

1 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

2 IN AND FOR THE COUNTY OF KING

3 -----

4 STACY TRUSSLER, an individual)

5 Plaintiff,)

6 vs.) No. 16-2-30183-5 SEA

7 THE STATE OF WASHINGTON,) TRIAL TESTIMONY OF:

8 Defendant.) HEIDI MABBOTT

9 -----

10 VERBATIM EXCERPT OF PROCEEDINGS

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12 Heard before: The Honorable Jim Rogers

13 Date: June 14th, 2018

14 Time: 9:00 a.m.

15
16 APPEARANCES:

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

20 Scott Barbara, Assistant Attorney General, on
21 behalf of the Defendant.

22
23 Reported and Transcribed by:

24 Michael P. Townsend

25 Official Court Reporter

1 PROCEEDINGS

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

4 THE COURT: You may all be seated. Good morning,
5 members of the jury. We have an hour lunch today, as
6 I said yesterday, so lunch will be from twelve to
7 one. I know at least one of you has to leave
8 promptly at four, so we'll stop a few minutes before
9 four. Just a reminder, I know you know this, you're
10 not here tomorrow, Friday. And then you will resume
11 next Monday at ten minutes to nine, okay? Thank you.
12 All right. Mr. Sheridan?

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

14 Whereupon,

15 HEIDI MABBOTT,

16 Having been first duly sworn, was called as a witness
17 herein, and was examined and testified as follows:

18 DIRECT EXAMINATION

19 BY MR. SHERIDAN:

20 Q. Morning, Ms. Mabbott.

21 A. Good morning.

22 Q. Okay. So we are going to continue talking about what
23 we started yesterday. So yesterday, we established
24 that you had a meeting with Ms. Taylor, and then some
25 time in January, maybe the first week, you went to

1 another meeting. So I want to just sort of have a
2 little **time line** here and talk about your participation
3 in the case a little. Were you involved in the case --
4 I gather you switched jobs in what month in 2014?

5 A. **I went to employee relations in May of 2014.**

6 Q. May of 2014. Okay. And you went to employee
7 relations?

8 A. That's correct.

9 Q. **Now, were you assigned to Ms. Scarton at this time?**

10 A. No.

11 Q. When did you become assigned to her organization?

12 A. I want to say it was about mid-summer, maybe --

13 Q. July?

14 A. **July or August, yes.**

15 Q. Okay. Did you provide advice to Ms. Scarton herself?

16 A. At some point, I reached out to her when her case was
17 handed over to me.

18 Q. **When you say "her case," you mean Ms. Trussler's**

19 **case?**

20 A. **Yes.**

21 Q. All right. Assigned to -- okay.

22 A. I'm sorry, did you say to Ms. Trussler? Did I
23 provide advice to Ms. Trussler?

24 Q. No, Ms. Scarton, you were right.

25 A. Oh, no, I did not, no, I was not Ms. Scarton's HR

1 consultant. Sorry.

2 Q. Did you provide advice to Ms. Woehler?

3 A. Yes.

4 Q. Okay. Would that be from July on?

5 A. Yes, that sounds correct, yes.

6 Q. All right. Got it. All right. In July, were you
7 aware of any complaints by Ms. Trussler from any source
8 that Ms. Scarton had yelled at her?

9 A. I don't believe so, no.

10 Q. How about that she was in a hostile work environment?

11 A. Not that I can recall, no.

12 Q. All right. Is it also true that it was in -- was it
13 in September of 2014 you became involved in the Bolotin
14 issue, or was this before?

15 A. That would have been about the right time line.

16 Q. Okay. So September. All right. Now, let's just
17 nail down the meeting with Katie Taylor. It's true, is
18 it not, that she called you in to her office before the
19 meeting that we talked about in January, some time in
20 October, she called you in to her office to tell you
21 what Ms. Trussler had told her?

22 A. Not exactly. She called me in to her office and
23 asked me to describe a meeting I had with Ms. Trussler.

24 Q. Okay. Was it in October?

25 A. That sounds about right, October, November.

1 Q. Okay. Meeting with -- all right. And Greg, could
2 you put up on the screen the org chart for the larger
3 management. Okay. So at this time frame, looking at
4 the secretary level, Taylor, Scarton and Laird, did you
5 have any responsibility to provide them with assistance
6 in 2014?

7 A. I was not their HR consultant.

8 Q. All right. Is it fair to say, then, that you were
9 the HR consultant for this group here, which would be
10 Ms. Woehler?

11 A. Correct, yes.

12 Q. All right. So when you were called in to Ms.
13 Taylor's office in October, did you know why you were
14 being called in?

15 A. No.

16 Q. All right. And did you meet with her besides the
17 October meeting and the January meeting? Did you meet
18 with her any other time?

19 A. I don't believe so.

20 Q. Okay. All right. So it's true, is it not, that Ms.
21 Taylor contacted you and actually met with you
22 regarding her meeting with Ms. Trussler?

23 A. Correct.

24 Q. Okay. And it's true that you and she walked through
25 her notes from the conversation with Ms. Trussler?

1 A. I don't remember that.

2 Q. Okay. But Ms. Taylor has already testified here and
3 you just don't recall it might have happened?

4 A. Correct.

5 Q. I understand.

6 A. Yes.

7 Q. Okay. And then you told Ms. Taylor -- so in terms of
8 what she told you, she told you basically that Ms.
9 Trussler gave her several reports, one of which was she
10 said that she believes the State is at legal risk of
11 being sued and that she is also at risk for being --
12 because she's in the role of appointing authority for
13 Ms. Bolotin, she told you that; right?

14 A. No, not that I recall.

15 Q. Okay. She told you that she received -- that Ms.
16 Trussler told her that she received a letter of
17 concern; right, or I guess, at that time, was an email
18 of concern?

19 A. No, not that I'm aware of.

20 Q. She told you that Ms. Scarton yelled -- that Ms.
21 Trussler said to her Ms. Scarton yelled so loudly that
22 staff members asked if she was all right?

23 A. I don't remember if Ms. Taylor told me that. I know
24 that there was a complaint that Ms. Scarton had yelled
25 at Ms. Trussler, but I don't recall if Ms. Trussler

1 shared that with me herself.

2 Q. All right. And she also told -- Mrs. Taylor told
3 you, because she was sharing her notes, she told you
4 that Ms. Trussler told her that there has been
5 discrimination on the basis of disability in an
6 application for failure to grant a reasonable
7 accommodation of Leah Bolotin or words to that effect;
8 right?

9 A. No.

10 Q. Isn't it also true, again, she's testified now, it's
11 also true, is it not, that you told Ms. Taylor that you
12 would follow up and look in to the additional items
13 that you were not aware of previously? That's what you
14 told her; right?

15 A. I don't remember that, all of that information from
16 the meeting. I recall Ms. Taylor asking me to describe
17 the meeting I had with Ms. Trussler and that she shared
18 that Ms. Trussler had said that I had threatened her in
19 the meeting.

20 Q. Okay. And it's true, though, that after you had that
21 conversation with Ms. Taylor, you did nothing to
22 investigate any of the claims that Ms. Trussler had
23 made, nothing?

24 A. That is correct.

25 Q. All right. And you went to tell Mr. -- let's see,

1 it's true, is it not, that Mr. Pelton was not in your
2 chain of command; right?

3 A. That is not correct.

4 Q. He was several layers up?

5 A. He was the HR director.

6 Q. And so was anyone else in the chain of command
7 besides Mr. Pelton and Ms. Monroe, was it?

8 A. Kim Monroe, Todd Dowler was labor and operations
9 manager, I believe, then Jeff Pelton, then Katie
10 Taylor, I believe, was the structure.

11 Q. But you weren't in labor and operations; right? So
12 he wasn't in your chain of command?

13 A. Correct.

14 Q. Okay. All right. But yet you talked to him, Mr.
15 Dowler, you talked to him about the report that Ms.
16 Taylor had given you about Ms. Trussler; right?

17 A. I don't recall that.

18 Q. Okay. Is it fair to say that you didn't even report
19 the conversation you had with Ms. Taylor to Ms. Monroe,
20 your immediate supervisor?

21 A. That sounds correct. I don't recall talking to Ms.
22 Monroe about it.

23 Q. Can you tell us why if -- you have told us that Ms.
24 Taylor reported to you that Ms. Trussler reported to
25 her that you had threatened her; right?

1 A. Correct, uh-huh.

2 Q. So you would agree with me, if that's true, that
3 would be a pretty serious thing for an HR specialist to
4 be accused of; right?

5 A. Yes.

6 Q. And it would be extremely unprofessional; right?

7 A. Correct, yes.

8 Q. So once you received that report, you didn't tell
9 your boss that there was a -- that a high-level manager
10 had said that you threatened her?

11 A. When I asked Ms. Taylor if I should follow up or take
12 any action, she said no, that she would handle it.

13 Q. Okay. Okay. Now, it's true, is it not, so -- you,
14 at this meeting -- I know yesterday you couldn't tell
15 us what the threat was, but it's true, is it not, that
16 the threat was you said to Ms. Trussler that she's
17 going to lose her job because of her disability?

18 A. No, that's not true.

19 Q. Okay. You gave sworn testimony in this case, did
20 you?

21 A. Yes.

22 Q. Okay. And is that on or about April 13th of this
23 year?

24 A. That sounds right.

25 Q. Okay.

1 MR. SHERIDAN: Plaintiff moves to publish the
2 deposition of Ms. Mabbott and we have a copy for the
3 judge.

4 THE COURT: Motion to publish is granted.
5 Members of the jury, a motion to publish is an
6 old-fashioned legal term meaning that a deposition is
7 opened and used in court. But the deposition does
8 not go into the jury room. The only thing you will
9 hear about the deposition is what is used here in
10 court by either counsel. So again, it's on
11 old-fashioned legal term. It means the deposition is
12 opened for use.

13 MR. SHERIDAN: May I approach the witness, your
14 Honor?

15 THE COURT: Yes.

16 Q. All right. And this is a copy of the deposition that
17 you gave in this case. And you were under oath when
18 you gave it; were you not?

19 A. That is correct, yes.

20 Q. Okay. All right. Let's take a look at page 39, if
21 we could. Your counsel was present for that, as well;
22 correct? Mr. Barbara was there?

23 A. Yes, that's correct.

24 Q. All right. And looking at page 39, line 15.

25 A. Uh-huh.

1 Q. And it begins with a statement that, "Katie Taylor
2 called me to her office separately." Do you see that?

3 A. Okay. Yes, uh-huh.

4 Q. So then I'm going to ask the next question, and you
5 just read it out loud and tell us how you answered,
6 okay? So the last sentence you said was, "Katie Taylor
7 called me to her office," and then I asked you, "This
8 is before the meeting we are talking about?" And you
9 said?

10 A. "Yes, on a different day."

11 Q. Okay. Then I said, "Tell me what happened there,"
12 and you said?

13 A. "Katie asked me what had happened in a conversation
14 with Ms. Trussler a couple of days prior, and I
15 explained it to her and it was the first time I had met
16 -- it was in regard to the first time I had met Ms.
17 Trussler in her office and we walked -- excuse me, and
18 we talked through the accommodation process. And Ms.
19 Taylor indicated that Ms. Trussler alleged that I had
20 threatened her."

21 Q. And I asked, "Did she say what the threat was," and
22 you said?

23 A. "That she was going to lose her job because of her
24 disability."

25 Q. Okay. So that was a true statement when you made it,

1 was it not?

2 A. That Ms. Trussler had alleged it. It's not true that
3 I had threatened that.

4 Q. Okay. But that's the information you received in
5 October from Katie Taylor; right?

6 A. Correct, yes.

7 Q. All right. And you don't remember any of the other
8 details that I have talked to you about this morning,
9 but you do recall this one; right?

10 A. Yes.

11 Q. All right. So that's a huge attack by a senior
12 director on your credibility, isn't it?

13 A. Yes.

14 Q. And you were actually worried that you could get into
15 trouble; correct?

16 A. No, actually, I was more concerned that I was trying
17 to figure out why she felt that way. I was surprised
18 by it.

19 Q. Okay. As a matter of fact, you were shocked by it;
20 right?

21 A. Yeah.

22 Q. And yet you didn't tell your boss that this senior
23 manager had said you threatened her; right?

24 MR. BARBARA: Objection, it has been asked and
25 answered.

1 THE COURT: Overruled.

2 A. I did not.

3 Q. Okay. And is it your testimony you basically said
4 your conversation with Ms. Taylor was that, "Don't
5 worry," essentially, "You don't have to do anything, I
6 will take care of it," or words to that effect?

7 A. Ms. Taylor directed me to not follow up, yes.

8 Q. So since you were not afraid for your own job, wasn't
9 it because Ms. Taylor was assuring you that nothing
10 would come of it?

11 A. No.

12 Q. Well, if anything would come of it, for example,
13 you're aware that Ms. Trussler was sent home for months
14 owing to an allegation by Ms. Thompson that came
15 through you that she was sleeping in her office; right?

16 A. Yes, she was sent home.

17 Q. Yet you, at no point, were afraid that you would be
18 sent home pending a similar investigation; correct?

19 A. That is correct.

20 Q. She was sent home based on the violence in the
21 workplace instruction, was she not?

22 A. I don't remember. I know it was -- the employees
23 were -- that Ms. Thompson was fearful of retaliation, I
24 believe.

25 Q. Isn't it true that in terms of putting on your HR

1 hat, the allegation that you allegedly made was much
2 more in line with a hostile action being a risk if
3 there is nothing done?

4 MR. BARBARA: Objection, your Honor, calls for
5 speculation and it's argumentative.

6 THE COURT: I think I'm going to -- I think, in
7 her position, I think the question is proper.

8 Q. You can answer.

9 A. Can you repeat it?

10 Q. Yes, sure.

11 A. Please.

12 Q. So putting on your HR hat, if you compare the
13 allegation of -- against Ms. Trussler?

14 A. Yes.

15 Q. And let me lay that out for you. Ms. Trussler would
16 have no way of knowing that Ms. Thompson came to you to
17 say that she was sleeping in her office; right?

18 A. That is correct, yes.

19 Q. On the other hand, you were specifically told that
20 Ms. Trussler was making an allegation that you had
21 threatened her; right?

22 A. Correct.

23 Q. So thinking of the violence in the workplace policy,
24 with your HR hat on, wouldn't you agree that under
25 those facts, just as allegations, not saying you admit

1 to them, under those facts, wouldn't you agree that the
2 greater threat was you to her, than Ms. Trussler to Ms.
3 Thompson, because she didn't know who was making any
4 allegations against her?

5 A. I didn't think that. Actually, I thought that the
6 allegation against me had been handled.

7 Q. But what made you think it had been handled?

8 A. Just from talking to Ms. Taylor, that she told me not
9 to take any action on it, that she would handle it.

10 Q. Oh, that it would be handled, not that it was
11 handled?

12 A. Correct.

13 Q. Okay. All right. But in any case, you were not
14 afraid that you would be sent home?

15 A. Correct, and I never heard anything about it after
16 that day.

17 Q. Okay. All right. So now, you're familiar with the
18 whistle blower statute for state employees?

19 A. Yes.

20 Q. Okay. And is it true that at that time, in 2014, Ms.
21 Taylor was one of the people who was appointed to
22 receive whistle blower claims?

23 MR. BARBARA: Your Honor, could I ask a sidebar?

24 THE COURT: Sure. Stand and stretch, if you
25 wish.

1 (Sidebar held.)

2 THE COURT: Please be seated. Mr. Sheridan, give
3 me one second. All right. Proceed.

4 MR. SHERIDAN: Thank you.

5 Q. So you said you're familiar with the whistle blower
6 law, and can you tell us, it's true, is it not, that in
7 2014, Ms. Taylor was one of the people designated to
8 receive complaints?

9 A. I do not know that.

10 Q. Okay. Is that typical that, in your business, you
11 wouldn't necessarily know that?

12 A. Well, I believe our whistle blower complaints come
13 through our audit office, so I don't know if Ms. Taylor
14 would directly receive them or not.

15 Q. Okay. I understand. Okay. All right. So
16 yesterday, we all -- so this was in October. And then,
17 as I recall, it was in January of 2015 that you had a
18 meeting with Katie Taylor again; right?

19 A. Yes. After the complaints from Ms. Thompson?

20 Q. Right. And the complaints from Ms. Thompson came to
21 you in December or January?

22 A. January.

23 Q. Okay. So --

24 A. She requested a meeting in December.

25 Q. Okay. Thompson complaint. Okay. Now, you had

1 talked to Ms. Scarton by now about this complaint;
2 right?

3 A. With Ms. Scarton? I don't believe so.

4 Q. Okay. Well, it's true that you learned that Ms.
5 Thompson had actually made such a complaint to Ms.
6 Scarton way back in March, 2014, and nothing came of
7 it; right?

8 A. I don't recall that.

9 Q. Okay. No one told you that?

10 A. I don't remember, no.

11 Q. Okay. So at this meeting, you actually met Ms.
12 Thompson for coffee for over two hours, didn't you?

13 A. We met at a coffee shop.

14 Q. About two hours; right?

15 A. Yes.

16 Q. So she's coming to you to talk about Ms. Trussler,
17 and you spent two hours with her. Were you seeking
18 evidence against Ms. Trussler?

19 A. I was seeking the report from Ms. Thompson.

20 Q. Okay. And it's true, is it not, that after getting
21 this report, you didn't talk to Ms. Trussler as a
22 senior manager to say, "Hey, there is a person who says
23 you're sleeping at work?" You didn't do that so she
24 could give an explanation and avoid being sent home;
25 correct?

1 A. I did not go to Ms. Trussler, no.

2 Q. You kept it secret from her, did you not?

3 A. I did it through my chain of command.

4 Q. Well, that's not true; is it? Didn't you really take
5 it to Mr. Dowler?

6 A. Yes, through our labor and operations manager.

7 Q. He is not your chain of command, is he?

8 A. He wasn't a direct supervisor, correct.

9 Q. But you went to him because you knew he had been
10 involved in Ms. Trussler's case with Ms. Woehler and
11 Ms. Scarton for months?

12 A. No, I did not know that.

13 Q. It's true, is it not, that if it had been anybody
14 else, you would have simply gone to Ms. Monroe and
15 said, "Hey, I have got a complaint against a manager"?
16 You would have gone to Ms. Monroe, your boss?

17 A. Not necessarily.

18 Q. Well, now, I don't understand your -- in your chain
19 of command as a -- is it HM 4?

20 A. HRC 4.

21 Q. HRC 4. Is that high up, or kind of entry-level, or
22 where is it in the --

23 A. It's a senior generalist, HR consultant.

24 Q. Would you be a lead?

25 A. Yes.

1 Q. So you're at the lead level?

2 A. Uh-huh.

3 Q. So a senior generalist. But in January, after you
4 spent two hours -- Ms. Miller was with you, too; right?

5 A. Correct, yes.

6 Q. And Ms. Miller is below you in the chain of command;
7 right?

8 A. Yes.

9 Q. She works for you, essentially?

10 A. Right, correct.

11 Q. So you had her there, you had Ms. Miller and Ms.
12 Thompson at the coffee shop for two hours with her
13 taking notes; right?

14 A. Yes, that sounds right.

15 Q. You didn't tell Ms. Miller that Ms. Trussler had said
16 you threatened her; right?

17 A. I don't recall that.

18 Q. Okay. Well, you wouldn't want her to know that, it
19 would be embarrassing; right?

20 A. Well, I didn't think it was true.

21 Q. Okay. But it doesn't matter, even if it's not true,
22 it's humiliating to have somebody that senior say
23 something that bad about you; right?

24 A. It was more concerning than humiliating.

25 Q. Okay. But let's keep in mind that through this

1 entire time, you weren't telling Ms. Trussler that Ms.

2 Taylor had told you that she threatened you; correct?

3 A. That is correct.

4 Q. We got to hear your audio tape of the December 31st

5 meeting?

6 A. Uh-huh.

7 Q. Were you a little upset during that meeting with Ms.

8 Trussler?

9 A. I was upset and a bit guarded that she was recording
10 our conversation.

11 Q. Okay. But you didn't object to her recording it, you

12 noted that she was, and that's why we got to hear it;

13 right?

