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UNITED STATES DISTRICT COURT

2

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

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4

RASEAN JOHNSON, AN INDIVIDUAL .

5

PLAINTIFF, .

NO.17-CV-0410

6

V. .

MAY 24, 2019

7

CITY OF SAN DIEGO, .

SAN DIEGO, CALIFORNIA

8

DEFENDANTS. .

JURY TRIAL - DAY 4

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09:38:09

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TRANSCRIPT OF PROCEEDINGS

(CLOSING ARGUMENTS ONLY)

11

BEFORE THE HONORABLE M. JAMES LORENZ

12

UNITED STATES DISTRICT JUDGE

13

APPEARANCES:

14

FOR THE PLAINTIFF:

SMITH, STEINER, VANDERPOOL, APC
BY: JOHN Y. VANDERPOOL AND JON CADIEXU
401 WEST A STREET, SUITE 340
SAN DIEGO, CALIFORNIA 92101

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FOR THE DEFENDANTS:

OFFICE OF THE CITY ATTORNEY
BY: ALISON P. ADEMA
AND GEORGE F. SCHAEFER
1200 THIRD AVENUE, SUITE 1100
SAN DIEGO, CALIFORNIA 92101

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09:38:09 1 SAN DIEGO, CALIFORNIA; MAY 24, 2019; 10:01 A.M.

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3 (JURORS PRESENT.)

4 THE COURT: GOOD MORNING, LADIES AND GENTLEMEN. I
5 HOPE THAT YOU HAD A GOOD EVENING AND YOU'RE READY FOR THE FINAL
6 DAY. AT THIS POINT, I'M GOING TO GIVE YOU THE FINAL JURY
7 INSTRUCTIONS, AND YOU WILL HAVE A COPY OF THEM WHEN YOU GO INTO
8 THE JURY ROOM. AND COUNSEL, IF THEY CARE TO, CAN REFER TO
9 THESE INSTRUCTIONS IN THEIR CLOSING ARGUMENTS. BUT AS I SAY,
10 YOU WILL HAVE THEM YOURSELF WHEN YOU GET INTO THE JURY ROOM.

11 (THE COURT READ THE JURY INSTRUCTIONS TO THE JURORS.)

12 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, THOSE
13 WERE THE INSTRUCTIONS. THERE WAS A TYPO IN HERE. I'LL HAVE
14 THAT CHANGED. THESE JURY INSTRUCTIONS REALLY GUIDE YOU, NOT
15 ONLY AS TO HOW TO CONSIDER THE EVIDENCE AND ANY ISSUE THAT MAY
16 COME UP AS IT RELATES TO DAMAGES, AND YOU SHOULD FOLLOW THEM.
17 OKAY. WITH THAT, WE WILL START OUR OPENING -- OR FINAL
18 ARGUMENT, STARTING WITH THE PLAINTIFF.

19 MR. VANDERPOOL: THANK YOU, YOUR HONOR. MAY I
20 RESERVE OR HOLD ABOUT FIVE TO SEVEN MINUTES ON REBUTTAL?

21 THE COURT: YES.

22 MR. VANDERPOOL: THANK YOU.

23 GOOD MORNING. I'D LIKE TO BEGIN BY THANKING THE
24 COURT, COURT STAFF, FOR ACCOMMODATING US THESE THREE-PLUS DAYS,
25 AND I WANT TO START OUT BY THANKING ALL OF YOU TO TAKE TIME AND

10:02:39 1 SERVE ON A JURY, AWAY FROM YOUR JOBS AND OTHER PRIORITIES THAT
2 YOU HAVE AND ON A BEAUTIFUL SAN DIEGO DAY. AND IT'S IMPORTANT
3 THAT YOU'RE HERE, AND I THINK OVER THE LAST THREE DAYS YOU'VE
4 SEEN WHY IT'S IMPORTANT FOR YOU TO BE HERE.

5 LADIES AND GENTLEMEN, JURIES ARE THE FOUNDATION OF
6 OUR COUNTRY'S JUSTICE SYSTEM. THE NOTION OF JURIES GOES BACK
7 TO BIBLICAL TIMES. IN THE 13TH CENTURY, MAGNA CARTA
8 INDOCTRINATED TRIAL BY JURY; OUR FOUNDING FATHERS PUT INTO OUR
9 U.S. CONSTITUTION THE RIGHT TO A TRIAL BY JURY. PRESIDENT
10 LINCOLN, WHO WAS A TRIAL LAWYER HIMSELF, SAID THAT JURY SERVICE
11 WAS THE HIGHEST FORM OF CITIZENSHIP. HE SAID THAT BECAUSE HE
12 REALIZED AND RECOGNIZED THAT JURORS LIKE YOU ARE THE CONSCIENCE
13 OF THE COMMUNITY IN WHICH YOU LIVE. YOU ARE THE COMMUNITY,
14 THIS COMMUNITY, BOTH INDIVIDUALLY AND COLLECTIVELY. YOU
10:03:59 15 PRESENT HERE WITH DIFFERENT LIFE EXPERIENCES, DIFFERENT
16 ORIGINS, DIFFERENT ETHNICITIES, DIFFERENT JOBS, ALL
17 REPRESENTATIVE OF THIS COMMUNITY. OUR JUSTICE SYSTEM VESTS YOU
18 WITH GREAT POWER, GREAT POWER TO RENDER JUSTICE.

19 HIS HONOR HAS INSTRUCTED YOU ON THE LAW, BUT YOU,
20 LADIES AND GENTLEMEN, ARE THE JUDGES OF THE FACTS AND THE
21 EVIDENCE PRESENTED IN THIS CASE. YOU DECIDE WHAT HAPPENED,
22 WHAT DIDN'T HAPPEN, AND WHY, AND WHAT SHOULD BE DONE ABOUT IT.
23 YOUR VERDICT IN THIS CASE WILL BE IMPORTANT; IMPORTANT NOT JUST
24 FOR MR. JOHNSON BUT IMPORTANT FOR THIS COMMUNITY IN WHICH YOU
25 LIVE AND WORK; IT WILL BE IMPORTANT TO THE CITY, TO THE CITY'S

10:05:12

1 OFFICERS, HUMAN RESOURCES, EEIO, AND MOST OF ALL, TO THE SOME
2 12,000 EMPLOYEES OF THIS CITY AND HOW THEY CARRY OUT THEIR WORK
3 AND TYPE OF PROTECTION, OR NOT, THEY ARE AFFORDED FOR WHAT THEY
4 DO.

5 YOUR VERDICT WILL SPEAK TO FUNDAMENTAL POLICIES AT
6 STAKE, NOT JUST HERE IN THE COMMUNITY. TWO KEY POLICIES: ONE,
7 THAT WHISTLEBLOWERS ARE PROTECTED FROM RETALIATION FOR MAKING
8 LEGITIMATE COMPLAINTS OF MISCONDUCT; TWO, THAT THE LAW, AS WELL
9 AS THE CITY'S OWN POLICIES, APPLY TO EVERYONE. IN THIS CASE,
10 YOU ARE THE FINAL CHECK TO ENSURE THAT THOSE TWO POLICIES ARE
11 ENFORCED.

10:06:33

12 NOW, THIS CASE IS ABOUT THE SUBTLETIES OF
13 RETALIATION. AND I PUT THAT IN QUOTES BECAUSE IT'S IN THE
14 CITY'S OWN POLICY WHICH YOU HAVE OR WILL HAVE AND HAVE SEEN,
15 SUBTLETIES OF RETALIATION. IT'S ALSO ABOUT THE INSIDIOUSNESS
16 -- BIG WORD FOR ME -- INSIDIOUSNESS OF WHAT I'LL CALL
17 INSTITUTIONAL RETALIATION. MANY TIMES I THINK WE'VE HEARD
18 OUTSIDE OF HOW PEOPLE RETALIATE, WHAT THEY DO. RETALIATION IN
19 THIS CASE IS A COLLECTION OF ACTS AND NON ACTS. AN ABDICATION
20 OF RESPONSIBILITY IS OFTENTIMES AS STRONG OR STRONGER THAN A
21 TAKING OF RESPONSIBILITY. IT'S WHAT HAPPENS OVERTLY AND
22 PASSIVELY.

23 NOW, MR. JOHNSON'S CASE IS REALLY PRETTY SIMPLE. IF
24 YOU BACK OUT THE LENS FROM WHAT I'LL TALK TO YOU ABOUT, WHICH
25 YOU'VE HEARD FOR THREE DAYS, THE STUBBORN FACTS ARE BASICALLY

10:07:38 1 THESE: A 12-YEAR UNDISPUTEDLY EXCELLENT EMPLOYEE MAKES THE
2 CHOICE TO REPORT HIS SUPERVISORS RELIGIOUS PROMOTION OF
3 PRACTICES IN HIS WORKPLACE THROUGH HIS UNION TO COMPLAIN ABOUT
4 THAT. ONE COULD SAY, AND I WILL, THAT THAT'S NOT JUST A CHOICE
5 AS A SUPERVISOR HIMSELF, THAT'S AN OBLIGATION. SEE SOMETHING
6 WRONG, REPORT IT. AND HE DID. IN THE SIX MONTHS THAT THE CITY
7 TOOK TO INVESTIGATE THAT REPORT, THAT COMPLAINT, BY THE TIME
8 THAT INVESTIGATION WAS DONE, MR. JOHNSON HAD LOST HIS
9 SUPERVISORY DUTIES, HIS SYSTEMS, FACILITIES ACCESS, WAS WORKING
10 IN A BASEMENT, OSTRACIZED AND EVENTUALLY PULLED THE PARACHUTE
11 TO LEAVE TO START HIS CAREER ALL OVER AGAIN AT A COMPLETELY
12 DIFFERENT DEPARTMENT, WORKING IN A CLOSET OFFICE THAT SMELLED
13 OF URINE AND OTHER WASTE. I WOULD SUBMIT THAT THAT RESULT,
14 LADIES AND GENTLEMEN, IS THE VERY ESSENCE OF WHAT RETALIATION
15 LAWS ARE MEANT TO PROHIBIT.

10:09:22 16 NOW, HIS HONOR RESPECTFULLY SAID THIS IS CLOSING
17 ARGUMENT. I WAS MENTORED THAT THIS IS SUMMATION. AND I SAY
18 THAT, AND I THINK WORDS MATTER, FOR A LIVING I SAY THAT,
19 BECAUSE I'M NOT HERE TO ARGUE WITH ANYBODY. SUMMATION IS MY
20 -- I'M NOT HERE TO TRY TO POUND SQUARE PEGS INTO ROUND HOLES OR
21 TELL YOU WHAT YOU WITNESSED, LISTENED TO, OBSERVED OVER THE
22 LAST THREE DAYS. THAT'S NOT MY JOB. THAT'S NOT WHAT I'M GOING
23 TO DO. WHAT I'M GOING TO TRY TO DO IS TALK TO YOU A LITTLE BIT
24 ABOUT HOW -- GIVE YOU SOME, HOPEFULLY, SUGGESTIONS ABOUT HOW
25 ALL OF YOU AND EACH OF YOU REASON THROUGH THE EVIDENCE AND COME

10:10:16

1 TO A CONSENSUS ABOUT WHAT HAPPENED AND WHAT NEEDS TO BE DONE
2 ABOUT IT.

3 NOW THAT REASONING PROCESS, I WOULD START OUT BY
4 SAYING, BEGINS WITH EACH OF YOU USING YOUR COMMON SENSE. WHEN
5 YOU GO BACK TO THAT JURY ROOM, YOU'LL HAVE HIS HONOR'S
6 INSTRUCTIONS. YOU'LL HAVE THE EXHIBIT NOTEBOOKS, EXHIBITS THAT
7 ARE ADMITTED. BUT YOU DON'T CHECK AT THE DOOR YOUR COMMON
8 SENSE, YOUR COMMON SENSE. FOR YOUR CONSIDERATION, I WOULD GIVE
9 YOU THREE THINGS ARE COMMON SENSE IN THIS CASE: THE CITY IS
10 JUST POLICIES AND BUILDINGS WITHOUT ITS EMPLOYEES, THE
11 LIFEBLOOD OF THE CITY. TWO, ONE'S JOB IS A SOURCE OF PURPOSE,
12 PRIDE, DIGNITY, RESPECT, AND MONEY. AND I'LL LEAVE YOU TO
13 THINK ABOUT WHICH IN ANY ORDER IS MOST IMPORTANT FOR EACH AND
14 ALL OF YOU IN A JOB. AND THIRDLY, THE INSTITUTIONAL POWER, THE
15 MORAL AUTHORITY IF YOU WILL, OF ANY ENTITY -- MUNICIPAL,
16 GOVERNMENT, FEDERAL GOVERNMENT, ANY ENTITY -- RESIDES AT THE
17 TOP, TOP OF THE LETTERHEAD, TOP OF MEMOS OF POLICIES. WITH
18 GREAT POWER COMES GREAT RESPONSIBILITY.

10:11:36

19 SO FIRST OF ALL, A FEW COMMENTS ON THE LAW WHICH HIS
20 HONOR JUST READ TO YOU WHICH YOU'LL HAVE BACK THERE. AS YOU
21 HEARD AND KNOW PROBABLY EVEN BEFORE COMING IN HERE, THE LAW
22 PROHIBITS RETALIATION FOR ENGAGING IN PROTECTED ACTIVITIES.
23 WHAT DOES THAT MEAN? IT MEANS WHAT IT SAYS. PROTESTING EQUAL
24 EMPLOYMENT OPPORTUNITY MISCONDUCT LIKE PROMOTING RELIGION IN
25 THE WORKPLACE, PARTICULARLY MAYBE PARTICULARLY A SUPERVISOR IS

10:12:32 1 DOING THAT, IS PROTECTED ACTIVITY, AND THE CITY DOES NOT
2 DISPUTE THAT. MR. JOHNSON ENGAGED IN PROTECTED ACTIVITY WHEN
3 HE MADE HIS COMPLAINT.

4 BUT THERE'S A POLICY THAT UNDERGIRDS THESE LAWS. ALL
5 OUR LAWS HAVE POLICIES. THEY'RE REASONS. YOU DON'T HAVE TO
6 LOOK FAR OR HEAR IT FROM ME BECAUSE YOU CAN READ IN THE CITY'S
7 OWN EEO POLICIES WHAT THAT IS, AND IT ENCOURAGES PEOPLE TO
8 REPORT MISCONDUCT IN THEIR WORK OR OTHER PLACES REALLY BECAUSE
9 IN SOME WAYS WE ALL HAVE A RESPONSIBILITY TO MAKE SURE THE LAW
10 IS FOLLOWED AND PEOPLE ARE TREATED FAIRLY IN COMPLIANCE WITH
11 POLICIES AND LAWS. BECAUSE IF WE DON'T, IF PEOPLE DON'T DO
12 THAT AND TURN THE OTHER WAY, LOOK THE OTHER WAY, IT CORRODES
13 FROM WITHIN; IT FESTERS IN THE WORKPLACE, AND THEIR OWN
14 POLICIES TALK ABOUT UNPRODUCTIVE WORKPLACES.

10:13:33 15 SO THESE POLICIES OF ANTI-RETALIATION ARE NOT
16 DESIGNED FOR PEOPLE LIKE MR. JOHNSON TO COME HERE AND PULL A
17 SLOT MACHINE AND GET MONEY. THEY'RE HERE BECAUSE HE AND OTHERS
18 WHO REPORT SUCH ACTIVITY ARE DOING IT BECAUSE THEY TAKE A
19 RESPONSIBILITY FOR MAKING SURE THAT THEY HONOR THEIR EMPLOYERS
20 AND THEIR CO-WORKERS BY DOING THAT.

21 THE EVIDENCE: AGAIN, I'M NOT GOING TO GO ALL THROUGH
22 IT, BUT A FEW COMMENTS TO YOU THAT WERE IN THE JUDGE'S
23 INSTRUCTIONS ABOUT HOW YOU EVALUATE EVIDENCE. NOW EVIDENCE
24 TYPICALLY COMES IN TWO FORMS: PAPER AND NOTEBOOKS, SOME
25 PICTURES THAT YOU'LL HAVE, AND IT COMES FROM THE WITNESS STAND

10:14:23 1 IN TESTIMONY. AND HIS HONOR'S INSTRUCTIONS INCLUDES SOME
2 MEANS, SOME TOOLS FOR HOW YOU EVALUATE AND ASSESS THAT EVIDENCE
3 BECAUSE YOU CAN HEAR THINGS, AND PARTICULARLY IF YOU READ THEM
4 IN BLACK AND WHITE, THEY CAN BECOME VERY DIFFERENT DEPENDING ON
5 WHO THEY COME FROM AND THE QUALITATIVE FACTORS THAT MATTER, AND
6 I WANT TO SPEAK TO A FEW OF THOSE.

