

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

3 -----  
4 MARIA LUISA JOHNSON, CARMELIA )  
DAVIS-RAINES, CHERYL MUSKELLY, )  
5 PAULINE ROBINSON, ELAINE )  
SEAY-DAVIS, TONI WILLIAMSON, )  
6 and LYNDA JONES, )  
Plaintiffs, )  
7 vs. ) No. 15-2-03013-2  
SEATTLE PUBLIC UTILITIES, a )  
8 department of the CITY OF )  
SEATTLE, a municipality, )  
9 Defendant. )  
10 -----

11 VERBATIM TRANSCRIPT OF PROCEEDINGS  
12 HELD BEFORE THE HONORABLE SUZANNE PARISIEN  
13 TRANSCRIBED FROM FTR AUDIO RECORDING  
14 -----

15 2:43 p.m.

16 August 5, 2016

17 King County Courthouse

18 Seattle, Washington  
19  
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21  
22

23 REPORTED VIA FTR RECORDING BY:

24 Brenda Steinman, CCR #2717

25 Court Reporter

A P P E A R A N C E S

FOR PLAINTIFFS:

JOHN P. SHERIDAN, ESQ.  
The Sheridan Law Firm, P.S.  
705 Second Avenue, Suite 1200  
Seattle, Washington 98104  
206.381.5949  
jack@sheridanlawfirm.com

FOR DEFENDANT SEATTLE PUBLIC UTILITIES:

PORTIA R. MOORE, ESQ.  
ARTHUR A. SIMPSON, ESQ.  
Davis Wright Tremaine LLP  
1201 Third Avenue, Suite 2200  
Seattle, Washington 98101  
206.757.8089  
portiamoore@dwt.com  
arthursimpson@dwt.com

SARAH E. TILSTRA, ESQ.  
Assistant City Attorney  
Seattle City Attorney's Office  
701 Fifth Avenue, Suite 2050  
Seattle, Washington 98104  
206.684.8230  
sarah.tilstra@seattle.gov

1 SEATTLE, WASHINGTON; FRIDAY, AUGUST 5, 2016

2 2:43 P.M.

3 oo-00-oo

4 THE COURT: Public Utilities. Cause  
5 No. 15-2-03013-2 Seattle designation.

6 Can I please have counsel identify them  
7 themselves for the record.

8 MR. SHERIDAN: Yes. Good afternoon, your  
9 Honor. I'm Jack Sheridan representing the seven  
10 plaintiffs. And just to save time, I will not  
11 introduce them individually.

12 THE COURT: Good afternoon. Thank you for  
13 coming. Sorry for the delay.

14 MS. MOORE: Good afternoon, your Honor. I'm  
15 Portia Moore of Davis Wright Tremaine representing the  
16 City. With me is Sarah Tilstra and Arthur Simpson.  
17 Our clients are also in the courtroom, but I --

18 THE COURT: Terrific.

19 MS. MOORE: -- will not introduce them.

20 THE COURT: Good afternoon, everyone.  
21 Thanks for all your patience.

22 Okay. So just for you folks, you're very  
23 well some to stand, sit, whatever you want, you can  
24 come to the bench, whatever you want.

25 Let me just tell you how I think we should

1 make good use of our time, which is I want to go  
2 through the two pretrial motions that I think were  
3 noted up for today as well -- or maybe they were noted  
4 for the first, I'm not sure.

5 MS. MOORE: They were noted -- they were  
6 noted before, your Honor, but we assumed you were  
7 going to --

8 THE COURT: Yeah, hear them today.

9 MS. MOORE: -- hear them today.

10 THE COURT: And then we'll go through the  
11 plaintiffs' motions in limine first and then the  
12 defendant's.

13 Thank you for, I have the two omnibus orders  
14 which have everything listed, which will be great.

15 What I like to do is have my, you know, one  
16 set of motions in limine orders right -- I keep at my  
17 bench in case things come up during trial, so I don't  
18 have to fiddle around. Not that I expect that there  
19 will be any issues, but sometimes, particularly  
20 employment cases, where things get slippery a little  
21 bit and move fast, if there are any objections based  
22 on the motions in limine it's just better to have them  
23 all in one place ready to go.

24 So let me start with -- start with the  
25 pretrial motions. The first one that I want to

1 address is the defendant's motion to exclude the  
2 testimony of Anthony Greenwald and his report.

3 And I have obviously reviewed everything. I  
4 reviewed with interest the Samaha versus Washington  
5 State case out of eastern Washington, the order that  
6 was issued in that case.

7 I have carefully considered the motion and,  
8 of course, the response. And I'm familiar with  
9 Dr. Greenwald's work. He -- the court has taken his  
10 tests and am very familiar with him and his work. And  
11 I certainly find the results of the work, his studies  
12 that's been done on implicit bias to be very  
13 compelling and worthwhile and troubling, the results.

14 That said, I am not going to allow him to  
15 testify at trial.

16 I do understand, you know, and also  
17 appreciate State versus St. Collie\* opinion, last  
18 year -- or 2014, dealing with, you know, the issue of  
19 implicit bias, and how important it is for courts to  
20 deal with it, and I -- it's a priority of this court,  
21 but I don't believe the way to do it is through expert  
22 testimony of this type in a discrimination case. I  
23 find that his opinions are grounded in methods and  
24 procedures of science; that is not my issue at all.

25 The issue that the court has is that these

1 are generalized opinions that are not tied to the  
2 specific facts of this case. And I believe that that  
3 would be confusing and misleading for the jury.

4 So I have signed -- or will sign that order  
5 precluding his testimony.

6 With regard to the motion to exclude the  
7 plaintiffs' emotional harm chart, I got the impression  
8 when the motion was written that you folks assumed  
9 that plaintiffs were hoping to have it admitted  
10 into -- as an exhibit.

11 MS. MOORE: That's correct, your Honor.

12 THE COURT: Okay. And I sort of got the  
13 impression that that's not even an issue.

14 MR. SHERIDAN: No.

15 THE COURT: So I think -- so your objection  
16 still lies to the use of it?

17 MS. MOORE: Well, your Honor, to -- you were  
18 going to do some of this though.

19 MS. TILSTRA: Sure. Sure. Your Honor,  
20 Sarah Tilstra.

21 The only remaining issue, plaintiffs did  
22 indicate in their response that they may use the  
23 charts to refresh recollection. And due to the  
24 circumstances behind creating the charts and  
25 inconsistencies with the memory, we would object to

1           them using them in that manner.

2                   THE COURT: Okay. Well, as I am looking at  
3           it, I think that, although I do understand the  
4           foundational issue with regard to how they were made  
5           and the privilege that was asserted about the  
6           instructions they may have received in creating it, I  
7           think that's things that can be explored on  
8           cross-examination. And, you know, the alleged  
9           unreliability of it, the fact that it was done later,  
10          many years later in some cases, again, that's perfect  
11          fodder for cross-examination.

12                   But so long as it's not being admitted into  
13          evidence, it seems to me that it would otherwise be  
14          admissible. It's almost like a diary entry, which I  
15          know there are different schools of thought on that.

16                   So I'm going to deny the order excluding the  
17          admission of that, but the use of it I will not sign.  
18          Okay?

19                   So I think that -- any other --

20                   MS. MOORE: Your Honor?

21                   THE COURT: -- issues on those two?

22                   MS. MOORE: I'm sorry, your Honor --

23                   THE COURT: Yeah. Sure.

24                   MS. MOORE: -- just to make sure I  
25          understand.

1 THE COURT: Yeah.

2 MS. MOORE: So your -- the charts will not  
3 be admitted, but they will be able to be used to  
4 refresh; correct?

5 THE COURT: Yeah. I mean of course there  
6 will have to be a foundational --

7 MS. MOORE: No, that's fine.

8 THE COURT: -- establishment first and --

9 MS. MOORE: That's fine, your Honor.

10 THE COURT: (Inaudible).

11 MS. MOORE: I just wanted --

12 THE COURT: Yeah.

13 MS. MOORE: -- to make sure --

14 THE COURT: Yeah.

15 MS. MOORE: -- I understood what you were --

16 THE COURT: Yeah.

17 MS. MOORE: -- saying.

18 THE COURT: No worries.

19 MS. MOORE: Thank you.

20 THE COURT: And I'm sure Mr. Sheridan won't  
21 (inaudible) foundation to use it to recall -- to  
22 refresh recollection.

23 Okay. So that deals with the two pretrial  
24 motions.

25 Moving on to the motions in limine, and

1 we'll start out with the plaintiffs.

2 MR. SHERIDAN: All right.

3 THE COURT: And I think what usually makes  
4 most sense to me, maybe you can both come forward and  
5 we can do one, one, just so --

6 MR. SHERIDAN: Sure.

7 THE COURT: -- as opposed to having someone  
8 argue, you know, nine, and then someone responds to  
9 nine, I find it just easier if we do them kind of in  
10 realtime.

11 And let me get the binder. Yours is in a  
12 binder (inaudible). Yes. Yeah. Okay.

13 MR. SIMPSON: Your Honor, as a matter of  
14 housekeeping, Ms. Tilstra and I will be kind of  
15 alternating and sharing the laboring oar in responding  
16 to plaintiffs' various motions in limine --

17 THE COURT: Okay.

18 MR. SIMPSON: -- if that's quite all right.

19 THE COURT: Yeah, you can do whatever you  
20 folks need to do. Okay. Let me just pull them right  
21 up here. Okay. All right.

22 And I'm going to try to -- well, actually in  
23 fact someone, maybe someone can do the realtime -- and  
24 I'm using defendant's order just because it has less  
25 language in it.

1                   So if you folks could just go through or  
2                   someone at the table, who's not arguing, could go  
3                   through, you know; granted, denied, reserve, as we go,  
4                   that would be great, and then we'll have a nice --

5                   MS. MOORE: That's fine, yeah. I can do  
6                   that.

7                   THE COURT: -- recording when we're done.  
8                   Okay.

9                   And we've got four that are stipulated,  
10                  right, one -- plaintiffs 1, 6, 19, and 20. So that's  
11                  great.

12                  So with regard to number 1, that's agreed --  
13                  it's granted, I should say, by stipulation. All  
14                  witnesses will be excluded from the courtroom.

15                  Okay. Number 2.

16                  MR. SHERIDAN: All right. And, your Honor,  
17                  may I make a brief pitch for why we should use my  
18                  proposed order?

19                  THE COURT: Sure.

20                  MR. SHERIDAN: Thanks very much.

21                  So, your Honor, when this is all said and  
22                  done, we're going to have a long trial where we all  
23                  have to remember what you said and we also have to  
24                  show our witnesses what you ruled.

25                  THE COURT: Right.

1           MR. SHERIDAN: So my proposal is that if you  
2           use our order, of course you may deny some and grant  
3           some, but it makes it easy to show it to the witnesses  
4           before they testify so that we're all on the same  
5           page, otherwise we go through a long process of  
6           explaining every ruling.

7           THE COURT: I understand. The only thing is  
8           that sometimes -- so I looked at yours, but sometimes  
9           the reasoning that may be in yours may not be where  
10          the court is, so that's the only thing that made me  
11          think it's easier to do it cleaner.

12          You can certainly append your own reasons on  
13          there. And if they're the same and you can, you know,  
14          check it off and give --

15          MR. SHERIDAN: Okay.

16          THE COURT: -- it to folks. And if it's  
17          different, then you don't have to worry about it.

18          MR. SHERIDAN: Got it. Okay.

19          THE COURT: Okay.

20          MR. SHERIDAN: Fair enough. Okay.

21          On to plaintiffs' motion in limine number 2  
22          regarding settlement discussions. So the -- this is  
23          pretty straightforward stuff. Under ER 408 it's not  
24          admissible because all of our discussions pertaining  
25          to mediation and offers to have her come back through

1 the union and all of that is out.

2 The defendants have their own motion under  
3 408 where they talk about the Peele\* stuff.

4 THE COURT: Yes, right.

5 MR. SHERIDAN: And I would prefer that the  
6 court just enter an order on this one, so that we have  
7 a clean record, because they're arguing that if you  
8 entered the order and then Peele\* is allowed in, there  
9 is waiver and all this.

10 So I would suggest that, you know, this  
11 is -- I'm not going to argue 408 extensively, because  
12 I think it's very clean --

13 THE COURT: Yeah.

14 MR. SHERIDAN: -- but for record purposes we  
15 should --

16 THE COURT: Sure.

17 MR. SHERIDAN: -- just enter it.

18 THE COURT: I agree. Okay. So --

19 MR. SIMPSON: Your Honor, just to clarify.

20 THE COURT: Sure.

21 MR. SIMPSON: Ms. Moore was prepared to  
22 respond to the Nick Peele\* settlement --

23 THE COURT: Okay. Well, that's --

24 MR. SIMPSON: -- motion (inaudible).

25 THE COURT: -- different from this one, so

1           we'll do that one separately, even though it's the  
2           same issue.

3                       So number 2 is granted. Okay.

4                       Number 3, marital privilege.

5                       MR. SHERIDAN: Do we have to argue?

6                       THE COURT: I don't think so. That's  
7           granted.

8                       MR. SIMPSON: Correct.

9                       THE COURT: Number 4, leading questions.

10                      MR. SHERIDAN: Right. So it looks like  
11           we're on the same page on Zurkowski\* versus Brown.

12                      THE COURT: Yep.

13                      MR. SHERIDAN: So that's fine.

14                      THE COURT: Yes.

15                      MR. SHERIDAN: The issue though that the  
16           defense sort of raised in their own motion in limine  
17           7, which I guess we can address now, is whether to  
18           exceed the scope.

19                      THE COURT: Right.

20                      MR. SHERIDAN: And so the defense has sort  
21           of made a practical argument don't make these people  
22           come back. But in fact there is real important  
23           reasons not to break the continuity of our case.

24                      Under 611(b), of course the general rule is  
25           you don't let them exceed the scope. There is

1 exceptions, we make exceptions for experts  
2 (inaudible) --

3 THE COURT: Sure.

4 MR. SHERIDAN: -- et cetera.

5 Under the Wilson case, cited by the  
6 defendants, again they say that, you know, we observe  
7 a party's presentation of its case without  
8 interruption is certainly the preferred method.

9 So the defense sort of made a general pitch  
10 that everybody is busy, but that's always the case,  
11 and I'm sure they're taking time to prep their  
12 witnesses.

