibits. And I'll ask, sir, if
8 you would turn to Exhibit 205, which would be 25 in that
9 notebook. Excuse me. It would be number five. And have you
10 gotten to Exhibit --

11 A. Yes.

12 Q. -- 205?

13 And how many pages does Exhibit 205 consist of?

14 A. A total of six.

15 Q. And the first two pages of Exhibit 205, what is this?

16 A. It's a letter of expectation and a written warning to Steve
17 Chaussee.

18 Q. And is there a date on the letter?

19 A. 31 July 2008.

20 Q. And does it indicate who prepared or signed the letter?

21 A. It's signed by me.

22 Q. And what does the letter regard?

23 MR. SHERIDAN: Your Honor, we have no objection to
24 admission of this document.

25 MR. DIAZ: We would offer its admission.

1 THE COURT: All right. Exhibit 205 will be
2 admitted.

3 (Defense's Exhibit No. 205 is admitted.)

4 Q. (By Mr. Diaz) What did the letter concern?

5 A. Basically Steve Chaussee's performance.

6 Q. All right. But in regards to performance --

7 A. His courtesy to others.

8 Q. Does it concern an incident of any sort?

9 A. Yes, it did.

10 Q. And what did it concern?

11 A. Basically it was a activity down in the carpenter shop after
12 hours where an IT person was verifying the communication
13 lines, and Steve was locking up the office, and he told her
14 that good luck getting out of here, and he left.

15 Q. Why was a letter of expectation or written warning prepared in
16 regards to the situation of that nature?

17 A. The person who was in the office doing IT work was Tammy
18 Peters, and she totally freaked out on that, and she basically
19 was concerned about trying to get out of the shop after Steve
20 left, and there was some doors can you open in the inside, but
21 she didn't know how to lock them. So she went back and wrote
22 a letter to her supervisor stating all the facts of the
23 incident.

24 Q. Now, on page one of the document, Exhibit 205, does it
25 indicate a -- what was violated as far as any codes of conduct?

1 A. Number 14.

2 Q. And what is number 14?

3 A. Discourtesy to others.

4 Q. And below where it says "discourtesy to others," what does it
5 say?

6 A. "Acts of discourtesy aimed at coworkers, customers and
7 supervisors."

8 Q. And then directly below that did it indicate anything else in
9 regards to other verbal warnings in the past?

10 A. There were two other verbal warnings in the past.

11 Q. And can you read that section of the letter.

12 A. "Verbal warnings for the same code of conduct violations were
13 given to you on April 30th, 2007, and April 29th, 2008."

14 Q. Now, April 30th, 2007 and April 29 of 2008, to your knowledge,
15 was that prior to the State Auditor's Office investigation
16 being conducted?

17 A. Yes.

18 MR. DIAZ: Your Honor, may we have a sidebar for a
19 moment?

20 THE COURT: Okay. Excuse us, ladies and gentlemen,
21 please.

22 (Side-bar conference held outside hearing of jury.)

23 Q. (By Mr. Diaz) Now, Mr. Day, in regards to the letter, I don't
24 -- I don't believe I asked you the date of the letter, but
25 what's the date of this letter?

1 A. 31 July 2008.

2 Q. And does it indicate that there was a fact-finding meeting
3 that was held in regards to this?

4 A. Correct.

5 Q. And what was the date of that fact-finding meeting?

6 A. 25 July 2008.

7 Q. And was there -- in regards to this letter were there any form
8 of discipline action that was being administered?

9 A. Prior to this written letter a warning there was two verbals
10 on other two dates.

11 Q. But in regards to this incident, what was the result of the
12 fact-finding and what was required, if anything, based on the
13 written warning?

14 A. Basically we required Steve to apologize to the information
15 technology lady, Tammy Peters, and HR recommended that he take
16 classes in the DOT communications which it's a training
17 department that Jackie Beddo scheduled for Steve. And Steve
18 Carpine basically will work with Brian Ford to get some change
19 to the time sheet templates for ease of navigation for Steve
20 to do time.

21 Q. Can I ask why that was listed here as something that was going
22 to be taken as action?

23 A. About the computer? Time sheet?

24 Q. Number four, yes.

25 A. Steve had complained he said it wasn't user-friendly program.

1 He was having trouble navigating through it.

2 Q. And did it continue on to page two?

3 A. Correct.

4 Q. And what else were being required and in regards to this
5 written warning and letter of expectation?

6 A. Basically said myself, R.J. Kelly and Steve Carpine will work
7 with you to find a solution with your difficulty with the data
8 entry to the computer. You will continue to work at polite
9 communication when attending meetings as well as speaking or
10 writing to peers, subordinates or supervisors as P.E. Kelly
11 advised you. Your rude communication will not be tolerated.
12 P.E. Kelly will continue to monitor your communication
13 behavior by checking weekly through August 31, 2008, then
14 monthly through December 31st, 2008; that you continue to
15 improve your communication regarding bullet number six above.
16 This monitoring will come in the form of both casual and
17 formal meetings with you to assess your progress. Again,
18 future incidents may lead to further discipline up to and
19 including termination.

20 Q. And then there's a concluding paragraph at the end of page two
21 of the body of the letter. Can you read that to the jurors.

22 A. Yes. "Steve, we believe you do a great job as foreman in the
23 carpenter shop and we support your efforts at efficiency and
24 excellence. We're here to help you in any way we can. Please
25 just ask. We trust that you'll make every effort to improve

1 your communication."

2 Q. Now, as the date of this letter which was July 31st of 2008,
3 did you believe that Mr. Chaussee was a whistleblower in
4 regards to the State Auditor's investigation that was
5 underway?

6 A. I did not.

7 Q. And why did you not believe that?

8 A. This letter here?

9 Q. Excuse me. Strike that question. Why was that your belief?

10 A. I just -- I have no belief he was a whistleblower. I was just
11 dealing with his performance issues.

12 Q. And do you have any knowledge whether or not Mr. Chaussee
13 attended any classes after July 31st of 2008 in regards to
14 what was being instructed in this warning?

15 A. Yes. I was told by HR that he did attend.

16 Q. I'd like to have you in the notebook that you presently have,
17 if you could turn to -- it's in the notebook as tab 14, but
18 it's actually Exhibit 214. Have you found Exhibit 214?

19 A. Yes, sir.

20 Q. And what is 214?

21 A. Basically it's an e-mail from Jackie Beddo to R.J. Kelly and
22 myself.

23 Q. What's the date of the e-mail?

24 A. It's dated 16 October 2008.

25 Q. And what is the subject of the e-mail?

1 A. It's conflict resolution class in Olympia.

2 Q. And does Exhibit 214 indicate in relationship to Mr. Chaussee
3 anything in regards to that class?

4 A. Any what?

5 Q. Anything in regards to the conflict resolution class.

6 A. Can you repeat the question, please.

7 Q. Exhibit 214 in regards to Mr. Chaussee and the conflict
8 resolution class, is there a connection between the two?

9 A. Yes.

10 Q. And what's that connection?

11 A. That was part of the agreement with the written warning.

12 MR. DIAZ: Your Honor, we would first offer 214.

13 MR. SHERIDAN: No objection.

14 THE COURT: Exhibit 214 is admitted.

15 (Defense's Exhibit No. 214 is admitted.)

16 Q. (By Mr. Diaz) Now, Exhibit 214, does it indicate that a class
17 was scheduled for Mr. Chaussee?

18 A. Yes, it does.

19 Q. And does it indicate the date the class was scheduled for?

20 A. October 21st, and October 22nd.

21 Q. And was that still of the same calendar year, 2008?

22 A. 2008, correct.

23 Q. Now, Mr. Day, there's been testimony in regards to -- I keep
24 referring to these notebooks, but the large notebook that's
25 marked as Exhibit 171, that is the State Auditor Office

1 investigation papers. Do you recall that notebook?

2 A. Yes.

3 Q. And is that still in front of you on the witness stand?

4 A. Yes, it is.

5 Q. Now, you were asked questions yesterday in regards to how that
6 material had come into your possession. Do you recall those
7 questions?

8 A. Yes, I do.

9 Q. Now, you had testified that yesterday that you were advised by
10 your direct supervisor Mr. Brodeur to conduct an
11 investigation; is that correct?

12 A. Yes.

13 Q. And that in part of your fact-finding investigation you were
14 provided the documents that are contained as Exhibit 171?

15 A. Correct.

16 MR. SHERIDAN: Your Honor, I'm going to move to
17 strike. It's leading.

18 THE COURT: It was, but it's been asked and
19 answered, and I'm going to allow it. Press on.

20 Q. (By Mr. Diaz) I'd like to have you turn at this time to tab 17
21 within the notebook which is marked as Exhibit 217.

22 A. I have it.

23 Q. And Exhibit 217, what is this?

24 A. Basically it's a letter from -- or an e-mail from Paul Brodeur
25 to David Mosely.

1 Q. And were you also CCed on the Brodeur Mosely e-mail?

2 A. I was.

3 Q. And what --

4 MR. SHERIDAN: Excuse me, Your Honor. I missed what
5 exhibit we're talking about.

6 MR. DIAZ: It's 17 under -- it's 217 is the --

7 MR. SHERIDAN: Okay. Thank you.

8 Q. (By Mr. Diaz) Now, is there a date on Exhibit 217 on the
9 e-mail?

10 A. May 19th, 2009.

11 Q. And in regards to this e-mail, do you have any recollection of
12 seeing this e-mail?

13 A. I don't recall it.

14 Q. Now, to refresh your memory, if it would, can you read to
15 yourself what's contained there in the e-mail from Mr. Brodeur
16 to Mr. Mosely.

17 A. Yes.

18 Q. By reviewing over the content there, does that refresh your
19 memory?

20 A. It does.

21 Q. And do you recall now the subject matter of this particular
22 e-mail?

23 A. I do.

24 Q. And what is the subject of the e-mail?

25 A. Basically talking the SAO report is --

1 MR. SHERIDAN: Objection to talking about the
2 document.

3 THE COURT: I'm sorry?

4 MR. SHERIDAN: My objection is that he's -- it's
5 hearsay. He's referring to a document that's not in
6 evidence. Substantively.

7 THE COURT: Well, we're not -- as I understand it
8 there's not been questions asked about what's in the
9 document. I'll allow him to indicate what this is talking
10 about. You may answer the question.

11 A. Basically comparing the State Auditor's final report with the
12 investigative report.

13 Q. (By Mr. Diaz) And do you have any knowledge whether or not
14 it's referring to the large stack of documents that have been
15 marked as Exhibit 171?

