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UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA  
RASEAN JOHNSON, AN INDIVIDUAL .  
PLAINTIFF, . NO.17-CV-0410  
V. . MAY 23, 2019  
CITY OF SAN DIEGO, . SAN DIEGO, CALIFORNIA  
DEFENDANTS. . JURY TRIAL - DAY 3  
. . . . . (MORNING SESSION)

08:43:58

TRANSCRIPT OF JURY TRIAL - DAY 3  
(MORNING SESSION - 9:00AM TO 2:10PM)  
BEFORE THE HONORABLE M. JAMES LORENZ  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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

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

COURT REPORTER: JULIET Y. EICHENLAUB, RPR, CSR  
USDC CLERK'S OFFICE  
333 WEST BROADWAY, ROOM 420  
SAN DIEGO, CALIFORNIA 92101  
JULIET\_EICHENLAUB@CASD.USCOURTS.GOV

REPORTED BY STENOTYPE, TRANSCRIBED BY COMPUTER

08:43:58 1

INDEX

2 EXAMINATION

3 WITNESS NAME DIRECT CROSS REDIRECT RECROSS

4 HAROLD BARCLAY ..... 9 38 55 63

5 KELLY CRUZ ..... 65 112 116

6 ELENA MENDOZA ..... 120 128 136

7 ELIZABETH MALAND ..... 137 139 157 162

08:43:58 8

EXHIBITS

9 EXHIBIT EVIDENCE

10 40 ..... 158

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SAN DIEGO, CALIFORNIA; MAY 23, 2019; 8:49 A.M.

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3

THE CLERK: PLEASE BE SEATED AND COME TO ORDER.

4

COUNSEL, PLEASE STATE YOUR APPEARANCES FOR THE RECORD.

5

MS. ADEMA: ALISON ADEMA AND GEORGE SCHAEFER FOR THE

6

CITY.

7

MR. CADIEUX: JOHN CADIEUX AND JOHN VANDERPOOL ON

8

BEHALF OF MR. JOHNSON.

9

THE COURT: DID YOU ALL FIGURE OUT WHAT TO DO WITH

10

THESE QUESTIONS YET?

11

MR. CADIEUX: WE DID, YOUR HONOR.

12

THE COURT: GOOD.

13

MR. CADIEUX: SO WHAT WE'D LIKE THE ANSWER TO BE FOR

14

THE JURY QUESTION REGARDING THE ALLEGATIONS IN THE COMPLAINT IS

08:49:45

15

AS FOLLOWS: MR. JOHNSON'S SEPTEMBER 9TH, 2015, GRIEVANCE

16

COMPLAINED THAT MRS. BEALE WAS VIOLATING CITY EEO POLICIES BY

17

PROMOTING HER RELIGIOUS BELIEFS IN THE WORKPLACE. THE COURT

18

HAS DETERMINED THAT THE SPECIFIC NATURE OF MS. BEALE'S CONDUCT

19

IS NOT RELEVANT TO YOUR DETERMINING WHETHER MR. JOHNSON WAS

20

SUBJECTED TO RETALIATION. REGARDLESS OF THE SUBJECT MATTER,

21

MR. JOHNSON'S COMPLAINT WAS A PROTECTED ACTIVITY, MEANING THAT

22

THE LAW PROHIBITS RETALIATION FOR HIS HAVING COMPLAINED ABOUT

23

HER CONDUCT.

24

THE COURT: THAT'S FINE. IF YOU BOTH AGREE, I'LL

25

AGREE TO THAT. THAT'S DIRECT AND TO THE POINT. THE OTHER ONE

08:50:25 1 WAS SUPPOSEDLY -- THERE'S SOME EVIDENCE ON THAT, WASN'T THERE?

2 MR. CADIEUX: YEAH, THERE WILL BE, YOUR HONOR. I  
3 DON'T KNOW THAT IT'S NECESSARILY COME IN YET, BUT I THINK THE  
4 JURY'S QUESTIONS WILL BE ANSWERED TODAY BY EITHER KELLY CRUZ OR  
5 DARRIN.

6 THE COURT: ALL RIGHT. MY THOUGHTS ON HOW TO DEAL  
7 WITH THIS IS TO DEAL WITH THIS MAYBE AFTER THE EVIDENCE BUT --  
8 EVEN IN THE ONE THAT YOU JUST MENTIONED. BUT YOU -- IF YOU  
9 WANT TO DO THAT CURRENTLY, I COULD DO THAT, BUT SEEMS TO ME IT  
10 MIGHT BE BETTER TO DO THEM BOTH AT THE SAME TIME AND WAIT UNTIL  
11 WE FINISH.

12 MR. CADIEUX: YOU KNOW, THE ONLY THING, YOUR HONOR,  
13 IS I THINK THE -- I DON'T WANT THE JURORS TO HAVE THOSE  
14 QUESTIONS AT THE FOREFRONT OF THEIR MIND INSTEAD OF LISTENING  
08:51:20 15 TO WHAT WE'RE SAYING IS MY ONLY CONCERN. I AGREE THE SECOND  
16 QUESTION IS PROBABLY BETTER LEFT UNTIL THE END BECAUSE I THINK  
17 IT WILL BE ANSWERED. SO IT WILL PROBABLY BE MOOT.

18 THE COURT: YOU MEAN THE ONE THAT HAS TO DO WITH THE  
19 TWO SUPER --

20 MR. CADIEUX: YES.

21 THE COURT: WHAT DOES THE CITY THINK?

22 MS. ADEMA: I AGREE WITH COUNSEL. I WOULD RATHER  
23 HAVE THE FIRST QUESTION ANSWERED JUST AT THE BEGINNING SO  
24 PEOPLE AREN'T SCRATCHING THEIR HEADS.

25 THE COURT: THAT BEING SAID -- I'LL GO ALONG WITH IT.

08:51:53 1 THAT'S FINE. DO YOU WANT ME TO READ THAT? I HAVE NO PROBLEM  
2 IF ONE OF YOU CONSIDER IT A JOINT STATEMENT AND DO IT, AND YOU  
3 ALL CAN STAND UP AND DO IT MAYBE THIS MORNING.

4 MR. CADIEUX: IF YOU DON'T MIND GIVING THAT  
5 INSTRUCTION, YOUR HONOR, I THINK THAT WILL BE BEST.

6 THE COURT: I HAVE NO PROBLEM.

7 MS. ADEMA: YES, I BELIEVE IT WILL BE BEST JUST ALONG  
8 THE LINES THAT THIS IS ALMOST AN AMENDED STATEMENT OF THE CASE  
9 THAT YOU'RE PROVIDING.

10 THE COURT: RIGHT.

11 MS. ADEMA: YEAH.

12 THE COURT: OKAY. WOULD YOU GIVE ME A COPY? I  
13 DIDN'T WRITE IT DOWN.

14 MR. CADIEUX: YEAH. MAKE SURE YOU CAN READ MY  
08:52:33 15 HANDWRITING THERE AT THE BOTTOM.

16 THE COURT: MAYBE IF WE TOOK A SECOND AND I GET A  
17 COUPLE COPIES OF THIS AND SO WE HAVE A RECORD OF IT, AND I DO  
18 WANT TO PUT IT ON THE RECORD. I'LL DO THAT OUTSIDE THE  
19 PRESENCE OF THE JURY BECAUSE AT THE TIME WE DISCUSSED IT  
20 ORIGINALLY MY COMPUTER WAS DOWN, AND THEY WERE IN THERE TRYING  
21 TO FIX IT SO MY REPORTER WAS UNABLE TO COME OVER TO LISTEN TO  
22 WHAT WE HAD TO SAY, BUT I THINK IT NEEDS TO BE ON THE RECORD,  
23 OFFICIALLY. LET'S MAKE A COPY OF THAT NOW.

24 WHILE SHE'S GONE, I CAN PUT THIS ON THE RECORD.  
25 YESTERDAY, DURING A BREAK, I COMMUNICATED WITH BOTH COUNSEL

08:53:43 1 REGARDING A QUESTION THAT A COUPLE JURORS HAD PRESENTED TO THE  
2 COURT IN WRITING. ONE OF THEM WAS: WILL THE JURY SEE ANY  
3 EVIDENCE TO SUPPORT THE FINDING OF THE EEIO FINDING THAT  
4 SUBSTANTIATED MR. JOHNSON'S CLAIM? ANOTHER QUESTION WAS: WHAT  
5 WAS THE ALLEGATIONS RASEAN MADE THAT EEIO FOUND TRUE AND  
6 PROVIDED THE LETTER? AND THE THIRD WAS: DOES THE CITY HAVE  
7 ANY EVIDENCE THAT THEY OFFERED MR. JOHNSON A CHOICE OF TWO  
8 SUPERVISORS IN THE CITY CLERK'S OFFICE?

9 I HAVE SPOKEN WITH COUNSEL REGARDING THESE QUESTIONS  
10 AND COUNSEL HAS PROVIDED A RESPONSE THAT WILL BE GIVEN TO THE  
11 JURY THIS MORNING AND THAT WOULD INCLUDE A RESPONSE THAT  
12 APPLIES TO TWO OF THE QUESTIONS RELATING TO THE, WHAT THE  
13 DECISION OF THE EEIO, WHAT WAS IT BASED ON. AND THE SECOND  
14 QUESTION WILL BE PROVIDED BY EVIDENCE IN COMING WITNESSES, AND  
08:55:13 15 THEREFORE, I WILL NOT RESPOND TO THAT QUESTION. AND IF THERE'S  
16 A PROBLEM, WE WILL DEAL WITH IT AFTER THE EVIDENCE. THIS IS  
17 FOR THE RECORD, IN LIGHT OF THE FACT THAT THE ORIGINAL  
18 QUESTIONS WERE NOT PART OF THE RECORD AT THE TIME YESTERDAY  
19 THAT THEY WERE PROVIDED. OKAY. THANK YOU.

20 (PAUSE IN THE PROCEEDINGS.)

21 THE COURT: LET ME LOOK AT THIS AND MAKE SURE I CAN  
22 UNDERSTAND IT.

23 (PAUSE IN THE PROCEEDINGS.)

24 MR. SCHAEFER: YOUR HONOR, THERE'S ONE OTHER MATTER  
25 IF THE COURT WILL ALLOW THAT WE TAKE UP NOW.

08:58:15 1 THE COURT: SURE.

2 MR. SCHAEFER: AS YOU KNOW HAROLD BARCLAY, THE EEIO  
3 INVESTIGATOR, HE FOUND AS PART OF HIS INVESTIGATION THAT SOME  
4 OF THE ALLEGATIONS THAT MR. JOHNSON MADE REGARDING THE  
5 RELIGIOUS ACTIVITY IN THE WORK PLACE WERE SUBSTANTIATED AND A  
6 VIOLATION OF CITY POLICY. AND THE PLAINTIFF IS CALLING MR.  
7 BARCLAY AS THEIR NEXT WITNESS AND BECAUSE HE DID FIND IN FAVOR  
8 OF THE PLAINTIFF, I THINK HE'S MORE PROPERLY CHARACTERIZED AS  
9 BEING ALIGNED WITH THE PLAINTIFF'S CASE, AND THEREFORE, I WOULD  
10 REQUEST THAT THE COURT FIND THAT HE NOT -- THAT PLAINTIFF  
11 CANNOT ASK LEADING QUESTIONS OF THIS WITNESS. OR IN THE  
12 ALTERNATIVE, IF THE COURT DISAGREES, GIVEN THIS UNIQUE  
13 SITUATION, THAT EITHER SIDE CAN ASK LEADING QUESTIONS.

14 THE COURT: WELL, YES, WHEN WE HAVE DUAL WITNESSES,  
08:59:23 15 I'LL ALLOW BOTH OF YOU TO ASK LEADING QUESTIONS.

16 MR. SCHAEFER: THANK YOU, YOUR HONOR.

17 MR. CADIEUX: THAT'S FAIR.

18 (PAUSE IN THE PROCEEDINGS.)

19 THE COURT: DO WE HAVE ALL OUR JURY INSTRUCTIONS?

20 MR. CADIEUX: YOUR HONOR, I BELIEVE THERE'S A FEW WE  
21 DO NOT AGREE ON THAT WE STILL NEED TO RESOLVE.

22 THE COURT: MAYBE THEY COULD GET ME A COPY OF THOSE  
23 WHILE I'M OUT HERE WHEN WE HAVE THESE LITTLE BREAKS. I KNOW  
24 LINDSAY TOLD YOU IT'S OUR POLICY TO PROVIDE JURY INSTRUCTIONS  
25 BEFORE FINAL ARGUMENT SO YOU CAN USE THEM.

09:10:00

1 (PAUSE IN THE PROCEEDINGS.)

2 THE CLERK: JURY ENTERING.

3 (JURORS PRESENT.)

4 THE COURT: OKAY. FIRST, BEFORE WE GET STARTED,  
5 THERE WAS THREE QUESTIONS PROVIDED BY TWO OF THE JURORS  
6 YESTERDAY THAT I WANT TO RESPOND TO. I'LL READ THE QUESTIONS  
7 FIRST. ONE: DOES THE CITY HAVE ANY EVIDENCE THEY OFFERED MR.  
8 JOHNSON A CHOICE OF TWO SUPERVISORS IN THE CITY CLERK'S OFFICE?  
9 I'M GOING TO DECLINE TO RESPOND TO THAT QUESTION BECAUSE THE  
10 EVIDENCE IN THE TRIAL SHOULD PROVIDE THAT ANSWER OR A ANSWER  
11 THAT THE JURY CAN CONSIDER.

12 AS TO THE OTHER TWO, ONE OF THEM WAS: WILL THE JURY  
13 SEE ANY EVIDENCE TO SUPPORT THE FINDING OF THE EEIO FINDING  
14 THAT SUBSTANTIATED MR. JOHNSON'S CLAIM? WHICH IS REALLY A

09:13:32

15 DIFFERENT WAY OF SAYING THE SAME THING: WHAT WERE THE  
16 ALLEGATIONS RASEAN MADE THAT EEIO FOUND TRUE AND PROVIDED THE  
17 LETTER? IN THAT RESPONSE, I PUT THOSE QUESTIONS TO COUNSEL AND  
18 COUNSEL HAS CONSIDERED THEM. AND AS TO THOSE TWO, THE  
19 FOLLOWING WOULD BE THE RESPONSE AND THE ANSWER TO THAT  
20 QUESTION: MR. JOHNSON'S SEPTEMBER 9TH, 2015, GRIEVANCE  
21 COMPLAINED THAT MRS. BEALE WAS VIOLATING CITY EEO POLICIES BY  
22 PROMOTING HER RELIGIOUS BELIEFS IN THE WORKPLACE. THE COURT  
23 HAS DETERMINED THAT THE SPECIFIC NATURE OF MRS. BEALE'S CONDUCT  
24 IS NOT RELEVANT TO YOUR DETERMINING WHETHER MR. JOHNSON WAS  
25 SUBJECTED TO RETALIATION. REGARDLESS OF THE SUBJECT MATTER,

09:14:29 1 MR. JOHNSON'S COMPLAINT WAS A PROTECTED ACTIVITY, MEANING THE  
2 LAW PROHIBITS RETALIATION FOR HIS HAVING COMPLAINED ABOUT HER  
3 CONDUCT.

4 THAT IS THE RESPONSE TO THAT QUESTION. USUALLY THESE  
5 QUESTIONS COME AFTER THE JURY IS IN THE JURY ROOM, BUT IN THIS  
6 CASE IT CAME BEFORE, AND I BELIEVE THE BEST RESPONSE WAS TO  
7 DETERMINE AND ALLOW THE PARTIES TO REVIEW IT, AND THAT IS THE  
8 RESPONSE THAT WAS A JOINT RESPONSE BY THE PARTIES. SO YOU  
9 SHOULD FOLLOW THE LAW AND THE EVIDENCE AND THAT WOULD BE THE  
10 TOTALITY THAT I WOULD DISCUSS ABOUT THE SUBJECT MATTER. OKAY.  
11 LET'S MOVE ON AND START WITH OUR NEW WITNESS.

12 MR. CADIEUX: THANK YOU, YOUR HONOR. PLAINTIFF WILL  
13 CALL HAROLD BARCLAY AS AN ADVERSE WITNESS PLEASE.

14 THE COURT: OKAY.

09:15:35 15 (OATH ADMINISTERED.)

16 THE CLERK: THANK YOU. PLEASE BE SEATED. PLEASE  
17 STATE YOUR FIRST AND LAST NAME AND SPELL IT FOR THE RECORD.

18 THE WITNESS: FIRST NAME IS HAROLD, H-A-R-O-L-D.  
19 LAST NAME IS BARCLAY, B-A-R-C-L-A-Y.

20 DIRECT EXAMINATION

21 BY MR. CADIEUX:

22 Q. GOOD MORNING, MR. BARCLAY.

23 A. GOOD MORNING.

24 Q. MR. BARCLAY, YOU WORK FOR THE CITY OF SAN DIEGO; IS THAT  
25 RIGHT?

09:16:32 1 A. CORRECT.

2 Q. YOUR TITLE IS MANAGER OF THE EQUAL EMPLOYMENT

3 INVESTIGATION'S OFFICE?

4 A. CORRECT.

5 Q. THAT EQUAL EMPLOYMENT INVESTIGATION'S OFFICE IS ORGANIZED

6 UNDER THE UMBRELLA OF THE PERSONNEL DEPARTMENT; AM I CORRECT

7 ABOUT THAT?

8 A. CORRECT.

9 Q. AND SO YOU REPORT DIRECTLY TO THE PERSONNEL DIRECTOR?

10 A. CORRECT.

11 Q. WHO IS THAT CURRENTLY?

12 A. DOUGLAS EVERETTE(PHONETIC).

13 Q. WHO WAS IT IN 2016, IF YOU RECALL?

14 A. HADI DEHGHANI

09:17:10 15 Q. THANK YOU FOR SPARING ME HAVING TO PRONOUNCE THAT NAME.

16 SO DOES IT MEAN THAT BECAUSE YOU REPORT TO THE PERSONNEL

17 DIRECTOR THAT THE PERSONNEL DIRECTS YOUR INVESTIGATIONS?

18 A. NO.

19 Q. YOUR OFFICE ACTS INDEPENDENTLY OF ANY OTHER CITY

20 DEPARTMENT; CORRECT?

21 A. CORRECT.

22 Q. DO YOU GET ANY INPUT REGARDING YOUR INVESTIGATIONS FROM

23 EITHER PERSONNEL OR H.R. DEPARTMENTS?

24 A. CORRECT, I DO.

25 Q. WHAT TYPE OF INPUT DO YOU GET?

09:17:36 1 A. UNDER OUR POLICY, I WILL GET A COMPLAINT FROM AN EMPLOYEE  
2 WHO WENT THROUGH THE H.R. DEPARTMENT OR THROUGH THE PERSONNEL  
3 DIRECTOR OR SOME TYPE OF COMPLAINT.

4 Q. GOT YOU. BUT THEY DON'T TELL YOU HOW TO DO THE  
5 INVESTIGATION REGARDING THAT COMPLAINT, RIGHT?

6 A. NO.

7 Q. AND THAT'S TO ENSURE THAT YOUR INVESTIGATION IS FAIR AND  
8 UNBIASED?

9 A. CORRECT.

10 Q. WHAT IS THE PURPOSE OF THE EEIO OFFICE THAT YOU OVERSEE?

11 A. TO INVESTIGATE COMPLAINTS.

12 Q. DO YOU HAVE ANY ROLE IN RESOLVING THOSE COMPLAINTS?

13 A. YES.

14 Q. WHAT TYPE OF ROLE DO YOU HAVE IN RESOLVING EEO POLICY  
09:18:26 15 COMPLAINTS?

16 A. IF THERE ARE ANY MEDIATIONS OR ANY SETTLEMENT, I'M  
17 INVOLVED.

18 Q. AS EEIO MANAGER, DO YOU SUPERVISE EMPLOYEES?

19 A. YES.

20 Q. APPROXIMATELY HOW MANY INVESTIGATORS WORK IN YOUR OFFICE?

21 A. THREE.

22 Q. AND YOU ALSO EMPLOY A SECRETARY?

23 A. CORRECT.

24 Q. MR. BARCLAY, IN ADDITION TO THE THREE INVESTIGATORS, YOU  
25 ALSO PERSONALLY DO SOME INVESTIGATIONS; CORRECT?

09:18:56

1 A. CORRECT.

2 Q. YOU'RE FAMILIAR WITH THE CITY'S EQUAL EMPLOYMENT

3 OPPORTUNITY POLICY?

4 A. CORRECT.

5 Q. IF YOU COULD BRING UP EXHIBIT 12 PLEASE, ELYSIA. I BELIEVE

6 IT'S STIPULATED TO. I'D LIKE TO PUBLISH.

7 THE COURT: YES.

8 MR. CADIEUX: THANK YOU.

9 BY MR. CADIEUX:

10 Q. IF YOU CAN TAKE A LOOK AT THIS EXHIBIT, THIS IS THE CITY'S

11 ANNUAL STATEMENT REGARDING ITS EQUAL EMPLOYMENT OPPORTUNITY

12 POLICY; IS THAT RIGHT?

13 A. YES.

14 Q. THIS ONE APPEARS TO BE DATED JULY 1, 2017?

09:19:36

15 A. YES.

16 Q. I THINK I SEE HADI DEGHANI'S NAME THERE AS PERSONNEL

17 DIRECTOR. THAT'S YOUR SUPERVISOR?

18 A. YES.

19 Q. IN A NUTSHELL, CAN YOU EXPLAIN TO US WHAT THIS POLICY

20 COVERS REGARDING RETALIATION?

21 A. THIS POLICY COVERS RETALIATION, ANY KIND.

22 Q. OKAY. AND YOU'LL SEE THE LAST SENTENCE OF THAT FIRST

23 PARAGRAPH: VIOLATIONS OF THIS POLICY WILL RESULT IN

24 DISCIPLINARY ACTION, UP TO AND INCLUDING TERMINATION EVEN IF

25 IT'S THE FIRST TIME SUCH BEHAVIOR OCCURS.

09:20:20 1 YOU'LL AGREE THAT'S PART OF THE EEO POLICY?

2 A. YES.

3 Q. YOUR OFFICE RESPONDS TO ONE HUNDRED PERCENT OF THE  
4 COMPLAINTS IT RECEIVES REGARDING EEO VIOLATIONS; IS THAT  
5 RIGHT?

6 A. YES.

7 Q. WHAT DOES THAT MEAN, THAT YOUR OFFICE RESPONDS TO A  
8 COMPLAINT?

9 A. IT MEANS IF A COMPLAINANT COMES TO OUR OFFICE AND FILES A  
10 COMPLAINT, WE REVIEW THAT COMPLAINT TO SEE IF THE COMPLAINT IS  
11 THE BASIS OF DISCRIMINATION.

12 Q. IF YOUR INVESTIGATION REVEALS THERE WAS A VIOLATION OF THE  
13 EEO POLICY, DO YOU RECOMMEND ANY DISCIPLINARY ACTION BE TAKEN  
14 AGAINST THE EMPLOYEE?

09:21:05 15 A. NO.

16 Q. DO YOU HAVE THE POWER TO DISCIPLINE THE EMPLOYEE  
17 YOURSELF?

18 A. NO.

19 Q. WHO DOES?

20 A. THE APPOINTING AUTHORITY OF THAT DEPARTMENT OR WHERE THAT  
21 EMPLOYEE RESIDES.

22 Q. SO TO PUT IN CONTEXT TO THIS CASE, WITH REGARD TO MR.  
23 JOHNSON'S COMPLAINT, SINCE HE WAS COMPLAINING ABOUT BEHAVIOR  
24 FROM DEPUTY DIRECTOR SHEILA BEALE WHO WORKS IN THE CLERK'S  
25 OFFICE, WHO WOULD BE THE APPOINTING AUTHORITY?

09:21:41 1 A. ELIZABETH MALAND, THE CITY CLERK.

2 Q. SO IT WOULD BE UP TO MS. MALAND TO DETERMINE WHAT, IF  
3 ANYTHING, TO DO IN RESPONSE TO YOUR INVESTIGATION RESULTS?

4 A. CORRECT.

5 Q. YOU STARTED YOUR INVESTIGATION OF MR. JOHNSON'S EEO  
6 COMPLAINT SOMEWHERE AROUND OCTOBER 2015; DOES THAT SOUND RIGHT  
7 TO YOU?

8 A. AROUND THAT TIMEFRAME.

9 Q. AND YOU FINISHED IT IN MARCH OF 2016; RIGHT?

10 A. CORRECT.

11 Q. IS THAT TYPICAL FOR AN INVESTIGATION TO LAST THAT LONG FROM  
12 YOUR OFFICE?

13 A. NOT NECESSARILY.

14 Q. DURING THE PENANCY OF THE INVESTIGATION, DID YOU PROVIDE  
09:22:23 15 ANY UPDATES TO MR. JOHNSON ABOUT HOW THE INVESTIGATION WAS  
16 PROCEEDING?

17 A. NOT THAT I RECALL.

18 Q. HOW ABOUT TO HIS REPRESENTATIVE, KELLY CRUZ?

19 A. NOT THAT I CAN RECALL.

20 Q. DID YOU PREPARE A FINAL REPORT OF YOUR FINDINGS REGARDING  
21 YOUR INVESTIGATION INTO MR. JOHNSON'S COMPLAINT?

22 A. I PREPARED A RESPONSE TO THE FEDERAL GOVERNMENT, AND I SENT  
23 A LETTER, I SENT CORRESPONDENCE TO MS. MALAND. I'M NOT QUITE  
24 SURE I DID A REPORT.

25 Q. YOU DIDN'T PUT TOGETHER A REPORT WITH THE RESULTS OF YOUR

09:23:23

1 INVESTIGATION?

2 A. I CAN'T RECALL RIGHT NOW.

3 Q. DO YOU RECALL GIVING A DEPOSITION IN THIS CASE?

4 A. CORRECT.

5 Q. AND I ASKED YOU A BUNCH OF QUESTIONS AT MY OFFICE; DO YOU  
6 REMEMBER THAT?

7 A. CORRECT.

8 Q. AND YOU HAD TAKEN AN OATH ON THAT DAY TO TELL THE TRUTH AS  
9 BEST YOU COULD RECALL; CORRECT?

10 A. CORRECT.

11 Q. THAT DEPOSITION WAS APPROXIMATELY A YEAR OR SO AGO; DOES  
12 THAT SOUND RIGHT?

13 A. ABOUT A YEAR AND A HALF AGO.

14 Q. YEAR AND A HALF AGO. OKAY. I'D LIKE TO PLAY -- EXCUSE ME,

09:23:55

15 I'D LIKE TO SHOW A SECTION OF THE TRANSCRIPT OF THAT  
16 DEPOSITION, PAGE 26, LINE THREE THROUGH FIVE.

17 THE COURT: COUNSEL, WOULD YOU ASK HIM FIRST ABOUT IT  
18 AND SEE IF HE RECALLS IT?

19 BY MR. CADIEUX:

20 Q. SURE. DO YOU RECALL TELLING ME DURING THAT DEPOSITION  
21 SAYING YOU HAD PREPARED A REPORT OF FINDINGS REGARDING YOUR EEO  
22 INVESTIGATION INTO MR. JOHNSON'S COMPLAINT?

23 A. IT'S POSSIBLE, BUT I DON'T RECALL. I COULD HAVE A YEAR AND  
24 A HALF AGO TOLD YOU, YES. I DON'T RECALL THOUGH.

25 THE COURT: OKAY. YOU CAN.

09:24:32 1 BY MR. CADIEUX:

2 Q. IF WE CAN SHOW PAGE 26, LINE THREE THROUGH FIVE OF MR.  
3 BARCLAY'S DEPOSITION?

4 MR. SCHAEFER: NO OBJECTION, YOUR HONOR.

5 THE COURT: OKAY.

6 BY MR. CADIEUX:

7 Q. OKAY. I'LL READ THE LINES.

8 "QUESTION: AND DID YOU WRITE A FINAL REPORT  
9 REGARDING THE FINDINGS OF MR. JOHNSON'S INVESTIGATION?