14 A. Yes, she continued to record us after I pointed it

15 out to her.

16 Q. Okay. All right. Well, so you were telling -- you

17 were still the point person to accommodate Ms. Trussler

18 after the October meeting with Ms. Taylor after you

19 learned that she, Ms. Trussler, had said you threatened

20 her?

21 A. Yes, correct.

22 Q. And you never told her -- never told Ms. Trussler

23 that you had that information?

24 A. No, I thought it was already addressed.

25 Q. All right. So now let's talk about the January

1 meeting. That meeting, it occurred after the Thompson
2 complaint was taken in; right? And you took your notes
3 and information about the two-hour meeting with Ms.
4 Thompson, you took that information to Mr. Dowler;
5 right?

6 A. Correct, yes.

7 Q. Okay. Now, Mr. Dowler is, like, -- he is, like, sort
8 of second tier, running the entire human resources;
9 right?

10 A. Yes, labor and operations.

11 Q. So at your level as a lead, how did you get access to
12 Mr. Dowler?

13 A. So our HR managers are accessible to us for guidance,
14 and Mr. Dowler's office, essentially, would be in
15 charge of investigations.

16 Q. Okay. Well, you knew at this time, I mean, you had
17 been involved in the whole Bolotin issue; right?

18 A. Peripherally.

19 Q. But you were aware that Ms. Woehler was basically
20 taking a position very different than Ms. Trussler on
21 whether or not Ms. Bolotin should be accommodated as
22 requested; right?

23 A. I don't know that. I know that Ms. Woehler expected
24 the accommodation to go through the accommodation
25 process.

1 Q. You also knew that Mr. Dowler was participating in
2 that by providing advice; right?

3 A. No, I don't recall that.

4 Q. Okay. So then the reason you went to Mr. Dowler was
5 simply because he conducts investigations; is that
6 right?

7 A. Correct.

8 Q. Okay. So he conducts investigations. What made you
9 think an investigation was necessary?

10 A. Because Ms. Thompson's complaints led me to seek
11 guidance from Mr. Dowler.

12 Q. Now, you also knew that Ms. Trussler had in place a
13 request for accommodation; right?

14 A. Yes.

15 Q. And you also knew that she had an FMLA signed request
16 and approval for things that were like accommodation
17 from 2014; right?

18 A. Correct, uh-huh.

19 Q. So you knew that it was okay for her to work at home,
20 you knew that it was okay for her to rest, all of those
21 things were okay; right?

22 A. I don't recall all of the details from the FMLA, but
23 some of those --

24 Q. I'm sorry, I didn't mean to interrupt you. And
25 before, when you went to talk to Mr. Dowler, you

1 alleged that she was sleeping in her office; correct?

2 That's what you were told, that's what you said; right?

3 A. I took Ms. Thompson's allegation to Mr. Dowler.

4 Q. But all Ms. Thompson said was sometimes she knocked
5 on the door and Ms. Trussler didn't answer and she took
6 that to mean sleeping at the office; right?

7 A. Correct.

8 Q. But you knew, because you had access to the request
9 for accommodation and Dr. Kinney's letter and Dr.
10 Kinney's FMLA certification, you knew that resting was
11 one of the ways that Ms. Trussler coped with her brain
12 injury?

13 A. I did know that she was seeking resting breaks
14 through the accommodation process.

15 Q. Okay. So if you knew that, isn't it true that the
16 only reason you went to Mr. Dowler is that you knew
17 that because Ms. Taylor, Mr. Dowler and Ms. Scarton
18 were working to terminate Ms. Trussler?

19 A. No.

20 Q. Well, let's talk about that meeting. Let's go back
21 to Katie Taylor for one minute because there is
22 something interesting in her statement that I want to
23 ask you about. So Ms. Taylor said you said you would
24 follow up and would look in to the additional items
25 that she was not aware of previously. And then she

1 said this to the jury in that conversation, "I became
2 aware that there had been a delay in the follow up
3 concerning the FMLA request when Ms. Mao was on leave."
4 The FMLA request is what she told the jury, and you
5 know -- you knew, at the time you were talking to her,
6 that the delay was not in connection with an FMLA
7 request, the delay of months was in connection with a
8 request for accommodation from March; right? That was
9 the truth, you knew that?

10 A. I don't recall Ms. Taylor asking me about that. I
11 know that the accommodation request had gone to Ms. Mao
12 some time earlier in the year.

13 Q. But then why would you tell Ms. Taylor that there was
14 a delay on the follow-up of an FMLA request when Ms.
15 Mao had been on leave?

16 A. I don't know. I don't remember talking about an FMLA
17 request with Ms. Taylor.

18 Q. All right. Would you agree, though, that the
19 accurate information is that there was a many month
20 delay in processing the March reasonable accommodation
21 request by Ms. Trussler?

22 A. Yes, there was a delay in the accommodation request.

23 Q. You also knew at the time, did you not, that under
24 the accommodation policy, every 30 days, someone is
25 supposed to give her a briefing on what the status is;

1 right?

2 A. Correct.

3 Q. And you knew that hadn't happened; right?

4 A. Correct, after I first talked to her, yes.

5 Q. And it's true, is it not, that as to the
6 accommodation process, you only talked to Ms. Trussler
7 three times face to face; right?

8 A. That sounds about right.

9 Q. In September, in October and on December 31st; right?

10 A. Correct.

11 Q. Now, this meeting that you attended in January, it
12 included Mr. Dowler, Ms. Scarton; is that right?

13 A. The meeting after Ms. Thompson's complaint?

14 Q. Yes.

15 A. Katie Taylor's office, is that what you are referring
16 to?

17 Q. Yes.

18 A. I believe Mr. Dowler was there, or Ms. Woehler, I
19 can't recall which one.

20 Q. Or Woehler. And Katie Taylor; right?

21 A. Correct.

22 Q. And you?

23 A. Yes, and Jeff Pelton.

24 Q. And Mr. Pelton was definitely there?

25 A. I can't recall.

1 Q. Okay.

2 A. He might have been there.

3 Q. Okay. So this meeting, it's true; is it not, that at
4 this meeting, the decision was made to bring in an
5 outside investigator to be hired by the State to do an
6 investigation of Ms. Trussler based on Ms. Thompson's
7 complaint?

8 A. That is correct, yes.

9 Q. All right. Why was -- well, maybe you wouldn't know
10 this, but isn't it true that at the meeting, it was
11 mostly Ms. Scarton and Ms. Taylor who did all the
12 talking?

13 A. I don't remember that.

14 Q. Okay. Well, you remember it was in Taylor's office;
15 right?

16 A. Yes.

17 Q. All right. Take a look at page 38 of your
18 deposition.

19 A. Okay.

20 Q. And go to lines 24 and 25. I'm going to read the
21 question and you go ahead and read the answer, okay?

22 A. Okay.

23 Q. "Who ran -- who spoke most at that meeting?" And you
24 said?

25 A. "Katie and Ms. Scarton."

1 Q. Katie Taylor and Ms. Scarton. And the focus of the
2 meeting was completely on Ms. Thompson's interview with
3 you; right?

4 A. That sounds accurate, yes.

5 Q. So it was never mentioned that -- it was never
6 mentioned by anyone here that Ms. Trussler had gone to
7 Katie Taylor and complained about Ms. Scarton and you,
8 and how Ms. Bolotin was being discriminated against?
9 None of that was mentioned?

10 A. I don't recall if that was mentioned. I believe that
11 was actually part of the consideration in bringing in
12 an external investigator.

13 Q. Was there a discussion about the idea that you
14 shouldn't be involved in accommodation in light of the
15 allegations against you?

16 A. No, not that I recall.

17 Q. As you sit here today under oath, you can't say for
18 sure that any of the conversations about what was said
19 to Ms. Trussler -- by Ms. Trussler to Ms. Taylor, was
20 spoken at this meeting?

21 A. I'm sorry, what? Can you say that again?

22 Q. Yeah. You can't -- as you sit here today, under
23 oath, you can't say that there was any discussion about
24 Ms. Trussler's complaints to Ms. Taylor?

25 A. I can't, no, I don't know for sure that anything

1 happened after that, correct.

2 Q. Okay. Meaning you don't know for sure that there was
3 ever a discussion at this meeting in January about Ms.
4 Trussler's complaints to Ms. Taylor?

5 A. Correct.

6 Q. Okay. So the decision, though, at this meeting, was
7 to send Ms. Trussler home; right?

8 A. I don't know if it was decided at that meeting. I
9 know that that decision was made at some point, but I
10 don't know if it happened at that exact meeting.

11 Q. Okay. Now, tell me this: Why were you at this
12 meeting?

13 A. I think because I had the first-hand information from
14 Ms. Thompson that I took. I did the complaint.

15 Q. Do you know why Ms. Thompson wasn't at the meeting?

16 A. I don't know.

17 Q. So by having you at the meeting, there was no way for
18 anybody to examine Ms. Thompson to see if it was a
19 valid claim; right?

20 A. Correct.

21 Q. Was it discussed by you -- did you stick up for Ms.
22 Trussler and say, "Oh, no, we should not do a formal
23 investigation of her because I know that Ms. Thompson
24 hadn't said she saw her sleeping, she says she didn't
25 answer the door, and I know from her FMLA and her

1 request for accommodation that she's supposed to rest?"

2 MR. BARBARA: Objection, your Honor, it's
3 argumentative.

4 THE COURT: I'm going to allow it. Go ahead.

5 Q. Did you say that?

6 A. I did not say that.

7 Q. But you knew it and you kept it to yourself?

8 A. I was sharing the information that I had at the time.

9 Q. Well, it's true, is it not that, in fact, you knew
10 that Dowler, Scarton and Taylor and Taylor knew all
11 about her complaints?

12 A. I knew that Ms. Taylor knew. I knew Ms. Taylor was
13 aware.

14 Q. And you also knew that everybody at the meeting knew
15 that Ms. Trussler was seeking accommodation that
16 included telework, for example?

17 A. They knew that she was seeking accommodation, yes.

18 Q. And -- all right. And it's true, also, that you
19 didn't even tell your immediate supervisor about this
20 meeting?

21 A. I don't remember that. I don't know if I told her or
22 not.

23 Q. It's basically this little group of people are the
24 only decision makers in sending Ms. Trussler home;
25 correct?

1 A. That sounds accurate, yes.

2 Q. Okay. Now, you were aware during -- now, let's talk
3 a bit about the accommodation process. You knew -- you
4 didn't get involved in the accommodation process of Ms.
5 Trussler until September, 2014; right?

6 A. Correct, yes.

7 Q. Okay. You met with Ms. Trussler for the first time
8 in September?

9 A. That sounds accurate, yeah.

10 Q. Okay. Now, this isn't -- I'm not asking you to agree
11 with this, but you understood this was the meeting
12 where Ms. Trussler said you threatened her with being
13 separated because of her disability?

14 A. That sounds correct, yes.

15 Q. Okay. All right. And at this meeting, you told Ms.
16 Trussler that you wanted her to sign some releases?

17 A. No.

18 Q. What did you ask her to do?

19 A. We met for the first time and introduced ourselves,
20 and it was the first time I had ever met her. I never
21 knew her prior to that. It wasn't -- never consulted
22 with that office before.

23 Q. Okay.

24 A. And we talked about her accommodation, like, what --
25 you know, basically what was going on.

1 Q. Did you ask her what doctors she wanted to get
2 involved in the accommodation process?

3 A. I don't believe so. I don't think we were that far
4 into the process yet, but we might have talked about
5 providers.

6 Q. By this time, you were aware that Ms. Woehler didn't
7 want Ms. Trussler involved in the bulletin
8 accommodation process; right?

9 A. I don't know if it was that early on.

10 Q. Okay.

11 A. I don't recall that.

12 Q. Okay. And so at this meeting in September, did you
13 ask Ms. Trussler to do anything?

14 A. I don't believe so.

15 Q. Is it true that you didn't have anything prepared for
16 this meeting in terms of moving the process forward?

17 A. Correct, it was more of a meet and greet type
18 meeting, yes.

19 Q. Okay. So you must have at least reviewed the request
20 for accommodation from March; right?

21 A. At some point I did, yes.

22 Q. Did you do it before the meeting?

23 A. I don't know. It would have been right about the
24 same time.

25 Q. Okay. What about the FMLA, the April FMLA

1 certification signed by Dr. Kinney?

2 A. So everything should have been in the medical file.

3 And at some point around this meeting, I would have

4 reviewed the medical file.

5 Q. Okay. And you also were aware that basically Ms.

6 Trussler had been receiving accommodations first from

7 Brian Smith, since the accident in 2012; right?

8 A. I think she shared that later. She was requesting --

9 you know, we talked about, like, resting breaks and

10 telework. And I think later she shared that Brian

11 Smith had provided an accommodation.

12 Q. Well, you understood the accident was in October of

13 2012; right?

14 A. Correct.

15 Q. So, I mean, it's -- as the person who was

16 spearheading the accommodation process, you would have

17 wanted to formulate a time line for yourself; right?

18 A. Yes.

19 Q. But is it fair to say that in the September meeting,

20 you didn't inquire what happened before March, 2014?

21 A. Can you repeat that?

22 Q. Yeah. So again, as the person who was spearheading

23 the accommodation process for Ms. Trussler that began

24 in March, are you telling us that you didn't seek the

25 complete time line to learn how she was accommodated

1 from the time of the accident until March, 2014 when
2 she submitted the formal request? You didn't have that
3 conversation?

4 A. We kind of had a conversation based on, like, "What's
5 happening right now, what do you need right now?"

6 Q. Isn't it true that, in fact, you at this point had
7 already talked to Ms. Woehler about Ms. Trussler?

8 A. Not that I can recall, I don't know.

9 Q. Okay. When -- tell us, when did you first learn that
10 Ms. Woehler was going to argue against telework?

11 A. I don't remember. It was probably the following
12 month, maybe the October time line.

13 Q. Okay. But isn't it true that the whole thing
14 involving Ms. Bolotin and telework had happened by the
15 time you had this meeting?

16 A. I don't remember that. I don't think so.

17 Q. Okay. All right. So as you sit here today, it's
18 your testimony you didn't threaten her?

19 A. Correct.

20 Q. And were you polite to her?

21 A. I think so.

22 Q. Were you impatient with her?

23 A. Not that I can recall.

24 Q. It's true, is it not, that by December, you told her
25 that the accommodation that she had been receiving is

1 no longer valid?

2 A. I told her that we needed to process her
3 accommodation formally, that there was nothing in the
4 file that indicated that we had an accommodation in
5 place.

6 Q. Okay. But, I mean, you said that it was no longer
7 valid; right?

8 A. That might have been my words, yes.

9 Q. But let's go to your deposition again. Let's look at
10 page 100. So now I'm jumping ahead.

11 A. Did you say 120?

12 Q. 100, please. It begins on line 5. Now, you're given
13 a lot of power in the accommodation process; right?
14 Let me be more specific: You actually get to be the
15 person who decides whether a person seeking
16 accommodation gets through the process?

17 A. We get to process the accommodation. An appointing
18 authority decides if an accommodation can be put in
19 place.

20 Q. But you have authority to shut it down; correct?

21 That's your authority?

22 A. No.

23 Q. Well, in Ms. Trussler's case, you wrote a letter in

24 February of 2014 shutting it down, did you not?

25 A. I closed the accommodation, yes.

1 Q. Okay. So you closed the accommodation file. Does
2 that mean you shut down the accommodation process on
3 your own authority?

4 A. No, I was directed to close it.

5 Q. By whom?

6 A. I believe it was Kim Monroe and Jeff Pelton.

7 Q. Okay. So in February, 2015 -- so Ms. Mabbott, you
8 were directed to close it by Pelton and who?

9 A. Ms. Monroe.

10 Q. And Ms. Monroe was your immediate supervisor?

11 A. That is correct.

12 Q. All right. Now, let's go back to the December time
13 frame. And at this time, let's look at line 5. We'll
14 get to the email in a second. I asked you -- and in
15 this email, it's your intent to tell her, that's Ms.
16 Trussler, the accommodations that she had been
17 receiving are no longer valid; correct? And you said?

18 A. "I am saying they can no longer honor a verbal
19 agreement. That's what I'm saying."

20 Q. So did you mean -- let's assume she could telework
21 from home two days a week, and you said? Line 12.

22 A. Okay.

23 Q. And I asked, "Were you telling her that she could no
24 longer telecommute from home three- days a week from
25 this day forward," and you said?

1 A. I was saying we had to formally process through the
2 accommodation process.

3 Q. Okay. "Meaning that she was eligible for no
4 accommodations until a new determination could be made
5 as to whether she was qualified for reasonable
6 accommodation," and you said?

7 A. "I believe Ms. Woehler had the authority to tell her
8 that."

9 Q. "Was it your understanding that that's what she was
10 told?" And you said?

11 A. "I think that's fair to say, yes."

12 Q. So as of December you told Ms. Trussler that she
13 could basically no longer telecommute until the formal
14 process was completed; right?

15 A. I advised her to follow the direction of her
16 supervisor.

17 Q. Okay. But -- okay. But it's true, is it not, that
18 you told her that she could not telecommute until the
19 process -- I mean, did he actually say the words at the
20 meeting, going by your deposition?

21 A. Essentially, yeah, I was saying, "We need to get this
22 formally processed."

23 Q. Okay.

24 THE COURT: Excuse me one second. Please stand
25 and stretch. Please be seated.

1 Q. Now, this decision, was this solely your decision or
2 were you directed to say this?

3 MR. BARBARA: Objection, vague, your Honor.

4 THE COURT: Overruled.

5 A. I was not directed to say this.

6 Q. So this was just your own idea?

7 A. This was my advice.

8 Q. Okay. And you had the authority to do that?

9 A. I had the -- I was advising her. I wasn't directing
10 her to stop.

11 Q. You were advising her to stop?

12 A. I was advising her to follow the directives of her
13 supervisor. Trying to encourage, you know, "Let's get
14 this through the formal process."

15 Q. But you said -- you need to read it again? On line
16 8, "I am saying we can no longer honor -- we can no
17 longer honor a verbal agreement"? That's what you were
18 communicating to her; right?

19 A. Correct, yes.

20 Q. And the agreement was verbal because the State had
21 not decided on her March accommodation by December;
22 correct? She requested accommodation in March and
23 you're telling her, essentially, all those months
24 later, that, "We are not going to honor the verbal
25 accommodation;" right?

1 A. I guess you could say that, yes.

2 Q. Okay. And is it your testimony you had no animosity
3 against her having known in December that she said you
4 threatened her?

5 A. No, I thought that had been handled separately.

6 Q. Had you already been invited to the January meeting
7 with Ms. Scarton and Ms. Dowler at the time you made
8 this statement?

9 A. No.

10 Q. All right. Let's look at Exhibit 517, please. This
11 is an email from you dated March 15th, 2014; is it not?

12 A. Yes, that's correct.

13 Q. You write, "Just to clarify," so I'm in the first
14 sentence?

15 A. It's not March 15th, it's December.

16 Q. Did I say March? Sorry, my mistake. December 15th,
17 2014. You say, "Thanks for the information you
18 provided. Just to clarify, this is all information
19 that we have on file already. It also is a detail of
20 events that occurred after Brian Smith left. Until
21 now, we have honored the alleged --" did you write
22 this?

23 A. I did, yes.

24 Q. "The alleged verbal agreement you had with Brian
25 Smith to telework and flex your schedule as part of an

1 informal accommodation." Now, you wrote the word
2 "alleged"?

3 A. I did, yes.

4 Q. Were you challenging her veracity at this point?

5 A. No, I didn't mean it that way.

6 Q. Well, why in the world did you put in the word
7 "alleged" if you weren't trying to offend her?

8 A. No, I didn't mean offense by it. I just didn't have
9 any documentation supporting the agreement with Brian
10 Smith.

11 Q. Okay. Now, you knew Brian Smith had retired; right?

12 A. Yes.

13 Q. So if you didn't believe Ms. Trussler's word, why
14 didn't you just track him down on Google and call him
15 and ask him?