7 A COUPLE OF QUALITY OF THE EVIDENCE FACTORS I WOULD
8 SUBMIT TO YOU ARE COMMON SENSE AS WELL. NUMBER ONE, OBJECTIVE
9 FACTS ARE BETTER THAN PEOPLE'S COMMENTARY OR PERCEPTIONS,
10 EDITORIALIZATIONS, OBJECTIVE FACTS. "HE YELLED AT ME." WHAT
11 DID HE SAY, FOR EXAMPLE? WRITINGS, PICTURES ARE MORE RELIABLE
12 THAN RECOLLECTIONS. WRITING ARE MORE RELIABLE THAN
13 RECOLLECTIONS. YOU HEARD ME QUIP, E-MAIL, THE "E" STANDS FOR
14 EVIDENCE. YOU GOT A LOT OF EVIDENCE IN E-MAILS AND OTHER FORMS
10:15:35 15 HERE. AND SO, FOR EXAMPLE, WHEN MR. SCHWABE AND MS. CRUZ
16 COMMUNICATE WITH EACH OTHER, FRANKLY IN ANY PROFESSION, LIKE
17 LAWYERS COMMUNICATE WITH EACH OTHER TO MAKE OFFERS OR
18 ACCEPTANCE, YOU TYPICALLY DO THAT IN WRITING BECAUSE WE WANT A
19 RECORD OF THAT, BECAUSE IF WE EVER HAVE TO COME HERE, WE WANT
20 TO BE ABLE TO DEMONSTRATE, PROVE WHAT WE SAID, WHEN, WHY.

21 NOW, BEYOND THAT, WRITTEN EVIDENCE, TESTIMONIAL
22 EVIDENCE, HIS HONOR MENTIONED BIAS. YOU ALL HEARD IT AT JURY
23 SELECTION. ALL OF US HARBOR BIAS. BOTH -- SOME ARE OVERT,
24 SOME WE KNOW ABOUT, SOME ARE IMPLICIT BIAS. YOU MAY HAVE HEARD
25 THAT TERM IN SOME TRAININGS. PEOPLE HARBOR BIAS. BUT BIAS AND

10:16:35 1 HOW IT AFFECTS US AFFECTS HOW WE RECALL THINGS AND HOW WE
2 PRESENT THOSE ACCOUNTS OF WHAT HAPPENED. IT'S A QUALITATIVE
3 FACTOR. IS SOMEONE BIASED? WHO ARE THEY? BEYOND WHAT THEY
4 SAY, WHO ARE THEY? WHERE ARE THEY? WHERE DO THEY WORK? WHAT
5 DO THEY DO?

6 DEMEANOR. CRITICAL. ONE OF THE FOUNDATIONS OF
7 JURIES AND WHY JURIES ARE SO IMPORTANT AND THE VERY SETUP OF A
8 COURTROOM -- YOU SEE THEM ON TV AND YOU'RE SITTING IN ONE NOW
9 -- GUESS WHO IS CLOSEST TO THE WITNESS? YOU ARE. WHY?
10 ACTUALLY, YOU MAY EVEN BE CLOSER THAN THE JUDGE, SOME OF YOU,
11 BECAUSE YOU'RE OBSERVING THE WITNESSES TESTIFY BECAUSE WHAT
12 WITNESSES SAY MATTERS BUT HOW THEY SAY IT. WHERE DO THEIR EYES
13 GO? CAN THEY LOOK AT THE QUESTIONER OR CAN THEY LOOK AT YOU?
14 CAN THEY LOOK YOU IN THE EYE AND TELL YOU THEIR STORY ON WHAT
10:17:36 15 HAPPENED? WHAT ARE THEIR MANNERISMS, FACIAL EXPRESSIONS,
16 GRIMACES. OR NOT. LOOKING UP, MAYBE TRYING TO RECALL. LITTLE
17 TELLING FACTORS BEAR UPON A WITNESS'S CREDIBILITY. SO
18 DEMEANOR.

19 RECOLLECTION; LAST ONE, THE ABILITY TO RECALL. THAT
20 WAS MEASURED, TESTED, FOLKS MEMORIES, THROUGHOUT THIS. SO WE
21 SAW EXAMPLES, YOU ALL SAW THESE, SO I'LL LEAVE THAT TO YOU TO
22 DISCUSS, BUT I'LL OFFER A FEW SUGGESTIONS, OFFER. MR. JOHNSON
23 IS A HARD-WORKING, LOYAL WORKER, CARRYING ON HIS FAMILY'S THIRD
24 GENERATION LEGACY NOW OF CITY EMPLOYMENT. AND CONSISTENT WITH
25 HIS EMPLOYMENT RECORD WHICH THE CITY WAS KIND ENOUGH TO REVIEW

10:18:32 1 IN SOME LENGTH WITH YOU -- HIS PAST REVIEWS, DISCRETIONARY
2 INCREASES -- ALL HIS ACCOLADES THAT HE RECEIVED, YOU SAW THAT
3 EXHIBITED BY MR. JOHNSON IN FRONT OF YOU IN HOW HE TESTIFIED.
4 HE WAS DETAILED, KNOWLEDGEABLE, RESPECTFUL; HE WAS FORTHCOMING.
5 HE LOOKED AT YOU WHEN TELLING HIS STORY.

6 DEPUTY DIRECTOR BEALE REVEALED VARIOUS FORMS OF BIAS.
7 MOSTLY, ONE STRIKING TO ME, IS THAT SHE CONTINUES TO DEFEND HER
8 ACTIONS, IN SPITE OF THE CITY'S OWN SIX-MONTH INVESTIGATION
9 SUBSTANTIATED MR. JOHNSON'S COMPLAINTS AGAINST HER ABOUT HER
10 PROMOTING RELIGIOUS PRACTICES, CONTINUES TO PERSIST IN CALLING
11 THEM FROM THE WITNESS STAND FALSE. SHE HARBORS THAT. CAN'T
12 LET IT GO. SHE WAS GENERALLY WELL-PREPARED FOR HER TESTIMONY
13 ON DIRECT. BUT REVEALED MUCH WHEN MR. CADIEXU CAUGHT HER ABOUT
14 REFERRING TO TWO EMPLOYEES THAT STILL WORK FOR MR. JOHNSON IN
10:19:50 15 APRIL. MR. CADIEXU SAID, I THOUGHT MR. BETHANY LEFT IN
16 DECEMBER, AND I SAW A COUPLE OF YOU CATCH THAT. OOPS.

17 HER REPEATED PROFESSIONS OF BEING UNINFORMED WERE
18 STRIKING. DENYING VARIOUS CONVERSATIONS EVER HAPPENED WITH MS.
19 MALAND, HER DIRECT SUPERVISOR, ANYONE FROM H.R., MR. BARCLAY,
20 MS. MENDOZA ABOUT THE SUPERVISOR ISSUE AND CERTAINLY MR.
21 JOHNSON. AND EQUALLY STRIKING WAS HER DENYING SPEAKING TO SUCH
22 PERSONS AT VARIOUS POINTS IN TIME ABOUT THE MENDOZA-SUPERVISOR
23 ISSUE AND HER HORRIBLE OVERSIGHT IN AN AUTO-RESPONSE E-MAIL;
24 DIDN'T SPEAK TO MS. MALAND ABOUT BARCLAY'S FINDINGS. AND I
25 THOUGHT A COUPLE OF HER WORD CHOICES, BESIDES CALLING THE

10:20:44 1 ALLEGATIONS AGAINST HER FALSE, WERE REVEALING. I CAUGHT
2 SUBTLETY WHEN SHE SAID, WHEN TALKING ABOUT MR. JOHNSON, THAT
3 SHE AND HE HAVE A LONG HISTORY TOGETHER. I WAS TRYING TO THINK
4 OF A TIME ANYBODY USED THAT EXPRESSION IN TALKING ABOUT SOMEONE
5 IN A POSITIVE WAY. "WE HAVE A LONG HISTORY WITH EACH OTHER."
6 DOESN'T SOUND LIKE YOU TALK ABOUT, "WELL, I HAVE A LONG HISTORY
7 WITH MY FATHER." I WON'T GET INTO THAT, BUT HOPEFULLY, YOU GET
8 MY POINT.

9 SHE SAID IT WAS STRESSFUL WITH MR. JOHNSON WORKING
10 AROUND HER. SHE TALKED ABOUT THAT STRESS BEING RELIEVED WHEN
11 HE LEFT. BUT I THOUGHT HER MOST STRIKING CREDIBILITY ISSUE WAS
12 EXPOSED WHEN SHE DENIED, IN RESPONSE TO THE CITY'S QUESTIONS,
13 TAKING AWAY ANY OF MR. JOHNSON'S SUPERVISORY DUTIES OR
14 RESPONSIBILITY AFTER HE FILED HIS COMPLAINT WHICH STRIKINGLY IS
10:21:44 15 INCONSISTENT WITH HER OWN EVALUATION OF THE MAN. ALL OF WHICH
16 IS IN PAST TENSE. ALL OF WHICH MR. JOHNSON ACKNOWLEDGED WAS
17 TAKEN AWAY, EXISTED BEFORE HIS COMPLAINT. SO IS HER DENYING
18 ABSOLUTELY -- WHEN SOMEONE TELLS ME "ABSOLUTELY" OR
19 "COMPLETELY," DOES IT MAKE YOU BELIEVE THEM MORE, THAT SHE
20 ABSOLUTELY DENIED RETALIATING? WELL, HOW DID HE LOSE ALL THOSE
21 RESPONSIBILITIES AND DUTIES FROM, BY MS. MENDOZA?

22 NOW CERTAINLY THIS IS A HE-SAID-SHE-SAID. BUT IN A
23 HE-SAID-SHE-SAID DISPUTE, WHO ARE YOU GOING TO BELIEVE? THE
24 12-YEAR EXCELLENT EMPLOYEE WHOSE PROTEST WAS INVESTIGATED OVER
25 SIX MONTHS AND SUBSTANTIATED, OR THE SUPERVISOR FOUND TO HAVE

10:22:42

1 ENGAGED IN THAT MISCONDUCT THAT STILL MAINTAINS THE ALLEGATIONS
2 ARE FALSE? WHO ARE YOU GOING TO BELIEVE? MR. BARCLAY ADMITTED
3 THERE WAS AN ERRONEOUS LETTER IN HIS FILE, OFFICIAL CITY FILE.
4 THERE'S AN ERROR LETTER IN THERE. AND THEN HE TRIED TO
5 CONVINCED YOU ALL THAT IT MAKES PERFECT SENSE THAT A 12-YEAR
6 EXCELLENT EMPLOYEE WOULD REQUEST A TRANSFER FROM HIS DEPARTMENT
7 THREE MONTHS AFTER COMPLAINING ABOUT HIS SUPERVISOR'S
8 MISCONDUCT AS A REMEDY FOR THAT MISCONDUCT. I HOPE YOU THINK
9 ABOUT WHAT THAT MEANS.

10 THE CITY'S OWN EEIO MANAGER BELIEVES THAT WHEN YOU
11 PROTEST PROMOTION OF RELIGIOUS PRACTICES IN THE WORKPLACE THAT
12 YOUR REMEDY IS TO ESCAPE IT, NOT STOP IT. THAT DOESN'T PASS
13 THE SMELL TEST. MS. CRUZ, WELL-PREPARED, HAD SPECIFIC RECORDS,
14 SPECIFIC DATES, SPECIFIC WORDS THAT SHE COMMUNICATED TO H.R.
15 ABOUT RETALIATION, HOSTILE WORK ENVIRONMENT: IT NEEDS TO STOP.
16 WE WANT MRS. BEALE REMOVED. THAT'S AN ADVOCATE.

10:24:07

17 MS. MENDOZA, HER BIAS WAS REVEALED IN WHERE AND WHO
18 SHE STILL WORKS FOR. YOU ALL CAUGHT IT. I SAW A COUPLE OF
19 YOU. WHEN SHE WAS ASKED, ANY PLANS TO TRANSFER, SHE SAID, NOT
20 YET. IT WAS ALMOST LIKE, WE'LL SEE HOW TODAY GOES. SO THERE'S
21 A BIAS, AND I'M SYMPATHETIC, FOR MS. MENDOZA. MS. MALAND SAID
22 H.R., HUMAN RESOURCES, WAS THE REASON WHY SHE DIDN'T
23 COMMUNICATE WITH RASEAN JOHNSON. BUT EVEN MR. SCHWABE GOT UP
24 AND CLARIFIED THAT: OH, NO, IT'S BETTER IF YOU NOT COMMUNICATE
25 ABOUT THE GRIEVANCE. THERE WASN'T AN EMBARGO FROM MR. SCHWABE,

10:25:12 1 JUST A CAUTION. MR. SCHWABE'S CLIENT IS THE CITY. HE DULLED
2 MS. CRUZ'S WORDS OF RETALIATION AND HOSTILE WORK ENVIRONMENT
3 CALLING THEM "UNCOMFORTABLE." THAT'S AN EXAMPLE OF SOMEONE'S
4 COMMENTARY CHANGING FROM FACTS ABOUT WHAT ACTUALLY WAS SAID.

5 THEN FRANKLY, THE CITY'S OWN INSTITUTIONAL
6 CREDIBILITY. AND WHAT I MEAN BY THAT, THE CITY DIDN'T CALL
7 JUDY VON KALINOWSKI. CARLSBAD IS 30 MILES, NOT TOO FAR. WHY
8 DIDN'T SHE GET CALLED TO THE STAND TO TESTIFY? WHAT ABOUT
9 GEORGE BIAGI, THE HEAD OF THE LEGISLATIVE DIVISION, TO SEE IF
10 HE WAS EVER THUMBS UP WITH MR. JOHNSON ALLEGEDLY BEING OFFERED
11 TO COME THERE. DERRICK BETHANY? THE CITY CALLS THREE
12 WITNESSES IN ITS CASE.

13 BURDEN OF PROOF. IT'S IN THE INSTRUCTIONS.
14 PREPONDERANCE OF THE EVIDENCE MEANS LADY JUSTICE HOLDING THE
10:26:16 15 SCALE, TILT EVER SO MUCH, 50 PERCENT PLUS ONE. PREPONDERANCE
16 MEANS 50 PERCENT. MR. JOHNSON, WE CARRY THE BURDEN TO PROVE
17 EACH OF THESE ELEMENTS BY A PREPONDERANCE. IT DOESN'T MEAN THE
18 SCALE DROPS TO THE BOTTOM WITH A TEN-POUND WEIGHT. IT MEANS
19 ENOUGH TO PERSUADE, TO BE MORE LIKELY THAN NOT TO HAVE
20 HAPPENED.

21 NOW, MY TWO WORDS: PROCESS AND CHOICE PERMEATE THIS
22 CASE. PROCESS BY MR. JOHNSON. OVER THREE DAYS, YOU'VE BORN
23 WITNESS TO THE MULTITUDE OF LAYERS OF PROCESS THAT MR. JOHNSON
24 HAD TO NAVIGATE FOR THREE-AND-A-HALF YEARS TO GET HERE. IT
25 BEGINS WITH HIS COMMENCING HIS PROTEST OF HIS SUPERVISOR

10:27:18 1 PROMOTING HER RELIGIOUS BELIEFS BY A GRIEVANCE, BY A COMPLAINT.
2 THAT STARTED PROCESS NUMBER ONE FOR MR. JOHNSON. HE COMPLIED
3 WITH AND WAS PATIENT THROUGH THAT SIX-MONTH INVESTIGATIVE
4 PROCESS PRECEDING RECEIVING MR. BARCLAY'S LETTER.

5 BEFORE COMING TO COURT, YOU HEARD FROM THE CITY, HE
6 HAD TO GO INTO THE FEDERAL EEOC AND GET A RIGHT TO SUE, RUN IT
7 BY THEM, BEFORE THAT AGENCY, BEFORE COMING INTO COURT WITH A
8 LAWSUIT FILED IN 2017 TO EXERCISE HIS RIGHT AND THE RIGHT OF
9 EVERY AMERICAN TO COME AND SETTLE THEIR DISPUTE HERE BEFORE
10 YOU. HE WITHSTOOD THE DISCOVERY PROCESS IN THIS CASE OF BEING
11 DEPOSED FOR EIGHT HOURS, VIDEOTAPED; NUMEROUS OTHER
12 PREREQUISITES NECESSARY IN ORDER TO GET HERE, TO GET THERE ON
13 THE STAND AND TELL YOU HIS STORY. THAT'S HIS PROCESS.