13 They also, in their own motion, in their  
14 reply, they talk about two people who are no longer  
15 working there and they may be at different jobs. And  
16 we'll certainly address that stuff as it comes up.

17 But we would ask that when we get to the end  
18 of our case, we would like the court to be able to  
19 rule on defendant's motion to dismiss at that point  
20 based on what we presented, not based on mixing it up.  
21 And also I think for clarity with the jury it's  
22 better.

23 THE COURT: Okay.

24 MR. SIMPSON: Your Honor, aside from the  
25 order, which Ms. Moore is going to be handling in our

1 own separate motion --

2 THE COURT: Sure.

3 MR. SIMPSON: -- in limine number 7, SPU  
4 does not object to the plaintiffs using leading  
5 questions with any witness that's properly deemed a  
6 managing agent under CR 43.

7 THE COURT: Okay.

8 MR. SIMPSON: For all other witnesses who  
9 are neither a current party, nor managing agent,  
10 plaintiffs should be required to have the court first  
11 declare that witness as hostile, pursuant to  
12 ER 611(c). That's pretty straightforward application  
13 of the Rule of Evidence, your Honor.

14 THE COURT: Yeah.

15 MR. SIMPSON: And as I said, Ms. Moore will  
16 be handling the order of proof argument, which is  
17 defendant's motion in limine number 7.

18 THE COURT: Okay. So I agree with that.  
19 The seven people who are managing agents can be  
20 questioned with leading questions, otherwise witnesses  
21 need to be first established as hostile in order to  
22 use leading questions.

23 So let me -- let me go through, because I  
24 know I said I'd do them separately, but they're  
25 overlapping.

1                   So here's my thoughts on -- and if you want  
2           to argue, Ms. Moore, on this --

3                   MS. MOORE: Yeah.

4                   THE COURT: -- issue now --

5                   MS. MOORE: That's fine, your Honor.

6                   THE COURT: -- with the order of witnesses,  
7           I do understand how important it is for flow and other  
8           things.

9                   But I do have to say that when it's a  
10          long -- a lengthy case with so many witnesses and, you  
11          know, big roll-out of a new product, things like that,  
12          I think I have a compromise, but I want to let you  
13          argue, Ms. Moore.

14                  MS. MOORE: Well, your Honor, you just  
15          made -- you just made all my arguments for me. I mean  
16          the City of Seattle is putting in a new computer  
17          system that is hundreds of thousands of dollars and  
18          everybody is all hands on deck working 24/7.

19                  Mr. Sheridan has identified 48 witnesses,  
20          the seven are his plaintiffs, all but two are City of  
21          Seattle employees. And it would just be incredibly  
22          burdensome to have them come back.

23                  Then we have the people who are working for  
24          different employers, who Mr. Sheridan is calling, and  
25          it would be incredibly burdensome to have them come

1 back.

2 So I understand that Mr. Sheridan does not  
3 like that. But he can, if he really does not want  
4 that, he can wait until the witnesses are called in  
5 our case and then his case won't be -- won't be  
6 interrupted in a way.

7 And, your Honor, finally I would say I've  
8 tried a lot of cases, and I'm confident that judges  
9 can figure out, determine, if there is a motion for  
10 directed verdict --

11 THE COURT: Yeah.

12 MS. MOORE: -- what applies.

13 THE COURT: I just think the chances of this  
14 case -- and I know you have another trial right after,  
15 it sounds like.

16 MS. MOORE: Yes.

17 THE COURT: So the chances of this case  
18 finishing in the allotted time, with this number of  
19 witnesses, if they're coming and going, coming and  
20 going, it won't happen, it just won't happen.

21 So here's what I -- I do understand your  
22 argument about flow and about making points, and there  
23 is a reason that people call witnesses in the order  
24 that they call them, so I respect that.

25 Here's what I'm going to do, as a small

1           compromise. I'm going to grant the defendant's motion  
2           to call folks and have them come to court once. I'm  
3           going to let you, you know, choose three people that  
4           you think are most material to your case, that you do  
5           not want to have interruption with the flow of your  
6           questioning, and those three people, whoever you may  
7           designate, will need to come back later on. Everyone  
8           else we're going to deal with them realtime.

9                     MR. SHERIDAN: Fair enough.

10                    THE COURT: Okay?

11                    MR. SHERIDAN: Thanks, Judge.

12                    MS. MOORE: Thank you, your Honor.

13                    THE COURT: I think that will work.

14                    MS. MOORE: That's fine. Thank you.

15                    THE COURT: Okay. So now we're on, I  
16           believe that puts us on 5.

17                    MR. SIMPSON: Correct, your Honor.

18                    MR. SHERIDAN: Right.

19                    THE COURT: Okay.

20                    MR. SHERIDAN: And so number 5 is --

21                    MS. MOORE: So your Honor, I'm sorry, so was  
22           that motion granted? I'm trying to keep a -- so it's  
23           plaintiffs' motion.

24                    THE COURT: So it's more your -- just  
25           want -- well --

1 MR. SHERIDAN: It's granted as to three.

2 THE COURT: It's granted as to three.

3 MS. MOORE: To three. All right.

4 THE COURT: Exactly.

5 MS. MOORE: (Inaudible.)

6 THE COURT: Perfect.

7 So payment of attorneys' fees and when  
8 Mr. Sheridan's office was retained.

9 MR. SHERIDAN: Right. So again, I don't  
10 want to spend too much time on this. But the  
11 defendant's only argument was the dates when  
12 plaintiffs each first retained counsel and whether  
13 their behavior or communications, vis-a-vis SPU,  
14 changes after the date is relevant.

15 But that's basically impugning somebody's  
16 rights to obtain counsel and get legal advice. So it  
17 puts us in the position of the company has the ability  
18 to access lawyers all day long, and yet the idea is  
19 that it's cross-examination fodder to say that you  
20 dare to get a lawyer.

21 So it's not relevant, it's prejudicial, and  
22 it also puts us in the position, depending on how  
23 cross goes, where if they have to say, Well, I was  
24 following legal advice, there's that whole waiver  
25 issue that's raised in the other issue, so -- in the

1 other motion.

2 So we would ask that the court grant this.

3 THE COURT: Okay. Tell me why, why that's  
4 relevant.

5 MR. SIMPSON: It's relevant, your Honor,  
6 because, first of all, I can guarantee that SPU is not  
7 going to be arguing that they should not have retained  
8 counsel or that it somehow impugned their character.  
9 It's not an argument that's going to be made to this  
10 court.

11 THE COURT: Why is it relevant? Tell me why  
12 it's relevant.

13 MR. SIMPSON: It's relevant, for instance,  
14 your Honor, it should be -- at the very least this  
15 most should be made at trial in the course of a line  
16 of questioning, because determining what dates the  
17 plaintiffs first obtained counsel, in conjunction with  
18 other pieces of evidence as to when they behaved in  
19 certain ways at work, or seems to act in conjunction  
20 at work, seems to demonstrate that they undertook  
21 planned, collective action in setting the stage for  
22 this litigation while they were still employees, and  
23 prior to some of them retiring.

24 There is crossover of dates. There is  
25 actions taken by multiple plaintiffs on the same day.

1 And, your Honor, that shows that there is a planned  
2 setting of the stage.

3 THE COURT: So I'm going to reserve on this.  
4 I'm going to reserve on this because I initially was  
5 prepared to grant it, but I'm going to reserve. Let's  
6 see how testimony looks, and we'll figure out at that  
7 point whether it's relevant and not too prejudicial.

8 MR. SHERIDAN: So that means nobody would be  
9 saying anything about this in opening.

10 THE COURT: Exactly. Yep.

11 MR. SHERIDAN: All right.

12 THE COURT: We're not -- we're not going to  
13 do it in opening.

14 Okay. Number 6.

15 MR. SHERIDAN: Okay.

16 THE COURT: I think that's granted by  
17 stipulation.

18 MR. SHERIDAN: It's granted, yeah.

19 THE COURT: Terrific. My favorite kind of  
20 motion. Okay.

21 Number 7 regarding discipline and other --

22 MR. SHERIDAN: Right.

23 THE COURT: -- personal information.

24 MR. SHERIDAN: Yeah. So this one, your  
25 Honor, it is -- we don't see it that much. It's

1 unopposed as to bankruptcy and marriage, so that's  
2 easy.

3 THE COURT: Right.

4 MR. SHERIDAN: But as to these old stale  
5 terminations, these go back, some of them, 22 years.  
6 The idea that a 20-year-old person who gets fired, and  
7 now is 40 years old and being cross-examined on that,  
8 it is more -- they're asking for more than they would  
9 even get if it was a felony conviction.

10 So, you know, if it was a felony, they'd be  
11 able to say, You were convicted on this day and this  
12 was the claim. No cross. No discussion.

13 They want carte blanche to basically do a  
14 404(a) character attack saying, And isn't it true you  
15 were fired there? And isn't it true that, you know,  
16 you stood up about something there?

17 It's a huge distraction and it has no  
18 probative value at all. So we would ask that the  
19 court deny -- grant our motion and deny them the right  
20 to ask about the stale stuff.

21 THE COURT: Okay. So let me tell you the  
22 ones, Counsel, that I -- where I am on this, and then  
23 I'll let you argue the ones --

24 MR. SHERIDAN: Sure.

25 THE COURT: -- that --

1 MR. SIMPSON: Very good, your Honor.

2 THE COURT: So with regard to the Bank of  
3 America one on Plaintiff Johnson, I'll let you folks  
4 argue that one.

5 The -- with regard to plaintiff -- is it  
6 Seay-Davis, Elaine Seay-Davis?

7 MR. SHERIDAN: Yes.

8 MS. MOORE: Seay-Davis.

9 THE COURT: -- that one I've granted; it's  
10 too old.

11 MR. SHERIDAN: Okay.

12 MR. SIMPSON: Your Honor, we stipulated to  
13 that.

14 THE COURT: Oh, even better.

15 MR. SHERIDAN: That was easy.

16 THE COURT: Okay.

17 Plaintiff Ms. Williamson regarding a 1995  
18 warning, I denied that simply because it's the same  
19 employer, and I think anything with the same employer  
20 is relevant.

21 The 1990 Hertz\*, too old and not relevant.

22 The bankruptcy, I believe that was  
23 stipulated; right?

24 MR. SHERIDAN: Right.

25 THE COURT: Yes.

1 MR. SIMPSON: That's correct, your Honor.

2 THE COURT: And plaintiffs being divorced.

3 I believe that was stipulated to; right?

4 MR. SHERIDAN: Right.

5 THE COURT: Okay.

6 MR. SIMPSON: Only to the extent we're not  
7 going to ask about them being divorced. If it comes  
8 out during --

9 THE COURT: Oh.

10 MR. SIMPSON: -- the case that they were  
11 married at the time when they made transactions on  
12 their own account, it may come out that way, but we're  
13 not --

14 THE COURT: Right.

15 MR. SIMPSON: -- going to be specifically  
16 inquiring --

17 MR. SHERIDAN: And I'd just ask that if such  
18 a thing is going to happen, it happen out of the  
19 presence of the jury and we figure it out at that  
20 moment.

21 THE COURT: Okay. But certainly if they  
22 were married at the time, that would be relevant.

23 MR. SHERIDAN: It may be unnecessary to say  
24 it.

25 THE COURT: It may be.

1 MR. SHERIDAN: Right, so that's the fine.

2 THE COURT: It may be.

3 And then with regard to Ms. Robinson, 1990,  
4 different employer. So that, I'm granting that as  
5 being too old as well.

6 MR. SHERIDAN: Got it.

7 THE COURT: Okay. I think --

8 MS. MOORE: Okay.

9 THE COURT: -- that's that.

10 MS. MOORE: Your Honor, let me just --

11 THE COURT: Yeah.

12 MS. MOORE: -- let me just read it back,  
13 because I'm --

14 THE COURT: Yeah.

15 MS. MOORE: -- I'm making your --

16 THE COURT: No, great idea. Go ahead.

17 MS. MOORE: So the Bank of America, did you  
18 want to hear --

19 THE COURT: Yeah.

20 MS. MOORE: -- argument on that?

21 THE COURT: I do want to hear on that.

22 MR. SIMPSON: Very good.

23 MS. MOORE: Okay. The Seay-Davis is  
24 granted.

25 Williamson is denied.

1 Hertz\* is granted.

2 Divorced is granted with the exceptions that  
3 we talked about.

4 And Ms. Robinson is granted.

5 THE COURT: Exactly. Perfect. Okay.

6 MS. MOORE: Okay.

7 THE COURT: So let's talk about  
8 Ms. Johnson's termination from Bank of America.

9 MR. SIMPSON: Very good, your Honor.  
10 Because as an initial matter this motion in limine  
11 number 7 is built on a faulty predicate.

12 Plaintiffs' arguments, largely made under  
13 ER 404(a), which deals with general character evidence  
14 or general disposition evidence.

15 The evidence regarding Ms. Johnson,  
16 vis-a-vis Bank of America, is simply not that. It's  
17 not being offered as that.

18 ER 404(a) is simply not implicated. We're  
19 not saying Plaintiff Johnson has a general propensity  
20 to steal or Plaintiff Johnson is not a nice person.

21 We're here to ask that you'd also reserve  
22 judgment on this, your Honor.

23 The testimony at trial is going to  
24 demonstrate that our line of questioning, as it  
25 regards Ms. Johnson's circumstances of her leaving

1 Bank of America, is directly implicated in a statement  
2 under ER 613, that's prior inconsistent statements.

3 THE COURT: Oh, so like impeachment.

4 MR. SIMPSON: That's correct, your Honor.

5 THE COURT: Okay.

6 MR. SIMPSON: It will be impeachment  
7 evidence.

8 THE COURT: Okay.

9 MR. SIMPSON: We would just ask that the  
10 court reserve judgment so that our impeachment  
11 evidence isn't smoked out --

12 THE COURT: Yep.

13 MR. SIMPSON: -- during the course of this  
14 motion in limine.

15 THE COURT: I think that's fair. So let's  
16 reserve on Ms. Johnson.

17 MR. SHERIDAN: Reserve. Got it.

18 THE COURT: Yeah. Okay.

19 So I think that covers all of 7.

20 MR. SHERIDAN: Number 8. The argument that  
21 plaintiffs should not have filed the lawsuit. Again,  
22 it puts us in a weird posi -- that we should have gone  
23 through administrative process first, either  
24 Loudermill hearing or through a union grievance  
25 process.