16 A. It's just not something we typically do.

17 Q. Well, it's true, is it not, that you were looking for
18 reasons to retaliate against her because you were
19 helping those who were trying to retaliate against her?

20 A. Absolutely not, no.

21 Q. Okay. And so it's your testimony today, under oath
22 that the word "alleged" is sort of just a misstatement;
23 right?

24 A. Yes, I didn't mean any offense by it.

25 Q. But you believed her, you never doubt that?

1 A. I thought there was a possibility that Brian Smith
2 had provided a verbal agreement.

3 Q. A possibility? So you were challenging her veracity?

4 A. Well, I was trying to get through the process of
5 formally accommodating Ms. Trussler.

6 Q. Well, never mind that for a minute. Even though --
7 so when I get a -- if I work there and I applied in
8 March of 2014 for reasonable accommodation, I don't get
9 it until you say I get it; right? If you're the one
10 who is processing it?

11 A. No, the appointing authority dictates the decision on
12 the accommodation.

13 Q. And her appointing authority was who in 2014?

14 A. Kerri Woehler.

15 Q. And when she -- before Ms. Woehler was hired in July,
16 who was the appointing authority?

17 A. I believe it was Amy Scarton.

18 Q. Okay. All right. There was an interim person,
19 wasn't there?

20 A. I don't remember that.

21 Q. Okay. So you write here, "We have honored the
22 alleged verbal agreement you had with Brian Smith to
23 telework and flexed your schedule as part of an
24 informal accommodation. We can no longer do that."
25 Who is we? Who is we?

1 A. The agency.

2 Q. And you're speaking on behalf of the entire State of
3 Washington here?

4 A. No.

5 Q. Did you tell anyone you were doing this?

6 A. I don't recall that.

7 Q. Have you told -- you told Ms. Woehler; right?
8 Because you guys were talking?

9 A. She was copied on the email.

10 Q. Okay. "And we need to formally process your
11 accommodation within agency policy and practice to
12 insure the accommodations provided to you are
13 appropriate medically and sound." So remember she's
14 basically been accommodated since objecting of 2012,
15 all the way through December, 2014. And is it fair to
16 say that you were basically wiping that all clean and
17 saying, "We are starting over"?

18 A. Not exactly. I was trying to get through the formal
19 process knowing that there was some concern that the
20 position that she was in was not eligible for telework
21 and flexible schedule.

22 Q. It was not eligible because Ms. Woehler told you she
23 was not going to grant telework to this employee;
24 correct?

25 A. Correct.

1 Q. All right. And as a matter of fact, when she told
2 you that, are we in the December time frame when
3 Woehler tells you that she's not going to grant
4 telework to Ms. Trussler?

5 A. That sounds about correct. That's about the right
6 time line.

7 Q. Okay. So when you heard this from Ms. Woehler, that
8 caused you concerns; correct?

9 A. Yes.

10 Q. It caused you concerns because you knew that under
11 the reasonable accommodation process, telework was a
12 valid accommodation; right?

13 A. It can be, yes.

14 Q. Well, it's actually, it's -- it's considered under
15 your policies and procedures; right?

16 A. Correct, yes.

17 Q. Okay. So you knew that and you also knew that there
18 was a risk that not giving Ms. Trussler telework as an
19 accommodation, one that she's had for years, could
20 aggravate her condition?

21 A. That is correct. I thought either way there could be
22 some risk here. I didn't know if telework was a valid
23 accommodation for Ms. Trussler.

24 Q. Well, you knew that she had used it as an
25 accommodation since her accident in October of 2012;

1 correct?

2 A. That is correct, yes.

3 Q. You also knew that working at home was one of the
4 provisions that Dr. Kinney had written in the April
5 FMLA, correct?

6 A. I would have had access to the file. I don't recall
7 the FMLA.

8 Q. Let me ask you this: Regardless of whether or not
9 you had completed the processing of the March request
10 for accommodation, that FMLA certification had been
11 approved and was enforced; correct?

12 A. It should have been, yes.

13 Q. So if the -- if Dr. Kinney said that one of the
14 things she needed was to be able to work at home, then,
15 nobody can say she can't; correct?

16 MR. BARBARA: Objection, calls for a legal
17 conclusion, your Honor.

18 THE COURT: Well, she can answer within the scope
19 of her job.

20 Q. Yeah. So, I mean, with your HR hat on, if I have an
21 FMLA certification that says I can do certain things,
22 my boss can't tell me I can't; correct?

23 A. So FMLA is a protected leave.

24 Q. Uh-huh.

25 A. And so the reasonable accommodation process is a

1 different process.

2 Q. I understand that. But it doesn't change the fact
3 that there was an FMLA process that had been approved
4 way back in April that included Dr. Kinney's wishes
5 that she be allowed to work at home and rest; right?

6 A. Correct.

7 Q. So there is no -- and it's true, also, that you were
8 a willing participant in Ms. Woehler's decision, even
9 though you knew it could aggravate Ms. Trussler's
10 condition; right?

11 A. Correct.

12 Q. You didn't oppose Ms. Woehler's decision to eliminate
13 telework from the accommodation, even though you knew
14 it could aggravate her condition, then?

15 A. I did advise Ms. Woehler that through the
16 accommodation process, that telework may come out as an
17 accommodation, as a recommended accommodation.

18 Q. But you would be the one decides if it's a
19 recommended accommodation; right? Just you?

20 A. No, her medical providers.

21 Q. Well, they already decided it going back to 2012;
22 right?

23 MR. BARBARA: Objection mischaracterizes the
24 evidence.

25 Q. Let me say that again. Her medical provider, Dr.

1 Kinney, had already decided that going back to March
2 and April of 2014; right?

3 MR. BARBARA: Objection, mischaracterizes the
4 evidence.

5 MR. SHERIDAN: I think I got it right.

6 THE COURT: I'm not sure I understand your
7 objection based on the earlier questions that were
8 asked along the same lines.

9 MR. BARBARA: Your Honor, the FMLA document says
10 what it says. It does not talk about telecommute.

11 MR. SHERIDAN: Talks about working at home.

12 THE COURT: Why don't you rephrase your question.

13 MR. SHERIDAN: Sure.

14 Q. So you knew, basically, that her doctor directed she
15 should be allowed to work at home in April in an FMLA
16 certification; right?

17 A. Correct.

18 Q. You knew that her doctor had directed that she should
19 be allowed to work at home as part of the reasonable
20 accommodation request; right?

21 A. No. I don't believe so.

22 Q. You mean you had never contacted the doctor, Dr.
23 Kinney?

24 A. No, I don't believe so.

25 Q. Well, you read her FMLA certification in April;

1 right?

2 A. Correct.

3 Q. So did you assume that for regarding the reasonable
4 accommodation issue, that she would have a different
5 opinion?

6 MR. BARBARA: Objection, your Honor, calls for
7 speculation as to what Dr. Kinney would think.

8 THE COURT: I'm going to ask you to rephrase your
9 question.

10 MR. SHERIDAN: Okay. Sure.

11 Q. Let's look at some of the policies. Let's look at
12 Exhibit 26, please. This is the telework program that
13 basically was updated on March 27, 2014; right?

14 A. Okay.

15 Q. You're aware of this program, right?

16 A. Yes.

17 Q. Okay. Let's take a look at the forward, if we can.
18 And there it is. Let's block that first paragraph
19 there. That's good, I can see. "Traditionally,
20 telework has fallen under the umbrella of
21 transportation demand management strategies because
22 it's seen as an alternative. In fact, it intersects
23 strategies in numerous domains," goes on to say that.
24 It says -- look at the next paragraph, "Today, it's
25 often easier to bring the work to the worker than vice

1 versa." You understood that, basically, WSDOT was
2 behind the idea that telework was a good idea; right?

3 A. Correct.

4 Q. All right. You understood that it was the policy of
5 WSDOT to help people telework, not to stop them from
6 teleworking unless there was a good reason; right?

7 A. I believe so, yes.

8 Q. Okay. And look at the page under chapter 1. Go to
9 the next page. Keep going. That's it. That chart
10 there. "Everyone benefits." Under the policy that was
11 in place since March, 2014, it says it increases
12 productivity, competitive recruitment, employee
13 retention, all of those things you also embraced in
14 your position as a human resources person; right?

15 A. Correct.

16 Q. Okay. So didn't it bother you that Ms. Woehler was
17 telling you that this particular employee wouldn't be
18 allowed to telework?

19 A. Ms. Woehler was the supervisor for the position and
20 indicated that the position was not eligible for
21 teleworking.

22 Q. Well, when you say the position was not eligible for
23 teleworking, aren't you saying because Ms. Woehler said
24 it was not?

25 A. Correct.

1 Q. It wasn't because the position itself had been
2 designated as not eligible; right?

3 A. That's correct.

4 Q. In fact, the position had been designated as
5 eligible; correct?

6 A. Prior to Ms. Woehler?

7 Q. Uh-huh.

8 A. Yes, that is correct.

9 Q. Okay. So let's go above here, and let's look at the
10 -- look at the paragraph that begins, "Telework can
11 also be used." So this is -- this is what the policy
12 says; right? It says, "Telework can also be used as a
13 form of reasonable accommodation," and that's a true
14 statement; true?

15 A. Correct, yes.

16 Q. "Reasonable accommodation is determined through the
17 human resource office." That's you; right?

18 A. Yes.

19 Q. "Please contact the HR consultant if you have
20 questions." So that is the policy, in fact, and what
21 you're telling us when you're saying that her position
22 is not eligible, what you mean is, Ms. Woehler decided
23 and told you that she was not eligible to telework;
24 right?

25 A. Correct.

1 Q. Okay. Now, let's look at Exhibit 50. Let's make it
2 51.

3 MR. BARBARA: Not admitted.

4 MR. SHERIDAN: Not admitted?

5 THE COURT: Not yet. Why don't you stand and
6 stretch. Please be seated.

7 Q. All right. It's true, is it not, that you had
8 actually seen a chart in which the organization had
9 defined -- from the Cam Gilmour level down, had defined
10 what jobs were eligible for telework and what jobs were
11 not?

12 A. About that time, we had a position review, I think,
13 going around the agency to determine what positions
14 were eligible for telework.

15 Q. Do you have a specific recollection of whether Ms.
16 Trussler's position was eligible?

17 A. I do not.

18 Q. All right. Might it help refresh your recollection
19 to take a look at the chart?

20 A. Oh, sure.

21 Q. Okay. Let me get that book, Exhibit 51.

22 MR. SHERIDAN: Excuse me one moment, your Honor.

23 MR. BARBARA: Counsel, I think you might want to
24 look at 52, which has been admitted.

25 THE COURT: He may not have heard you.

1 MR. SHERIDAN: Yeah, it's 50, sorry. May I
2 approach, your Honor?

3 THE COURT: Yes. Which number is that?

4 MR. SHERIDAN: That's -- looks like it's 52.

5 THE COURT: 52 has been admitted?

6 MR. SHERIDAN: For record purposes, we are
7 looking at Bates stamp 38261.

8 Q. I'm going to ask you to look at entry in the middle
9 of the page. And don't read it -- I mean, read it
10 quietly, don't say anything. And if you will look at
11 the chart, you will see that there is a header that
12 says, "Put an X if it's not eligible." Do you see
13 that?

14 A. Correct, I see that.

15 Q. Okay. Now, looking at that page, do you see a line
16 for Ms. Trussler?

17 A. I do, yes.

18 Q. Does that refresh your recollection as to whether or
19 not Ms. Trussler's position was eligible for telework?

20 MR. BARBARA: Objection, your Honor,
21 mischaracterizes the evidence.

22 THE COURT: Well, the question is whether it
23 refreshes her recollection as to a particular -- it
24 doesn't -- it either does or it doesn't. It may not.

25 MR. BARBARA: My concern, your Honor, is that the

1 evidence itself is being mischaracterized, not what
2 --

3 THE COURT: Well, 52, he is not showing the
4 evidence, he is simply asking whether a particular
5 thing refreshes her recollection. She's free to say
6 yes or no.

7 Q. Does that refresh your recollection?

8 A. No, I don't recall seeing this specific chart.

9 Q. You don't recall the chart?

10 A. No.

11 Q. Okay. All right.

12 A. This would pre-date Kerri Woehler's appointment.

13 Q. Oh, Kerri Woehler's appointment. You think the chart
14 changed after Kerri Woehler's appointment?

15 A. I know when Ms. Woehler came in and became the
16 manager, she was the one that decided that the position
17 --

18 Q. Right. Okay. So wait, that's a different question.
19 I'm asking you now, before she came in, did you see
20 this chart?

21 A. I don't know. I don't believe so. Before Ms.
22 Woehler's appointment?

23 Q. Yes.

24 A. I didn't consult with the group prior to that.

25 Q. Were you aware of the telecommuting work that was

1 being done by Cam Gilmour and others?

2 A. Around the agency, yes, generally speaking, yes.

3 Q. Okay. If you look at that chart, it deals with that
4 segment of the agency, did you see that chart?

5 A. Yes, I see this now, yes.

6 Q. No, no, that's not my question. Did you see the
7 chart back before Ms. Woehler --

8 A. Oh, I don't know that.

9 Q. Okay. Fair enough. I understand. Let me take that
10 back. Thank you. Okay. Now, it's true, is it not,
11 that the types of jobs that one cannot get
12 telecommuting for are jobs like a receptionist, who has
13 to be physically present; right?

14 A. That would be one example, yes.

15 Q. And somebody who drives a boat; right? They have to
16 really be there to drive the boat?

17 A. Correct.

18 Q. Okay. But truly, most managers can telecommute;
19 right?

20 A. It's position specific.

21 Q. And it is true, is it not, that you can't telecommute
22 unless your supervisor gives you authority; right?

23 A. That is correct.

24 Q. And you understood that Ms. Trussler could
25 telecommute from before the accident and after the

1 accident all the way up until December, 2014, when Ms.
2 Woehler said you can't?

3 A. Correct.

4 Q. And because she's the supervisor, she has that
5 authority; right?

6 A. Yes, that is correct.

7 Q. Even though you knew that it was an accommodation
8 that had been implemented, you did nothing to advocate
9 on her behalf against any of her telecommuting?

10 A. That is correct. I let Ms. Woehler know that
11 telework could come out as an accommodation.

12 Q. But that would only be if you said it could come out
13 as an accommodation; correct?

14 A. No, just if -- you know, if it was recommended and
15 Ms. Woehler determined that the position could
16 accommodate telework.

17 Q. All right. And did you tell Ms. Woehler that failure
18 to give her telework could aggravate her condition?
19 Did you tell her that?

20 A. I don't believe so, I can't recall that.

21 Q. Okay. All right. In fact, let's take a look at
22 Exhibit 134. This is the December 29th letter. Okay.
23 So this is Ms. Woehler writing to Ms. Trussler and she
24 copies you on this? Let's go down to the bottom.
25 That's it. Okay. So you're cc'd on this; right?

1 A. Okay. Yes.

2 Q. Did you draft this for her?

3 A. I don't recall.

4 Q. Okay. All right. Well, let's talk about it for a
5 minute.

6 THE COURT: Is this a good time for a break?

7 MR. SHERIDAN: This would be a fine time.

8 THE COURT: We are going to take our morning
9 break. Please leave your notebooks on your chairs.
10 Please rise for the jury.

11 (The following occurred in
12 the absence of the jury:)

13 THE COURT: We did have a sidebar with regards to
14 an objection by Mr. Barbara, who was asking -- Mr.
15 Sheridan was asking a question about the whistle
16 blower law to the current witness. Mr. Barbara
17 objected at sidebar saying there is no claim that he
18 had talked to Mr. Sheridan about an earlier claim,
19 showed them it was legally insufficient, and it was
20 dismissed. And while you didn't use this word, I
21 think you were saying there was confusion and
22 prejudice to asking the question. Mr. Sheridan said
23 there is a whistle blower claim in this termination
24 in violation of public policy. I ruled that if it's
25 simply going -- and there was also discussion that

1 the questions that came up yesterday with regard to
2 Ms. Trussler as to how she went to Ms. Taylor to
3 report. And I ruled as long as it was limited to the
4 policies for reporting, it can go forward. I wasn't
5 deciding the whole issue that the parties were
6 raising. Anything to add to the sidebar, Mr.
7 Sheridan?

8 MR. SHERIDAN: No, your Honor.

9 THE COURT: Mr. Barbara?

10 MR. BARBARA: No, your Honor.

11 THE COURT: It appears the parties may want to
12 brief me on this issue because you have completely
13 different views as to whether or not there is an
14 element of whistle blower in the case. Doesn't need
15 to be long, but -- or even cases.

16 MR. SHERIDAN: I think, looking at the jury
17 instruction, and -- yeah, we'll just send you the
18 Rose. There is a trilogy of cases that apply.

19 THE COURT: Okay. Thank you. We are at recess,
20 fifteen minutes.

21 (Recess taken.)

22 MR. SHERIDAN: I wanted to bring to the Court's
23 attention Exhibit 137 because I wanted to show it to
24 the witness, and I wanted to make sure it's all -- we
25 lay it all out. We have an authenticating

1 declaration of records custodians from the law
2 office.

3 THE COURT: Go ahead, I'm --

4 MR. SHERIDAN: And I know counsel is objecting to
5 it on several grounds, but I wanted to use the
6 declaration, at least, to get over any hearsay
7 objection piece. And then just address in advance of
8 the witness testimony what -- an offer of proof of
9 what -- of what we intend to show, and I was going to
10 ask to do it out of the witness's presence, if that's
11 okay.

12 THE COURT: All right. Could you step out just
13 in the hallway, just for a moment, please. You can
14 all be seated.

15 MR. SHERIDAN: This is the authenticating
16 declaration. I don't know if counsel is going to
17 object to it being a business record as opposed to
18 substantive.

19 THE COURT: "I'm an employee of the Offices of
20 Alex J. Higgins," signed Alex J Higgins.

21 MR. SHERIDAN: It worked for me.

22 THE COURT: Do you object just to authentication?

23 MR. BARBARA: Your Honor, I have several concerns
24 starting with, I haven't seen the declaration before
25 today. But I do not dispute that this is a document

1 that presumably was actually written and prepared by
2 Alex J. Higgins.

3 THE COURT: Okay.

4 MR. BARBARA: I then have a number of other
5 objections.

6 THE COURT: I understand. All right. So I do
7 not think I will have this marked as an exhibit, but
8 rather just filed.

9 MR. SHERIDAN: Okay. Thanks.

10 THE COURT: All right. Give me one second.

11 MR. SHERIDAN: Okay.

12 THE COURT: I should ask this, are you willing to
13 admit this exhibit?

14 MR. SHERIDAN: Yes, seeking to admit.

15 THE COURT: All right. Your objections?

16 MR. BARBARA: So your Honor, we'll start with --
17 the content would appear to reflect an expert opinion
18 with no foundation. Second, it would seem to support
19 a legal -- or an expert opinion for which there is no
20 facts or basis to articulate it and for which there
21 has been no expert disclosure provided. In fact,
22 Alex Higgins is not a witness in this case.

23 THE COURT: So that objection would appear to
24 apply to the first page. What about the second --
25 you don't have the same objection on the second page,

1 which seems to apply more to facts. Whether or not
2 it's admissible is a separate question, but I'm
3 addressing solely your objection on expert. You
4 would agree that that's a second -- that is a
5 separate issue?

6 MR. BARBARA: It is, your Honor.

7 THE COURT: Okay. So why don't you proceed,
8 then, with your objections.

9 MR. BARBARA: On the related issue, on the first
10 page, the statement of the law is inaccurate. It's
11 referencing the wrong law, the Americans with
12 Disability Act and the EEOC guidelines have no
13 applicability in this case.

14 THE COURT: You don't need to go into detail, you
15 could move onto the next objection you have.

16 MR. BARBARA: Sure. This is also hearsay within
17 hearsay, given that it seems to be reflecting what
18 Ms. Trussler told Mr. Higgins. It's also hearsay
19 that does not fall within the business records
20 exception. This is clearly an advocacy piece written
21 specifically by an advocate for Ms. Trussler to the
22 Washington State Department of Transportation. The
23 business records exception is intended for records
24 that are essentially ministerial in nature. They're
25 not designed to bring in subjective skill, judgment,

1 et cetera, they're designed to bring in records that
2 are, essentially, clerical.