16 A. Yes.

17 MR. DIAZ: Your Honor, we would offer 217 at this
18 time.

19 MR. SHERIDAN: And objection. 902. No foundation.

20 THE COURT: I'll overrule the objection. I'm going
21 to allow the admission of 217 at this time.

22 (Defense's Exhibit No. 217 is admitted.)

23 Q. (By Mr. Diaz) Now, Mr. Day, if you could flip to the next
24 exhibit which is marked as 218. It's tab 18 in our notebook.
25 And let me know when you're there.

1 A. I'm there.

2 Q. And this is again an e-mail. Do you recognize this e-mail
3 that's marked as Exhibit 218?

4 A. Yes.

5 Q. And were you one of the individuals who prepared the e-mail?

6 A. Yes.

7 Q. And on what date was it prepared?

8 A. Third of June, 2009.

9 Q. And who was the e-mail to?

10 A. Paul Brodeur.

11 Q. And what was the subject of the e-mail?

12 A. They're still waiting the investigative package from the SAO.

13 MR. DIAZ: We would offer Exhibit 218 at this time.

14 MR. SHERIDAN: No objection, Your Honor.

15 THE COURT: Exhibit 218 is admitted.

16 (Defense's Exhibit No. 218 is admitted.)

17 Q. (By Mr. Diaz) Now, just so the jurors understand, when we're
18 talking about receipt of a package, ultimately did you receive
19 some form of a package that had been created by the State
20 Auditor's Office?

21 A. That's correct.

22 Q. And what was the package that was received that you saw?

23 A. It's basically all the data that was collected by the SAO
24 during their investigation of the Nannery whistleblower case.

25 Q. And the items that had been marked as Exhibit 171 in the

1 notebook to your right, is that a copy of those papers?

2 A. That's correct.

3 Q. Now, the subject of Exhibit 218, you were inquiring of
4 Mr. Brodeur in regards to the whereabouts of this package?

5 A. Yes.

6 Q. And did you receive any response from Mr. Brodeur?

7 A. It says, "Thanks, Vern. I can check with Kathleen if you
8 already haven't to see if she has received the SAO material."

9 Q. And was there a reply from you to anyone?

10 A. "As of today she's not received it according to Jack. I
11 believe it will be here sometime this week."

12 Q. And what was the date of the your reply e-mail?

13 A. Three June 2009.

14 Q. Now, I'm going to have you just for convenience sake flip to
15 the next page -- excuse me -- the next tab, 19. It's actually
16 marked as Defendant's Exhibit 219, but it has been admitted
17 already under another exhibit number, which I will have for
18 you in a moment. It's been previously admitted as Exhibit No.
19 74. And just to be accurate, I'm going to have you turn to
20 tab 74 in that notebook.

21 A. I'm there.

22 Q. And Exhibit 74 which has previously been admitted is a cover
23 letter dated June 5, 2009 addressed to Ms. Kathleen Flynn
24 Mahaffey.

25 A. Correct.

1 Q. And the materials that had been transmitted to you by
2 Mr. Brodeur that you testified to, which appear, a copy of, as
3 Exhibit 171, was the letter that's attached here or Exhibit 74
4 attached to those documents?

5 A. Yes.

6 Q. I would like you now to turn to -- and it's going to be in the
7 defense notebook -- it's marked as Exhibit 222. It's under
8 tab 22. It's in the smaller notebook here, sir.

9 A. Okay. I'm there.

10 Q. Now, yesterday during your direct examination you were shown
11 an exhibit, and that exhibit was an e-mail which was admitted
12 as Exhibit No. 78. And Exhibit No. 78, the contents -- you're
13 going to have to do a little compare and contrast, and I'm
14 sorry. But if you're got Exhibit No. 78, which is in
15 plaintiff's exhibit notebook.

16 A. Okay.

17 Q. And Mr. Day, are you at Exhibit No. 78 now?

18 A. Yes.

19 Q. And do you recognize Exhibit No. 78 from yesterday as an
20 e-mail?

21 A. Yes, I do.

22 Q. And Exhibit No. 78 at the top of the page one of the exhibit
23 was an e-mail that you testified that you had prepared on June
24 16th of 2009?

25 A. Correct.

1 Q. And that e-mail had been sent to -- strike that.

2 Who did you send the e-mail to?

3 A. It went to Jackie Beddo, Kathleen Flynn Mahaffey and Paul
4 Brodeur.

5 Q. And do you know if you received any response to the e-mail
6 that you had generated on June 16th of 2009?

7 A. Yes.

8 Q. And what time of day or night had you prepared your e-mail on
9 June 16th of two 79 as indicated on Exhibit 78?

10 A. 7:29 a.m.

11 Q. And on Exhibit 222 does it indicate any response or reply to
12 your e-mail of June 16th?

13 A. Jackie Beddo did respond.

14 Q. And does it indicate the date and time she may have responded?

15 A. 16 June 2009 at three p.m.

16 MR. DIAZ: We would offer Exhibit 222 at this time.

17 MR. SHERIDAN: No objection.

18 THE COURT: Exhibit 222 is admitted.

19 (Defense's Exhibit No. 222 is admitted.)

20 Q. (By Mr. Diaz) And can you read to the jurors the response that
21 had been received on June 16th of 2009 as sent by Ms. Beddo.

22 A. It says, "Absolutely. SAO should have typed up the report and
23 summarized and redacted."

24 Q. Now, to refresh jurors' memory of your testimony yesterday in
25 regards to Exhibit 78, can you just re-read over your original

1 e-mail from 7:29 a.m. on the 16th.

2 A. "If the decision is made to have Jack Nannery see the whole
3 report, I would caution you that even when SAO made the effort
4 to remove any mention of the whistleblower's name and address
5 throughout the report, there is still one issue to consider.
6 In reading through the whole report there is a handwritten
7 copy of the whistleblower's initial filing. With this in
8 mind, it was easy to compare the printed characters of the
9 report and compare them to the handwritten time sheets of the
10 past. If Jack were to see this, I know he would do the same
11 and find out who the whistleblower is. This would definitely
12 be a serious problem."

13 Q. And that was your e-mail from 7:29 on June 16th of 2009 that
14 Ms. Beddo responded to later on the same date.

15 A. Correct.

16 Q. And I would ask at this time, Mr. Day, if you would turn to
17 tab 21 of the notebook. It's marked as Exhibit 221.

18 A. I'm there.

19 Q. And Exhibit 221 is also an e-mail, is it not?

20 A. Correct.

21 Q. And does the e-mail that you prepared at 7:29 a.m. on June 16,
22 2009 appear on Exhibit 221?

23 A. It does appear on there, but there's some added words to it.

24 Q. I'm sorry. There's what?

25 A. Added words to it. In smaller font.

1 Q. And what added words are to it?

2 A. It says, "This would definitely be a serious problem."

3 Q. And why do you say those are added words?

4 A. Basically I read my first e-mail, and the fonts are even
5 smaller.

6 Q. And now, when you said you read your first e-mail, what are
7 you referring to?

8 A. The one I just read to the jury.

9 Q. Okay. What exhibit number is that?

10 A. Exhibit 222.

11 Q. On Exhibit 222 there is -- comparing Exhibit 221, is there a
12 difference?

13 A. There is. The font is smaller on this copy in 221 versus 222.

14 Q. And do you know why the font is different on 221 as to 222?

15 A. I do not.

16 Q. But the difference in font, you're referring to, is the last --

17 A. Last sentence.

18 Q. Last sentence which contains six words?

19 A. Yes.

20 Q. Now, on Exhibit 221 did you receive any response to your June
21 16, 2009 e-mail?

22 A. Yes.

23 Q. And who is that response from?

24 A. From Kathleen Flynn Mahaffey.

25 Q. And does it indicate the date and time that was there was a

1 response from Ms. Kathleen Flynn Mahaffey?

2 A. It's Tuesday June 16th 2009 at 7:31 a.m.

3 Q. So that would appear to be two minutes different from the time
4 sent by you you received a reply in e-mail.

5 A. Correct.

6 MR. DIAZ: We would offer Exhibit 221 at this time.

7 MR. SHERIDAN: No objection.

8 THE COURT: Exhibit 221 is admitted.

9 (Defense's Exhibit No. 221 is admitted.)

10 Q. (By Mr. Diaz) And Exhibit 221, can you read to the jurors the
11 reply e-mail from Ms. Flynn Mahaffey to yourself.

12 A. Yes. "We should discuss before distributing anything to Jack."

13 Q. Now, did it indicate that -- other recipients to the e-mail
14 besides yourself on this response from Ms. Flynn Mahaffey?

15 A. It was basically sent to Jackie Beddo and Paul Brodeur.

16 Q. Were in addition to yourself.

17 A. Correct.

18 Q. Now, do you have any knowledge whether or not the subject of
19 the e-mail referencing the handwritten copy of the
20 whistleblower's initial filing was ever distributed to
21 Mr. Nannery?

22 A. Not that I'm aware of.

23 Q. Did you distribute it to anyone after finding it on or about
24 the 16th of June of 2009?

25 A. I did not.

1 Q. Do you have any knowledge whether Mr. Brodeur distributed it
2 to anyone?

3 A. I do not.

4 Q. Do you have any knowledge whether or not Mr. Brodeur saw the
5 handwritten copy of the whistleblower's initial filing?

6 A. I do not.

7 Q. Do you know if Ms. Flynn Mahaffey had seen the handwritten
8 copy of the whistleblower's --

9 A. I don't know if she's seen it or not.

10 Q. But are you aware of whether Ms. Beddo saw it?

11 A. Yes.

12 Q. And how do you have knowledge that Ms. Beddo saw this?

13 A. I think there's an e-mail that said she reviewed it and saw
14 the report in there.

15 Q. Now, yesterday you were asked during a deposition that was
16 conducted back in May of 2013 whether or not you had seen this
17 handwritten whistleblower form or complaint prior to a certain
18 date and time in relationship to a declaration that was signed
19 in January of 2013. You said that you were unsure of the
20 date. Did you have the opportunity to see these e-mails prior
21 to that deposition being conducted?

22 A. I did not.

23 Q. Were you presented with copies of these e-mails to refresh
24 your memory at the time of your deposition in May of 2013?

25 A. No.

1 Q. Once you had the opportunity to see the e-mails, did that
2 refresh your memory as to timing and receipt of the working
3 papers from the State Auditor's Office?

4 A. Yes.

5 Q. Do you have any doubt at this time as you're testifying as to
6 when you first received the package which contained this
7 handwritten whistleblower complaint?