10 ANSWER: CORRECT."

11 UPON CONCLUDING YOUR INVESTIGATION, WHO DID YOU  
12 NOTIFY?

13 A. I NOTIFIED THE PERSONNEL DIRECTOR AND MS. MALAND. LET ME  
14 BACK UP. I THINK I NOTIFIED THE HUMAN RESOURCE DEPARTMENT.

09:25:35 15 Q. WHY WOULD YOU HAVE NOTIFIED THE HUMAN RESOURCES  
16 DEPARTMENT?

17 A. BECAUSE IF I RECALL, THE HUMAN RESOURCE DEPARTMENT WAS THE  
18 REQUEST TO DO THE INVESTIGATION.

19 Q. AND YOU ALSO NOTIFIED MS. MALAND AS THE APPOINTING  
20 AUTHORITY?

21 A. CORRECT.

22 Q. AND YOU HAD MENTIONED THAT YOU HAD SENT A LETTER TO MS.  
23 MALAND REGARDING THE CONCLUSION OF YOUR INVESTIGATION?

24 A. CORRECT.

25 Q. COULD WE BRING UP EXHIBIT 6, PLEASE? MR. BARCLAY, IS THIS

09:26:14 1 THE NOTICE YOU RECALL SENDING TO MS. MALAND ON OR AROUND MARCH  
2 28TH, 2016?

3 A. THIS MAY NOT BE THE CORRECT ONE.

4 Q. OKAY. THAT'S YOUR SIGNATURE AT THE BOTTOM?

5 A. CORRECT. WE SENT TWO IN ERROR. ONE WAS IN ERROR, MARCH  
6 28TH. I THINK IT WAS APRIL 7TH WHERE WE ACTUALLY -- IS THIS  
7 THE CONCLUSION? IT MAY HAVE BEEN THE APRIL 7TH, AND THIS WAS  
8 PUT IN THE FILE INCORRECTLY.

9 Q. SO IS IT YOUR TESTIMONY YOU NEVER SENT THIS LETTER TO MS.  
10 MALAND?

11 A. NO. MY TESTIMONY IS THAT I DID SEND A SIMILAR LETTER TO  
12 MS. MALAND, BUT THIS PARTICULAR LETTER HERE, WHEN I WENT BACK  
13 TO LOOK, WE HAD A REVISION, AND WE SENT ONE ON APRIL 7TH.

14 Q. OKAY. WELL, LET ME ASK ABOUT THIS ONE. IF YOU COULD BLOW  
09:27:29 15 UP THE FIRST PARAGRAPH FOR ME, ELYSIA. IF YOU LOOK AT THE LAST  
16 SENTENCE THERE: BASED UPON INTERVIEWS AND A REVIEW OF RELEVANT  
17 DOCUMENTATION, THERE WAS SUFFICIENT EVIDENCE TO SUBSTANTIATE  
18 HIS ALLEGATIONS, MEANING RASEAN JOHNSON'S ALLEGATIONS; YOU  
19 AGREE THAT WAS THE RESULT OF YOUR INVESTIGATION?

20 A. CORRECT.

21 Q. AND YOU SENT MR. JOHNSON A SIMILAR LETTER TO THIS ONE ON  
22 THE SAME DATE, MARCH 28, 2016; CORRECT?

23 A. I SENT MR. JOHNSON A LETTER GIVING HIM THE RESULT AND HIS  
24 RIGHT TO APPEAL OUR INVESTIGATION IF HE CHOSE TO.

25 Q. LET'S SHOW YOU THAT LETTER, EXHIBIT 5 PLEASE. IS THIS THE

09:28:15 1 LETTER YOU SENT TO MR. JOHNSON?

2 A. CORRECT.

3 Q. AND YOU'LL SEE AT THE TOP: THE PURPOSE OF THIS  
4 CORRESPONDENCE IS TO ADVISE YOU THAT THE INVESTIGATION OF YOUR  
5 COMPLAINT HAS BEEN CONCLUDED. AND THE NEXT PARAGRAPH: AS A  
6 RESULT, IT HAS BEEN DETERMINED THAT SUFFICIENT EVIDENCE EXISTS  
7 TO SUPPORT YOUR ALLEGATIONS. SO THIS IS CONSISTENT WITH WHAT  
8 YOU WERE TELLING MS. MALAND TOO?

9 A. CORRECT.

10 Q. NOW YOU TYPICALLY PROVIDE A COPY OF YOUR REPORT OF  
11 INVESTIGATORY FINDINGS TO THE EMPLOYEE THAT FILED THE  
12 COMPLAINT; IS THAT CORRECT?

13 A. NO, WE DON'T PROVIDE REPORTS.

14 Q. YOU DON'T PROVIDE A REPORT OF INVESTIGATORY FINDINGS TO THE  
09:29:01 15 EMPLOYEE WHO FILED THE COMPLAINT?

16 A. NO. WE MEET WITH THE EMPLOYEE, AND WE DEBRIEF THE EMPLOYEE  
17 ON THE RESULT OF THE INVESTIGATION.

18 Q. OKAY. SO I GUESS THE DISTINCTION THERE IS YOU DON'T  
19 ACTUALLY PROVIDE A WRITTEN COPY OF YOUR FINDINGS, BUT YOU DO  
20 SIT DOWN WITH YOUR EMPLOYEE AND GO THROUGH THE FINDINGS THAT  
21 YOU MADE THROUGH YOUR INVESTIGATION; CORRECT?

22 A. CORRECT.

23 Q. AND YOU DEFINITELY DON'T PROVIDE A COPY OF THE  
24 INVESTIGATORY FINDINGS TO THE SUBJECT OF THAT COMPLAINT, DO  
25 YOU?

09:29:36

1 A. NO.

2 Q. AND PART OF THE REASON FOR THAT IS TO AVOID ANY POTENTIAL  
3 RETALIATION FROM THAT PERSON?

4 A. CORRECT.

5 Q. DID YOU SIT DOWN WITH MR. JOHNSON AND DISCUSS THE FINDINGS  
6 OF YOUR INVESTIGATION, AS YOU JUST TESTIFIED AS TYPICAL?

7 A. NOT ME. THE INVESTIGATOR WHO INVESTIGATED I RECALL HAD A  
8 CONVERSATION WITH MR. JOHNSON.

9 Q. WHICH INVESTIGATOR WAS THAT?

10 A. I THINK IT WAS MS. LAMAS(PH.).

11 Q. WHEN DID MS. LAMAS HAVE A CONVERSATION WITH MR. JOHNSON  
12 ABOUT THE OUTCOME OF YOUR INVESTIGATION?

13 A. IT WAS SHORTLY BEFORE THIS LETTER WENT OUT.

14 Q. OKAY. HOW DID YOU KNOW SHE HAD THAT CONVERSATION?

09:30:22

15 A. BECAUSE I'M THE EEO MANAGER AND SO EVERY DEBRIEF -- WE CALL  
16 IT DEBRIEF -- THAT THE INVESTIGATOR HAS WITH THE COMPLAINANT  
17 WE, SHE HAVE A CONVERSATION WITH ME ABOUT THE RESULTS OF THE  
18 INVESTIGATION. I'LL LOOK AT ALL THE DIFFERENT EVIDENCE. AND  
19 SO I KNEW WHAT THE RESULT OF THE INVESTIGATION WAS, AND IT WAS  
20 JUST A MATTER OF INFORMING MR. JOHNSON WHAT WE HAD, WHAT OUR  
21 INVESTIGATION HAD CONCLUDED.

22 Q. DID SHE TELL YOU THAT SHE SPOKE WITH MR. JOHNSON ABOUT THE  
23 FINDINGS OF YOUR INVESTIGATION?

24 A. I THINK SHE TOLD ME SHE SPOKE WITH MR. JOHNSON SEVERAL  
25 TIMES. I CAN'T RECALL THAT SPECIFIC, WHETHER SHE WAS

09:31:19 1 DEBRIEFING HIM AT THAT PARTICULAR TIME. MR. JOHNSON WAS NOT  
2 THE REQUESTER OF THE INVESTIGATION.

3 Q. IT WAS HIS COMPLAINT THOUGH, WASN'T IT?

4 A. NO.

5 Q. IT WAS NOT MR. JOHNSON'S GRIEVANCE?

6 A. IT WAS A REQUEST FROM THE HUMAN RESOURCE DEPARTMENT TO LOOK  
7 INTO ALLEGATIONS THAT WAS BROUGHT FORTH IN ANOTHER COMPLAINT,  
8 ANOTHER INVESTIGATION.

9 Q. BUT YOU UNDERSTOOD THE COMPLAINTS, THE EMPLOYEE WHO WAS  
10 MAKING THE COMPLAINTS WAS MR. JOHNSON?

11 A. CORRECT.

12 Q. DO YOU HAVE ANY EVIDENCE THAT YOU CAN SHARE WITH US,  
13 ANYTHING IN WRITING, CONFIRMING THAT MS. LAMAS HAD A MEETING  
14 WITH MR. JOHNSON TO DISCUSS THE RESULTS OF THAT

09:31:59 15 INVESTIGATION?

16 A. EVERYTHING THAT WE DID WAS IN THE CASE FILE; SO THAT CASE  
17 FILE WAS TURNED OVER.

18 Q. OKAY. AND IF THERE'S NOTHING IN THAT CASE FILE THAT SAYS  
19 THERE WAS A MEETING WITH MR. JOHNSON, IS THERE ANY WAY TO  
20 VERIFY THAT ACTUALLY HAPPENED?

21 A. TYPICALLY, IN THE CASE FILE WE -- ALL INTERVIEWS ARE PUT IN  
22 THE CASE FILE, EVEN DEBRIEFS.

23 Q. OKAY. WOULD IT SURPRISE YOU IF MR. JOHNSON SAID THAT THERE  
24 WAS NO SUCH MEETING WITH HIM TO DISCUSS THE OUTCOME?

25 A. I WOULDN'T BE SURPRISED BECAUSE MR. JOHNSON NEVER FOLLOWED

09:32:33 1 UP WITH OUR OFFICE. I SENT HIM A LETTER GIVING HIM THE  
2 OPPORTUNITY TO COME IN AND SPEAK TO US ABOUT THE COMPLAINT, AND  
3 HE WAS SILENT ON THAT ISSUE.

4 Q. LET'S PUT THAT LETTER BACK UP, EXHIBIT FIVE PLEASE. CAN  
5 YOU HIGHLIGHT THE THIRD FROM LAST PARAGRAPH, THE BIG SECTION IN  
6 THE MIDDLE WITH THE NUMBERS, THE ONE ABOVE THAT. IT STARTS  
7 WITH, "PLEASE BE ADVISED." THERE YOU GO. SO THIS WAS WHAT YOU  
8 WERE TELLING MR. JOHNSON IN THIS LETTER, RIGHT, THAT HE HAS THE  
9 RIGHT TO APPEAL THE DECISION TO THE CIVIL SERVICE COMMISSION  
10 WITHIN 10 DAYS OF RECEIPT?

11 A. CORRECT.

12 Q. AND THE APPEAL IS GOING TO BE BASED UPON EITHER THE  
13 INVESTIGATION WAS INCOMPLETE OR IMPROPERLY CONDUCTED, THE  
14 CONCLUSION OF THE INVESTIGATION IS INCORRECT BASED ON THE  
09:33:36 15 EVIDENCE, OR THE CONCLUSION OF THE INVESTIGATION IS INCORRECT  
16 BASED ON THE LAW; RIGHT?

17 A. CORRECT.

18 Q. IF YOUR INVESTIGATORY FINDINGS AND WHAT YOU'RE TELLING MR.  
19 JOHNSON IS THAT SUFFICIENT EVIDENCE EXISTS TO SUPPORT HIS  
20 ALLEGATIONS, WHY WOULD HE BE APPEALING SAYING THAT YOUR  
21 INVESTIGATION, THE CONCLUSION WAS INCORRECT BASED ON EVIDENCE  
22 OR THE LAW?

23 A. THIS IS STANDARD PRACTICE WE GIVE EVERY COMPLAINT OR EVERY  
24 PERSON WHO FILES A COMPLAINT OR INVOLVED WITH A COMPLAINT  
25 BECAUSE MR. JOHNSON MAY NOT HAVE BEEN HAPPY WITH THE RESULTS OF

09:34:07 1 THE INVESTIGATION EVEN THOUGH WE FOUND, SUBSTANTIATED HIS  
2 ALLEGATIONS, BUT WE STILL HAVE TO GIVE HIM THE RIGHT TO  
3 EXERCISE HIS RIGHT TO APPEAL OR NOT APPEAL.

4 Q. AND SO IT'S YOUR POSITION THAT WHAT MR. JOHNSON SHOULD HAVE  
5 DONE WHEN RECEIVING THIS LETTER IS COME TALK TO YOUR OFFICE  
6 ABOUT THE OUTCOME OF THE INVESTIGATION?

7 A. NO. WHAT I'M SAYING IS THAT, AND IF YOU LOOK AT THE SECOND  
8 PARAGRAPH, THE LAST PARAGRAPH, I OFFER, EXTENDED MY NUMBER,  
9 PERSONAL NUMBER, TELEPHONE, IF MR. JOHNSON HAD ANY ISSUES OR  
10 CONCERNS ABOUT OUR INVESTIGATION, IF HE HAD ANY QUESTIONS,  
11 PLEASE CALL ME. THAT WAS AN OPEN INVITATION TO MR. JOHNSON TO  
12 CLARIFY ANYTHING HE MAY HAVE HAD REGARDING THE INVESTIGATION.

13 Q. OKAY. DO YOU KNOW WHETHER MS. BEALE RECEIVED A COPY OF  
14 YOUR INVESTIGATORY FINDINGS?

09:35:07 15 A. NO.

16 Q. YOU DON'T KNOW?

17 A. I DON'T RECALL. NOT FROM ME, NOT FROM MY OFFICE.

18 Q. YOU GAVE A COPY TO ELIZABETH MALAND THOUGH; CORRECT?

19 A. I GAVE MS. MALAND THE LETTER.

20 Q. SHE DIDN'T GET A COPY OF YOUR INVESTIGATORY FINDINGS?

21 A. MY FINDINGS WENT TO THE HUMAN RESOURCES DEPARTMENT BECAUSE  
22 THE HUMAN RESOURCES DEPARTMENT REQUESTED WE DO THE  
23 INVESTIGATION.

24 Q. WELL, WHO WAS THE HUMAN RESOURCES DIRECTOR AT THAT TIME?

25 A. I THINK THE LETTER SAYS KAREN DECRESCENZO.

09:35:38 1 Q. DID JUDY VON KALINOWSKI, DID SHE RECEIVE A COPY OF THAT  
2 INVESTIGATORY REPORT?

3 A. I DON'T KNOW.

4 Q. WASN'T SHE THE H.R. DIRECTOR IN THE 2015-16 TIMEFRAME?

5 A. CORRECT.

6 Q. OKAY. DID YOU EVER TELL MS. DECRESCENZO OR MS. VON  
7 KALINOWSKI NOT TO SHARE A COPY OF YOUR INVESTIGATORY FINDINGS  
8 WITH MS. MALAND?

9 A. NO.

10 Q. SO THEY MIGHT HAVE?

11 A. I HAVE NO IDEA.

12 Q. DID YOU EVER MEET WITH MS. MALAND AS THE APPOINTING  
13 AUTHORITY TO DISCUSS THE OUTCOME OF YOUR INVESTIGATION?

14 A. I RECALL BEING IN A MEETING, BUT I DIDN'T MEET WITH HER  
09:36:16 15 PERSONALLY.

16 Q. DID YOU EVER DISCUSS THE OUTCOME OF YOUR INVESTIGATION WITH  
17 MS. MALAND?

18 A. I DON'T RECALL, BUT I MAY HAVE.

19 Q. DO YOU RECALL IN YOUR DEPOSITION THAT YOU HAD WITH ME WHEN  
20 I ASKED IF YOU EVER HAD A CONVERSATION?

21 MR. SCHAEFER: COUNSEL, CAN YOU PLEASE TELL ME THE  
22 LINE, AND LET ME LOOK AT IT BEFORE YOU PUBLISH IT?

23 MR. CADIEUX: SURE. I AM NOT GOING TO READ IT.

24 MR. SCHAEFER: OH, YOU'RE NOT GOING TO READ IT.

25 MR. CADIEUX: I'M LOOKING AT PAGE 94, LINES 14

09:37:08

1 THROUGH 18.

2 BY MR. CADIEUX:

3 Q. MR. BARCLAY, DO YOU RECALL ME ASKING YOU THAT SAME

4 QUESTION, WHETHER YOU HAD A CONVERSATION WITH MS. MALAND, AND

5 YOU TELLING ME THAT YOU DID NOT?

6 A. NO. I'M TELLING YOU I DIDN'T HAVE A CONVERSATION WITH HER,

7 PER SE. I MAY HAVE BEEN IN A GROUP SETTING AND SHE WAS IN THAT

8 MEETING. BUT I DIDN'T SCHEDULE OR HAVE A ONE-ON-ONE WITH

9 HER.

10 Q. OKAY. YOU NEVER BROUGHT HER IN TO HAVE A DISCUSSION ABOUT

11 WHAT SHE WAS GOING TO DO IN RESPONSE TO THE INVESTIGATION?

12 A. NO. NO.

13 Q. AND THERE WAS NO MEDIATION SESSION THAT YOU SET UP WITH MR.

14 JOHNSON AND MS. BEALE?

09:37:53

15 A. NO, I DIDN'T SET UP A MEDIATION SESSION.

16 Q. MR. BARCLAY, THE CITY MAINTAINS WRITTEN PROCEDURES FOR

17 RESOLVING EEO COMPLAINTS; CORRECT?

18 A. CORRECT.

19 Q. AND THOSE ARE LOCATED IN THE PERSONNEL MANUAL, RIGHT?

20 A. CORRECT.

21 Q. THAT'S SOMETHING MAINTAINED BY THE PERSONNEL OFFICE OR

22 PERSONNEL DEPARTMENT?

23 A. CORRECT.

24 Q. YOUR BOSS?

25 A. CORRECT.

09:38:16 1 Q. GENERALLY SPEAKING, THOSE PROCEDURES INCLUDE MEETING WITH  
2 THE EMPLOYEE AFTER THE INVESTIGATION, RIGHT?

3 A. CORRECT.

4 Q. MEETING WITH THE IMPACTED DEPARTMENT ABOUT THE  
5 INVESTIGATION; CORRECT?

6 A. CORRECT.

7 Q. AND HAVING MEDIATION SESSIONS TO COME TO SOME TYPE OF  
8 RESOLUTION ON BEHALF OF THE EMPLOYEE; IS THAT RIGHT?

9 A. CORRECT.

10 Q. THAT DIDN'T HAPPEN IN MR. JOHNSON'S CASE, DID IT?

11 A. NO.

12 Q. DID YOU EVER SIT DOWN WITH MRS. BEALE TO DISCUSS YOUR  
13 FINDINGS?

14 A. NO.

09:38:59 15 Q. LET'S LOOK AT THOSE COMPLAINT RESOLUTION PROCEDURES.  
16 ELYSIA, IF YOU COULD PULL UP EXHIBIT 1, PAGE 10. ELYSIA, IF  
17 YOU COULD BLOW UP PARAGRAPH 6.4.2. OKAY. MR. BARCLAY, THIS IS  
18 ONE OF THE COMPLAINT RESOLUTION PROCEDURES; CORRECT?

19 A. IT'S A COMPLAINT RESOLUTION PROCEDURE; CORRECT.

20 Q. IT SAYS THAT THE DEPUTY DIRECTOR OR HIS OR HER DESIGNEE  
21 WILL ENSURE THAT THE REPORTING AND SUBJECT EMPLOYEES ARE  
22 NOTIFIED OF THE FINAL DETERMINATION OF THE COMPLAINT. DO YOU  
23 AGREE WITH THAT?

24 A. CORRECT.

25 Q. WHAT DOES THAT NOTIFICATION TYPICALLY LOOK LIKE?

09:40:06 1 A. THAT COULD BE ANY TYPE OF NOTIFICATION BY THE APPOINTING  
2 AUTHORITY, WHICH IS IN THIS CASE THE DEPUTY DIRECTOR.

3 Q. SO THAT'S NOT SOMETHING THAT YOUR OFFICE IS RESPONSIBLE FOR  
4 DOING; THAT'S THE BURDEN OF THE DEPUTY DIRECTOR?

5 A. CORRECT.

6 Q. OF THE DEPARTMENT?

7 A. CORRECT.

8 Q. SINCE SHEILA BEALE WAS DEPUTY DIRECTOR OF THE CLERK'S  
9 OFFICE AND SHE WAS THE ONE WHO WAS THE SUBJECT OF THE  
10 COMPLAINT, WHO WOULD BE THE PERSON WHO IS SUPPOSED TO ENSURE  
11 THE REPORTING AND SUBJECT EMPLOYEES ARE NOTIFIED?

12 A. THAT I'M ASSUMING WOULD BE THE APPOINTING AUTHORITY, MS.  
13 MALAND, OR SHE COULD HAVE FARMED IT OUT TO ANOTHER DIRECTOR.

14 Q. SO IT WOULD BE YOUR EXPECTATION THAT MS. MALAND OR SOMEONE

09:40:50 15 ELSE AT THE DEPUTY DIRECTOR OR ABOVE LEVEL IN THE CLERK'S  
16 OFFICE WOULD HAVE SAT DOWN WITH MR. JOHNSON AND MS. BEALE TO  
17 DISCUSS THE OUTCOME OF YOUR INVESTIGATION?

18 A. NO, NOT IN THIS PROCESS.

19 Q. OKAY. EXPLAIN TO ME THAT.

20 A. THIS IS A ADMINISTRATIVE OF REGULATIONS THAT IS FOR THE  
21 DEPARTMENT TO DO THEIR OWN INVESTIGATION. THIS IS NOT WHAT WE  
22 DO IN THE EEIO OFFICE. WE HAVE A DIFFERENT PROCEDURE,  
23 DIFFERENT PROCESS, DIFFERENT POLICY.

24 Q. WHAT'S YOUR PROCEDURE FOR RESOLVING COMPLAINTS? I THOUGHT  
25 YOU TOLD ME YOU JUST INVESTIGATE IT.

09:41:33 1 A. NOT UNDER THIS POLICY.

2 Q. I UNDERSTAND. ISN'T THIS HOW EEO POLICY VIOLATIONS ARE TO  
3 BE RESOLVED? WHETHER IT'S YOUR DEPARTMENT OR WHETHER IT'S THE  
4 APPOINTING AUTHORITY'S DEPARTMENT, THESE ARE THE PROCEDURES  
5 THAT ARE SUPPOSED TO BE FOLLOWED; CORRECT?

6 A. NO. THERE'S TWO TRACKS. THIS IS FOR THE DEPARTMENT TO DO  
7 THE INVESTIGATION ON THEIR OWN, THEIR OWN INVESTIGATION. AND  
8 IT'S A FORM, THEY FILL IT OUT, IT'S A PROCEDURE, WE TRACK IT,  
9 WE LOOK AT IT, GIVE IT A REVIEW; BUT IT'S NOT, THIS IS NOT OUR  
10 PROCESS.

11 Q. RIGHT. I'M NOT TALKING ABOUT YOUR PROCESS. BUT THIS IS  
12 -- IF YOU LOOK AT THE SUBJECT LINE AT THE TOP, THE TITLE ON  
13 THIS IS EQUAL EMPLOYMENT OPPORTUNITY POLICY AND COMPLAINT  
14 RESOLUTION PROCEDURES. DO YOU UNDERSTAND THAT TO BE SOMETHING  
09:42:29 15 ELSE OR THAT SUBJECT TITLE IS INCORRECT?

16 A. NO, IT'S A COMPLAINT RESOLUTION PROCEDURE. IT'S A, IT'S A  
17 PROCESS.

18 Q. IT'S JUST NOT SOMETHING THAT YOUR OFFICE PARTICIPATES IN?

19 A. CORRECT.

20 Q. OKAY. SO SINCE YOUR DEPARTMENT IS RESPONSIBLE FOR  
21 INVESTIGATING AND THE APPOINTING AUTHORITY DEPARTMENT IS  
22 RESPONSIBLE FOR DECIDING WHAT, IF ANYTHING, TO DO IN RESPONSE  
23 TO YOUR INVESTIGATION, YOU WOULD AGREE IT'S ESSENTIALLY A  
24 TRUST-BASED ENFORCEMENT POLICY, THAT BASICALLY YOU INVESTIGATE  
25 AND TRUST THAT THE APPOINTING AUTHORITY, THE DEPUTY DIRECTOR OR

09:43:23 1 DEPARTMENT HEAD, WILL TAKE APPROPRIATE ACTION?

2 A. CORRECT, WHATEVER THE ACTION IS.

3 Q. OKAY. WHAT FOLLOW-THROUGH DOES YOUR OFFICE HAVE A DUTY TO  
4 DO TO ENSURE AN EMPLOYEE ISN'T RETALIATED AGAINST BY THE  
5 APPOINTING AUTHORITY OR THE SUBJECT OF THE COMPLAINT?

6 A. IN MOST INVESTIGATIONS, WE ADMONISH THE SUBJECT AND WE  
7 ADMONISH THE PERSON, THE COMPLAINANT; AND WE ALSO EXTEND ADVICE  
8 TO THEM IF THEY FEEL THEY'RE BEING RETALIATED AGAINST, THEY CAN  
9 FILE A COMPLAINT WITH OUR OFFICE OR GO TO THE FEDERAL  
10 GOVERNMENT, THE EEOC, EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,  
11 OR GO TO THE STATE DEPARTMENT FOR EMPLOYMENT HOUSING AND FILE A  
12 RETALIATION CLAIM BECAUSE THEY'RE IN A PROTECTED ACTIVITY.

13 Q. AND THEY CAN ALSO TELL THEIR SUPERVISOR OR BOSS THAT  
14 THEY'RE BEING RETALIATED AGAINST?

09:44:19 15 A. CORRECT.

16 Q. THAT SUPERVISOR WOULD THEN HAVE A DUTY TO INFORM YOUR  
17 OFFICE; CORRECT?

18 A. THEY CAN INFORM ME; THEY CAN INFORM THE HUMAN RESOURCES  
19 DEPARTMENT. THERE'S A LIST OF PLACES IN OUR EEO POLICY WHERE  
20 THEY CAN REACH OUT AND INFORM SOMEONE. OR THEY CAN TAKE  
21 MATTERS IN THEIR OWN HAND AND START WHAT WE CALL A FACT-FINDING  
22 INTO THE ISSUE AND GET TO THE BOTTOM OF IT.

23 Q. MS. BEALE WAS INTERVIEWED AS PART OF YOUR INVESTIGATION  
24 INTO MR. JOHNSON'S COMPLAINT?

25 A. CORRECT.

09:44:53 1 Q. WAS SHE GIVEN WARNINGS NOT TO RETALIATE AGAINST MR. JOHNSON  
2 DURING THAT INTERVIEW?

3 A. YES, SHE WAS ADMONISHED.

4 Q. WAS THAT YOU THAT PERFORMED THAT INTERVIEW?

5 A. NO. IT WAS THE INVESTIGATOR.

6 Q. HOW DO YOU KNOW THE INVESTIGATOR --

7 A. BECAUSE I ASKED THAT QUESTION.

8 Q. YOU ASKED THAT QUESTION OF WHOM?

9 A. THE INVESTIGATOR. WHEN I GOT THE INFORMATION, ONE OF THE  
10 THINGS IS THE STANDARD PROCEDURE THAT WE USE IS WE DO THE  
11 ADMONISHMENT.