3 THE COURT: Okay.

4 MR. BARBARA: This is not that. Similarly, this
5 is not something that would be created regularly in
6 the course of business, it's specific to particular
7 cases that are being handled as an advocate. So it
8 does not fall within business records and should not
9 be admitted at all other than to the extent that it
10 put the State on notice that Ms. Trussler had a
11 representative who had concerns about the
12 questionnaires. It should not be admitted as a
13 substantive exhibit.

14 THE COURT: So you believe that -- and that goes
15 to the second to last paragraph, finally, the medical
16 questionnaire.

17 MR. BARBARA: Yes.

18 THE COURT: And what about the notice issue,
19 because I think you probably anticipated Mr.
20 Sheridan's argument, he has made it before, regarding
21 turning to the release, although leave out the
22 business necessity statement but, "Although my client
23 is willing to sign a limited release," do you agree
24 or disagree that that also goes to the notice issue?

25 MR. BARBARA: I think, to the extent that he is

1 saying she's willing to sign a release, that would be
2 fine and we can argue and the facts bear out that, in
3 fact, she would not. The remainder of it is not
4 appropriate. Again, it turns into legal conclusions.
5 We don't think it's appropriate for it to be there.
6 We don't think that you should have unfettered right
7 to access to third parties, those are legal positions
8 that her advocate is taking. And he is not here as a
9 witness, his qualifications are not before the jury.

10 MR. SHERIDAN: So the reason that the whole
11 letter should come in is because in the December 31st
12 meeting between Ms. Trussler and Ms. Mabbott, Ms.
13 Mabbott basically sort of gave her an ultimatum, "You
14 have until the 7th to fill this stuff out or we are
15 taking it away." So what -- rather than she
16 responding, she basically hires him as her agent to
17 respond in her place, and he responds on the 7th, and
18 says that -- he says that, for example, you know,
19 "It's wrong to wait this long," and he says, "It's
20 bad faith," and he says that she doesn't have to do a
21 thing. And in her deposition, Ms. Trussler -- Ms.
22 Mabbott pretty much agrees, from wearing her HR hat,
23 that these are right, that it's true that it has to
24 be -- that she can't just, you know, ask for any
25 doctor's stuff. And it's true that that has to be

1 business necessity. So she -- it's relevant because
2 of her testimony saying that's true, which is
3 contradicting the things that she gave Ms. Trussler
4 to fill out by the 7th or lose her rights to
5 accommodation. And then, what happens, the other
6 testimony, I think this second page, obviously, is
7 all fact-based, but then what happens is, she gives
8 this to Dowler and to her boss. And that, in my
9 understanding of the time line, it's before the
10 decision to send her home. So now Dowler has got it,
11 and it's important that we be able to talk to her
12 about what she said to Dowler. And then -- so
13 whether or not there is a need for an instruction
14 that, you know, you're not to assume that, you know,
15 that the first page isn't offered for the truth of
16 the matter asserted or whatever, but her answers are
17 relevant. I mean, she says it has to be a business
18 necessity, that's relevant. And the only reason
19 she's saying is she's responding to the letter. So
20 having said that, the fact that then Dowler gets it
21 and then they have this meeting that sends her home
22 and nobody mentions this is relevant. So the fact
23 that they're on notice, and then right after that,
24 she's directed to end the accommodation. So I think
25 -- I think the whole -- if we don't put in both

1 pages, we sort of walk into this void where we can't
2 really establish what she knew and what she did with
3 the information and then how they reacted to the
4 letter, because they are reacting to the letter.

5 THE COURT: Well, as you're anticipating, I sort
6 of see this as two completely separate issues
7 regarding the first page, which has a statement of --
8 it's a mix between a statement of legal -- a legal
9 opinion and advocacy and addressing specific acts.
10 The second page, which I think is closer in the fact
11 that it could be putting them on notice as to their
12 -- your client's position and what they should be
13 doing in its relevant accommodation process, so --

14 MR. BARBARA: May I speak, your Honor?

15 THE COURT: Give me a second. I -- a couple
16 things. On the first page, I don't -- well, I would
17 rule that Mr. Higgins' legal opinions would not be
18 admissible. It's possible some of that page could be
19 used in context for the second page, such as, "The
20 ADA specifically limits an employer's ability to ask
21 medical questions to those which are needed as
22 medical necessity." I don't know if there is a
23 dispute as to that's true. And then moving to the
24 next page, turning to the relief sought by Ms.
25 Trussler, I do not see how this qualifies as a

1 business necessity. "My client is willing to sign a
2 limited release, we have two specific objections."
3 Is there any dispute on the law that the ADA limits
4 an employer's ability to ask medical questions to
5 those which are needed as business necessity? I
6 mean, isn't that --

7 MR. BARBARA: Absolutely. The ADA Title I, which
8 deals with employment, has no applicability
9 whatsoever to the State of Washington. We enjoy
10 Title 11 immunity -- excuse me, Eleventh Amendment
11 immunity in Federal Court, and the Washington Court
12 of Appeals has determined that Washington State has
13 not waived sovereign immunity for the ADA. The
14 Washington Law Against Discrimination is the
15 exclusive remedy for employment discrimination from
16 Washington State employees employed by the State of
17 Washington, which means any reference to the ADA and
18 the EEOC guidelines is not only improper, it's wrong.

19 MR. SHERIDAN: Having said that, though, the
20 people at HR receive training under ADA guidelines
21 and EEOC rules. So when I asked her about business
22 necessity, I didn't say it, I don't think I said it,
23 under the ADA, and she agreed. "That's right, you
24 can't -- you can't just ask for anything." So I
25 don't know that we have to say the ADA, but the

1 bottom line is, what's relevant is she's asked the
2 questions about the underlying positions and she
3 agrees with us under oath. So that's important. And
4 I think, you know, like the first -- the way I was
5 sort of approaching it, too, is as her agent, if the
6 fact that she is saying this, if she were writing
7 this letter, how much of this letter would get in?
8 Well, we know, like, the first two paragraphs would
9 get in because she's saying, you know, "You guys, I
10 am mad that you guys are delaying so long, I think
11 it's abusive," that's him speaking for her, that
12 could be her words. It couldn't be her words to talk
13 about legal positions, but because she -- because Ms.
14 Mabbott, she's an expert in what she does, she's
15 agreeing that you can't over -- you know, just ask
16 for anybody's records, they have to be related and
17 show a business necessity, so she's agreeing. So it
18 becomes like -- it's -- what Higgins says is only
19 relevant in the sense that she reacts to it at her
20 deposition. And I don't know, I could tailor that in
21 a way, but I thought the rest of it, anything that --
22 because he is her agent, anything that she could say
23 is -- should be admitted as, you know, the words of
24 her agent on her behalf because that's not -- you
25 know, this is now going up the chain and then they're

1 sending her home.

2 THE COURT: Sure, no, I appreciate your argument.
3 I think the issue is that it's a letter from
4 someone's lawyer takes on a significance that's a
5 little different under 403. It's very confusing and
6 looks like not her words, but the opinion of a legal
7 counsel, which it is in large part. But I do think
8 that parts of this should be admitted. Do you agree,
9 Mr. -- even if you don't agree with me letting any
10 part of this letter in, Mr. Barbara do you agree that
11 the Washington Law Against Discrimination, and
12 generally the laws applicable to this case limit the
13 medical questions to those which are needed as a
14 business necessity?

15 MR. BARBARA: I do, your Honor, and I think
16 that's part of the problem. What we are hearing from
17 Mr. Sheridan is not issues addressed to whether the
18 letter itself should be coming in and, in fact, are
19 advocating for its use as cumulative. How many times
20 did he say, "She agrees, she agrees, she agrees." If
21 he asks her and she agrees, then, he doesn't need the
22 letter.

23 THE COURT: I missed part of what you said. Did
24 you say cumulative?

25 MR. BARBARA: Yes, absolutely.

1 THE COURT: Okay.

2 MR. BARBARA: If she's going to agree to those
3 things out of her own mouth, which Mr. Sheridan has
4 represented she will, and I think she has testified
5 along those lines, then, the letter itself is
6 cumulative. Even if it were otherwise admissible,
7 it's cumulative and it's not admissible at the outset
8 in any part. And to the extent that Ms. Trussler had
9 written this letter, there is at least a hearsay
10 argument on that, as well, other than as it relates
11 to notice.

12 MR. SHERIDAN: That's exactly what we talked
13 about before, is notice.

14 THE COURT: Okay. Here is my ruling in part. So
15 you want to show this to the jury now?

16 MR. SHERIDAN: In about ten minutes more into her
17 testimony, yeah. Would you rather --

18 THE COURT: No, no, I want to move this along.

19 MR. SHERIDAN: Me, too.

20 THE COURT: I'm not interested in delay. I will
21 allow you to re-address the first page after I rule,
22 mr. Sheridan, and then Mr. Barbara to object again.
23 I will allow in the first sentence, "I represent
24 Stacy Trussler in connection with her employment with
25 the Washington State Department of Transportation."

1 And the, "At this time, my comments would be limited
2 to the reasonable accommodation process and the
3 demand that Ms. Trussler execute medical releases in
4 order to have her accommodation request considered by
5 WSDOT." The first sentence of the last paragraph on
6 the first page says the ADA specifically, and I would
7 redact out that part and then leave in -- excuse me,
8 I would redact out either ADA or the ADA. Either
9 way, it makes more sense to read. It includes,
10 "Specifically limits an employer's ability to ask
11 medical questions to those which are needed as a
12 business necessity." That's the only thing I would
13 leave in that paragraph.

14 MR. SHERIDAN: So it starts with the word
15 "specifically"?

16 THE COURT: Right, or it could start the blank,
17 specifically.

18 MR. SHERIDAN: Okay.

19 THE COURT: And then --

20 MR. SHERIDAN: So -- okay.

21 THE COURT: So then the second page would come in
22 as notice. So it would be just the first sentence of
23 the first paragraph, just the last sentence of the
24 first paragraph, and the only the first sentence of
25 the -- and then, so I will read it in total on the

1 first page so there is no confusion.

2 MR. SHERIDAN: Okay.

3 THE COURT: "I represent Stacy Trussler in
4 connection with her employment with the Washington
5 State Department of Transportation. At this time, my
6 comments will be limited to the reasonable
7 accommodation process in demand Ms. Trussler execute
8 medical releases in order to have her accommodation
9 request considered by WSDOT. The blank specifically
10 limits an employer's ability to ask medical questions
11 to those which are needed as a business necessity."
12 Next page, it's all in.

13 MR. SHERIDAN: Okay. Next page in. I can
14 actually -- because Leah is here, I can actually have
15 her fill that out that way so that we can put it up
16 on the screen.

17 THE COURT: That's fine, you can do that.

18 MR. SHERIDAN: Okay.

19 THE COURT: Are there any further objections on
20 what I ruled? I'm allowing the rest of it in just on
21 that issue of notice, and obviously the issue of
22 whether it's a demand, that's a question of fact, but
23 --

24 MR. BARBARA: Absolutely, your Honor. Starting
25 with the sentence that you're allowing in the last

1 paragraph of the first page, even as admitted, the
2 blank, or whatever you put in there, specifically
3 limits an employer's ability to ask medical questions
4 to those which are needed as a business necessity is
5 a statement of law. Mr. Higgins is instructing via a
6 letter that is hearsay, and is doing something that
7 the Court does, not Mr. Higgins. And the fact that
8 we don't -- that he is citing from a case that is an
9 ADA case, the fact that it continues with other ADA
10 cases is improper. Mr. Higgins, if he were a
11 witness, does not get to tell the jury what the law
12 is. You wouldn't allow it if he were here live, it
13 shouldn't be allowed here in this letter.

14 THE COURT: Well, I first of all, I think you
15 agree that's the law and the law for State of
16 Washington. Secondly, I can give a limiting
17 instruction. I'm not intending that the jury take
18 this as an instruction on the law, I'm only using it
19 to give context to the notice on the second page.
20 But I could give a limiting instruction that would
21 say something to the effect of this this, and again I
22 invite comments. This exhibit -- mark this exhibit
23 yet? 137. "This exhibit, 137, is admitted solely
24 for the purpose of the fact that Ms. Trussler,
25 through her lawyer, gave notice, or that Washington

1 State Department of Transportation received notice
2 about certain issues relating to medical releases and
3 questionnaires. It is not an instruction on the law.
4 I will give you the law at the end of the case in the
5 instructions I give you, to the jury."

6 MR. BARBARA: Your Honor, even with the limiting
7 instruction, it's improper to allow an attorney, who
8 is not here testifying, whose qualifications have not
9 been established, to instruct the jury, via a hearsay
10 letter, that -- what the law is. Whether I and my
11 client agree with it or not, it's improper for the
12 jury to hear it from that attorney.

13 THE COURT: I think you have made that argument
14 and I've overruled it, but let me tell you what how
15 I'm viewing this and then address this. I'm simply
16 addressing it as something that might be necessary to
17 give context to the second page. If you disagree
18 with that, I'd certainly would be willing to hear
19 from you on that, but that was simply trying to lead
20 in to that issue. Again, I don't think anyone
21 disagrees in this case that employers don't get to
22 ask medical questions on everything. They're limited
23 to issues related to the business that they're
24 involved in.

25 MR. BARBARA: Right, your Honor, there is no

1 dispute about that, that's not the dispute. The
2 dispute is about this particular exhibit and the way
3 it's going to be given even if you give a limiting
4 instruction. The only reason this is in here is
5 because they're going to argue that Ms. Trussler had
6 an attorney. We have been hearing about it already,
7 she's talking to an attorney. Her attorney told the
8 State of Washington that they couldn't do this. Her
9 attorney told them that he had these concerns. Their
10 attorney told them that he had issues with the
11 medical questionnaires. Their attorney said he is
12 willing to talk to an attorney general, assistant
13 attorney general. That creates a side show, your
14 Honor. Mr. Higgins was never identified as a witness
15 for trial, neither are the assistant attorney
16 generals who were involved. We are not going to get
17 into, or we shouldn't be getting into a side show
18 about what the attorneys did or didn't do. And the
19 fact that Mr. Higgins says, "I would be willing to
20 talk to an assistant attorney general" is also
21 improper. The attorney generals aren't the ones who
22 were involved in evaluating reasonable accommodation,
23 they're not ones who are evaluating the releases of
24 the medical questionnaires, that's done by HR. So
25 it's improper at the outset. Every piece of this,

1 other than that Ms. Trussler, through Mr. Higgins, is
2 saying, "I'm on notice that we have some issues, and
3 oh, by the way, we didn't sign them. We would be
4 happy to talk to you about them," that's all it
5 should be worth, your Honor, and that's not what the
6 admission does.

7 THE COURT: I think you know this, but it's
8 already in evidence that Mr. Higgins advocated on
9 behalf of Ms. Trussler, that already came in.

10 MR. BARBARA: I understand that.

11 THE COURT: And I think you cross examined on it.

12 MR. BARBARA: I do understand that.

13 THE COURT: Right. You raised this in pre-trial,
14 and fairly so but, I mean, I think it's properly
15 admitted on the issue of notice. I don't think that
16 Mr. Higgins should be given out of court -- well, Mr.
17 Higgins wouldn't be able to, even if he was here,
18 give his personal views on the law. But I thought it
19 was for a non-controversial -- that the employer's
20 ability to ask medical questions are limited to
21 business necessity. In fact, you cross examined for
22 a great deal of time, but there is actually a fairly
23 limited issue with regard to the 2015/2016 time
24 frame.

25 MR. BARBARA: All of --

1 THE COURT: I mean, I don't have a -- we can take
2 this first -- the last sentence of the first page
3 out, I don't have a strong feeling about that. But I
4 think that the rest of it is -- I don't understand
5 the issue with the assistant attorney general, but I
6 thought that there actually -- there was an inference
7 from testimony with Ms. Trussler that there was an
8 assistant attorney general either involved or
9 requested to be involved, and I don't know the truth
10 or the falsity of that, but I have to tell you that's
11 before the jury.

12 MR. BARBARA: I appreciate that, your Honor, but
13 that's not an issue in the trial.

14 THE COURT: Okay.

15 MR. BARBARA: The to the extent there was an
16 assistant attorney general, he is not a witness
17 identified by either party. Mr. Higgins was not a
18 witness identified by either party, yet now we are
19 trying to back-door in a hearsay letter.

20 THE COURT: Okay.

21 MR. BARBARA: I realize you're making your
22 ruling, I think I have made my record, but I believe
23 that, at a minimum, the last sentence of the first
24 paragraph on the first page should be redacted so we
25 are left with the two sentences in the first

1 paragraph. I also believe that, at a minimum,
2 everything in the last sentence after, "I'm happy to
3 discuss this matter with you," should be removed.

4 MR. SHERIDAN: So just you know what's in the
5 transcript is, I asked -- and I'm editing a little, I
6 asked, "The blank specifically limits an employer's
7 ability to ask medical questions to those which are
8 needed as a business necessity. Was that also your
9 understanding in the 2014, 2015 time frame as to the
10 employer's limitations," and she says yes. So having
11 that sentence there helps the jury understand why I'm
12 asking the question, and she -- it's relevant because
13 she says that's what it is, not because Higgins says
14 it.

15 THE COURT: Okay. What about the assistant
16 attorney general?

17 MR. SHERIDAN: I don't care if that's deleted, I
18 mean, --

19 THE COURT: Okay. I will allow in, "I am happy
20 to discuss this matter with you," and take out
21 everything starting with the word "Or with the
22 assistant attorney general assigned to the matter."

23 MR. SHERIDAN: Fair enough.

24 THE COURT: I frankly think the last sentence in
25 the first page is a tempest within a teapot a little

1 bit because I think it's undisputed, but I will
2 remove it. So the ADA specifically limits an
3 employer's ability to ask medical questions. You
4 will get that evidence in through Ms. Mabbott.

5 MR. SHERIDAN: I will still ask it.

6 THE COURT: Yes.

7 MR. SHERIDAN: I will delete ADA, too.

8 THE COURT: Yeah, it's appropriate to ask the
9 question. So the only part of the first page is the
10 first paragraph.

11 MR. SHERIDAN: Right.

12 THE COURT: First sentence, last sentence, and
13 then the next page with the redaction of, "Or with
14 the assistant attorney general assigned to the
15 matter."

16 MR. SHERIDAN: Let me just -- I want to make sure
17 that last sentence --

18 THE COURT: Okay.

19 MR. SHERIDAN: We should have that in a couple
20 minutes. I can actually start while she's working on
21 it.

22 THE COURT: Do you want a limiting instruction on
23 the issue of notice?

24 MR. BARBARA: I would, your Honor.

25 THE COURT: Okay.

1 MR. BARBARA: Indicating that. I also have a
2 concern, in light of the Court's rulings, that I
3 believe that Mr. Sheridan is looking at deposition
4 testimony from Ms. Mabbott in which he is referencing
5 this letter and what it says. In light of the
6 redaction and the jury not getting to see parts of
7 it, I think the question ought to be directed to Ms.
8 Mabbott. I think her answer is still going to be the
9 same, that she will acknowledge that business
10 necessity is what drives the decision. If she does,
11 then, there is no need to reach back into the
12 transcript that includes references to the letter
13 itself.

14 THE COURT: Well, isn't -- is there any dispute
15 she's a managing agent for the purpose of the civil
16 rules?

17 MR. SHERIDAN: No, she's a CR 43.

18 MR. BARBARA: That's not the issue.

19 THE COURT: It's because he can then use the
20 deposition for any purpose. Are you saying that that
21 evidence should be limited?

22 MR. BARBARA: What I'm saying, your Honor, is
23 that the testimony that came through in the
24 deposition references the exhibit. The exhibit has
25 now been redacted, so to the extent that the

1 questions related to the text of the letter that has
2 been redacted, that portion of the question that
3 leads to the answer is no longer appropriate.