14 WHAT WAS THE CITY'S PROCESS? DID THE CITY ADHERE TO
10:28:29 15 PROCESS? DID THE CITY ADHERE TO ITS OWN EEOC POLICIES --
16 EXCUSE ME -- EEO POLICIES? DID THE CITY ADHERE TO ITS OWN EEIO
17 POLICY, MEDIATION, PROVIDING A REPORT AND FINDINGS, WHEN AND TO
18 WHOM? MR. BARCLAY LEFT IT UP TO MR. JOHNSON: HEY, CALL ME,
19 YOU WIN, CHARGES SUBSTANTIATED, IF YOU WANT TO APPEAL OR JUST
20 GIVE ME A CALL. THE CITY HIDES BEHIND ITS PROCESSES EXPECTING
21 FORMS OVER SUBSTANCE. THE CITY'S PROCESS LEAVES RESPONDING TO
22 EEIO FINDINGS THAT ARE MADE TO THE DEPARTMENT THAT'S BEING
23 INVESTIGATED, TO THE NUMBER TWO PERSON IN THAT DEPARTMENT AND
24 HER DIRECT REPORT: WE JUST MAKE FINDINGS, YOU FIGURE OUT AND
25 DECIDE WHAT TO DO ABOUT IT.

10:29:31

1 AND ALL THE DEPARTMENTS WE'VE HEARD FROM -- HUMAN
2 RESOURCES, EEIO, CLERK'S OFFICE -- THEY ALL POINT FINGERS AT
3 EACH OTHER. WE HEARD HUMAN RESOURCES DIRECTOR, VON KALI, TELL
4 KELLY CRUZ -- THERE'S NO REFUTING THAT CONVERSATION BECAUSE
5 THERE WAS NO OTHER TESTIMONY ABOUT IT -- THAT HUMAN RESOURCES
6 IS POWERLESS TO FORCE CITY CLERK TO REMOVE MS. BEALE FROM HER
7 POSITION. BUT MALAND POINTS THE FINGER BACK AT HUMAN RESOURCES
8 AND SAYS: I WAS TOLD NOT TO SPEAK TO MR. JOHNSON. HAROLD
9 BARCLAY SAID HE EXPECTED H.R. TO TELL HIM THAT THERE WERE
10 RETALIATION COMPLAINTS FROM MR. JOHNSON GOING REPEATEDLY TO MR.
11 SCHWABE. MR. BARCLAY EXPLAINED THAT THE EEIO COMPLAINT CAME
12 FROM H.R. SO HE EXPECTED TO HEAR IF THERE WAS RETALIATION
13 COMING FROM THE INVESTIGATION HE WAS UNDERTAKING. BUT DARRIN
14 SCHWABE SAYS MR. JOHNSON COULD HAVE, SHOULD HAVE, MADE THE
15 REPORT HIMSELF. BUT LOOK AT THE POLICIES ONE AND TWO. HE CAN
16 REPORT TO EEIO, HIS INTERNAL DEPARTMENT, H.R. HE DID THAT.

10:30:45

17 MR. JOHNSON EXERCISED PROCESS TO CALL OUT, TO CALL
18 OUT POLICY VIOLATIONS THAT WERE SUBSTANTIATED. BUT IS HE
19 THANKED FOR THAT? NO. INSTEAD OF EQUAL EMPLOYMENT
20 OPPORTUNITY, THE CITY SERVES UP TO MR. JOHNSON ITS OWN VERSION
21 OF EEO. ELIMINATE, EVISCERATE AND OSTRACIZE. THAT'S WHAT
22 THEIR EEO STANDS FOR. HIS SUPERVISORY RESPONSIBILITIES ARE
23 ELIMINATED. HIS SYSTEMS FACILITIES ACCESS ARE EVISCERATED.
24 HE'S OSTRACIZED BY SENIOR MANAGERS IN THE CLERK'S OFFICE. THAT
25 OSTRACIZE, I THINK WE HEARD FROM MS. CRUZ THAT WORD, I WOULD

10:31:53

1 SUBMIT THAT REGARDLESS OF HER REASONS, THE EFFECT THAT MRS.
2 MALAND NEVER SPEAKING TO MR. JOHNSON AT ANY TIME AFTER HE FILED
3 HIS COMPLAINT UNTIL THIS LAST DAY IN THE CLERK'S OFFICE, APRIL
4 22, CANNOT BE DISCOUNTED AS AN INSTITUTIONAL, AN INSIDIOUS FORM
5 OF RETALIATION.

6 SHE'S THE LEADER, HEAD OF THAT DEPARTMENT. SHE'S THE
7 MORAL AUTHORITY. SHE'S THROWN A BABY SHOWER, HOSTED A BABY
8 SHOWER FOR THE MAN. BUT WHEN SHE TICKED OFF THE FIVE THINGS
9 THAT SHE HAD SET INTO MOTION IN JANUARY 2016, NOT ANY OF THEM
10 WERE GIVING SAYING ONE WORD, LET ALONE A CONVERSATION, TO MR.
11 JOHNSON, HOW ARE YOU DOING? HOW ABOUT SOME WORDS OF
12 REASSURANCE? HANG IN THERE UNTIL THIS INVESTIGATION COMES OUT;
13 HEY, WE ALWAYS BELIEVE IN YOU; YOU'RE A GREAT EMPLOYEE; WE'LL
14 SEE THIS GETS DONE. NOTHING. NO WORDS OF REASSURANCE. AND
15 HOW ABOUT JUST TO LISTEN TO HIS STORY: HEY, I KNOW YOU FILED A
16 COMPLAINT, BUT CAN YOU TELL ME WHAT'S GOING ON? IT'S A
17 COMPLETE ABDICATION OF RESPONSIBILITY FROM THE LEADER, AND THE
18 SILENCE TO MR. JOHNSON IS DEAFENING, DEAFENING SILENCE. HE'S
19 ESSENTIALLY MARGINALIZED AND MADE TO FEEL RADIOACTIVE; YOU
20 KNOW, PUT IN THE BASEMENT WHERE THEY KEEP RADIATION-TYPE STUFF.
21 NOT INVITED TO MEETINGS.

10:33:03

22 SO EVEN WERE THE MOVE, THE CHANGE TO THE LEGISLATIVE
23 DIVISION OF THE CLERK'S OFFICE A REAL OPTION, ACTUALLY
24 COMMUNICATED TO MS. CRUZ OR MR. JOHNSON, HOW HE WAS BEING
25 TREATED AT THAT POINT IN THE DEPARTMENT, PARTICULARLY BY MS.

10:33:57 1 MALAND, MADE IT ABUNDANTLY CLEAR THAT REGARDLESS OF THE
2 REPORTING LINE OF HIERARCHY, HE WAS GETTING DIVORCED FROM HIS
3 DEPARTMENT. HE WAS GETTING DIVORCED. THINK ABOUT THAT.
4 ANYBODY, IF YOU GET A DIVORCE FROM YOUR SPOUSE, HEY, WHY DON'T
5 YOU JUST MOVE TO THE OTHER PART OF THE HOUSE. YEAH, WE CAN
6 JUST USE DIFFERENT ENTRANCES. SO THAT'S THE LEGISLATIVE -- WE
7 HAVEN'T SEEN ONE RECORD, ACTUALLY WRITTEN RECORD, THAT THAT WAS
8 ACTUALLY EVER OFFERED. EVEN IF IT WERE, IT DOESN'T MAKE SENSE
9 FOR THE MAN WHO HAD NO TRUST OR CONFIDENCE IN HIS OWN
10 DEPARTMENT.

11 CHOICE; YOU KNOW, THIS IS -- YOU HEARD FROM THE
12 CITY'S OPENING STATEMENT, HE CHOSE, HE MADE CHOICES. LET'S
13 TALK A LITTLE BIT ABOUT MR. JOHNSON'S CHOICES THAT HE MADE. HE
14 CHOSE TO EXCEL IN HIS JOB FOR 12 YEARS. THAT'S CLEAR. HE
10:34:59 15 CHOSE TO REPORT HIS SUPERVISOR'S MISCONDUCT THROUGH PROPER
16 CHANNELS. HE CHOSE TO REPORT THE RETALIATION HE WAS SUFFERING
17 TO HIS UNION WHO REPORTED IT TO H.R. MULTIPLE TIMES. HE CHOSE
18 TO REPORT UNDER HIS PEER, MS. MENDOZA, HOPING THE DEPUTY
19 DIRECTOR BEALE RETALIATION WOULD RELENT. HE CHOSE TO STICK OUT
20 HIS JOB, PATIENTLY WAITING FOR THE EEIO'S FINDINGS. AND HE
21 ULTIMATELY MADE THE PRACTICAL, THE SELF-PRESERVATION CHOICE TO
22 TRANSFER TO THE PUBLIC UTILITIES DEPARTMENT. TO QUOTE WHAT MS.
23 CRUZ SAYS, IS IT A CHOICE TO TAKE THE PARACHUTE AS OPPOSED TO
24 STAYING ON THE PLANE THAT'S GOING DOWN? YOU PICK THE ANALOGY,
25 BUT IT'S APROPOS. IS THAT A CHOICE?

10:36:04

1 NOW THE CITY'S DEFENSE ABOUT CHOICE ACTUALLY RESTS ON
2 WHAT ARE FALSE CHOICES. MR. JOHNSON WAS GIVEN THE CHOICE TO
3 REPORT TO ONE OF TWO PEERS, TO BE A BUFFER. LOOK AT EXHIBIT
4 40, EVEN MS. MALAND'S OWN E-MAIL OF JANUARY 12 CHARACTERIZED
5 THAT ISSUE OF A REPORTING CHANGE AS COMPLEXITIES AND NOT AN
6 EFFECTIVE SOLUTION. REAL CHOICE; FALSE CHOICE. MR. JOHNSON IS
7 GIVEN THE CHOICE TO CHANGE DIVISIONS, STILL UNDER THE CITY
8 CLERK WHO HAS OSTRACIZED AND IGNORED HIM IN HIS PLIGHT. THEN
9 THE CITY GAVE HIM THE CHOICE OF STAYING IN THE CLERK'S OFFICE
10 OR TRANSFERRING TO PUD. NOT REAL CHOICES.

11 I WANT TO SHOW YOU THE VERDICT FORM WHICH YOU'RE
12 GOING TO GET AND TAKE BACK WITH YOU. THESE ARE THE QUESTIONS
13 THAT YOU'LL BE ANSWERING. YOU SEE, THERE'S SEVEN QUESTIONS TO
14 GET THROUGH. THE FIRST FIVE DEAL WITH ADVERSE ACTION,
15 ESSENTIALLY. NUMBER ONE, DID THE CITY REMOVE MR. JOHNSON'S
16 TITLE AND OR DUTIES AS IMAGING DEPARTMENT SUPERVISOR? AS HIS
17 HONOR INSTRUCTED YOU, CHANGES IN FORM OF RETALIATION MUST
18 CONSUMMATE AN ADVERSE ACTION WHICH IS A MATERIAL CHANGE. THIS,
19 TAKING AWAY HIS TITLE OR DUTIES OF IMAGING DEPARTMENT
20 SUPERVISOR AT ANY TIME AFTER THAT WOULD BE AN ADVERSE ACTION.
21 SO YOU'RE ASKED TO DECIDE WHETHER IT WAS AN ADVERSE ACTION.

10:37:38

22 QUESTION TWO -- AND WE THINK THE ANSWER, YOU MIGHT
23 GUESS, IS YES -- WAS THE REMOVAL OF MR. JOHNSON'S TITLE AN
24 ADVERSE ACTION? SO FIRST OF ALL, THE CITY WANTS -- THAT FIRST
25 QUESTION, WAS HIS TITLE OR DUTIES ACTUALLY REMOVED, AND WAS IT

10:38:33 1 AN ADVERSE ACTION? WAS IT MATERIAL TO HIS JOB OR HOW HE
2 CARRIED IT OUT? YES. QUESTION THREE, DID THE CITY REMOVE MR.
3 JOHNSON'S TITLE AND OR DUTIES AS IMAGING DEPARTMENT SUPERVISOR
4 BECAUSE OF HIS PROTECTED ACTIVITY? NOW HERE IS A NUANCE
5 PERHAPS -- MAYBE THAT'S NOT THE RIGHT WORD -- BUT BETWEEN
6 ADVERSE ACTIONS AND WHY AND HOW THEY WERE CAUSED; TO BE CLEAR,
7 MR. JOHNSON, WE, ARE NOT CLAIMING THAT PETTY SLIGHTS -- THAT
8 WAS MR. CADIEXU'S CHARACTERIZATIONS -- NOT SAYING GOOD MORNING,
9 NOT INVITED TO STAFF MEETINGS, BEING TOLD TO ONLY E-MAIL MRS.
10 BEALE, WE'RE NOT SAYING THOSE ARE ADVERSE ACTIONS, THAT THEY'RE
11 ACTIONABLE, THAT HE DESERVES DAMAGES FOR NOT BEING TOLD GOOD
12 MORNING BACK. BUT WE WILL TELL YOU THAT, AS IS COMMON SENSE,
13 ACTIONS SPEAK LOUDER THAN WORDS. AND OFTENTIMES, ACTIONS ARE
14 MUCH MORE TRUTHFUL AND TELLING THAN WORDS.

10:39:49 15 THE POINT IS THAT DEPUTY DIRECTOR BEALE WAS TREATING
16 MR. JOHNSON A REGULAR BASIS -- HOW SHE WAS TREATING HIM
17 IMPEACHES HER SWORN TESTIMONY SHE ABSOLUTELY WAS NOT
18 RETALIATING AGAINST HIM. BECAUSE IN LINE WITH HIS HONOR'S
19 CIRCUMSTANTIAL EVIDENCE, HOW SHE TREATED HIM IS CIRCUMSTANTIAL
20 EVIDENCE AT LEAST OF HER MOTIVATION OF WHAT SHE'S ACTUALLY
21 DOING AND WHY SHE'S DOING IT. SHE ADMITTED BEING HURT BY MR.
22 JOHNSON'S COMPLAINT. BUT THAT CHARACTERIZATION IMPEACHES HER
23 DENYING AN EYE-FOR-AN-EYE RETRIBUTION AGAINST HIM IN THE WAKE
24 OF HIS COMPLAINT AGAINST HER; IMPEACHES HER.

25 I WOULD RESPECTFULLY SUGGEST THAT MS. BEALE IS

10:40:40

1 BEARING FALSE WITNESS AGAINST HER NEIGHBOR IN THAT REGARD. HER
2 MOTIVATION IS REVEALED BY HOW SHE TREATED HIM IN THE WAKE OF
3 HIS COMPLAINT. THE PROXIMITY IN TIME IS KEY. THE CITY HELPED
4 US TO SEE AND PORTRAY FOR YOU HOW SHE TREATED HIM AND PRAISED
5 HIM FOR YEARS UP UNTIL HIS COMPLAINT. JUST A COINCIDENCE THAT
6 ALL OF THAT CHANGED AFTER SEPTEMBER 9TH, 2015? SO THIS
7 INDICIA, EVIDENCE OF RETALIATORY MOTIVE BORNE OUT IN HOW SHE
8 ACTED, HOW SHE CONDUCTED HERSELF, AND YOU HAVE EVIDENCE OF THAT
9 FROM MR. JOHNSON, MS. CRUZ AFFIRMED THAT, AND IT BEING
10 COMMUNICATED TO H.R.

10:42:02

11 SO THAT'S THE STRONG AND SUBSTANTIAL EVIDENCE OF THE
12 "BECAUSE" ELEMENT, THE "BECAUSE" ELEMENT IN QUESTION THREE AND
13 IN THE "BECAUSE" ELEMENT OF QUESTION FIVE. HOW DO WE KNOW IT
14 WAS "BECAUSE"? WE KNOW IT WAS "BECAUSE," BECAUSE OF TIME,
15 BECAUSE IT'S SO DIFFERENT THAN HOW SHE PRAISED HIM AND TREATED
16 HIM BEFORE AND HER ACTIONS THEMSELVES. NOW THE OTHER ADVERSE
17 ACTION SHOULD BE, IN OUR ESTIMATION, PRETTY STRAIGHTFORWARD;
18 WAS MR. JOHNSON'S TRANSFER TO THE PUD AN ADVERSE EMPLOYMENT
19 ACTION? AS YOU HEARD FROM HIS HONOR'S INSTRUCTIONS, AND YOU'LL
20 READ THEM, A JOB ASSIGNMENT CHANGE, A JOB LOCATION CHANGE,
21 GOING BACK FROM A 12 YEARS OF SENIORITY AND A DEPARTMENT OF 45
22 TO SOMEWHERE AT THE VERY BOTTOM RUNG OF SENIORITY AT THE PUD
23 DEPARTMENT, DEALING WITH DINOSAUR SYSTEMS THAT ARE BEING
24 RETIRED WITH NO FUTURE IN SIGHT OF WHAT HIS JOB IS GOING TO BE
25 AFTER. FORGET THE URINE-SMELLING OFFICE THAT STARTED IT OUT

10:42:54 1 AND ALL THAT. THAT'S A MATERIALLY DIFFERENT POSITION FOR MR.
2 JOHNSON. THEY'LL TELL YOU THE PAY IS THE SAME; HE'S STILL THE
3 SAME CLASSIFICATION. BUT THAT GOES TO WHAT IS IMPORTANT ABOUT
4 A JOB AND YOUR COMMON SENSE. THAT'S ADVERSE.