1 Well, as the court is aware, Smith versus  
2 Bates College says, you know, you don't have to go  
3 through any process. And in fact if you do, there may  
4 be collateral estoppel issues as to union stuff and  
5 the things that would happen to public employees.

6 So from our perspective, your Honor, we  
7 think this is an effort to cast the defendants -- the  
8 plaintiffs in a negative light, that they should have  
9 done more before they sued.

10 There's an implication that Mr. Hoffman may  
11 have done something had two of them gone to a  
12 Loudermill hearing.

13 But the bottom line is this, that it's our  
14 position that Mr. Hoffman was -- he was deposed twice  
15 and never said that he made a mistake and would have  
16 changed his mind had they only come and talked to him.  
17 It's simply a matter of it being irrelevant.

18 There's no reason for that information to be  
19 requested, except again to try to cast them in a  
20 negative light that they should have done more before  
21 sued, which is contrary to the law.

22 THE COURT: Okay. Thank you.

23 MS. TILSTRA: Good afternoon, your Honor.

24 THE COURT: Good afternoon.

25 MS. TILSTRA: So as to the collateral

1       estoppel issue, we're not arguing collateral estoppel  
2       or exhaustion. I think the cases --

3               THE COURT: Yeah. I saw it in the brief,  
4       yeah.

5               MS. TILSTRA: Yeah. The cases that  
6       Mr. Sheridan --

7               THE COURT: Yeah. There's no duty to  
8       exhaust.

9               MS. TILSTRA: Right. Right. That's not the  
10      issue.

11              But the issue is that plaintiffs have argued  
12      throughout this case that they were treated  
13      differently than other employees, and that they, who  
14      are white or younger who had not engaged in protected  
15      activities, but because some of these plaintiffs  
16      didn't go through the whole Loudermill process we  
17      don't know if they would have been treated  
18      differently.

19              So they're just speculating as to that, as  
20      to whether they -- if they had participated in the  
21      process. So we're -- we should be allowed to inquire  
22      about that.

23              THE COURT: Okay. So here's -- I'm denying  
24      the motion. The relevancy though is limited, and it's  
25      only to how comparators were treated, because I think

1           that's relevant. So obviously there is no argument or  
2           (inaudible) of administrative remedies or collateral  
3           estoppel, that's stipulated to, but otherwise I'm  
4           going to deny it.

5                     MR. SHERIDAN: Okay.

6                     THE COURT: And let's see here.

7                     MR. SHERIDAN: Number 9.

8                     THE COURT: Number 9.

9                     MR. SHERIDAN: All right. This is regarding  
10           excluding of references made to the not ready  
11           percentage. So we have both testimony at depositions,  
12           as well as performance evaluations that make reference  
13           to this not ready percentage.

14                    THE COURT: Right.

15                    MR. SHERIDAN: So it's our position that,  
16           first of all, it is a summary under 1006 and it's a  
17           calculation. They admit it's a calculation, but they  
18           mention it.

19                    As to the -- and as to the extent that it  
20           exists in another document, like a performance  
21           evaluation, it's double hearsay under 805.

22                    So we agree that the performance evaluations  
23           are business records, but the calculation itself is --  
24           it is hearsay data that is being quoted as though Joe  
25           said in the context of the performance evaluation.

1                   So we're moving under those two bases.

2                   THE COURT: Is your issue that they didn't  
3                   have the underlying data that's been destroyed, or  
4                   just never was collated in that way, you haven't been  
5                   able to see it? Is that what --

6                   MR. SHERIDAN: It's never been offered. And  
7                   under 106, because it is a summary, it has to have  
8                   been given to us in advance of offering it.

9                   THE COURT: Well, I don't think it's a  
10                  summary. I don't -- it's a --

11                  MR. SHERIDAN: It's a calculation.

12                  THE COURT: It's an evaluation. A  
13                  evaluation can have all kinds of things now. It can  
14                  say, you know, how many days were, you know -- someone  
15                  was absent 25 percent of the time. You know, this --  
16                  evaluations typically have summaries in them of other  
17                  things. So I don't see it in that way.

18                  MR. SHERIDAN: Well, 106 includes  
19                  calculations specifically. I mean 1006 includes --

20                  THE COURT: Right.

21                  MR. SHERIDAN: -- calculations.

22                  THE COURT: Right.

23                  MR. SHERIDAN: So if you're not buying that  
24                  one, then I hope you'll buy the 805 one --

25                  THE COURT: Okay.

1 MR. SHERIDAN: -- because that is double  
2 hearsay.

3 THE COURT: Okay. Let's --

4 MS. TILSTRA: Well, I agree with your  
5 assessment. I was just going to say that 1006 does  
6 not -- it only applies to summaries of voluminous data  
7 prepared for purposes of litigation; that's not the  
8 case. If you take that argument to its logical  
9 conclusion, any business record with --

10 THE COURT: Numbers --

11 MS. TILSTRA: -- summaries in it --

12 THE COURT: -- in it.

13 MS. TILSTRA: Yeah.

14 THE COURT: And they all have numbers.

15 MS. TILSTRA: Yeah. So, you know, these are  
16 documents that were maintained in the regular course  
17 of business. Certainly plaintiffs had an opportunity  
18 to object and dispute those percentages at the time  
19 that they received their performance evaluations.

20 THE COURT: And you can still do that by  
21 saying, And you don't have the record to support that  
22 on cross-examination, you don't -- we can't verify  
23 when this was done.

24 MS. TILSTRA: Okay.

25 THE COURT: So I'm going to deny that.

1 Certainly I think the plaintiffs' performance at work  
2 is always relevant in any employment case, and this  
3 would not be any different. Okay. So that is  
4 number 9.

5 MR. SHERIDAN: Okay. Number 10 is testimony  
6 as to why a particular plaintiff sought a payment  
7 arrangement is irrelevant.

8 So it's undisputed that payment arrangements  
9 can be given to any customer for any reason or no  
10 reason at all. There doesn't -- no one -- so when you  
11 pick up the phone and call and say, I need an  
12 extension, nobody is allowed to ask you why and is it  
13 need based. It's just you ask and you get it. That's  
14 the idea.

15 So in our posi -- our position is that  
16 cross-examining the plaintiffs on why they needed it  
17 is irrelevant, and it's making them stand at a higher  
18 standard than any other customer. And that's just  
19 unfair under 402 and 403.

20 THE COURT: Okay.

21 MR. SIMPSON: I dispute plaintiffs'  
22 representation of what a payment arrangement's  
23 qualifications are. There are qualifications to  
24 obtain a payment arrangement.

25 You can't have, for instance, two broken

1 payment arrangements in the prior year. If you're in  
2 a certain stage of collections, you have to pay a  
3 50 percent or a 75 percent deposit.

4 So that factual statement is just incorrect,  
5 your Honor.

6 But this relevant -- the evidence is  
7 relevant by any definition of the term. The payment  
8 arrangement at SPU allows a utility customer to  
9 postpone the payment of their utility bill and also  
10 waives corresponding late fees and interest charges.

11 The plaintiffs in this case entered payment  
12 arrangements on their own accounts in violation of the  
13 city codes of ethics -- city code of ethics.

14 They now prefer that the jury not know why  
15 they did so. The jury is entitled to know these  
16 reasons, or the lack thereof, your Honor.

17 For instance, Plaintiff Johnson made 31  
18 financial transactions on her own utility account,  
19 many of which were outside of policy. So the average  
20 ratepayer would not have been able to obtain them.

21 Yet she testified at her deposition that her  
22 and her family had never suffered financial distress  
23 during the course of her employment with SPU that  
24 would have necessitated her to enter this payment  
25 arrangement.

1 Her husband, for instance, testified, when  
2 asked why he thought that she did it, that she was a  
3 shopaholic.

4 So this shows, your Honor, that her  
5 misconduct in violation of the city code of ethics was  
6 willful, flagrant, and not driven by any financial  
7 exigency. We believe that that is relevant and the  
8 jury should be entitled to receive that information.

9 MR. SHERIDAN: May I respond briefly?

10 THE COURT: Sure.

11 MR. SHERIDAN: Your Honor, the examples that  
12 counsel gave are not need based. So if somebody -- he  
13 said there is certain limitations, you can't do more  
14 than two in a year or whatever; those are not need  
15 based. Those are calculations based on the facts in  
16 your record.

17 So again, it doesn't matter why you're doing  
18 it, what matters is they have their own formulas for  
19 when it might be restricted or go to another  
20 department, but it's not need based, so it's not  
21 relevant.

22 As to being able to cross-examine them on,  
23 Well, you really didn't need it, you can -- you just  
24 heard basically the cross, and that is 403 stuff. You  
25 can't basically say to somebody that what you are

1           allowed to do -- You were doing 55, weren't you?  
2           That's irrelevant. It doesn't matter if you're doing  
3           the speed limit, it doesn't matter if you're -- if  
4           you're -- our case sinks or swims on whether or not it  
5           was proper for them to do payment arrangements for the  
6           last decade. It has nothing to do with their  
7           motivation, because if we're right, and we think we  
8           are, the answer is there was no policy prohibiting it.

9                       So to ask to cross-examine them on, Well,  
10          why did you do it when no one else says to do it? It  
11          doesn't lead to anybody getting more evidence that  
12          helps them prove their case under relevance.

13                      THE COURT: Okay. But it seems like there's  
14          an issue as to whether or not other citizens/clients,  
15          customers, have to give a reason.

16                      MR. SHERIDAN: I think he'll admit -- I  
17          think counsel will admit that they do not.

18                      MR. SIMPSON: Your Honor, the problem is  
19          they're not allowed to work on their own utility  
20          accounts at all.

21                      THE COURT: Right.

22                      MR. SIMPSON: It was a violation of the city  
23          code --

24                      THE COURT: Right.

25                      MR. SIMPSON: -- of ethics.

1 THE COURT: So why does it matter what the  
2 reasoning was? I mean --

3 MR. SIMPSON: Because --

4 THE COURT: -- the fact that they did it,  
5 your theory of the case is the fact they did it is  
6 enough. I mean are you going to really have one of  
7 the plaintiffs testify 31 different reasons she gave  
8 for each one?

9 MR. SIMPSON: It shows the degree of their  
10 conduct, your Honor, and the degree in which they were  
11 willing to forego compliance with work base policies  
12 without any exigency.

13 I think the jury -- that is -- you know,  
14 shows relevance. That's relevant to what made them do  
15 it.

16 They, we contend, knew about this  
17 prohibition the entire time, they just realized they  
18 couldn't get caught for it for years. So it shows  
19 like a flagrancy of action, your Honor, and that is  
20 certainly relevant. Nor is it unfairly prejudicial.  
21 It's part of the case. It's part of what led them to  
22 engage in these transactions.

23 THE COURT: Okay.

24 MS. MOORE: And, your Honor, if I could just  
25 say, I think motive is always something that is

1           allowed in a case. And it -- we don't have -- we  
2           don't intend to ask any plaintiff why they did this 31  
3           times or 60 times. But it does go to their motive and  
4           shows their willfulness.

5                       And I didn't -- I shouldn't have --

6                       THE COURT: Okay.

7                       MS. MOORE: -- interrupted.

8                       THE COURT: Well, I'm going to deny it.

9           I -- I'm going to deny it. I think it's -- I think  
10          any time the actual conduct that is the subject of the  
11          discipline, things around that behavior, and the  
12          defendant's response to that behavior, the bar to say  
13          that something is not relevant is pretty high. So I'm  
14          going to allow it. Okay.

15                      Number --

16                      MR. SHERIDAN: 11, your Honor.

17                      THE COURT: -- 11.

18                      MR. SIMPSON: That's correct.

19                      MR. SHERIDAN: This is just straightforward  
20          rules of evidence stuff. Were you aware? Did you  
21          understand format in a deposition question is just  
22          improper, as it would be at trial.

23                      It was asked literally a hundred times over  
24          the course of seven depositions, and it was objected  
25          to 99 out of those times.

1                   So we would ask that in -- if they -- if  
2                   they use deposition testimony that they not be allowed  
3                   to ask the question as -- for questions that are  
4                   formulated this way. And of course at court we would  
5                   just object and rule on it there.

6                   THE COURT: Okay.

7                   MR. SIMPSON: Your Honor, the plaintiffs  
8                   were long time employees at SPU. I believe the  
9                   shortest tenure was about ten years which the employee  
10                  had been working at SPU.

11                  Your Honor, the court is asking -- the  
12                  plaintiff is -- I do apologize.

13                  THE COURT: That's okay.

14                  MR. SIMPSON: Plaintiff is asking the court  
15                  to exclude the plaintiffs' admissions at deposition  
16                  regarding certain policies that had been long  
17                  standing, long implemented part of the workplace, and  
18                  part of the workplace expectations of employees.

19                  If plaintiffs' proposition was such a  
20                  straightforward evidentiary proposition, surely he  
21                  would have been able to present the court with a case,  
22                  in which a court jettisoned a pretty sizable amount of  
23                  deposition transcript because of some supposed problem  
24                  with the way the question is framed.

25                  Your Honor, the plaintiffs' premise is that

1 none of these policies existed, that they were  
2 fabricated, and that they were hoaxes.

3 At their depositions, SPU was entitled to  
4 ask them in cross-examination whether they were aware  
5 of well established and long standing workplace  
6 policies.

7 Plaintiffs' argument doesn't have any  
8 affirmative support. There is no case, that he could  
9 find apparently, that represents this is a  
10 straightforward application of the evidence rules.  
11 The plaintiffs testified under oath, and to the extent  
12 necessary for impeachment or otherwise we should be  
13 permitted to use those admissions under oath.

14 MR. SHERIDAN: Well, your Honor, we actually  
15 only cited to Takeland\* and State versus Denton, which  
16 says -- Takeland\* says more typically objectionable  
17 questions begin with phrases like did you know or  
18 would you be surprised.

19 So we all know, as trial lawyers, that that  
20 stuff is not permitted. And so this doesn't have to  
21 do with the rightness of the answers or admissions, it  
22 has to do with asking the question under --  
23 appropriately for the rules of evidence.