12 Q. IF MS. BEALE TESTIFIED SHE DID NOT RECEIVE THAT  
13 ADMONISHMENT, WOULD SHE BE MISTAKEN?

14 A. SHE -- CORRECT.

09:45:29 15 Q. AT ANY OTHER TIME BESIDES DURING THE INVESTIGATORY  
16 INTERVIEW OF MS. BEALE, DID ANYONE IN HER OFFICE REMIND HER NOT  
17 TO RETALIATE AGAINST MR. JOHNSON?

18 A. NO.

19 Q. AS FAR AS THAT ADMONISHMENT, WAS SHE TOLD THAT IF SHE  
20 ENGAGES IN SUCH RETALIATION IT WOULD CONSTITUTE A VIOLATION OF  
21 THE EEO POLICY?

22 A. YES. AND THE INDIVIDUAL COMPLAINANT HAD A RIGHT TO FILE A  
23 COMPLAINT OF RETALIATION.

24 Q. WAS SHE ALSO TOLD THAT VIOLATING THAT EEO POLICY BY  
25 RETALIATING WOULD RESULT IN DISCIPLINARY ACTION?

09:46:10 1 A. NOT BY ME.

2 Q. DO YOU KNOW IF ANYBODY TOLD HER THAT?

3 A. NOT THAT I KNOW OF.

4 Q. DURING YOUR INVESTIGATION, SO IN OR AROUND THE JANUARY TO  
5 FEBRUARY 2016 TIMEFRAME, DID ANYONE FROM H.R. TELL YOU THAT  
6 MRS. BEALE WAS RETALIATING AGAINST MR. JOHNSON FOR FILING HIS  
7 EEO COMPLAINT?

8 A. NO.

9 Q. DID YOU ASK ANYONE OR FOLLOW UP WITH ANYONE FROM H.R. ABOUT  
10 WHETHER MS. BEALE WAS RETALIATING AGAINST MR. JOHNSON?

11 A. NO.

12 Q. NO ONE TOLD YOU THAT MS. BEALE HAD REMOVED MR. JOHNSON'S  
13 SUPERVISORY DUTIES?

14 A. NO.

09:47:01 15 Q. DID EITHER DARRIN SCHWABE FROM H.R. OR MS. MALAND TELL YOU  
16 THAT MR. JOHNSON WAS REPORTING MS. BEALE RETALIATING AGAINST  
17 HIM IN JANUARY 2016?

18 A. NOT THAT I RECALL.

19 Q. AND IF IN FACT MR. JOHNSON WAS MAKING THOSE REPORTS TO  
20 H.R., IT WOULD HAVE BEEN H.R.'S DUTY TO LET YOU KNOW SINCE YOUR  
21 INVESTIGATION WAS ONGOING; CORRECT?

22 A. I WOULD THINK SO.

23 Q. OKAY. AND SAME THING WITH JUDY VON KALINOWSKI, THE H.R.  
24 DIRECTOR, IF SHE HAD INFORMATION IN JANUARY/FEBRUARY 2016 THAT  
25 MS. BEALE WAS RETALIATING AGAINST MR. JOHNSON, IS THAT

09:47:50 1 INFORMATION YOU WOULD EXPECT SHE WOULD HAVE SHARED WITH YOU?

2 A. YES.

3 Q. NOW, ISN'T IT REQUIRED FOR THEIR TO BE SOME FOLLOWUP WITH  
4 THE EMPLOYEE AFTER THE COMPLETION OF THE EEO INVESTIGATION TO  
5 DETERMINE WHETHER THAT EMPLOYEE HAS EXPERIENCED ANY  
6 RETALIATION?

7 A. COULD YOU REPEAT THAT QUESTION?

8 Q. SURE. ISN'T IT PART OF THE PROCEDURES TO FOLLOW UP WITH AN  
9 EMPLOYEE AFTER AN EEO INVESTIGATION TO ENSURE THAT EMPLOYEE HAS  
10 NOT BEEN RETALIATED AGAINST?

11 A. OUR POLICY AND OUR PROCESS IS, ONCE WE ADMONISH THE SUBJECT  
12 AND THE COMPLAINANT, WE TELL THEM ABOUT THE PROCESS AND WE GIVE  
13 THEM THEIR RIGHTS TO, IF THEY FEEL THEY'RE BEING RETALIATED  
14 AGAINST, TO FILE A COMPLAINT, A RETALIATION COMPLAINT, WITH OUR  
09:48:50 15 OFFICE, WITH THE STATE AND THE FEDERAL GOVERNMENT. WE DON'T GO

16 OUT AND ADVERTISE TO EITHER PARTY THAT YOU BEING RETALIATED  
17 AGAINST OR IF YOU FEEL LIKE YOU'RE BEING RETALIATED AGAINST.  
18 WE WAIT FOR THEM TO COME TO US AND TELL US THAT THEY'RE BEING  
19 RETALIATED AGAINST BECAUSE AS FAR AS WE KNOW, WE ONLY KNOW WHAT  
20 WE KNOW AND EVERYTHING IN THE INVESTIGATION IS GOING ALONG AS  
21 PLANNED.

22 Q. IN OR AROUND JANUARY 2016, HADN'T YOU BEEN TOLD THAT MR.  
23 JOHNSON WAS REQUESTING A TRANSFER OUT OF THAT DEPARTMENT?

24 A. YES.

25 Q. THAT DIDN'T SEND UP ANY RED FLAGS TO YOU THAT HE MIGHT BE

09:49:31 1 SUFFERING SOME RETALIATION?

2 A. NO.

3 Q. SO YOUR UNDERSTANDING IS HE HAD FILED A COMPLAINT SAYING  
4 THAT HIS BOSS WAS VIOLATING EEO POLICIES, WE'RE IN THE MIDDLE  
5 OF AN INVESTIGATION INTO THAT, AND YOU HEAR FROM H.R. THAT MR.  
6 JOHNSON IS REQUESTING A TRANSFER; THAT DOESN'T RAISE ANY RED  
7 FLAGS?

8 A. NO. MY UNDERSTANDING WAS THAT WAS A REMEDY THAT MR.  
9 JOHNSON WAS SEEKING.

10 Q. OKAY. IS THAT WHY YOU DIDN'T FOLLOW UP THEN AFTERWARDS  
11 BECAUSE IT HAD ALREADY BEEN DETERMINED HE WAS GOING TO BE  
12 MOVED?

13 A. MY UNDERSTANDING IS MR. JOHNSON SOUGHT OUT A REMEDY TO BE  
14 REMOVED FROM UNDER THE SUPERVISION OF MS. BEALE.

09:50:17 15 Q. YOU DIDN'T THINK TO ASK WHY?

16 A. NO. I JUST THOUGHT -- BECAUSE TYPICALLY, A LOT OF TIMES WE  
17 WILL GET COMPLAINANTS, IN THIS CASE MR. JOHNSON OR ANOTHER  
18 COMPLAINANT, WHO WE SAY, WHAT IS YOUR REMEDY? WHAT DO YOU WANT  
19 TO OCCUR? AND THEY'RE LIKE, WELL, I WANT TO BE FROM UNDERNEATH  
20 THAT SUPERVISOR. SO IT WAS ROUTINE. I DIDN'T GET ANY  
21 INFORMATION THAT "I WANTED TO BE FROM UNDERNEATH THAT  
22 SUPERVISOR BECAUSE THAT SUPERVISOR IS DOING BAD THINGS TO ME."  
23 MY UNDERSTANDING IS THAT HE WANTED TO BE REMOVED BECAUSE OF THE  
24 INITIAL ISSUE, AND HE DIDN'T WANT TO BE UNDER THAT  
25 SUPERVISION.

09:50:59 1 Q. BECAUSE OF HOW SHE WAS TREATING HIM IN THE EEO COMPLAINT?

2 A. IN THE EEO COMPLAINT.

3 Q. OKAY. YOUR INVESTIGATION HADN'T CONCLUDED AT THAT POINT  
4 THOUGH, DID IT?

5 A. NO.

6 Q. AND MR. JOHNSON WASN'T MOVED UNTIL AFTER YOUR INVESTIGATORY  
7 FINDINGS CAME OUT; CORRECT?

8 A. I CAN'T RECALL THE EXACT DATE.

9 Q. AND YOU DIDN'T DO ANY INVESTIGATION TO DETERMINE WHETHER  
10 THAT TRANSFER WAS APPROPRIATE OR NOT?

11 A. NO.

12 Q. IF AN EMPLOYEE BELIEVES THAT A TRANSFER IS THE ONLY WAY TO  
13 ESCAPE FROM THEIR SUPERVISOR'S MISCONDUCT, DO YOU CONSIDER THAT  
14 PART OF A RETALIATORY ACT?

09:51:58 15 A. NO. CAN I BACK UP ON THAT QUESTION?

16 Q. SURE.

17 A. AFTER THE INVESTIGATION AND THEY CAME IN WITH RETALIATION  
18 COMPLAINT, YES. BUT WITHOUT ANY COMPLAINT OR IF MR. JOHNSON  
19 WOULD HAVE CAME TO THE DOOR AND SAID, I'M BEING RETALIATED  
20 AGAINST, WE WOULD HAVE DONE AN INVESTIGATION ON THAT BASIS  
21 ALONE BECAUSE HE WAS IN A PROTECTED ACTIVITY. SO IF HE WANTED  
22 TO BE MOVED, THAT WOULD HAVE BEEN AN ARGUMENT TO MOVE HIM BASED  
23 ON RETALIATION. I NEVER RECEIVED ANYTHING REQUESTING TO BE  
24 MOVED BECAUSE OF THE CONDUCT OR BEHAVIOR BY MS. BEALE WHEN WE  
25 WERE DOING THE INVESTIGATION.

09:52:46 1 Q. I SEE. OKAY. SO IF MR. JOHNSON WAS COMPLAINING TO H.R.  
2 ABOUT THAT RETALIATION, H.R. NEVER FORWARDS THAT ON TO YOU,  
3 THEN YOU HAVE NO WAY OF KNOWING THAT YOU NEED TO DO ANOTHER  
4 INVESTIGATION?

5 A. RIGHT. MY UNDERSTANDING WAS MR. JOHNSON WAS REQUESTING TO  
6 MOVE IN GENERAL BECAUSE OF THE COMPLAINT HE HAD FILED, AND HE  
7 DIDN'T WANT TO BE WORKING UNDERNEATH THE SUPERVISION OF MS.  
8 BEALE.

9 Q. SURE; THE TRANSFER HAPPENED BECAUSE OF HIS EEO COMPLAINT?

10 A. RIGHT.

11 Q. OTHER CITY EMPLOYEES HAVE BEEN FIRED FOR VIOLATING THE  
12 CITY'S EEO POLICY, RIGHT?

13 A. POSSIBLY.

14 Q. AND THAT'S ONE OF THE REMEDIES THAT'S SPECIFICALLY STATED  
09:53:31 15 IN THE EEO POLICY, ISN'T IT?

16 A. IT IS ONE OF THE REMEDIES STATED IN THE EEO POLICY;  
17 CORRECT.

18 Q. ISN'T IT TRUE YOU TOLD SOMEONE AT H.R. THAT MS. BEALE  
19 SHOULD HAVE BEEN FIRED AS A RESULT OF YOUR INVESTIGATION  
20 FINDINGS?

21 A. NO.

22 Q. YOU NEVER HAD AN OFF-THE-RECORD CONVERSATION WITH ANYONE  
23 FROM THE CITY INDICATING THAT IN YOUR OPINION SHE SHOULD HAVE  
24 BEEN FIRED?

25 A. NOT THAT I RECALL.

09:53:59 1 Q. YOU MIGHT HAVE?

2 A. THAT'S NOT TYPICALLY WHAT I DO BECAUSE I WORK FOR THE  
3 PERSONNEL DIRECTOR WHO WORKS FOR THE CIVIL SERVICE COMMISSION,  
4 AND IF ANY TERMINATION OR FIRING OF AN EMPLOYEE AS A RESULT OF  
5 MY INVESTIGATION COULD BOOMERANG SO TO SPEAK BECAUSE I'M STAFF  
6 OF THE CSC; SO I DON'T GET INTO DISCIPLINARY CONVERSATIONS  
7 BECAUSE I DON'T WANT TO BE ALLEGED TO HAVE, TO HAVE PROMOTED  
8 SOMEBODY BEING TERMINATED OR DISCIPLINED BECAUSE THAT'S NOT MY  
9 CALL.

10 Q. DID ANYONE FROM THE CITY EVER ASK FOR YOUR OPINION ON THAT  
11 MATTER?

12 MR. SCHAEFER: YOUR HONOR, I'M GOING TO OBJECT AS  
13 RELEVANCY.

14 THE COURT: SUSTAINED.

09:54:54 15 BY MR. CADIEUX:

16 Q. DO YOU SEE ANY PROBLEMS WITH HAVING YOUR DEPARTMENT BEING  
17 LIMITED TO DOING INVESTIGATIONS ONLY?

18 A. NO. WE'RE INVESTIGATORS. THAT'S WHAT WE DO.

19 Q. YOU DON'T SEE ANY RISK IN ABUSE THE WAY THE CITY'S  
20 PROCEDURES ARE SET UP WHERE YOUR OFFICE IS INDEPENDENT, DOES A  
21 FAIR AND IMPARTIAL INVESTIGATION, BUT ANY ACTION THAT'S GOING  
22 TO TAKE PLACE AS A RESULT OF YOUR FINDINGS IS PUT BACK INTO THE  
23 DISCRETION OF THE WRONGDOER'S SUPERVISION? YOU DON'T SEE THAT  
24 AS A PROBLEM?

25 A. CAN YOU REPEAT THAT QUESTION?

09:55:32 1 MR. SCHAEFER: I'M GOING TO OBJECT. ASSUMES FACTS  
2 NOT IN EVIDENCE. INCOMPLETE HYPOTHETICAL.

3 THE COURT: NO, I'LL ALLOW THE QUESTION.

4 BY MR. CADIEUX:

5 Q. THANKS. LET ME ASK AGAIN. I'LL TRY TO REMEMBER WHAT I  
6 SAID. YOU DON'T SEE ANY PROBLEM WITH THE WAY THE CITY'S  
7 PROCEDURES ARE SET UP, WHERE YOUR OFFICE DOES A FAIR AND  
8 IMPARTIAL INVESTIGATION BUT THEN ANY ACTION TAKEN IN RESPONSE  
9 TO THAT IS LEFT UP TO THE DISCRETION OF THE WRONGDOER'S  
10 SUPERVISOR?

11 MR. SCHAEFER: OBJECTION. ASSUMES FACTS NOT IN  
12 EVIDENCE, YOUR HONOR.

13 THE COURT: WELL, THE "WRONGDOER SUPERVISOR" I THINK  
14 WOULDN'T BE APPROPRIATE FOR THE QUESTION. ASK THE QUESTION IN  
09:56:22 15 A MORE NEUTRAL WAY.

16 MR. CADIEUX: SURE. THIRD TIME'S A CHARM. HERE WE  
17 GO.

18 BY MR. CADIEUX:

19 Q. YOU DON'T SEE ANY PROBLEM WITH THE CITY'S PROCEDURES WHERE  
20 YOUR OFFICE DOES A FAIR AND IMPARTIAL INVESTIGATION BUT THE  
21 DECISION ON WHETHER TO TAKE ANY ACTION IN RESPONSE TO THAT  
22 INVESTIGATION IS LEFT UP TO THE APPOINTING AUTHORITY?

23 A. UNDER OUR PROCESS, OUR CITY CHARTER, OUR RULES AND  
24 REGULATIONS, NO.

25 Q. WHY NOT?

09:56:50 1 A. BECAUSE IT'S SPELLED OUT BY THE CHARTER, THE CITY CHARTER,  
2 AND THAT'S THE TAXPAYERS HAVE DECIDED THAT THIS IS THE WAY THE  
3 PROCEDURES AND PROCESSES ARE GOING TO BE CARRIED OUT. WHAT I  
4 MEAN BY THAT IS THAT BECAUSE I AM AN OFFICE OR AGENCY  
5 UNDERNEATH THE CIVIL SERVICE COMMISSION AND THE PERSONNEL  
6 DIRECTOR, THE CITIZENS HAVE DECIDED UNDER THE CHARTER THAT THIS  
7 IS THE PROCESS, THE WAY IT SHOULD BE, THESE ARE THE PROCEDURES.

8 Q. MS. MALAND IS THE ONE THAT INFORMED YOU THAT MR. JOHNSON  
9 HAD REQUESTED A TRANSFER; ISN'T THAT RIGHT?

10 A. IT COULD HAVE BEEN. I DON'T RECALL.

11 Q. AND DID SHE TELL YOU THAT SHE ENDORSED THAT REQUEST?

12 A. IT COULD HAVE BEEN. WE MAY HAVE BEEN TALKING ABOUT A  
13 REMEDY FOR MR. JOHNSON.

14 Q. THIS WOULD BE IN THE JANUARY 2016 TIMEFRAME THOUGH, RIGHT?

09:57:53 15 DIDN'T YOU SAY YOU KNEW BY THEN THAT MR. JOHNSON WAS GOING TO  
16 BE TRANSFERRED?

17 A. IT'S POSSIBLE.

18 Q. AND IN FACT, SHE TOLD YOU THAT WAS SOMETHING THAT WAS A  
19 PRIORITY FOR HER TO HAVE HAPPEN; CORRECT?

20 A. I DON'T RECALL SPECIFICALLY. MY UNDERSTANDING WAS THAT IN  
21 MY VIEW IF WE HAVE A COMPLAINANT, AN EMPLOYEE WHO FEELS  
22 STRONGLY, AND WE DO AN INVESTIGATION AND WE HAD SUBSTANTIATED  
23 SOME OF THE ALLEGATIONS, IT MADE SENSE TO, IN THE BENEFIT OF  
24 MR. JOHNSON, IF HE'S REQUESTING THAT, THAT I THOUGHT THAT MAY  
25 BE A GREAT IDEA BECAUSE THAT GOES TO THE PART OF THE CORRECTIVE

09:58:48 1 ACTION.

2 Q. LET'S LOOK AT EXHIBIT 1 AGAIN, PAGE 11. NOW IF YOU COULD  
3 BLOW UP 6.4.4. THIS PROCEDURE REQUIRES THE DEPUTY -- I ASSUME  
4 THAT MEANS DEPUTY DIRECTOR; IS THAT YOUR UNDERSTANDING?

5 A. YES.

6 Q. THE DEPUTY SHALL DESIGNATE APPROPRIATE FOLLOWUP CONTACT  
7 WITH THE COMPLAINANT, WITNESS OR OTHERS WHO MAY HAVE  
8 PARTICIPATED IN ANY INVESTIGATION TO ENSURE THAT DIRECT OR  
9 INDIRECT RETALIATION HAS NOT TAKEN PLACE.

10 DO YOU KNOW WHETHER ANYBODY FROM THE CITY CLERK'S  
11 OFFICE COMPLIED WITH THIS PROCEDURE WITH REGARD TO MR.  
12 JOHNSON?

13 A. I DON'T KNOW BECAUSE I DON'T THINK THEY USE THIS  
14 PROCEDURE.

09:59:49 15 Q. OKAY. FAIR ENOUGH. NO FURTHER QUESTIONS, MR. BARCLAY.

16 THE COURT: I'M GOING TO TAKE ABOUT A TWO-MINUTE  
17 BREAK. IF ANYONE ELSE WANTS TO VISIT THE RESTROOM, BE MY  
18 GUEST.

19 (RECESS.)

20 THE COURT: OKAY. YOU CAN PROCEED.

21 CROSS-EXAMINATION

22 BY MR. SCHAEFER:

23 Q. GOOD MORNING, MR. BARCLAY.

24 A. GOOD MORNING.

25 Q. MR. BARCLAY, YOU WERE ASKED BY PLAINTIFF'S COUNSEL ABOUT

10:06:24 1 THE FACT THAT THERE WAS MEDIATION OR NO MEDIATION IN THIS CASE.

2 DO YOU RECALL THAT TESTIMONY?

3 A. YES.

4 Q. WHY WAS THERE NO MEDIATION IN THIS MATTER?

5 A. MEDIATION IS WHEN WE GET MEDIATION REQUESTS FROM THE  
6 COMPLAINANT THEMSELVES WANTING TO ENGAGE IN SOME TYPE OF  
7 SETTLEMENT OR MEDIATION. TYPICALLY THAT COMES THROUGH THE  
8 STATE AND FEDERAL GOVERNMENT. OCCASIONALLY WE GET AN EMPLOYEE  
9 WHO WANTS TO MEDIATE THE ISSUE AND RESOLVE THE ISSUE AT THE  
10 LOWEST LEVEL, BUT WE DON'T JUST AUTOMATICALLY GO INTO  
11 MEDIATION. THERE HAS TO BE A REQUEST.

12 Q. YOU MENTIONED STATE AND FEDERAL GOVERNMENT SOMETIMES THIS  
13 COMES ABOUT. COULD YOU CLARIFY THE TYPICAL SETTING IN WHICH  
14 THAT HAPPENS?

10:07:20 15 A. WE'LL GET A PHONE CALL FROM THE FEDERAL GOVERNMENT, AND I'M  
16 ASSUMING IT'S A WORK ISSUE, AND THEY LOOK AT THE CASE AND THEY  
17 SAID, HEY, CITY OF SAN DIEGO, WOULD YOU LIKE TO MEDIATE THIS OR  
18 SETTLE THIS WITHOUT GOING INTO THE INVESTIGATION? AND I'M  
19 ASSUMING FROM THE COMPLAINANT'S END OR CHARGING PARTY THEY HAVE  
20 AGREED TO THAT, AND THEY REACH OUT TO US.

21 Q. NOW THIS WAS NOT A SITUATION WHERE MR. JOHNSON CAME  
22 DIRECTLY TO YOUR OFFICE AND FILED A COMPLAINT OF DISCRIMINATION  
23 AGAINST SHEILA BEALE; IS THAT CORRECT?

24 A. CORRECT.

25 Q. HE FILED A GRIEVANCE THROUGH HIS UNION, AND THE H.R.

10:08:06 1 DEPARTMENT REFERRED THE ALLEGATION OF DISCRIMINATION TO YOUR  
2 OFFICE?

3 A. CORRECT.

4 Q. IF MR. JOHNSON HAD FILED A COMPLAINT DIRECTLY WITH YOUR  
5 OFFICE, YOU WOULD HAVE HAD HIM COMPLETE A STANDARD FORM FOR  
6 SUCH COMPLAINTS; CORRECT?

7 A. CORRECT.

8 Q. AND IT'S ALSO TRUE YOU CAN'T INITIATE AN INVESTIGATION WHEN  
9 THERE HASN'T BEEN BY THE COMPLAINANT A WRITTEN, A SIGNED  
10 COMPLAINT?

11 A. CORRECT. WE CALL IT A FORMAL COMPLAINT.

12 Q. SO IF YOU JUST WANTED TO SAY, OH, YOU KNOW I'M GOING TO GO  
13 OUT THERE AND LOOK TO SEE IF THERE'S RETALIATION, YOU DON'T  
14 HAVE THE AUTHORITY TO DO THAT; YOU HAVE TO HAVE A COMPLAINT  
10:08:56 15 BEFORE YOU CAN BEGIN AN INVESTIGATION. IS THAT CORRECT?

16 A. CORRECT.

17 Q. COULD WE PUT EXHIBIT 150 ON THE SCREEN. IT'S A STIPULATED  
18 EXHIBIT. MR. BARCLAY, YOU TESTIFIED THAT YOU BELIEVE THE  
19 LETTER YOU SENT TO MS. MALAND WAS DATED APRIL 7TH, 2016. THE  
20 ONE YOU WERE SHOWN BY PLAINTIFF'S COUNSEL WAS AN EARLIER  
21 VERSION NOT SENT. DO YOU RECALL THAT TESTIMONY?

22 A. CORRECT.

23 Q. IS THIS THE LETTER OF APRIL 7TH, 2016, OR I SHOULD SAY  
24 MEMO, THAT YOU SENT TO MS. MALAND?

25 A. CORRECT.

10:09:53 1 Q. AND WHAT IS IT IN THIS PARTICULAR MEMO THAT IN ANY WAY  
2 DIFFERS FROM THE EARLIER DRAFT THAT YOU MENTIONED?

3 A. THIS MEMO TALKED ABOUT THE FACT THAT WE FOUND SUFFICIENT  
4 EVIDENCE TO SUBSTANTIATE A VIOLATION OF THE CITY'S EEO  
5 POLICY.

6 Q. IS THAT SIGNIFICANT IN TERMS OF YOU FOUND A POLICY  
7 VIOLATION VERSUS YOUR OFFICE MADE A FINDING OF A VIOLATION OF A  
8 LAW?

9 MR. CADIEUX: OBJECTION, YOUR HONOR. THIS IS PART OF  
10 OUR MOTION IN LIMINE AND MSJ RULING.

11 THE COURT: ALSO, YOU'RE ASKING FOR A LEGAL  
12 CONCLUSION AND SO I SUSTAIN THE OBJECTION.

13 BY MR. SCHAEFER:

14 Q. WELL, LET'S TALK ABOUT THE POLICY THAT WAS IN EFFECT --  
10:10:48 15 WELL, FIRST LET'S GO TO EXHIBIT 12 AND JUST HIGHLIGHT THE DATE.  
16 YOU WERE ASKED ABOUT THIS POLICY OF JULY 1, 2017. DO YOU  
17 RECALL?

18 A. YES.

19 Q. AND IF WE CAN NOW GO TO EXHIBIT 38, IS THIS ACTUALLY THE  
20 SAME POLICY, JUST THE ONE IN EFFECT AS OF JULY 1, 2015 THROUGH  
21 JUNE 30TH, 2016?

22 A. YES.

23 Q. BUT ESSENTIALLY IT'S THE SAME EXCEPT AT THAT TIME THERE WAS  
24 A DIFFERENT CITY ATTORNEY, JAN GOLDSMITH?

25 A. CORRECT.

10:11:43 1 Q. AND IS IT YOUR UNDERSTANDING, GIVEN YOUR POSITION, THAT  
2 WHEN THIS POLICY COMES OUT EVERY FISCAL YEAR AT THE BEGINNING,  
3 JULY 1, 2015, IT'S SENT TO ALL EMPLOYEES?

4 A. CORRECT.

5 Q. AND THEY ARE TOLD, ARE THEY NOT, IN THE POLICY THAT  
6 RETALIATION FOR FILING A COMPLAINT IS PROHIBITED?

7 A. CORRECT.

8 Q. AND IF WE COULD GO TO THE LAST PAGE, OR SORRY, THE SECOND  
9 TO THE LAST PAGE, PARAGRAPH 10, AND ALL EMPLOYEES ARE TOLD IN  
10 THIS NOTICE THAT IF THEY FEEL THE POLICY HAS BEEN VIOLATED THEY  
11 SHOULD IMMEDIATELY BRING THE MATTER TO THE ATTENTION OF ANY OF  
12 THE INDIVIDUALS OR OFFICES LISTED BELOW; IS THAT RIGHT?

13 A. CORRECT.

14 Q. AND THAT WOULD INCLUDE THE LAST BULLET POINT THERE. THEY  
10:13:04 15 COULD BRING IT TO THE PERSONNEL DEPARTMENT, EEIO OFFICE, YOUR  
16 OFFICE?

17 A. CORRECT.

18 Q. SO IF AN EMPLOYEE FEELS LIKE, HEY, I FILED A COMPLAINT OF  
19 DISCRIMINATION, AND I'M BEING RETALIATED AGAINST FOR HAVING  
20 DONE SO, THIS POLICY NOTIFIES THEM EVERY YEAR THAT IF YOU WANT  
21 YOU HAVE THE OPTION OF GOING TO THE EEIO OFFICE AND  
22 COMPLAINING?