8 A. No.

9 Q. And what is that time?

10 A. The time I received?

11 Q. Yes, sir.

12 A. Which? I guess I need to have you rephrase that.

13 Q. Well, what I'm asking is based on refreshing your memory from
14 the e-mails, when did you receive and recognize that there was
15 a handwritten whistleblower complaint containing those papers?

16 A. That was I think June 10th, 2009.

17 Q. So it was sometime in June of 2009.

18 A. Yes.

19 Q. And as you sit here today do you have any doubt about the time
20 period?

21 A. I do not.

22 Q. After you had completed reviewing those documents that were
23 provided from the State Auditor's Office to the Department of
24 Transportation and Washington State Ferries, what did you do
25 with those documents?

1 A. Once they were turned over to me I think it was Jackie Beddo
2 reviewed them first, and I took my time and I went and
3 reviewed those also over a week or so time.

4 Q. All right. But what did you do once you had completed your
5 review of those documents?

6 A. That whole pack was delivered back over to the Paul Brodeur's
7 office in Seattle, HR office.

8 Q. Did you keep a copy of the documents before you transmitted
9 them back to Seattle?

10 A. I did not.

11 Q. Do you have any knowledge whether or not any other person at
12 Eagle Harbor kept a copy of those documents?

13 A. I believe I was the only one that saw that package at Eagle
14 Harbor.

15 THE COURT: We're about three minutes away from our
16 noon break.

17 MR. DIAZ: I still have quite a few more questions,
18 Your Honor. I'm just trying to organize my thoughts at the
19 moment. I don't know if the Court wishes to then take the
20 recess now.

21 THE COURT: That will speed things along. You said
22 you were organizing. If you're ready to ask other
23 questions, go right ahead, but if you want to wait.

24 MR. DIAZ: I would like to wait.

25 THE COURT: Okay. Mr. Day, you can step down.

1 THE WITNESS: Thank you.

2 THE COURT: Ladies and gentlemen of the jury, we're
3 going to take our noon recess. I'd like to start again at
4 1:30 this afternoon. Remember as I excuse you I need to
5 give you those instructions. Don't discuss this case or
6 allow anyone to discuss it with you or in your presence.
7 Don't read, view or listen to anything that might be in the
8 media about this case. Don't have any contact with the
9 attorneys, with the parties, with anyone that's assisting
10 them here in court or with anyone that has been or might be
11 a witness in this case. If you talk to folks that have a
12 right to know about your schedule, remember what I've told
13 you before. You can tell them that you're going to be off
14 Friday if that's important. You may also tell them that
15 you are a juror in a civil jury trial that will last
16 potentially through Thursday of next week or perhaps even
17 into Monday of the week following. Don't try to do any
18 investigation of any kind. I need all of you to drive
19 safely. Have a good lunch. No indigestion allowed, and
20 come back at 1:30. I'll see you then.

21 Will the bailiff please take them to the jury room.

22 Counsel, remain in session, please.

23 (Jury exits.)

24 THE COURT: Everybody else can be seated. Counsel,
25 the only sidebar that I made note of was when the defense

1 asked to approach and indicated that while they were asking
2 questions of the witness Mr. Sheridan was stepping up to
3 the easel and writing things down and drawing the jury's
4 attention to what he was writing down, and I indicated that
5 that should not be taking place, that Mr. Sheridan did tell
6 me that he needed to remember things, and that's why he was
7 doing it. I told him to write it down somewhere else, and
8 then he can put it on the easel at an appropriate time.

9 Anything else about that?

10 MR. SHERIDAN: Nothing from the plaintiff, Your
11 Honor.

12 MR. DIAZ: No. We were just looking for some
13 courtesy.

14 THE COURT: Okay. Well, we all want to be
15 courteous, and I trust that everybody's going to adhere to
16 that. We'll see you back here just before 1:30.

17 (A recess was taken.)

18
19 (Jury enters.)

20 THE COURT: Please be seated.

21 Good afternoon to everybody. We're going to press on.

22 Mr. Diaz, your cross-examination continued, please.

23 MR. DIAZ: If it please the Court, ladies and
24 gentlemen.

25 Q. (By Mr. Diaz) Mr. Day, earlier we were -- you had testified in

1 regards to flex time. And I need to ask you is whether or not
2 Mr. Nannery was subject of flex time to your knowledge in 2009.

3 A. In 2009 we discussed him playing -- coaching baseball, and I
4 mandated that if he's going to coach baseball that I would
5 support that, but I needed a schedule of his time and baseball
6 schedule and what days he was taking vacation so I could
7 monitor it.

8 Q. Now, did you have any agreement with Mr. Nannery and baseball
9 in calendar year 2008?

10 A. I did not.

11 Q. Now, can you explain to the jurors in 2009 what had changed
12 where you're now discussing with Mr. Nannery baseball.

13 A. Basically it was the whistleblower case where there was abuse
14 of time. So being he's supporting the little league and
15 everything, our baseball, that I would certainly support him
16 flexing his time to coach, but I needed exactly what days he
17 was playing and what days he intended to take a vacation.

18 Q. And did you learn what days he had intended to be available
19 for baseball?

20 MR. SHERIDAN: Objection. Hearsay.

21 THE COURT: I'll allow the answer that was just
22 given to stand.

23 COURT REPORTER: I didn't hear an answer.

24 THE WITNESS: I said yesterday.

25 Q. (By Mr. Diaz) What was provided to you in regards to base

1 ball, if anything?

2 A. He gave me the schedule of his games and the times he was
3 going to take vacation.

4 Q. What did you do then when you came into possession of this
5 baseball schedule?

6 A. I made a copy and provided it to the carpenter shop.

7 Q. When you say you provided it to the carpenter shop, is there
8 anyone specific you provided it to?

9 A. The foreman.

10 Q. And who was the foreman in 2009?

11 A. Steve Chaussee.

12 Q. Why did you provide the foreman with a copy of this schedule?

13 A. So he would also know exactly what days he was going to take
14 vacation, game days.

15 Q. And what was the purpose of the vacation, the schedule and
16 advising the foreman about this?

17 A. That way you could monitor his time that he's recording, his
18 time sheets.

19 Q. And when you said he could have flex time on regards to those
20 days where he may be coaching, again, I need to understand
21 exactly what flex time -- what that means.

22 A. That you can start earlier than the normal work schedule, and
23 you can quit an hour earlier than your normal schedule, or
24 whatever time you want to flex it, half hour, whatever. So
25 his normal time to start is seven, if he started at 6:30,

1 instead of 3:30, he would quit at three o'clock.

2 Q. And the use of flex time on those occasions, did that still
3 require him to put in a full eight-hour day?

4 A. Correct.

5 Q. If he did not put in a full eight-hour day, and he is still
6 trying to use part of flex time, did he have to utilize other
7 type of time off in order to cover it?

8 A. That's correct.

9 Q. And that that was your understanding.

10 A. Yeah. He would use vacation time, correct.

11 Q. Did you convey that understanding to anyone within the
12 carpentry shop?

13 A. Actually, it was on the schedule the days he was planning on
14 taking vacation.

15 Q. And did you point that out to anyone within the carpentry shop?

16 A. I just told the carpenter shop, Steve Chaussee, that this is
17 his baseball schedule for 2009, and it has the dates of the
18 games and has the dates he intends to take vacation.

19 Q. And did you become aware of whether or not the time sheets
20 reflected those game days and any time off that was utilized
21 through vacation or other type of time off?

22 A. Yes.

23 Q. And what did you learn?

24 A. That he was towing the line. He was taking vacation when he
25 said he would to make up the time difference.

1 Q. Now, Mr. Day, in front of you is the exhibit notebook, and I
2 have it open to Exhibit No. 85 which had been admitted
3 yesterday. Do you have that exhibit in front of you?

4 A. Yes, I do.

5 Q. And there's actually it appears on Exhibit 85 two different
6 dates. Do you see that?

7 A. Yes, I do.

8 Q. And the top date is what?

9 A. May 11, 2010.

10 Q. And is that in relationship to an e-mail?

11 A. Yes, it is.

12 Q. And the May 11, 2010 e-mail was to whom?

13 A. Elisabeth Garrera.

14 Q. And then what was being sent to Ms. Garrera?

15 A. It was a conversation I had from an e-mail I had with Jack
16 Nannery to Paul Brodeur.

17 Q. And what was the date again of the e-mail that is also
18 attached below?

19 A. Sixteen July 2009.

20 Q. Now, do you recall in relationship to any discipline that
21 Mr. Nannery had received in 2009, how in relationship to the
22 date of the discipline, how far apart these dates are?

23 A. July 6th I think he was disciplined sometime in August 2009.

24 Q. Well, let's turn to, if you would, that's already been
25 admitted, to Exhibit 87 within your book. And have you found

1 it?

2 A. I did.

3 Q. Is that letter of demotion to Mr. Nannery?

4 A. It is.

5 Q. And what is the date of that letter?

6 A. That's July 20th, 2009.

7 Q. And so in relationship to Exhibit 85, the e-mail letter that
8 was dated for demotion was four days apart.

9 A. Correct.

10 Q. And did you receive a copy of the letter that had been -- been
11 sent?

12 A. Yes, I did. I was CCed on it.

13 Q. Now, with that in mind the next exhibit that was admitted is
14 Exhibit 89, and that was also admitted yesterday during your
15 direct examination. Do you have that in front of you?

16 A. Yes, sir, I do.

17 Q. What's the date of that exhibit?

18 A. July 21st, 2009.

19 Q. And what does Exhibit 89 relate to?

20 A. Change in carpenter shop lead positions.

21 Q. And why was there a change in the carpentry shop lead
22 positions?

23 A. Because Jack Nannery was demoted.

24 Q. And when was the change in leads to take effect?

25 A. Effective immediately. Date was July 21st, 2009.

1 Q. And Mr. Cleland was to become then a terminal lead?

2 A. That's correct. He replaced Jack Nannery.

3 Q. And that was the position Mr. Nannery had held prior.

4 A. Correct.

5 Q. Now, Mr. Nannery, did he remain then in the carpentry shop?

6 A. He was suspended for a week without pay, and he came back to
7 the carpentry shop as a journeyman.

8 Q. Now, was there a reason why he returned back to the carpentry
9 shop after being demoted?

10 A. Jack Nannery?

11 Q. Yes, sir.

12 A. He was a carpenter and he would just pick up the tools rather
13 than being the lead man.

14 Q. But is there a reason why he remained there at Eagle Harbor in
15 the carpentry shop as opposed to being demoted, transferred
16 elsewhere?