5 BUT PERHAPS THE KEY QUESTION THERE IS QUESTION FIVE
6 ON THE "BECAUSE" ELEMENT, AND THAT GOES BACK TO THIS: WAS IT
7 HIS CHOICE TO DO THAT? I BELABORED THAT ISSUE ENOUGH. NOW A
8 COUPLE COMMENTS -- I'M WINDING UP HERE, FOLKS. THANKS FOR
9 BEARING WITH ME. THE CITY WILL POINT TO MS. BEALE APRIL 2016
10 EVALUATION THAT WAS SIGNED OFF BY MS. MALAND, AND THEY'LL POSE
11 TO YOU: HOW IS THAT RETALIATION? SHE PRAISED THE MAN. SHE
12 PRAISED THE MAN FOR ALL HE'D DONE FOR THE DEPARTMENT OVER THAT
13 PAST YEAR. WELL, THAT REVIEW, AND EVEN MS. MALAND'S E-MAIL --
14 I GUESS IT'S A FAREWELL E-MAIL TO HIM ABOUT SEND OFF AND THANK
10:44:11 15 YOU FOR YOUR SERVICE. I'LL DEVIATE FROM MY OWN MENTORSHIP OF
16 ARGUMENT AND TELL YOU I THINK THAT THOSE SHOW THE
17 INSIDIOUSNESS --

18 THE COURT: WAIT A MINUTE, COUNSEL. WHAT YOU THINK
19 IS NOT THE --

20 MR. VANDERPOOL: FORGIVE ME, YOUR HONOR. THE
21 EVIDENCE SHOWS THAT CONSCIOUS EFFORT TO WRITE A REVIEW THAT'S
22 IN THE PAST TENSE, DISPLAYS THAT WERE WELL-LIKED IN THE PAST
23 TENSE, IS ALL INTENDED TO COVER UP THE TRUE MOTIVE. IT'S ALL
24 INTENDED TO PUT SOME KIND OF BOW ON AN UGLY TREATMENT AND
25 AFFAIR. IT SUGGESTS THAT MS. MALAND OR MS. BEALE OR THE CITY

10:44:58 1 H.R. OR WHOMEVER WERE ANTICIPATING BEING HERE SO THEY HAVE SOME
2 EVIDENCE TO SAY, HEY, CAN'T BE RETALIATION, LOOK AT THIS
3 GLOWING REVIEW. IT'S AS IF THE CITY WANTED TO TAKE A BRANCH
4 AND SWEEP AWAY THE FOOTPRINTS.

5 QUESTION SIX AND SEVEN OF THE VERDICT FORM DEAL WITH
6 PAST AND FUTURE HARM. NOW JUST A FEW COMMENTS ON THAT. FULL
7 DAMAGES -- IF JUSTICE IS TO BE DONE AND SERVED FOR MR. JOHNSON
8 IN FINDING THERE WAS RETALIATION SUCH THAT YOU GET TO THESE
9 QUESTIONS, FULL DAMAGES IS WHAT MATTERS. THERE'S NO SUCH THING
10 AS PARTIAL JUSTICE. LESS THAN FULL DAMAGES IS NO JUSTICE. IF
11 YOU FIND THAT THE CITY ENGAGED AND BROKE THE LAW UNDER THESE
12 QUESTIONS THAT YOU ANSWERED BEFORE THESE, YOU MUST AWARD SOME
13 DAMAGES; JUST DAMAGES, REASONABLE COMPENSATION FOR WHAT HE'S
14 LOST TO DATE, AND WHAT HE STANDS TO LOSE AND NOT GAIN BACK IN
10:46:14 15 THE FUTURE.

16 NOW TWO THINGS THAT YOU CAN'T DO. ONE, HIS HONOR
17 READ TO YOU, AND THAT IS, YOU'RE NOT TO DETERMINE ECONOMIC
18 LOSSES. HE WAS MAKING THE SAME PAY. OR WHETHER THERE'S ANY
19 ISSUES ABOUT PROMOTABILITY, THAT'S NOT FOR YOU TO DETERMINE.
20 YOU'RE TALKING ABOUT THE INTANGIBLE LOSSES TO MR. JOHNSON, THE
21 THINGS THAT WE'VE MENTIONED FROM THE BEGINNING OF THIS CASE --
22 DIGNITY, RESPECT, TRUST -- THAT YOU CAN'T PUT A DOLLAR SIGN
23 AROUND EASILY. AND THAT IS WHY YOU AS JURORS ARE VESTED WITH
24 THAT DISCRETION TO DETERMINE WHAT IS FAIR COMPENSATION FOR MR.
25 JOHNSON. WHEN I ASKED HIM WHEN HE CAME HERE, HE SAID

10:46:59 1 "JUSTICE." HE DIDN'T GIVE YOU A DOLLAR AMOUNT. I'M NOT GOING
2 TO GIVE YOU A DOLLAR AMOUNT NOW.

3 I WOULD JUST TELL YOU THAT I THINK IT NEEDS TO BE
4 MEANINGFUL, IF YOU'RE TO GET TO THESE QUESTIONS. MEANINGFUL
5 FOR MR. JOHNSON, MORE THAN JUST SOME KIND OF TOKEN OF COMING
6 IN, BECAUSE HE'S HAD MEANINGFUL LOSSES IN HIS LIFE, CHANGES,
7 MATERIAL CHANGES TO HIS LIFE, HIS JOB, HIS JOB SATISFACTION.
8 AND THAT'S THE THING YOU CAN'T DO; YOU CAN'T GIVE HIM THOSE
9 THINGS BACK. YOU CAN'T COME OUT AND SAY, WE DON'T WANT TO GIVE
10 HIM MONEY, BUT WE WANT THE CITY TO REINSTATE HIM TO HIS
11 SUPERVISORY RESPONSIBILITIES, PUT HIM BACK TO WHERE HE WAS ON
12 SEPTEMBER 1, 2015. THE LAW, THE COURTS, DON'T ALLOW YOU ALL TO
13 DO THAT.

14 ALL YOU CAN DO IS AFFORD SOME MEASURE OF
10:47:46 15 COMPENSATION. IS THAT MEASURE OF COMPENSATION MEANINGFUL IF
16 IT'S FIVE FIGURES? IS IT SIX FIGURES? I'LL LEAVE THAT UP TO
17 YOU. MR. JOHNSON TRUSTS YOU ALL EIGHT REPRESENTATIVES OF THIS
18 COMMUNITY TO RENDER AND DO HIM FAIR JUSTICE. MEANINGFUL
19 JUSTICE, AGAIN, FOR MR. JOHNSON'S SAKE, ALSO MEANS IT FOR THE
20 CITY'S SAKE. MEANINGFUL SO THAT THE PEOPLE HERE IN THIS ROOM
21 AND THOSE THAT WILL HEAR ABOUT AND KNOW ABOUT YOUR VERDICT
22 ABOUT HOW MR. JOHNSON HAS BEEN TREATED FROM A STAR EMPLOYEE OF
23 12 YEARS TO GET HERE NOW AND WORKING WHERE HE IS IS NOT RIGHT.
24 WITH THAT, YOUR HONOR, I'LL RESERVE THE REST FOR REBUTTAL.

25 THE COURT: LET'S TAKE A QUICK FIVE-MINUTE BREAK SO

10:48:41

1 YOU CAN USE THE RESTROOM IF YOU WANT. JUST MAKE IT SHORT.

2 (RECESS.)

3 MS. ADEMA: GOOD MORNING, EVERYONE. THE CITY WOULD
4 ALSO VERY MUCH LIKE TO THANK YOU FOR YOUR TIME THIS WEEK. IT'S
5 A BIG COMMITMENT, AND IT'S IMPORTANT. IT'S VERY IMPORTANT,
6 JUST AS THE PLAINTIFF'S ATTORNEY SAID. AND IT'S IMPORTANT TO
7 THE CITY, AND IT'S IMPORTANT TO THE PEOPLE WHO WORK FOR THE
8 CITY, FOR THOSE EMPLOYEES WHO CAME AND TESTIFIED QUITE
9 SINCERELY AND GENUINELY THIS WEEK. IT'S NOT A PLEASURE TO BE
10 IN TRIAL AGAINST A CURRENT CITY EMPLOYEE. WE'RE HERE BECAUSE
11 WE BELIEVE THAT WE DID WHAT WE WERE REQUIRED TO DO AND WHAT WE
12 SHOULD DO AND THAT WE FOLLOWED THE VARIOUS POLICIES THAT HAVE
13 BEEN REFERRED TO, NOT ONLY THE POLICIES BUT THE LAW, AND THAT'S
14 WHY WE'RE HERE.

10:56:58

15 WE'RE HERE BECAUSE OF THE LAW, NOT CONFUSING
16 REFERENCES TO CITY POLICIES, BUT WHETHER OR NOT, BASED ON THE
17 INSTRUCTIONS THAT THE COURT READ TO YOU AND THAT YOU'LL HAVE IN
18 THE JURY ROOM, THE CITY ACTED UNLAWFULLY. THE EVIDENCE DOES
19 NOT SHOW THAT IT DID. MR. JOHNSON'S BURDEN IS TO PROVE BY A
20 PREPONDERANCE OF THE EVIDENCE EACH OF THE ELEMENTS OF HIS CASE.
21 THOSE ELEMENTS WERE READ TO YOU BY THE JUDGE, AND I'LL BE
22 REFERRING BACK TO THEM AS I SUM UP AND PROVIDE THIS CLOSING.
23 AND WE'LL LOOK AT THOSE ELEMENTS IN THE CONTEXT OF THE
24 EVIDENCE, NOT ON ARGUMENT ABOUT THE EVIDENCE.

25 SO LET'S START WITH THE FIRST ELEMENT. THE FIRST

10:58:21

1 ELEMENT OF THE INSTRUCTION YOU'LL FIND AT PAGE 21 OF THE SET
2 THAT YOU'LL RECEIVE. AND WHEN I MEAN "FIRST ELEMENT OF THE
3 INSTRUCTION," I'M TALKING ABOUT MR. JOHNSON'S CLAIM FOR
4 UNLAWFUL RETALIATION UNDER FEDERAL LAW. AND SO THE FIRST
5 ELEMENT THAT MR. JOHNSON MUST PROVE IS THAT HE PARTICIPATED IN
6 A PROTECTED ACTIVITY UNDER FEDERAL LAW BY FILING HIS GRIEVANCE
7 WITH THE CITY ON SEPTEMBER 9TH, 2015. WORDS MATTER, AND THEY
8 MATTER HERE BECAUSE MR. JOHNSON WOULD LIKE YOU TO GO INTO THE
9 JURY AND BELIEVE THAT EVERYTHING THAT HE PUT INTO HIS GRIEVANCE
10 ON SEPTEMBER 9TH, 2015, WAS PROTECTED ACTIVITY, AND IT'S NOT.

11 MR. VANDERPOOL: MISSTATES THE EVIDENCE, YOUR HONOR.
12 THERE IS NO GRIEVANCE.

10:59:42

13 THE COURT: WELL, AGAIN, THE JURY HEARD ALL THE
14 EVIDENCE, AND YOUR THE ARBITRAR OF THE FACTS NOW. SO YOU
15 RECALL THEM THE WAY YOU RECALL THEM. THAT'S THE IMPORTANT
16 THING. OKAY.

17 MS. ADEMA: THERE WAS TESTIMONY FROM MR. BARCLAY, MR.
18 SCHWABE, MS. MALAND, THAT THERE WAS TWO PARTS TO WHAT HAPPENED
19 AFTER MR. JOHNSON FILED HIS GRIEVANCE. LET'S CALL THEM PART A.
20 PART A WOULD BE COMPLAINTS THAT HAVE NOTHING TO DO WITH THE
21 EQUAL EMPLOYMENT OPPORTUNITY LAWS OR STANDARDS. THOSE WERE
22 HANDLED BY THE HUMAN RESOURCES DEPARTMENT, BY MR. SCHWABE'S
23 DEPARTMENT WITH THE FACT-FINDING. THEN THERE'S PART B. THAT
24 HAS TO DO WITH WHAT WE CALL PROTECTED ACTIVITY. PROTECTED
25 ACTIVITY IS A COMPLAINT OF SOME SORT OF DISCRIMINATION IN THE

11:00:38

1 WORKPLACE BASED ON A CHARACTERISTIC THAT'S PROTECTED, NOT JUST
2 ANYTHING. AND HERE, THE JUDGE READ TO YOU THE AGREED UPON
3 STATEMENT BY THE PARTIES THAT THE ALLEGATIONS CONTAINED IN THE
4 LARGER GRIEVANCE THAT WERE PROTECTED BY THE LAW WERE THE
5 ALLEGATIONS THAT HAD TO DO WITH MS. BEALE PROMOTING RELIGION IN
6 THE WORKPLACE.

7 AND IT'S IMPORTANT, ITS REALLY IMPORTANT FOR YOU TO
8 UNDERSTAND, AND AS YOU HEARD AT THE BEGINNING OF THE CASE, THAT
9 WE ARE NOT HERE TO SECOND-GUESS THE DETERMINATION OF MR.
10 BARCLAY'S OFFICE THAT THERE WAS SUFFICIENT EVIDENCE TO SUPPORT
11 THAT, IN FACT, MS. BEALE HAD VIOLATED CITY POLICY WITH REGARDS
12 TO PROMOTING RELIGION. WE'RE NOT HERE DISPUTING THAT. THE
13 CITY IS NOT HERE DISPUTING THAT. NOW MS. BEALE MAY STILL
14 PERSONALLY FEEL THAT IT DIDN'T, YOU KNOW, COME OUT THAT WAY,
11:02:05 15 BUT SHE DIDN'T SHOW ANY SORT OF ANGER. SHE DIDN'T SHOW ANY --
16 YOU KNOW, SHE JUST ACCEPTED THAT. AND AS IT CAME OUT, SHE HAS
17 ACCEPTED DISCIPLINE ABOUT THAT. THERE WAS TESTIMONY ABOUT
18 THAT. BECAUSE OF HER PRIVACY RIGHTS AND CONFIDENTIALITY OVER
19 DISCIPLINARY MATTERS, WHICH IS UNDERSTANDABLE, THE CITY WAS NOT
20 ABLE TO OFFER EVIDENCE OF WHAT SPECIFIC DISCIPLINE IT WAS. BUT
21 SHE WAS DISCIPLINED.

22 SO I REMIND YOU THAT WE'RE NOT HERE TO JUDGE THIS
23 CASE BASED ON THERE BEING A FINDING BY MR. BARCLAY'S OFFICE OF
24 EVIDENCE TO SUPPORT THE ALLEGATIONS OF WHAT MR. BARCLAY FOUND
25 WERE A POLICY VIOLATION, NOT THAT SHE HAD VIOLATED FEDERAL LAW.

11:03:16 1 MR. BARCLAY TESTIFIED THAT HE FOUND THAT THERE WAS A POLICY
2 VIOLATION. AND IT ALSO WAS EXPLAINED THAT THE CITY POLICIES GO
3 BEYOND THE REQUIREMENTS OF THE LAW WHICH, IF YOU THINK ABOUT
4 IT, MAKES COMPLETE SENSE. BECAUSE IF WE HAVE STRONG POLICIES
5 THAT ARE FAIR BUT ALSO WILL AVOID WORKPLACE CONDUCT THAT MIGHT
6 BE SUGGESTIVE OF UNLAWFUL DISCRIMINATION BUT ISN'T, WE'RE DOING
7 A LOT TO TRY AND MAKE THE WORK ENVIRONMENT BETTER.

8 SO AGAIN, THE CITY DOESN'T DISPUTE THE FIRST ELEMENT
9 OF MR. JOHNSON'S CLAIM THAT HE DID ENGAGE IN PROTECTED ACTIVITY
10 UNDER FEDERAL LAW BY FILING ONLY ALLEGATIONS RELATED TO
11 WORKPLACE DISCRIMINATION BASED ON RELIGION. THAT'S REALLY
12 IMPORTANT THAT IT BE DISTINGUISHED BETWEEN A COMPLAINT OF
13 PROTECTED ACTIVITY AND ONE THAT'S NOT PROTECTED, AND I WILL
14 COVER THAT MORE AS WE PROCEED ON THE INSTRUCTIONS.