4 THE COURT: That I limited because it's an
5 opinion of an attorney, but are you disputing that
6 the business necessity issue is actually a live issue
7 in this case?

8 MR. BARBARA: No, I'm not, that's why I'm saying,
9 if he wants to ask Ms. Mabbott, I think she'll tell
10 him, she will agree business necessity is an issue.

11 MR. SHERIDAN: I'm going to -- just to smooth
12 this out, I'm not going to ask words on the business
13 necessity question that say, "Alex Higgins writes."

14 MR. BARBARA: Okay. That was my only concern.

15 THE COURT: He already said that.

16 MR. SHERIDAN: Yeah, all right.

17 THE COURT: I take it you're not resting this
18 morning?

19 MR. SHERIDAN: No.

20 THE COURT: Why don't you bring in Ms. Mabbott.
21 But this is the longest witness?

22 MR. SHERIDAN: Yes, it is. Everybody else is
23 quick.

24 MR. BARBARA: I think the record is pretty clear,
25 but I do want to take exception to the ruling that

1 the Court has made.

2 THE COURT: Exceptions were eliminated by the
3 Civil Rules about 55 years ago.

4 MR. BARBARA: That happened, then, your Honor.

5 (The following occurred in
6 the presence of the jury:)

7 THE COURT: You may all be seated. Mr. Sheridan?

8 MR. SHERIDAN: Thanks, your Honor.

9 CONTINUED DIRECT EXAMINATION

10 BY MR. SHERIDAN:

11 Q. Okay. So at the break, we were looking at this
12 Exhibit 134, which is a December 29th letter. And this
13 is -- we have already established that you were copied
14 on this; right?

15 A. Correct, yes.

16 Q. So this is Ms. Woehler writing that, "You asked me to
17 share with you my assessment of your position for
18 telework. Please note the evaluation below refers to
19 regularly scheduled telework days. An agreement
20 covering inclement weather would be appropriate for
21 your position as would occasional work from home due to
22 travel." Did you draft this?

23 A. I don't believe so. I believe Ms. Woehler drafted
24 this.

25 Q. Let's look at the next paragraph. And it says, "I

1 will begin by reminding you the telework is a
2 management tool, not an employee entitlement." So did
3 you agree, though, that persons who need telework as an
4 accommodation, that that is something that is required
5 by the State; right, to give?

6 A. It's something that would be considered if the work
7 -- if the position can accommodate telework, yes.

8 Q. Okay. You understood at the time that this letter
9 was written that the position had accommodated telework
10 since before the motorcycle accident; right?

11 A. Correct, yes.

12 Q. Okay. And again, you didn't bring that up to Ms.
13 Woehler; right?

14 A. No.

15 Q. Okay.

16 A. I don't believe so.

17 Q. Let's go down to the, "As stated in your position
18 description. You direct and provide leadership for the
19 UPO office and represent the secretary and WSDOT as a
20 voting member of numerous politically sensitive boards
21 and committees." Now, as of December 29th, that wasn't
22 an accurate statement because she had been removed of
23 all those responsibilities; right?

24 A. Not that I'm aware of.

25 Q. Nobody told you if she had been removed of all those

1 responsibles?

2 A. I don't know that she was removed from all those
3 responsibilities.

4 Q. The responsibilities of attending those third-party
5 meetings, you don't know if that's the case?

6 A. Correct, not that I can recall.

7 Q. What do you think she was left with as of December
8 29th?

9 A. I don't remember a new position description, not that
10 I can recall.

11 Q. What you mean is, that her position description was
12 unchanged, that's different from -- were you aware that
13 she had -- that Ms. Woehler had taken various job
14 responsibilities and personnel away from her by the
15 29th of December?

16 A. I knew that there was a reorganization being
17 considered, and that from what I recall, Ms. Scarton
18 started to attend a counsel -- there was a specific
19 Council meeting she was attending instead of Ms.
20 Trussler, but I don't know that all of these duties
21 were removed.

22 Q. Can you tell us why you know that? Why should you
23 know that piece of information? Why should you have
24 known that in December?

25 A. I don't remember how I found out. Through Ms.

1 Woehler, perhaps.

2 Q. Okay. So somebody was telling you what was happening
3 to Ms. Trussler's job responsibilities in December?

4 A. It was -- something was communicated to me about a
5 specific Council meeting, yes.

6 Q. So you knew, when you read this letter, that this
7 letter wasn't factually accurate in terms of her
8 responsibilities?

9 A. Not necessarily, no.

10 Q. Well, would you agree with me that as she had done
11 all of those, she had done her job up until the time
12 that Ms. Woehler started taking her responsibilities
13 away; right?

14 A. I believe so, yes.

15 Q. Okay. So, in fact, if she could telework with the
16 full load of things you do, did you discuss with Ms.
17 Woehler the logic of she should be more likely to
18 telework and able to telework with less
19 responsibilities?

20 MR. BARBARA: Objection, calls for speculation.

21 MR. SHERIDAN: Simply asked if she talked to her.

22 THE COURT: Well, that's not the question you
23 asked. Why don't you rephrase.

24 MR. SHERIDAN: Sure.

25 Q. Did you talk to Ms. Woehler about the fact that since

1 they're taking away many of her responsibilities if she
2 could telework before that with a full load, why does
3 it make sense to not let her telework with the --

4 MR. BARBARA: Objection, assumes facts not in
5 evidence, mischaracterizes the evidence.

6 THE COURT: Overruled, that goes to the arguments
7 the parties are making. Go ahead.

8 A. We did not discuss that, no.

9 Q. All right. Let's look at the next section there.

10 Okay. Let's skip, "The staff relies." And let's look
11 at the last paragraph. "Representing the secretary and
12 WSDOT as a voting member of the numerous politically
13 sensitive boards is a key responsibility." Do you know
14 if she had been -- as of the 29th of December, was she
15 allowed to do that?

16 A. To be on boards and committees?

17 Q. To represent the secretary.

18 A. I do not know that. I'm not aware of that.

19 Q. But you did know that Ms. Scarton took over at least
20 one responsibility; right?

21 A. For one counsel that I recall, I believe, yes.

22 Q. Got it. All right. Now, this is December 29th, but
23 let's go back now to the October meeting. I think we
24 talked about your meeting with Ms. Taylor in September.
25 At this October meeting, this was no longer a meet and

1 greet; right? This meeting with Ms. Trussler? This is
2 your second meeting with Ms. Trussler?

3 A. That sounds correct. I did meet with her, yes.

4 Q. So at this meeting, you now knew that Ms. Trussler
5 had said that you threatened her; right?

6 A. Correct, yes.

7 Q. Okay. So at this meeting, were you a little hostile
8 to her?

9 A. No, I don't believe so.

10 Q. Did you show Ms. Trussler any documents to sign?

11 A. I believe I presented the medical release forms for
12 signature.

13 Q. The release forms, did you actually show them to her?

14 A. I don't remember. I think I gave them to her, I
15 believe so, or I had emailed them to her, I don't
16 remember.

17 Q. Did you put the doctor's names in the releases?

18 A. I don't remember.

19 Q. Did you -- okay. Because at this time, you didn't
20 have a questionnaire prepared; right?

21 A. That is correct, yes.

22 Q. So no questionnaire.

23 A. Uh-huh.

24 Q. Okay. And no -- the release, you don't recall if
25 there were doctors' names?

1 A. I don't recall that, no.

2 Q. Okay. You understood, though, that the only doctors
3 you should be asking for information from are the
4 doctors who were treating her for the things she wanted
5 accommodated; right?

6 A. Yes.

7 Q. Okay. It's true, though, that at this meeting, you
8 told her that you had looked at her record and she had
9 four serious medical conditions; right?

10 A. I don't know if it was at that meeting that we
11 discussed it. I know we discussed it in the December
12 meeting.

13 Q. Okay. The four -- so the four serious medical
14 conditions, it's -- without talking about any details,
15 it's true, is it not, that Ms. Trussler told you at
16 this meeting that she only wanted accommodation for the
17 medical condition related to her accident; right?

18 A. I don't remember if she said that at that meeting.

19 Q. Well, she said it over and over to you, didn't she?
20 She doesn't want to be accommodated for every possible
21 illness or injury, she just wants to be accommodated
22 for the issues related to her accident, vision, that
23 stuff; right?

24 A. I wouldn't say that she said anything over and over
25 to me. I was a little bit confused because our first

1 meeting that we had --

2 Q. In September?

3 A. In September, she went into great detail about a
4 medical condition, and that wasn't related to the
5 motorcycle accident. And so at some point, I don't
6 remember if it was at the actual meeting or thereafter,
7 she had indicated --

8 MR. BARBARA: Your Honor, I have a concern that,
9 perhaps, --

10 THE COURT: I understand. Would you bring in
11 Monica? Might be simplest to talk about it very
12 briefly.

13 MR. SHERIDAN: Sure.

14 THE COURT: I'm going to have you step out for
15 within minute.

16 (The following occurred in
17 the absence of the jury:)

18 THE COURT: Be seated. Ms. Mabbott, I don't want
19 to make this a guessing game for you, you're hearing
20 questions and not sure how you should answer some of
21 them. Some of the conditions have been excluded by
22 court order, specifically fibromyalgia. So that
23 can't be mentioned in the Court.

24 THE WITNESS: Okay.

25 THE COURT: What you said so far has been fine.

1 was allowed to do flex time; right?

2 A. Yes.

3 Q. You knew that she was allowed to telework; right?

4 A. Correct.

5 Q. You knew she was allowed to rest, when necessary?

6 A. I guess so, yes.

7 Q. Okay. All right. Okay. And so it's true, also, is
8 it not, that through this time, you understood that
9 it's okay to do informal accommodations at the State;
10 right?

11 A. Correct.

12 Q. So informal accommodations, it's actually referred,
13 "Why make a big deal of something if the manager
14 recognizes a problem and comes up with a low-cost,
15 efficient accommodation;" right?

16 A. It's a case by case.

17 Q. So there was nothing wrong with Brian Smith doing the
18 accommodation from the time of the motorcycle accident
19 to the time he retired; right?

20 A. If he felt that the position could accommodate those
21 things, then, yes.

22 Q. All right. You had seen that many times in your
23 career; right?

24 A. Yes.

25 Q. Okay. Now, let me just get to this October meeting

1 again. At this meeting, didn't you say to Ms.
2 Trussler, "If you don't sign the release, I'm going to
3 do an IME," or words to that effect?

4 A. I remember bringing up an IME when she had indicated
5 she wasn't going to sign the release, and I remember
6 saying that, you know, "Your management or the agency
7 may require an IME," something along those lines.

8 Q. Okay. An IME is actually something that is totally
9 authorized whenever the employer has questions about
10 the medical condition of the person applying; right?

11 A. Yes.

12 Q. It was totally within your authority to order an
13 independent medical exam if you had any concerns or
14 questions; right?

15 A. No.

16 Q. Well, who would have to approve an IME?

17 A. So management would have to request it, and Ms.
18 Trussler would have to consent to it.

19 Q. You mean -- you mean Ms. Woehler would have to
20 request an IME; right?

21 A. Correct.

22 Q. All right. And so once you do that, if you really
23 want to know what a person's condition is and you feel
24 like you can't figure it out, an IME is a good way to
25 get to the bottom; right, of the question?

1 A. It can be, yes.

2 Q. Okay. But it's true, is it not, that Ms. Woehler
3 never, ever ordered an independent medical exam?

4 A. No, not that I'm aware of.

5 Q. Nor did you recommend one?

6 A. I didn't. And actually, you know, it wasn't long
7 after I had mentioned in the meeting, I realized I
8 wanted to kind of back up and proceed with what would
9 make Ms. Trussler the most comfortable. It's ideal to
10 get her own medical providers information, you know.

11 Q. So I mean, if I -- you didn't view this as a threat?

12 A. It wasn't meant to be a threat, it was kind of meant
13 as like a, I don't know, "What else to do if we can't
14 get medical information for you, the agency may require
15 an IME."

16 Q. In October, wasn't Ms. Trussler simply asking to be
17 included in the process, to be given a little bit of
18 time to see what it is you want and to understand what
19 the questionnaires would be? Because you didn't have
20 any questionnaires in October; right?

21 A. And that is what we agreed to by the time we wrapped
22 up the meeting.

23 Q. But it's also true that you said words to the effect
24 that, "If you won't sign, sign these records, I may
25 have an IME done on you," or words to that effect?

1 MR. BARBARA: Objection, been asked and answered,
2 your Honor.

3 THE COURT: I will allow it.

4 A. I said that -- I believe I said that, "The agency or
5 your management may require an IME." I don't think --
6 I wouldn't have the authority to force Ms. Trussler to
7 an IME.

8 Q. All right. Okay. And when you said this, this was
9 with full knowledge that she had suggested -- had gone
10 to Katie Taylor to complain that you had threatened
11 her?

12 A. That was after me meeting with Ms. Taylor, correct.

13 Q. So now you have met with Ms. Taylor and you
14 understood there was no threat to you because Katie
15 Taylor told you that; right?

16 MR. BARBARA: Objection, it has been asked and
17 answered.

18 THE COURT: I think it's a different question. I
19 will allow it.

20 A. I'm not sure I understand what you're asking.

21 Q. Sure. So as of this meeting, the October meeting,
22 you had already met with Katie Taylor; right?

23 A. Correct, yes.

24 Q. And you knew that Ms. Taylor had taken care of the
25 threat claim; correct?

1 A. That she was going to handle it, yes.

2 Q. So you felt bold enough in talking to Ms. Trussler to
3 say, "If you won't sign, we may -- the agency may
4 require an IME;" right?

5 MR. BARBARA: Your Honor, this question has been
6 asked and answered multiple times, it's now just
7 argumentative.

8 THE COURT: It is argumentative. You may
9 rephrase.

10 MR. SHERIDAN: Sure.

11 Q. Well, you were no longer afraid of Ms. Trussler;
12 right?

13 A. I was never afraid of Ms. Trussler.

14 Q. You were afraid, though, initially, that you might
15 yourself be investigated; right?

16 A. That was never indicated to me. I know Ms. Taylor
17 questioned me about my interaction with Ms. Trussler,
18 and I thought it had been handled.

19 Q. Is it fair to say that at the conclusion of this
20 meeting, you understood that Ms. Trussler only wanted
21 to be accommodated for issues pertaining to her injury,
22 the motorcycle injury?

23 A. What I recall from the conclusion of the meeting was
24 that we had agreed to re-meet and I would have the full
25 questionnaires and the medical release forms prepared

1 for her to review at our next meeting.

2 Q. Okay. Can you tell us -- I don't mean to interrupt
3 you. So can you explain why, we are now into October,
4 2014 and you still haven't drafted questionnaires?

5 A. Yes. The employee relations office that year was --
6 we were short staffed, and so it's really -- the delay
7 was about case load primarily.

8 Q. I'm sorry. Did you prioritize people that had been
9 waiting the longest?

10 A. I tried to, we tried to.

11 Q. Isn't it true that Ms. Trussler pretty much was at
12 the top of the list waiting the longest for an
13 accommodation?

14 A. She had been waiting an extended period, that is
15 correct.

16 Q. But having said that, so now, before or after this
17 meeting, there was -- strike that. Now, if we go into
18 December, there is a letter of concern drafted in part
19 by you; right?

20 A. For Ms. Woehler, yes.

21 Q. Okay. Go ahead and put up 108. Assuming I have it
22 right.

23 MR. BARBARA: It hasn't been admitted.

24 MR. SHERIDAN: The letter of concern?

25 MR. BARBARA: It has not.

1 MR. SHERIDAN: Okay. Sorry, I was wrong, it was
2 133.

3 MR. BARBARA: Which has been admitted.

4 MR. SHERIDAN: Well, that was easy.

5 Q. All right. So this letter of concern is dated the
6 29th of December, too; right?

7 A. Yes.

8 Q. And you helped Ms. Woehler draft this, or you drafted
9 it for her; right?

10 A. Yes, one or the other, yes.

11 Q. Okay. And this is basically sort of a
12 pre-disciplinary letter; correct?

13 A. It's not what we would call a pre-disciplinary
14 letter, that would be a little bit different. A letter
15 of concern is, I'm noting some concerns with
16 performance and kind of a, "Let's work on turning
17 things around."

18 Q. Okay. And this letter was basically created for the
19 purpose of telling Ms. Trussler things that you and Ms.
20 Woehler had agreed were potential deficiencies; right?

21 A. That Ms. Woehler had identified, yes.

22 Q. You helped her identify them; right?

23 A. I believe they were primarily about work product. I
24 don't remember the entire --

25 Q. Well, let's take a look. The first bullet is -- it

1 says -- well, let's start at the paragraph above the
2 heading. It says, "The following summarizes my
3 concerns and clarifies the expectations you're required
4 to follow immediately." Oops. "In order to correct
5 these issues." Then she says, "Standards of conduct.
6 As a permanent WMS 4 manager, you're held to a higher
7 standard and expected to model correct and professional
8 behavior." Did you draft that sentence?

9 A. I don't recall. Ms. Woehler and I both wrote and
10 reviewed this, so I may have had a part in that, yes.

11 Q. So this is at the same time you're the person in
12 charge of the accommodation of Ms. Trussler; right?

13 A. That's correct.

14 Q. You didn't see this as a conflict of interest?

15 A. No.

16 Q. All right. So the first bullet is on September 26th
17 regarding a telephone conference with Leah Bolotin's
18 reasonable accommodation request with Rich Warren,
19 Heidi Mabbott, that's you, and Jennifer Shaffer. "You
20 asked inappropriate questions about Ms. Bolotin's
21 medical questionnaire." What did Ms. Trussler do that
22 was inappropriate?

23 A. I don't remember.

24 Q. Were you present? You were present, it says, in the
25 letter; right?

1 A. Right.

2 Q. So what was it she did that was inappropriate?

3 A. She must have asked questions about Ms. Bolotin's
4 medical information.

5 Q. Well, do you mean medical questionnaire? I'm asking
6 specifically, is it okay for the manager to see the
7 complete medical questionnaire of an employee?

8 A. After -- um, not, no, not necessarily.

9 Q. Well, so it either would it be an invasion of
10 privacy, for example, for to you go talk to Ms. Woehler
11 about Ms. Trussler's medical questionnaire, would that
12 be inappropriate?

13 A. Only if it included details of medical conditions.

14 Q. That's when it would be inappropriate; right?

15 A. Yes.

16 Q. So as long as you don't say that she has a head
17 injury, it's okay to talk about what the doctor said?

18 A. In general terms, yes.

19 Q. But you knew that Ms. Bolotin had fibromyalgia, she
20 didn't try to hide that from anyone; right?

21 A. I did know what the medical diagnosis was at the
22 time.

23 Q. It's true, is it not, that the entire discussion that
24 Ms. Trussler did in this meeting was around the medical
25 questionnaire that she had a right to have access to as

1 the appointing authority; right?

2 A. I actually don't remember what she asked about, what
3 this bullet references.

4 Q. Okay. But we would agree that if she was talking
5 about the medical questionnaire, that's fair game?

6 A. Uh-huh.

7 Q. Yes?

8 A. Yes.

9 Q. And that if she's talking about something that the
10 patient -- that the person who is seeking accommodation
11 has made public, that's also not a problem; right?

12 A. Oh, it's a problem if other employees are present in
13 the meeting. It shouldn't be part of the discussion.

14 Q. Well, you mean the word "fibromyalgia" should not be
15 a part of the discussion even if Ms. Bolotin is not
16 trying to keep that a secret?

17 A. Correct, it shouldn't be discussed in the meeting
18 with other employees.

19 Q. Okay. But you would agree that it's okay to discuss
20 whether or not somebody has misrepresented what's in
21 the doctor's medical questionnaire; right?

22 A. I think so, yes.

23 Q. Okay. All right. Let's look at the next entry. And
24 it says, "On October 9th, you informed me of concerns
25 you're having working with the human resources group.