17 A. No. There's no reason.

18 Q. Was that a possibility of transferring him some place else?

19 A. Possibly. I don't know if he had experience in the lock shop
20 or not.

21 Q. I mean --

22 A. That's a possibility, yes.

23 Q. Being transferred to a different location.

24 A. Oh. No. Not a possibility.

25 Q. And why wasn't that a possibility?

1 A. He is a carpenter assigned to Eagle Harbor. I don't know
2 where else he would be assigned to.

3 Q. Now, during the course -- during the same timeframe, July of
4 2009, were you involved at all in providing information of any
5 type or input into the proposed disciplinary proceeding
6 involving the plaintiff Mr. Chaussee?

7 A. Yes, I was.

8 Q. And how were you involved?

9 A. I had discussions with R.J. Kelly and my boss about the
10 performance of Steve Chaussee.

11 Q. Did you provide any documentation to anyone involved in the
12 disciplinary process or predisciplinary process?

13 A. Yes. We shared it with I think Paul Brodeur for sure.

14 Q. You shared what?

15 A. Some of the incidents that Steve Chaussee was documented to
16 have done.

17 MR. DIAZ: I'd like to have marked at this time as
18 an exhibit a three-page document.

19 THE COURT: This has been marked as Exhibit 250.

20 MR. DIAZ: Thank you, Your Honor. I just need a
21 point of clarification before I move on as to Exhibit No.
22 87, whether or not my notes show that had already been
23 previously admitted.

24 THE COURT: 87 has not been admitted.

25 MR. DIAZ: All right. Then I would offer

1 Plaintiff's Exhibit No. 87 at this time.

2 MR. SHERIDAN: No objection.

3 THE COURT: All right. Exhibit 87 is admitted.

4 (Plaintiff's Exhibit No. 87 is admitted.)

5 Q. (By Mr. Diaz) I'm going to hand to you, Mr. Day, what's now
6 been marked as Exhibit 250, and I'll ask are you familiar with
7 that three-page document?

8 A. Yes, I am.

9 Q. And how are you familiar with it?

10 A. The second page is a chronological set of dates and events
11 that I documented on Steve Chaussee.

12 Q. All right. But the question is: How are you familiar with it?

13 A. I created this document.

14 Q. There's three pages there. Could you first look at the cover
15 sheet, the first page.

16 A. I sent this and sent it to Jackie Beddo and Kathleen Flynn
17 Mahaffey and I CCed Paul Brodeur and R.J. Kelly.

18 Q. Can you identify what page one is.

19 A. It's just an e-mail cover sheet. Deborah Jacober (phonetic)
20 had made a copy of this.

21 Q. All right. But is it an e-mail that you created?

22 A. Yes.

23 Q. And does it indicate a date that it was created?

24 A. July 21st, 2009.

25 Q. And is there a time that it's indicated that it's created?

1 A. 2:26 p.m.

2 Q. And it was to -- and you've already identified -- you said
3 Kathleen Flynn Mahaffey?

4 A. Yes, and Jackie Beddo.

5 Q. And CC to whom?

6 A. Paul Brodeur and R.J. Kelly.

7 Q. And what's the subject?

8 A. Chaussee.

9 Q. And was there any attachments to this e-mail?

10 A. There's two attachments.

11 Q. And are those attachments attached to Exhibit 250?

12 A. They are.

13 Q. And the first attachment, can you just identify what the
14 attachment is.

15 A. Basically it's a set of events with dates on it. Basically
16 I'm describing some of the issues with the lock shop lead man
17 and basically Steve Chaussee.

18 Q. Is that something you prepared?

19 A. Yes, it is.

20 Q. And does your name appear any place on it?

21 A. It's at the bottom.

22 Q. The third page, is that the second attachment identified on
23 page one -- on page one?

24 A. Yes, it is.

25 Q. And was this sent along with the e-mail?

1 A. It was.

2 Q. And do you know how you gained access or possession of the
3 second attachment?

4 A. This is kept in our administrative file with R.J. and myself
5 the only ones that have keys to it.

6 Q. And it's kept where?

7 A. In R.J.'s office under lock and key.

8 MR. DIAZ: Your Honor, we would offer what's been
9 marked as Exhibit 250 at this time.

10 MR. SHERIDAN: Your Honor, no objection to the first
11 page. Objection to the second page. ER 403, 802 and 805.

12 THE COURT: All right. When you say the first page,
13 are you talking about the first attachment? There are
14 three pages.

15 MR. SHERIDAN: Page number one is the e-mail cover
16 sheet. Page number two is the narrative. That's where the
17 objections are. No objection to three.

18 THE COURT: All right.

19 MR. SHERIDAN: I think it's a business record,
20 number three.

21 THE COURT: All right. I'm going to allow the
22 admission of Exhibit 250 in its present state, that is the
23 cover sheet and two attachments. The second page was
24 objected to. I'm overruling that objection.

25 (Defense's Exhibit No. 250 is admitted.)

1 Q. (By Mr. Diaz) Now, Mr. Day, Exhibit No. 52, now let's cover
2 the page two of the exhibit, please. Are you on page two?

3 A. Yes, I am.

4 Q. Now, page two, what is outlined there on page two of Exhibit
5 250?

6 A. Basically it's dates of events that I had -- I had documented.

7 Q. And what is being documented there?

8 A. Basically it's the investigation that Jackie Beddo and I
9 conducted.

10 Q. So the information that is contained on page two of Exhibit
11 252, that's an outline of the fact-finding investigation you
12 and Ms. Beddo conducted?

13 MR. SHERIDAN: Objection. Leading.

14 THE COURT: That was a leading question. I'll ask
15 that it be rephrased.

16 MR. DIAZ: Thank you, Your Honor.

17 Q. (By Mr. Diaz) The information on page two, does it have any
18 relationship to a fact-finding investigation that was
19 conducted?

20 A. Yes, it does.

21 Q. When was that fact-finding investigation conducted?

22 A. May 2009.

23 Q. And the fact-finding investigation, who was involved in it?

24 A. Jackie Beddo and myself.

25 Q. And the information contained on page two, is it from that

1 investigation?

2 A. Yes.

3 Q. Now, turning to the last page, page three, the information
4 contained on page three of Exhibit 250, does that concern the
5 plaintiff in this matter, Mr. Chaussee?

6 A. Yes, it did.

7 Q. And how -- what's the date range that's reflected on page
8 three of Exhibit 250?

9 A. It's from year 2000 to 2009.

10 Q. And are there categories or columns where information on the
11 document is contained?

12 A. There is.

13 Q. And what are the headings of the individual columns?

14 A. The date, incident description, disciplinary action, and
15 comments.

16 Q. And for the information of the jury, how many total items are
17 listed on page three of Exhibit 250?

18 A. There are nine items, but I wasn't there for the first item
19 that was in 2000.

20 Q. All right. But there's nine items listed.

21 A. Correct.

22 Q. And how many of those items were prior to May 6th of 2008?

23 A. Looks like six.

24 Q. And so the remaining items were after May 6th of 2008?

25 A. Correct.

1 Q. Now, we've discussed some discipline which ended up resulting
2 in the form of a demotion. Were you involved at all in any
3 recommendations as to any discipline during 2009 in regards to
4 Mr. Chaussee?

5 A. I basically explained to Paul Brodeur my boss several of the
6 incidents that I considered poor performance to Paul Brodeur
7 and discipline should be warranted.

8 Q. Why would you make a recommendation of that nature?

9 A. For the simple fact that he had a lot of acts unbecoming a
10 foreman, good example of that attitude, talking down to
11 people, name calling, late performance meetings, saying to
12 people "I don't give a shit." "I don't care any more," things
13 of that nature. And it's not becoming of a foreman.

14 Q. Did that raise any concerns, if at all, in your position as a
15 senior port engineer?

16 A. It did. My job is to make that whole maintenance facility
17 function as a unit, and it takes all nine or eight foremen to
18 make it work. You got to be able to coordinate with each
19 other and work together, and you all have to come with a team
20 player-type attitude.

21 Q. And did you -- strike that.

22 Now, you are aware of the fact that Mr. Chaussee was
23 demoted.

24 A. Yes.

25 Q. And upon being demoted, what occurred in regards to the job

1 assignment of Mr. Chaussee?

2 A. When I got the demotion letter he was demoted from foreman
3 down to journeyman, and at that point he would be back on
4 tools, and my recommendation that he basically be assigned to
5 the lock shop, which is part of the carpenter shop for one, it
6 would save him from having to work with other disgruntled
7 employees in that shop, and two, I needed an extra person in
8 that lock shop.

9 Q. All right. Now, when you used the term being "back to tools,"
10 what does that mean?

11 A. That means that he wouldn't be in a supervisory position. He
12 would actually be performing work.

13 Q. And when you said he was going back to tools, that would be
14 within the carpentry shop?

15 A. That's correct.

16 Q. And we had discussed -- or you had testified a moment ago in
17 regards to Mr. Nannery on his demotion that he would remain in
18 the carpentry shop. Was there any concerns about Mr. Nannery
19 and Mr. Chaussee working together within the carpentry shop?

20 A. Not so much, but if he were assigned to the lock shop, he
21 would be working with Don Gillespie.

22 Q. So I don't understand.

23 A. Okay. I don't think there would be a problem with Steve and
24 Nannery working in the same shop.

25 Q. All right. Now, you said there was some need for bodies

1 within the lock shop. Why would there have been a need there?

2 A. Simple fact is that the mission of the lock shop has grown a
3 lot with the -- with these security changes being implemented
4 at Washington State Ferries. Basically all the vessels have
5 to have different locks installed, basically a lot of
6 electronics, same with the terminals. Basically they all have
7 to be upgraded also. So it makes a lot more work for a small
8 shop so an extra person would certainly be beneficial. Has to
9 do with Homeland Security. A lot of mandates from Homeland
10 Security to keep our vessels secure.

11 Q. And do you have any knowledge whether or not the lock shop
12 currently has expanded?

13 A. That I don't know.

14 Q. You had testified earlier that there had been discussion of
15 trying to expand and split or have the lock shop stand alone
16 with its own foreman.

17 A. That's correct.

18 Q. And was that still part of the process at this time in 2009?

19 A. It was.

20 Q. Now, Mr. Day, you're aware of the fact that Mr. Chaussee was
21 reinstated to the foreman position at a later date?

22 A. That's correct.

23 Q. And were you still senior port engineer at the time of his
24 reinstatement?

25 A. Yes, I was.

1 Q. And at the time of the reinstatement, where was he assigned?

2 A. He was back down to the carpenter shop as foreman.

3 Q. And at the time that Mr. Chaussee became foreman of the
4 carpentry shop, do you have any knowledge whether Mr. Nannery
5 was still working in the carpentry shop?