24 And we cited the court to State versus  
25 Denton, which says that such questions are tantamount

1 to testimony by counsel.

2 So there's no -- you just have to ask the  
3 question right. And if you don't and it's objected  
4 to, you're out. So we objected and the rules of  
5 evidence apply.

6 THE COURT: Okay. So I'll reserve on that.  
7 I think it depends on the questions. I mean if there  
8 has been evidence already establishing that whenever  
9 policy A existed at X time, to ask a witness who is  
10 alleged to be, purportedly is bound by that policy,  
11 it's appropriate to ask them, Were you aware of policy  
12 A, B, C. I'll reserve and --

13 MR. SHERIDAN: All right.

14 THE COURT: -- you know, just be listening  
15 carefully. Okay.

16 So now we're on motion in limine 12.

17 MR. SHERIDAN: 12. And 12 is the because of  
18 formulation of questions at depositions. So the  
19 standard, you know -- it's not the standard, because  
20 of, even though it's in the statute --

21 THE COURT: Right.

22 MR. SHERIDAN: -- it's substantial factor.

23 THE COURT: Substantial factor. Right.

24 MR. SHERIDAN: And I did a case (inaudible)  
25 versus Bon Marche where the defendant convinced the

1 judge to put in because of in the jury verdict form,  
2 even though we did a motion -- we had proper jury  
3 instructions, and the court overturned it.

4 So here, over objection, defendants  
5 repeatedly again asked the question framed as, State  
6 the facts you believe were because of your race or  
7 based on your race. And I objected each time.

8 And so counsel just framed it wrong and  
9 should not be able to basically say that in front of  
10 the jury and confuse the jury.

11 THE COURT: Okay.

12 MR. SHERIDAN: In depositions. Of course it  
13 wouldn't happen here in court.

14 THE COURT: Right.

15 MR. SIMPSON: Your Honor, we're not asking  
16 to have inappropriate legal standard put into a jury  
17 instruction.

18 Plaintiffs' counsel misunderstands the  
19 import of those questions.

20 At the depositions SPU's counsel did not say  
21 or did not ask, Did you suffer an adverse employment  
22 action because of your race or because of your age.  
23 That wasn't the question.

24 The question was whether they believed they  
25 had been discriminated against on the basis of their

1 age or race.

2 Your Honor, this case is a race and age  
3 discrimination case. SPU's counsel appropriately  
4 asked them if they themselves believed that certain  
5 SPU management personnel had discriminated against  
6 them.

7 I think plaintiffs' counsel's issue might be  
8 that a number of them said no, and that's clearly  
9 relevant. That's not misstating the legal standard.  
10 And besides, this court will surely enter a jury  
11 instruction that does appropriately instruct the jury  
12 as to the appropriate legal standard.

13 THE COURT: Okay.

14 MR. SHERIDAN: Oh --

15 THE COURT: So I don't -- yeah. I don't  
16 think there is any possibility that the jury is going  
17 to be confused between the substantial factor, which  
18 is in the jury instruction at three -- would be 330,  
19 and Do you think you were discriminated against  
20 because of your race. So I think that's an  
21 appropriate question to ask. So I'm going to deny 12.

22 MR. SHERIDAN: All right.

23 THE COURT: 13.

24 MR. SHERIDAN: 13. Your Honor, 13 pertains  
25 to the original page. I wasn't sure if the court had

1           seen --

2                   THE COURT: I think I had a copy of --

3                   MR. SHERIDAN: Do you have a copy of that,  
4           appendix one to the reply?

5                   THE COURT: Oh, no.

6                   MR. SHERIDAN: May I --

7                   THE COURT: No, I do not.

8                   MR. SHERIDAN: -- hand up --

9                   THE COURT: Yes, thank you. I don't think I  
10          did.

11                   MR. SHERIDAN: Give a copy to the other  
12          side. Do you guys have copies?

13                   MS. MOORE: Give it to Arthur, please.

14                   MR. SHERIDAN: So if you look at appendix  
15          one --

16                   THE COURT: This is the one that's subject  
17          to the motion with regard to the expert.

18                   MR. SHERIDAN: That's right.

19                   THE COURT: Okay. The handwriting analysis.

20                   MR. SHERIDAN: Yes. So appendix one,  
21          basically there is two different documents. One of  
22          them was produced mit's Exhibit 34, which was produced  
23          at the deposition, and she was crossed to --  
24          Ms. Williamson was cross-examined on it.

25                   The second one is a document that we were

1 told was reviewed by the expert that was retained  
2 after the discovery cutoff. And the questions were  
3 asked in April of 2016, long before the discovery  
4 cutoff.

5 But as you can see, one document is Bates  
6 stamped and one isn't. One has handwriting in the  
7 upper right, and one has handwriting in the bottom.  
8 So they're different documents.

9 So had we known that, we would have done  
10 discovery on the fact that they're -- and just so you  
11 understand the set up, because it's actually a little  
12 complicated, that Exhibit 33, that you don't have, are  
13 the first several -- is the first version of this  
14 document that they say is the March 24, 2011 UAR  
15 expectations.

16 So there is a bunch of expectations that  
17 exist in the record going back to the 1990s. These  
18 expectations get signed. But we were never given a  
19 signed copy for actually any of the clients for this  
20 March 24, 2011 UAR expectations.

21 We were given a blank version, that is the  
22 Exhibit 33 that you don't have, that has all the  
23 pages. And then we were given -- we were shown  
24 Exhibit 34, as a separate exhibit, and asked, Is that  
25 something that you signed.

1                   So the first question was, under 33, Do you  
2                   recognize these UARs? And the second is -- and  
3                   Ms. Williamson said no. And then the next question  
4                   was, And is this your signature?

5                   So the idea is these two separate documents  
6                   are being treated as though they really must be one.  
7                   So had we known that in the file there were two  
8                   different versions of this document, we would have  
9                   gone back and tried to find out where they were  
10                  located, and who it is that had them, and why it is  
11                  that there's different versions of it.

12                  So that means -- so the other thing is we  
13                  objected on ER 106, because they were just being --  
14                  the clients, all of them, were just being shown this  
15                  last signature page, not tied to the first seven  
16                  pages. So there is no way for us to tell the  
17                  authenticity of the document and if it really matches,  
18                  without making some bold assumptions.

19                  And so we think that this is prejudicial.  
20                  We think that it impedes our ability to prepare for  
21                  trial. And we think that since the defendant didn't  
22                  produce the original and we didn't -- and didn't give  
23                  us any notice of the expert under the local rules

24                  26 --

25                  THE COURT: Well, that's rebuttal. They

1 will argue that that's rebuttal testimony, it's  
2 impeachment. And frankly, I don't know that they  
3 would have had to have given you that. I think that  
4 was a courtesy thing.

5 MR. SHERIDAN: Well, actually there is a  
6 rebuttal -- you know, there is the list of possible  
7 primary witnesses, and then there is the rebuttal  
8 list, that if you have witnesses who are going to  
9 rebut something. Expert witnesses are always --  
10 always need to be disclosed.

11 And the only question is what happens in a  
12 late disclosure, and that's the case that was cited  
13 against the City.

14 So in this particular situation, I mean I  
15 think the local rules say failure to disclose is  
16 sanctionable under 26. So --

17 THE COURT: But you know, Counsel, the new  
18 recent cases that have come down on this require this  
19 court, before I exclude anyone, to go through the  
20 Burnet factors.

21 MR. SHERIDAN: Yes.

22 THE COURT: You have to find willful,  
23 deliberate, prejudice, and whether any lesser sanction  
24 would suffice.

25 MR. SHERIDAN: Right.

1 THE COURT: So, you know, that's a high  
2 burden. My hands are very much tied --

3 MR. SHERIDAN: Well, I --

4 THE COURT: -- with regard to excluding  
5 witnesses.

6 MR. SHERIDAN: Well, I think, if you look at  
7 cases like Hyundai\* and you look at Faisons\*, you can  
8 find willfulness here because of the failure to  
9 produce the original document. Because remember, the  
10 expert isn't analyzing Exhibit 34 from the deposition,  
11 he's analyzing something that we didn't have.

12 In the defendant's response they give Bates  
13 stamp numbers, which is appendix two, saying, Oh, we  
14 produced it five times. And I -- may I hand this up?

15 THE COURT: Sure.

16 MR. SHERIDAN: And these are the Bates stamp  
17 numbers that are cited in their brief, and they have  
18 nothing to --

19 THE COURT: Do you want to take these back?  
20 I'll give them back to you.

21 MR. SHERIDAN: Sure. Thanks.

22 THE COURT: (Inaudible) copies. Let's not  
23 waste paper here.

24 MR. SHERIDAN: Sure.

25 THE COURT: All right. So --

1                   MR. SHERIDAN: Thanks. So appendix two  
2 doesn't -- it's the Bates stamp numbers in the lower  
3 right-hand corner the defense cite in their brief.  
4 And it has nothing to do with -- it's not originals,  
5 it's not copies of the thing tat they call the  
6 original, it's something else.

7                   So we think we've been prejudiced. And we  
8 think that there is a right remedy is, because we  
9 think that the court can find that that is -- that it  
10 was willful to not give us the original.

11                  THE COURT: Well, where is the original? Do  
12 you have it? Do you not have it?

13                  MR. SIMPSON: Your Honor, the original is in  
14 our office. We allowed counsel to inspect the  
15 original.

16                  THE COURT: Right. That's fair.

17                  MR. SIMPSON: The document put at -- you  
18 know, acknowledged in appendix one is a copy of the  
19 original we produced to counsel because he wanted to  
20 see it. He had never previously asked to see the  
21 original of this document, your Honor. As you can see  
22 from the second page of this --

23                  THE COURT: So you've seen the original. So  
24 that can't be the basis of the objection if you've  
25 seen it.

1                   MR. SHERIDAN: We saw it after the discovery  
2                   cutoff. And it's not the same document that was used  
3                   in April as Exhibit 34. We didn't know about the  
4                   original until we got the July report.

5                   THE COURT: But it was a copy. You saw the  
6                   copy of it before.

7                   MR. SHERIDAN: Right.

8                   THE COURT: You probably didn't ask for the  
9                   original because --

10                  MR. SHERIDAN: We assumed it was the same  
11                  thing.

12                  But if you look at the two documents in  
13                  appendix one, they're not the same documents. One has  
14                  handwriting on the top, one has handwriting on the  
15                  bottom, one's Bates stamped, one's not. I mean  
16                  they're not the same document.

17                  And so they probably exist somewhere  
18                  different at the City that we don't -- we don't know  
19                  where they got them.

20                  THE COURT: Okay. So I'll give this one  
21                  back to you. Thank you.

22                  MR. SHERIDAN: Okay.

23                  THE COURT: Okay. So --

24                  MR. SIMPSON: Quite frankly, your Honor, I  
25                  look at these two documents and I don't understand how

1 plaintiffs' counsel is arguing that they're not the  
2 same. I mean the document was copied multiple times.  
3 We've dealt with -- sorry. We've responded to over a  
4 hundred Public Records Request Act requests in this  
5 case. We've produced tens or hundreds of thousands of  
6 pages of documents. Under best evidence a copy is  
7 okay. Plaintiffs' counsel got a copy. The copy may  
8 have been made earlier in time before the notation in  
9 the upper right-hand corner was put there.

10 But as your Honor can see, it's clearly the  
11 same document.

12 And the reason it didn't come with the rest  
13 of the document is because signature pages and  
14 acknowledgment pages to personnel documents or policy  
15 documents are taken off the document itself and put in  
16 the personnel file for keeping. SPU maintains paper  
17 copies of personnel files. Some of the plaintiffs had  
18 been employed with the City of Seattle since the late  
19 80s and early 90s. Clearly it makes a lot more sense  
20 to take the acknowledgment page off, than to start  
21 warehousing --

22 THE COURT: Policy -- every single policy  
23 the person's acknowledged over ten years --

24 MR. SIMPSON: Exactly.

25 THE COURT: -- the file would be this big.

1 MR. SIMPSON: That's impractical.

2 THE COURT: It says on the bottom left what  
3 it's a signature to.

4 MR. SHERIDAN: We don't believe it. We  
5 don't think --

6 THE COURT: Okay.

7 MR. SHERIDAN: We think -- we think the  
8 documents are being manipulated. We have an example  
9 of Ms. Johnson's signature, being an attendant  
10 signature where she is being -- signs -- somebody  
11 signs her name claiming that she attended an ethics  
12 briefing. They've admitted that's not her signature.  
13 So we don't trust those documents. And we think that  
14 it's a big deal that there exists two different  
15 versions of that.

16 The fact that one has handwriting on the  
17 upper right and then the other has it on the bottom,  
18 we don't -- we asked for personnel files, we didn't  
19 get that in the personnel file; it wasn't in there and  
20 it wasn't in any of them.

21 So we think there is a problem with  
22 authenticity and we think there's a problem with us  
23 not having gotten that.

24 THE COURT: Okay.

25 MR. SIMPSON: Your Honor, that goes to

1 weight and to not admiss -- not to admissibility.

2 If he wants to cross-examine the expert or  
3 somebody at SPU about this, he's entitled to, assuming  
4 that it's relevant to the line of --

5 THE COURT: Sure.

6 MR. SIMPSON: -- questioning in the case.

7 THE COURT: Sure.

8 MR. SIMPSON: But frankly, your Honor, it's  
9 a bit far fetched.

10 I can put this in perspective of what  
11 happened in discovery -- I should actually say the end  
12 of discovery, because Ms. Williamson's second  
13 deposition occurred very close to the close of  
14 discovery.

15 At her second deposition she was presented  
16 with a copy of this document, Exhibit 34 --

17 THE COURT: Right.

18 MR. SIMPSON: -- in appendix one.

19 THE COURT: Right.

20 MR. SIMPSON: She denied that it was her  
21 signature.

22 During the deposition, Ms. Moore asked her  
23 if we get a handwriting expert, is that handwriting  
24 expert going to agree with you. And she said that it  
25 was still a forged signature. She was presented with

1 several other almost identical signatures in other  
2 exhibits at the same deposition, and still maintained  
3 that it was a forged signature.

4 Several days after the deposition, SPU  
5 propounded requests for admissions to Ms. Williamson  
6 asking her to admit or deny that it was her actual  
7 signature on the document. She denied it. This was  
8 after the close of discovery, I should add.