11:04:59 15 SO THE SECOND ELEMENT THAT MR. JOHNSON MUST PROVE BY
16 A PREPONDERANCE OF THE EVIDENCE IS THAT THE CITY SUBJECTED MR.
17 JOHNSON TO AN ADVERSE EMPLOYMENT ACTION. I WANT TO TALK ABOUT
18 THOSE WORDS, "SUBJECTED TO." "SUBJECTED TO" MEANS THE CITY DID
19 IT TO HIM, THE CITY DID IT TO HIM; THAT HE HAS TO ESTABLISH
20 THAT IT'S MORE PROBABLE THAN NOT THAT THE CITY DID THIS TO HIM.
21 AND WHAT ARE THE TWO THINGS THAT ARE IN THE INSTRUCTIONS THAT
22 ARE BEFORE YOU FOR DECISION? THEY ARE, ONE -- AND THEY'RE IN
23 YOUR INSTRUCTIONS SO YOU WILL BE ABLE TO REFER TO THEM -- THAT
24 HE WAS SUBJECTED TO ADVERSE EMPLOYMENT ACTION BY REMOVING HIM
25 AS IMAGING DEPARTMENT SUPERVISOR AFTER DECEMBER 13TH, 2015.

11:06:07

1 SO AFTER DECEMBER 13TH, 2015. THIS WAS GLOSSED OVER
2 IN PLAINTIFF'S CASE, AND IT WAS GLOSSED OVER IN THE CLOSING
3 ARGUMENT AND WHEN PLAINTIFF'S COUNSEL DIRECTED YOU TO THE
4 SPECIAL VERDICT FORM WHICH SPECIFICALLY CITES THAT DATE. AND
5 THAT'S A LEGAL RULE, AND IT'S ONE THAT YOU NEED TO ACCEPT, THAT
6 THERE ARE TIME LIMITS ON THIS CLAIM. THERE ARE RULES THAT
7 APPLY TO A LOT OF DIFFERENT THINGS AND THE DECISION THAT YOU
8 MAKE MUST BE IN THE CONTEXT OF THOSE RULES.

9 SO WHAT DOES THAT MEAN? AFTER DECEMBER 13TH, 2015,
10 MR. JOHNSON HAS TO PROVE TO YOU THAT HIS, THE JURY INSTRUCTION
11 SAYS, REMOVING HIM AS IMAGING DEPARTMENT SUPERVISOR. WE'LL
12 TALK ABOUT THE EVIDENCE ON THAT POINT. THERE'S ONLY ONE OTHER
13 ACTION THAT YOU'RE CONSIDERING TODAY AS AN ADVERSE EMPLOYMENT
14 ACTION UNDER THE LAW, AND THAT IS WHETHER OR NOT MR. JOHNSON'S
15 TRANSFER TO THE PUBLIC UTILITIES DEPARTMENT IN APRIL 2016 WAS
16 AN ADVERSE EMPLOYMENT ACTION.

11:07:27

17 ALL RIGHT. LET'S TURN TO WHAT AN ADVERSE EMPLOYMENT
18 ACTION IS, AND I'M GOING TO SHOW YOU THIS INSTRUCTION WHICH IS
19 AT PAGE 23. ARE YOU ABLE TO SEE THAT INSTRUCTION? OKAY. SO
20 THIS IS ANOTHER SITUATION WHERE THE WORDS REALLY, REALLY
21 MATTER, AND THIS IS AN EXCELLENT INSTRUCTION OF THE LAW ON
22 ADVERSE EMPLOYMENT ACTION, AND I WANT TO DRAW YOUR ATTENTION TO
23 A COUPLE OF THE WORDS. IN THE FIRST LINE, AN ACTION IS AN
24 ADVERSE EMPLOYMENT ACTION IF A REASONABLE EMPLOYEE WOULD HAVE
25 FOUND THE ACTION MATERIALLY ADVERSE. LET'S STOP THERE. WHAT

11:08:44 1 DOES "REASONABLE EMPLOYEE" MEAN? IT'S NOT THE WAY MR. JOHNSON
2 FEELS ABOUT IT. IT'S THE WAY AN OBJECTIVE, NEUTRAL,
3 REASONABLE, NOT ANGRY, PERSON WOULD FEEL ABOUT IT. SO THAT'S
4 YOU GUYS. THAT'S THE JURY.

5 THAT'S THE JURY SYSTEM THAT WE'RE SO FORTUNATE IN
6 THIS COUNTRY TO HAVE, IS THAT THE EIGHT OF YOU CAN STEP BACK
7 FROM THIS SITUATION, YOU CAN STEP BACK AND REVIEW IT
8 OBJECTIVELY, NOT BY THE WAY MR. JOHNSON SAYS THAT HE WAS
9 FEELING ABOUT THE WORK ENVIRONMENT OR HE REPORTED TO MS. CRUZ
10 ABOUT THE WORK ENVIRONMENT. HIS REPORT TO MS. CRUZ THAT HE WAS
11 BEING RETALIATED AGAINST IS NOT EVIDENCE. THAT'S THE SAME
12 PERSON THAT TESTIFIED HERE TODAY TELLING MS. CRUZ AT THE TIME,
13 THIS IS THE WAY I'M FEELING. SO IT'S A REASONABLE EMPLOYEE.
14 IT'S NOT HOW MR. JOHNSON FEELS. AND THEN, IT CAN'T JUST BE ANY
11:10:03 15 ACTION MR. JOHNSON FEELS IS, YOU KNOW, NEGATIVE. IT HAS TO BE
16 MATERIALLY ADVERSE, MEANING IT MIGHT HAVE DISSUADED, AGAIN, A
17 REASONABLE EMPLOYEE, NOT MR. JOHNSON, FROM MAKING OR SUPPORTING
18 A CHARGE OF DISCRIMINATION.

19 THIS DOES NOT REQUIRE AN EMPLOYEE TO PROVE HE WAS
20 FIRED OR DEMOTED. WE ACCEPT THAT. HE HASN'T BEEN. IT'S BEEN
21 -- LOSE TRACK OF TIME -- SOME ALMOST FIVE YEARS, FOUR YEARS,
22 SINCE MR. JOHNSON'S FILED HIS INITIAL GRIEVANCE. HE'S STILL AT
23 THE CITY WORKING, AND HE MIGHT NOT LIKE WHERE HE'S AT, BUT
24 WE'LL TALK ABOUT THAT TOO; AND YOU KNOW WHAT ELSE THE EEO
25 POLICY PROTECTS AND THE LAW PROTECTS? IT PROTECTS MR. JOHNSON

11:11:04

1 FROM ANY RETALIATION FOR FILING A LAWSUIT. THERE WILL BE NO
2 REPERCUSSIONS TO MR. JOHNSON'S EMPLOYMENT BY THIS LAWSUIT.
3 HOWEVER, WHAT IS REQUIRED BY MATERIALLY ADVERSE EMPLOYMENT
4 ACTION OR MATERIALLY ADVERSE EMPLOYMENT ACTION IS PROOF THAT
5 THE EMPLOYEE ENDURED A SIGNIFICANT HARM RISING ABOVE ORDINARY
6 WORKPLACE PROBLEMS, MINOR ANNOYANCES OR A LACK OF GOOD MANNERS.

7 WHILE ROUTINE EMPLOYMENT ACTIONS SUCH AS A JOB
8 REASSIGNMENT AND THE IMPOSITION OF A MORE BURDENSOME WORK
9 SCHEDULE CAN BE CONSIDERED MATERIALLY ADVERSE TO A REASONABLE
10 EMPLOYEE IN CERTAIN INSTANCES, YOU MUST DETERMINE WHETHER ANY
11 PARTICULAR ACTION BY THE CITY WAS MATERIALLY ADVERSE TO A
12 REASONABLE PERSON IN MR. JOHNSON'S POSITION CONSIDERING ALL THE
13 CIRCUMSTANCES, CONSIDERING NOT AN ISOLATED CIRCUMSTANCE BUT ALL
14 OF THE CIRCUMSTANCES. SO YOU'RE ASKED TO STEP BACK AND TAKE A
15 LOOK BETWEEN DECEMBER 13TH OF 2015 AND APRIL OF THAT YEAR. WAS
16 -- DO THE TOTALITY OF THE CIRCUMSTANCES AND THE EVIDENCE THAT
17 YOU HEARD ESTABLISH THAT MR. JOHNSON WAS REMOVED FROM HIS ROLE
18 AS IMAGING DEPARTMENT SUPERVISOR? DO THEY SUPPORT THAT MR.
19 JOHNSON WAS FORCED OR SUBJECTED TO A TRANSFER TO THE PUBLIC
20 UTILITIES DEPARTMENT ON APRIL 2016?

11:12:12

21 AND FINALLY, THE THIRD ELEMENT, HE HAS TO BE
22 SUBJECTED TO ONE OF THOSE TWO ACTIONS, EITHER REMOVING HIM AS
23 IMAGING DEPARTMENT SUPERVISOR OR FORCING HIM TO TRANSFER TO THE
24 PUBLIC UTILITIES DEPARTMENT BECAUSE OF HIS PARTICIPATION IN A
25 PROTECTED ACTIVITY. AND THIS IS WHERE WORDS ARE REALLY, REALLY

11:13:29 1 | IMPORTANT. I'M JUST GOING TO LEAVE HERE JUST A MOMENT TO WRITE
2 | TWO WORDS, AS MR. JOHNSON'S LAWYER DID. "BUT FOR." "BUT FOR."
3 | THE JURY INSTRUCTION THAT IS THE LAW PROVIDES THAT A PLAINTIFF
4 | IS SUBJECTED TO AN ADVERSE EMPLOYMENT ACTION BECAUSE OF HIS
5 | PARTICIPATION IN A PROTECTED ACTIVITY IF THAT ACTION WOULD NOT
6 | HAVE OCCURRED BUT FOR THAT PARTICIPATION.

7 | MR. JOHNSON NEEDS TO PROVE TO YOU THAT THE TWO
8 | ACTIONS THAT HE CLAIMS WERE ADVERSE EMPLOYMENT ACTIONS UNDER
9 | THE LAW HAPPENED FOR NO OTHER REASON THAN THAT HE FILED
10 | ALLEGATIONS ON SEPTEMBER 9TH, 2015; FOR NO OTHER REASON THAN
11 | THAT, WAS HIS DUTIES TAKEN AWAY? MR. JOHNSON CANNOT PROVE THAT
12 | CAUSATION ELEMENT. HE CAN'T PROVE IT BECAUSE HIS GRIEVANCE ON
13 | SEPTEMBER 9TH, 2015, CONTAINED ALLEGATIONS THAT WERE PROTECTED
14 | BY THE LAW AND NOT PROTECTED BY THE LAW. HE CAN'T TIE THESE
11:15:40 15 | ACTIONS DIRECTLY TO HIS COMPLAINTS THAT MS. BEALE WAS PROMOTING
16 | RELIGION IN THE WORKPLACE BECAUSE IT'S A FACT THAT THERE WERE
17 | -- THERE WAS MORE IN THIS GRIEVANCE PACKAGE THAT MS. CRUZ
18 | TESTIFIED SHE SPENT A MONTH PREPARING AS THE SENIOR LABOR
19 | REPRESENTATIVE FOR THE M.E.A. THAN THIS SLICE OF IT, THE SLICE
20 | OF IT THAT WAS REPORTED TO MR. BARCLAY'S OFFICE.

21 | AND THE H.R. PORTION OF THE INVESTIGATION WAS
22 | CONCLUDED IN NOVEMBER OF 2015, PRIOR TO WHEN MR. JOHNSON CLAIMS
23 | THAT THE RETALIATION BEGAN. AND THEN IN JANUARY OF THIS YEAR
24 | -- THE TIMELINE IS IMPORTANT -- IN JANUARY OF 2015, A FEW
25 | MONTHS AFTER THE H.R. PORTION WAS COMPLETED, THE FACT FINDING

11:16:45 1 FROM H.R. HAD BEEN COMPLETED, AND IN JANUARY, MS. CRUZ WAS
2 UPSET. SHE WAS UPSET BECAUSE AT THE CONCLUSION OF THE
3 FACT-FINDING, MS. BEALE REMAINED THE DEPUTY DIRECTOR. AGAIN,
4 WE DON'T KNOW WHAT DISCIPLINE TOOK PLACE. BUT WE KNOW IN
5 JANUARY, BEFORE MR. BARCLAY'S OFFICE EVEN FINISHED THEIR
6 INVESTIGATION AND CONCLUDED IT, THE UNPROTECTED GRIEVANCES, THE
7 GRIEVANCES NOT PROTECTED BY FEDERAL LAW, THAT THAT FINDING HAD
8 BEEN CONCLUDED AND THAT THE CITY CLERK'S OFFICE -- YOU HEARD
9 MS. MALAND HAD ALREADY IMPLEMENTED SEVERAL CORRECTIVE ACTIONS
10 IN RESPONSE TO THAT BY IMPLEMENTING A TRAINING, TRYING TO HIRE
11 AN H.R. LIAISON. SHE WAS SINCERELY COMMITTED TO ADDRESSING HER
12 WORKPLACE CONCERNS AND IMPROVING MORALE AND THAT ALL STARTED
13 HAPPENING IN JANUARY, AT THE SAME TIME THAT KELLY CRUZ FIRST
14 RAISED WITH THE CITY'S H.R. DEPARTMENT THE REQUEST THAT MR.
11:18:15 15 JOHNSON BE REMOVED FROM THE DEPARTMENT ENTIRELY.

16 THAT DIVORCE, THAT DIVORCE THAT PLAINTIFF'S COUNSEL
17 TALKED ABOUT, MR. JOHNSON ASKED FOR IT. HE ASKED FOR IT IN
18 JANUARY OF 2015 BEFORE MR. BARCLAY'S OFFICE HAD EVEN CONCLUDED
19 THEIR INVESTIGATION. AND THERE WERE A LOT OF COMMUNICATIONS,
20 COMMUNICATIONS THAT WERE TESTIFIED TO BY MR. SCHWABE THAT WERE
21 ACKNOWLEDGED BY THE TESTIMONY OF MS. CRUZ THAT ARE DOCUMENTED
22 IN THE E-MAIL AT EXHIBIT 41 IN MID-JANUARY OF 2016 WHEN MS.
23 MALAND IS COMMUNICATING WITH THE H.R. DEPARTMENT, JUDY VON
24 KALINOWSKI, AS WELL AS MR. SCHWABE, WHO IS CC'D ON THAT E-MAIL.
25 COMMUNICATIONS ABOUT, ALL RIGHT, SO I'VE HEARD BECAUSE I'VE

11:19:21 1 BEEN INFORMED THAT KELLY CRUZ OR THE M.E.A. HAS REQUESTED THAT
2 MR. JOHNSON BE REMOVED TO A DIFFERENT DEPARTMENT; I'VE HEARD
3 THIS IS HAPPENING. SHE DOESN'T SAY, YOU KNOW, OH, YEAH, LET'S
4 DO IT RIGHT NOW, LET'S DO IT IMMEDIATELY. NO, THERE'S NOTHING
5 LIKE THAT. SHE'S WORRIED. SHE'S WORRIED ABOUT THE MORALE IN
6 HER WORKPLACE. SHE HAD A GRIEVANCE FILED BY THE M.E.A. IN
7 SEPTEMBER OF 2015 MAKING A BUNDLE OF DIFFERENT CHARGES AGAINST
8 HER DEPUTY DIRECTOR. AND ONE INVESTIGATION HAD ALREADY
9 CONCLUDED. THEY HAD PROVIDED HER WITH INFORMATION ON THAT AND
10 SHE HAD JUMPED ON IT. SHE HAD STARTED ADDRESSING IT LAST
11 JANUARY, AND AT THE SAME TIME, THE M.E.A. WAS UPSET. THEY WERE
12 UPSET BECAUSE MS. BEALE WAS STILL IN HER JOB. THEY WANTED HER
13 FIRED. THAT'S WHAT THIS IS ABOUT.

14 SO LET'S TALK ABOUT THAT MONTH OF JANUARY 2016 A
11:20:50 15 LITTLE BIT MORE. MS. CRUZ CONTACTED H.R. SAYING WE WANT HIM
16 MOVED OUT OF A DIFFERENT DEPARTMENT. MR. SCHWABE EXPLAINED TO
17 YOU THE RATIONALE FOR NOT IMMEDIATELY DOING THAT BECAUSE IT
18 WOULD LOOK POTENTIALLY RETALIATORY TO MR. JOHNSON TO TAKE HIM
19 OUT OF THE ENVIRONMENT WHILE ONE INVESTIGATION HAD CONCLUDED
20 AND ANOTHER WAS CONTINUING. SO THEY TALKED ABOUT OTHER
21 SOLUTIONS. AND WHAT WAS PROPOSED? WHAT WAS PROPOSED WAS THAT
22 AS AN INTERIM MEASURE, AND NOT NECESSARILY ONLY AN INTERIM
23 MEASURE -- THERE'S NO TESTIMONY, NO EVIDENCE TO SUPPORT, BUT
24 YET EVIDENCE THAT WOULD CONTRADICT ANY NOTION THAT MR. JOHNSON
25 COULD HAVE JUST CONTINUED UNDER THE ARRANGEMENT THAT HE HIMSELF

11:21:46 1 CHOSE IN JANUARY OF 2015 -- '16, TO BE SUPERVISED BY MS.
2 MENDOZA.