23 A. CORRECT. AND MAY I ADD?

24 Q. SURE.

25 THE COURT: WAIT A MINUTE. NO QUESTION IS PENDING.

10:13:40 1 HE CAN ANSWER IT, BUT JUST ASK THE QUESTION.

2 BY MR. SCHAEFER:

3 Q. OKAY. THE NEXT PARAGRAPH, IF WE COULD HIGHLIGHT THAT, IT  
4 ALSO NOTIFIES THEM THAT THEY CAN FILE A COMPLAINT, A FORMAL  
5 COMPLAINT, DIRECTLY WITH EXTERNAL AGENCIES THAT ARE THERE TO  
6 PROTECT LEGAL RIGHTS; CORRECT?

7 A. CORRECT.

8 Q. AND THESE AGENCIES INCLUDE THE CALIFORNIA DEPARTMENT OF  
9 FAIR EMPLOYMENT AND HOUSING, A STATE AGENCY?

10 A. CORRECT.

11 Q. AND IT PROVIDES THE NUMBER TO CALL IF YOU FEEL LIKE YOU  
12 HAVE BEEN RETALIATED AGAINST?

13 A. CORRECT.

14 Q. AND THEN THERE'S THE FEDERAL EQUAL EMPLOYMENT OPPORTUNITY  
15 COMMISSION WITH A NUMBER; IS THAT CORRECT?

10:14:20

16 A. CORRECT.

17 Q. WE CAN NOW GO TO EXHIBIT 9. AT SOME POINT AFTER MR.  
18 JOHNSON TRANSFERRED TO THE PUBLIC UTILITIES DEPARTMENT, WERE  
19 YOU NOTIFIED BY THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
20 THAT HE HAD FILED WITH THAT AGENCY A COMPLAINT OF  
21 RETALIATION?

22 A. CORRECT.

23 Q. AND IF WE COULD EXPAND THIS LETTER A LITTLE BIT, IS IT YOUR  
24 UNDERSTANDING THAT THAT INVESTIGATION CONCLUDED BECAUSE MR.

25 JOHNSON REQUESTED A RIGHT TO SUE LETTER OF THE EEOC ON FEBRUARY

10:15:33 1 17, 2017?

2 A. CORRECT.

3 Q. AND AT THE VERY BOTTOM OF THIS LETTER, YOUR OFFICE WAS  
4 COPIED WITH THAT; IS THAT RIGHT?

5 A. CORRECT.

6 Q. IS THAT STANDARD PROCEDURE WHEN A COMPLAINANT IS NOTIFIED  
7 THAT, BECAUSE YOU HAVE REQUESTED THE RIGHT TO SUE, WE ARE  
8 CLOSING YOUR FILE AND YOUR COPIED?

9 A. CORRECT.

10 Q. THE LAST PARAGRAPH OF THIS LETTER FROM THE DEPARTMENT OF  
11 JUSTICE -- IF WE COULD HIGHLIGHT THAT, IT SAYS, THIS NOTICE --  
12 IS THAT LANGUAGE TYPICAL WHEN THEY'RE CLOSING THEIR FILE BEFORE  
13 AN INVESTIGATION IS COMPLETED THAT THE DEPARTMENT OF JUSTICE  
14 DOES NOT MAKE A JUDGMENT AS TO WHETHER THE CASE HAS MERIT?

10:16:16 15 A. CORRECT.

16 Q. NOW BEFORE THIS LETTER WENT OUT WHERE THEY SAID WE'RE  
17 CLOSING THE FILE BECAUSE MR. JOHNSON WOULD LIKE TO HAVE A RIGHT  
18 TO SUE LETTER, WERE YOU ASKED BY THE EEOC TO INVESTIGATE MR.  
19 JOHNSON'S CLAIM THAT HE WAS RETALIATED AGAINST BECAUSE HIS  
20 SUPERVISOR RESPONSIBILITIES WERE TAKEN AWAY?

21 A. CORRECT.

22 Q. YOUR OFFICE WAS ASKED TO DO THAT?

23 A. WE WERE ASKED TO RESPOND.

24 Q. TO RESPOND. AND YOU DID AN INVESTIGATION OF THAT  
25 ALLEGATION?

10:16:52

1 A. CORRECT.

2 Q. WERE YOU ABLE, YOUR OFFICE, IN ANY WAY TO SUBSTANTIATE THAT  
3 HE WAS RETALIATED AGAINST BECAUSE HIS SUPERVISOR  
4 RESPONSIBILITIES WERE TAKEN AWAY?

5 A. NO.

6 Q. WERE YOU ALSO, IN RESPONSE TO THE EEOC'S INQUIRY, TASKED  
7 WITH PREPARING A RESPONSE AS TO WHETHER MR. JOHNSON WAS  
8 RETALIATED AGAINST FOR BEING TRANSFERRED TO THE PUBLIC  
9 UTILITIES DEPARTMENT?

10 A. YES.

11 Q. AND DID YOU, YOUR OFFICE, INVESTIGATE WHETHER THERE WAS ANY  
12 SUBSTANTIATION OF THAT ALLEGATION?

13 A. YES.

14 Q. AND DID YOU FIND THERE WAS ANY EVIDENCE TO SUPPORT THAT  
15 CLAIM?

10:17:41

16 A. NO.

17 Q. EXHIBIT 2, PLEASE. NOW YOU MENTION THERE ARE TWO DIFFERENT  
18 PROCESSES FOR INVESTIGATING DISCRIMINATION COMPLAINTS. DO YOU  
19 RECALL THAT?

20 A. YES.

21 Q. AND EXHIBIT 2, YOU SAID THAT'S NOT THE PROCESS YOU FOLLOW;  
22 THAT'S THE PROCESS THAT ANOTHER DEPARTMENT, NOT THE EEIO  
23 OFFICE, FOLLOW; CORRECT?

24 A. CORRECT.

25 Q. AND THERE'S A SEPARATE POLICY, IS THERE NOT, CALLED THE K2

10:18:32 1 PERSONNEL REG THAT YOUR OFFICE FOLLOWS?

2 A. CORRECT.

3 Q. I DON'T WANT TO GET TOO MUCH IN THE WEEDS HERE, BUT LET'S  
4 WALK THROUGH THOSE TWO DIFFERENT POLICIES SO THAT WE HAVE  
5 CONTEXT OF WHAT HAPPENED IN THIS CASE. IF WE COULD GO TO  
6 EXHIBIT 1, THAT'S THE REGULATIONS THAT GOVERN DISCRIMINATION  
7 COMPLAINTS IN WHICH THE DEPARTMENT IS DOING THEIR OWN INTERNAL  
8 FACT-FINDING; IS THAT CORRECT?

9 A. CORRECT.

10 Q. AND IF WE GO TO PAGE TWO, THE PARAGRAPH THAT TALKS ABOUT  
11 THE EQUAL EMPLOYMENT INVESTIGATIVE OFFICE, THERE IS AN  
12 ACKNOWLEDGEMENT, IS THERE NOT, THAT IN THIS REGULATION THAT  
13 THERE IS AN OFFICE, YOUR OFFICE, THAT YOU ARE TASKED WITH  
14 INVESTIGATION AND RESOLUTION OF COMPLAINTS OR CHARGES OF  
10:20:02 15 DISCRIMINATION BASED ON TITLE 7 OF THE CIVIL RIGHTS ACT OF  
16 1964?

17 A. YES.

18 Q. AND THAT'S THE FEDERAL LAW GOVERNING DISCRIMINATION?

19 A. CORRECT.

20 Q. THAT FEDERAL LAW IS DISTINCT, IS IT NOT, FROM THE CITY'S  
21 POLICY?

22 A. CORRECT.

23 Q. THE POLICY THAT YOU ALSO LOOK INTO FOR VIOLATIONS IS MUCH  
24 BROADER THAN FEDERAL LAW?

25 A. CORRECT.

10:20:28 1 Q. AND THIS PARTICULAR STATEMENT NOTES THAT YOU ARE THE  
2 LIAISON AND PRIMARY CONTACT WITH ALL FEDERAL, STATE, AND  
3 COMPLIANCE AGENCY; IS THAT CORRECT?

4 A. CORRECT.

5 Q. IS THAT WHY IN THIS INSTANCE WHEN YOU WERE ASKED TO LOOK  
6 INTO OR RESPOND TO THE ALLEGATION OF RETALIATION BY THE EEOC,  
7 YOU WERE THE CONTACT PERSON?

8 A. CORRECT.

9 Q. THAT'S NORMAL?

10 A. NORMAL.

11 Q. THEN THE NEXT SENTENCE HERE INDICATES THAT PART OF YOUR  
12 DUTIES OF YOUR OFFICE IS TO RECEIVE AND PROCESS FORMAL  
13 COMPLAINTS LODGED BY THE AGENCIES?

14 A. YES.

10:21:08 15 Q. AND INVESTIGATE AND RESPOND TO SUCH COMPLAINTS?

16 A. YES.

17 Q. AND WHEN YOU GET A REQUEST BY THE EEOC TO INVESTIGATE A  
18 RETALIATION COMPLAINT, DOES YOUR OFFICE TAKE THAT VERY  
19 SERIOUSLY?

20 A. YES.

21 Q. DO YOU DO YOUR BEST TO LOOK INTO EVERY ASPECT OF IT?

22 A. YES.

23 Q. OF THE ALLEGATION?

24 A. YES.

25 Q. AND DOES THIS RECOGNIZE THAT YOU HAVE THE AUTHORITY TO

10:21:33 1 SCHEDULE EMPLOYEE INTERVIEWS AND PROVIDE ACCESS TO RECORDS WHEN  
2 REQUESTED BY A FEDERAL AGENT OR OFFICER?

3 A. YES.

4 Q. IF WE GO TO THE NEXT PAGE PLEASE. AND THE OTHER THING  
5 THAT'S ACKNOWLEDGED IN THIS PARTICULAR REGULATION IS THAT YOUR  
6 OFFICE ALSO RECEIVES AND RESPONDS TO FACT FINDINGS FROM  
7 COMPLIANCE AGENCIES BECAUSE OF THEIR INVESTIGATION; IS THAT  
8 CORRECT?

9 A. YES.

10 Q. THIS IS VERY IMPORTANT. THE LAST SENTENCE INDICATES ALSO,  
11 ON TOP OF ALL THESE THINGS YOUR OFFICE DOES, YOU RECEIVE  
12 INTERNAL COMPLAINTS DIRECTLY OR INDIRECTLY FROM APPLICANTS FOR  
13 CITY EMPLOYMENT, EMPLOYEES, FORMER EMPLOYEES AND EMPLOYEE  
14 REPRESENTATIVES?

10:22:55 15 A. YES.

16 Q. IF WE COULD NOW GO TO THE NEXT PAGE, AND THERE ARE  
17 DEFINITIONS HERE WHICH THE JURY WILL HAVE. THEY'RE PRETTY  
18 SELF-EXPLANATORY, BUT I JUST WANT TO HIGHLIGHT TWO ON PAGE  
19 THREE. THERE'S A DEFINITION OF A COMPLAINT; CORRECT?

20 A. CORRECT.

21 Q. AND THAT IS AN ALLEGATION OF POTENTIAL VIOLATION OF THE  
22 CITY'S EEO POLICY?

23 A. YES.

24 Q. AND THEN THE NEXT DEFINITION IS OF THE REPORTING PARTY?

25 A. YES.

10:23:51 1 Q. AND THAT'S THE INDIVIDUAL WHO REPORTS THE VIOLATION OF THE  
2 EEO POLICY; IS THAT RIGHT?

3 A. YES.

4 Q. AND THEN THE LAST DEFINITION HERE, SUBJECT EMPLOYEE, WHICH  
5 IS KIND OF AN UNUSUAL NAME, BUT IT'S THE INDIVIDUAL WHO  
6 ALLEGEDLY VIOLATED THE EEO POLICY?

7 A. YES.

8 Q. AND WITHOUT GOING INTO ALL THE FINE WORDING IN HERE, THE  
9 REGULATION HERE, THESE RULES REQUIRE CONFIDENTIALITY OF  
10 COMPLAINTS OF DISCRIMINATION?

11 A. YES.

12 Q. AND EMPLOYEES THEMSELVES, IF WE GO TO 5.9, THE LAST  
13 SENTENCE HERE, THE EMPLOYEES ARE RESPONSIBLE FOR MAINTAINING  
14 THE CONFIDENTIALITY WHEN THEY PARTICIPATE IN THE COMPLAINT  
10:24:58 15 PROCESS AS A WITNESS, SUBJECT OR COMPLAINANT?

16 A. YES.

17 Q. AND IT'S TRUE, IS IT NOT, THAT PART OF THAT IS TO PROTECT  
18 THE PRIVACY OF THE INDIVIDUALS INVOLVED?

19 A. YES.

20 Q. THE PERSON THAT MAKES THE COMPLAINT; THAT'S RIGHT?

21 A. CORRECT.

22 Q. AND THE PERSON THAT IS THE SUBJECT EMPLOYEE WHO IS ALLEGED  
23 TO HAVE COMMITTED DISCRIMINATION, THESE PROCEEDINGS ARE  
24 GENERALLY KEPT, AS REQUIRED, PRIVATE?

25 A. CORRECT.

10:25:28 1 Q. IF WE COULD GO NOW TO PAGE 8, WHICH IS DASH 008 AT THE  
2 BOTTOM, AND START WITH THE PARAGRAPH IN THE MIDDLE, THE ABILITY  
3 TO COMPLETE. THE REGULATIONS ENCOURAGE EMPLOYEES TO, STRONGLY  
4 ENCOURAGE TO REPORT DISCRIMINATION WITHIN 60 DAYS OF THE MOST  
5 RECENT ALLEGED ACT; IS THAT RIGHT?

6 A. CORRECT.

7 Q. AND THEN THE PARAGRAPH ABOVE, THIS MIDDLE SENTENCE HERE,  
8 COMPLAINTS FILED WITH THE PERSONNEL DEPARTMENT'S EEO OFFICE  
9 WILL BE SUBJECT TO PROCEDURES DETAILED IN PERSONNEL MANUAL  
10 INDEX CODE K2; DO YOU SEE THAT?

11 A. YES.

12 Q. IS THAT WHAT YOU'RE TALKING ABOUT? YOU DON'T GO INTO THE  
13 POLICY TO DO YOUR INVESTIGATION; YOU GO UNDER THE RULES UNDER  
14 K2?

10:26:46 15 A. YES.

16 Q. AND THAT WAS EXHIBIT 2 THAT WE LOOKED AT FOR A MINUTE  
17 BEFORE WE GOT INTO THE SPECIFICS OF THESE ADMINISTRATIVE  
18 REGS?

19 A. YES.

20 Q. SO LET'S NOW GO BACK TO EXHIBIT 2. SO THESE ARE THE RULES  
21 THAT YOU GO BY WHEN YOU ARE INVESTIGATING A COMPLAINT OF  
22 DISCRIMINATION?

23 A. YES.

24 Q. THE ONES THAT WERE IN ONE, TO SUMMARIZE, ARE REALLY FOR THE  
25 AGENCIES WHO ARE DOING INTERNAL OR DEPARTMENT'S INTERNAL

10:27:24 1 FACT-FINDING?  
2 A. CORRECT.  
3 Q. THEY HAVE A WHOLE DIFFERENT PROCEDURE?  
4 A. CORRECT.  
5 Q. IF WE COULD NOW GO TO, PLEASE, PAGE FIVE. WHEN YOU  
6 COMPLETE YOUR INVESTIGATION, YOU BASICALLY HAVE TWO OPTIONS.  
7 YOU CAN MAKE A NO-CAUSE FINDING; CORRECT?  
8 A. CORRECT.  
9 Q. AND WE'LL JUST HIGHLIGHT "A," AND THE DEFINITION OF A  
10 NO-CAUSE FINDING IS THERE'S NO SUBSTANTIATING EVIDENCE FOR A  
11 CHARGE OF DISCRIMINATION?  
12 A. CORRECT.  
13 Q. AND THEN WE'LL GO TO EXHIBIT -- PAGE 7 AND HIGHLIGHT "CAUSE  
14 FINDING." AND A DEFINITION OF A CAUSE FINDING IS THERE'S  
10:28:58 15 REASONABLE CAUSE FOR A CHARGE OF DISCRIMINATION; CORRECT?  
16 A. CORRECT.  
17 Q. AND IN THIS CASE, ULTIMATELY YOU CONCLUDED THAT THERE WAS  
18 SOME CORROBORATING EVIDENCE FOR, TO SUPPORT MR. JOHNSON'S  
19 ALLEGATIONS OF CITY VIOLATIONS OF POLICY?  
20 A. CORRECT.  
21 Q. AND THEN LAST, I'D LIKE TO GO TO PAGE 8, UNDER D, IF YOU  
22 COULD JUST -- THANK YOU -- EXPAND THAT. AND DO YOU REMEMBER  
23 THAT LETTER THAT YOU SENT TO MR. JOHNSON WHERE YOU NOTIFIED HIM  
24 OF HIS THREE OPTIONS OF GOING TO THE CIVIL SERVICE  
25 COMMISSION?

10:29:54

1 A. CORRECT.

2 Q. IS THIS PART OF THE RULES THAT YOU FOLLOW THAT REQUIRES YOU  
3 TO DO THAT?

4 A. YES.

5 Q. EVEN THOUGH YOU SUBSTANTIATED SOME OF HIS CLAIMS OF  
6 VIOLATION OF POLICY, YOU STILL HAD TO DO THIS?

7 A. YES.

8 Q. IN CASE FOR SOME REASON HE THOUGHT, FOR EXAMPLE, THE  
9 INVESTIGATION WAS NOT COMPLETE OR PROPERLY DONE?

10 A. CORRECT.

11 Q. AND I ASSUME YOU SENT THE SAME LETTER TO MS. BEALE?

12 A. NO.

13 Q. AND WHY IS THAT?

14 A. BECAUSE MS. BEALE IS THE SUBJECT OF THE INVESTIGATION, AND

10:30:27

15 IF ANYTHING WAS TO HAPPEN IN TERMS OF DISCIPLINE OR SOMETHING  
16 TO MS. BEALE, SHE HAS ANOTHER COURSE TO PROCEED AND SHE CAN  
17 QUESTION -- SHE ALSO IS TOLD THIS VERBALLY THAT SHE HAS THE  
18 SAME RIGHTS TO APPEAL THE INVESTIGATION, BUT SHE DOESN'T GET A  
19 WRITTEN DOCUMENT.

20 Q. NOW AFTER YOU COMPLETED YOUR INVESTIGATION, YOU HAVE NO  
21 AUTHORITY TO IMPOSE DISCIPLINE, AS YOU MENTIONED, UNDER THE  
22 CITY CHARTER AND THE RULES; IS THAT CORRECT?

23 A. THAT'S CORRECT.

24 Q. BECAUSE IF DISCIPLINE IS IMPOSED, THE EMPLOYEE HAS THE  
25 RIGHT, IF THEY ARE A CIVIL SERVICE EMPLOYEE, TO APPEAL THAT TO

10:31:13 1 THE CIVIL SERVICE COMMISSION?

2 A. CORRECT.

3 Q. AND YOU ARE IN THE SAME PERSONNEL DEPARTMENT THAT IS  
4 RESPONSIBLE FOR CIVIL SERVICE MATTERS?

5 A. CORRECT.

6 Q. SO IT WOULD BE A CONFLICT OF INTEREST FOR YOU TO BE ON ONE  
7 HAND INVOLVED IN DISCIPLINING AN EMPLOYEE AND ON THE OTHER HAND  
8 HELPING THE CIVIL SERVICE COMMISSION IN THEIR REVIEW OF AN  
9 APPEAL OF THAT DISCIPLINE?

10 A. CORRECT.

11 Q. IS THAT WHY YOU STAY STRICTLY OUT OF THAT WHOLE DISCIPLINE  
12 ISSUE?

13 A. CORRECT.

14 Q. AND THE DEPARTMENT HEAD IS THE ONE THAT TYPICALLY IS  
10:31:45 15 INVOLVED IN CONSULTATION WITH H.R. WITH THE ISSUE OF  
16 DISCIPLINE?

17 A. CORRECT.

18 Q. AND DISCIPLINARY MATTERS ARE REQUIRED TO BE KEPT PRIVATE;  
19 IS THAT CORRECT?

20 A. CORRECT.

21 Q. SO IF THERE'S ANY CORRECTIVE MEASURES TAKEN AGAINST AN  
22 EMPLOYEE THAT'S VIOLATED CITY POLICY, BECAUSE OF THAT  
23 EMPLOYEE'S RIGHT TO PRIVACY, IT MUST REMAIN CONFIDENTIAL?

24 A. CORRECT.

25 Q. ARE YOU AWARE THAT IN THE DISCIPLINARY PROCESS, YOUR

10:32:24 1 REPORT, IF IT'S USED FOR DISCIPLINE, IS SOMETIMES SHARED WITH  
2 THE SUBJECT EMPLOYEE SO THEY HAVE NOTICE OF THE POLICIES THEY  
3 VIOLATED IN CASE THEY WANT TO APPEAL ANY DISCIPLINE TO THE  
4 CIVIL SERVICE COMMISSION?

5 A. THEY HAVE THE SAME RIGHTS UNDER THIS PROCESS.

6 Q. THEY HAVE WHAT'S CALLED A RIGHT TO A SKELLY HEARING;  
7 CORRECT?

8 A. CORRECT.

9 Q. SO THEY HAVE NOTICE AND OPPORTUNITY TO KNOW WHAT SUPPOSEDLY  
10 THEY DID WRONG?

11 A. CORRECT.

12 Q. THAT YOUR OFFICE FOUND?

13 A. CORRECT.

14 Q. BUT YOU'RE NOT INVOLVED WITH THAT?

10:33:00 15 A. I'M NOT INVOLVED, CORRECT.

16 Q. AND LAST, YOU SAID THAT THERE WERE NO RED FLAGS THAT MR.  
17 JOHNSON'S REQUEST FOR EITHER DIFFERENT SUPERVISOR OR  
18 TRANSFERRING THAT INDICATED TO YOU RETALIATION. WHY IS THAT?

19 A. BECAUSE I THOUGHT IT WAS THE OPPOSITE. I THOUGHT WE WERE  
20 BENEFITING MR. JOHNSON BECAUSE MR. JOHNSON HAD MADE THE REQUEST  
21 TO BE MOVED, WHICH WAS LOGICAL TO ME. IF HE FELT THAT HE WAS  
22 BEING HARMED BY A SUPERVISOR IN THE INVESTIGATION THAT WE DID,  
23 THEN IT MAKES SENSE THAT IF HE'S REQUESTING THIS REMEDY, IN  
24 ORDER TO PROVIDE SOME TYPE OF BENEFIT FOR MR. JOHNSON, THAT WE  
25 SHOULD DO THAT. BUT AT NO TIME WAS I UNDER THE IMPRESSION THAT

10:34:00 1 MR. JOHNSON WAS CONTINUALLY BEING DISCRIMINATED AGAINST OR  
2 RETALIATED AGAINST BECAUSE OF THE COMPLAINT HE FILED IN OUR  
3 OFFICE, THE INVESTIGATION THAT HE WAS DOING IN OUR OFFICE.

4 Q. THE COMPLAINT HE FILED THROUGH HIS UNION THAT --

5 A. CORRECT.

6 MR. SCHAEFER: THANK YOU. I HAVE NO FURTHER  
7 QUESTIONS.

8 REDIRECT EXAMINATION

9 BY MR. CADIEUX:

10 Q. MR. BARCLAY, YOU JUST TESTIFIED THAT IT WAS YOUR  
11 UNDERSTANDING THAT THE REQUEST FOR A DIFFERENT SUPERVISOR OR  
12 TRANSFER WAS PART OF A REMEDY FOR MR. JOHNSON'S EEO COMPLAINT.  
13 WOULDN'T A BETTER REMEDY BE TO JUST STOP THE MISCONDUCT OF  
14 MS. BEALE?

10:34:43 15 MR. SCHAEFER: OBJECTION, YOUR HONOR.

16 ARGUMENTATIVE.

17 THE COURT: SUSTAINED.

18 BY MR. CADIEUX:

19 Q. LET'S LOOK AT EXHIBIT 1, PAGE 7. MR. BARCLAY, I THINK YOU  
20 TESTIFIED THAT THESE PROCEDURES IN EXHIBIT 1 HERE ARE NOT THE  
21 ONES THAT WOULD APPLY TO YOUR INVESTIGATION FROM YOUR OFFICE,  
22 RESOLVING A COMPLAINT FROM YOUR OFFICE; CORRECT?

23 A. CORRECT.

24 Q. YOU AGREE UNDER 6.1 HERE THAT IF AN EMPLOYEE BELIEVES  
25 THERE'S A VIOLATION OF THE CITY'S EEO POLICY, HE OR SHE IS

10:35:18 1 ENCOURAGED TO REPORT THESE INSTANCES IMMEDIATELY TO ANY OF THE  
2 FOLLOWING, AND THIS INCLUDES THE EMPLOYEE'S SUPERVISOR, ANOTHER  
3 SUPERVISOR, THE EEO LIAISON, DEPUTY DIRECTOR, DEPARTMENT HEAD,  
4 HUMAN RESOURCES, YOUR OFFICE, PERSONNEL DEPARTMENT, EEIO; THESE  
5 ARE ALL EQUALLY AVAILABLE TO EMPLOYEES TO REPORTING VIOLATIONS  
6 OF THIS POLICY; CORRECT?

7 A. YES.

8 Q. LET'S LOOK TO THE NEXT PAGE, PAGE 8, IF YOU COULD BLOW UP  
9 THE FIRST FULL PARAGRAPH THERE, RIGHT THERE. AND SO THIS PART  
10 SAYS THAT IF AN EMPLOYEE CHOOSES TO REPORT POSSIBLE VIOLATIONS  
11 TO ANY OF THOSE INDIVIDUALS WE JUST TALKED ABOUT, THE COMPLAINT  
12 PROCEDURES LISTED IN THIS SECTION SHALL APPLY. DO YOU SEE  
13 THAT?

14 A. YES.

10:36:09 15 Q. OKAY. SO YOUR UNDERSTANDING WAS THAT MR. JOHNSON FILED A  
16 COMPLAINT REGARDING EEO VIOLATIONS WITH THE CITY'S HUMAN  
17 RESOURCES DEPARTMENT; CORRECT?

18 A. I GOT THE COMPLAINT FROM THE HUMAN RESOURCES DEPARTMENT.  
19 THE GENESIS OF IT I THINK CAME FROM A GRIEVANCE OR -- BUT IT  
20 DIDN'T COME DIRECTLY TO ME.

21 Q. BUT COMPLAINT CAME FROM H.R., AND H.R. GAVE THAT COMPLAINT  
22 TO YOU?

23 A. CORRECT.

24 Q. UNDER THIS POLICY, DOESN'T IT MEAN THAT THE POLICY  
25 EXPLAINED HERE SHALL APPLY TO THE RESOLUTION OF THAT

10:36:46

1 COMPLAINT?

2 A. CAN YOU REPEAT THE QUESTION?

3 Q. I'LL MOVE ON. I THINK I MADE MY POINT. LET'S LOOK AT  
4 EXHIBIT 2, PAGE 7, AND PARAGRAPH 2A, UNDER CAUSE FINDINGS. WE  
5 JUST LOOKED AT THIS. SO THIS SAYS THAT IF AFTER AN  
6 INVESTIGATION BY YOUR OFFICE -- AND THESE, BY THE WAY, ARE THE  
7 PROCEDURES THAT YOU SAY APPLY TO YOUR INVESTIGATIONS, RIGHT?

8 A. CORRECT.

9 Q. SO IF AFTER YOUR INVESTIGATION THERE IS REASONABLE CAUSE  
10 FOR A CHARGE OF DISCRIMINATION, THE EEIO SHALL DISCUSS THIS  
11 FINDING WITH THE PERSONNEL DIRECTOR. THAT'S -- AT THE TIME OF  
12 MR. JOHNSON'S COMPLAINT, I THINK WE ESTABLISHED THAT WAS HADI  
13 DEHGHANI; CORRECT?