6 A. He was gone by then.

7 Q. And when you say "he was gone," what do you mean, he's gone?

8 A. He was retired I believe.

9 Q. Did -- do you know if whether or not the position in the lock
10 shop that Mr. Chaussee held for a period of time, whether that
11 was filled by someone else?

12 A. It was not.

13 Q. All right. I don't have any further questions.

14 THE COURT: Any redirect?

15 MR. SHERIDAN: Yes, Your Honor.

16

17 REDIRECT EXAMINATION

18 BY MR. SHERIDAN:

19 Q. All right. Mr. Day, you talked -- you first began talking,
20 you talked about the fact that a laptop, Nannery's laptop, it
21 was in Chaussee's office, right?

22 A. It was in the foreman's office, correct.

23 Q. The foreman's office had how many desks?

24 A. I think it had one desk, and I think there's two or three
25 standup stations there.

1 Q. Standup stations. Wasn't it like a shoe box-shape kind of
2 like this table here?

3 A. Correct.

4 Q. And wasn't it about 25 feet long and ten feet wide or
5 something like that?

6 A. Probably.

7 Q. All right. And wasn't the door on one end of the shoe box?

8 A. That's correct.

9 Q. And wasn't Mr. Chaussee's sort of little cubicle on the very
10 far end of the shoe box?

11 A. I think there's one cubicle to the right when you came in the
12 door, and there was two standup things to the left.

13 Q. All right. And then Mr. Chaussee was all the way at the end,
14 right?

15 A. Yes, that's correct.

16 Q. And one of the standups, was that the desk for the laptop?

17 A. That's correct.

18 Q. And it was actually plugged in. It wasn't wireless, right?

19 A. That's correct.

20 Q. It's true, is it not, that Mr. Nannery had his own password?

21 A. They all do.

22 Q. So if you walked into that office, you wouldn't be able to
23 operate Mr. Nannery's computer, would you?

24 A. No, I would not.

25 Q. Because you wouldn't have had his password.

1 A. Correct.

2 Q. And it's true, is it not, that in the investigation conducted
3 by the State Auditor's Office, they took that into account,
4 the fact that Mr. Nannery had his own password, right?

5 A. I think the findings was that he shared his password with
6 other people.

7 Q. Oh. That's not a defense, is it? If you share your password?

8 A. It's basically against the rules of the computer use.

9 Q. Right. Because the whole idea is you're accountable for what
10 you do on your computer, right?

11 A. That's correct.

12 Q. All right. And it's true also, is it not, that Mr. Nannery
13 came in about an hour early before everybody else? When he
14 started the day.

15 A. I'm not sure if it was an hour and a half or I think he flexed
16 it a half hour and I think he used the other half hour over
17 lunch.

18 Q. So it's fair to say that he was actually alone in that room
19 every single day he worked because he was the first one there.

20 A. I believe John Envelodson started at 6:30 also.

21 Q. And that guy was a peer of his, right? He wasn't a
22 supervisor, right?

23 A. They were both lead men.

24 Q. All right. So if Mr. Nannery's standing at his workstation
25 and checking baseball scores, there's really nobody to watch

1 him but his peer, right?

2 A. That's correct.

3 Q. Okay. Now, let's look at Exhibit 219. Or is it 249? Right?
4 249? And I have to find it. You don't have it up there, do
5 you? 249?

6 A. I do not.

7 Q. All right. I'm handing you what's been admitted as the
8 Defense Exhibit 249, and go ahead and put that up on the
9 screen.

10 So this is -- this is one of those documents from the big
11 800-page file, right?

12 A. Yes, sir.

13 Q. All right. And this basically documents your conversation
14 with the investigators, right? On or about May 14th, 2008.

15 A. Yes.

16 Q. All right. So let's take a look at the beginning. So this
17 documents that you met with -- her name is Larene Barlin; is
18 that right?

19 A. Yes.

20 Q. Okay. And she actually came to the eagle Bainbridge Island
21 Eagle Harbor maintenance shop, right?

22 A. Yes.

23 Q. She was unannounced, right?

24 A. Correct.

25 Q. You were a bit upset she was just walking in there, weren't

1 you?

2 A. I was not.

3 Q. Okay. She told you the purpose of the visit was to basically
4 take the computer, correct?

5 A. Yes, that's correct.

6 Q. All right. Let's go down to the paragraph that begins "Barlin
7 explained." Yeah. Just move that up a little if you would.
8 So she explained -- and tell me if you agree this really
9 happened. She explained the whistleblower statute, and she
10 asked Mr. Nan -- she asked if Mr. Nannery had a state-issued
11 laptop. And you said yes. That's right?

12 A. Yes.

13 Q. All right. And then she asked if the laptop was still at the
14 facility, and you said you can go down to the office and take
15 a look, right? You said that.

16 A. Yes, because I didn't know if it was in the field or at the
17 desk.

18 Q. Because sometimes he'd take it into the field?

19 A. He has an air card with it and it's a laptop. It's possible.

20 Q. And you say he has an air card. That means he can access the
21 internet basically from anywhere, right?

22 A. If there's reception, correct.

23 Q. Okay. All right. And then let's see. At this point she
24 explained to you the assertion involved personal use -- this
25 was the whistleblower claim involved personal use of state

1 resources, right?

2 A. Correct.

3 Q. And it was alleged that Nannery was using the state laptop for
4 baseball statistics, printing schedules, et cetera, and that's
5 what she told you, right?

6 A. Correct.

7 Q. She also said that it was alleged that he was leaving work
8 early to go to Kingston High School to coach the baseball team
9 and attend games. She told you that too, right?

10 A. Yes.

11 Q. Then it says here that Mr. Day stated he had heard gossip
12 about Mr. Nannery and his job -- and his job at Kingston High
13 School. Is that what you told her, that you had heard gossip?

14 A. Yes.

15 Q. So this is in May of 2008, right?

16 A. Uh-huh.

17 Q. That's a yes, right, for the record?

18 A. Yes.

19 Q. Thank you. But in fact in March of 2008 you heard an actual
20 report of alleged theft from Mr. Chaussee, right?

21 A. Yes.

22 Q. That's not gossip, is it?

23 A. It is true I don't know if it's gossip or not. That's why I
24 wanted to check.

25 Q. How come you didn't tell her that, "Hey, I had two guys in my

1 office in March, Chaussee and Gillespie, and those guys
2 reported the same thing you're saying here. And I said I'd go
3 do -- have somebody do an investigation, and I did. I had Bob
4 Orr go out we couldn't find anything." You didn't tell her
5 that, did you?

6 A. Not at that time, no.

7 Q. Why in the world would you not tell her that you had received
8 a bona fide report that concerned you enough that you sent one
9 of your people out into the field to actually investigate?

10 MR. DIAZ: Objection. Characterization.

11 THE COURT: I think it's a fair question. I'll
12 overrule that. You may answer.

13 A. Could you repeat the question, please.

14 Q. (By Mr. Sheridan) Yeah. Why in the world would you not tell
15 her that you had received a real report in March of the same
16 exact misconduct and it concerned you so much that you had
17 essentially said I have the resources to investigate and sent
18 Bob Orr out to do that. Why didn't you tell her?

19 A. Well, we didn't find anything.

20 Q. Why didn't you tell her?

21 A. I have no idea.

22 Q. Well, you told -- didn't tell her because you wanted to cover
23 it up, correct?

24 A. No, sir.

25 Q. You didn't tell her because Bob Orr really didn't do much of

1 anything, right?

2 A. I believe he did.

3 Q. And she never got to interview Bob Orr, did she?

4 A. I don't know who she did or not.

5 Q. Well, had you mentioned Bob Orr and Chaussee, she'd have been
6 right on there interviewing those people, right?

7 MR. DIAZ: Objection. Lack of foundation.

8 THE COURT: I'll sustain that. Ask a different
9 question.

10 Q. (By Mr. Sheridan) Sure. You were concerned that those people
11 would be disclosed to her, right?

12 A. Which people?

13 Q. Chaussee and Orr.

14 A. No.

15 Q. But can you give me a business reason for not telling her?

16 A. At the time she came in it totally caught me by surprise. I
17 didn't really know where this was going to go so I was just
18 more or less following her directions to confiscate the laptop.

19 Q. Well, you knew why she was confiscating it.

20 A. She told me why, yes.

21 Q. Well, you did have though, you had the presence of mind to say
22 to her -- and let's look at the next paragraph. "Mr. Day
23 stated that Nannery had a colorful past." You told her that,
24 right?

25 A. Correct.

1 Q. And you told her that he's been an 18-year employee, right?

2 A. Yes.

3 Q. And you said that he'd failed a random drug test several years
4 ago and was taken out of a lead position. You told her that
5 right away, right?

6 A. Yes.

7 Q. And then you said that he was also involved in some personnel-
8 type actions that went to mediation, right?

9 A. Yes. That was before my time, correct.

10 Q. And you said that he won because of a technicality, right?

11 A. He was reinstated. That's all I know.

12 Q. Okay. Well, you told -- this is what you told her though,
13 right?

14 A. Yes.

15 Q. And you told her that he knows -- that Nannery knows the
16 system and knows how to get around things. You told her that,
17 right?

18 A. Yes.

19 Q. All right. And you also told her that Mr. Nannery tries to
20 intimidate people.

21 A. He does.

22 Q. And you told her that.

23 A. I did.

24 Q. And you also said several years ago Mr. Nannery had the use of
25 a state-issued truck, but you had to take the vehicle away

1 from him. You told her that, right?

2 A. Correct.

3 Q. And you said it was because it was asserted he used it to go
4 to soccer practice and some people saw soccer balls in the
5 vehicle. That's what you told her.

6 A. That's right.

7 Q. Even though you told the jury that it had nothing to do with
8 soccer.

9 A. He didn't play -- coach soccer. He coached baseball.

10 Q. But it was him --

11 A. So it's hearsay that there was soccer balls in the state truck.

12 Q. All right. And you didn't ask her anything about whether she
13 had photographs or time sheets, did you?

14 A. At that time, no, I did not.

15 Q. All right. During your -- during your examination by defense
16 counsel you pointed out that Nannery works in the field, right?

17 A. That's correct.

18 Q. And that because of that you would hope that he would properly
19 fill out his time sheets, right?

20 A. Yes, sir.

21 Q. All right. But you also said when asked the question as to,
22 well, why didn't you ask for time sheets when you -- when you
23 began the conversation about them, you said because you
24 actually get to check the time sheets every week, right?