9 So SPU obtained, shortly thereafter, a  
10 handwriting expert. Handwriting expert, very shortly  
11 after, provides his expert opinion that to the highest  
12 degree of certainty it was indeed her signature on the  
13 original document.

14 Shortly after that, Ms. Moore provided  
15 plaintiffs' counsel with the expert's opinion and an  
16 email saying we don't have to do this, which is the  
17 law, your Honor.

18 And Mr. Sheridan thereafter requested to  
19 see, for the first time, the original signature. And  
20 he was provided unfettered access at that time.

21 Plaintiffs' arguments go to weight, they  
22 don't go to admissibility, and the motion should be  
23 denied.

24 THE COURT: Okay. I do -- I understand the  
25 objection and I do think that it goes to weight and

1 not admissibility. This is -- it's impeachment  
2 evidence or an important fact going to knowledge of  
3 the policy.

4 But certainly it's wide open for any  
5 arguments about authenticity. It's wide open to argue  
6 that someone manipulated data, records. So that you  
7 can still argue a theory of the case. But I am going  
8 to deny --

9 MR. SHERIDAN: All right.

10 THE COURT: I'm going to deny -- we're up to  
11 13.

12 MR. SIMPSON: Thank you.

13 14 next.

14 MR. SHERIDAN: 14. And 14 --

15 THE COURT: 14 is moot.

16 MR. SHERIDAN: -- since you denied  
17 Greenwald --

18 THE COURT: Yeah. That's moot.

19 MR. SHERIDAN: -- that's easy.

20 THE COURT: 15.

21 MR. SHERIDAN: And then 15 the same.

22 THE COURT: Moot.

23 MR. SHERIDAN: And now to 16.

24 THE COURT: The --

25 MR. SHERIDAN: Water alliance thing.

1 THE COURT: Right.

2 MR. SHERIDAN: Right.

3 And has your Honor seen the --

4 THE COURT: Yes, I saw that.

5 MR. SHERIDAN: Okay, so you're familiar with  
6 it.

7 THE COURT: The declaration did appear to  
8 shore it up in terms of authenticity.

9 MR. SHERIDAN: Right.

10 THE COURT: But -- so I guess I'm not sure  
11 what the objection is. Oh, I think I recall now. You  
12 folks -- there is some information in there that  
13 doesn't quite seem to be accurate or it's not  
14 complete? Is that what the objection was? It didn't  
15 say who was at the meeting or --

16 MS. TILSTRA: Right. So the declaration  
17 doesn't say who drafted the minutes, it doesn't say  
18 whether all the participants in this purported  
19 meeting, including Mr. Hoffman, who made the  
20 statement, that purportedly made the statement that's  
21 at issue, actually got a chance to review. There's no  
22 statement about, you know, the minutes are approved at  
23 the next meeting, like is customarily done in board  
24 meetings and meetings like that.

25 He just says the practice is for a

1 participant to take notes at the meeting, to circulate  
2 those notes among attendees for changes and to  
3 finalize and post the notes.

4 But that's -- there's no testimony that that  
5 is in fact what occurred here and no evidence that  
6 that's what occurred here.

7 MR. SHERIDAN: Well, the author of the  
8 declaration is listed as an attendee on the document.  
9 And the -- you don't have to be the author in order to  
10 be the custodian of record. So he has laid the proper  
11 foundation for the admission of the documents. He  
12 said it's a true and correct copy and he gave the  
13 process.

14 So since they're not challenging the  
15 authenticity of the document, it seems to me that this  
16 is the kind of thing that ought not to be a big deal  
17 to get admitted. And because the -- I mean obviously  
18 we can subpoena him and he'll be here and he'll have  
19 to, you know, jump through some hoops to do it, but  
20 he'll do it.

21 So I've had documents like this admitted as  
22 a result of an authenticating declaration and not had  
23 a problem. But --

24 THE COURT: I'm going to grant the motion.  
25 I don't -- it seems -- it seems like it's a business

1 record and it seems like it's authenticated by  
2 Mr. Willart\* -- Mr. Miller. I can't imagine any  
3 creative, so I can't imagine why we'd need to bring  
4 him in.

5 Okay. 17.

6 MS. TILSTRA: Well, he didn't --

7 THE COURT: He did not create?

8 MS. TILSTRA: No.

9 MR. SHERIDAN: No, he doesn't claim to be  
10 the author, but nor need he as for business records.

11 THE COURT: I'm sorry, you're right.

12 MR. SHERIDAN: He's the custodian of  
13 records.

14 THE COURT: Right, he's the custodian.

15 MR. SHERIDAN: Yeah.

16 THE COURT: The authen -- well, okay. It  
17 says the authenticity has been attested to by Jim  
18 Miller, the head of the organization, which -- oh, the  
19 organization created the document. I get it, not the  
20 person. Okay. Understood. Still going to grant it.  
21 Okay.

22 So now we are on 17 --

23 MR. SHERIDAN: 17.

24 THE COURT: -- with regard to (inaudible)  
25 working in other businesses.

1 MR. SHERIDAN: Oh, right. So some of the  
2 cross-examination by the defendants had to do with, at  
3 depositions, had to do with, So did you work in the  
4 banking industry? Could you do it in the banking  
5 industry?

6 Well, that's neither here nor there. If the  
7 banking industry has certain policies and procedures,  
8 they're a heavily regulated organization, they're  
9 regulated by the federal government and the state  
10 government, and if they have policies and practices  
11 that's fine.

12 If you're in the banks, you have to do  
13 certain things. But if you are in this company and  
14 you have been allowed to do it for ten years, which is  
15 our position, it is irrelevant to cross-examine you on  
16 other policies.

17 If you and I were playing chess, you  
18 wouldn't be able to say to me, Jack, you're not  
19 following the rules of Monopoly. Different rules,  
20 different game. Same thing here.

21 It is -- it is unfair to say to the  
22 plaintiffs on cross, Why don't you follow the rules of  
23 the banking industry? Didn't you know better? That's  
24 really what they want to say.

25 And the answer is, When I was in the banking

1 industry, I did what I was supposed to do. And now  
2 that I'm here, I'm doing what I'm supposed to do.

3 So our clients say -- it's our position that  
4 they were never taught or told that they could not  
5 make adjustments, and they did so for ten years. They  
6 challenged that there's any policy before March of  
7 2011 and there was no procedure until 2012. And  
8 that's our case.

9 So to cross-examine them on what they did  
10 when they were in the banking industry or cash  
11 regis -- when they were doing -- working at  
12 McDonald's, is extremely prejudicial and will lead the  
13 jury to think that there must be policies out there  
14 that are applicable to them that somehow overflow.

15 It can only be convincing -- it can only be  
16 confusing. The defendant has to prove that what their  
17 policies were and that their policies were in place,  
18 not what the banking industry or retail industry did.

19 THE COURT: Okay.

20 MS. TILSTRA: Well, to kind of go with  
21 Mr. Sheridan's Monopoly/Chess analogy, I would argue  
22 that in both games cheating is wrong, and that's the  
23 essence of what we're arguing here.

24 We want to be able to say the plaintiffs  
25 have said, Oh, we didn't know. We didn't know that

1           this was -- that this would be a conflict of interest.  
2           When many of them had worked in prior employers where  
3           the same essential rule existed, you know, you  
4           don't -- you don't cash out your family member at a  
5           fast-food restaurant, you don't deposit your own check  
6           at a bank. I mean these are -- this argument that,  
7           oh, the banking industry is regulated, these are  
8           hypertechnical arguments.

9                     The basic underlying premise is the same.  
10          You don't engage in conflicts of interest. And the  
11          plaintiffs have alleged that we had no idea and  
12          we're -- and SPU is entitled to explore whether that's  
13          actually true, explore the veracity and the  
14          credibility of their statements.

15                    MS. MOORE: Your Honor, if I could just say,  
16          in addition --

17                    MR. SHERIDAN: Your Honor, I guess I'm going  
18          to object.

19                    THE COURT: That's not fair. I let you go  
20          under one, but I think, you know, to have the fire  
21          power of two highly skilled trained litigators --

22                    MS. MOORE: Well, thank you, your Honor.

23                    THE COURT: Yeah. So let me think on this.

24                    MR. SHERIDAN: Okay.

25                    THE COURT: I'm stuck on it. I really see

1 merit to both. I don't know -- there's probably no  
2 analogous cases like it. So this goes to notice and  
3 what people have as their reasonable sense of  
4 information from past life experiences. And I  
5 understand that that is kind of relevant. But I do  
6 also understand that it might be prejudicial.

7 So I'm going to -- what I would -- somebody  
8 remind me, I'd like to rule on it before we start  
9 trial.

10 MR. SHERIDAN: Okay.

11 THE COURT: So just remind me on Monday that  
12 it's out there. I'm going to look at -- the Monday  
13 before -- the Monday of trial remind me it's still out  
14 there and I can rule --

15 MR. SHERIDAN: Got it.

16 THE COURT: -- before we start, in the event  
17 that folks want to use it early on at trial.

18 MR. SHERIDAN: Okay.

19 THE COURT: Okay.

20 MS. MOORE: So 17 is reserved, your Honor?

21 THE COURT: Yeah, I'm going to reserve. And  
22 just make a note that to nag me on the 15th --

23 MR. SHERIDAN: All right.

24 THE COURT: -- before we go get our jurors.

25 MR. SHERIDAN: The next one is a, again, a

1 form question from depositions. Each defendant --  
2 each plaintiff was asked whether or not in their  
3 opinion making a payment arrangement primarily  
4 benefited the customer or the city. And they all  
5 answered in different ways.

6 But this is an opinion question. It is  
7 objectionable and was objected to as an opinion. And  
8 it was also objected to based on competency. They're  
9 not in a position to make policy decisions.

10 The City does things that benefit presumably  
11 the City. So it's really just an argumentative line  
12 of questioning, and we ask that the court exclude it.

13 THE COURT: Okay.

14 MS. TILSTRA: That's not argumentative, your  
15 Honor. It's -- these employees were long time  
16 employees at the City of Seattle. The ethics code has  
17 been in place since sometime in the 1970s. And the  
18 ethics code prohibits City employees from engaging in  
19 activities in conduct that primarily benefits  
20 themselves rather than the City.

21 So the questions are relevant to that point.  
22 And the ethics code was a basis for the finding of  
23 misconduct against these plaintiffs.

24 THE COURT: Okay. I'm going to deny.

25 It's -- you know, it's somewhat similar to 17, but

1           it's certainly more relevant, because it's the ethical  
2           code, not just in other fast-food industry or banking,  
3           but in this job at that time. So --

4                   MR. SHERIDAN: Well, could -- oh, just to  
5           say --

6                   THE COURT: Yeah.

7                   MR. SHERIDAN: -- just so you know what's  
8           coming up is there will be -- we would ask that the  
9           defendant be required to lay a foundation as to  
10          training on the ethics code before such a question  
11          gets asked, because that's been an issue as well.

12                   MS. TILSTRA: Well, I would --

13                   THE COURT: Well, I'll deny that. You can  
14          ask, that's a perfect question on cross-examination,  
15          you know, When were you trained? And you ask the  
16          defense, Did you ever train them? No. Boom.

17                   MR. SHERIDAN: Fair enough.

18                   THE COURT: So okay. So that one is denied.

19                   MR. SHERIDAN: Okay. 19.

20                   THE COURT: Now we're on -- 19 is  
21          stipulation. That's great.

22                   MR. SHERIDAN: Yes. 20.

23                   THE COURT: As is 20.

24                   MR. SHERIDAN: Yes.

25                   THE COURT: Which is great. And --

1 MR. SHERIDAN: And 21.

2 THE COURT: 21, Mr. Johnson. I read the  
3 prior orders from Judge North and from Judge Mack on  
4 this, and I read the U.S. versus Agnes\* case.

5 So tell me why he is -- what's the standard,  
6 he's not -- not helpful, he's got to be -- his  
7 presence has to be essential.

8 MR. SHERIDAN: Right.

9 THE COURT: Which is a high burden.

10 MR. SHERIDAN: So here's the thing is, first  
11 of all, thinking about what is the purpose of 615.  
12 615 is to prevent a witness at counsel table from  
13 benefiting from hearing the testimony of other  
14 witnesses.

15 Well, he's not part of the discrimination  
16 claim, he's not an employee. Right? His --

17 THE COURT: But he's married to one.

18 MR. SHERIDAN: He's married to one. So I  
19 mean one could always say bias, right. One could say  
20 bias for the expert that sits in the room because he's  
21 hired by the plaintiff or the defendant. Right?

22 But there's no -- he's not going to -- his  
23 testimony won't benefit, that's the 615 exclusion  
24 rule. Because he is really just a document guy. But  
25 he's an important document guy. He is the reason that

1 we learned about the scapegoating aspect of our case,  
2 because he found documents that then we absorbed and  
3 figured out how they fit in the timeline.

4 And once we -- once the defense became aware  
5 that we had certain documents, their story line  
6 changed.

7 So we think that his testimony will be  
8 relevant as to the story line and that, but he's only  
9 talking about -- he's not talking about documents that  
10 he's going to offer -- that we would lay a foundation  
11 for admission with him. He would only be talking  
12 about documents that were already admitted through  
13 some other witness. That's his testimony.

14 But at counsel table he'll be a valuable  
15 source to explain to us, as I'm sitting there, what  
16 other documents might be relevant in the moment. And  
17 there's really nobody else that can do it but him.  
18 Our paralegals can't -- aren't as fast as him. He  
19 just knows what he's -- he just knows these documents  
20 backwards and forwards.

21 So there's no prejudice to them, since under  
22 615 he's not going to -- his testimony, when he does  
23 testify, won't have anything to do with the  
24 discrimination claim. And he's -- he has tremendous  
25 knowledge and speed of knowledge regarding the

1 documents.

2 MS. TILSTRA: Well, your Honor said that you  
3 read the two prior orders, so I'm sure you can see  
4 from those orders that the characterization that the  
5 prior courts have given him some sort of special  
6 status is simply not correct. There's been no  
7 judicial blessing of his purported status as agent.

8 And there's really been no authority  
9 provided as to how a party's -- as to why a party's  
10 spouse should be able to render themselves essential  
11 or reasonably necessary simply by reading documents.