1 I directed you at the time to take your concerns to Mr.
2 Pelton and let him know you would be calling. It's my
3 understanding that, to date, you have not contacted Mr.
4 Pelton to discuss your concerns." Why would that, in
5 any way, be something that would be a lack -- show a
6 deficiency in performance?

7 MR. BARBARA: Objection, calls for speculation as
8 to Ms. Woehler's thoughts.

9 THE COURT: I'm going to overrule the objection.
10 As I understand the foundation, they both helped
11 draft this.

12 MR. SHERIDAN: Correct.

13 THE COURT: Go ahead.

14 A. Actually, that's a great question. I don't know,
15 other than that Ms. Woehler had concerns that Ms.
16 Trussler didn't follow up.

17 Q. Follow up. Was this a complaint about you?

18 A. I don't know.

19 Q. Wasn't this -- and could you make that a little
20 bigger? It's a little cut off there. We don't need
21 the other blow-ups, let's just do the October blow up.
22 Thank you. Okay. So you knew, this is December 29th;
23 right?

24 A. Yes.

25 Q. You knew that Ms. Trussler had gone to Ms. Taylor to

1 complain that you had threatened her. Were you aware
2 of any other concerns that Ms. Trussler reported
3 regarding human resources other than you?

4 A. Not that I can recall right now, no.

5 Q. But you knew that she went to Katie Taylor and not
6 Mr. Pelton; right?

7 A. Correct, yes.

8 Q. So you left this paragraph unchanged even though you
9 participated in the drafting?

10 A. Yes.

11 Q. Okay. You don't remember why?

12 A. I don't.

13 Q. Okay. Let's look at the next one. And then she
14 writes, "On October 30th, I met with you to inform you
15 that your position is not eligible for telework."

16 A. Uh-huh.

17 Q. "As you know, WSDOT policy requires a valid telework
18 agreement between an employee and supervisor. As you
19 were teleworking without an agreement, I have directed
20 you to discontinue." Now, it's true, is it not, that
21 you understood that there was no way Ms. Trussler could
22 get a new telework agreement because Ms. Woehler would
23 not sign it; right?

24 A. I believe Ms. Woehler's agreement with Ms. Trussler
25 was that telework could be done intermittently for

1 special projects.

2 Q. Snow storm?

3 A. Inclement weather, those kind of things.

4 Q. So you understood that she had been doing telework
5 since before she was injured; right?

6 A. Uh-huh, yes.

7 Q. And now you understood that she was being identified,
8 as it says, as you were teleworking without an
9 agreement, "You must discontinue immediately." So the
10 argument here, you --

11 A. I helped draft it, yes.

12 Q. The argument is if you have an agreement, you're
13 okay, but if you don't, you must stop; right?

14 A. That sounds accurate.

15 Q. But you understood she was never going to get an
16 agreement from Ms. Woehler because Ms. Woehler was
17 against her teleworking?

18 A. That sounds correct, outside of the accommodation
19 process, yes.

20 Q. So can you explain, was this -- was this last
21 sentence meant to antagonize her?

22 MR. BARBARA: Objection to the extent it's asking
23 for Ms. Woehler's state of mind.

24 MR. SHERIDAN: Well, since she -- drafted it,
25 too.

1 THE COURT: Yeah, I agree. Why don't you
2 rephrase your question.

3 MR. SHERIDAN: Sure.

4 Q. You were still mad at Ms. Trussler; right?

5 MR. BARBARA: Objection, argumentative.

6 THE COURT: Actually, it's not -- go ahead.

7 A. No, I wasn't mad at Ms. Trussler.

8 Q. Well, so this is the 29th, this is the same day you
9 had the meeting with her. We heard your audio tape;
10 right? Same day you had a meeting with Ms. Trussler;
11 right?

12 A. I believe, actually, it was --

13 Q. The 31st, you're right, my mistake. This is the
14 29th, that meeting was the 31st.

15 A. Yes.

16 Q. All right. You -- at this point, you were helping
17 Ms. Woehler take away what you understood had been an
18 accommodation; right?

19 A. Essentially, you could say that, yes.

20 Q. You didn't lift a finger to stop it; right?

21 A. That is correct, yes.

22 Q. Isn't it true, though, that within the policy, aren't
23 you supposed to get somebody -- isn't there, like, a --
24 isn't there a person who works for the state that is
25 responsible for sort of oversight of the accommodation

1 process?

2 A. At DOT?

3 Q. Yeah.

4 A. We have, like, an ADA accommodation specialist
5 presently. I don't know if we had one back then.

6 Q. It's true, is it not, that you kept this to yourself?
7 You didn't go up the accommodation chain to talk to
8 anybody about this, it was just you and Ms. Woehler and
9 then -- right?

10 A. My -- I actually debriefed with my boss, also.

11 Q. Who was that?

12 A. Kim Monroe.

13 Q. So Ms. Monroe knew what you were doing, then, too;
14 right?

15 A. She was updated on the -- over time, as how things
16 were progressing, yes.

17 Q. Did she step in to try stop this?

18 A. No.

19 Q. Okay. Let's take a look at -- oh, never mind, never
20 mind. So we have the meeting on December 31st, and
21 that's the one we have the audio. All right. So if we
22 could look at Exhibit 228, please.

23 MR. SHERIDAN: Is that not admitted?

24 MR. BARBARA: I believe it is.

25 THE COURT: 228? I think it is, but --

1 MR. SHERIDAN: I thought it was. Okay. So this
2 is the policy.

3 THE COURT: Yes.

4 MR. SHERIDAN: Thank you.

5 Q. This is the policy on accommodation; is it not? You
6 might have to make the top bigger, Greg.

7 A. No, it's not, I don't believe so.

8 Q. What is this?

9 A. It's an equal opportunity affirmative action freedom
10 from discrimination and from sexual harassment policy.

11 Q. Oh.

12 A. There is a reasonable accommodation policy.

13 Q. Let me see where. Oh, chapter 25. Go to the thing
14 that stays chapter 25. It seems to be the same
15 exhibit. So page down about four pages, go to the
16 smaller -- so you can move to the -- if you would.
17 Yeah, just keep going until you see chapter 25.

18 THE COURT: Why don't we take our break, start a
19 few minutes earlier, give you a chance to look at the
20 exhibits.

21 MR. SHERIDAN: Thanks.

22 THE COURT: Take your lunch break, be back by 20
23 minutes -- or I'm thinking -- be back by ten minutes
24 to one, we'll try to start as soon as possible before
25 one, or just at one.

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

3 THE COURT: Stating the obvious, but we have to
4 get moving. See you after lunch.

5 MR. SHERIDAN: Thanks.

6 (Recess taken.)

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

9 THE COURT: You may be seated. Mr. Sheridan?

10 MR. SHERIDAN: Thanks.

11 BY MR. SHERIDAN:

12 Q. Okay. So there is a chapter 25 that's admitted as
13 Exhibit -- I guess it's 230. And it deals with the
14 accommodation process. The one that we got in
15 discovery is dated February of 2012. So if it turns
16 out that you have any questions about this, you think
17 this is all right, let us know, but this is the
18 interactive process, and it kind of goes through the
19 steps. Look at step 2, it says, "The HR consultant in
20 conjunction with a state-wide ADA coordinator will
21 determine if additional medical information is

22 necessary." Isn't it true that you had a state-wide
23 coordinator position in 2014 and didn't use it?

24 A. I don't know that that position was filled at that
25 time, actually.

1 Q. But it -- but in the absence of a State ADA
2 coordinator, is that person's job to and oversee sort
3 of make sure there is consistency in the application of
4 accommodation; right?

5 A. Correct, yes.

6 Q. And also to sort of get guidance; right?

7 A. Yes.

8 Q. It's fair to say you never sought out anybody like
9 that before making the decisions about accommodation,
10 or IME's, or anything else regarding Ms. Trussler?

11 A. That is correct.

12 Q. Okay. All right. After -- so we now get through the
13 end of the year, and now we are in to January, 2015.
14 And we talked about the complaint, we talked about the
15 meeting, but also, it's true, is it not, that you had
16 basically told Ms. Trussler that she would -- that you
17 would basically close her case unless, you know, she
18 consented to signing all of your waivers and rights?

19 A. We closed the accommodation case.

20 Q. Okay. But before you did, it's true, is it not, that
21 Ms. Trussler hired an attorney who wrote you a letter?

22 A. Yes.

23 Q. And that letter is Exhibit 137, and we would like to
24 put that up on the screen. It has been admitted. And
25 in the letter, you learned that it's a letter addressed

1 to you; right?

2 A. Correct.

3 Q. And you learned that -- go ahead and make the top big
4 there. It's a bit redacted. So this was Mr. Higgins
5 on the 7th, he sent you a letter via email, did he not?

6 A. Yes.

7 Q. And in the letter, he said, among other things, "I
8 represent Ms. Trussler," and he said, "At this time, my
9 comments will be limited to the reasonable
10 accommodation process and the demand that Ms. Trussler
11 execute medical releases in order to have her
12 accommodation request considered." Well, you read this
13 letter; right?

14 A. Yes.

15 Q. And as a matter of fact, you did not respond to Mr.
16 Higgins' letter other than to say you received it?

17 A. That is correct.

18 Q. Was that at someone's direction?

19 A. Yes.

20 Q. Whose?

21 A. Todd Dowler and Kim Monroe.

22 Q. So your bosses both told not to respond; right?

23 A. That's correct, yes.

24 Q. And you gave this letter to them, did you not?

25 A. I did, yes.

1 Q. Okay. Let's go to the second page of the letter.
2 And the top paragraph. As to the release, it says,
3 "You have sought from Ms. Trussler. I do not see how
4 this qualifies as business necessity. Although my
5 client is willing to sign a limited release, we have
6 two specific objections. First, we do not believe it's
7 appropriate to permit you and Sheri Miller to meet with
8 the medical provider and have private discussions about
9 Ms. Trussler's medical information. Ms. Trussler and
10 her representative should be able to participate in any
11 such meeting." As you sit here today, you agree with
12 that; right? That Ms. Trussler should have the ability
13 to be present at any meeting in which you would meet
14 with her doctors?

15 A. Yes.

16 Q. Okay. But that's not what your directions were in
17 December; right? You wanted to be able to just meet
18 with the doctors without Ms. Trussler present?

19 A. Not to meet with them, to send them a medical
20 questionnaire in the mail.

21 Q. To communicate with them?

22 A. To communicate, yes.

23 Q. It says, "Secondly, we object to the idea that WSDOT
24 should have an unfettered right to share her medical
25 information with any third party." You would agree it

1 would be inappropriate to share her information with
2 any third party; right?

3 A. Generally speaking, yes.

4 Q. But why did you have that in the release?

5 A. It was a template release that we used in our
6 process.

7 Q. Okay. So this was a valid objection; right?

8 A. If she did object to the third party disclosure,
9 then, yes.

10 Q. You received this letter on or about the 7th; right?

11 A. Yes.

12 Q. So you knew she objected; right?

13 A. Yes.

14 Q. And you knew that was a valid objection; right?

15 A. Yes.

16 Q. Yet in any case, you closed her case rather than
17 getting back to Mr. Higgins; right?

18 A. Correct.

19 Q. And that was because you were told to by Mr. Dowler;
20 right?

21 A. Yes.

22 Q. Okay. And then the last paragraph, it says,
23 "Finally, the medical questionnaire itself poses some
24 issues. First you propose to attach the job
25 description, which is no longer applicable. For

1 instance, she no longer manages a group of 17
2 employees. We believe that in couching the description
3 could be mislead and confusing. Otherwise, we have a
4 more general concern that the questionnaire is too
5 detailed and may not produce accurate information. We
6 suggest streamlining the process to address only most
7 critical questions pertaining to accommodation sought,
8 rather than the details of questions about every
9 possible job function that she might need to perform."
10 And you agree that when you drafted the questionnaire,
11 you were unaware that much of her responsibilities had
12 changed?

13 A. I used that position description on file.

14 Q. Rather than talking to Ms. Trussler to find out what
15 she was really doing; right?

16 A. When I drafted the questionnaires, that is correct.

17 Q. Okay. And also, you didn't even talk too Ms. Woehler
18 about what her job duties really were as of the end of
19 December; right?

20 A. I don't recall talking to Ms. Woehler.

21 Q. Okay. All right. Fair enough. Also, you would
22 agree with me that there would be no business necessity
23 for you to ask for releases for doctors that were not
24 part of the accommodation process; right?

25 A. Correct.

1 Q. Okay. It's also true you have no reason to believe
2 that she could not do the director of UPO job; correct?

3 A. That is correct, yes.

4 Q. So even though you made her jump through all those
5 hoops, you believed at the time that she could do the
6 job?

7 A. Yes, I believed she could do the job.

8 Q. You were making her jump through the hoops because
9 Ms. Woehler told you to; correct?

10 A. If by jumping through hoops you mean following the
11 accommodation process?

12 Q. I mean starting it over instead of taking what you
13 had, what Ms. Mao had developed and going from there.

14 A. I thought that it would be best to follow the process
15 and get the best possible accommodation recommendations
16 from her medical providers.

17 Q. You understood, as of December, that she could
18 perform the essential functions of the job of director
19 of UPO, did you not?

20 A. Yes.

21 Q. Okay. So you understood that and you understand
22 also, you had already said in your testimony, that it's
23 actually okay for just a manager to accommodate a
24 person informally; right?

25 A. Yes.

1 Q. So if you understood that she could do the essential
2 functions, you understood that she had been doing it
3 for two years, you really didn't have to make her go
4 through all of this, you could have just given her the
5 blessings that the things she had been doing for two
6 years is within your discretion; right?

7 A. No, it was not in my discretion.

8 Q. Who prevented you from doing that?

9 A. So the appointing authority would determine if an
10 accommodation could be met in the position.

11 Q. So what you mean is it didn't matter that you
12 believed she could do essential functions of the UPO
13 director job, as long as Ms. Woehler had concerns, it
14 was -- she was the one who made the decision?

15 A. Essentially, yes.

16 Q. So would you agree with me that shutting off the
17 accommodation process was not your decision, it was Mr.
18 Dowler's?

19 A. Correct.

20 MR. SHERIDAN: I have no further questions of
21 this witness.

22 THE COURT: All right. Cross examination?

23 CROSS EXAMINATION

24 BY MR. BARBARA:

25 Q. Good afternoon, Ms. Mabbott. I'm going to try and

1 stick to just a few questions. At the point -- first,
2 I want to talk about your meeting with Ms. Taylor.

3 A. Uh-huh. Okay.

4 Q. At the point where you left that meeting, what was
5 your understanding of what, if anything, you needed to
6 do to address the concerns that had been raised?

7 A. I don't think I had any action items to take on after
8 the meeting.

9 Q. What was your understanding of what was going to
10 happen after the org meeting with Ms. Taylor?

11 A. I thought that Ms. Taylor would be circling back with
12 Ms. Trussler. I thought it would be handled by Ms.
13 Taylor.

14 Q. And did you inquire whether there was anything you
15 should do following the meeting?

16 A. Before I left Ms. Taylor's office, I asked her if I
17 should follow up with Ms. Trussler and try to clear the
18 air with her and she said no, that she would handle it.

19 Q. If Ms. Taylor had not given you that information,
20 that she would handle it from there, what would you
21 have likely done?

22 MR. SHERIDAN: Objection, speculation.

23 THE COURT: I will allow it. Go ahead.

24 A. I would have gone to my supervisor for guidance on
25 it.

1 Q. Okay. You were asked several questions about threats
2 and threats in the workplace violence policy. Did you
3 understand -- excuse me, what was your understanding
4 about whether the threat that Ms. Trussler made against
5 you was in any way a physical threat?

6 A. Can you restate that?

7 Q. Sure. Did you have any understanding of whether the
8 threat that Ms. Trussler was saying that you had made
9 to her was a physical threat?

10 A. No.

11 Q. What, if anything, did you understand the nature of
12 the threat that Ms. Trussler reported to be?

13 A. From Ms. Taylor's perspective, was that I had
14 threatened Ms. Trussler that she was going to be
15 disability separated.

16 Q. Okay. You were in HR; correct?

17 A. That's correct.

18 Q. As a person in HR, did you have any hire and fire
19 authority over anybody?

20 A. No.

21 Q. Did you have authority to discipline anyone?

22 A. I was a supervisor for one HRC 1.

23 Q. And if they had done something that you thought
24 warranted discipline, what were you able to do on your
25 own authority?

1 A. I could have wrote a disciplinary -- you know,
2 written reprimand, could have taken disciplinary action
3 to a certain point.

4 Q. What was your understanding of what Ms. Trussler's
5 rank was in your organization?

6 A. Much higher than mine. She was a WMS 4. She was a
7 manager.

8 Q. Where -- to your knowledge within the HR realm, were
9 there MS 4's above you in the HR chain?

10 A. HR, WMS 4's?

11 Q. Yes.

12 A. Yes, I believe so, yes.

13 Q. Did you have any authority to discipline someone who
14 was an WMS 4 above you, within your own chain?

15 MR. SHERIDAN: Your Honor, excuse me, this is
16 ministerial, but I'm actually trying to develop that
17 into a time line so I would ask counsel to --

18 MR. BARBARA: I could take the page down as soon
19 as I'm done.

20 MR. SHERIDAN: Well, no, the pages are all
21 pre-marked, so I would rather that that tablet not be
22 used.

23 MR. BARBARA: I will swap.

24 THE COURT: Makes me feel better about the fact
25 we are not getting out three-ring binders for the

1 jury.

2 Q. All right. So we have HR and we have you, Ms.
3 Mabbott. Where we left off was that there WMS 4's
4 above you in the human resources chain of command;
5 right?

6 A. Correct.

7 Q. Did you have any authority to take any sort of
8 disciplinary action against WMS 4's above you?

9 A. No.

10 Q. Now, if we think about Ms. Trussler, she was a WMS 4;
11 right?

12 A. Correct.

13 Q. Was she in a different chain of command completely
14 than you?

15 A. Yes.

16 Q. Okay. And she was an WMS 4; right?

17 A. Correct.

18 Q. When Ms. Thompson came to talk to you, or asked to
19 meet with you, then you met with her, this was -- she
20 asked to meet in December of 2014 and then you met in
21 January of 2015?

22 A. That is correct, yes.

23 Q. To your knowledge, was Ms. Thompson in Ms. Trussler's
24 chain of command?

25 A. Yes, I believe so.

1 Q. Do you know what the reporting relationship was
2 between Ms. Trussler and Ms. Thompson?

3 A. I don't recall.

4 Q. Did you have any understanding of whether Ms.
5 Thompson was a direct report?

6 A. She was either a direct report or reported to
7 somebody in Ms. Trussler's chain of command.

8 Q. What, if anything, did you know about whether Ms.
9 Trussler was an appointing authority over Ms. Thompson?

10 A. By the time I had met with Ms. Thompson, I believe
11 Jerri Woehler was the appointing authority.

12 Q. Okay. Ms. Woehler was above Ms. Trussler; right?

13 A. Correct, yes.

14 Q. Okay. Was Ms. Thompson Ms. Trussler's executive
15 assistant?

16 A. Administrative assistant.

17 Q. Administrative assistant? Okay. Did you have any
18 understanding of whether Ms. Trussler had the ability
19 to discipline Ms. Thompson?

20 A. Yes, that would be the case.

21 Q. Did you have an understanding of whether Ms. Trussler
22 had authority to hire or fire Ms. Thompson, someone
23 in her position?

24 A. Kerri Woehler, as the appointing authority, could
25 hire or fire. I believe Ms. Trussler would have a

1 recommendation in that process.

2 Q. You're familiar with progressive discipline within
3 the Washington State Department of Transportation?

4 A. Yes.

5 Q. What's the lowest level of progressive discipline?

6 A. Typically, it's a letter of concern.

7 Q. Is a letter of concern disciplinary, or
8 pre-disciplinary, or something less than that?

9 A. It's not pre, there is even a pre-disciplinary step
10 after a letter of concern.

11 Q. Okay. So a letter of concern is the lowest possible
12 thing?

13 A. Yes.

14 Q. Okay. If we move up from there, is there a letter of
15 reprimand that would come above letters of concern?

16 A. Yes.

17 Q. What would come above a letter of concern -- or
18 excuse me, a letter of reprimand?

19 A. Probably some kind of action. It could be, like, a
20 pay reduction.

21 Q. Was it your -- or what understanding did you have as
22 to whether Ms. Trussler could actually negatively
23 impacted Lara Thompson's position in professional
24 development and success within the Washington State
25 Department of Transportation, given their relationship?