25 A. I said what?

1 Q. You get to check the time sheets every week, right?

2 A. We audit the time sheets, yes.

3 Q. Who does?

4 A. Who audits time sheets?

5 Q. No. Who audits time sheets?

6 A. I audit them, R.J. Kelly audits them, and the general foreman
7 audits them.

8 Q. Every single week, right?

9 A. Pretty much on a regular basis.

10 Q. How many time sheets do you audit every week?

11 A. We share, the different shops.

12 Q. How many people are there?

13 A. Around 116-120.

14 Q. So you divvy up the 116-120 and you each -- you and, what,
15 Mr. Kelly do the audit?

16 A. Yeah. Each job we grab one shop and do the audit.

17 Q. And do you swap around? One you might be carpenter shop this
18 week and next week I'll do locks or something or one of the
19 other ones?

20 A. Correct.

21 Q. So when you audit them, you're looking to see if they're
22 filled out correctly, right?

23 A. Partially, yes.

24 Q. All right. And as of March you knew that there was an
25 allegation that Nannery was filling them out falsely, right?

1 A. Allegedly, yes.

2 Q. So when you disciplined Mr. Chaussee for failing to audit
3 Nannery, you actually failed to do the same thing, failed to
4 catch a thief, just like Mr. Chaussee, right?

5 A. No.

6 MR. DIAZ: Objection. Form of the question. He's
7 already -- it mischaracterizes previous testimony. He
8 didn't do any discipline of this person.

9 MR. SHERIDAN: Speaking objection. Objection.

10 THE COURT: Counsel, I think your last question can
11 be argued to the jury. I'm not going to allow the form of
12 the question.

13 MR. SHERIDAN: Yes, sir.

14 THE COURT: Sustaining it.

15 MR. SHERIDAN: All right.

16 Q. (By Mr. Sheridan) So it's true, is it not, that you and R.J.
17 Kelly were responsible for auditing the time sheets for the
18 entire place?

19 A. We have a certain function we audit, but we don't have all the
20 information. We're looking for correctness in the coding and
21 hours, where down at the shop level they have knowledge of
22 what work was actually conducted.

23 Q. But you told Mr. Chaussee you had the resources to investigate
24 the alleged theft, correct?

25 A. I did.

1 Q. You didn't say to him, Mr. Chaussee, "I'm going to give you a
2 thousand dollars to go out and hire a PI." You didn't say
3 that, right?

4 A. I did not.

5 Q. You didn't say, "Mr. Chaussee, I'm going to relieve you of
6 some of your duties so you can go and conduct surveillance on
7 this man," right?

8 A. Steve Chaussee can conduct his own investigation. That's part
9 of his job description.

10 Q. That may be true, but you told him that you were going to do
11 it, right?

12 A. I did.

13 Q. All right. And then you disciplined him and claimed he should
14 have done it, right?

15 A. I went up and had Bob Orr check and we didn't find anything.
16 I didn't discipline him for anything.

17 Q. Oh, it was also asked -- counsel pointed you to that report
18 that you -- you and Ms. Beddo made in May where you had a
19 little paragraph talking about Bob -- Mr. Orr going out,
20 right? That was your narrative, right? Do you remember what
21 I'm talking about?

22 A. No, sir.

23 Q. So you know the report that you and Ms. Beddo created? The
24 whistleblower investigation report that you created?

25 A. The five-page report.

1 Q. Yeah.

2 A. Yes.

3 Q. Do you know that -- you were pointed to a paragraph in it by
4 your counsel who said that look, here's where you talked about
5 Mr. Orr going out. Do you remember that?

6 A. No, I don't.

7 Q. Okay. It doesn't matter. Well, let me just ask you this:
8 It's true, is it not, that you and Ms. Beddo drafted that
9 narrative?

10 A. She drafted it.

11 Q. All right. All right. You were concerned once you learned
12 that there was a whistleblower investigation going on, you
13 were concerned that the investigation might hurt the
14 reputation of your department. True?

15 A. Not true.

16 Q. All right. Let's grab your first deposition if we can. Okay.
17 I'm looking at page 25. And sir, I'm going to ask you if you
18 would to look at page 25. And it begins on line ten. I'm
19 going to read you the question and I'm going to ask you to
20 just read the jury your answer. "And were you concerned that
21 the investigation might hurt the reputation of your
22 department?" And you said?

23 A. "Any time there's a whistleblower filing, there's probably
24 something wrong I would assume."

25 Q. And then I asked the question: "So you were concerned?" And

1 you said?

2 A. "Yes."

3 Q. Okay. So when you were under oath, what's the date on the
4 front of that?

5 A. January 31.

6 Q. Okay. Of what year?

7 A. 13.

8 Q. So when you testified under oath on January 31st, 2013, you
9 stated honestly, did you not, that you felt that a
10 whistleblower investigation could hurt the reputation of your
11 department?

12 A. It brings that it could need something fixed, yes. I don't
13 know if it hurts the reputation, but I know it needs to be
14 fixed.

15 Q. Is it fair to say when you were testifying then you were
16 testifying honestly?

17 A. Correct.

18 Q. Okay. You were also asked by the defense counsel about
19 cellphones, and it was pointed out that I guess everybody had
20 a business cellphone, right?

21 A. Some foreman elected to not carry two phones so they chose to
22 use their personal phone for work.

23 Q. And fair to say that Jack Nannery had a cellphone?

24 A. A work cellphone or personal?

25 Q. Either.

1 A. Yes.

2 Q. So and fair to say had Mr. Orr wanted to, he could have called
3 him at the end of the every day to find out where he was?

4 A. He could call and ask him, sure.

5 Q. And he didn't do that, right?

6 A. I have no idea.

7 Q. And you've also spent a lot of time saying that Mr. Chaussee
8 was not a very good foreman, right?

9 A. At first he was, and about 2007-2008 I noticed he started to
10 have issues.

11 Q. And all of those -- all of those things that you identified,
12 personality things, that resulted in discipline in 2008 and
13 then demotion in 2009, there was not really a personality
14 change in him, was there?

15 A. There was an attitude change.

16 Q. So the person he was in -- so let's say in February 2008 he
17 was fine?

18 A. I noticed the attitude starting in 2007, but I was hoping by
19 me talking to him and giving him some pep -- you know, pep
20 talks that he would come around.

21 Q. The 2007 thing. That's this exhibit here. Exhibit 250. You
22 note an incident in 2007 where -- I guess this chart -- we
23 don't have this for this screen, do we?

24 ASSISTANT: I can put it up.

25 Q. (By Mr. Sheridan) So this is the third page. We're looking at

1 the third page of Exhibit 250 now, right?

2 A. That's correct.

3 Q. And let's talk about the first page for a moment. We don't
4 have that, do we? We do? Nicely done.

5 Okay. So this is actually the first page. This is you
6 transmitting a paper narrative of Mr. Stephen Chaussee, and
7 then a chart of discipline, right, of Mr. Chaussee?

8 A. Yes.

9 Q. And you're transmitting it to Flynn Mahaffey. She's the head
10 of HR, right?

11 A. Yes.

12 Q. And Beddo is the HR person assigned to the ferries, right?

13 A. Correct.

14 Q. And you're also sending it to your boss Paul Brodeur, right?

15 A. Correct.

16 Q. And is that R.J. Kelly?

17 A. Yes, sir.

18 Q. All right. And so you're attaching a narrative that you
19 wrote, right?

20 A. Correct.

21 Q. And the narrative -- let's go the to narrative first. This
22 narrative begins on May 14th, 2009. Why did you begin on May
23 14th, 2009?

24 A. That was the start of the interviewing in my office.

25 Q. You mean your investigation, your --

1 A. That's correct.

2 Q. Your parallel investigation.

3 A. Yes.

4 Q. All right. Okay. And then you're analyzing here -- you're
5 basically -- can you tell us what was the purpose of this part
6 of the narrative. Why did you send this to your boss and HR?

7 A. I think they were asking -- I don't know for sure why I sent
8 it at that time. I can only speculate.

9 Q. Well, were they asking you for it?

10 A. Probably.

11 Q. You're not really sure.

12 A. I'm not.

13 Q. Okay. But somebody -- something happened that prompted you to
14 draft this narrative and then come up with this chart, right?

15 A. Yes.

16 Q. All right. You said something about something's locked in the
17 room and only two of you have the key. What was that you were
18 talking about? Is there something about -- is there anything
19 to do with this that has to do with only a few people had
20 access to it?

21 A. You talking about the case with the IT person being locked in
22 the carpenter shop?

23 Q. No, this was different. This had to do with access. Maybe --
24 I'll come back.

25 So in this narrative you're basically telling your boss and

1 HR I guess -- are you writing a case for demotion at this
2 point?

3 A. No, sir.

4 Q. Well, what were you thinking when you were putting this
5 together?

6 A. Basically poor performance of the foreman in the carpenter
7 shop.

8 Q. So looking at the first page, it's July 21st, 2009 that you're
9 sending it, right?

10 A. Which page is that?

11 Q. The first page. It's the transmittal page.

12 A. Correct.

13 Q. All right. And then let's look at the last page, which is the
14 chart, and this chart, you were putting in things going back
15 to 2000? Why was that?

16 A. R.J. Kelly put this spreadsheet together.

17 Q. R.J. did?

18 A. Yes.

19 Q. Did you ask him to make a sheet that took this back to 2000?

20 A. No.

21 Q. He just did it on his own?

22 A. Yes.

23 Q. All right. And you weren't thinking that he deserved to be
24 demoted because of the cumulative effect of things going back
25 to 2000, were you?

1 A. No, sir.

2 Q. All right. And 2007, one of the things is that Jeff Marby
3 resigns because he's worried? Is that right? About Chaussee?

4 A. That's something R.J. Kelly investigated. I can't speak to
5 that.

6 Q. Okay. Well, in fact, it's true, is it not, that -- that
7 Mr. Jeff Marby actually wrote a statement saying that's just
8 not the case?

9 A. If he did, I haven't seen it.

10 Q. Well, all right. Do you have 126 in front of you or do you
11 need a different book?

12 MR. SHERIDAN: May I approach the witness just to
13 check, Your Honor?

14 THE COURT: Yes.

15 MR. SHERIDAN: That's it.

16 Q. (By Mr. Sheridan) Do you know who Jeff Marby is?

17 A. He was a journeyman carpenter assigned to the carpenter shop
18 when I first started supervising over there.

19 Q. All right. And so you -- you worked with him for some period
20 of time.

21 A. I didn't work with him. I knew who he was.

22 Q. Okay. And is it your testimony that you didn't receive a
23 February 5th, 2010 statement from him saying that -- that
24 Mr. Chaussee's not to blame?

25 A. I don't remember seeing this, no.

1 Q. All right. And can you tell me this: Did you have any
2 conversations with him where he said, "I'm leaving because of
3 Chaussee"?