14 A. CORRECT.

10:37:45

15 Q. DID YOU HAVE THAT DISCUSSION WITH HADI DEHGHANI?

16 A. YES. I BRIEFED HIM ON THE RESULT OF THE INVESTIGATION.

17 Q. OKAY. DID HADI DEHGHANI CONCUR IN YOUR FINDINGS?

18 A. YES.

19 Q. SO YOU'LL SEE THE NEXT PART OF THAT SENTENCE: IF THE  
20 PERSONNEL DIRECTOR CONCURS IN THE FINDING OF THE EEIO, THE EEIO  
21 SHALL ATTEMPT TO MEDIATE THE COMPLAINT. DID YOU ATTEMPT TO  
22 MEDIATE THE COMPLAINT?

23 A. NO.

24 Q. THERE'S NOTHING IN THIS POLICY THAT REQUIRES THE EMPLOYEE  
25 WHO MADE THE EEO COMPLAINT TO REQUEST MEDIATION; CORRECT?

10:38:31 1 A. NO.

2 Q. THIS SAYS YOU SHALL DO IT?

3 A. YES.

4 Q. LET'S LOOK AT PARAGRAPH 2D. YOU TESTIFIED EARLIER THAT  
5 THIS IS WHAT PROMPTED YOU TO PUT APPEAL LANGUAGE IN THAT LETTER  
6 TO MR. JOHNSON ON MARCH 28, 20 --

7 A. CORRECT.

8 Q. THIS SAYS IF MEDIATION IS NOT POSSIBLE, THE COMPLAINANT OR  
9 RESPONDENT MAY APPEAL, AND THEN THE LAST SENTENCE SAYS OR LAST  
10 PART OF THAT FIRST SENTENCE SAYS THAT THEY CAN APPEAL WITHIN  
11 TEN WORKING DAYS OF BEING NOTIFIED OF THE FAILURE OF THE  
12 MEDIATION PROCESS. DID YOU EVER NOTIFY MR. JOHNSON THAT IF  
13 THERE'S A FAILURE OF THAT MEDIATION PROCESS THAT YOUR OFFICE  
14 SHALL UNDERTAKE?

10:39:25 15 A. NO. MR. JOHNSON NEVER ENGAGED IN A MEDIATION PROCESS.

16 Q. YOUR OFFICE NEVER ENGAGED IN A MEDIATION PROCESS?

17 A. I WENT BACK TO THE PERSON WHO REQUESTED THE INVESTIGATION.  
18 IF MR. JOHNSON WOULD HAVE COME INTO MY OFFICE AND FILED A  
19 COMPLAINT AND WE WOULD HAVE WENT THROUGH A PROCESS WITH MR.  
20 JOHNSON, THEN YES, THIS WOULD HAVE APPLIED.

21 Q. YOU MENTIONED THE SECOND INVESTIGATION AFTER BEING NOTIFIED  
22 BY THE FEDERAL EEOC THAT MR. JOHNSON HAD FILED A COMPLAINT  
23 ABOUT RETALIATION. WHEN DID YOU DO THAT SECOND  
24 INVESTIGATION?

25 A. IT WAS AFTER THE FIRST ONE. I CAN'T RECALL THE ACTUAL

10:40:10 1 DATE.

2 Q. OKAY. IT WAS WELL AFTER MR. JOHNSON HAD TRANSFERRED,  
3 RIGHT?

4 A. CORRECT.

5 Q. YOU DIDN'T PREPARE A WRITTEN REPORT OF THE SECOND  
6 INVESTIGATION, DID YOU?

7 A. I PREPARED A RESPONSE TO THE FEDERAL GOVERNMENT.

8 Q. OTHER THAN THAT RESPONSE TO THE FEDERAL GOVERNMENT, YOU  
9 DIDN'T DO A REPORT OF FINDINGS; CORRECT?

10 A. NO.

11 Q. YOU DIDN'T INTERVIEW ANY WITNESSES AS PART OF THAT  
12 INVESTIGATION EITHER, DID YOU?

13 A. YES.

14 Q. YOU DID?

10:40:34 15 A. YES.

16 Q. DO YOU RECALL TELLING ME SOMETHING DIFFERENT IN MY  
17 DEPOSITION?

18 A. MAYBE. YOU CAN REMIND ME.

19 MR. SCHAEFER: COUNSEL, BEFORE PUBLISHING THAT, TELL  
20 ME THE PAGE NUMBER AND THE LINES.

21 MR. CADIEUX: I'M ABOUT TO. I GOT TO FIND IT.

22 BY MR. CADIEUX:

23 Q. OKAY. I'D LIKE TO READ PAGE 76, LINES 14 THROUGH 19.

24 MR. SCHAEFER: I'D OBJECT AS NOT BEING PROPER  
25 IMPEACHMENT, YOUR HONOR.

10:41:33 1 THE COURT: WELL, LET ME REVIEW WHAT THE QUESTION WAS  
2 FIRST. THEN I'LL HAVE A SIDEBAR.

3 MR. SCHAEFER: I WITHDRAW THE OBJECTION, YOUR  
4 HONOR.

5 THE COURT: YOU WITHDRAW IT? OKAY. GO AHEAD.  
6 BY MR. CADIEUX:

7 Q. THANK YOU.

8 "QUESTION: DID YOU INTERVIEW ANY WITNESSES REGARDING  
9 THE RETALIATION?

10 ANSWER: I HAVE TO GO BACK AND REVIEW. NO. BECAUSE  
11 SOME OF THE CHARGES IN THIS COMPLAINT ARE THE SAME THING THAT  
12 WAS IN THE COMPLAINT ABOUT THE GRIEVANCES."

13 DOES THAT REFRESH YOUR RECOLLECTION?

14 A. THAT DOES REFRESH MY RECOLLECTION, YES.

10:42:18 15 Q. OKAY. SO AS PART OF THAT SECOND INVESTIGATION, YOU DIDN'T  
16 INTERVIEW ANY WITNESSES?

17 A. WE WERE GOING OVER THE SAME TERRITORY, SAME INFORMATION.

18 Q. YOU DIDN'T INTERVIEW MS. BEALE OR MS. MALAND?

19 A. NO.

20 Q. YOU DID TALK TO JUDY VON KALINOWSKI, THE H.R. DIRECTOR,  
21 HOWEVER; RIGHT?

22 A. YES.

23 Q. DID YOU TRANSCRIBE ANY NOTES FROM THAT DISCUSSION?

24 A. I CAN'T RECALL.

25 Q. IT WASN'T A FORMAL INTERVIEW; IT WAS JUST A DISCUSSION?

10:42:52

1 A. CORRECT.

2 Q. AND MS. VON KALINOWSKI TOLD YOU THAT MR. JOHNSON HAD ASKED  
3 TO BE MOVED; CORRECT?

4 A. YES.

5 Q. AND THAT WAS THE END OF YOUR INVESTIGATION; CORRECT?

6 A. I THINK I MAY HAVE SAW AN E-MAIL OR SOMETHING TO THAT  
7 EFFECT THAT HE WAS REQUESTING TO BE MOVED.

8 Q. WAS THAT AN E-MAIL FROM MS. MALAND TO JUDY VON  
9 KALINOWSKI?

10 A. I DON'T KNOW. I DON'T KNOW. I JUST, I GOT THE, AND I  
11 THINK AT SOME POINT WE KNEW MR. JOHNSON WANTED TO MOVE AS PART  
12 OF THE REMEDY. IT WAS MORE OF WHAT'S THE REMEDY THAT MR.  
13 JOHNSON WANTS.

10:43:31

14 Q. AS PART OF THAT SECOND INVESTIGATION, YOU NEVER SPOKE WITH  
15 MR. JOHNSON THOUGH, DID YOU?

16 A. NOT THAT I RECALL.

17 Q. YOU DIDN'T ASK HIM, HEY, WHY DID YOU WANT TO TRANSFER, OR  
18 IS THIS SOMETHING THAT YOU WOULD WANT INSTEAD OF SOME OTHER  
19 REMEDY; CORRECT?

20 A. NO. I THINK AT SOME POINT -- I'D HAVE TO GO BACK AND LOOK  
21 -- MR. JOHNSON WAS MAKING IT CLEAR THAT HE DID NOT WANT TO, HE  
22 WANTED TO BE MOVED. I GOT THAT CLEAR UNDERSTANDING HE WANTED  
23 TO BE MOVED NOT BECAUSE OF RETALIATION. IT WAS BECAUSE HE WANT  
24 A REMEDY. THAT WAS PART OF HIS REMEDY.

25 Q. CORRECT. BUT MY QUESTION WAS YOU NEVER SPOKE TO MR.

10:44:06 1 JOHNSON TO CONFIRM THAT; CORRECT?

2 A. NO, I NEVER HEARD FROM MR. JOHNSON COMPLAINING THAT HE WAS  
3 BEING RETALIATED AGAINST. I INFORMED MR. JOHNSON, WE HAD  
4 INFORMED MR. JOHNSON ALL THE THINGS HE COULD DO IF HE FELT HE  
5 WAS BEING RETALIATED AGAINST BECAUSE OF OUR INVESTIGATION, AND  
6 WE NEVER HEARD FROM MR. JOHNSON.

7 Q. OKAY. AND WHAT YOU INFORMED HIM WAS IN THAT LETTER THAT WE  
8 LOOKED AT, MARCH 28, 2016; CORRECT? THERE WAS NO OTHER  
9 LETTER --

10 A. I THINK MR. JOHNSON WAS IN OUR OFFICE AND AT SOME POINT WE  
11 SPOKE TO MR. JOHNSON.

12 Q. YOU PERSONALLY?

13 A. NOT ME PERSONALLY, BUT I DO RECALL MR. JOHNSON BEING IN OUR  
14 OFFICE, AND THAT'S TYPICAL FOR WHAT WE WOULD DO IN A COMPLAINT,  
10:44:43 15 AN INVESTIGATION. WE WOULD ADMONISH BOTH THE COMPLAINANT AND  
16 THE SUBJECT AGAINST RETALIATION --

17 Q. MR. BARCLAY, I DON'T MEAN TO CUT YOU OFF. I UNDERSTAND  
18 WHAT IS TYPICALLY DONE. I'M MORE CONCERNED ABOUT WHAT WAS  
19 ACTUALLY DONE IN THIS CASE. DO YOU HAVE A CLEAR RECOLLECTION  
20 ABOUT WHEN MR. JOHNSON MIGHT HAVE CAME INTO YOUR OFFICE AND YOU  
21 GAVE HIM ANY OF THESE INSTRUCTION OR OPTIONS ON WHAT HE COULD  
22 DO?

23 A. NO. NO.

24 Q. OKAY. THANK YOU. NO FURTHER QUESTIONS.

25 RECROSS-EXAMINATION

10:45:15 1 BY MR. SCHAEFER:

2 Q. MR. BARCLAY, I WANT TO PUT IN CONTEXT WITH THE FOLLOWING  
3 QUESTION YOUR RESPONSE IN THAT DEPOSITION. WHEN YOU GOT THIS  
4 EEOC COMPLAINT THAT MR. JOHNSON FILED, THAT YOU WERE ASKED TO  
5 RESPOND TO, IT INCLUDED THE ORIGINAL ALLEGATIONS THAT WERE MADE  
6 AGAINST MS. BEALE FOR DISCRIMINATION; CORRECT?

7 A. CORRECT.

8 Q. AND WHEN YOU SAID YOU WEREN'T GOING TO GO BACK AND  
9 INTERVIEW ALL THE WITNESSES, YOU WERE TALKING ABOUT THAT  
10 PARTICULAR PART OF THIS?

11 A. CORRECT.

12 Q. THIS EEOC CHARGE?

13 A. CORRECT.

14 Q. BUT WITH RESPECT TO THIS NEW ALLEGATION THAT "I WAS  
10:45:58 15 RETALIATED AGAINST BECAUSE SOME OF MY SUPERVISOR  
16 RESPONSIBILITIES WERE TAKEN AWAY AND I HAD TO GO TO PUD," YOU  
17 DID TALK TO MS. VON KALINOWSKI?

18 A. CORRECT.

19 Q. YOU DID REVIEW WITH HER EVERYTHING THAT HAD HAPPENED IN  
20 TERMS OF WHY HE WAS GIVEN A DIFFERENT SUPERVISOR; CORRECT?

21 A. CORRECT.

22 Q. AND WHY HE WENT TO PUD?

23 A. CORRECT.

24 Q. AND YOU JUST DIDN'T FIND ANY EVIDENCE TO SHOW THERE WAS  
25 RETALIATION BY MANAGEMENT IN GIVING HIM A NEW SUPERVISOR?

10:46:33 1 A. CAN I ADD ONE THING?

2 Q. SURE.

3 A. NOT ONLY DID I SPEAK TO PEOPLE BUT I ALSO LOOKED AT THE  
4 SYSTEM. WHAT I MEAN BY THE "SYSTEM," I LOOKED TO SEE WHAT IS  
5 HIS JOB CLASSIFICATION. WAS HE A SUPERVISOR? HAD HE HAD A  
6 SUPERVISORY ROLE AT THE TIME? AND I DIDN'T FIND ANY OF THAT.  
7 HE WAS NOT A TYPICALLY, A SUPERVISOR. HE DIDN'T HAVE A JOB  
8 CLASSIFICATION AS A SUPERVISOR. SO IN MY INVESTIGATION I  
9 DIDN'T FIND WHERE HE HAD LOST, HE WAS DEMOTED. I THINK IN THE  
10 CHARGE HE MAY HAVE EVEN MADE, I DON'T KNOW, THE CLAIM THAT HE  
11 WAS DEMOTED. HE WAS NEVER DEMOTED. HE NEVER WAS THE  
12 SUPERVISOR. HE WAS IN AN INFORMAL ROLE THAT MS. BEALE HAD  
13 GIVEN HIM IN ORDER TO GIVE HIM THE OPPORTUNITY TO WORK IN A  
14 CAPACITY THAT HE DIDN'T NORMALLY WORK IN. SO THAT'S WHAT I  
10:47:34 15 FOUND.

16 Q. WHEN YOU ARE TALKING ABOUT THE CLASSIFICATION, YOU'RE  
17 TALKING ABOUT THE CIVIL SERVICE CLASSIFICATION?

18 A. RIGHT.

19 Q. WHETHER THAT CLASSIFICATION HE WAS IN WAS CLASSIFIED AS A  
20 SUPERVISOR?

21 A. CORRECT.

22 Q. OKAY. THANK YOU.

23 THE COURT: ALL RIGHT. THANK YOU, SIR. YOU MAY STEP  
24 DOWN. CAN THIS WITNESS BE EXCUSED?

25 MR. CADIEUX: YES, YOUR HONOR.

10:47:58 1 THE COURT: VERY GOOD. NEXT WITNESS?  
2 MR. VANDERPOOL: PLAINTIFF CALLS KELLY CRUZ. SHE'S  
3 OUTSIDE.  
4 (OATH ADMINISTERED.)  
5 THE CLERK: PLEASE BE SEATED UP HERE. PLEASE STATE  
6 YOUR FIRST AND LAST NAME AND SPELL IT FOR THE RECORD.  
7 THE WITNESS: KELLY CRUZ, K-E-L-L-Y, C-R-U-Z.  
8 MR. VANDERPOOL: MAY I PROCEED, YOUR HONOR?  
9 THE COURT: YES.  
10 MR. VANDERPOOL: THANK YOU.

11 DIRECT EXAMINATION

12 BY MR. VANDERPOOL:  
13 Q. GOOD MORNING, MS. CRUZ. ARE YOU SUBPOENAED TO BE HERE  
14 TODAY?  
10:49:45 15 A. YES.  
16 Q. BY WHOM?  
17 A. YOURSELF AND THE CITY ATTORNEY'S OFFICE.  
18 Q. YOU GOT TWO DIFFERENT SUBPOENAS?  
19 A. I DID.  
20 Q. YOU'RE REALLY IN DEMAND FOR BEING HERE. THANK YOU FOR  
21 COMING.  
22 A. YOU'RE WELCOME.  
23 Q. DID YOU REVIEW ANY DOCUMENTATION IN PREPARATION FOR YOUR  
24 TESTIMONY THIS MORNING?  
25 A. YES, I DID.

10:49:59 1 Q. WHAT DID YOU REVIEW?

2 A. I REVIEWED MY DEPOSITION. I REVIEWED MY DOCUMENTS THAT I  
3 HAD TO SUPPLY AT THE DEPOSITION. I REVIEWED MY CASE NOTES, AND  
4 I PREPARED A CHRONOLOGY OF EVENTS.

5 Q. OKAY. LET'S BREAK SOME OF THOSE DOWN. YOUR DEPOSITION WAS  
6 TAKEN BY A CITY ATTORNEY IN THIS CASE JANUARY 2018?

7 A. YES.

8 Q. AND YOU WERE SUBPOENAED BY THE CITY ATTORNEY TO APPEAR AT  
9 THAT DEPOSITION; CORRECT?

10 A. YES.

11 Q. AND WITH THAT SUBPOENA YOU WERE DIRECTED TO PRODUCE  
12 DOCUMENTS IN CONNECTION WITH YOUR COMMUNICATIONS WITH CITY  
13 OFFICIALS, INCLUDING MR. SCHWABE RIGHT THERE; IS THAT RIGHT?

14 A. CORRECT.

10:50:34 15 Q. AS WELL AS WITH MR. JOHNSON?

16 A. CORRECT.

17 Q. SHOW THE JURY HOW BIG A STACK OF MATERIALS YOU BROUGHT TO  
18 YOUR DEPOSITION?

19 A. IT WAS PROBABLY ABOUT THAT BIG.

20 Q. SO OVER TWO, PROBABLY THREE INCHES?

21 A. PROBABLY.

22 Q. AND YOU PROVIDED THE CITY ATTORNEY AT YOUR DEPOSITION WITH  
23 ALL THOSE WRITTEN MATERIALS?

24 A. YES, I DID.

25 Q. YOU EVEN PRINTED THEM OUT FOR HIM?

10:50:53 1 A. I SURE DID.

2 Q. THOSE ARE THE MATERIALS YOU WENT THROUGH WHEN? WITHIN THE

3 LAST WEEK?

4 A. WITHIN THE LAST COUPLE DAYS.

5 Q. WHY DID YOU WANT TO REVIEW THAT MATERIAL?

6 A. TO REFRESH MY MEMORY BECAUSE OF HOW LONG IT'S BEEN SINCE

7 THE CASE WAS ACTIVE.

8 Q. DURING THAT DEPOSITION BY A CITY ATTORNEY, DID YOU ANSWER

9 ALL OF THEIR QUESTIONS?

10 A. NOT ALL OF THEM, NO. I WASN'T -- I DIDN'T HAVE THE MEMORY

11 FOR SOME OF THEM.

12 Q. BY NOT ANSWER, YOU MEAN IN SOME INSTANCES YOU DIDN'T

13 REMEMBER AN ANSWER?

14 A. RIGHT.

10:51:26 15 Q. OKAY. BUT IF THEY POSED AN ANSWER, YOU SAID EVEN "I DON'T

16 RECALL"?

17 A. TRUE.

18 Q. MEANING, YOU DIDN'T REFUSE TO ANSWER ANY QUESTIONS?

19 A. NO.

20 Q. I GOT IT. NOW YOU MENTIONED IN REVIEWING THESE MATERIALS

21 YOU PREPARED SOME KIND OF CHRONOLOGY?

22 A. A CHRONOLOGY OF EVENTS.

23 Q. DID ANYBODY TELL YOU TO DO THAT?

24 A. NO.

25 Q. WHY DID YOU PREPARE A CHRONOLOGY TO, READY FOR THIS

10:51:48 1 MORNING?

2 A. BECAUSE I WANTED TO HAVE A FRESH MEMORY OF THE EVENTS THAT  
3 OCCURRED WITH RASEAN'S CASE AND THE TREATMENT HE WAS  
4 RECEIVING.

5 Q. DID YOU DO ANYTHING ELSE TO PREPARE FOR YOUR TESTIMONY  
6 TODAY?

7 A. YES.

8 Q. WHAT?

9 A. YOU AND I MET ON TUESDAY, AND WE REVIEWED MY CASE NOTES.  
10 WE REVIEWED MY CHRONOLOGY OF EVENTS. YOU WENT OVER A COUPLE OF  
11 QUESTIONS, AND WE HAD PIZZA.

12 Q. THANK YOU FOR THE PIZZA. DURING THE COURSE OF THE MEETING,  
13 DID I TELL YOU HOW TO TESTIFY?

14 A. NOT HOW TO TESTIFY. YOU TOLD ME HOW TO TELL THE TRUTH OR  
10:52:32 15 TO TELL THE TRUTH.

16 Q. NOW YOUR EMPLOYMENT, MS. CRUZ, WHO IS YOUR EMPLOYER?

17 A. SAN DIEGO MUNICIPAL EMPLOYEE'S ASSOCIATION.

18 Q. WHAT TYPE OF ORGANIZATION IS THAT?

19 A. A LABOR UNION.

20 Q. NON-PROFIT?

21 A. YES.

22 Q. AND IT REPRESENTS WHOM?

23 A. THE WHITE COLLAR UNITS IN THE CITY OF SAN DIEGO.

24 Q. WHITE COLLAR, DOES THAT MEAN IT'S AT A PARTICULAR TERM OF  
25 ART, BARGAINING UNIT OR SOMETHING ELSE?

10:52:57 1 A. THAT MEANS WE DON'T REPRESENT ANYONE IN THE SKILLED TRADES  
2 UNIT. IT'S GENERAL THE PROFESSIONAL CLASSIFICATIONS IN THE  
3 CITY, AND WE DO HAVE FOUR DIFFERENT BARGAINING UNITS THAT WE  
4 REPRESENT.

5 Q. AND MR. JOHNSON IS IN WHICH OF THOSE BARGAINING UNITS?

6 A. HE IS IN THE ADMINISTRATIVE SUPPORT AND FIELD SERVICE  
7 UNIT.

8 Q. I TAKE IT THAT'S ONE OF THE UNITS THAT YOU'RE RESPONSIBLE  
9 FOR SUPPORTING?

10 A. YES, THE CLASSIFICATIONS.

11 Q. AND HOW LONG HAVE YOU BEEN EMPLOYED WITH MEA?

12 A. 32 YEARS.

13 Q. AND IS THAT AFFILIATED UNION, MEANING INTERNATIONALLY OR  
14 NATIONALLY?

10:53:32 15 A. NO, IT'S INDEPENDENT.

16 Q. WHAT DOES THAT MEAN FOR FOLKS WHO MAY NOT UNDERSTAND  
17 THAT?

18 A. THAT MEANS WE'RE NOT AFFILIATED WITH A NATIONAL OR  
19 INTERNATIONAL UNION LIKE AFL, CIO OR FIREFIGHTERS  
20 INTERNATIONAL. WE ARE A LOCAL UNION, INDEPENDENT AND ONLY  
21 HERE IN SAN DIEGO.

22 Q. THANK YOU. AND YOUR CURRENT JOB TITLE IS WHAT?

23 A. LABOR RELATIONS MANAGER.

24 Q. AND HAVE YOU -- WHAT JOB TITLE, IF ANY DIFFERENT, DID YOU  
25 HOLD BACK IN 2015/'16?

10:54:06 1 A. YES. I WAS A SENIOR LABOR RELATIONS REPRESENTATIVE BACK  
2 THEN.

3 Q. ABOUT HOW MANY MEA MEMBERS ARE THERE?

4 A. APPROXIMATELY -- MEMBERS OR PEOPLE WE REPRESENT?

5 Q. GOOD QUESTION. LET'S TALK ABOUT MEMBERS FIRST.

6 A. PROBABLY ABOUT 4,000.

7 Q. AND MEMBERS IS DIFFERENT THAN PEOPLE YOU REPRESENT?

8 A. CORRECT.

9 Q. WITHOUT GETTING INTO A WHOLE DISSERTATION, THIS IS BECAUSE  
10 OF THE SUPREME COURT'S RULING LAST YEAR?

11 A. CORRECT.

12 Q. MEANING YOU REPRESENT CERTAIN PEOPLE WHO ARE NOT MEMBERS?

13 A. CORRECT.

14 Q. IS MR. JOHNSON A MEMBER?

10:54:39 15 A. YES, HE IS.

16 Q. AND HE WAS BACK IN 2015/'16?

17 A. YES, HE WAS.

18 Q. DOES MEA HAVE SOME TYPE OF CONTRACT BETWEEN ITS MEMBERS AND  
19 THE CITY?

20 A. YES WE DO.

21 Q. WHAT'S THAT KNOWN AS?

22 A. AN MOU.

23 Q. MOU IS MEMORANDUM OF UNDERSTANDING?

24 A. YES.

25 Q. AND DOES THE MOU HAVE TERMS AND CONDITIONS OF EMPLOYMENT

10:55:06 1 APPLICABLE TO EMPLOYEES?

2 A. YES.

3 Q. MEMBERS AND NON-MEMBERS OF MEA?

4 A. YES.

5 Q. HAVE YOU EVER WORKED FOR THE CITY OF SAN DIEGO?

6 A. NO.

7 Q. NOW YOUR ROLE WITH RESPECT TO MEA MEMBERS LIKE MR. JOHNSON,  
8 HOW WOULD YOU SUMMARIZE YOUR ROLE -- AND LET'S TAKE IT BACK IN  
9 2015/'16 -- WITH RESPECT TO MEMBERS?

10 A. SO WE'RE RESPONSIBLE FOR ENFORCEMENT OF THE MOU. WE  
11 REPRESENT EMPLOYEES ON A VARIETY OF MATTERS, INCLUDING  
12 FACT-FINDINGS, DISCIPLINES THAT ARE RECEIVED AND THEN APPEALED.  
13 WE NEGOTIATE DIFFERENT POLICIES WITHIN THE CITY. WE DO MEET  
14 AND CONFER. WE REPRESENT THE UNION ON LABOR MANAGEMENT  
10:55:54 15 COMMITTEES, AND I COULD GO ON AND ON.

16 Q. LOTS OF STUFF. IN CARRYING OUT THOSE JOB DUTIES, DO YOU  
17 COMMUNICATE WITH MULTIPLE MEA MEMBERS AT ANY GIVEN TIME?

18 A. YES.

19 Q. DO THEY CONTACT YOU IF THEY NEED HELP IN ANY OF THOSE  
20 AREAS?

21 A. YES.

22 Q. AND -- NOW IN REPRESENTING EMPLOYEES LIKE MR. JOHNSON, DO  
23 YOU ENGAGE WITH CITY REPRESENTATIVES, KIND OF AS YOUR  
24 COUNTERPART?

25 A. YES.

10:56:24 1 Q. AND WHAT AGENCY OR DEPARTMENT IS YOUR COUNTERPART TO  
2 ADVOCATING OR REPRESENTING EMPLOYEES?  
3 A. HUMAN RESOURCES.  
4 Q. CITY'S HUMAN RESOURCES?  
5 A. RIGHT.  
6 Q. OKAY. PEOPLE LIKE MR. SCHWABE?  
7 A. CORRECT.  
8 Q. IN FACT, YOU'VE KNOWN MR. SCHWABE FOR QUITE SOME TIME AND  
9 DEALT WITH HIM INCLUDING ON MR. JOHNSON'S MATTER?  
10 A. CORRECT.  
11 Q. I TAKE IT OVER 31 YEARS YOU DEALT WITH A LOT OF H.R.  
12 REPRESENTATIVES?  
13 A. MANY.  
14 Q. WE HAVEN'T HEARD YET MUCH ABOUT THE CITY'S H.R. DEPARTMENT.  
10:56:56 15 BUT LET ME ASK YOU A FEW QUESTIONS ABOUT IT. BACK WHEN WE'RE  
16 DEALING WITH MR. JOHNSON BACK IN 2015/'16, WHO IS THE HIGHEST  
17 RANKING H.R. DEPARTMENT OFFICIAL AS OF, LET'S TAKE JANUARY 1,  
18 2016?  
19 A. JUDY VON KALINOWSKI.  
20 Q. AND IS SHE STILL EMPLOYED AT THE CITY?  
21 A. NO.  
22 Q. DO YOU KNOW WHERE SHE IS NOW?  
23 A. I BELIEVE SHE IS WITH THE CITY OF CARLSBAD.  
24 Q. SO SHE'S TAKEN ANOTHER JOB?  
25 A. SHE HAS.