1 A. She would have authority to reprimand Ms. Thompson.

2 Q. When you spoke with Ms. Thompson in January of 2015,
3 did you say that you talked for two hours,
4 approximately?

5 A. It sounds about -- I think so, that it's about two
6 hours I met with her.

7 Q. And did Ms. Thompson express concerns about possible
8 retaliation?

9 MR. SHERIDAN: Objection, leading.

10 THE COURT: I will allow it.

11 A. She did, yes.

12 Q. Beyond reading Ms. Trussler's job description in
13 order to try and pull out the essential functions for
14 developing the medical questionnaire, what else did you
15 do to know whether or not Ms. Trussler was able to do
16 her job at the time prior to the RA being completed?

17 A. What else did I do for the accommodation process?

18 Q. Well, I actually want to follow up, you answered some
19 questions from Mr. Sheridan about whether or not you
20 thought Ms. Trussler could do the essential functions
21 of the job. What I'm wondering is what did you do to
22 make that determination?

23 A. Oh, um, I assumed because she was in the position,
24 that she was able to perform the job.

25 Q. Is it fair to say that you didn't have access to any

1 records that would talk about whether she was actually
2 doing the job?

3 MR. SHERIDAN: Objection, leading again.

4 THE COURT: I'm giving you a little leeway to
5 move things along, but if you would rephrase.

6 Q. Did you have access to any records that showed
7 whether Ms. Trussler, in the 2014 time frame, was
8 actually doing her job?

9 A. Other than reports from Ms. Woehler, no.

10 Q. Okay. And did Ms. Woehler express concerns to you
11 about Ms. Trussler's performance?

12 MR. SHERIDAN: Same.

13 THE COURT: Your objection was obliterated, but
14 it's not your fault. But assuming it's leading, I'm
15 going to overrule the objection. The question is,
16 did Ms. Woehler express concerns to you about Ms.
17 Trussler's performance. That was the question he
18 just asked. Go ahead and answer it.

19 A. She did, yes.

20 Q. The decision of a manager to informally allow an
21 accommodation, who does that decision reside with when
22 you make that decision?

23 A. It would be part of the interactive process. The
24 manager ultimately decides if the position can
25 accommodate.

1 Q. I want you to think about the informal. If a manager
2 informally grants accommodation, is the manager the one
3 that has the authority to do that?

4 A. Yes.

5 Q. In this case, did Ms. Trussler report to you that Mr.
6 Smith, her former supervisor, had given her informal
7 accommodations?

8 A. No, I don't think so. I believe she reported to
9 Kerri Woehler.

10 Q. Did you, at some point, learn that Ms. Trussler was
11 saying she had informal accommodations from Mr. Smith?

12 A. Yes.

13 Q. Did you have occasion to have any discussions with
14 Ms. Trussler about the informal accommodations she had
15 gotten from Mr. Smith?

16 A. Could you repeat that?

17 Q. Sure. Did you, yourself, ever have discussions with
18 Ms. Trussler about the informal accommodation she
19 claimed to have gotten from Mr. Smith?

20 A. I don't believe we discussed it.

21 Q. Okay. So what was your source of understanding that
22 there were informal accommodations that Ms. Trussler
23 was saying she had been enjoying with Mr. Smith?

24 A. Just that she had shared that with Ms. Woehler.

25 Q. Okay. At some point, did you have any occasion to

1 ask Ms. Trussler for any sort of documentation
2 associated with the informal accommodation she had with
3 Mr. Smith?

4 A. I believe so, in an email at some point, yes.

5 Q. And did Ms. Trussler ever actually provide any
6 information about -- or identify what the
7 accommodations were that she was getting from Mr.
8 Smith?

9 A. I don't believe I ever received any documentation.

10 Q. Do you recall her providing any information about the
11 time line for her more formal reasonable accommodation
12 request?

13 A. I don't recall.

14 Q. Okay. Fair enough. If there were going to be an
15 investigation of someone in the Washington State
16 Department of Transportation for personnel related
17 issues in the 2014 time frame, was there a part of the
18 human resources department that would be involved in
19 that?

20 A. Yes.

21 Q. And what was that part of the Washington State
22 Department of Transportation's human resource office
23 that would be involved in investigations of personnel
24 type issues?

25 A. I believe, at the time, it was under our labor and

1 operations group.

2 Q. Who was the head of that at the time?

3 A. Todd Dowler.

4 Q. Okay. At the point where Ms. Thompson was talking to
5 you about her concerns, did you have authority to
6 investigate the substance of the concerns on your own?

7 A. After she -- after I had met with her?

8 Q. Right. So I will back it up. At the point where Ms.
9 Thompson is telling you various things that are
10 concerning her related to Ms. Trussler, were you
11 empowered to investigate those concerns on your own?

12 A. No.

13 Q. Were you allowed to -- let me rephrase it. Did you
14 have authority to decide not to forward those concerns
15 to anyone?

16 A. No.

17 Q. So you handed them off to whom?

18 A. To Todd Dowler and Kim Monroe.

19 Q. What if any understanding did you have as to whether
20 they would look at the nature of the allegations in
21 order to determine whether an investigation was needed?

22 A. It's my understanding that they would make the
23 decision.

24 Q. Okay. Did you have any role in whether an
25 investigation would or wouldn't be made into the

1 allegations Ms. Thompson had made against Ms. Trussler?

2 A. I did not have a decision making authority for that.

3 Q. Okay. We have been talking a little bit about the
4 reasonable accommodation process. As a human resources
5 consultant for employee relations, did you have any
6 role in dealing with FMLA applications?

7 A. Yes, occasionally.

8 Q. As a human resources consultant within the Washington
9 State Department of Transportation's human resource
10 office, is there any difference between the FMLA
11 process and the reasonable accommodation process?

12 A. Yes.

13 Q. What does the FMLA process look at as an issue?

14 A. FMLA is actually a protected leave.

15 Q. And what does that mean to a lay person like me?

16 A. So it essentially protects an employee from being
17 fired if they need to go out for a medical condition,
18 or for a family member's medical condition.

19 Q. And is there a process associated with getting Family
20 Medical Leave Act leave?

21 A. Yes.

22 Q. What is that process, as you understand it?

23 A. There is a form, a request form, that is made by the
24 attorney -- or by the employee, sorry.

25 Q. And is there any sort of certification required by

1 anyone other than the employee in order to get Family
2 Medical Leave Act leave?

3 A. The medical provider.

4 Q. Is there a process for approving Family Medical Act
5 leave, to your knowledge, within the human resources
6 department of the Washington State Department of
7 Transportation?

8 A. I believe so, yes.

9 Q. If a request for a Family Medical Leave Act leave is
10 granted, how would the employee be notified of that?

11 A. If the request is approved? It comes through the HR
12 office, the HR consultant.

13 Q. If it's approved, what does the human resources
14 department tell the employee about their request for
15 Family Medical Leave Act leave?

16 A. They provide, essentially, the details, the scope and
17 the time frame.

18 Q. So if an employee within the Washington State
19 Department of Transportation makes a request for Family
20 Medical Leave Act leave that gets approved, and let's
21 suppose it's approved for intermittent leave over a
22 six-month period of time. If the employee wants to use
23 some of the Family Medical Leave Act leave, how do they
24 document it?

25 A. We use time sheets, time keeping -- time sheets for

1 leave.

2 Q. And so if they were going to use it, there is
3 something they would do on the time sheet to indicate
4 that's what they were doing was taking Family Medical
5 Act leave?

6 A. Correct.

7 Q. Is the reasonable accommodation process different
8 than Family Medical Leave Act process?

9 A. Yes.

10 Q. If an employee wants to initiate the reasonable
11 accommodation process, to your knowledge, can they do
12 that verbally?

13 A. Yes.

14 Q. Once the process gets started, what kind of
15 information does Washington State Department of
16 Transportation human resources department need in order
17 to move the process forward?

18 A. It's essentially what is the barrier to performing
19 the job and how do we accommodate what are the
20 essential job functions that are impacted, and how do
21 we -- how does the accommodation remove that barrier to
22 performing the functions of the job.

23 Q. Does that process require some information from
24 medical care providers?

25 A. Sometimes, yes.

1 Q. In the course of handling Ms. Trussler's reasonable
2 accommodation process, did you, as a human resources
3 consultant, believe there was a need for medical
4 information?

5 A. Yes.

6 Q. And did that -- what were the factors that you
7 thought required medical information?

8 A. Ms. Trussler's meeting with me and describing her
9 condition. And she was seeking to telework and the
10 appointing authority was saying the position is not
11 available for telework, so maybe to somehow validate
12 that there is a medical need to accommodate and then
13 kind of determine if the position could accommodate
14 telework.

15 Q. Telework can be used as a reasonable accommodation,
16 to your understanding; is that right?

17 A. Yes.

18 Q. Can telework be used in any other ways within the
19 Washington State Department of Transportation?

20 A. Yes, that's correct.

21 Q. And we looked at the telework handbook. Is telework
22 a management tool that can be used within the
23 Washington State Department of Transportation?

24 A. Yes.

25 Q. Do you have an understanding of who determines, from

1 a work tool type analysis, who determines whether
2 telework is appropriate for a given position?

3 A. The appointing authority over the position.

4 Q. And if telework is being considered in the reasonable
5 accommodations process, is the human resources
6 consultant the first person who is sort of looking at
7 that as an issue?

8 A. Yes.

9 Q. And who ultimately would decide whether telework
10 could be a reasonable accommodation if it's being
11 requested?

12 A. The appointing authority.

13 Q. If telework is being asked for as an accommodation,
14 is that something that you, as a human resources
15 consultant, would want medical support?

16 A. Yes, it's case by case, but yes.

17 Q. Okay. As I understand it, did you first meet with
18 Ms. Trussler in September of 2014?

19 A. That sounds correct, yes.

20 Q. To your knowledge, who had been involved in dealing
21 with her reasonable accommodation request within the
22 human resources department before that?

23 A. As I understand it, it was Alvina Mao.

24 Q. And the jury has heard various descriptions of Ms.
25 Mao disappearing. Did you know Ms. Mao before

1 September of 2014?

2 A. Yes.

3 Q. Was she a peer of yours within the human resources
4 department?

5 A. Yes.

6 Q. Did there come a time where you understood she was
7 not able to work in the office?

8 A. Yes.

9 Q. During approximately what period of time did you
10 understand that to be the case?

11 MR. SHERIDAN: Objection, scope.

12 THE COURT: I think it's within the scope. Go
13 ahead.

14 A. I want to say some time in July of 2014.

15 Q. Until when?

16 A. When did she come back?

17 Q. Yes.

18 A. I don't know. I don't recall.

19 Q. Okay. So in approximately September of 2014, you
20 picked up Ms. Trussler's case to handle it; right?

21 A. Yes.

22 Q. When Ms. Mao went out on -- like, out, she wasn't at
23 work anymore, was there a need to reassign work within
24 the human resources department?

25 A. Yes.

1 MR. BARBARA: May I approach, your Honor?

2 THE COURT: Yes. What number?

3 MR. SHERIDAN: 70.

4 MR. BARBARA: We'll offer 70, which I don't think
5 has been admitted, your Honor.

6 THE COURT: 70 is admitted.

7 MR. BARBARA: Do we have the ability to call up
8 70, Stephanie?

9 Q. Handing you Exhibit 70, you're free to look at a
10 either the piece of paper or the screen. Can you pull
11 the screen up a little bit further. Pull out the first
12 section that shows the date and all that this is going
13 to. So Exhibit 70, looks like it's an email. Did it
14 come from you?

15 A. Yes.

16 Q. I realize that is in Spanish, the way it has been
17 printed, but if we accept that a day is -- and para is
18 for two, were you sending this email to that string of
19 people in the para part of the email?

20 A. Yes, that's correct.

21 Q. Okay. Within that chain of emails, addresses, we
22 see, for example, Amy Arnis. Was she assistant
23 secretary?

24 A. Yes.

25 Q. We see a Jennifer Lorenzo, was she a director,

1 assistant secretary.

2 A. Judy Lorenzo.

3 Q. It says Jennifer, I'm sorry -- no, I'm looking at the
4 wrong one, it's Judy?

5 A. Judy Lorenzo was a manager.

6 Q. Okay. Mark Finch?

7 A. Yes.

8 Q. Stacy Trussler?

9 A. Yes.

10 Q. Okay. Where it says -- which I think is the subject,
11 that's, "Temporary HR contacts." Do you see that?

12 A. Yes.

13 Q. Does Exhibit 70 reflect who is being temporarily
14 assigned as human resources contacts for the various
15 offices within the Department of Transportation that
16 Ms. Mao may have otherwise worked for?

17 A. Yes, that's correct.

18 Q. All right. We'll take that down. Now, you first met
19 with Ms. Trussler in September; right?

20 A. Yes.

21 Q. And then you met with her in October?

22 A. Yes.

23 Q. Did you meet with her in November?

24 A. I don't believe so. I don't think so.

25 Q. I believe she has testified she went on vacation to

1 Argentina in November. Do you recall her being out for
2 a period of time on vacation?

3 A. Yes.

4 Q. And then you met with her again in December?

5 A. Correct.

6 Q. Okay. So essentially, once a month, excluding the
7 month she was on vacation, you had face-to-face
8 meetings with her; right?

9 A. That is correct, yes.

10 Q. During your first meeting, you mentioned it was a
11 meet and greet. Do you remember anything else about
12 what you might have discussed in that meeting?

13 A. It was really kind of an introduction. We introduced
14 each other, we talked about her accommodation request.
15 I think we talked about that, her organizational
16 structure within her office and the work that they do.

17 Q. Did you -- having never met her before and now
18 picking up her reasonable accommodation process, did
19 you have any discussion about how the reasonable
20 accommodation process would work?

21 A. Yes, I believe so.

22 Q. Do you recall anything about what you told her about
23 that?

24 A. I think we just walked through the process and I
25 believe that I provided a copy of the policy.

1 Q. Did you -- in the course of describing the process,
2 did you share any information about possible outcomes
3 at the end of the process?

4 A. Yes, that's likely, talked about the different things
5 that could happen throughout the accommodation process,
6 yes.

7 Q. Do you recall anything about what options you may
8 have shared with her in that meeting?

9 A. I don't recall exactly what we talked about and
10 essentially it would have been the accommodation goes
11 into effect, there could be disability placement in the
12 event that a position cannot accommodate an employee,
13 then, there is also disability separation.

14 Q. So in that first meeting, one of the things that you
15 did describe for as a possible outcome is disability
16 separation?

17 A. Yes.

18 Q. In the first meeting that you had with Ms. Trussler,
19 did you talk at all about whether you were going to
20 need medical information?

21 A. I don't recall.

22 Q. Even if you didn't ask for it, as you described the
23 process, would acquiring medical information have been
24 part of that discussion generically speaking?

25 A. Yes, generally speaking.

1 Q. When did you first ask Ms. Trussler to allow you
2 access to medical records via a release?

3 A. I believe it was on the October 30th meeting.

4 Q. During that meeting, did you give her copies of
5 releases?

6 A. I don't remember. I think so.

7 Q. Okay. Did the Washington State Department of
8 Transportation have a form release for medical records
9 for use in the reasonable accommodation process?

10 A. Yes, it was a template.

11 Q. Okay. What, if anything, did the release do that was
12 specific to the individual as opposed to simply
13 releasing medical records related to the accommodation?

14 A. Can you repeat that?

15 Q. Sure. Was the medical release, as opposed to the
16 questionnaire, was the release in any way tailored to
17 the specific individual's accommodation needs?

18 A. No, it was a template.

19 Q. And how would you, as a human resources consultant,
20 go about determining whose records to seek?

21 A. In consultation with the employee.

22 Q. If an employee, before you got involved, had written
23 out a formal request for reasonable accommodation, is
24 that something you might look at to see what sorts of
25 injuries were involved?

1 A. Yes.

2 Q. If the person had submitted Family Medical Leave Act
3 requests signed by various doctors related to injuries
4 in the accident, are those doctors that you might be
5 interested in getting records from?

6 A. Yes.

7 Q. Go the -- if the person had submitted letters from
8 medical care providers, would those medical care
9 providers have been people that you might have wanted
10 to collect records from?

11 A. Yes.

12 Q. Okay. In this case, did you have discussions with
13 Ms. Trussler about which medical care providers you
14 wanted to collect records from?

15 A. I think, at the last meeting that we had on December
16 31st, is when I brought the questionnaires and we
17 discussed it at that time.

18 Q. The questionnaires, were they tailored to Ms.
19 Trussler specifically and her job?

20 A. Yes.

21 Q. As a human resources consultant within the Washington
22 State Department of Transportation, what do you use
23 medical questionnaires for?

24 A. It's essentially to determine how an essential
25 function of the job is impacted and how -- what if any

1 recommended accommodations a provider could suggest.

2 Q. Does the medical questionnaire provide medical
3 support for possible accommodations?

4 A. Yes.

5 Q. Does the medical questionnaire provide information
6 about what disabilities may be impairing the employee's
7 ability to do their job?

8 A. Yes.

9 Q. Are those pieces of information that you, as a human
10 resources consultant, needs in order to make
11 recommendations to management about possible reasonable
12 accommodations that could be made to help the employee
13 do their job?

14 A. Yes.

15 Q. In order to send a medical questionnaire to a doctor,
16 do you need permission from the employee?

17 A. Yes.

18 Q. In order to collect medical records from the medical
19 care provider, do you need a release from the employee?

20 A. Yes.

21 Q. If the determination is made by management that they
22 want to have an independent medical examination, is the
23 doctor who does that chosen by the employee?

24 A. No.

25 Q. Can someone in management choose it?

1 A. I believe there is a way to select an independent
2 medical examiner. I don't know exactly the process.

3 Q. Have you ever had to assist an employee through the
4 independent medical examination process?

5 A. Just once.

6 Q. Just once? Do you recall approximately how long ago
7 it was?

8 A. About five years ago, maybe.

9 Q. So if we are in 2018, it would have been 2013?

10 A. Somewhere in 2013, 2014, yes.

11 Q. So not very long before you were helping Ms.
12 Trussler; right?

13 A. Correct.

14 Q. In that case, I don't want any details, did the
15 employee have to consent to the independent medical
16 examination?

17 A. Yes.

18 Q. If the employee doesn't consent to an independent
19 medical examination, do you have an understanding of
20 whether it can move forward?

21 A. I don't believe it can.

22 Q. Okay. Just so I'm clear, if we want medical records,
23 the employee has to let us get them; right?

24 A. Correct.

25 Q. If the Washington State Department of Transportation

1 wants to send a medical questionnaire, the employee has
2 to agree to that?

3 A. Correct.

4 Q. And if we want an independent medical examination,
5 the employee has to agree to that?

6 A. Yes.

7 Q. In this case, did Ms. Trussler ever return to you any
8 of the medical releases that you asked her to sign?

9 A. No.

10 Q. Did Ms. Trussler ever return to you any of the
11 medical questionnaires that you had presented her?

12 A. No.

13 Q. At the point where the meeting on the 31st of
14 December ended, did you leave the releases and medical
15 questionnaires with Ms. Trussler?

16 A. Yes.

17 Q. Did you give her an opportunity to look then over --
18 over a period of time?

19 A. Yes, I did.

20 Q. Did you have any expectation of whether -- if Ms.
21 Trussler had concerns about what was in the documents
22 that she would have shared those with you?

23 A. Yes.

24 Q. I understand that we listened to the tape. Was it
25 your position in December of 2014 that you weren't

1 really looking for Ms. Trussler's doctors to create the
2 questionnaire; is that true?

3 A. That is correct.

4 Q. That your expectation is they would answer the
5 questions that you were presenting?

6 A. Yes.

7 Q. If Ms. Trussler had any concerns about the questions
8 that were being asked, did you ask her to provide that
9 information to you?