4 A. I didn't, no.

5 Q. All right. And so this -- this idea that he's leaving, I see
6 that it's blank under "comment." There's no action taken,
7 right?

8 A. No, sir.

9 Q. All right. And then after the March report to you, item
10 number five, you say that there's a private meeting from James
11 Howard concerned about the carpenter shop environment, right?

12 A. That was with R.J. Kelly.

13 Q. Okay.

14 A. It didn't come to me.

15 Q. And there's no action taken, right?

16 A. Nothing I see.

17 Q. Okay. But I mean, would you agree with me that if somebody
18 had an actual -- if an employee has a problem that there has
19 to be some type of notice to the person he has a problem with
20 and the ability to work out a solution, right?

21 A. Depending what the problem was, correct.

22 Q. This happened after Mr. Chaussee came to you in March to
23 report Mr. Nannery's stealing, right?

24 A. Yes.

25 Q. And then on April 29th you say there's -- it's written here

1 that there's a meeting with -- held to discuss Dave Seibert
2 grievance about hostility. Is that right?

3 A. April 29th?

4 Q. Yeah.

5 A. That had to do with -- when somebody is absent in the
6 carpenter shop like the lead man, somebody gets promoted up,
7 and the carpenter shop was bypassing seniority people in the
8 lock shop, and they should be asked first.

9 Q. That was Jack Nannery doing that, right?

10 A. I'm not sure if it was him or not.

11 Q. Wasn't Mr. Chaussee on vacation when this was going on and
12 that's why it was happening?

13 A. I have no idea.

14 Q. And then on 7/25, this is the Tammy Peters thing, right?

15 A. That's correct.

16 Q. And Tammy Peters, you said that -- you said that she sent an
17 e-mail to somebody?

18 A. She drafted an e-mail to her boss, yes.

19 Q. And you saw the e-mail?

20 A. That's correct.

21 Q. But you didn't interview her.

22 A. I didn't. No, I did not.

23 Q. All right. And that's in July of '08, right?

24 A. Yeah. That's correct.

25 Q. Now, during this whole timeframe you're aware that the

1 whistleblower investigation is ongoing, right?

2 A. Yes.

3 Q. And so the state auditor during this time, they're asking for
4 documents, talking to people, right?

5 A. I would assume so.

6 Q. Okay. And so the concern that you expressed in your
7 deposition about hurting the reputation of the department, it
8 was ongoing through the summer of 2008, right?

9 A. The investigation?

10 Q. Yeah.

11 A. Yes.

12 Q. Okay. And your concern was ongoing, right?

13 A. Yes.

14 Q. Okay. And then -- and it's -- your testimony isn't evolving
15 in any way, right? It's still the only two people you could
16 connect to the claims that went to the whistleblower -- to the
17 Auditor's Office were Gillespie and Chaussee, right? They're
18 the only two people even through 2008 that had brought up Jack
19 Nannery allegedly stealing time.

20 A. To my knowledge, yes.

21 Q. Okay. All right. Now let's compare -- we're going to take a
22 look at Exhibit 78 and 222. And while we're finding that --
23 I'll let you find it too.

24 A. 78?

25 Q. 78 in the plaintiff's book and 222 in the defense book. This

1 is that e-mail that has the font change.

2 A. I don't have either one of those.

3 Q. Okay. Yeah. This is the last one in here. Okay. Now you
4 should be all set. I'll take this from you.

5 A. Thank you.

6 Q. All right. So now you have Exhibit 78 and Exhibit 222, right?

7 A. That's correct.

8 Q. All right. Let's put Exhibit 78 up there first.

9 And so this is the one that has the font change, right?

10 A. That's correct.

11 Q. All right. You see how it's -- it also says "Subject:
12 Whistleblower report. Importance: High."

13 A. Yes.

14 Q. Okay. Now let's look at 222. Go ahead and put that up there.
15 Go ahead and make that headline -- keep Jackie Beddo on there.

16 Now, do you notice anything missing from this version of
17 the e-mail?

18 A. The importance and the time change. There's different times
19 on them.

20 Q. And also the font is different, right?

21 A. Yes.

22 Q. So can you explain why you have the only document that talks
23 about the complaint it appears in different forms. Can you
24 explain that?

25 A. No, I can't.

1 Q. Okay. This is the only document that talks about you
2 confirming that there's a -- that there's a complaint in this
3 800-page package, right?

4 A. That I'm aware of, yes.

5 Q. This e-mail string. Okay.

6 You also -- it sounded like you were testifying that you
7 knew that Nannery didn't get the complaint, but truly, you
8 don't know whether Nannery was handed a copy of the redacted
9 whistleblower complaint, do you?

10 A. I do not.

11 Q. Okay. You also made some statements about who got to see that
12 800-page book, but all you really know is that that 800-page
13 book, it was actually on the web, right?

14 A. I'm not aware of that.

15 Q. Okay. When it came to you, you have no idea who saw it before
16 the -- before the 800-page book came to you, right?

17 A. Only Jackie Beddo.

18 Q. How do you know?

19 A. Just by her e-mail. She said she's done with it. I don't
20 know if she looked at it or not.

21 Q. You have no idea who she showed it to before giving to you?

22 A. No. I thought she looked at it. No. I don't know who she
23 showed it to.

24 Q. And after it left you, you actually sent it to your boss,
25 right?

1 A. Going back to the port engineer's office.

2 Q. You have no idea what he did with it after it left you, right?

3 A. That's correct.

4 Q. So you can only say that during the time you had it you didn't
5 show it to anyone.

6 A. That's right.

7 Q. Okay. You also talked about flex time, and you've talked
8 about it over the last couple of days, and you said that you
9 said it was okay in 2009, right?

10 A. For who?

11 Q. For I guess everybody.

12 A. Everything's on a case-by-case basis.

13 Q. Okay. So it sounds like -- I'm trying to understand what
14 month it was that you told Jack Nannery it was okay for him to
15 do flex time.

16 A. I think he approached me at the beginning of the baseball
17 season to talk about it.

18 Q. What month?

19 A. It probably was March. I'm just surmising.

20 Q. So while the investigation into his theft of time was going
21 on, you told him it was okay to flex time. Right?

22 A. At that time, yes.

23 Q. And you were not the person who was his boss, right?

24 A. No.

25 Q. So why were you reaching down the chain of command to give a

1 special favor to Mr. Nannery?

2 A. To my knowledge he was flexing his time every year coaching
3 baseball.

4 Q. That's not my question. My question is why didn't you follow
5 the chain of command rather than stepping in as a very
6 high-ranking person to give special attention to this person
7 Mr. Nannery?

8 A. Because I don't believe those two ever talked, got along at
9 all.

10 Q. Those two being who?

11 A. Steve Chaussee and Nannery.

12 Q. But you just told the jury, didn't you, that in your mind had
13 Nannery and Chaussee been assigned to the same shop after they
14 were demoted, they would have been okay.

15 A. They would have worked together, but I don't believe they
16 talked together.

17 Q. But in fact the investigation, the draft report showing that
18 Nannery had stolen time came to you April 1st, right?

19 A. Yes.

20 Q. Isn't that the same time baseball season starts?

21 A. I think it started in March.

22 Q. Okay. So did you retract that offer, that permission that you
23 gave him?

24 A. I did not.

25 Q. So even though now you knew that he'd stolen time, you knew

1 that he'd used his computer improperly, you let him go with
2 the same thing as though nothing happened.

3 A. Actually, we had him provide us a schedule and dates he would
4 take vacation so we could monitor his time.

5 Q. And when the demotions came down, Mr. Chaussee was demoted two
6 levels, right?

7 A. At first, yes.

8 Q. And Mr. Nannery one, right?

9 A. He was put on the beach without pay for a week and demoted
10 from lead man to journeyman. There's nothing lower than
11 journeyman other than being fired.

12 Q. So you demoted Mr. Chaussee two levels. Had you ever seen
13 that before?

14 A. I didn't demote him.

15 Q. I understand. The State demoted him two levels. Have you
16 ever seen that before?

17 A. No, sir.

18 Q. Okay. And so he was busted back to journey level person, the
19 lowest position you can have, right?

20 A. Yes.

21 Q. And so now after the demotion, the double demotion, he was now
22 being supervised by Mr. Gillespie, right?

23 A. That's correct.

24 Q. And Mr. Chaussee was a carpenter, right?

25 A. Yes.

1 Q. His experience was carpentry, right?

2 A. Basically the lock shop is covered under the carpentry union.

3 Q. I understand they're covered under the union, but didn't you
4 say you didn't want to send Jack over there because you
5 weren't sure whether he had lock experience?

6 A. I didn't say that, no.

7 Q. Well, isn't it true there was no reason to move Mr. Chaussee
8 out of the carpenter shop and take away the thing he'd been
9 doing his whole life?

10 A. There were two reasons.

11 Q. What were they?

12 A. One reason is that if he was back down in journeyman level
13 with all the conflict in that shop that he would be -- do
14 better being away from the shop. And two, I was short of
15 bodies in the lock shop.

16 Q. Okay. And then when Mr. Chaussee was bumped back up to only
17 being demoted one level, where was he assigned?

18 A. Carpenter shop. I'm sorry. Lock shop.

19 Q. So even though now he was higher ranked, you didn't let him go
20 back until the arbitrator ordered that he go back.

21 A. I still needed help in the lock shop.

22 Q. Well, after he won his arbitration, you had no choice but to
23 send him back, right?

24 A. That's correct.

25 Q. And you found a way to adjust to the order from the

1 arbitrator, right?

2 A. Yes.

3 Q. All right. That's all I have. Thanks.

4 THE COURT: Any re-cross?

5 MR. DIAZ: No re-cross.

6 THE COURT: Then ladies and gentlemen, it's time for
7 you to ask questions. It's been a while since we've
8 allowed you to do that so I'll just remind you: You are to
9 pass in a question form whether or not you have a question
10 or not. Counsel and I are going to stand over here to the
11 side while you're in the process of filling out questions
12 if you have such.

13 (Side-bar conference held outside hearing of jury.)

14 THE COURT: All right. Ladies and gentlemen, I
15 think you understand that you can relax for a few minutes.
16 We'll get back to you. Thank you.

17 (Side-bar conference held outside hearing of jury.) SZ

18 THE COURT: All right. Ladies and gentlemen, if we
19 can have your attention. We're ready to proceed.

20 Mr. Day, there are a number of questions from jurors.
21 First of all, what would happen to Steve if he refused to
22 sign off on a timecard?