10:57:27 1 Q. AND WAS THERE A MR. CHADWICK IN THE CITY'S H.R. OFFICE BACK  
2 IN 2015/'16.  
3 A. YES. YES.  
4 Q. WHAT WAS HIS TITLE?  
5 A. HE WAS THE CHIEF OPERATING OFFICER.  
6 Q. OKAY. IS HE STILL EMPLOYED IN THE CITY?  
7 A. NO, HE'S NOT.  
8 Q. WHERE IS HE?  
9 A. CITY OF CARLSBAD.  
10 Q. HE WENT WITH MS. VON KALINOWSKI THERE?  
11 A. SHE WENT WITH HIM.  
12 Q. SHE WENT WITH HIM. OKAY. WHAT ABOUT MR. SCHWABE. IS HE  
13 STILL EMPLOYED WITH THE CITY?  
14 A. YES, HE IS.  
10:57:56 15 Q. UNTIL WHEN?  
16 A. I'M NOT SURE.  
17 Q. IS HE LEAVING SOON?  
18 A. I BELIEVE HE IS, YES.  
19 Q. WHERE IS HE GOING?  
20 A. CITY OF CARLSBAD.  
21 Q. OKAY. WORKING IN H.R., DO YOU KNOW?  
22 A. I DON'T.  
23 Q. NOW IN REPRESENTING EMPLOYEES LIKE MR. JOHNSON, WOULD YOU  
24 CONSIDER YOURSELF AN ADVOCATE?  
25 A. YES.

10:58:21 1 Q. HOW SO?

2 A. BECAUSE IT'S MY JOB TO HELP EMPLOYEES WHO ARE EXPERIENCING

3 DIFFICULTIES IN THE WORKPLACE.

4 Q. AND IN ADVOCATING FOR EMPLOYEES LIKE MR. JOHNSON, DO YOU

5 ADVOCATE AGAINST YOUR COUNTERPARTS?

6 A. SOMETIMES.

7 Q. NOT THAT YOU MAYBE KNOW OUR PROFESSION AS ATTORNEYS, BUT IS

8 THERE AN ANALOGOUS RELATIONSHIP THERE?

9 A. I WOULD SAY SO.

10 Q. YOU REPRESENT THE EMPLOYEE AND THE CITY REPRESENTS THEIR

11 CLIENT, IF YOU WILL, THE CITY?

12 A. RIGHT.

13 Q. SO HOW WOULD YOU CHARACTERIZE THE NATURE OF YOUR

14 INTERACTION WITH H.R.? IN OTHER WORDS, WHAT ARE YOU ALL SET

10:58:57 15 OUT TO DO IF THERE'S A RHYME OR REASON IN GENERAL TO ANY

16 EMPLOYEE ISSUE?

17 A. TO TRY AND RESOLVE THEM.

18 Q. WHAT ABOUT IDENTIFYING THE ISSUES THAT NEED TO BE

19 RESOLVED?

20 A. WELL, THAT WOULD BE MY JOB IN REPRESENTING THE EMPLOYEE IS

21 TO IDENTIFY WHAT PROBLEM OR THE ISSUE IS AND THEN TRY AND FIX

22 THAT. AND IN ORDER TO DO THAT, WE HAVE TO HAVE A POSITIVE

23 COLLABORATIVE RELATIONSHIP WITH HUMAN RESOURCES, AND WE DO.

24 Q. IN THE COURSE OF YOUR COMMUNICATION WITH EMPLOYEES LIKE MR.

25 JOHNSON, DO YOU KEEP RECORDS OF THOSE COMMUNICATION?

10:59:31

1 A. YES.

2 Q. WHY DO YOU KEEP RECORDS OF YOUR COMMUNICATION WITH YOUR  
3 EMPLOYEES?

4 A. IT HELPS US TO RECALL WHAT THE NEXT STEP IS. IT HELPS US  
5 WHEN EMPLOYEES GO TO TALK TO ATTORNEYS THAT WE HAVE  
6 DOCUMENTATION THAT WE CAN SUPPORT AND FOR TIMES LIKE THIS TO  
7 HELP IF WE ARE SUBPOENAED INTO COURT.

8 Q. AND LIKE TIMES AT YOUR DEPOSITION WHEN YOU'RE GOING TO BE  
9 ASKED QUESTIONS ABOUT WHAT YOU DID WHEN; RIGHT?

10 A. RIGHT.

11 Q. YOU CAN PIECE BACK TOGETHER WHERE YOU WERE, WHAT YOU SAID,  
12 WHO YOU TALKED TO WHEN; RIGHT?

13 A. RIGHT.

14 Q. AND THAT'S EXACTLY THE INFORMATION YOU WERE REVIEWING IN  
11:00:07 15 PREPARING TO TESTIFY TODAY?

16 A. RIGHT.

17 Q. AND LIKEWISE, DO YOU HAVE COMMUNICATIONS WITH YOUR  
18 COUNTERPARTS? I MEAN HAVE THEM, DO YOU RETAIN THEM?

19 A. YES.

20 Q. BEFORE WE TALK ABOUT RECORDS YOU RETAIN, YOUR NATURE OF  
21 YOUR COMMUNICATIONS WITH H.R. COUNTERPARTS IS IN WHAT FORM?

22 A. A VARIETY OF FORMS, IT'S E-MAILS, PHONE CALLS, TEXT  
23 MESSAGING, PRETTY MUCH ALL FORMS.

24 Q. IN PERSON?

25 A. IN PERSON, YES.

11:00:34 1 Q. DO YOU FAX ANYMORE?

2 A. NO.

3 Q. BACK IN THE DAY. IS THERE A REASON YOU WOULD USE A CERTAIN  
4 TYPE OF COMMUNICATION OVER ANOTHER?

5 A. SOMETIMES WE WOULD USE E-MAIL SO WE HAVE A DOCUMENTED  
6 RECORD OF WHAT OCCURRED.

7 Q. E-MAIL. DOES THE "E" IN E-MAIL STAND FOR ANYTHING, IF YOU  
8 KNOW?

9 A. I BELIEVE IT STANDS FOR ELECTRONIC.

10 Q. SOMEONE TOLD ME IT STOOD FOR EVIDENCE, BUT I DON KNOW. BUT  
11 HAVING AN E-MAIL IS CONFIRMING CERTAIN ACTIONS OR PLANS OR WHAT  
12 THE INTENTIONS ARE; RIGHT?

13 A. YES.

14 Q. SO YOU HAVE A RECORD OF WHAT YOU SAID, WHAT YOU DID, WHAT  
11:01:15 15 WE'RE GOING TO DO; CORRECT?

16 A. CORRECT.

17 Q. AND AGAIN, THAT'S EXACTLY THE KIND OF COMMUNICATIONS YOU  
18 REVIEWED, THE THREE-INCH STACK OF MATERIALS YOU REVIEWED BEFORE  
19 YOU CAME HERE TODAY?

20 A. CORRECT.

21 Q. A LITTLE BIT ABOUT SOME TERMS WE HEARD IN THIS CASE. ONE  
22 IS JOB CLASSIFICATIONS. A CLASSIFICATION IS PART OF WHAT? THE  
23 CITY'S SALARY SCHEDULE OR SOMETHING ELSE?

24 A. THE CLASSIFICATIONS ARE PART OF THE CLASS SPECIFICATION  
25 SERIES, AND THEN IN ADDITION, THERE'S A SALARY TABLE THAT

11:01:46 1 ADDRESSES EACH CLASSIFICATION IN THE CITY.

2 Q. AND CLASSIFICATIONS ARE DIFFERENT FROM JOB DUTIES OR JOB  
3 TITLES?

4 A. YES, THEY CAN BE.

5 Q. HOW SO?

6 A. AN EMPLOYEE COULD BE A CLERICAL ASSISTANT TWO BY  
7 CLASSIFICATION BUT HAVE A WORKING TITLE OF OFFICE MANAGER.

8 Q. GOT IT. AND DO THE JOB DUTIES AT A PARTICULAR DEPARTMENT  
9 OR POSITION ARE THOSE MAINTAINED WITHIN THAT DEPARTMENT?

10 A. EACH DEPARTMENT HAS THE JOB DUTIES FOR THE CLASSIFICATION  
11 BASED ON THE DEPARTMENT'S NEEDS, YES.

12 Q. DOES PART OF YOUR ASSISTANCE WITH EMPLOYEES INCLUDE GIVING  
13 THEM GUIDANCE OR SUPPORT IF THEY'RE INTERESTED IN  
14 TRANSFERRING?

11:02:33 15 A. ON OCCASION.

16 Q. WHAT ABOUT INTERESTED IN PROMOTING?

17 A. ON OCCASION.

18 Q. ON OCCASION HAVE YOU OVER 31 YEARS GOTTEN QUESTIONS ABOUT  
19 "HOW DO I TRANSFER," "HOW DO I PROMOTE"?

20 A. YES.

21 Q. AND YOU SERVE AS A RESOURCE FOR THOSE TYPES OF QUESTIONS?

22 A. RIGHT.

23 Q. ARE YOU FAMILIAR WITH THE TERM OF TRANSFER LIST?

24 A. YES.

25 Q. WHAT DOES THAT MEAN IN YOUR UNDERSTANDING OF THAT TERM IN

11:02:59 1 RELATION TO JOB TRANSFERS?

2 A. SO THAT IS A LIST THAT ANY EMPLOYEE IN THE CITY CAN GO ON  
3 IF THEY ARE INTERESTED IN TRANSFERRING TO A DIFFERENT  
4 DEPARTMENT OR TRANSFERRING TO A DIFFERENT SPOT IN THEIR CURRENT  
5 DEPARTMENT WITHIN THE SAME CLASSIFICATION.

6 Q. SO JUST TO -- IF I COULD SHOW YOU EXHIBIT 33, WE HAD SOME  
7 QUESTIONS ON THIS YESTERDAY. I KNOW THIS IS A LITTLE HARD TO  
8 SEE. BUT GO TO THE NEXT PAGE IF YOU WOULD, ELYSIA. MR. JOHNSON  
9 WAS ASKED ABOUT THIS TRANSFER REQUEST OR PERSONNEL ACTION  
10 REQUEST THAT HE SIGNED BACK IN 2010. IS THIS FORM -- YOU'RE  
11 FAMILIAR WITH THIS FORM?

12 A. YES.

13 Q. YOU'VE SEEN AND USED IT BEFORE?

14 A. YES.

11:03:50 15 Q. GO DOWN PLEASE, ELYSIA, WHERE IT SAYS, CHECK THE BOX, ABOUT  
16 TRANSFER. I WISH TO TRANSFER IN MY PRESENT JOB TO ANOTHER  
17 DEPARTMENT. YOU TOLD US THIS FORM IS ALSO USED EVEN IF YOU  
18 WANT TO PROMOTE IN YOUR OWN DEPARTMENT?

19 A. I'M SORRY. COULD I SEE THE BACK PART? I DON'T KNOW IF  
20 THIS FORM IS USED FOR PROMOTION OR NOT. I'M SORRY. I DON'T  
21 KNOW THE ANSWER TO THAT.

22 Q. OKAY. IS THERE A REASON, IF YOU KNOW, MR. JOHNSON WOULD BE  
23 SUBMITTING THIS TYPE OF FORM IF HE WAS NOT INTERESTED IN  
24 ACTUALLY LEAVING THE CLERK'S OFFICE?

25 A. A LOT OF CITY EMPLOYEES WILL PUT THEIR NAMES ON TRANSFER

11:04:45 1 LISTS BECAUSE SOMETIMES IN THE SMALLER DEPARTMENTS SUCH AS  
2 RASEAN WORKS IT'S HARDER TO PROMOTE. SO IF YOU TRANSFER TO ONE  
3 OF THE LARGER DEPARTMENTS, YOU HAVE MORE OPPORTUNITY FOR CAREER  
4 ENHANCEMENT OR ADVANCEMENT IF YOU DO TRANSFER TO SOME OF THE  
5 LARGER DEPARTMENTS. IT DOESN'T NECESSARILY MEAN SOMETHING IS  
6 WRONG. IT'S JUST MORE ABOUT PROMOTIONAL OPPORTUNITIES AND  
7 MAKING MORE MONEY.

8 Q. GOT IT. THERE WERE ALSO SOME QUESTIONS YESTERDAY ABOUT MR.  
9 JOHNSON BEING CONTACTED FOR INTERVIEWS AT SOME POINTS IN TIME  
10 AFTER HIS TRANSFER TO THE PUBLIC UTILITIES DEPARTMENT. ARE YOU  
11 AWARE OF THOSE INVITATIONS MR. JOHNSON RECEIVED?

12 A. I'M FAMILIAR WITH THE ONE HE RECEIVED FROM THE CITY CLERK'S  
13 OFFICE.

14 Q. WHAT IS THE SOURCE OF THAT, IF YOU KNOW? IN OTHER WORDS,  
11:05:41 15 HOW DOES THE CITY CLERK'S OFFICE OR SOMEONE CONTACT MR. JOHNSON  
16 ABOUT A POTENTIAL JOB POSITION OR RE-TRANSFER I GUESS?

17 A. WELL, LET ME SEE IF I CAN EXPLAIN THIS CLEARLY. SO IF AN  
18 EMPLOYEE IS ON THE TRANSFER LIST AND THEY GET A NOTIFICATION  
19 FROM PERSONNEL THAT THERE'S AN OPENING FOR A CLASSIFICATION  
20 THAT THEY'RE INTERESTED IN, IT GENERALLY WILL GIVE THE EMPLOYEE  
21 THE INFORMATION TO CONTACT THE DEPARTMENT WITH THE VACANCY; AND  
22 AT THAT POINT THE EMPLOYEE WILL LET THEM KNOW THAT THEY'RE  
23 INTERESTED IN INTERVIEWING, AND THEN THE DEPARTMENT CALLS BACK  
24 THE PEOPLE THAT THEY WANT TO INTERVIEW, OR INVITE THEM TO  
25 INTERVIEW I SHOULD SAY.

11:06:31 1 Q. DO YOU HAVE A MEMORY THAT WHEN MR. JOHNSON WAS INVITED FOR  
2 AN INTERVIEW BACK AT THE CLERK'S OFFICE?

3 A. YES.

4 Q. WHEN?

5 A. I'M SORRY -- OH, NO IT WAS APRIL, APRIL 11, I BELIEVE.

6 Q. WHAT YEAR?

7 A. 2016.

8 Q. THAT'S WHEN HE TRANSFERRED TO PUBLIC UTILITIES. MY  
9 QUESTION IS AFTER THAT. LET ME SEE IF I CAN REFRESH YOUR  
10 MEMORY. PULL UP EXHIBIT 52. CAN YOU SEE IT?

11 A. I'M SORRY. I GOT THE YEAR WRONG. IT WAS 2017.

12 Q. WHAT WAS? YOU SAID "IT."

13 A. THE E-MAIL RASEAN GOT FROM THE CITY CLERK'S OFFICE INVITING  
14 HIM TO INTERVIEW.

11:07:35 15 MS. ADEMA: OBJECTION. LACKS FOUNDATION.

16 MR. VANDERPOOL: NOT OFFERING IT, YOUR HONOR.

17 THE COURT: IT WAS JUST TO REFRESH HER RECOLLECTION.

18 SO IT'S NOT COMING IN. IT WAS JUST FOR THE DATE, RIGHT?

19 MR. VANDERPOOL: I'M SORRY, YOUR HONOR.

20 THE COURT: THAT WAS JUST FOR THE DATE?

21 MR. VANDERPOOL: YES, YOUR HONOR. IT WAS.

22 THE COURT: IT WASN'T FOR THE CONTENT. OKAY.

23 BY MR. VANDERPOOL:

24 Q. DO YOU HAVE YOUR MEMORY, MS. CRUZ, REFRESHED WITH THIS  
25 DOCUMENT WHETHER MR. JOHNSON DID INTERVIEW FOR THE POSITION?

11:07:59 1 A. I BELIEVE HE DID.  
2 Q. DID HE GET THE JOB?  
3 A. NO.  
4 Q. DO YOU REMEMBER OR KNOW WHO HE INTERVIEWED WITH?  
5 A. NO, I DON'T.  
6 Q. NOT PUBLISH BUT SHOW THE WITNESS EXHIBIT 10. DOES THIS  
7 DOCUMENT REFRESH YOUR MEMORY ABOUT WHEN MR. JOHNSON HEARD BACK  
8 ABOUT HIS INTERVIEW IN 2017 WITH THE CLERK'S OFFICE?  
9 A. YEAH. IT SAYS, MONDAY MAY 8TH, 2017.  
10 Q. DOES THIS REFRESH YOUR MEMORY THAT HE WAS DECLINED FOR THAT  
11 POSITION?  
12 A. YES. IT SAYS THEY SELECTED ANOTHER APPLICANT.  
13 Q. AND THE POSITION WAS IN THE SERVICES ELECTION ANALYST?  
14 A. YES.  
11:08:51 15 Q. AND ARE YOU GENERALLY FAMILIAR THAT IN THE CLERK'S OFFICE  
16 THERE ARE DIVISIONS THAT WOULD IN ONE DIVISION BY GEORGE -- HOW  
17 DO YOU PRONOUNCE LAST NAME?  
18 A. BIAGI.  
19 Q. THAT WAS AN ELECTIONS DIVISION?  
20 A. YES, I THINK SO.  
21 Q. SO HERE, MR. JOHNSON -- DOES THIS REFRESH YOUR MEMORY THAT  
22 MR. JOHNSON, EVEN IN 2017, WAS INTERESTED IN RETURNING TO THE  
23 CLERK'S OFFICE IF HE COULD GET A JOB?  
24 MS. ADEMA: OBJECTION. LEADING, YOUR HONOR.  
25 THE COURT: WELL, IN THIS CASE, SO WE MOVE ON, I'M

11:09:28 1 GOING TO OVERRULE IT.

2 THE WITNESS: CAN YOU REPEAT THE QUESTION?

3 BY MR. VANDERPOOL:

4 Q. WAS MR. JOHNSON PURSUING A JOB IN THE ELECTIONS DIVISION OF  
5 THE CLERK'S OFFICE IN MAY 2017?

6 A. YES.

7 Q. SHIFTING GEARS FROM TRANSFERS AND REQUEST TO INTERVIEW.  
8 OVER 31 YEARS REPRESENTING MEA MEMBERS, HAVE YOU ASSISTED THEM  
9 IN DEALING WITH RETALIATION COMPLAINTS?

10 A. YES.

11 Q. AND I DON'T WANT TO GET INTO ANY NAMES. I'M JUST ASKING  
12 FOR YOUR BACKGROUND IN THIS AREA. HOW MUCH EXPERIENCE DO YOU  
13 HAVE IN SUPPORTING MEMBERS LIKE MR. JOHNSON WHO ARE CLAIMING  
14 THEY ARE BEING SUBJECT TO RETALIATION?

11:10:08 15 A. A LOT. WE DO IT ON A REGULAR BASIS.

16 Q. OKAY. AND WHEN YOU'RE ASSISTING A MEMBER WITH THAT KIND OF  
17 SITUATION, WHAT IS YOUR ROLE?

18 A. WELL, TO FIRST IDENTIFY WHAT THE PROBLEM IS AND TO IDENTIFY  
19 WHETHER THERE TRULY IS RETALIATION. IF THERE IS, THEN WE  
20 ADVISE THE EMPLOYEE OF WHAT THEIR RIGHTS ARE, WHAT COURSES OF  
21 ACTION WE CAN TAKE, AND IF THEY'RE NOT WILLING TO MOVE FORWARD,  
22 BECAUSE A LOT OF EMPLOYEES ARE AFRAID, THEN WE GUIDE THEM  
23 TOWARDS THE EMPLOYEE'S ASSISTANCE PROGRAM.

24 Q. AND AGAIN, AS WE'VE COVERED A FAIR AMOUNT ALREADY, IN  
25 FIELDING THOSE KIND OF EMPLOYEE COMPLAINTS, DO YOU REGULARLY

11:10:57 1 GET INVOLVED WITH YOUR COUNTERPARTS IN HUMAN RESOURCES?

2 A. IF NECESSARY, YES.

3 Q. TO BE CLEAR ABOUT "COUNTERPARTS", MR. JOHNSON, AS YOU WELL  
4 KNOW, IS A CLERK'S OFFICE EMPLOYEE. WHY WOULDN'T YOU BE IN  
5 DIRECT CONTACT WITH, FOR EXAMPLE, ELIZABETH MALAND, THE CITY  
6 CLERK, AS OPPOSED TO MR. SCHWABE?

7 A. AM I ALLOWED TO ANSWER THAT QUESTION?

8 Q. WELL, LET ME MAKE IT MORE GENERAL. WHEN AN EMPLOYEE COMES  
9 WITH A RETALIATION COMPLAINT, IS YOUR ROLE TO NOTIFY THEIR  
10 DIRECT DEPARTMENT HEAD ABOUT THE EMPLOYEE'S COMPLAINT?

11 A. DEPENDS ON WHICH WAY THE EMPLOYEE WANTS TO GO. NORMALLY,  
12 WE'LL RECOMMEND TAKING IT OUT OF THE DEPARTMENT BECAUSE H.R.  
13 HAS MORE EXPERIENCE, KNOWLEDGE, AND THEY CAN HELP THE  
14 DEPARTMENT TO UNDERSTAND WHAT IS REQUIRED OF THEM WHEN AN  
11:11:56 15 EMPLOYEE IS EXPERIENCING AN ISSUE LIKE THAT.

16 Q. AND DOES IT ALSO DEPEND, IN TERMS OF THE CONTACT, OF WHO  
17 THE RETALIATION IS ALLEGED AGAINST?

18 A. ABSOLUTELY.

19 Q. WHEN YOU SAY "ABSOLUTELY," WHY? WHAT DO YOU MEAN?

20 A. BECAUSE IF AN EMPLOYEE IS BEING RETALIATED AGAINST A  
21 HIGH-LEVEL SUPERVISOR, WE PROBABLY WOULD TAKE THAT OUT OF THE  
22 DEPARTMENT. IF IT'S FROM A FIRST-LEVEL SUPERVISOR, THAT'S MORE  
23 OF A CLERICAL SUPERVISOR, THEN WE WOULD PROBABLY KEEP THAT  
24 WITHIN THE DEPARTMENT.

25 Q. AGAIN, I DON'T WANT TO GET INTO ANY NAMES, BUT DOES IT ALSO

11:12:32 1 DEPEND IF YOU'VE HEARD RETALIATION ALLEGATIONS COMING ABOUT,  
2 FROM THE SAME, MEANING ALLEGED AGAINST THE SAME PERSON?

3 A. YES.

4 MS. ADEMA: OBJECTION. VAGUE.

5 THE COURT: REPHRASE.

6 BY MR. VANDERPOOL:

7 Q. WHEN YOU'RE DEALING AND TRYING TO SOLVE, REACH SOLUTIONS  
8 ABOUT A RETALIATION COMPLAINT, DO YOU TAKE INTO ACCOUNT WHETHER  
9 OR NOT THE PERSON BEING COMPLAINED AGAINST THAT YOU'VE HAD,  
10 YOU, MEA, HAS HAD OTHER COMPLAINTS AGAINST THAT PERSON  
11 BEFORE?

12 THE WITNESS: YES.

13 MS. ADEMA: OBJECTION. CONFUSING. VAGUE.

14 THE COURT: OVERRULED. I UNDERSTAND IT.

11:13:12 15 BY MR. VANDERPOOL:

16 Q. NOW WE HEARD A LOT IN THIS CASE ABOUT A SEPTEMBER 9, 2015,  
17 GRIEVANCE THAT RASEAN JOHNSON SUBMITTED. DID YOU ASSIST IN  
18 PREPARING THAT DOCUMENTATION?

19 A. YES.

20 Q. AND ABOUT HOW MUCH TIME DID YOU TAKE, APPROXIMATELY, TO  
21 COMPILE THE INFORMATION IN THE GRIEVANCE?

22 A. APPROXIMATELY A MONTH.

23 Q. AND THAT PACKET, IF YOU WILL, THAT GRIEVANCE COMPLAINT, DID  
24 IT HAVE SOME ATTACHMENTS WITH IT?

25 A. YES, IT DID.

11:13:41 1 Q. IT WAS SUBMITTED TO WHOM?

2 A. JUDY VON KALINOWSKI.

3 Q. THE TITLE AGAIN OF H.R.?

4 A. H.R. DIRECTOR.

5 Q. SOMETIME AFTER SUBMITTING THAT COMPLAINT, DID YOU FIND OUT

6 THAT THE CITY'S EEIO DEPARTMENT -- MR. BARCLAY WHO WAS JUST

7 HERE TO TESTIFY -- GOT INVOLVED?

8 A. YES.

9 Q. HOW DID YOU HEAR THAT OR KNOW THAT?

10 A. I BELIEVE IT WAS FROM THE H.R.O. THAT WAS ASSIGNED THE

11 GRIEVANCE BY THE NAME OF VICKY DAVIDSON.

12 Q. WHAT'S AN H.R.O.?

13 A. HUMAN RESOURCES OFFICER.

14 Q. WOULD THAT BE A PEER OF MR. SCHWABE?

11:14:22 15 A. CURRENTLY THAT WOULD BE A SUBORDINATE OF MR. SCHWABE.

16 Q. AND DO YOU REMEMBER WHAT YOU HEARD FROM VICKY ABOUT THE

17 EEIO INVOLVEMENT?

18 A. I REMEMBER SHE TOLD ME THERE WAS GOING TO BE TWO SEPARATE

19 INVESTIGATIONS OF THE GRIEVANCE; ONE THAT ADDRESSED THE THREAT

20 MANAGEMENT AND HOSTILE WORK ENVIRONMENT AND ONE THAT ADDRESSED

21 THE EEIO VIOLATIONS THAT WOULD BE DONE BY THE CITY'S EEO OFFICE

22 OR MR. BARCLAY.

23 Q. NOW, ON OR AFTER DECEMBER 14, 2015, DID YOU COMMUNICATE

24 WITH MR. JOHNSON ABOUT RETALIATION HE WAS EXPERIENCING BY MRS.

25 BEALE?

11:15:04 1 A. YES.

2 Q. HOW DO YOU KNOW THAT?

3 A. BECAUSE I HAVE E-MAILS FROM HIM.

4 Q. DO YOU HAVE AN E-MAIL FROM HIM AROUND THAT EXACT DATE?

5 A. YES.

6 Q. WHAT'S THE DATE OF THE E-MAIL YOU'RE THINKING OF?

7 A. DECEMBER 16TH.

8 Q. 2015?

9 A. CORRECT.

10 Q. AND IS THAT AN E-MAIL THAT YOU REVIEWED JUST WITHIN THE  
11 PAST WEEK?

12 A. YES.

13 Q. INTEGRATED INTO YOUR CHRONOLOGY?

14 A. YES.

11:15:26 15 Q. IT WAS AMONG E-MAILS PRODUCED TO THE CITY ATTORNEY?