10 A. That was the idea that, you know, the time to review
11 them, yes.

12 Q. And when Mr. Higgins wrote to you in January of 2015,
13 did he ever provide any edits to the releases that you
14 had given Ms. Trussler?

15 A. No, just the letter.

16 Q. Did he ever provide any feedback or comments on the
17 medical questionnaires that he thought would make them
18 suitable for use?

19 A. Not anything in addition to the letter.

20 Q. All right.

21 THE COURT: Why don't you stand and stretch for a
22 minute. Please be seated.

23 Q. Ms. Mabbott, did you ever have Ms. Trussler's
24 permission to contact her doctors to talk to them?

25 A. No.

1 Q. Without her permission, could you have called up and
2 asked questions of the doctor?

3 A. No.

4 Q. At the time Ms. Woehler was working with you to
5 develop the letter of concern, was there any common
6 theme to the concerns that were leading to the letter
7 that you were aware of?

8 A. Not that I can recall.

9 Q. Okay. We looked at some of the bullets that were in
10 the letter. For example, you didn't have a telework
11 agreement and Ms. Woehler had told you not to telework.
12 Would that have do with Ms. Woehler giving direction
13 that Ms. Trussler wasn't following?

14 A. Yes.

15 Q. Were there issues you were aware of regarding Ms.
16 Trussler's calendaring practices?

17 A. I don't recall that.

18 Q. Do you recall, for example, that --

19 MR. SHERIDAN: This is really leading, objection.

20 THE COURT: I'm going to sustain the objection,
21 especially in light of the earlier answer.

22 MR. BARBARA: Sure.

23 Q. Was there anything about your contact with Ms. Taylor
24 following Ms. Trussler's accusation against you that
25 altered the way you did your job?

1 A. No.

2 Q. You were in a meeting, teleconference meeting that --
3 in which Ms. Bolotin's medical questionnaire was
4 discussed; right?

5 A. Yes, yes. In Ms. Woehler's office?

6 Q. Yes. Do you recall Ms. Trussler raising issues about
7 the medical questionnaire?

8 A. I don't recall that.

9 Q. What, if anything, do you recall about that
10 conversation that took place when you were in Ms.
11 Woehler's office related to Ms. Bolotin?

12 A. It was essentially, I think, Ms. Woehler discussing
13 the telework eligibility process.

14 Q. As a human resources consultant, do you get to see
15 telework agreements on anything like a regular basis?

16 A. We would see telework agreements, yes.

17 Q. What kind of situations would cause you to see a
18 telework agreement?

19 A. They get filed with HR.

20 Q. Have you had occasion to see various telework
21 agreements for WMS 4 employees of the Washington State
22 Department of Transportation over the years?

23 A. Not that I recall.

24 Q. Did you ever have occasion to see Ms. Trussler's
25 telework application to Ms. Scarton and Ms. Woehler?

1 A. I don't recall that.

2 Q. After January of 2015, after you sent the letter
3 closing the reasonable accommodation process for Ms.
4 Trussler, did you personally have any further dealings
5 with her RA process, her reassignment, anything at all?

6 A. I don't believe so.

7 Q. At the point where you were closing her reasonable
8 accommodation process, did you consider that to be a
9 permanent stop to the process?

10 A. No.

11 Q. What would have prompted it to be reopened?

12 A. Following the mistrust letter would, again, request
13 to open the accommodation.

14 Q. So, for example, if Ms. Trussler had come forth with
15 a medical release, would that have re-initiated the
16 process for you as a human resources consultant?

17 A. Yes.

18 Q. And if that ever happened, you weren't engaged in it;
19 is that true?

20 A. That is correct.

21 MR. BARBARA: That's all I have for cross.

22 THE COURT: All right. Redirect?

23 MR. SHERIDAN: Please.

24 REDIRECT EXAMINATION

25 BY MR. SHERIDAN:

1 Q. Okay. So counsel asked you if there had been a
2 medical release, would that have started the process
3 over. It's now in the record that there was one. Did
4 anyone tell you that she had signed a medical release?

5 A. No.

6 MR. BARBARA: Mischaracterizes the evidence.

7 MR. SHERIDAN: Plaintiff -- your Honor, I know we
8 referred to Exhibit 162 on more than one occasion,
9 but I couldn't find evidence it has been admitted.

10 THE COURT: 162.

11 MR. SHERIDAN: I'd offer it if it has not been
12 admitted.

13 THE CLERK: It's on the 12th.

14 MR. SHERIDAN: It was?

15 MR. BARBARA: I see it.

16 THE CLERK: Notation to be redacted.

17 MR. SHERIDAN: I would like to put up 162.

18 MR. BARBARA: It hasn't been redacted.

19 MR. SHERIDAN: That will be for the book, not for
20 this.

21 MR. BARBARA: If you're putting it up, it's not
22 redacted.

23 THE COURT: Counsel, your -- not to be pejorative
24 here, but you're muttering to each other. I can't
25 hear any of it. I don't know if you're having an

1 objection, or whether you -

2 MR. BARBARA: The concern we were discussing is
3 whether -- I believe it was admitted with redactions,
4 and before it went up, we should probably check to
5 make sure the redactions have been put in place, is
6 the only -- was the little discussion we had.

7 THE COURT: Well, that's fair.

8 MR. BARBARA: I apologize that you couldn't --

9 THE COURT: That's fair. I should mention to
10 counsel, too, that I should have said this much
11 earlier, there is a loud HV/AC here, it's probably
12 making it difficult sometimes for the jurors to hear
13 some of the witnesses, as well as you. Both of you
14 have been very soft-spoken today. So as we proceed
15 throughout the day and voices tend to drop, please
16 keep your voices up.

17 MR. SHERIDAN: Will do.

18 THE COURT: I'm hard of hearing in the first
19 place, so --

20 Q. Okay. Put up 162. I remember something about,
21 "Don't go past the signature," so --

22 THE COURT: Give me one second. There was
23 discussion with counsel about an agreement on
24 redactions, but I never received a copy of 162.

25 MR. SHERIDAN: I'm not quite certain what is

1 being -- I'm pretty sure this has been up on the
2 screen before, and I don't see --

3 THE COURT: You can stand and stretch again, if
4 you want.

5 MR. BARBARA: I think we figured out what the
6 issue is, your Honor.

7 THE COURT: If there is no issue, why don't you
8 all be seated and we will proceed.

9 Q. Okay. So 162 is going up there, this is a
10 questionnaire to Dr. Kinney. And do you recognize this
11 as one of the questionnaires you have created in
12 December?

13 A. Yes.

14 Q. All right. Let's go through and go page by page.
15 All right. And see how the blocks are filled in that
16 says -- yes, there, keep going. And more filled out,
17 keep going, keep going, keep going, keep going. And
18 blow up the signature and the date. So based on your
19 answer with your attorney, it sounds like you didn't
20 know that this document had been completed on February
21 9th, 2015; is that right?

22 A. That is correct, I don't recall that.

23 Q. So you saw it said, "Returnable to Jeff Pelton." Did
24 you see that on the first page?

25 A. Yes.

1 Q. Is it fair to say Mr. Pelton never told you that this
2 questionnaire had been completed by Dr. Kinney?

3 MR. BARBARA: Objection, this assumes facts not
4 in evidence, your Honor.

5 THE COURT: He is asking. Go ahead, you may
6 answer.

7 Q. Go ahead.

8 MR. BARBARA: Objection is to foundation of the
9 question itself.

10 THE COURT: Foundation is established by the
11 exhibit. It can be rebutted, but there is a
12 sufficient foundation to ask the question.

13 Q. Go ahead. He never told you, did he, that this
14 document was returned on or about the 9th of February?

15 THE COURT: If there is evidence establishing
16 that he never received it, you can introduce that
17 evidence, but this is enough of a good-faith basis to
18 ask the question.

19 Q. Go ahead.

20 A. That is correct.

21 Q. So you didn't know this was filled out until -- I
22 just showed you this now; right?

23 A. Yes.

24 Q. All right. And let's look at the lower, right-hand
25 corner of this page. Right there, right above the

1 Bates stamp number, that little corner. Yep, that's
2 it. Did you ever see any documents you had nothing to
3 do with this case after January; right?

4 A. Yeah, I don't believe so.

5 Q. So you never heard from anyone in management or HR,
6 management, Ms. Scarton, no one asked you to reengage
7 in the accommodation process?

8 A. That is correct.

9 Q. Okay. And you had said before, I just want to make
10 sure your testimony is the same, that you yourself had
11 no doubts that Ms. Trussler was able to perform the
12 essential functions of the director of UPO job?

13 A. Correct.

14 MR. SHERIDAN: Nothing further, thanks.

15 THE COURT: Any re --

16 MR. BARBARA: No, your Honor.

17 THE COURT: Okay. Ms. Mabbott, in the State of
18 Washington, jurors are allowed to ask witnesses
19 questions, as well. They do it in writing, they
20 write them out, and then I read the questions to the
21 witness, to you. So now we are going to turn to the
22 jury, who already look like they have some questions.
23 So I will come back, I'm going to talk with the
24 lawyers and then I will come back and I will read
25 them to you and I will ask you to answer them to the

1 jury.

2 (Sidebar held.)

3 THE COURT: I'm going to read the questions to
4 you. The natural thing would be to answer to me.
5 The jurors decide fact in this case, so if you would
6 answer to them. If you want me to repeat a question,
7 I can do that. I try to put them in a logical order,
8 sometimes I'm not very successful, so if you feel
9 like you've already answered a question, you're also
10 free to say that.

11 THE WITNESS: Okay.

12 THE COURT: So give me just a minute to put these
13 down in some sort of order. A lot of these questions
14 are similar, so I'm going to be as efficient as
15 possible. One question that's fairly straightforward
16 what was the date of your deposition, I think you
17 already read into the record, I will just answer it,
18 simplify things, it was April 13th, 2018. "How long
19 would you expect a typical accommodation request
20 process to complete? How long would it take to
21 complete a typical accommodation request process?"

22 THE WITNESS: It can vary on a case by case
23 basis, anywhere from 30 to 90 days.

24 THE COURT: "Are managers expected or required to
25 honor informal or verbal accommodation requests

1 between employees and their predecessors?"

2 THE WITNESS: Managers are required to consider
3 the accommodations that are in place, and the
4 employer has the opportunity to revisit existing
5 accommodations and review them over time.

6 THE COURT: "In your experience, approximately
7 what percentage of formal reasonable request process
8 by WSDOT human resources involve a medical
9 questionnaire being sent to a health care provider?"

10 THE WITNESS: I don't know that answer.

11 THE COURT: "In your dealings with Ms. Trussler
12 as her human resources consultant, did you find her
13 to be cooperative?"

14 THE WITNESS: At times, yes. At other times, no.

15 THE COURT: "Is there anything Ms. Trussler could
16 have done to expedite her accommodation request
17 process with you?"

18 THE WITNESS: The delay over time for
19 accommodation request, that was due to workload
20 within HR. Ms. Trussler could have helped expedite
21 it after our December meeting, I believe.

22 THE COURT: "In your first meeting with Ms.
23 Trussler as her HR consultant in September of 2014,
24 were you able to review her initial accommodation
25 request previously filled out with Ms. Mao in March

1 of the same year?"

2 MR. SHERIDAN: I couldn't hear that one.

3 THE COURT: "In your first meet with Ms. Trussler
4 as her human resources consultant in September of
5 2014, were you able to review her initial
6 accommodation request previously filled out with Ms.
7 Mao in March of 2014?"

8 THE WITNESS: I did have access to that document,
9 yes.

10 THE COURT: "If so, was it your understanding she
11 was seeking accommodations to attend multiple
12 therapies over time? Speech, sleep, cognitive,
13 psychiatric and physical therapy?"

14 THE WITNESS: I don't recall all of the details
15 in the document.

16 THE COURT: "You said you left medical
17 questionnaires and releases with Ms. Trussler and
18 asked for them within seven days, which would have
19 been January 7th, 2015. Is this a typical time frame
20 for an employee to review medical releases?"

21 THE WITNESS: It was an arbitrary date that I had
22 suggested.

23 THE COURT: Was any -- okay. I think that answer
24 that question. Excuse me. "Was it common practice
25 during this time to work with the State-wide ADA

1 coordinator in RA requests?" So during this time,
2 was it common practice to work with the State-wide
3 ADA coordinator in reasonable accommodation requests?

4 THE WITNESS: I don't recall if the position was
5 actually filled at the time.

6 THE COURT: "Did you have reasonable
7 accommodation request cases you worked with with the
8 ADA coordinator?"

9 THE WITNESS: Again, same thing, I don't recall
10 that the position was filled at the time. I don't
11 know that we had an actual ADA coordinator at that
12 time.

13 THE COURT: "Who ordered a customized
14 questionnaire be sent to Dr. Kinney instead of a more
15 generic medical questionnaire," and the follow-up
16 question is, "Are customized questionnaires common?"

17 THE WITNESS: The questionnaires were template --
18 we had template releases and template questionnaires,
19 and the changes were specific to essential job
20 functions for the position. So there are slight
21 differences with the content of the questionnaires,
22 are typically the same. I don't recall a customized
23 questionnaire.

24 THE COURT: "How does the disability separation
25 process work in regards to a reasonable

1 accommodations process?" The follow-up question -- I
2 can read these all again if you want. "What
3 protections are in place for an employee to prevent a
4 retaliatory separation once accommodations are
5 known?" So should I read that all again?

6 THE WITNESS: Could you read first part, please?

7 THE COURT: Sure. "How does the disability
8 separation process work?" I left over the -- "How
9 does the disability separation process work in
10 regards to a reasonable accommodations process?"

11 THE WITNESS: So the agency considers the
12 accommodation being requested and the medical
13 information as available. And if the position can
14 accommodate the medical accommodation, then, the
15 accommodation goes into place. If not, then, the HR
16 consultant works with the employee through a process
17 to see if there are other positions, other like or
18 similar positions that the employee could be
19 accommodated in. And there are steps throughout that
20 process that go through a number of reviews of
21 positions. And then, if there are no available
22 positions, then, the employee is separated.

23 THE COURT: "Once accommodations are known, what
24 protections are in place for an employee to prevent a
25 retaliatory separation?"

1 THE WITNESS: Internally, the employee could
2 report to management or executive staff a complaint
3 or fear of retaliation. And externally, there is the
4 human rights commission and the EEOC.

5 THE COURT: "Having approval of accommodations,
6 if working from home is listed as an employee's
7 approved FMLA leave, would that employee be expected
8 to claim FMLA leave on the days they choose to work
9 from home?"

10 THE WITNESS: No.

11 THE COURT: "Were you tempted to follow up with
12 Ms. Taylor to determine whether she did, indeed,
13 handle the allegation that you threatened Ms.
14 Trussler? And if not, why not?"

15 THE WITNESS: I did not follow up with Ms.
16 Taylor. I assume she had taken care of it, that she
17 had circled back with it.

18 THE COURT: "Were there more complaints from Ms.
19 Thompson about Ms. Trussler than falling asleep in
20 her office? And if yes, what were they?"

21 THE WITNESS: There were several complaints,
22 several issues she reported. I don't recall all of
23 them. I know that they included that she was not
24 showing up for work, that she wasn't available to
25 staff, that other offices had disengaged with Ms.

1 Trussler because she wasn't participating with them.
2 She complained or she alleged that Ms. Trussler was
3 sleeping in her office. That's about all I can
4 recall.

5 THE COURT: "Was Ms. Trussler sent home and
6 investigated for these complaints or were there more
7 complaints involved outside of what you talked about
8 with Ms. Thompson?"

9 THE WITNESS: Those are the only complaints that
10 I'm aware of.

11 THE COURT: Those are the jury questions. Mr.
12 Sheridan, anymore questions?

13 MR. SHERIDAN: No, thanks.

14 THE COURT: Mr. Barbara?

15 MR. BARBARA: Yes, your Honor.

16 REDIRECT EXAMINATION

17 BY MR. BARBARA:

18 Q. One of the questions was about managers honoring
19 informal accommodations that were granted by other
20 managers, do you recall that?

21 A. Yes.

22 Q. Once an interactive reasonable accommodation process
23 starts, if accommodations are granted, do they ever get
24 revisited?

25 A. They can, yes.

1 Q. Have there been occasions where you have been dealing
2 with an employee whose reasonable accommodation needs
3 have changed over time?

4 A. Yes, that does occur.

5 Q. When I say change, have you had ones who have gotten
6 better?

7 A. Yes.

8 Q. And ones who have gotten worse?

9 A. Yes.

10 Q. And to your knowledge and understanding, are you, as
11 a human resources consultant, and the Washington State
12 Department of Transportation, as an employee, allowed
13 to periodically re-examine existing reasonable
14 accommodations?

15 A. Yes.

16 Q. One of the questions asked was whether Ms. Trussler
17 could have done anything to expedite her process. Do
18 you recall that?

19 A. Yes.

20 Q. Okay. And you mentioned that at least during the
21 time between Ms. Mao going out and you getting
22 involved, that there was a workload issues; right?

23 A. That's correct.

24 Q. If we focus specifically on the time from when you
25 got involved in September, through Ms. Trussler's

1 reasonable accommodation process being closed in
2 January of 2015, were there things that Ms. Trussler
3 could have done to move the process along more quickly?

4 A. She could have released the medical information.

5 Q. How about --

6 MR. SHERIDAN: Objection, leading.

7 THE COURT: Sustained. You have to rephrase your
8 question.

9 Q. Is there anything other than signing and turning in
10 the releases that could have accelerated the process?

11 A. Not that I can think of.

12 Q. All right. Do you recall that one of the jurors
13 asked about whether the medical questionnaires are
14 customized and you said that you worked off of a
15 template?

16 A. That is correct, yes.

17 Q. Does the template allow or require you, as a human
18 resources consultant, to put in any information about
19 essential job functions?

20 A. Yes. From what I recall, yes.

21 Q. So we looked at the medical questionnaire that Dr.
22 Kinney completed, that you had a hand in drafting;
23 right?

24 A. Yes.

25 Q. Did anyone else other than you draft that one?

1 A. I had my peers review it, but no.

2 Q. Do you consider that to be a customized medical
3 questionnaire?

4 A. No, it was a template, I believe.

5 Q. To the extent there was things specific to Ms.
6 Trussler, where did that information come from?

7 A. Oh, so there is kind of an opening typically in the
8 questionnaire, where we give some background
9 information to the medical provider, gives them a
10 context, so that would be specific to an employee.

11 Q. And was there any requirement for you to identify her
12 essential functions in the questions that went into the
13 medical care provider?

14 A. Yes.

15 Q. Okay. Other than Ms. Trussler, have you had occasion
16 to work with employees where you asked for medical
17 releases?

18 A. Yes.

19 Q. And approximately over what period of time have you
20 had a job that provided opportunities for you to
21 request medical releases in the human resources
22 consultant role for Washington State Department of
23 Transportation?

24 MR. SHERIDAN: I think this is beyond the scope.

25 THE COURT: I'm just looking at the questions to

1 determine that very thing. Involving a medical
2 questionnaire. I would allow the question to go
3 forward.

4 MR. BARBARA: Specifically, your Honor, I'm
5 referencing the question that asked that the release
6 and medical questionnaire were left with her, and they
7 asked for response within seven days?

8 THE COURT: That's fine. You have to be more
9 specific in regard to her. There was a more general
10 question asked about percentage of formal, reasonable
11 accommodation requests processed --

12 Q. The question was whether seven days was typical in
13 your experience, are releases normally done in less
14 than seven days?

15 A. It's on a case-by-case basis.

16 Q. Have you ever had anyone who took months to sign a
17 medical release?

18 A. No.

19 MR. BARBARA: That's all I have. Thank you.

20 MR. SHERIDAN: No follow-up.

21 THE COURT: Ms. Mabbott, you're excused. You're
22 all done.

23 MR. BARBARA: Subject to recall, your Honor.

24 THE COURT: Taking our break. Fifteen minutes.
25 See you then.