3 THE E-MAIL THAT'S AT EXHIBIT 41 DISCUSSES, OKAY,
4 WE'RE NOT GOING TO MOVE HIM OUT OF THE DEPARTMENT, THAT
5 WOULDN'T BE APPROPRIATE RIGHT NOW, BUT WHAT CAN WE DO RIGHT
6 NOW; AND WE CAN OFFER HIM TO BE SUPERVISED BY THE TWO ANALYSTS
7 IN THE RECORDS MANAGEMENT DIVISION, ELENA MENDOZA OR SABRINA
8 TATUM, AND HE CHOSE ELENA MENDOZA. AND YOU CAN PROBABLY
9 UNDERSTAND WHY. SHE'S A VERY, VERY PERSONABLE, NICE PERSON.
10 AND SHE CAME IN AND TESTIFIED. SHE'S NOT IN A LEVEL OF HIGH
11 AUTHORITY. SHE'S A WORKING SUPERVISOR, AND SHE TOOK ON THE
12 SUPERVISION OF ANOTHER WORKING SUPERVISOR, MR. JOHNSON, WHO
13 WHILE PLAINTIFF'S COUNSEL WOULD LIKE TO SUGGEST A CREDIBILITY
14 PROBLEM ON MRS. BEALE'S PART, THE FACT OF THE MATTER IS WE
11:23:10 15 DIDN'T HAVE ANY TESTIMONY OR EVIDENCE THAT MR. BETHANY'S
16 POSITION WAS NOT REPLACED BY ANOTHER DEPUTY CLERK AFTER HE LEFT
17 IN DECEMBER. BUT THE FACT IS, AND BASED ON THE ORGANIZATIONAL
18 CHART THAT WE SHOWED YOU, WHICH I BELIEVE IS EXHIBIT 157, THAT
19 THE STRUCTURE IN THERE AS OF LATE JANUARY 2016 WHEN MS.
20 MENDOZA STARTED TO SUPERVISE MR. JOHNSON WAS IDENTICAL IN
21 DECEMBER OF 2015 AS IT WAS IN FEBRUARY.

22 AND THAT IS THAT THERE ARE TWO DEPUTY CITY CLERK
23 POSITIONS UNDER THE POSITION OF MR. JOHNSON AS IMAGING
24 DEPARTMENT SUPERVISOR. THE ONLY COMPARISON THAT IS VALID HERE
25 IS AN APPLES-TO-APPLES COMPARISON. IT'S NOT A COMPARISON TO

11:24:21 1 WHAT THE STRUCTURE WAS LIKE IN THE ORGANIZATION IN AUGUST 2015
2 WHEN MR. JOHNSON PRESENTED HIS -- WELL, HE DIDN'T PRESENT IT
3 UNTIL SEPTEMBER AND MS. BEALE DIDN'T EVEN KNOW ABOUT IT UNTIL
4 OCTOBER. BUT MR. JOHNSON REFERRED TO AN ORGANIZATIONAL CHART
5 THAT HE FIXES IN TIME -- EVEN THOUGH IT'S NOT DATED, TO MY
6 KNOWLEDGE -- AT AUGUST 2015, AND IT SHOWS A LITTLE BIT OF A
7 DIFFERENT STRUCTURE BUT STILL THAT HE HAD AT LEAST TWO PEOPLE
8 REPORTING TO HIM AND THAT HE WAS DOING THE JOB OF IMAGING
9 DEPARTMENT SUPERVISOR.

10 MS. MENDOZA, MS. MALAND, MS. BEALE, THEY ALL TOLD YOU
11 THAT HE CONTINUED TO DO, PERFORM THE ROLE OF IMAGING DEPARTMENT
12 SUPERVISOR BOTH BEFORE AND AFTER FEBRUARY OF 2016. SO THERE
13 WAS ANOTHER CHOICE THAT WAS PRESENTED IN JANUARY OF 2016 OR
14 THAT WAS DISCUSSED. SOON AFTER -- SOUNDS LIKE IT WASN'T QUITE
11:25:50 15 AT THE TIME THAT MS. MALAND WROTE HER E-MAIL ON JANUARY 12TH
16 BECAUSE MR. SCHWABE TESTIFIED HE THOUGHT IT WAS A COUPLE WEEKS
17 LATER. SO IT WOULD HAVE BEEN MAYBE LATE JANUARY, EARLY
18 FEBRUARY, BUT IT WAS RIGHT AT THE TIME THAT MS. MENDOZA BECAME
19 MR. JOHNSON'S SUPERVISOR BECAUSE WHAT HAPPENED? WHAT DID MS.
20 MENDOZA SAY? SHE SAID, WENT TO MR. JOHNSON, I SAID, HEY, I'M
21 GOING TO BE YOUR SUPERVISOR, WHY DID YOU CHOOSE ME? I CHOSE
22 YOU OVER MR. BIAGI, THAT'S WHAT MR. JOHNSON SAID. THERE'S NO
23 REASON AT ALL TO BELIEVE, NOT BELIEVE THE ACCOUNT THAT MS.
24 MENDOZA PROVIDED. DID SHE COME IN HERE AND MAKE THAT UP? NO,
25 SHE DID NOT. NOR DID MS. MALAND, NOR DID MR. SCHWABE MAKE UP

11:27:08 1 THAT THERE WERE DISCUSSIONS THAT STARTED IN EARLY 2016 AND
2 STILL OPEN TO DISCUSSION AND ON THE TABLE IN APRIL 2016 WHEN
3 MR. JOHNSON CHOSE TO TRANSFER TO THE PUBLIC UTILITIES
4 DEPARTMENT THAT HE COULD STAY IN THE CITY CLERK'S OFFICE, THAT
5 HE COULD STAY THERE AND WORK IN LEGISLATIVE AFFAIRS UNDER MR.
6 BIAGI.

7 THE ONLY EVIDENCE THAT OPTIONS WERE NOT PROVIDED TO
8 MR. JOHNSON WAS THE TESTIMONY OF MR. JOHNSON DURING HIS DIRECT
9 EXAMINATION WHEN HIS ATTORNEYS ASKED HIM WHETHER THERE WAS
10 CHOICES AND HE DENIED IT. HE DENIED IT ON THE WITNESS STAND.
11 HE TESTIFIED HE WAS NEVER GIVEN THE OPTION OF A DIFFERENT
12 SUPERVISOR TO REPORT TO, INCLUDING MS. TATUM. MS. TATUM'S NAME
13 IS REFERENCED IN THE E-MAIL. AS PLAINTIFF'S COUNSEL'S SAYS,
14 YOU NEED TO LOOK AT NOT AT ELECTRONIC MAIL BUT E-MAIL OF
11:28:30 15 EVIDENCE. IT SAYS SABRINA TATUM AND ELENA MENDOZA WERE
16 DISCUSSED AT THAT TIME.

17 BUT CERTAINLY NOT TO BE DISCOUNTED IS THE TESTIMONY
18 OF THE WITNESSES. MR. SCHWABE TOLD YOU THAT HE WAS IN
19 CONTINUAL CONVERSATION WITH MS. CRUZ AND THAT IT WAS LARGELY BY
20 TELEPHONE. THIS IS THE CITY'S LARGEST UNION, AND THIS IS THEIR
21 SENIOR LABOR REP. SHE TESTIFIED SHE HAS MONTHLY MEETINGS AT
22 THE H.R. DEPARTMENT. SHE TESTIFIED THERE'S PHONE CALLS;
23 THERE'S E-MAILS. IT'S NOT AS IF -- THERE'S JUST NO REASON TO
24 BELIEVE OR HAVE MUCH CREDENCE IN ANYTHING, FRANKLY, THAT MR.
25 JOHNSON TESTIFIED TO ON HIS DIRECT EXAM BECAUSE YOU SAW A MUCH

11:29:36 1 DIFFERENT MR. JOHNSON WHEN HE WAS CROSS-EXAMINED BY ASSISTANT
2 CITY ATTORNEY GEORGE SCHAFFER. PLAINTIFF'S COUNSEL TALKED ABOUT
3 DEMEANOR, TONE, THOSE THINGS THAT MAKE THE WITNESS CREDIBLE.
4 I'D LIKE TO JUST SHOW YOU A LITTLE CLIP OF SOME OF THE VIDEO
5 THAT WAS OFFERED AS IMPEACHMENT EVIDENCE BASED ON MR. JOHNSON'S
6 DEPOSITION AND CONTRADICTORY STATEMENTS MADE BY HIM DURING HIS
7 DEPOSITION VERSUS WHAT HE CAME TO COURT AND TESTIFIED TO.

8 (VIDEO DEPOSITION PLAYED.)

9 MS. ADEMA: MR. JOHNSON HAD A CHOICE. HE DIDN'T HAVE
10 TO GO TO CHOLLAS. MS. CRUZ INDICATED THAT HE NEEDED TO MAKE A
11 QUICK DECISION SO SHE COULDN'T CHECK IT OUT ANY FURTHER. MR.
12 SCHWABE TOLD YOU THAT THERE WAS NO TIME DEADLINE FOR MS. CRUZ
13 TO RESPOND TO HIM. IT DIDN'T TAKE LONG FOR MR. JOHNSON AND MS.
14 CRUZ TO DECIDE TO SELECT THE OPTION OF HIM LEAVING THE
11:32:21 15 DEPARTMENT BECAUSE HE HAD BEEN WANTING TO LEAVE THE DEPARTMENT
16 SINCE JANUARY. SO IT DIDN'T TAKE THEM LONG AFTER THE
17 INVESTIGATION CONCLUDED BY MR. BARCLAY'S OFFICE WHICH
18 SUBSTANTIATED HIS ALLEGATIONS FOR HIM TO DECIDE, MS. CRUZ TO
19 DECIDE, YEAH, I'LL GO AHEAD, YOU KNOW, NOW I'M GOING TO RUN
20 WITH THIS; OKAY, IT'S ALL CONCLUDED, BOTH PARTS OF THE
21 INVESTIGATION ARE CONCLUDED SO I'LL REACH OUT; I'LL HAVE MS.
22 CRUZ REACH OUT TO THE H.R. DEPARTMENT AND MOVE ALONG THIS
23 CHANGE OF DEPARTMENTS THAT I WANTED ALL ALONG.

24 AND MS. CRUZ TOLD YOU ABOUT SOME VERY, VERY
25 ATTRACTIVE REASONS FOR MR. JOHNSON TO MOVE TO THE PUBLIC

11:33:20 1 UTILITIES DEPARTMENT: LARGER DEPARTMENT, MORE PROMOTIONAL
2 OPPORTUNITIES, MORE PROSPECTIVE PROMOTION, EARN MORE. SO IT'S
3 REALLY SURPRISING BECAUSE WITH THE GUIDANCE OF MS. CRUZ AT THE
4 TIME SAYING THAT THERE WERE POSITIVES TO THE TRANSFER TO THE
5 PUBLIC UTILITIES DEPARTMENT THAT BOTH OF THEM WOULD TAKE THE
6 POSITION THAT THERE WEREN'T ANY OPTIONS. AND OF COURSE, MR.
7 SCHWABE EXPLAINED, THERE'S ALWAYS THE OPTION OF SEEING WHAT THE
8 NEXT VACANCY IS. BUT THE FACT OF THE MATTER IS THAT
9 MRS. SCHWABE DID HIS JOB. WHEN MS. CRUZ APPROACHED HIM, MR.
10 SCHWABE IS LIKE, ALL RIGHT, I GUESS THEY STILL WANT THIS. SO
11 HE JUMPED ON IT, FOUND OUT WHAT'S VACANT RIGHT NOW, WHAT HE'S
12 QUALIFIED FOR, I NEED HIS RESUME, I NEED TO MATCH HIM. HE
13 FOUND A MATCH, AND MR. JOHNSON SAID YES, AND HE WAS OFF AND
14 RUNNING.

11:34:31 15 NOW WE SAW ALL THE PICTURE. WE HEARD PLAINTIFF'S
16 COUNSEL TALKING ABOUT THE SMELL OF URINE FROM THE BATHROOM.
17 NONE OF THAT SOUNDS GOOD. NONE OF THAT SOUNDS GOOD. BUT DID
18 ANYBODY -- WAS THERE ANY EVIDENCE AT ALL THAT SHEILA BEALE,
19 THAT MS. MALAND, THAT MR. SCHWABE EVEN HAD ANY KNOWLEDGE THAT
20 HIS OFFICE WOULD BE BY A BATHROOM AND HE MIGHT SMELL URINE?
21 NO. THERE'S NO EVIDENCE OF THAT. AND THE FACT OF THE MATTER
22 IS MR. JOHNSON HAS TO SHOW THAT WHAT IS ADVERSE IS NOT --
23 WHAT'S MATERIAL ADVERSE IS NOT WHERE HE WAS SITTING AND WORKING
24 BUT HOW HE GOT THERE, AND HE CHOSE TO GO THERE.

25 I DON'T WANT TO KEEP YOU ALL TOO MUCH LONGER, BUT I

11:35:36 1 DO NEED TO TOUCH ON A COUPLE MORE KEY THINGS. THIS E-MAIL --
2 COULD WE SHOW EXHIBIT 19? AFTER DECEMBER 13 OF '13, MR.
3 JOHNSON MUST PROVE BY A PREPONDERANCE OF THE EVIDENCE THAT HE
4 WAS REMOVED FROM THE POSITION OF IMAGING DEPARTMENT SUPERVISOR.
5 MS. MENDOZA, HIS DIRECT SUPERVISOR, WHO WAS SIGNING OFF ON HIS
6 TIME, TAKING, YOU KNOW, CARE OF THAT EVEN THOUGH MR. JOHNSON
7 DIDN'T RECOLLECT IT, RECEIVING REPORTS FROM MR. JOHNSON ABOUT
8 WHAT HE WAS DOING, KNEW THE STRUCTURE OF THE IMAGING SECTION
9 BOTH BEFORE AND AFTER SHE BECAME HIS SUPERVISOR SAID NO, NO,
10 NO, HE CONTINUED TO PERFORM IN THAT ROLE. SHE DIDN'T KNOW
11 THAT, YOU KNOW, SHE HAD BEEN NAMED THE SUPERVISOR. SHE WAS
12 JUST SUPERVISING THE SECTION.

13 AND YOU KNOW WHAT? SHE DIDN'T EVEN RECEIVE THIS
14 E-MAIL. YOU KNOW WHY? THE ONLY REASON YOU WOULD RECEIVE THIS
11:37:10 15 E-MAIL IS IF YOU HAPPENED TO E-MAIL MS. BEALE ABOUT SOMETHING
16 WHILE SHE WAS OUT OF THE OFFICE ON TRAINING FOR THOSE FEW DAYS.
17 THAT WOULD BE THE ONLY REASON YOU GOT IT. SO THERE WAS A LOT
18 OF INNUENDO CREATED BY MR. JOHNSON THIS COULD HAVE GONE TO ANY
19 OF THE 40 PEOPLE IN THE DEPARTMENT, MAYBE IT WENT TO ALL 11,000
20 PEOPLE IN THE CITY. YOU KNOW, WELL, WE DIDN'T HAVE ANYBODY
21 COME IN HERE AND SAY, I RECEIVED THIS E-MAIL AND I THOUGHT MR.
22 JOHNSON HAD BEEN REMOVED FROM HIS POSITION. THIS IS A -- THIS
23 IS SILLY.

24 MS. BEALE TOLD YOU THAT SHE REALIZES SHE MADE A
25 MISTAKE. IT APPEARED IN AN AWKWARD WAY. MS. MENDOZA HAD JUST

11:38:10 1 BECOME MR. JOHNSON'S SUPERVISOR. THERE WAS INVESTIGATIONS
2 GOING ON. MS. BEALE HAD BEEN TOLD, YOU'RE NOT SUPERVISING MR.
3 JOHNSON. SHE DIDN'T WANT TO CREATE THE IMPRESSION THAT SHE WAS
4 STILL IN LOOP WITH QUESTIONS, YOU KNOW, FOR THE IMAGING
5 SECTION.