16 MS. ADEMA: OBJECTION, YOUR HONOR. THIS E-MAIL WAS  
17 NEVER PLACED ON THE EXHIBIT LIST.

18 MR. VANDERPOOL: I'M NOT OFFERING ANYTHING, YOUR  
19 HONOR.

20 MS. ADEMA: IT SHOULD NOT BE DISCUSSED. IT SHOULD  
21 NOT, YOU KNOW.

22 THE COURT: IF IT'S NOT ON THE EXHIBIT LIST, YOU'RE  
23 NOT GOING TO I GUESS OFFER THE EXHIBIT, BUT YOU CAN ASK  
24 QUESTIONS RELATED TO IT.

25 MR. VANDERPOOL: YEAH. THANK YOU, YOUR HONOR.

11:15:56 1 FOUNDATIONAL, YOUR HONOR.

2 BY MR. VANDERPOOL:

3 Q. DO YOU HAVE HAVE A RECOLLECTION THAT MR. JOHNSON'S E-MAIL  
4 WAS SPECIFIC ABOUT THE TYPE OF RETALIATION HE WAS  
5 EXPERIENCING?

6 A. YES.

7 Q. WHAT WAS HE RELATING TO YOU? WHAT TYPES OF RETALIATION --

8 MS. ADEMA: YOUR HONOR, OBJECTION. WHETHER THERE'S  
9 RETALIATION IS A LEGAL CONCLUSION, AND I DON'T BELIEVE THIS  
10 WITNESS --

11 THE COURT: I AGREE WITH THAT. OTHER THAN USE THE  
12 WORD RETALIATION, WHAT WAS SAID --

13 BY MR. VANDERPOOL:

14 Q. DID HE COMPLAIN ABOUT HOW HE WAS BEING TREATED?

11:16:33 15 MS. ADEMA: OBJECTION. HEARSAY.

16 THE COURT: NOT IF HE ORALLY OR SPECIFICALLY TOLD  
17 HER. I DON'T KNOW IF IT ONLY RELATES TO THE E-MAIL. MAYBE YOU  
18 LAY A FOUNDATION.

19 MR. VANDERPOOL: OKAY.

20 BY MR. VANDERPOOL:

21 Q. AFTER GETTING MR. JOHNSON'S E-MAIL OF DECEMBER 16TH, DID  
22 YOU HAVE A CONVERSATION WITH HIM?

23 MS. ADEMA: OBJECTION. FOUNDATION.

24 THE COURT: WELL, HE CAN LAY THE FOUNDATION -- WHEN,  
25 WHERE, WHY, ET CETERA, IF SHE REMEMBERS?

11:16:59 1 BY MR. VANDERPOOL:

2 Q. DID YOU SPEAK WITH MR. JOHNSON ON OR ABOUT DECEMBER 16TH,  
3 2015, ABOUT HOW HE FELT HE WAS BEING TREATED BY MS. BEALE?

4 MS. ADEMA: OBJECTION. RELEVANCE.

5 THE COURT: OVERRULED.

6 THE WITNESS: YES.

7 BY MR. VANDERPOOL:

8 Q. WHAT DID HE TELL YOU?

9 A. HE TOLD ME MORE IN MORE DETAIL ABOUT THE TREATMENT THAT HE  
10 WAS RECEIVING BY MS. BEALE AND EXPRESSED THAT HE WAS SERIOUSLY  
11 STRESSED OUT RIGHT NOW, THAT THE WORK ENVIRONMENT HAD BECOME  
12 UNBEARABLE.

13 Q. DID HE TELL YOU -- WAS HE AT ALL SPECIFIC ABOUT WHAT MS.  
14 BEALE WAS DOING?

11:17:38 15 A. YES.

16 Q. WHAT SPECIFICS DID HE GIVE YOU?

17 A. THERE WAS AN E-MAIL THAT MS. BEALE SENT TO RASEAN AND CC'D  
18 THE CITY CLERK, MS. MALAND, THAT --

19 MS. ADEMA: OBJECTION. MOTION IN LIMINE RULING. MAY  
20 WE HAVE A SIDEBAR PLEASE?

21 THE COURT: YEAH.

22 MR. VANDERPOOL: WE'LL MOVE ON, YOUR HONOR. I WON'T  
23 GO INTO THAT. DIDN'T KNOW THE WITNESS WAS GOING TO GIVE THAT  
24 ANSWER.

25 THE COURT: ALL RIGHT.

11:18:04 1 MR. VANDERPOOL: MOVE ON.

2 BY MR. VANDERPOOL:

3 Q. DO YOU HAVE ANY OTHER RECOLLECTION BESIDES THAT ISSUE?

4 MS. ADEMA: OBJECTION. LACKS FOUNDATION.

5 BY MR. VANDERPOOL:

6 Q. OF A CONVERSATION MR. JOHNSON HAD WITH YOU ABOUT TREATMENT

7 HE WAS RECEIVING BY MRS. BEALE IN OR ABOUT DECEMBER 16TH,

8 2015?

9 MS. ADEMA: OBJECTION. FOUNDATION. MAY WE HAVE  
10 SIDEBAR?

11 THE COURT: NO. BUT LAY THE FOUNDATION. IF SHE  
12 RECALLS THE FOUNDATION, THE DATE AND WHEN, IF THERE WAS ONE.

13 BY MR. VANDERPOOL:

14 Q. DO YOU RECALL A CONVERSATION WITH MR. JOHNSON IN MID

11:18:35 15 DECEMBER 2015?

16 A. YES.

17 MS. ADEMA: OBJECTION. MID DECEMBER IS A VERY  
18 IMPORTANT DATE.

19 BY MR. VANDERPOOL:

20 Q. DO YOU RECALL A CONVERSATION WITH MR. JOHNSON ON OR AFTER

21 DECEMBER 15, 2016?

22 A. YES.

23 Q. ABOUT HOW HE FELT HE WAS BEING TREATED?

24 A. YES.

25 Q. WHAT DID HE TELL YOU ABOUT HOW HE WAS BEING TREATED BY MS.

11:18:55 1 BEALE WITH RESPECT TO SUBORDINATES?

2 A. HIS SUBORDINATES WERE BEING GIVEN WORK WITHOUT HIS  
3 KNOWLEDGE AND SHE WAS TRYING TO THROW, IN MY OPINION, RASEAN  
4 UNDER THE BUS AND MAKE HIM LOOK BAD BY SENDING THE E-MAIL TO  
5 LIZ MALAND.

6 MS. ADEMA: OBJECTION. MOVE TO STRIKE, AND I WOULD  
7 REQUEST A SIDEBAR.

8 THE COURT: ALL RIGHT.

9 (THE FOLLOWING PROCEEDINGS WERE HELD AT SIDEBAR:)

10 MS. ADEMA: THE REFERENCES TO WHO IS NOT BEING GIVEN  
11 WORK BY MR. JOHNSON RELATES TO THE REORGANIZATION THAT OCCURRED  
12 IN AUGUST 2015 THAT PLAINTIFF'S CLAIMED WAS AN ACT OF  
13 RETALIATION AND WAS RULED TO BE INADMISSIBLE BASED ON THE  
14 STATUTE OF LIMITATION. THE SUPERVISION ISSUE DEALS WITH THE  
11:20:19 15 AUGUST 2015 REORGANIZATION WHICH OCCURRED PRIOR TO THE  
16 GRIEVANCE BEING PRESENTED IN SEPTEMBER.

17 THE COURT: ALL RIGHT. THE QUESTIONS THAT YOU HAVE  
18 PUT TO HER, DO THAT RELATE TO THE REORGANIZATION, AS SHE POINTS  
19 OUT?

20 MR. VANDERPOOL: WHY DON'T I DO THIS, YOUR HONOR:  
21 I'LL MOVE ON. I'M LOOKING AT HER E-MAIL THAT WAS GIVEN TO THE  
22 CITY ATTORNEY 6, 18 MONTHS AGO. IT WAS PRODUCED IN HER RECORDS  
23 AND NOT IDENTIFIED THEM IN THE EXHIBITS. IN ANY EVENT, I'LL  
24 MOVE ON. I JUST WANTED TO REFRESH HER MEMORY OF WHAT WAS IN  
25 HIS E-MAIL. HE WAS TALKING ABOUT CURRENT POINTS IN TIME WITH

11:20:57 1 THESE EMPLOYEES, DECEMBER 16TH, MY UNDERSTANDING IN HOW I READ  
2 THE E-MAIL. BUT HE ALSO WAS SAYING, MS. BEALE WAS DIRECTING  
3 HIM ONLY TO E-MAIL HER AND NOT SPEAK, AND THAT WAS CURRENT IN  
4 TIME. SO I CAN SIMPLY --

5 THE COURT: WHAT'S THE DATE OF E-MAIL?

6 MR. VANDERPOOL: DECEMBER 16TH OF 2015. IT WAS AMONG  
7 THE RECORDS PRODUCED. WE'RE HAPPY TO SHARE IT WITH COUNSEL.

8 THE COURT: THE ONLY WAY ALL OF THAT WOULD BE  
9 ADMISSIBLE, BECAUSE IT IS HEARSAY AND SUCH, BUT SHE'S IN A  
10 POSITION TO TAKE ACTION, AND IT DOESN'T MATTER WHETHER IT'S  
11 HEARSAY OR NOT, IF SOMETHING WAS TOLD TO HER AND THAT BECAUSE  
12 OF WHAT SHE HEARD THIS IS WHAT SHE DID --

13 MR. VANDERPOOL: THAT'S WHERE I'M GOING.

14 THE COURT: -- YOU HAVE THE RIGHT TO ASK THE  
11:21:37 15 QUESTIONS, BUT I HAVE TO MAKE SURE THAT THEY'RE WITHIN THE  
16 TIMEFRAME, AND SECONDLY, IT'S NOT RELATED TO AN IRRELEVANT  
17 ISSUE ABOUT THE REORGANIZATION AND SUCH.

18 MR. VANDERPOOL: UNDERSTOOD, YOUR HONOR. HERE, YOUR  
19 HONOR, IT'S JUST A REFERENCE. IF THE COURT CARES TO LOOK AT  
20 IT --

21 MS. ADEMA: MAY I PLEASE LOOK AT IT?

22 MR. VANDERPOOL: WHAT? SURE. I GAVE IT TO GEORGE.  
23 YEAH, I HAVE ANOTHER COPY TOO IF YOU WANT. YOU CAN BOTH HAVE A  
24 COPY. I'LL MOVE ON.

25 THE COURT: BUT AS I SAY, IF SHE TOOK SOME ACTION

11:22:10 1 BASED ON THIS, THEN THAT MAKES IT ADMISSIBLE, ASSUMING IT'S  
2 WITHIN THE TIMEFRAME THAT WE'RE CLEAR ON, AND ALSO, ASSUMING  
3 THE SUBJECT MATTER IS RELEVANT TO HER, OUR ACTION.

4 MS. ADEMA: THIS IS THE PROBLEM. IT'S THE SUBJECT  
5 MATTER ASPECT. THE SUBJECT MATTER IS A CARRY-OVER FROM PRIOR,  
6 BEFORE THE GRIEVANCE WAS EVEN FILED WITH H.R.

7 MR. VANDERPOOL: WHICH IS WHY WE'LL MOVE ON. BUT THE  
8 DATE OF THE E-MAIL, COUNSEL, AGREE, IS NOT WITHIN THE TIME  
9 BAR.

10 MS. ADEMA: THERE IS ONE VERY SIMILAR IMMEDIATELY  
11 BEFORE, DECEMBER 11TH, SO IT'S A CARRY-OVER OF THE SAME SUBJECT  
12 MATTER.

13 MR. VANDERPOOL: I'M NOT GOING ON FURTHER WITH THE  
14 SUBJECT MATTER.

11:23:05 15 THE COURT: FINE. THANK YOU.

16 (SIDEBAR CONCLUDED.)

17 BY MR. VANDERPOOL:

18 Q. SORRY ABOUT THAT MS. CRUZ. REGARDLESS OF WHAT THE E-MAIL  
19 SAID, WHAT YOU REMEMBER ABOUT THE CONVERSATION, THE INFORMATION  
20 YOU RECEIVED, WHAT DID YOU DO WITH IT?

21 A. I FORWARDED THE INFORMATION TO DARRIN SCHWABE IN DECEMBER.  
22 THAT WOULD HAVE BEEN TO KAREN DECRESCENZO I BELIEVE IN H.R.

23 Q. WHEN YOU SAID YOU FORWARDED THE INFORMATION TO MR. SCHWABE,  
24 DID YOU DO SO ON OR ABOUT DECEMBER 16, 2015?

25 A. YES. BUT I DON'T BELIEVE IT WAS MR. SCHWABE. I THINK

11:23:38 1 KAREN WAS STILL THERE AT THAT TIME.

2 Q. KAREN. I'M SORRY. I'M LOSING TRACK OF THE NAMES.

3 A. DECRESCENZO.

4 Q. MAYBE YOU CAN SPELL THAT FOR THE COURT REPORTER LATER.

5 A. DARRIN CAN PROBABLY DO IT BETTER THAN I CAN.

6 Q. WHEN YOU SAY YOU FORWARDED THE INFORMATION, DO YOU MEAN YOU  
7 FORWARDED THE E-MAIL OR SOMETHING ELSE?

8 A. YES, IT -- WELL, I'M SORRY. I DON'T REMEMBER FOR SURE  
9 WHETHER I FORWARDED THE E-MAIL OR WHETHER I ACTUALLY PICKED UP  
10 THE PHONE AND CALLED HER, BUT I MADE HER AWARE OF IT.

11 Q. AND MAKING HER AWARE OF WHAT MR. JOHNSON WAS REPORTING TO  
12 YOU, DID YOU ASK THAT SOMETHING HAPPEN?

13 A. I ASK THAT SHE LOOK INTO IT.

14 Q. "SHE" BEING KAREN DECRESCENZO?

11:24:20 15 A. RIGHT.

16 Q. LOOK INTO IT FOR WHAT PURPOSE?

17 MS. ADEMA: OBJECTION. HEARSAY.

18 THE COURT: WELL, I THINK IT COMES, THE INFORMATION  
19 COMES FROM THE E-MAIL. THE E-MAIL IS HEARSAY. BUT IF SHE TOOK  
20 ACTION BASED ON THE INFORMATION AND IT'S RELEVANT, THEN IT  
21 TAKES IT OUT OF THAT CATEGORY AND BECAUSE SHE IS TAKING ACTION  
22 BASED ON SOMETHING; SO SHE CAN SAY WHAT IT IS. OVERRULED.

23 MS. ADEMA: THANK YOU.

24 THE WITNESS: TO GET THE RETALIATION TO STOP.

25 MS. ADEMA: OBJECTION TO THE USE OF THE LEGAL TERM

11:24:58 1 "RETALIATION." THAT'S A LEGAL CONCLUSION FOR THE JURY TO MAKE.  
2 THE COURT: WELL, THAT'S TRUE. BUT I THINK SHE HAS A  
3 RIGHT TO SAY WHAT WORDS SHE USED. AND YOU MAKE A POINT; THAT  
4 IS, THAT IF CERTAIN WORDS ARE USED LIKE RETALIATION, HOSTILE  
5 WORKPLACE, DISCRIMINATION, ET CETERA, THAT'S GOING TO BE UP TO  
6 THE JURY TO DECIDE. SO YOU MAY FIND WITNESSES THAT MAKE THESE  
7 STATEMENTS, BUT WHETHER SOMETHING ACTUALLY WAS WHAT IT CLAIMED  
8 IT WAS IS GOING TO BE UP TO YOU. SO YOU KEEP THAT IN MIND.  
9 THEY'RE JUST RELATING WHAT TRANSPIRED IN THEIR CONTEXT.  
10 OKAY?

11 BY MR. VANDERPOOL:

12 Q. AT THAT TIME, AGAIN MID DECEMBER 16TH, 2015, AND THROUGH  
13 THE END OF THAT CALENDAR YEAR, DID ANYONE AT HUMAN RESOURCES  
14 TELL YOU -- WHETHER MS. DECRESCENZO, MR. SCHWABE, KELLY -- THAT  
11:26:00 15 IF THERE'S A RETALIATION COMPLAINT, YOU OR THE EMPLOYEE NEEDS  
16 TO FILL OUT A FORMAL COMPLAINT AND SUBMIT IT TO US, EEIO, THE  
17 DEPARTMENT; WE CAN'T HEAR AND DEAL WITH THIS UNLESS WE GET A  
18 COMPLAINT?

19 MS. ADEMA: OBJECTION. LEADING.

20 THE COURT: YES. REPHRASE.

21 BY MR. VANDERPOOL:

22 Q. DID H.R. RESPOND TO YOU THAT THEY COULDN'T DEAL WITH ANY OF  
23 THE INFORMATION YOU WERE GIVING UNLESS YOU PUT IT IN A FORM?

24 A. NO.

25 Q. I WANT TO MOVE INTO JANUARY 2016. DOES YOUR CHRONOLOGY

11:26:38 1 THAT YOU PUT TOGETHER COVER EVENTS AND DETAILS OF  
2 COMMUNICATIONS IN JANUARY 2016 ABOUT MR. JOHNSON?

3 A. YES.

4 Q. OKAY. AND DID YOU SPEAK TO JUDY VON KALINOWSKI AT CITY  
5 H.R. ABOUT MR. JOHNSON'S CIRCUMSTANCES ON OR ABOUT JANUARY  
6 12TH?

7 A. YES.

8 Q. AND HOW DO YOU RECALL THAT PARTICULAR CONVERSATION OR  
9 WHY?

10 A. BECAUSE RASEAN WAS CONTINUING TO BE TREATED SO POORLY IN  
11 THE CITY CLERK'S OFFICE, AND WE NEEDED ACTION TO BE TAKEN  
12 BECAUSE AS OF THAT DATE NOTHING REALLY HAD BEEN DONE.

13 Q. AND AS OF THAT DATE, WE'RE TALKING JANUARY 12TH?

14 A. YES.

11:27:24 15 Q. AND SO DID YOU CONTACT JUDY VON KALINOWSKI -- FORGIVE ME.  
16 I DON'T WANT TO MISPRONOUNCE HER NAME FOR THE THIRD TIME.

17 A. I LEFT HER A MESSAGE. SHE CALLED ME BACK.

18 Q. WERE YOU SPECIFIC WITH JUDY ABOUT WHAT NEEDED TO HAPPEN?

19 A. YES.

20 Q. WHAT?

21 A. SHEILA BEALE NEEDED TO BE REMOVED FROM SUPERVISION.

22 Q. AND DID JUDY, THE EXECUTIVE OF H.R., RESPOND TO YOU TO THAT  
23 REQUEST?

24 A. YES.

25 Q. WHAT DID SHE TELL YOU?

11:27:53 1 A. SHE TOLD ME SHE DIDN'T HAVE THE AUTHORITY TO REMOVE SHEILA  
2 FROM SUPERVISION BECAUSE THE CITY CLERK IS AN INDEPENDENT  
3 DEPARTMENT AND IS NOT UNDER THE PURVIEW OR THE REQUIREMENTS OF  
4 THE MAYOR'S OFFICE.

5 Q. IF YOU KNOW, OR HELP THE JURY UNDERSTAND, WHAT'S AN  
6 INDEPENDENT DEPARTMENT VERSUS ONE THAT'S UNDER THE MAYOR'S  
7 CONTROL OR OFFICE?

8 A. SO THERE IS THREE OR FOUR DEPARTMENTS IN THE CITY WHERE THE  
9 HEAD OF THAT DEPARTMENT DOES NOT DEPARTMENT DIRECTLY TO THE COO  
10 OR THE MAYOR. ONE OF THEM IS THE CITY CLERK'S THAT REPORTS TO  
11 THE CITY COUNCIL. ONE IS THE PERSONNEL DEPARTMENT THAT REPORTS  
12 TO THE CIVIL SERVICE COMMISSION. ONE IS THE RETIREMENT OFFICE  
13 WHICH REPORTS TO THE RETIREMENT BOARD.

14 Q. SO HOW DID YOU FEEL UPON BEING TOLD BY JUDY THAT YOU, THAT  
11:28:53 15 SHE HAD NO POWER TO DO ANYTHING?

16 MS. ADEMA: RELEVANCE, YOUR HONOR.

17 THE COURT: YEAH, I DON'T BELIEVE THAT'S A PROPER  
18 QUESTION.

19 MR. VANDERPOOL: I'LL REPHRASE.

20 BY MR. VANDERPOOL:

21 Q. WHAT WAS YOUR Demeanor ON THE PHONE CALL?

22 A. I WAS UPSET.

23 Q. WHY WERE YOU UPSET?

24 A. BECAUSE RASEAN WAS CONTINUING TO BE ISOLATED IN THE  
25 WORKPLACE, AND WE ALSO HAD NOT GOTTEN A PROPER GRIEVANCE

11:29:18 1 RESPONSE.

2 Q. DID YOU RESPOND TO JUDY ABOUT HER EXPRESSING INABILITY TO  
3 STOP WHAT HE WAS EXPERIENCING?

4 A. DID I RESPOND TO HER?

5 Q. YEAH.

6 A. WELL, SHE ASKED ME WHAT IT WOULD TAKE TO RESOLVE THE  
7 GRIEVANCE. I TOLD HER I WANTED SHEILA OUT OF SUPERVISION. SHE  
8 SAID THAT COULDN'T HAPPEN, AND THEN I SAID, WELL, THEN GET  
9 RASEAN OUT OF THERE.

10 Q. AT THAT MOMENT IN TIME -- THAT WAS ON A PHONE CALL, RIGHT  
11 -- HAD YOU TALKED TO MR. JOHNSON ABOUT THAT OPTION, WELL, THEN  
12 I'LL LEAVE?

13 A. NO.

14 Q. SO WHY DID YOU BRING UP, WELL, RASEAN GETS OUT OF THERE,  
11:30:05 15 WITH THE HEAD OF H.R. IF MR. JOHNSON HADN'T SAID, WILL YOU  
16 PLEASE CHECK ON THAT, IF I CAN GET OUT OF THERE?

17 A. BECAUSE HE WAS SO STRESSED AND DEFLATED AT THAT POINT. IT  
18 WAS KIND OF LIKE BEING ON AN AIRPLANE THAT'S CRASHING. YOU  
19 EITHER STAY ON THE PLANE AND CRASH WITH IT, OR YOU JUMP AND  
20 HOPE THE PARACHUTE IS GOING TO GET OUT OR OPEN.

21 Q. AFTER YOUR PHONE CALL WITH JUDY, DID YOU CALL MR. JOHNSON  
22 AND LET HIM KNOW, RELATE TO HIM WHAT H.R. WAS TELLING YOU?

23 A. YES.

24 Q. AND DID YOU TELL HIM AT THAT POINT IN TIME IT LOOKS LIKE,  
25 WHAT ABOUT A TRANSFER OR ASK HIM ABOUT THAT?

11:30:39 1 A. ASKED HIM ABOUT THAT.

2 Q. WHAT WAS MR. JOHNSON'S RESPONSE TO THAT?

3 A. HIS EXACT WORDS WERE, WHY IN THE HELL AM I THE ONE THAT HAS

4 TO MOVE?

5 Q. DID YOU RESPOND AT ALL TO THAT?

6 A. WE TALKED ABOUT IT, AND PROCESSED IT. I UNDERSTOOD HIS

7 INITIAL REACTION BECAUSE HE'S THE ONE THAT'S BEING TREATED

8 POORLY IN THE WORKPLACE. WHY IS HE THE ONE THAT HAS TO LEAVE

9 HIS JOB AND HIS FRIENDS IN THE CITY CLERK'S OFFICE?

10 Q. AND INTO JANUARY, THE REMAINDER OF JANUARY, DID DISCUSSIONS

11 CONTINUE BETWEEN YOU AND H.R. ABOUT A TRANSFER PROSPECT?

12 A. YES.

13 Q. WITH WHOM WERE YOU DISCUSSING THAT OPTION WITH AT THAT

14 POINT IN TIME?

11:31:24 15 A. MR. SCHWABE.

16 Q. MR. SCHWABE DIRECTLY?

17 A. CORRECT.

18 Q. DISCUSSING BY PHONE, E-MAIL, IN PERSON?

19 A. YES.

20 Q. OKAY. WERE THERE DISCUSSED IN THOSE CONVERSATIONS

21 INTERMEDIATE STEPS TO REMEDIATE WHAT MR. JOHNSON WAS

22 EXPERIENCING?

23 A. YES.

24 Q. WHAT WAS DISCUSSED IN THAT REGARD?

25 A. TO CHANGE RASEAN'S SUPERVISOR TO SOMEBODY ELSE WITHIN THE

11:31:54 1 DIVISION AND NOT HAVE HIM REPORT TO SHEILA ANYMORE.  
2 Q. OKAY. WHAT ABOUT MOVING HIM SOMEWHERE ELSE IN THE CLERK'S  
3 OFFICE TO A DIFFERENT DIVISION?  
4 A. I THINK THAT CAME LATER.  
5 Q. OKAY. JUST FOR A TIMEFRAME, WHEN ARE YOU TALKING ABOUT  
6 "LATER" RELATIVE TO JANUARY 2016?  
7 A. I WOULD SAY IT PROBABLY WOULD HAVE BEEN TWO OR THREE WEEKS  
8 LATER THEY TALKED ABOUT A TRANSFER WITHIN THE CITY CLERK'S  
9 OFFICE TO A DIFFERENT DIVISION.  
10 Q. BY THE WAY, IN YOUR CONVERSATION WITH JUDY, WAS SHE  
11 CONVEYING TO YOU THAT SHE WAS IN DIRECT COMMUNICATION WITH THE  
12 CITY CLERK, ELIZABETH MALAND?  
13 A. I DON'T RECALL.  
14 Q. IN YOUR EXPERIENCE WITH DEALING WITH H.R., OVER 31 YEARS,  
11:32:47 15 HAS THAT BEEN, HAVE YOU HAD THAT EXPERIENCE WHERE H.R. SENIOR  
16 EXECUTIVES ARE COMMUNICATING DIRECTLY WITH THE APPOINTING  
17 AUTHORITY?  
18 A. YES.  
19 Q. KEEPING THEM APPRISED OF WHAT'S GOING ON?  
20 A. YES.  
21 Q. ESSENTIALLY, THEIR CLIENT APPRISED OF WHAT'S GOING ON?  
22 MS. ADEMA: OBJECTION, YOUR HONOR. LEADING.  
23 THE COURT: SUSTAINED.  
24 MR. VANDERPOOL: I'LL WITHDRAW.  
25 THE COURT: ALSO I THINK HER LAST TESTIMONY IS A

11:33:13 1 LITTLE BIT SPECULATION. JUST A MINUTE.

2 THE FACT YOU HAD EXPERIENCE IN THE PAST COMMUNICATING  
3 DIRECTLY WITH THE APPOINTING AUTHORITY, WHICH YOU SAID YES,  
4 THAT'S REALLY IRRELEVANT. AND I'LL HAVE THAT STRUCK BECAUSE  
5 YOU EITHER COMMUNICATED WITH THEM OR YOU DID NOT. WHAT YOU  
6 MIGHT HAVE DONE IN THE PAST IS IRRELEVANT. HOWEVER, IT'S  
7 REALLY NO CONSEQUENCE BECAUSE I DON'T -- YOU SAID YOU DIDN'T  
8 RECALL. SO WE'LL LEAVE IT AT THAT.

9 BY MR. VANDERPOOL:

10 Q. DO YOU HAVE A TIMEFRAME IN MIND OF WHEN THE TRANSFER OUT OF  
11 THE DEPARTMENT BECAME THE COURSE OF ACTION TO BE TAKEN?

12 A. IT WAS ON APRIL 21ST.

13 Q. ARE YOU TALKING WHEN THE TRANSFER ACTUALLY HAPPENED?

14 A. NO. I'M TALKING WHEN WE GOT THE E-MAIL FROM MR. SCHWABE

11:34:32 15 SAYING PUD WAS A "GO."

16 Q. OKAY. BAD QUESTION. AT SOME TIME IN LATE JANUARY, WAS  
17 THERE DISCUSSIONS FROM MR. SCHWABE ABOUT, YEAH, LET'S HEAD FOR  
18 A TRANSFER OUT OF THE DEPARTMENT?