12 Mr. Johnson's not an attorney, he's not a  
13 paralegal, legal assistant, interpreter, and he's not  
14 a party.

15 And plaintiffs have legal assistant and  
16 paralegal. And they -- plaintiffs' counsel has  
17 individuals who can fulfill all of those roles.

18 The Agnes\* case is pretty directly on point  
19 with the girlfriend of a defendant was excluded from  
20 trial and -- or from sitting at counsel's table.

21 And the fact is that Mr. Johnson's going to  
22 be called as a witness for both sides. And he's --  
23 Mr. Sheridan is trying to kind of parse what he will  
24 and won't testify about. But there's simply no reason  
25 that Mr. Sheridan's paralegal can't also familiarize

1       herself with the documents or even Mr. Sheridan  
2       himself or his associate. So we would ask that the --

3               THE COURT: Okay.

4               MS. TILSTRA: -- motion be denied.

5               MR. SHERIDAN: Your Honor, may I just add  
6       one point to that?

7               THE COURT: Yeah.

8               MR. SHERIDAN: So this is the first time in  
9       my career that I've ever had somebody who was not my  
10      employee sit in on attorney-client privilege meetings.  
11      And that's -- and he -- that is basically his status.  
12      He is effectively my agent. That he's allowed to be  
13      there when we're all meeting, and what happens in the  
14      room when he's there is attorney-client privileged.  
15      So --

16              THE COURT: Right. But Judge Mack was very  
17      specific about how she made that ruling.

18              MR. SHERIDAN: Only when -- only when he  
19      was -- only when I was there was it privileged, which  
20      is fair. I mean that's how it ought to be; right? So  
21      because he's not -- he is not an employee of mine.

22              But she said whenever -- whenever I'm there  
23      his communications are privileged. That's the first  
24      time in my career this has ever happened. And he  
25      really is our agent, he really does have special

1 status.

2 So -- and he -- and truly, if you think  
3 about it, he's not -- he's not testifying about his  
4 wife's emotional distress. He's not testifying about  
5 anything that his wife said or did. All he's going to  
6 talk about is documents. So he can't hurt either side  
7 in that regard.

8 THE COURT: Yeah, I'm going to deny the  
9 request. I actually think that the fact that he's  
10 testifying on both -- behalf of both parties, I  
11 actually think that it would be confusing to the jury  
12 and I actually think it could harm your case, is what  
13 I think. And I don't want -- I want this to be a fair  
14 trial. And the jury to see him sitting with you,  
15 conferring with you, taking notes with you, and then  
16 he's on the witness stand, he's a spouse; I think it's  
17 going to harm you, and that's my belief.

18 MR. SHERIDAN: All right.

19 THE COURT: But my real -- the basis for my  
20 ruling is just like the court in Agnes said,  
21 defendants may have shown that the girlfriend's  
22 presence would be helpful, but did not show that it  
23 was essential to the case. So that's my ruling on  
24 that.

25 Let's take a short comfort break, you know.

1 We're going to obviously go a little later than 4:00;  
2 I want to get this done. So let's just take a five  
3 minute comfort break, we'll come back, and then we'll  
4 do the next round.

5 MR. SHERIDAN: Thank you.

6 MS. MOORE: Thank you, your Honor.

7 THE BAILIFF: Please rise. The court's in  
8 recess.

9 (Recess.)

10 MS. MOORE: Motion, so hopefully --

11 THE COURT: Yeah.

12 MS. MOORE: -- it will go --

13 THE COURT: We're doing great.

14 MS. MOORE: -- this will go faster.

15 THE COURT: No problem. Okay. Let me get  
16 that. So that's not that. Okay.

17 Number 1.

18 MS. MOORE: Number 1, your Honor, is  
19 strictly a rule of evidence that a person has to have  
20 personal knowledge before they can testify. This may  
21 have already been taken care of when -- I didn't  
22 really understand what Mr. Sheridan was saying, but we  
23 just want to make sure that he understands that he  
24 cannot use Mr. Johnson to authenticate documents that  
25 he got from a Public Records Request.

1                   He's certainly able to come in and say he  
2                   made this many Public Records Requests, but that's not  
3                   (inaudible) authentication. So I think we agree  
4                   with --

5                   THE COURT: I bet he agrees about that;  
6                   right? Yeah.

7                   MR. SHERIDAN: Absolutely.

8                   THE COURT: That's black letter. Okay.

9                   MR. SHERIDAN: Right.

10                  THE COURT: Okay. Great. So then granted.

11                  MS. MOORE: And number 2 is granted.

12                  THE COURT: Okay. Right.

13                  MS. MOORE: And so that brings us to  
14                  number 3.

15                  THE COURT: Great.

16                  MS. MOORE: And this is testimony regarding  
17                  Nick Peele\* --

18                  THE COURT: Yes, Peele\*.

19                  MS. MOORE: -- and a settlement agreement.  
20                  So we kept settlement agreements out.

21                  THE COURT: Right.

22                  MS. MOORE: We know that under 408 they  
23                  can't come in.

24                  Mr. Sheridan is saying that he needs to  
25                  bring this in to prove bias. But there is no way,

1 your Honor, that this can prove bias.

2 Mr. Peele\* was a high level manager who was  
3 resigned in lieu of termination. He hadn't -- he  
4 didn't do the same things that the plaintiffs were  
5 doing. So there's -- it's just -- it's not relevant.  
6 He's not a comparator. It's not -- it's not relevant.

7 THE COURT: Other than Scott Hoffman. You  
8 say a decision maker, that's -- that's --

9 MS. MOORE: Right.

10 THE COURT: -- the only --

11 MS. MOORE: Right. But what Mr. Sheridan is  
12 trying to come in and do is say that you entered into  
13 a settlement agreement with this person that you --  
14 and that was just purely, your Honor, a legal decision  
15 that he did on the basis of counsel. So it's just --  
16 it's not relevant.

17 THE COURT: Okay. So I'll let --

18 MR. SHERIDAN: Sure.

19 THE COURT: -- Mr. Sheridan respond.

20 MR. SHERIDAN: Well, of course this is a  
21 discrimination case, so we all need to provide liberal  
22 construction to the meaning of the statute. We prove  
23 these cases through circumstantial evidence. This is  
24 crucial to our case. It was crucial to our summary  
25 judgment case.

1           The fact that it -- so remember, this is  
2           2011, the same time frame. Hoffman views Caucasian  
3           persons differently than others. And so it doesn't  
4           matter that if he's an executive, what matters is that  
5           he's engaged in misconduct, and Hoffman chooses for  
6           the Caucasian man to let him get off the hook and give  
7           him \$70,000, when he really did something, and the  
8           other ones too, really did something wrong.

9           Whereas our clients did nothing wrong and  
10          were treated harshly, terminated, or threatened with  
11          termination.

12          So this is -- it's sort of -- it's one of  
13          those issues that may be outcome determinative. And  
14          to not allow this may affect the outcome of the case.

15          So in our view there's no link under 408.  
16          You know, the 408 evidence that has to do with our  
17          case is the first part of 408, it cannot be admitted  
18          to prove liability or invalidity of the claim or its  
19          amount.

20          So our settlement stuff clearly doesn't come  
21          in. Their settlement stuff, this Peele\* stuff, has to  
22          do with another -- it's all for another purpose, such  
23          as proving bias.

24          And as you know, under 611 we prove bias  
25          with extrinsic evidence. So we can use this to prove

1 his bias in favor of Caucasian people.

2 As to -- as to the cases that were cited,  
3 there's not one case that supports the defendant's  
4 position. We're showing bias or prejudice. And the  
5 Bulliark\* case and all that whole string of cases that  
6 we cited all comes in.

7 So -- but the other thing I wanted to say is  
8 what counsel says here is also waiving the privilege,  
9 that if she's going to rely on the idea that I  
10 followed the advice of counsel, we gave the case law  
11 to the court that they're waiving the privilege.  
12 They're not allowed to weasel out of stuff by saying,  
13 I followed my lawyer's advice, any more than we would  
14 be in the motions that were discussed.

15 THE COURT: But you won all those, right?  
16 So they can't ask about --

17 MR. SHERIDAN: Right.

18 THE COURT: They can't --

19 MR. SHERIDAN: And we won't say it.

20 THE COURT: Right. So but let me -- go  
21 ahead.

22 MS. MOORE: Your Honor, Mr. Sheridan said  
23 that there was no case law, and that's absolutely not  
24 right. Pervey\* says that in order for this  
25 information to come in, it has to be similarly

1           situated --

2                   THE COURT:   Situated plaintiffs.

3                   MS. MOORE:   -- and have engaged in the same  
4           conduct.   And if you use Mr. Sheridan's logic, then  
5           anybody who was terminated from SPU could come in; he  
6           could use a comparator as long as they were white.

7                   They engaged in different conduct, your  
8           Honor.   So if he wants to bring in a white person who  
9           worked on their own account, who Mr. Hoffman didn't do  
10          something to, have had it, but this is totally  
11          different conduct.

12                   THE COURT:   So here's what I think.   I think  
13          that it is -- it's different conduct and they are not  
14          otherwise similarly situated, but you do have the  
15          common actor, Mr. Hoffman.

16                   Here's -- here is how I'm going compromise  
17          on this, because sometimes the best way to do it is  
18          just to compromise.

19                   You know, so the actual dollar amount, the  
20          \$70,000, is not admissible.   The fact that he entered  
21          into -- that they entered into a settlement is  
22          admissible.   But there will not be any reference to  
23          the specifics; Nick's chicks, things like that.   We're  
24          not going to be inflaming the jury with that kind of  
25          information.

1                   So you can just say, you know, you know, a  
2                   simple statement about, you know, he was --

3                   MR. SHERIDAN: Misconduct.

4                   THE COURT: Misconduct involving, you know,  
5                   female coworkers; period. Nothing about big, you  
6                   know, caldron of lots of young -- nothing. Misconduct  
7                   with female coworkers or subordinates; I'm not sure  
8                   what it was.

9                   MR. SHERIDAN: Right.

10                  THE COURT: But just coworkers. And nothing  
11                  about the \$70,000. And nothing about Nick's chicks.

12                  But, you know, you're opening up, of course,  
13                  cross-examination opportunities --

14                  MR. SHERIDAN: Right.

15                  THE COURT: -- for, you know, the  
16                  difference -- his position being different, different  
17                  job, and different -- I mean it's all going to come  
18                  in.

19                  MR. SHERIDAN: Got it.

20                  THE COURT: But I want to limit the amount  
21                  of prejudice that it's going to have, so that's why  
22                  I've made those specifics.

23                  MR. SHERIDAN: All right.

24                  MS. MOORE: Thank you, your Honor.

25                  THE COURT: Yep.

1 MS. MOORE: That brings us to number 4.

2 THE COURT: Yeah.

3 MS. MOORE: This is testimony regarding  
4 Roger Faustino's social media usage. Mr. Faustino in  
5 2010 worked as a UAR in the --

6 THE COURT: Same job.

7 MS. MOORE: -- call center, same job as the  
8 plaintiffs. He was not a supervisor. He used  
9 Facebook in a way that was inappropriate.

10 I actually went home and showed my teenage  
11 sons this is what happens when you use Facebook.

12 But there is no claim of a hostile work  
13 environment in this case. And in fact four days after  
14 Mr. Faustino testified, they dropped their hostile  
15 work environment claim.

16 So this isn't relevant to anything, your  
17 Honor. And it is just used to inflame the jury. It  
18 is highly prejudicial. It's not relevant to any issue  
19 in the case.

20 MR. SHERIDAN: So the defendants are talking  
21 about a 2010 time frame. But I think we have to  
22 actually look the other -- we have to start from the  
23 2012 time frame and then work backwards.

24 So he's --

25 THE COURT: Because he's now a supervisor.

1 MR. SHERIDAN: He's a supervisor in 2011.

2 In 2012 he takes a videotape in the --  
3 basically in the break room of two of the plaintiffs,  
4 and then he posts it on Facebook, as a supervisor, and  
5 puts in -- puts in the sound track or basically jokes  
6 from one of the Simpson episodes. So he is  
7 humiliating them in his capacity with his supervisor  
8 hat on about things that have to do with work, that  
9 took place at work.

10 Now, there's a question of whether or not  
11 the city management above him knew that. But let's  
12 face it. As a supervisor, it's supervisor liability  
13 right off.

14 The big problem is what happened after they  
15 learned. It is relevant that this guy as a supervisor  
16 was -- also had CCSS access and also did things that  
17 were violations of the ethics rules under their  
18 framework, and was not disciplined. And also, after  
19 the City learned about what he did in terms of the  
20 video, they did nothing.

21 So again, he is a person who is not African  
22 American and is not Vietnamese, and was treated better  
23 than the plaintiffs.

24 So by virtue of the fact that he is in that  
25 position, and by virtue of the fact that the City did

1 nothing to even investigate his misconduct, that's  
2 what makes it the most relevant is that if you -- if  
3 you -- if you have knowledge that somebody did it, and  
4 they certainly have knowledge now, and take no action,  
5 that is evidence of discrimination.

6 Another fact that just happened, is after  
7 knowing what he did, and after hearing evidence of  
8 what he did, and after hearing -- you also may know  
9 that after his deposition we submitted a declaration  
10 seeking a second deposition, because he said to Toni  
11 Williamson that he was sorry for what he had done  
12 regarding her. He admitted to doing it to her.

13 And so our client -- the clients know this,  
14 they're all -- they all know what he did in terms of  
15 the video, they all know what he did in terms of the  
16 ages stuff going back to 2010, and yet as of today the  
17 two plaintiffs who are still working there, the City  
18 has moved them under his supervision.

19 So again, this is -- this is evidence  
20 that -- of their discriminatory intent in our view.  
21 And the jury gets to hear what it is that this  
22 supervisor did and his discriminatory intent.

23 The defense says but there's no evidence  
24 that he actually was involved in the discipline; that  
25 doesn't matter. The fact that they created

1 environment where the people who do nothing wrong, but  
2 are persons of color and older are being punished, and  
3 people who they know have done something wrong are  
4 being let off the hook again. It's the same evidence  
5 as the other persons who are getting preferential  
6 treatment, and we ought to be able to put it in front  
7 of the jury.