6 THERE'S A REALLY IMPORTANT INSTRUCTION THAT, GIVEN
7 THE TIME, I WON'T DISPLAY, BUT IT'S AT PAGE 24 AND IT TALKS
8 ABOUT WHAT IS NOT UNLAWFUL. AND IT'S AN EMPLOYER'S DECISION,
9 AND THAT WOULD MEAN THE AGENTS OF THE EMPLOYER, ANY ONE OF THE
10 CITY'S WITNESSES WHO YOU HEARD FROM BECAUSE THE CITY ONLY WORKS
11 THROUGH ITS PERSONNEL. YOU SAW, YOU KNOW, ALL OF THE CITY'S
12 WITNESSES WHO CAME THIS WEEK AND TESTIFIED AND TOOK, YOU KNOW,
13 THE TIME AWAY FROM THEIR JOBS TO APPEAR AND EXPLAIN THE STORY
14 AND EXPLAIN IT TO YOU. THOSE ARE PEOPLE, JUST LIKE MR. JOHNSON
11:39:37 15 IS A PERSON, AND THEY ARE ALL INVESTED IN WHAT THEY DID AND THE
16 JOB THAT THEY DID, JUST AS MR. JOHNSON IS INVESTED IN HIS WORK
17 FOR THE CITY.

18 SO WHAT YOU SEE AT THE INSTRUCTION THAT APPEARS AT
19 PAGE 24 IS THAT A DECISION MAY BE MISTAKEN, UNWISE OR EVEN
20 UNREASONABLE, BUT STILL LAWFUL. AN EMPLOYER HAS THE DISCRETION
21 AND THE PEOPLE WORKING FOR THAT EMPLOYER -- MR. SCHWABE, MS.
22 MALAND, MS. BEALE, MS. MENDOZA, MR. BARCLAY -- HAS THE
23 DISCRETION TO MAKE THE EMPLOYMENT DECISIONS IT CHOOSES, AS LONG
24 AS THOSE DECISIONS ARE NOT IN RETALIATION FOR THE EXERCISE OF A
25 PROTECTED RIGHT. THAT'S ALL THAT'S PROTECTED HERE: THE RIGHT

11:40:35 1 TO MAKE AN ALLEGATION OF DISCRIMINATION THAT IS FOLLOWED
2 THROUGH BY BEING INVESTIGATED BY THE EEIO OFFICE OF THE CITY, A
3 SIX-MONTH INVESTIGATION, WITNESSES ARE -- AS MR. BARCLAY'S
4 LETTER TO MR. JOHNSON CONVEYS, WITNESS ARE INTERVIEWED,
5 DOCUMENTS ARE REVIEWED. WE REVIEWED IT ALL, AND WE FOUND
6 SUFFICIENT EVIDENCE SUPPORTS YOUR ALLEGATION.

7 DOES IT MAKE ANY SENSE? DOES IT MAKE ANY SENSE THAT
8 IMMEDIATELY MR. JOHNSON SAYS, OKAY, BUT I STILL WANT TO LEAVE
9 THE DEPARTMENT WITHOUT -- AND IS SO CONCERNED ABOUT NEXT STEPS
10 BUT DOESN'T REACH OUT TO MR. BARCLAY'S OFFICE AND SAY, WELL,
11 I'M KIND OF CONCERNED ABOUT STAYING BECAUSE THIS AND THIS
12 HAPPENED TO ME AND THERE MIGHT BE RETALIATION? HE DOESN'T DO
13 THAT. NO. HE LEAVES. AND THEN WHAT DOES HE DO? HE FILES A
14 COMPLAINT. HE GOES TO THE FEDERAL GOVERNMENT AND FILES A
11:41:48 15 COMPLAINT WITH THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.
16 THAT'S THE FIRST STEP TO FILING THIS LAWSUIT. HE FILES A
17 COMPLAINT. THE COMPLAINT IS SENT, AS IS CUSTOMARY, TO THE CITY
18 FOR A RESPONSE, AND MR. BARCLAY RESPONDS IN WRITING.

19 AND THE ONLY THING NEW IN THAT COMPLAINT IS THIS
20 CLAIM OF RETALIATION AND MR. BARCLAY -- A FULL-FLEDGED
21 INVESTIGATION AT THAT POINT ISN'T NEEDED. HE HAD DONE AN
22 INVESTIGATION. SO HE CONTACTS INDIVIDUALS INVOLVED AND HE
23 CONCLUDES, YOU KNOW, I JUST DON'T SEE ANYTHING HERE. HE
24 DOESN'T SEE ANY EVIDENCE OF RETALIATION AND HE REPORTS THAT.
25 JUST AS MR. SCHWABE DIDN'T SEE IT WHEN HE WAS, WHEN HE WAS

11:42:47 1 COMMUNICATING WITH KELLY CRUZ. HE DIDN'T SEE IT EITHER. IN
2 FACT, MR. SCHWABE SAID HE HADN'T EVEN RECEIVED EXHIBIT 19. MS.
3 CRUZ DIDN'T SEND HIM THAT; APPARENTLY, SHE WAS JUST KIND OF
4 GENERALLY EXPLAINING HE WAS REMOVED FROM HIS DUTIES. BUT IT
5 CAUGHT MR. SCHWABE'S ATTENTION. SO HE WENT TO MS. MALAND, THE
6 CITY CLERK APPOINTED BY THE CITY COUNCIL, WHO PLAINTIFF'S
7 COUNSEL WOULD LIKE TO PORTRAY AS COMPLETELY UNACCOUNTABLE TO
8 ANYONE WHICH IS FAR FROM THE TRUTH.

9 IN EXHIBIT 40, IF YOU LOOK AT THE TEXT OF THAT
10 EXHIBIT, SHE IS -- OR EXCUSE ME. I THINK IT'S 41. SHE'S
11 SAYING TO DARRIN SCHWABE AND JUDY VON KALINOWSKI: AS I STATED
12 IN MY RESPONSE TO THE CITY COUNCIL PRESIDENT, AFTER THE H.R.
13 FACT-FINDING, THESE ARE THE CORRECTIVE MEASURES THAT I'M GOING
14 TO TAKE AT THIS TIME. AND SHE SPELLS THEM OUT OR SHE SPELLS
11:44:10 15 OUT IN THE E-MAIL THE CORRECTIVE MEASURES, AND THEN IN THE
16 SECTION WHERE SHE'S TALKING ABOUT MR. JOHNSON'S REQUEST TO
17 LEAVE OF THE DEPARTMENT, I BELIEVE THAT'S THE PART WHERE SHE
18 SAYS, THIS IS WHAT I REPORTED TO CITY COUNCIL PRESIDENT SHERRI
19 LIGHTNER, AN ELECTED OFFICIALS. SHE'S APPOINTED BY THE CITY
20 COUNCIL. SHE IS ACCOUNTABLE.

21 SO THERE'S A LOT HERE. SO YOU'VE HEARD A LOT IN A
22 SHORT PERIOD OF TIME. THE CITY HAS TRUST IN YOUR JUDGMENT FROM
23 TAKING THE POSITION OF THE REASONABLE EMPLOYEE IN THIS
24 SITUATION AND SO I, LIKE MR. VANDERPOOL, WILL TAKE A LOOK AT
25 THE JURY INSTRUCTIONS, OR RATHER, THE SPECIAL VERDICT FORM WITH

11:45:21

1

YOU.

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ACTUALLY, YOU KNOW, THERE IS ONE MORE THING THAT I FORGOT TO SAY THAT I THINK IS IMPORTANT ABOUT THE WHOLE IMAGING SUPERVISOR DUTIES ISSUE. COULD YOU SHOW EXHIBIT 46 PLEASE? EXHIBIT 46 I WANT TO DRAW YOUR ATTENTION TO, AND THIS IS DISPLAYED A COUPLE DIFFERENT TIMES FROM E-MAILS THAT ARE IN EVIDENCE SENT BY MR. JOHNSON DURING THE RELEVANT TIMEFRAME AND AFTER FEBRUARY OF 2016 WHEN HE SAID THAT HIS ROLE AS IMAGING SUPERVISOR HAD BEEN TAKEN AWAY. IF YOU JUST LOOK AT THE SIGNATURE BLOCK ON THAT E-MAIL, IT SAYS RASEAN JOHNSON AND UNDER IT, IMAGING SUPERVISOR, AND THE DATE OF THIS E-MAIL IS APRIL 14TH, 2016. SO HOPEFULLY THERE'S SOME CONTEXT NOW FOR YOUR DECISION ON WHETHER OR NOT THAT'S AN ADVERSE EMPLOYMENT ACTION.

11:47:10

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ALL RIGHT. WE'LL TAKE A, HOPEFULLY, A FAIRLY BRIEF LOOK AT THE SPECIAL VERDICT FORM. QUESTION NUMBER ONE: DID THE CITY REMOVE RASEAN JOHNSON'S TITLE AND OR DUTIES AS IMAGING DEPARTMENT SUPERVISOR AT ANY TIME AFTER DECEMBER 13, 2015? THE LAW ON ADVERSE EMPLOYMENT ACTION AND THE FACTS COMPEL YOU, IN THE CITY'S VIEW, TO ANSWER THIS QUESTION AS NO. QUESTION NUMBER ONE, THE EVIDENCE SUPPORTS AND THE LAW SUPPORTS, SHOULD BE ANSWERED IN THE NEGATIVE. THE INSTRUCTIONS THAT FOLLOW STATE: IF YOU ANSWER NO, SKIP QUESTION TWO AND PROCEED TO QUESTION 4. THE SECOND QUESTION HAS TO DO WITH IMAGING DUTIES SUPERVISOR AND WHETHER OR NOT THAT WAS ACTUALLY ADVERSE. YOU

11:48:42

1 DON'T GET TO THAT IF THE DUTIES WERE NEVER REMOVED.

2 SO GOING ON NOW TO QUESTION NUMBER FOUR: WAS RASEAN
3 JOHNSON'S TRANSFER TO THE PUBLIC UTILITIES DEPARTMENT AN
4 ADVERSE EMPLOYMENT ACTION? THAT SHOULD ALSO BE ANSWERED NO.
5 BECAUSE WHAT IS AN ADVERSE EMPLOYMENT ACTION? IT'S SOMETHING
6 THAT YOU HAVE BEEN SUBJECTED TO, NOT THAT YOU CHOOSE. AND MR.
7 JOHNSON'S ANSWER THAT HE HAD NO CHOICE IS JUST NOT CREDIBLE.
8 IT'S NOT BELIEVABLE. I'M GOING TO ADDRESS QUESTION FIVE IN
9 CASE THERE'S ANY DOUBT IN YOUR MIND THAT QUESTION NUMBER FOUR
10 IS NO.

11 IF FOR SOME REASON YOU FIND THAT MR. JOHNSON HAS
12 PROVED BY A PREPONDERANCE OF THE EVIDENCE THAT HE WAS FORCED TO
13 LEAVE THE CITY CLERK'S OFFICE IN APRIL OF 2016, YOU MOVE ON TO
14 QUESTION NUMBER FIVE. DID RASEAN JOHNSON'S TRANSFER TO THE
15 PUBLIC UTILITIES DEPARTMENT OCCUR BECAUSE OF HIS PROTECTED
16 ACTIVITY OF FILING A GRIEVANCE WITH THE CITY ALLEGING WORKPLACE
17 DISCRIMINATION? SO HERE IS A POINT WHERE WORDS, AGAIN, MATTER.
18 WHAT IS "BECAUSE OF HIS PROTECTED ACTIVITY"? SO WE WENT OVER
19 THE DEFINITION THAT THE JUDGE READ TO YOU AND THAT I READ TO
20 YOU. THE DEFINITION IS THAT, BUT FOR, FOR NO OTHER REASON THEN
21 HIS ALLEGATIONS OF WORKPLACE DISCRIMINATION DID HE, WAS HE
22 FORCED OUT OF THE CITY CLERK'S OFFICE? DOESN'T MAKE ANY SENSE.

11:50:41

23 HE WAS ASKING TO LEAVE IN JANUARY, AND KELLY CRUZ AND
24 MR. SCHWABE SAID THAT THOSE CONVERSATIONS CONTINUED AS THE
25 INVESTIGATION, THE SECOND INVESTIGATION, THE ONE THAT MR.

11:51:50 1 BARCLAY'S OFFICE WAS DOING, PROGRESSED UNTIL THEY HAD A FINAL
2 RESOLUTION. DID MR. JOHNSON PROVE THAT THERE WAS SOMETHING
3 BETWEEN HAROLD BARCLAY'S LETTER OF MARCH 28 COMMUNICATING THAT
4 THERE WAS SUFFICIENT EVIDENCE TO SUPPORT THE ALLEGATIONS ABOUT
5 PROMOTING RELIGION IN THE WORKPLACE THAT CAUSED HIM TO HAVE
6 KELLY CRUZ WITHIN DAYS, A WEEK, CALL DARRIN SCHWABE AND SAY,
7 OKAY, SO HE STILL WANTS TO LEAVE, LET'S FIND HIM A SPOT, AND
8 DARRIN DOES IT. THEY WERE JUST WAITING, WAITING FOR THE OTHER
9 OPPORTUNITY.

10 THE KIND OF STUFF THAT HAS BEEN ALLUDED TO IN TERMS
11 OF THE ATMOSPHERE, UNCOMFORTABLE, I WAS AWKWARD, THERE WAS ONE
12 THING THAT I THINK MR. JOHNSON SAID IN HIS TESTIMONY AND IT WAS
13 REALLY VAGUE, BUT HE SAID MS. MALAND OR RATHER MS. BEALE TOLD
14 PEOPLE NOT TO TALK TO ME. AND SHE SAID THAT DIDN'T HAPPEN AND
11:53:16 15 SHE, I BELIEVE, PROVIDED SOME CONTEXT FOR THAT, THAT IT WAS
16 ABOUT A VERSATILE OR SOME SYSTEM OR ANOTHER THAT MR. JOHNSON
17 WASN'T RESPONSIBLE FOR ANYMORE. IT GOES WITHOUT SAYING THAT IT
18 WAS STRESSFUL TO HAVE TWO INVESTIGATIONS GOING ON. THAT'S NOT
19 WHAT MATERIALLY ADVERSE EMPLOYMENT ACTION. OUR WORKPLACES ARE
20 STRESSFUL SOMETIMES. NO QUESTION ABOUT THAT.

21 ALL RIGHT. SO WAS MR. JOHNSON FORCED OUT OF THE
22 PUBLIC UTILITIES DEPARTMENT FOR NO OTHER REASON BUT FOR
23 PROTECTED ACTIVITY OF FILING A GRIEVANCE? NO. HE WASN'T. HE
24 WANTED TO GO. HE ALREADY STARTED GOING. HE HAD MORE
25 PROMOTIONAL OPPORTUNITIES IN THE PUBLIC UTILITIES DEPARTMENT.

11:54:17 1 IT WAS A LARGER DEPARTMENT. THERE'S A LOT OF OPPORTUNITIES IN
2 THAT DEPARTMENT. THERE'S MORE MONEY IN THAT DEPARTMENT. IT
3 BILLS CUSTOMERS FOR WATER AND OTHER SERVICES.

4 MR. JOHNSON, WE DIDN'T REFUTE HIS PERFORMANCE RECORD.
5 I'M CONFIDENT HE'S A QUICK LEARNER. I DON'T BELIEVE THAT'S A
6 DEAD END FOR HIM, AND I DON'T THINK THE EVIDENCE SHOWED THAT.

7 THE COURT: COUNSEL, WHAT YOU THINK IS NOT
8 RELEVANT.

9 MS. ADEMA: YOU'RE RIGHT, YOUR HONOR. I DON'T THINK
10 THE EVIDENCE SHOWED THAT. I DON'T THINK HE HAS SHOWN YOU. I
11 DON'T THINK HE'S PROVEN TO YOU THAT HE'S AT A DEAD END IN
12 PUBLIC UTILITIES.

13 ALL RIGHT. SO THE NEXT TWO QUESTIONS DEAL WITH
14 DAMAGES. YOU ONLY GET TO THE DAMAGES IF YOU PROVE LIABILITY.

11:55:17 15 THERE'S NO LIABILITY. THERE'S NO LIABILITY HERE. AND IT'S
16 REALLY IMPORTANT FOR ALL OF YOU TO RECOGNIZE WHAT THE JURY
17 INSTRUCTION SAYS IN TERMS OF THE JURY'S ROLE VERSUS THE COURT'S
18 ROLE IN THIS CASE. THE ONLY TYPE OF DAMAGE THAT YOU MAY AWARD
19 IS FOR EMOTIONAL HARM, MENTAL SUFFERING, INCONVENIENCE, LOSS OF
20 ENJOYMENT OF LIFE OR DAMAGE TO HIS PROFESSIONAL REPUTATION.
21 AND THE ONLY WAY YOU GET THERE IS IF YOU FIND LIABILITY. AND
22 LIABILITY CANNOT BE FOUND BASED ON TRYING TO PULL AT YOUR HEART
23 STRINGS, AND YOU KNOW, MAKE YOU, YOU KNOW, SOMEHOW FEEL SORRY
24 FOR MR. JOHNSON BECAUSE HE'S, YOU KNOW, A THIRD GENERATION CITY
25 EMPLOYEE AND HE SAYS THAT HE WANTED TO STAY IN THE CITY CLERK'S

11:56:31 1 OFFICE DESPITE THE EVIDENCE THAT HE HAD BEEN ON LIKE TRANSFER
2 LISTS PRIOR TO LEAVING THE OFFICE WHICH LEAVES YOU IN THE
3 POSITION TO TRANSFER FOR A ONE YEAR PERIOD OF TIME.