23 THE WITNESS: I guess we would just question why he
24 would not sign off.

25 THE COURT: Were there codes for vacation time and

1 flex time?

2 THE WITNESS: Vacation time only.

3 THE COURT: How long have you known David Mosely and
4 Paul Brodeur on a professional and/or personal level?

5 THE WITNESS: I knew Paul Brodeur basically when he
6 hired in. I don't know what the date was. So he was a
7 port engineered hired for the passenger-only ferries. I
8 was working as a project engineer for vessel construction.
9 David Mosely I met him when he first came aboard as the
10 assistant secretary of transportation. No personal contacts
11 with them.

12 THE COURT: Could you only recommend written or
13 verbal warnings?

14 THE WITNESS: We -- I can give written warnings and
15 verbal warnings.

16 THE COURT: It was stated by you I think that
17 Nannery was intimidating to other employees. Do you think
18 Nannery was intimidating?

19 THE WITNESS: Yes. Correct. He was.

20 THE COURT: Did he intimidate you?

21 THE WITNESS: No, sir.

22 THE COURT: I think you've already answered that.
23 I'm going to ask it again. Is there a time sheet code for
24 flex time?

25 THE WITNESS: No, sir.

1 THE COURT: Why did you want to know the identity of
2 the whistleblower?

3 THE WITNESS: I didn't. I just discovered that when
4 I was reviewing the package.

5 THE COURT: Mr. Day, in your position as senior port
6 engineer do you have the ability to change or edit time
7 sheet codes?

8 THE WITNESS: I have the ability to edit it. If
9 there's any changes, we usually bring it back down to the
10 shop that provided the time sheet.

11 THE COURT: You've stated that flex time was managed
12 at shop level. You then later stated that you had a flex
13 time agreement with Mr. Nannery. Was Chaussee aware of
14 this agreement?

15 THE WITNESS: Yes.

16 THE COURT: Should it have been his responsibility
17 to make this agreement?

18 THE WITNESS: Yes.

19 THE COURT: When times are entered on the time
20 sheet, are they handwritten?

21 THE WITNESS: At first they were handwritten, then
22 eventually converted over to a electronic version in the
23 computers so it was all done electronically.

24 THE COURT: In your agency does the State provide
25 cellphones for work-related duties?

1 THE WITNESS: Just for foremen and lead men.

2 THE COURT: If so, why would someone need a personal
3 cellphone to communicate while on duty?

4 THE WITNESS: Some of the supervisors in the shop
5 elected to only use one phone instead of carrying two. So
6 they basically said they would use their personal cellphone
7 for business purposes.

8 THE COURT: When Steve Chaussee made the statement,
9 "I don't give a shit," to whom was he talking?

10 THE WITNESS: He used that statement several times,
11 some to management and a lot of times in the foremen's
12 meetings.

13 THE COURT: Why did you not follow up on Chaussee's
14 repeated reports to you regarding Nannery's possible
15 baseball activities during work hours?

16 THE WITNESS: I directed the general foreman for
17 terminals, Bob Orr, to follow up.

18 THE COURT: Who paid for the gas in the company
19 vehicles when they were used to go to, quote, other
20 properties?

21 THE WITNESS: The State does.

22 THE COURT: Did you feel left out in any of the
23 decisions made about Mr. Chaussee?

24 THE WITNESS: Yes.

25 THE COURT: Are Jackie Beddo and Jack Nannery

1 friends to your knowledge?

2 THE WITNESS: They are acquaintances as far as I
3 know, but I don't know much about their personal life at
4 all.

5 THE COURT: Did Mr. Chaussee receive a copy of the
6 fact-finding spreadsheet?

7 THE WITNESS: I don't know.

8 THE COURT: Has any disciplinary action been taken
9 against you during 2008 and 2009?

10 THE WITNESS: No.

11 THE COURT: The complaints about Mr. Chaussee's
12 conduct, was that in writing?

13 THE WITNESS: As far as I know most of them are
14 verbal.

15 THE COURT: That's all the questions I have from
16 jurors. In light of those questions, are there follow-up
17 questions by counsel? Mr. Sheridan.

18 MR. SHERIDAN: Yes. Thanks, Your Honor. Briefly.

19

20 REDIRECT EXAMINATION

21 BY MR. SHERIDAN:

22 Q. You had said that you'd known Mr. Brodeur for a long time.
23 What year would you say that was?

24 A. I'm not sure when he was required in, but I was working in
25 vessel construction. When he was hired in, he was working I

1 believe for operations at the time as a port engineer.

2 Q. So what year were you in vessel construction?

3 A. I started in 1990.

4 Q. Okay. So he -- so you've probably known him sometime in the
5 '90s you met him.

6 A. I believe he was maybe 2000 when he was hired. I know it was
7 quite a bit after -- it could have been in the late '90s. I
8 don't have the dates.

9 Q. Okay. And have you worked with him during that time?

10 A. No.

11 Q. Okay. And when did you begin working with him?

12 A. Basically when the operations separated the port engineers and
13 we -- they created their own port engineers department, I was
14 one of the first project engineers to come to work for the
15 port engineers. Paul Brodeur was in charge of the vessel-only
16 program -- passenger-only program. I'm sorry. And he
17 basically was reassigned down to purchasing for the port
18 engineers, and I didn't work with him until he basically came
19 up and was the director.

20 Q. All right. And did you know him? To say hi and to chat?

21 A. Yes.

22 Q. Okay. Did you socialize with him?

23 A. No, sir.

24 Q. You were asked whether you had the ability to edit or change
25 time slips -- time sheets, and it sounds like you said you

1 have the ability to edit, right?

2 A. If there's a problem, we normally bring it back. Our first
3 stop is back to the general foreman to have them straighten it
4 out.

5 Q. But just in terms of from an access perspective, it's fair to
6 say, isn't it, that if you wanted to, you could sit down and
7 change a time sheet?

8 A. Anybody probably could, but we don't do that.

9 Q. I'm not asking you whether you did; I'm asking you whether
10 given your access you had the ability to do that.

11 A. No. It's all done by computers. I don't have a copy of the
12 time sheets in the computers.

13 Q. Well, when you review and edit them you must be able to access
14 them, right?

15 A. No. We look at the hard copies.

16 Q. And how do you make a change?

17 A. We don't make a change. If there's a change, we take it back
18 to the general foreman so they can research it and go back to
19 the shop.

20 Q. Where does it go after that? After a change is made.

21 A. It comes back up to us again.

22 Q. And then what do you do?

23 A. If it's correct, we initial it and send it on to payroll.

24 Q. So it's fair to say -- let's say you were dishonest
25 hypothetically. If you were dishonest, you could actually

1 take one and make a change and initial it and never send it
2 back to the foreman, right? There's nobody that would be able
3 to know you did that.

4 A. Right.

5 Q. Okay. And you said you felt left out of decisions made about
6 Chaussee. Which decisions?

7 A. Any time there's a decision like in discipline and stuff,
8 that's all done at the director's level.

9 Q. But we saw Exhibit 250. That was you basically writing all of
10 the facts that you said -- or alleged facts supported the
11 decision, right?

12 A. That's correct.

13 Q. So I mean, it's not like you weren't consulted before
14 discipline was enacted, right?

15 A. Actually, even in the predisciplinary hearings I don't -- I
16 wasn't invited to any of those either.

17 Q. Because you'd already talked to everybody before the hearing,
18 right?

19 A. No.

20 Q. Well, you actually said you participated in the drafting of
21 all the discipline letters.

22 A. I talked to Paul Brodeur only.

23 Q. Okay. Well, what about when you participated in the various
24 drafting of the letters?

25 A. Which letter is that?

1 Q. Well, there was the letter that was given in July of 2008, and
2 then there was the demotion letter that went through many
3 drafts in 2009.

4 A. I saw some. I don't know if I made any changes to them.

5 Q. Okay. But you were consulted. I mean, Ms. Beddo and you
6 worked together on these things, right?

7 A. On some of the report, yes.

8 MR. SHERIDAN: Nothing further.

9 MR. DIAZ: Please the Court, ladies and gentlemen.

10

11

RECROSS-EXAMINATION

12

BY MR. DIAZ:

13 Q. Just several quick questions. In regards to Exhibit 250, are
14 you familiar with what exactly we're referring to, 250?

15 A. I'd have to look at it. Unless you have a title for it.

16 Q. No. It's separate from the book, sir, so I'm going to hand
17 you what's Exhibit 250 for your review. I just want to make
18 certain when we ask questions that you actually have a
19 document to look at so you can answer the question in regards
20 to that document. In 250, is that the materials you were
21 asked to provide to individual --

22

MR. SHERIDAN: Objection. Leading.

23

THE COURT: I'm going to overrule that. Go ahead

24

and ask the question.

25

A. Yes.

1 Q. (By Mr. Diaz) And so you were requested to provide that
2 information to someone.

3 A. Yes.

4 Q. And it's indicated who the information was provided to on page
5 one of the e-mail.

6 A. Correct.

7 Q. Secondly, you were asked about the July 2008 letter. Do you
8 recall that letter?

9 A. I do not.

10 Q. I'll find the exhibit.

11 THE COURT: While he's looking for that I'll
12 indicate that we're already more than five minutes almost
13 ten minutes past our usual break time. I wanted to see if
14 we could finish this witness. If it's not possible to do
15 so in the next few minutes, we'll take a break. Now that
16 I've said that, we'll see how things go.

17 Q. (By Mr. Diaz) It's Exhibit 205 which has been admitted. It's
18 under tab five of the defense exhibits.

19 A. Yes.

20 Q. Do you see that?

21 A. I do.

22 Q. And Exhibit 205, that's a letter dated July 31st, 2008?

23 A. Yes.

24 Q. And was this a written warning?

25 A. Yes. Letter of expectation and written warning.

1 Q. And you are authorized to issue written warnings.

2 A. This was drafted by the HR department for me to sign, but yes,
3 it's my letter.

4 Q. But you had testified earlier you could give counseling or
5 verbal warnings or written warnings.

6 A. That's correct.

7 Q. And this is an example of a written warning.

8 A. Yes.

9 Q. I don't have any further questions.

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CERTIFICATE OF REPORTER

STATE OF WASHINGTON)
) ss.
COUNTY OF THURSTON)

I, RALPH H. BESWICK, CCR, Official Reporter of the Superior Court of the State of Washington in and for the County of Thurston do hereby certify:

That I was authorized to and did stenographically report the foregoing proceedings held in the above-entitled matter as designated by Counsel to be included in the transcript and that the transcript is a true and complete record of my stenographic notes.

Dated this 22nd day of March, 2015.

RALPH H. BESWICK, CCR
Official Court Reporter
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