8 MS. MOORE: So, your Honor, I just need to  
9 correct a number of statements that Mr. Sheridan made  
10 that were wrong.

11 First of all, Mr. Faustino is a person of  
12 color. Second of all, there is absolutely no  
13 evidence, and Mr. Sheridan has presented no evidence,  
14 that anybody at SPU knew about either these Facebook  
15 pages or this alleged video that he made until  
16 discovery in this case, until the plaintiffs'  
17 deposi -- actually it was the deposition of one of the  
18 named defendants where he asked about some video. We  
19 said, What are you talking about?

20 There's been -- none of the plaintiffs have  
21 seen this video. None of the plaintiffs even know  
22 whether it exists or not. There's going to be no  
23 evidence. It's not relevant. It's highly  
24 prejudicial.

25 He had nothing to do with the disciplinary

1 decisions in this case. That's a given.

2 And Mr. Sheridan's claim that he was not  
3 disciplined in any way is wrong. He was disciplined.

4 Now, he can argue that he got lesser  
5 discipline than his plaintiffs got, that's fine.

6 But to bring this stuff in, when his clients  
7 haven't seen it, when there is no evidence that we  
8 knew about it, and when he wants to, I guess put  
9 everything together and bring in both Facebook and now  
10 this video that nobody has seen.

11 THE COURT: So here's what I'm going to do.  
12 You know, employers can't manage the Facebook pages of  
13 every employee; that would be impossible. And I --  
14 what this sounds like to me is a mini -- a trial  
15 within a trial on things that are -- can be maybe  
16 quite collateral and confusing. So here's what I'm  
17 going to do.

18 I'm going to grant the motion in limine with  
19 some carve outs. So he can be used as a comparator  
20 since, you know --

21 MS. MOORE: That's fine --

22 THE COURT: -- to the extent that --

23 MS. MOORE: -- your Honor.

24 THE COURT: What?

25 MS. MOORE: That's fine. We have no

1 problem.

2 THE COURT: Right. He can be used as a  
3 comparator and, you know, that would include evidence  
4 of how he was disciplined. That may be admissible.

5 But all this other stuff about his Facebook  
6 pages and his posts and alleged movie -- video that he  
7 may have made, and things that have happened recent,  
8 to the extent that they may or may not be true, I  
9 don't know, about his promotions and that, this is a  
10 trial within a trial that we're not going to. I don't  
11 think they're relevant. I think that they could be  
12 unfairly prejudicial, and frankly, more confusing.

13 So he's fine as a comparator, but that's  
14 about it.

15 MR. SHERIDAN: Okay.

16 MS. MOORE: That's fine, your Honor.

17 THE COURT: Okay. So now we're on.

18 MS. MOORE: Number 5, your Honor.

19 THE COURT: 5.

20 MS. MOORE: This is just -- this is just --  
21 we're just trying to shorten up the trial. I really  
22 don't care what you do with this motion anyway, but  
23 this is just a side issue, your Honor, of a billing  
24 software glitch that was found out. The City, Seattle  
25 City Light found out about it. Seattle City Light

1 immediately corrected it. If you want to prolong the  
2 trial and bring it in, we can do it, but it just -- it  
3 has no relevance.

4 None of his clients were disciplined for  
5 this particular software glitch. I guess he's arguing  
6 that more people should have been disciplined. I  
7 guess is why he's thinking it's relevant. But it  
8 really is a side show that's going to prolong the  
9 trial that we don't need to do.

10 THE COURT: So tell me how it's -- how it's  
11 relevant.

12 MR. SHERIDAN: This -- this is very  
13 important to the case, because our position is that  
14 the City sort of walked -- SPU sort of walked into  
15 this whole idea that we're trying to find fraud.  
16 We're trying to find places where people are abusing  
17 the system. That's how the investigation began.

18 And it started out with SPU and Guillemette  
19 Regan and the SPU auditor. And then they said they  
20 were going to hire a person from the outside to do  
21 an -- to do their own investigation. All of it is  
22 sort of looking at lost money. So basically somebody  
23 is improperly stealing from the company.

24 THE COURT: Yeah, like a million dollars or  
25 something; wasn't it?

1 MR. SHERIDAN: Right.

2 THE COURT: I mean I can see why they may  
3 have had some pressure from the auditor's office to  
4 start paying close attention.

5 MR. SHERIDAN: Absolutely.

6 So -- so through this process the thing  
7 begins as a fraud investigation, they're really  
8 looking for people who are stealing. And so that's  
9 part of our comparator argument. People who actually  
10 were stealing weren't punished and people who were  
11 just accessing their own accounts were.

12 But the thing that's important here is the  
13 timeline. Is at the point where Mr. Amy\* testified  
14 and told us that if you put a negative number into the  
15 system instead of saying I'm going to give you a  
16 credit for the hundred bucks or forgive your \$100  
17 penalty, you put a negative number, there's no way to  
18 track it, it doesn't leave any trail behind.

19 And what that means is he said it could mean  
20 millions of people have done this, so this is like a  
21 really big problem. This has to do with a computer  
22 glitch that would have allowed people to just blindly  
23 steal from the company with no way of following them.

24 And the timing of it is the same day that  
25 Amy\* says that look what happened SPU -- the Seattle

1 auditor is basically off the case, and now it's just  
2 an internal investigation that continues to pursue the  
3 plaintiffs, but ignores the thing that really is the  
4 big problem that could be millions of dollars worth of  
5 lost money. And it doesn't get any traction or any  
6 play, and the only thing is that now the auditor's out  
7 of the game and SPU is doing its own investigation.  
8 Again, for publicity purposes they're saying, Look, we  
9 caught these people stealing. But they're ignoring  
10 the thing that really matters.

11 So it's a one witness examination that makes  
12 all the difference in terms of the jury's  
13 understanding of what was really happening.

14 THE COURT: Okay. I think it's very  
15 attenuated, but if -- I'll deny the motion, but if  
16 this starts to become a sideshow about, you know,  
17 other glitches and, you know, too far down the line of  
18 this that's not relevant to this case -- what I hear  
19 you say, you want to use it to show pretext --

20 MR. SHERIDAN: Yes.

21 THE COURT: -- basically, to use summary  
22 judgment language.

23 MR. SHERIDAN: Yes.

24 THE COURT: So that I will -- I can see that  
25 it's relevant. But I don't want to waste a lot of

1 time on it. And it's potentially confusing to the  
2 jury, because it's not -- the plaintiffs weren't  
3 involved in this and they weren't accused of this.

4 MR. SHERIDAN: Right.

5 THE COURT: So a limited amount of  
6 questioning. I'm going to -- so deny the motion.

7 MR. SHERIDAN: Okay.

8 THE COURT: But I'll be paying attention to  
9 this.

10 MR. SHERIDAN: All right, fair enough.

11 MS. MOORE: That brings us to number 6, your  
12 Honor. There were, in the course of the CCSS billing  
13 investigation, SPU uncovered a couple of people who  
14 had improperly gotten benefits, health benefits from  
15 the City.

16 They were told -- SPU was told from the City  
17 that this is a city-wide issue, the City is going to  
18 handle it, City HR.

19 So Mr. -- the people who -- the same people  
20 who did the health stuff, also did some improper  
21 transactions on their accounts, and they were  
22 disciplined for that.

23 But SPU was not responsible for looking at  
24 the health benefit issue so it shouldn't come in. It  
25 shouldn't -- it has nothing to do with us. We

1       couldn't do it. It was a mayor's office issue. So it  
2       wasn't us.

3               THE COURT: Okay.

4               MS. MOORE: But we did discipline them for  
5       what the plaintiffs were disciplined for.

6               THE COURT: Okay.

7               MR. SHERIDAN: So that's exactly right. Is  
8       the punch line here is these are people that went in  
9       front of Hoffman who actually stole stuff who were  
10      uncovered in the CCS investigation, and Hoffman gave  
11      them like a day off for a suspension.

12              So people who actually stole stuff, who  
13      happened to be not older persons or not African  
14      American or Vietnamese persons basically get off the  
15      hook under Hoffman. He's the guy meting out the  
16      penalties. Wagner's one of them. Sanchez is another.  
17      And so it really is a function of, from Hoffman's  
18      perspective, what color you are as to what level of  
19      discipline.

20              So it is --

21              THE COURT: What about the claim --

22              MR. SHERIDAN: -- wrong to say --

23              MS. MOORE: Your Honor --

24              THE COURT: -- that the City --

25              MS. MOORE: -- I just have to correct him

1           because the people that he's talking about, one is  
2           Wagner, who is a 40-year-old African American woman.  
3           The other is somebody called Flores, who is also a  
4           person of color. So it has nothing to do with what  
5           we're here for.

6                     MR. SHERIDAN: Well, we're hap --

7                     MS. MOORE: Nothing to do --

8                     MR. SHERIDAN: We are happy to lay the  
9           foundation as we go, your Honor. But I think you will  
10          see that these are bona fide comparators, and that  
11          they are comparators that were prominent in our --

12                    THE COURT: But if the City --

13                    MR. SHERIDAN: -- summary judgment motion.

14                    THE COURT: -- is doing -- well, I read the  
15          order, and the order from Judge Mack is denied, so we  
16          don't know what she relied on or what was prominent.

17                    But if the City was in charge of discipline,  
18          not SPU, how --

19                    MR. SHERIDAN: No, backwards. Hoffman was  
20          in charge of discipline. Hoffman was in charge of  
21          discipline.

22                    MS. MOORE: Not for -- not for the health  
23          benefits issue. It was a city-wide issue.

24                    MR. SHERIDAN: See --

25                    MS. MOORE: It was not an SPU issue, it was

1 not a Seattle City Light issue, it was not a City  
2 Attorney's Office issue; it was an issue for the City  
3 of Seattle.

4 MR. SHERIDAN: It is Hoffman that makes the  
5 decision as to what punishment these people are going  
6 to get. And we are confident that we can present that  
7 to the court and to the jury.

8 THE COURT: Okay. Well, I'm going to  
9 reserve on this. I want to hear how things come out.  
10 But what I hear is a lot of mini trials and I really  
11 want to avoid that. I mean I really want to avoid  
12 that.

13 MR. SHERIDAN: I understand your position.

14 THE COURT: How can -- how can they be  
15 comparators if they are people of color?

16 MR. SHERIDAN: There's a much bigger story  
17 behind all of this, and we will show you that --

18 THE COURT: Now it doesn't sound like a mini  
19 trial, now it sounds like --

20 MR. SHERIDAN: It's -- no --

21 THE COURT: -- it's going to be a maxi trial  
22 on something totally different.

23 MR. SHERIDAN: No, no, no.

24 THE COURT: So that's concerning to me too.

25 MR. SHERIDAN: Hang on.

1 THE COURT: Show me how -- I don't see the  
2 relevance. I'm trying to get there.

3 MS. MOORE: It's because there is no  
4 relevance, your Honor. It's not relevant. He can ask  
5 Mr. Hoffman about what he did with respect to the  
6 transactions that they did, that's fine. We have --  
7 he can say that Mr. Hoffman gave them less because  
8 they were under 40, one was under 40, that's fine.

9 THE COURT: Right.

10 MS. MOORE: He can say that.

11 THE COURT: That's comparator information.

12 MR. SHERIDAN: Right.

13 MS. MOORE: But the City -- it is a City  
14 issue, it is not an SPU issue. And so for him to be  
15 saying -- tarring Mr. Hoffman with doing something  
16 that he could not do is unfair.

17 THE COURT: So if -- let me just say this,  
18 okay.

19 MR. SHERIDAN: Yes.

20 THE COURT: I'm going to actually reserve,  
21 but let me just be clear --

22 MR. SHERIDAN: Yes.

23 THE COURT: -- in my reservation, which is  
24 that to the extent that Mr. -- they can be used as  
25 comparators for the issue regarding their access of

1 the accounts, which they allege --

2 MS. MOORE: (Inaudible.)

3 THE COURT: -- which they may or may not  
4 have done, I'm not impugning anybody.

5 MS. MOORE: Right.

6 THE COURT: But with regard to what happened  
7 to them, with regard to the benefits they're alleged  
8 impropriety with the signing committed partners or not  
9 committed partners, medical benefits and that stuff,  
10 which appears to me, I take it on the faith of  
11 Ms. Moore that was the City of Seattle took that over,  
12 I don't want him questioned on that. He cannot be  
13 impugned by failure to discipline people that he can't  
14 discipline.

15 MR. SHERIDAN: It -- we will lay the  
16 foundation for admission. We will show you that  
17 Ms. Wagner\* was 30 years old in 2013. So we have age  
18 comparators. We have race comparators.

19 MS. MOORE: That's fine.

20 THE COURT: That's fine.

21 MS. MOORE: That's fine.

22 THE COURT: To compare it on the issue that  
23 he's allowed to discipline them on, that's fine.

24 MR. SHERIDAN: Yes.

25 THE COURT: But not -- I don't want to hear

1           about the City stuff.

2                   MR. SHERIDAN: We will --

3                   THE COURT: Okay?

4                   MR. SHERIDAN: We will lay the proper  
5 foundation.

6                   THE COURT: Okay.

7                   MS. MOORE: Your Honor, I think number 7  
8 we've already decided.

9                   THE COURT: Yes, we have, yes. You get  
10 three people that you -- your case only. That's it.

11                  MR. SHERIDAN: Got it.

12                  THE COURT: Number 8.

13                  MS. MOORE: Okay.

14                  THE COURT: The mini stroke.

15                  MS. MOORE: Your Honor, there's differing  
16 testimony on this, but Ms. Williamson testified at her  
17 deposition that she had a mini stroke, her deposition  
18 was postponed. Then we got the records, we asked for  
19 the records, and there is one doctor that says she has  
20 a stroke. But the later records say you're under  
21 stress from the litigation process, you need to talk  
22 to your doctor or Mr. Sheridan; no evidence of a  
23 stroke.

24                         So she -- so I just don't want her coming in  
25 here saying that she had a stroke, because then we're

1 going to have to bring in --

2 THE COURT: Yeah.

3 MS. MOORE: -- all the doctors.

4 THE COURT: I'm going to grant the motion  
5 and I'll tell you why. A, I don't think it's  
6 relevant. It's actually similar to the testimony  
7 that's not allowed to be introduced, which is the  
8 stress that's caused by --

9 MS. MOORE: The lawsuit.

10 THE COURT: -- litigation.

11 MS. MOORE: Right.

12 THE COURT: That's not admissible.

13 MR. SHERIDAN: All right. We -- we don't --

14 THE COURT: And that's what that is.

15 MR. SHERIDAN: We don't intend to offer  
16 diagnoses, we just intend to talk about what her  
17 symptoms were at various times. So.