4 THIS CASE SHOULD NOT BE, CANNOT BE DECIDED BASED ON
5 YOUR FEELINGS, NEITHER YOUR FEELINGS ABOUT MR. JOHNSON NOR YOUR
6 FEELINGS ABOUT THEIR HAVING BEEN SOME EVIDENCE OF WORKPLACE
7 POLICIES BEING VIOLATED BY MS. BEALE BECAUSE THIS IS A MUCH
8 LARGER CASE THAN THAT. IT INVOLVES ALL OF THE VERY GENUINE
9 WITNESSES THAT YOU HEARD FROM IN THE PAST WEEK; MS. MALAND, THE
10 APPOINTED CITY CLERK WHO YOU COULD SEE HER PASSION FOR HER
11 POSITION IN RECITING THE OATH OF OFFICE TO YOU. SHE CARED.
12 SHE CARED THAT HER WORKPLACE MORALE IMPROVED, AND SHE DID
13 THINGS ABOUT IT.

14 MR. SCHWABE, HE'S BEEN, EVER SINCE HE GRADUATED
11:57:48 15 WORKING AS A PUBLIC SERVANT. WORKING -- HE'S SHOWED HIS
16 KNOWLEDGE OF H.R. PRACTICES AND PROCESSES. MR. BARCLAY, THE
17 EEO MANAGER, I DON'T THINK ANYBODY COULD LOOK AT MR. BARCLAY
18 OR I DON'T BELIEVE YOU COULD LOOK AT MR. BARCLAY AND NOT
19 BELIEVE THAT HE WAS PASSIONATE ABOUT EEO POLICIES. IN FACT, HE
20 FOUND A VIOLATION. WHAT HE DIDN'T FIND IS THAT THERE WAS ANY
21 RETALIATION. MS. MENDOZA, SHE DOESN'T HAVE ANY BIAS OR AX TO
22 GRIND. SPEAKING TO BIAS, I'D LIKE TO ADDRESS ONE THING. THE
23 IMPLICATION THAT BECAUSE MR. SCHWABE HAS DECIDED TO MAKE A
24 CHOICE AND GO TO THE CITY OF CARLSBAD AND WORK, IT'S A LOSS FOR
25 THE CITY. IT'S A GAIN FOR THEM. IT CERTAINLY DOESN'T REFLECT

11:59:01

1 POORLY ON HIS CREDIBILITY. IF ANYTHING, IT ENHANCES HIS
2 CREDIBILITY BECAUSE HE'S ALREADY ACCEPTED ANOTHER JOB. HE
3 DOESN'T HAVE TO COME HERE AND SAY ANYTHING THAT'S NOT ACCURATE,
4 AND HE DID NOT.

5 MR. VANDERPOOL: YOUR HONOR, BECAUSE OF THE LATE
6 HOUR, AND COUNSEL HAS GONE ON 100 -- I'M SORRY -- 64 MINUTES,
7 MAY WE GET AN ESTIMATE?

8 MS. ADEMA: I'M GOING TO CONCLUDE RIGHT NOW. THANK
9 YOU VERY MUCH FOR YOUR TIME. THE CITY APPRECIATES IT, AND IT
10 WOULD REQUEST THAT YOU RETURN A VERDICT FOR THE CITY,
11 REPRESENTING JUSTICE, JUSTICE FOR ALL OF THE PEOPLE WHO HAVE
12 BEEN SO INVOLVED WITH THIS CASE AND REPRESENTING ALSO JUSTICE
13 TO MR. JOHNSON. JUSTICE REQUIRES APPLICATION OF THE LAW TO THE
14 EVIDENCE. WE'D REQUEST THAT YOU RETURN A VERDICT FOR THE CITY
15 AND AWARD NO COMPENSATION TO MR. JOHNSON. THANK YOU.

12:00:13

16 MR. VANDERPOOL: YOUR HONOR, I WON'T GO OVER SEVEN
17 MINUTES. MR. CADIEXU WILL REMIND ME WHEN I HAVE TWO.

18 MR. VANDERPOOL: LADIES AND GENTLEMEN, IT'S NOW EVEN
19 MORE ABUNDANTLY CLEAR WHY YOU'RE HERE. THE CITY SAYS THIS IS
20 SILLY. LOSS OF JOB TITLE DUTIES, IT'S NOT SILLY FOR MR.
21 JOHNSON. WE'RE HERE FOR A HIGHER CALLING, LADIES AND
22 GENTLEMEN. IT'S IRONIC THAT THE CITY USES PETTY TORMENTS ABOUT
23 PLAINTIFF WHEN IT SAYS THOSE TORMENTS ARE NOT ACTIONABLE.

24 A FEW COMMENTS ABOUT A COUPLE OF THE CITY'S POINTS.
25 THE CITY TALKS ABOUT GRIEVANCE, BUT THE GRIEVANCE ISN'T BEFORE

12:01:20 1 YOU. HIS HONOR HAS DETERMINED THAT THE GRIEVANCE IS NOT GOING
2 TO BE SEEN. SO COUNSEL DISINGENUOUSLY ARGUES SOMETHING TO YOU
3 THAT YOU WILL NOT EVEN SEE. SAME THING AS TO THE DISCIPLINE
4 ABOUT MS. BEALE. THEY HIDE BEHIND A RIGHT TO PRIVACY. IT'S
5 HER PRIVACY. SHE COULD COME IN HERE AND WAVE A LETTER TO YOU
6 ALL AND SAY, HERE IS WHAT I HAD TO DEAL WITH BECAUSE OF WHAT I
7 DID TO PROMOTE MY RELIGIOUS BELIEFS IN THE WORKPLACE AND WAS
8 SCOLDED FOR RETALIATING AGAINST MY EMPLOYEE. SHE COULD BRING
9 THAT IN. SHE DIDN'T BRING THAT IN. THEY DON'T WANT THAT IN.
10 THAT'S DISINGENUOUS TO ARGUE SOMETHING YOU HAVEN'T SEEN AND
11 TELL YOU THAT IT WAS SOMEHOW CLOSE TO MEANINGFUL.

12 COUNSEL SAYS THERE'S NO REPERCUSSION FOR MR.
13 JOHNSON'S FILING HIS LAWSUIT IN THIS CASE. THAT'S IRONIC TOO.
14 I'LL QUOTE MS. MENDOZA: NOT YET. BECAUSE YOU HAVEN'T COME
12:02:10 15 BACK WITH A VERDICT. COUNSEL, THE CITY, SAYS SHEILA BEALE'S
16 FIRING IS WHAT THIS CASE IS ABOUT. NO, IT'S NOT. IT'S ABOUT
17 GETTING PROMOTING RELIGIOUS BELIEFS IN THE WORKPLACE TO STOP
18 AND ABOUT STOPPING RETALIATION. THAT'S A SOLUTION; TO DEMOTE,
19 CHANGE, MOVE MRS. BEALE. BUT THE LAWS ABOUT RETALIATION,
20 HARASSMENT OF ANY KIND, DON'T HAVE THE VICTIM GETTING MOVED,
21 BUT THAT'S EXACTLY WHAT HAPPENED HERE.

22 THE GEORGE OPTION OF SOME DIVISION, COUNSEL SAYS
23 THAT'S ON THE TABLE. WHAT TABLE? WHERE IS THAT OFFER? WHERE
24 IS THAT WRITING? OUT OF MR. SCHWABE'S HEAD? NO, IT'S NOT ON
25 THE TABLE. THEY HAVEN'T OFFERED ONE PIECE OF WRITING OR

12:03:01 1 EVIDENCE FOR THAT. COUNSEL FOR THE CITY REFERS TO, ALL
2 EMPLOYEES OF OUR CITY ARE VESTED IN THEIR JOBS AND VESTED IN
3 THEIR JOBS LIKE MR. JOHNSON. WELL, I SURE HOPE AND PRAY FOR
4 THEM THAT THEY'RE NOT TREATED LIKE MR. JOHNSON. AND IF THEY
5 ARE, AND ARE IN THIS ROOM, THEY SHOULD GET MY CARD.

6 SO A FEW CLOSING COMMENTS. THE CITY'S SEAL, LADIES
7 AND GENTLEMEN, YOU SAW IT AT THE BEGINNING, MR. CADIEXU
8 COMMENTED UPON IT, EVER VIGILANCE, SEMPER VIGILANTES; THAT WAS
9 NOT HONORED TO MR. JOHNSON. THAT WAS NOT HONORED. THE CITY'S
10 DEFENSES IS A WATER SANDWICH. LET ME TELL YOU MORE ABOUT
11 CHOICES THE CITY MADE. THE CITY CHOSE NOT TO INVESTIGATE MR.
12 JOHNSON'S RETALIATION COMPLAINTS, THE SUBTLETIES OF WHICH WERE
13 REPORTED TO HUMAN RESOURCES NUMEROUS TIMES. IRONICALLY, THEY
14 SAY, WELL, IT WAS CONVERSATIONS WITH KELLY CRUZ SO, YEAH, HE
12:04:03 15 WAS GIVEN A GEORGE OFFER. BUT WHEN THERE'S COMMUNICATIONS
16 MULTIPLE TIMES JANUARY, FEBRUARY AND ON ABOUT RETALIATION, THEY
17 DON'T LAUNCH EVEN ONE INVESTIGATION. THEY'RE DISMISSIVE OF IT,
18 CALLING THEM JUST "UNCOMFORTABLE."

19 THE CITY CHOSE NOT TO FOLLOW ITS OWN EEO'S POLICY.
20 THE CITY CHOSE TO INSTITUTE TRAININGS, TRACKING SYSTEMS,
21 ADDITIONAL STAFF FOR THE CLERK'S OFFICE BUT CHOSE NOT TO TAKE
22 ANY STEPS TO PROTECT MR. JOHNSON FROM RETALIATION. THE CITY
23 CHOSE TO PERMIT DEPUTY DIRECTOR BEALE TO GRADUALLY INCREASE A
24 STRANGLE HOLD ON MR. JOHNSON'S JOB DUTIES SO THAT HE HAD NO
25 CHOICE BUT TO TAP OUT. THAT'S WHAT HE DID. HE HAD NO CHOICE.

12:04:51

1 BECAUSE THE VICE WAS TURNING EVERY DAY.

2 AND THEY SET THAT TRAP FOR HIM. "THEY" BEING MALAND
3 AND DARRIN SCHWABE BECAUSE WHEN HE TAPPED OUT SAYING, IS THAT
4 AN OPTION -- BECAUSE KELLY CRUZ OFFERED IT AS A SUGGESTION
5 JANUARY 12TH, SAME DAY AS HER CONVERSATION, KELLY CRUZ WITH VON
6 KALINOWSKI, SHE SEIZED UPON IT. MALAND TOLD H.R., WHO CAN'T
7 TELL HER WHAT TO DO, PUSH THIS, GET THIS TRANSFER DONE, THIS IS
8 MEANINGFUL. THEY WERE THE ONES PUSHING FOR IT. JANUARY 12,
9 YOU'LL SEE THE E-MAIL. YOU KNOW THE E-MAIL. THEY CHOSE NOT TO
10 FOLLOW THEIR EEO RESOLUTION PROCESSES. THOSE ARE THE CHOICES
11 THE CITY MADE.

12 LAST POINTS: IN THIS SEAL, THE CITY ACTS THROUGH ITS
13 LEADERS, THROUGH ITS POWER CENTERS. MS. MALAND RECITED THE
14 OATH OF OFFICE BY MEMORY. THAT'S COMMENDABLE. PERHAPS SHE'S
15 TOO FAMILIAR WITH IT TO REMAIN COGNIZANT OF WHAT IT MEANS AND
16 WHAT IT OBLIGES HER TO DO. TO PROTECT THE CONSTITUTION, THE
17 LAWS OF THIS COUNTRY, THIS STATE, THIS CITY. SHE CAN RECITE
18 THEM, BUT THEY HAVE MEANING. THEY HAVE MEANING, AND THEY WERE
19 NOT GIVEN ANY EFFECT TO MR. JOHNSON. THE CITY'S SEAL INCLUDES
20 PILLARS, PILLARS SYMBOLIZING STRENGTH, STRENGTH IN CHARACTER,
21 STRENGTH IN REPUTATION AS AMERICA'S FINEST CITY, STRENGTH IN
22 THE COLLECTIVE PURPOSE AND COMPETENCE OF ITS EMPLOYEES.

12:05:49

23 BUT HOW IS THAT STRENGTH UTILIZED? HOW IS THAT POWER
24 BEING USED IN THIS CASE? TO UP HOLD THE VALUES FOR WHICH THIS
25 CITY STANDS FOR, TO BE EVER VIGILANT, TO ROOT OUT RETALIATION,

12:06:41 1 TO ROOT ON THE DISCRIMINATION AND HARASSMENT? EQUALITY,
2 JUSTICE, PROHIBITING RETALIATION IN ALL ITS FORMS, IS THAT THE
3 STRENGTH THE CITY IS FLEXING HERE? NO. INSTEAD THE POWER HAS
4 BEEN USED TO ASSIMILATE A BATTALION OF LEGAL PERSONNEL TO CRUSH
5 A MAN THAT DID HIS JOB AND DID IT WELL, INCLUDING REPORTING
6 ILLEGAL CONDUCT IN HIS WORKPLACE, A MAN THAT SPOKE TRUTH TO
7 POWER, THAT TRUSTED IN THE CITY'S PROCESS ONLY TO BE LEFT TO
8 FEND FOR HIS OWN PROFESSIONAL SURVIVAL BY LEAVING A JOB THAT HE
9 LOVED.

10 LASTLY, THE CITY SEAL INCLUDES A SHIELD, A SHIELD
11 CONSISTENT WITH THE RESPONSIBILITIES TO PROTECT AND TO SERVE.
12 IT'S THE SHIELD THAT'S ON THE BADGES OF OFFICERS THAT ENFORCE
13 THE LAW OF THIS CITY, ITS CITIZENS, INCLUDING EMPLOYEES LIKE
14 MR. JOHNSON. BUT LADIES AND GENTLEMEN, CONSIDER WHO AND HOW
12:07:46 15 THAT SHIELD IS PROTECTING, AND WHO IT IS PROTECTING IN THIS
16 CASE. NOT MR. JOHNSON. IT'S PROTECTING THEIR INSTITUTION.
17 THAT'S NOT WHAT THIS SHIELD WAS MEANT TO PROTECT.

18 LADIES AND GENTLEMEN, PLEASE DO JUSTICE IN THIS CASE.
19 IT IS WITHIN YOUR POWER TO DO IT, AND IT NEEDS TO SEND A
20 MESSAGE TO THE CITY AND ITS OFFICIALS. THEY JUST DON'T GET IT.
21 THANK YOU.

22 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, WE'VE
23 CONCLUDED. MY CLERKS NEED TO BE SWORN IN AS THE BAILIFFS.

24 (OATH ADMINISTERED TO THE BAILIFFS.)

25 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, IF YOU

12:08:51

1 WILL GO WITH MY CLERK'S INTO THE JURY ROOM, YOU CAN ASK THEM
2 ANY QUESTIONS. SHE'LL EXPLAIN THE LUNCH OPTIONS, MAYBE YOU
3 WANT TO BRING IT IN OR GO OUT, IT'S UP TO YOU.
4 (WHEREUPON, FURTHER PROCEEDINGS WERE REPORTED BUT NOT
5 TRANSCRIBED HEREIN, PER REQUEST.)

6 C-E-R-T-I-F-I-C-A-T-I-O-N

7
8 I HEREBY CERTIFY THAT I AM A DULY APPOINTED, QUALIFIED
9 AND ACTING OFFICIAL COURT REPORTER FOR THE UNITED STATES
10 DISTRICT COURT; THAT THE FOREGOING IS A TRUE AND CORRECT
11 TRANSCRIPT OF THE PROCEEDINGS HAD IN THE AFOREMENTIONED CAUSE;
12 THAT SAID TRANSCRIPT IS A TRUE AND CORRECT TRANSCRIPTION OF MY
13 STENOGRAPHIC NOTES; AND THAT THE FORMAT USED HEREIN COMPLIES
14 WITH THE RULES AND REQUIREMENTS OF THE UNITED STATES JUDICIAL
15 CONFERENCE.

16 DATED: JUNE 12, 2019, AT SAN DIEGO, CALIFORNIA.

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25
/S/ JULIET Y. EICHENLAUB
JULIET Y. EICHENLAUB, RPR, CSR
OFFICIAL COURT REPORTER
CERTIFIED SHORTHAND REPORTER NO. 12084