18 THE COURT: No, I don't see it as being  
19 relevant.

20 MR. SHERIDAN: I think -- well, your  
21 Honor --

22 THE COURT: What would -- what would be the  
23 relevance to that -- her --

24 MR. SHERIDAN: What her symptoms were at  
25 various times?

1 THE COURT: Right.

2 MR. SHERIDAN: Well, because we have to  
3 prove emotional harm damages. And so if she's felling  
4 stress or whatever, if -- we don't intend to link --  
5 we don't intend to present any evidence of stress from  
6 the lawsuit. We would not -- we would not offer that.

7 THE COURT: But it's tied to her being in a  
8 deposition, so to me --

9 MR. SHERIDAN: It doesn't matter.

10 THE COURT: -- that's stress in a  
11 litigation.

12 MR. SHERIDAN: Her testimony will be, as an  
13 offer of proof, that it was the reliving the events  
14 that caused her the stress, not that she was in  
15 litigation or in a deposition, it was the reliving,  
16 and that's admitted --

17 MS. MOORE: Well, then --

18 MR. SHERIDAN: -- all the time.

19 MS. MOORE: Well, then we have to bring in  
20 the records, your Honor --

21 MR. SHERIDAN: No.

22 MS. MOORE: -- in order to bring in that --  
23 yes, we do.

24 THE COURT: You would. You can't --

25 MR. SHERIDAN: We're not -- we're not

1           putting in a diagnosis.

2                   MS. MOORE: But -- (inaudible).

3                   MR. SHERIDAN: We're not saying that she --  
4           that she suffered from a stroke, we don't have to.  
5           All.

6                   We have to say is this is how I felt and  
7           this is what happened. Not saying, I had a stroke or  
8           a mini stroke, because some doctors say she did. And  
9           we don't need that evidence to win the -- to get  
10          damages, so we don't want to put it in, we're staying  
11          away from it.

12                   But as to what happened to her, she gets to  
13          talk about every day of her life where damages were  
14          proximately caused, and she will say that. She -- we  
15          will not elicit testimony about litigation stress,  
16          because we know it's not compensable.

17                   MS. MOORE: So, your Honor, as long as she's  
18          not going to say that she had a stroke --

19                   THE COURT: Right.

20                   MR. SHERIDAN: She's not.

21                   MS. MOORE: She can come -- she can come --

22                   MR. SHERIDAN: She's not.

23                   MS. MOORE: Then why didn't you just say  
24          that --

25                   THE COURT: Right.

1 MS. MOORE: -- you would agree with the  
2 motion?

3 MR. SHERIDAN: Oh. Oh, well, so what  
4 happened was I simply put in -- I simply put in a  
5 medical record because I thought that she was wrong  
6 factually. We're not -- we don't -- we don't want  
7 doctors in this case. We don't intend to call doctors  
8 in this case. We don't intend to elicit diagnoses in  
9 this case. We're presenting evidence without medical  
10 testimony pursuant to Bunch versus --

11 THE COURT: (Inaudible) --

12 MR. SHERIDAN: -- King County.

13 THE COURT: -- you (inaudible) need to Bunch  
14 versus King County.

15 MR. SHERIDAN: Right.

16 So all we're talking about is how you felt  
17 at a specific moment. We're not going to talk about  
18 litigation stress, because we know --

19 THE COURT: You can't say --

20 MR. SHERIDAN: -- you can't get a penny for  
21 if.

22 THE COURT: -- being in a deposition brought  
23 it all back for me --

24 MR. SHERIDAN: Right.

25 THE COURT: -- it was terrible.

1 MR. SHERIDAN: Oh.

2 THE COURT: This whole litigation stress has  
3 been so hard for me.

4 MR. SHERIDAN: She can't say that.

5 THE COURT: Right.

6 MR. SHERIDAN: But she can say that as I  
7 relived the events I felt stress. And that is not  
8 litigation stress, that is different. She is reliving  
9 the events just like -- just like she'll do --

10 MS. MOORE: Then why is she reliving the  
11 events, Jack?

12 MR. SHERIDAN: Well, because she's being  
13 asked questions, but that's different.

14 MS. MOORE: That's --

15 THE COURT: That's litigation stress.

16 MS. MOORE: -- litigation stress.

17 MR. SHERIDAN: Well, if --

18 THE COURT: That's litigation stress. And  
19 when you -- I'm going to grant 8.

20 MR. SHERIDAN: All right.

21 THE COURT: Okay.

22 MR. SHERIDAN: So your Honor, I hope that as  
23 we get through the trial you will reconsider that if  
24 we make the appropriate presentation to you.

25 THE COURT: Sure. And, you know, you

1 already know that all the information about their  
2 emotional distress chart, and all that data, and all  
3 the years that you --

4 MR. SHERIDAN: Right.

5 THE COURT: -- you know, that's Bunch  
6 stuff --

7 MR. SHERIDAN: Got it.

8 THE COURT: -- that (inaudible) come in.  
9 But specific talk about being in a deposition and  
10 having to relive it caused me to X, Y, Z, that's  
11 litigation stress to this court's opinion.

12 MR. SHERIDAN: Got it.

13 THE COURT: Okay. So --

14 MS. MOORE: Then our last --

15 THE COURT: -- 9.

16 MS. MOORE: -- one, your Honor, is just that  
17 we evenly --

18 THE COURT: Yeah.

19 MS. MOORE: -- divide the time. I've been  
20 in too many trials where plaintiffs take up all the  
21 time and defendants don't (inaudible.)

22 THE COURT: So here's how we're going to do  
23 it. Thank you for doing the math on that, the 4200  
24 hours. I'm going to divide it equally, except for I'm  
25 going to give plaintiffs an additional two hours for

1           rebuttal.

2                   MS. MOORE:   That's fine.

3                   THE COURT:   I think that's fair.  That's  
4           half a -- that's a morning.  That's a whole day they  
5           can do rebuttal.

6                   MS. MOORE:   That's fine.

7                   THE COURT:   Other than that, that's the only  
8           fair way to do it.  There's a lot of parties in this  
9           case and --

10                  MR. SHERIDAN:  So can we have --

11                  THE COURT:   -- everyone needs a chance.

12                  MR. SHERIDAN:  Do we have a number of  
13           specific set number of days in your -- I don't  
14           remember that.

15                  THE COURT:   You guys have four weeks.

16                  MS. MOORE:   Yeah, four weeks.

17                  THE COURT:   16 days.

18                  MS. MOORE:   We have four weeks.

19                  MR. SHERIDAN:  Okay, 16 days.

20                  THE COURT:   Someone did all the math.

21                  MS. MOORE:   I think it's 15, your Honor,  
22           because one is a holiday.

23                  THE COURT:   Oh, that's right.  Labor day.

24                  MS. MOORE:   Yeah, one's a holiday.

25                  THE COURT:   One's a holiday.  So I --

1 MS. MOORE: That's what we did the numbers  
2 on.

3 MR. SHERIDAN: So 15 days divided by two  
4 plus two hours.

5 THE COURT: Is it 15?

6 MS. MOORE: Yes.

7 THE COURT: Yes, right, 15 days. I got here  
8 someone gave me the 4200 minutes.

9 MS. MOORE: Yeah.

10 THE COURT: I assume that's true.

11 MS. MOORE: Yes.

12 THE COURT: So then you would get 2100 hours  
13 plus 60 -- no, no, 120.

14 MS. MOORE: Correct -- 120 minutes.  
15 Minutes.

16 THE COURT: Minutes. I'm so sorry, minutes.  
17 Pardon me.

18 MR. SHERIDAN: Okay, say it again, please.

19 THE COURT: So your minutes would be -- you  
20 would get 2100 plus 120 in minutes, so 2220, two two  
21 two --

22 MR. SHERIDAN: Minutes, got it.

23 THE COURT: -- zero. That's your minutes.

24 MR. SHERIDAN: And who's -- are you the  
25 timekeeper?

1 THE COURT: My clerk will do that, right?

2 Can you? Yes.

3 MR. SHERIDAN: All right.

4 MS. MOORE: And we can also --

5 THE COURT: She's good at that.

6 MS. MOORE: -- have somebody do it too, so  
7 we can check.

8 THE COURT: Yeah.

9 MR. SHERIDAN: Fair enough. Okay.

10 THE COURT: I think that's it.

11 MR. SHERIDAN: I think we did it.

12 THE COURT: But a few things are reserved.  
13 Someone will put that order together.

14 MR. SHERIDAN: Right.

15 MS. MOORE: Yes, your Honor.

16 And I just had a couple -- I just have a --

17 THE COURT: Yeah.

18 MS. MOORE: -- a housekeeping question --

19 THE COURT: Of course.

20 MS. MOORE: -- for you.

21 Your order said, with respect to deposition  
22 excerpts that are going to be used as substantive  
23 evidence, we needed to give those. Are you talking  
24 about admissions of party opponents like the  
25 plaintiffs that I would play?

1 THE COURT: No, I was more concerned  
2 about --

3 MS. MOORE: Okay, that's what I thought.

4 THE COURT: -- experts, if you --  
5 perpetuation depositions. If there are objections --

6 MS. MOORE: Okay.

7 THE COURT: -- I wanted --

8 MS. MOORE: That's what I thought.

9 THE COURT: -- to rule on those before we  
10 got there. But I don't think that's what I hear is  
11 going on.

12 MR. SHERIDAN: Yeah, we have one witness who  
13 is no longer available, she's moved to Arizona.

14 THE COURT: Okay.

15 MR. SHERIDAN: So we've provided a book to  
16 the other side marked up, like you said --

17 THE COURT: Great.

18 MR. SHERIDAN: -- and we're just waiting for  
19 that to come back.

20 THE COURT: All right.

21 MS. MOORE: And last, your Honor, because of  
22 this big thing that's going on with the City --

23 THE COURT: -- yeah.

24 MS. MOORE: -- normally I'm happy to have  
25 just a day's notice, but I've asked Mr. Sheridan to

1           give us 48 hours' notice, because everybody is working  
2           overtime and we've got to --

3                     THE COURT: Right.

4                     MR. SHERIDAN: -- we've got to get the  
5           coverage.

6                     THE COURT: That's sometimes hard to do with  
7           a lot of people.

8                     MR. SHERIDAN: Yes. It's also hard -- it's  
9           also hard for plaintiff to be locked into 48 hours  
10          when we don't know how the case is going to --

11                    THE COURT: How long it's going to go.

12                    MR. SHERIDAN: And we also don't know how  
13          the adverse witnesses are going to go.

14                    THE COURT: Right.

15                    MR. SHERIDAN: So we have to sort of be able  
16          to move according to what the jury hears.

17                    THE COURT: Right. I would -- I would hope  
18          that you would do more than your usual best effort to  
19          give as much time as possible.

20                    MR. SHERIDAN: I never make them sit.

21                    THE COURT: Yeah. We all bene -- well,  
22          people will have to sit, that's the way it works.

23                    MS. MOORE: Right. I'm just telling you the  
24          less time you give us, I'm not going to be able to  
25          guarantee that I can get people there at this time, so

1           you're going to have a whole bunch of people. And  
2           we'll try.

3                   MR. SHERIDAN: So most of the witnesses are  
4           right across the street.

5                   THE COURT: Which is the great thing.

6                   MR. SHERIDAN: Which is really good. So if  
7           there is a problem, I assume counsel and I will  
8           discuss it --

9                   THE COURT: Okay.

10                  MR. SHERIDAN: -- far in advance --

11                  THE COURT: Great.

12                  MR. SHERIDAN: -- to figure these things  
13           out.

14                  THE COURT: Great.

15                  MS. MOORE: Okay.

16                  THE COURT: And, you know, my -- just so you  
17           folks know, my number one priority everyone gets a  
18           fair trial. Number two is we don't waste witnesses'  
19           or jurors' time. So I like to have people -- if  
20           they're lined up, tell them to bring magazines, tell  
21           them to bring new notes on roll-out, whatever it is,  
22           so we don't want to run out of witnesses. I'm sure --

23                  MS. MOORE: We're on the same page.

24                  THE COURT: -- we won't.

25                  MS. MOORE: Okay. We never have.

1 THE COURT: Okay. Great.

2 Well, thanks for all the excellent briefing.

3 MR. SHERIDAN: Thanks, Judge.

4 THE COURT: Nice and thorough.

5 MS. MOORE: Thank you, your Honor.

6 THE COURT: And I know there is one --  
7 (inaudible) getting an order together from what we  
8 did.

9 MS. MOORE: Yes.

10 THE COURT: I don't need to have it now, as  
11 long as I have it on day of, that's all I care about.

12 MR. SHERIDAN: Right.

13 MS. MOORE: We'll get it to you.

14 THE COURT: And then I know there is one  
15 that I need to rule on right away, which I will.

16 MR. SHERIDAN: Okay. And, your Honor, just  
17 before you go, I just want to let you know the person  
18 who is the out of town witness, there is two exhibits  
19 that I'll talk to counsel about. We'll come to you  
20 first day if there is an issue.

21 THE COURT: Okay. Terrific. Thanks for  
22 your hard work. Have a great weekend.

23 MS. MOORE: Thank you, your Honor.

24 MR. SIMPSON: Thank you.

25 MR. SHERIDAN: Thank you.

1 THE BAILIFF: Please rise. Court's in  
2 recess.

3 (Court adjourned at 4:27 p.m.)  
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C E R T I F I C A T E

STATE OF WASHINGTON )

) ss.

COUNTY OF KING )

I, the Licensed Court Reporter in the state of Washington, do hereby certify that:

I am not a relative or employee or counsel of any of the parties to said action, or a relative or employee of any such attorney or counsel, and that I am not financially interested in the said action or the outcome thereof;

The transcript attached hereto is a true transcription of audio recording of the proceedings to the best of my ability.

IN WITNESS WHEREOF, I have hereunto set my hand: August 13, 2016.

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Brenda Steinman  
CCR #2717  
Certified Court Reporter  
State of Washington.