19 A. OH, I'M SORRY, YES.

20 Q. WHEN WAS THAT TIMEFRAME?

21 A. THAT THE DISCUSSIONS HAPPENED?

22 Q. YEAH.

23 A. IT WAS JANUARY, FEBRUARY, AND MARCH.

24 Q. WAS THAT DISCUSSION BECAUSE MR. JOHNSON CHOSE -- LET ME  
25 REPHRASE -- BECAUSE HE WANTED TO LEAVE THE CLERK'S OFFICE?

11:35:07 1 A. NO.

2 Q. THEN WHY DID YOU FACILITATE A TRANSFER IF YOUR EMPLOYEE  
3 DIDN'T WANT TO?

4 A. BECAUSE HE WAS IN A HOSTILE WORK ENVIRONMENT, AND THAT'S MY  
5 JOB.

6 MS. ADEMA: OBJECTION. MOVE TO STRIKE. CALLS FOR  
7 LEGAL CONCLUSION. ALSO MOTION IN LIMINE, YOUR HONOR.

8 THE COURT: WELL, THE QUESTION WAS, WHY DID YOU  
9 FACILITATE A TRANSFER IF YOUR EMPLOYEE DIDN'T WANT TO, AND THE  
10 ANSWER WAS BECAUSE HE WAS IN A HOSTILE WORK ENVIRONMENT AND  
11 THAT'S MY JOB. AS I SAID EARLIER, WHETHER HE WAS IN A HOSTILE  
12 WORK ENVIRONMENT OR NOT IS REALLY FOR THE JURY TO DECIDE. THIS  
13 IS HER OPINION. SHE HAS A JOB TO MAKE OPINIONS BASED AS AN  
14 ADVOCATE FOR MR. JOHNSON. SO I WILL ALLOW IT WITH THE CAVEAT  
11:36:12 15 THAT IT'S UP TO THE JURY TO DECIDE WHETHER THIS INFORMATION,  
16 BASED ON ALL THE EVIDENCE, IS ACCURATE OR NOT. ALL RIGHT.  
17 PROCEED.

18 BY MR. VANDERPOOL:

19 Q. THANK YOU, YOUR HONOR. SO IF I UNDERSTAND THE TIMELINE,  
20 MS. CRUZ, FROM LATE JANUARY 2016, AN ACTUAL TRANSFER WASN'T  
21 EFFECTED UNTIL APRIL, MONDAY, APRIL 25 OF 2016; RIGHT?

22 A. RIGHT.

23 Q. AND WHY DID IT TAKE THREE AND A HALF MONTHS, IF YOU KNOW  
24 -- LET ME REPHRASE. WERE YOU IN COMMUNICATIONS WITH MR.  
25 SCHWABE OVER THAT THREE-AND-A-HALF-MONTH PERIOD ABOUT THE

11:36:56 1 TRANSFER, MAKING IT HAPPEN?

2 A. YES.

3 Q. DID YOU FOLLOW UP WITH MR. SCHWABE AT TIMES?

4 A. YES.

5 Q. VIA E-MAIL?

6 A. YES.

7 Q. PHONE CALLS?

8 A. YES.

9 Q. WERE THERE GAPS IN NOT RECEIVING ANY UPDATE OR RESPONSE  
10 FROM MR. SCHWABE?

11 A. YES.

12 Q. WHAT WAS THE LONGEST GAP IN TIME WHEN YOU LEFT A MESSAGE OR  
13 SENT AN E-MAIL THAT MR. SCHWABE DIDN'T GET BACK TO YOU?

14 A. I BELIEVE IT WAS APPROXIMATELY THREE WEEKS.

11:37:23 15 Q. THREE WEEKS. NO RESPONSE FROM -- DO YOU REMEMBER THE  
16 PARTICULAR E-MAIL, WHAT YOU WERE ASKING?

17 A. I WAS ASKING FOR AN UPDATE ON WHERE WE WERE WITH THE  
18 TRANSFER.

19 Q. WERE YOU GIVEN A REASON ABOUT WHY IT WAS TAKING SO LONG?

20 A. H.R. HAD EXPERIENCED A LARGE TURNOVER IN THEIR STAFF AND SO  
21 THEY WERE SHORT-STAFFED AT THE TIME.

22 Q. HOW WOULD YOU CHARACTERIZE YOUR EFFORTS OR ROLE IN THE  
23 TRANSFER PROCESS COMING TO SOME KIND OF A CONCLUSION?

24 A. WELL, MY ROLE WAS TO KEEP THAT ON THE FOREFRONT OF MR.  
25 SCHWABE'S LIST OF THINGS TO DO.

11:38:14 1 Q. WAS IT -- GETTING THE TRANSFER, WAS THAT A PRIORITY FOR  
2 YOU?

3 A. YES.

4 Q. WHY?

5 A. BECAUSE OF THE WORK ENVIRONMENT HE WAS IN.

6 Q. IN FACT, IN FEBRUARY 2016, DID MR. JOHNSON COMMUNICATE  
7 ADDITIONAL RETALIATION -- EXCUSE ME -- ADDITIONAL TREATMENT HE  
8 FELT HE WAS RECEIVING FROM MRS. BEALE?

9 A. YES.

10 Q. HOW DID HE COMMUNICATE THAT TO YOU?

11 A. VIA E-MAIL.

12 Q. AND WAS THAT AMONG THE E-MAILS YOU REVIEWED WITHIN THE PAST  
13 WEEK?

14 A. YES.

11:38:45 15 Q. THAT WAS AN E-MAIL PRODUCED TO THE CITY ATTORNEY AT YOUR  
16 DEPOSITION?

17 A. YES.

18 Q. AND WHAT TYPE, DO YOU HAVE A A RECOLLECTION?

19 MS. ADEMA: OBJECTION. CAN WE HAVE THE E-MAIL  
20 INTRODUCED OR REFERENCED BY AN EXHIBIT NUMBER?

21 MR. VANDERPOOL: JUST LAYING FOUNDATION, YOUR HONOR.

22 THE COURT: WELL, DO YOU HAVE AN EXHIBIT THERE?

23 MR. VANDERPOOL: IT'S NOT AN EXHIBIT. THE CITY  
24 DIDN'T MAKE IT ONE.

25 MS. ADEMA: YOUR HONOR, IT'S A JOINT PROCESS TO

11:39:17 1 DESIGNATE AN EXHIBIT. THIS IS NOT AN EXHIBIT ON THE EXHIBIT  
2 LIST AND --

3 THE COURT: I AGREE. FOR THE CASE-IN-CHIEF, IT  
4 SHOULDN'T COME IN. IT COULD COME IN FOR OTHER REASONS  
5 POSSIBLY, BUT IF YOU'RE JUST TRYING TO PUT IN THE FACTS, YOU'RE  
6 JUST GOING TO HAVE TO -- YOU CAN'T USE THAT AT THIS POINT IF  
7 YOU HAVEN'T DESIGNATED IT OR UNLESS IT WAS ON THE LIST TO BE,  
8 LIST OF OBJECTIONS THAT I HAVEN'T RULED ON.

9 MR. VANDERPOOL: I DON'T PLAN TO OFFER THE EXHIBIT,  
10 YOUR HONOR.

11 MS. ADEMA: IT'S JUST NOT ON THE EXHIBIT LIST.

12 MR. VANDERPOOL: DOESN'T MEAN IT DIDN'T HAPPEN.

13 THE COURT: OKAY. BUT THE FACT IS WE GOT CERTAIN  
14 RULES HERE. THEY CAN'T USE STUFF THEY MIGHT WANT TO THAT'S NOT  
11:40:00 15 ON THE EXHIBIT LIST. SAME APPLIES TO YOU. SO MOVE ON.

16 MR. VANDERPOOL: UNDERSTOOD.

17 BY MR. VANDERPOOL:

18 Q. DO YOU HAVE A MEMORY OF WHAT MR. JOHNSON COMMUNICATED TO  
19 YOU IN THAT E-MAIL?

20 A. YES.

21 Q. WHAT TYPE OF TREATMENT WAS HE TELLING YOU HE WAS UNDER, HE  
22 WAS EXPERIENCING IN FEBRUARY 2016?

23 A. HE EXPRESSED THAT SOME OF THE JOB DUTIES THAT HE HAD  
24 PERFORMED FOR MANY, MANY YEARS HAD BEEN STRIPPED FROM HIM. HIS  
25 WORKING TITLE HAD BEEN STRIPPED FROM HIM, AND OTHER EMPLOYEES

11:40:30 1 IN THE RECORDS CENTER HAD BEEN INSTRUCTED THAT THEY NO LONGER  
2 CAN ASK HIM QUESTIONS OR GO TO HIM FOR HELP.

3 MS. ADEMA: OBJECTION, YOUR HONOR. THIS GOES TO THE  
4 SIDEBAR THAT WE WERE DISCUSSING EARLIER.

5 THE COURT: DATE ISSUE?

6 MS. ADEMA: YEP.

7 THE COURT: WELL, IF YOU CAN LAY THE FOUNDATION OF  
8 WHEN THIS TOOK PLACE.

9 MR. VANDERPOOL: SURE.

10 BY MR. VANDERPOOL:

11 Q. FEBRUARY 2016, FEBRUARY 12TH, 2016, DO YOU RECALL A  
12 DISCUSSION WITH MR. JOHNSON -- BY THE WAY, DID YOU HAVE A PHONE  
13 CALL WITH MR. JOHNSON SUBSEQUENT TO GETTING HIS E-MAIL?

14 A. ON THAT ONE, I DON'T RECALL.

11:41:10 15 Q. WHEN YOU REFERRED TO STRIPPING HIS TITLE OR JOB DUTIES, DID  
16 THAT RELATE TO MS. MENDOZA IN THE DEPARTMENT?

17 A. DID THAT RELATE TO HER?

18 Q. YEAH.

19 A. MEANING THAT IT WAS HER THAT GOT THE TITLE OF IMAGING  
20 SUPERVISOR, YES.

21 Q. OKAY. THAT'S WHAT YOU WERE TALKING ABOUT?

22 A. RIGHT.

23 Q. NOT SOMETHING FROM 2015?

24 A. NO.

25 MS. ADEMA: YOUR HONOR, IN LIGHT OF THIS

11:41:38 1 CLARIFICATION FROM THE WITNESS, I WOULD MOVE TO STRIKE HIS  
2 REFERENCES TO INSTRUCTING EMPLOYEES NOT TO SPEAK WITH MR.  
3 JOHNSON AS WELL AS ANY REMOVAL OF DUTIES OTHER THAN BASED ON  
4 THE E-MAIL SENT IN JANUARY THAT INDICATES THAT MS. MENDOZA'S  
5 TITLE WAS IMAGING SUPERVISOR.

6 THE COURT: WELL, THIS IS GETTING A LITTLE COMPLEX.  
7 THE EXHIBIT IS NOT TO BE USED AS TO THE CONTENTS OF IT. BUT IF  
8 SHE CAN RECALL THE DATE THAT SHE COMMUNICATED AT THIS POINT,  
9 NOT BASED ON THE CONTEXT OF IN THE E-MAIL BUT SOME VERBAL  
10 CONVERSATION OR SOME EXHIBIT THAT'S WITHIN THE TIMEFRAME, BUT  
11 IF SHE RECALLS AND SHE CAN RECALL THE TIMEFRAME THAT WE'RE  
12 TALKING ABOUT, SHE CAN STATE ANYTHING THAT'S WITHIN THAT  
13 MEMORY. AND I THOUGHT THAT'S WHAT SHE WAS DOING, BUT MAYBE YOU  
14 CAN LAY A BETTER FOUNDATION.

11:42:59 15 BY MR. VANDERPOOL:

16 Q. ON OR ABOUT FEBRUARY 12TH, 2016, OR SOMETIME AFTER  
17 RECEIVING MR. JOHNSON'S E-MAIL, DID YOU HAVE A CONVERSATION  
18 WITH HIM ABOUT HIS E-MAIL?

19 A. I DON'T RECALL WHETHER WE ACTUALLY HAD A CONVERSATION OR  
20 NOT.

21 Q. REGARDLESS OF THAT CONVERSATION, DID YOU COMMUNICATE TO  
22 CITY HUMAN RESOURCES ABOUT THE CONDUCT MR. JOHNSON WAS  
23 REPORTING TO YOU THAT HE WAS STILL EXPERIENCING IN THE  
24 DEPARTMENT?

25 A. YES.

11:43:34 1 Q. TO WHOM DID YOU CONVEY, COMMUNICATE THAT CONDUCT?

2 A. MR. SCHWABE.

3 Q. AND HOW DID YOU COMMUNICATE THAT INFORMATION TO MR.

4 SCHWABE?

5 A. I SENT HIM AN E-MAIL SAYING WE NEEDED TO TALK.

6 Q. AND DID YOU TALK TO HIM?

7 A. NOT FOR A COUPLE OF WEEKS.

8 Q. NOT FOR A COUPLE OF WEEKS. WHEN YOU DID TALK TO HIM, DID

9 YOU TELL HIM IN DETAIL WHAT YOU'RE TELLING THE JURY HERE

10 TODAY?

11 A. YES.

12 Q. ABOUT THE CONDUCT THAT MR. JOHNSON WAS FEELING HE WAS BEING

13 SUBJECTED TO?

14 A. YES.

11:44:06 15 Q. WAS THAT PART OF AN UPDATE ABOUT HOW THE TRANSFER OPTION

16 WAS GOING?

17 A. WELL, IT ULTIMATELY ENDED IN THAT DISCUSSION.

18 Q. LET'S NOT GET TO THE ULTIMATE THEN. WHAT HAPPENED BEFORE

19 THE ULTIMATE IN THE DISCUSSION?

20 A. WE TALKED ABOUT THE TREATMENT RASEAN WAS RECEIVING, AND I

21 WAS TRYING TO FIND OUT MORE INFORMATION FROM MR. SCHWABE TO

22 FIND OUT WHAT ACTION WAS TAKEN BY H.R.

23 Q. DID MR. SCHWABE GIVE YOU ANY INFORMATION AT ALL ABOUT WHAT

24 ACTION, EFFORTS, INVESTIGATION WAS BEING UNDERTAKEN?

25 A. I BELIEVE THEY TOLD ME THEY WERE STILL WAITING FOR THE

11:44:44 1 RESULTS OF THE EEO INVESTIGATION, BUT I BELIEVE IT WAS THAT DAY  
2 THAT HE ASKED ME FOR RASEAN'S RESUME.

3 Q. SO WERE YOU GIVEN ANY CONCRETE -- SORRY. WERE YOU GIVEN  
4 ANY RESPONSE BY H.R. ABOUT, HERE IS WHAT WE'RE GOING TO DO,  
5 KELLY, TO STOP THE TREATMENT?

6 A. NO.

7 Q. DID MR. SCHWABE TELL YOU AT THAT POINT, KELLY, WHY DON'T  
8 YOU OR YOUR EMPLOYEE FILL OUT A FORMAL COMPLAINT OF RETALIATION  
9 SO THEN THE DEPARTMENT, OR EEIO, OR WE, CAN ACT ON IT?

10 MS. ADEMA: OBJECTION. LEADING.

11 THE COURT: SUSTAINED. THAT'S WAY TOO LEADING.

12 BY MR. VANDERPOOL:

13 Q. WERE YOU EVER ADVISED THAT HUMAN RESOURCES COULD NOT ACT ON  
14 RETALIATION WITHOUT A FORM?

11:45:43 15 A. NO.

16 Q. IN LEADING UP TO THE TRANSFER, DID YOU PROVIDE MR. JOHNSON  
17 ANY GOOD NEWS, IF YOU WILL, ABOUT THE PUBLIC UTILITIES  
18 DEPARTMENT OPTION?

19 A. YES. WE DISCUSSED WHAT THE PUBLIC UTILITIES DEPARTMENT  
20 WOULD BE ABLE TO OFFER HIM IN TERMS OF PROFESSIONAL GROWTH,  
21 PROMOTIONAL OPPORTUNITIES, REDUCED RISK OF LAYOFF, MORE UPDATED  
22 TECHNOLOGY AND THAT IT WAS AN ENTERPRISED DEPARTMENT SO THEY  
23 HAD MORE MONEY THAN MOST DEPARTMENTS.

24 Q. DID YOU BECOME AWARE THAT MR. JOHNSON RECEIVED A  
25 PERFORMANCE EVALUATION IN THE CLERK'S OFFICE IN OR ABOUT APRIL

11:46:48 1 2016?

2 A. YES.

3 Q. DID YOU ASK TO SEE IT?

4 A. YES.

5 Q. WHY DID YOU WANT TO SEE IT?

6 A. TO MAKE SURE THAT IT WAS IN LINE WITH HIS ACTUAL

7 PERFORMANCE.

8 Q. AS OPPOSED TO WHAT?

9 A. PUTTING NEGATIVE COMMENTS IN THERE BECAUSE OF HIM FILING A  
10 GRIEVANCE.

11 Q. WERE YOUR CONCERNS RELIEVED WHEN YOU SAW IT?

12 A. YES.

13 Q. DO YOU RECALL E-MAILING MR. JOHNSON ON THAT SUBJECT?

14 A. YES.

11:47:21 15 Q. DO YOU RECALL SPECIFICALLY WHAT YOU COMMENTED TO MR.  
16 JOHNSON ABOUT IN TERMS OF THAT?

17 A. IT WAS SOMETHING TO THE EFFECT, I'M GLAD THEY WEREN'T  
18 FOOLISH AND DIDN'T PUT ANY NEGATIVE COMMENTS IN THERE.

19 Q. MR. JOHNSON WAS DIRECTED TO REPORT TO THE PUBLIC UTILITIES  
20 DEPARTMENT ON MAY 25TH, 2016, HOW MANY DAYS?

21 MS. ADEMA: OBJECTION. MISCHARACTERIZES THE  
22 TESTIMONY.

23 THE COURT: PARDON ME?

24 MS. ADEMA: I BELIEVE IT MISCHARACTERIZES THE DATE?

25 THE COURT: YOU MEAN THE WRONG DATE?

11:47:53 1 MS. ADEMA: WRONG DATE.

2 THE COURT: WELL, I WOULDN'T KNOW.

3 BY MR. VANDERPOOL:

4 Q. DO YOU RECALL WHAT DATE MR. JOHNSON REPORTED TO THE PUD?

5 A. YES, APRIL 25TH.

6 Q. OF WHAT YEAR?

7 A. 2016.

8 Q. HOW LONG BEFORE THAT DATE DID MR. JOHNSON OR DID YOU  
9 RECEIVE NOTIFICATION ABOUT WHERE HE WOULD BE REPORTING, EVEN TO  
10 WHAT DEPARTMENT?

11 A. WELL, IT WAS APPROXIMATELY FOUR DAYS, BUT HE TRANSFERRED TO  
12 THE DEPARTMENT ON A MONDAY, WE WERE NOTIFIED ON A THURSDAY THAT  
13 IT WAS A "GO" AND HE HAD ONE DAY TO MAKE THE DECISION, GET HIS  
14 THINGS TOGETHER, GET HIS OFFICE CLEARED OUT AND THINGS LIKE  
11:48:30 15 THAT.

16 Q. ONE DAY. FRIDAY, APRIL 22ND?

17 A. UH-HUH.

18 Q. SO THE CITY ATTORNEY ASKED YESTERDAY TO MR. JOHNSON WHETHER  
19 MR. JOHNSON WOULD HAVE EXPECTED YOU TO UNDERTAKE SOME DUE  
20 DILIGENCE ABOUT THE PUBLIC UTILITIES DEPARTMENT. HOW MUCH TIME  
21 DID YOU HAVE TO CONDUCT ANY DUE DILIGENCE?

22 A. NOT VERY MUCH.

23 Q. DID YOU TRY TO FIND OUT WHATEVER YOU COULD ABOUT THE JOB?

24 A. I DID TRY. THE ONE THING I RECALL THAT I WAS TOLD WAS THAT  
25 HE WOULD BE REPORTING TO A GENTLEMAN BY THE NAME OF ANTHONY

11:49:09 1 AUSTIN.

2 Q. AND PRIOR TO MR. JOHNSON'S LAST DAY, DID YOU SEE AN E-MAIL  
3 FROM ELIZABETH MALAND ABOUT HIS PENDING DEPARTURE?

4 A. YES.

5 Q. HOW DID YOU RECEIVE THAT?

6 A. FROM MR. JOHNSON.

7 Q. DID THAT E-MAIL CONTENT OF THE E-MAIL FROM ELIZABETH MALAND  
8 TO MR. JOHNSON SURPRISE YOU?

9 A. YES.

10 Q. WHY?

11 A. BECAUSE IT WAS LIKE A SLAP IN THE FACE TO RASEAN AFTER  
12 EVERYTHING HE HAD BEEN THROUGH.

13 Q. BEFORE I PASS THE WITNESS, SUBJECT TO REDIRECT, ANY OF THE  
14 NAMES WE'VE BEEN USING HERE TODAY ABOUT YOUR TESTIMONY ARE THEY  
11:49:50 15 IN THE GALLERY AT ALL TODAY OR WERE THEY?

16 A. IN THE GALLERY?

17 Q. YES.

18 A. I DON'T THINK SO.

19 Q. OKAY. JUST CONFIRMING. PASS THE WITNESS.

20 THE WITNESS: CAN I GET SOME WATER?

21 THE COURT: WELL, WE'RE GOING TO TAKE A BREAK A  
22 LITTLE EARLY. BUT WE'RE GOING TO COME BACK, COME BACK AT 12:30  
23 IF YOU WOULD PLEASE SO WE CAN GET THROUGH THIS WITNESS FAIRLY  
24 SOON AND MOVE ON. SO IF YOU COME BACK AT 12:30. REMEMBER MY  
25 ADMONISHMENT. DON'T DISCUSS THIS MATTER AMONG YOURSELVES OR

11:50:17 1 ANYONE. LEAVE YOUR PADS HERE AND BE BACK AT 12:30.

2 (RECESS.)

3 THE COURT: ALL RIGHT. YOU MAY PROCEED.

4 CROSS-EXAMINATION

5 BY MS. ADEMA:

6 Q. GOOD AFTERNOON, MS. CRUZ.

7 A. GOOD AFTERNOON.

8 Q. IT'S CORRECT THAT MS. MENDOZA BECAME MR. JOHNSON'S  
9 SUPERVISOR AS OF JANUARY 26TH OF 2016; CORRECT?

10 A. I'M NOT SURE OF THE EXACT DATE.

11 Q. LET ME GO AHEAD AND ASK YOU A FEW MORE QUESTIONS. WELL,  
12 ACTUALLY, NO, I THINK IT'S IMPORTANT TO GO AHEAD AND CLARIFY  
13 THIS. YOUR DEPOSITION, YOU ACKNOWLEDGE, WAS TAKEN IN THIS  
14 CASE, AND THAT WAS TAKEN ON JANUARY 25TH, 2018; CORRECT?

12:39:18 15 A. YES.

16 Q. AND YOU WERE ASKED -- YOU TESTIFIED UNDER OATH AT THAT  
17 TIME; CORRECT?

18 A. YES.

19 Q. AND YOU AGREED TO GIVE YOUR BEST TESTIMONY AT THE TIME OF  
20 YOUR DEPOSITION; IS THAT CORRECT?

21 A. YES.

22 Q. DO YOU RECALL TESTIFYING IN YOUR DEPOSITION THAT MS.  
23 MENDOZA WAS ASSIGNED TO MR. JOHNSON AS HIS SUPERVISOR ON  
24 JANUARY 26TH OF 2016?

25 A. I BELIEVE SO, YES.

12:39:58 1 Q. AND ISN'T IT TRUE THAT YOU TESTIFIED THAT THE ONLY ISSUE  
2 THAT AROSE WHILE MR. JOHNSON WAS BEING SUPERVISED BY MS.  
3 MENDOZA WAS IN CONNECTION WITH THE AUTO-REPLY E-MAIL RESPONSE  
4 BY SHEILA BEALE THAT WAS SENT ON TO YOU BY MR. JOHNSON?

5 A. I'M NOT SURE WHAT YOU'RE REFERRING TO.

6 Q. LET'S GO AHEAD AND DISPLAY EXHIBIT 19 WHICH HAS BEEN  
7 ADMITTED. DO YOU RECOGNIZE THIS DOCUMENT?

8 A. YES.

9 Q. WHAT'S THE DATE ON THE E-MAIL OF THIS DOCUMENT?

10 MR. VANDERPOOL: CUMULATIVE.

11 THE WITNESS: FEBRUARY 11TH, 2016.

12 BY MS. ADEMA:

13 Q. DID YOU -- WERE YOU SENT A COPY OF THIS E-MAIL ON OR ABOUT  
14 FEBRUARY 11TH, 2016, BY MR. JOHNSON?

12:41:15 15 A. ON OR ABOUT, YES.

16 Q. AND OTHER THAN THIS E-MAIL, DID YOU RECEIVE ANY INFORMATION  
17 FROM MR. JOHNSON AFTER DECEMBER 13TH, 2015, THAT HE -- HIS  
18 TITLE AS IMAGING DEPARTMENT SUPERVISOR WAS BEING TAKEN AWAY?

19 A. DID I RECEIVE ANY OTHER DOCUMENTATION BESIDES THIS?

20 Q. CORRECT.

21 A. YES.

22 Q. WHEN DID YOU RECEIVE THAT?

23 A. IT WAS INCLUDED IN THIS -- THERE WAS AN E-MAIL THAT WAS  
24 SENT WITH A COUPLE OF ATTACHMENTS AND ONE OF THE ATTACHMENTS  
25 WAS A WRITE-UP BY MR. JOHNSON.

12:42:27 1 Q. OKAY. YOU WERE ASKED ABOUT THIS E-MAIL AT YOUR DEPOSITION;  
2 CORRECT?

3 A. I BELIEVE SO, YES.

4 Q. AND ISN'T IT CORRECT THAT AT YOUR DEPOSITION YOU TESTIFIED  
5 THAT THIS IS THE ONLY INFORMATION OR EVIDENCE THAT YOU RECEIVED  
6 FROM MR. JOHNSON GOING TO THE ISSUE OF HIS DUTIES OR TITLE  
7 BEING REMOVED AS IMAGING DEPARTMENT SUPERVISOR?

8 A. CAN YOU RESTATE --

9 Q. I'M NOT LOOKING FOR COMMUNICATION FROM MR. JOHNSON LIKE  
10 REDESCRIBING THIS, BUT THAT THIS IS THE ONLY ACTUAL  
11 SUBSTANTIATION THAT YOU RECEIVED; ISN'T THAT CORRECT?

12 MR. VANDERPOOL: VAGUE AND AMBIGUOUS AND  
13 ARGUMENTATIVE AS TO "ACTUAL SUBSTANTIATION."

14 THE COURT: I'M NOT SURE WHAT THAT MEANS. REPHRASE.

12:43:23 15 BY MS. ADEMA:

16 Q. YOU DIDN'T HAVE ANY KNOWLEDGE OF MR. JOHNSON'S TITLE OR  
17 ROLES AS IMAGING DEPARTMENT SUPERVISOR BEING REMOVED AFTER  
18 DECEMBER 13TH, 2015, OTHER THAN WHAT MR. JOHNSON TOLD YOU AND  
19 THIS E-MAIL THAT HE PROVIDED YOU; CORRECT?

20 A. CORRECT.

21 Q. ISN'T IT CORRECT THAT YOU TESTIFIED IN YOUR DEPOSITION THAT  
22 AFTER BEING NOTIFIED THAT MS. MENDOZA HAD BEEN ASSIGNED AS MR.  
23 JOHNSON'S SUPERVISOR, YOU DIDN'T EVER RECEIVE A COMPLAINT  
24 COMMUNICATED TO YOU, AT LEAST THAT YOU TESTIFIED TO AT YOUR  
25 DEPOSITION, THAT MS. MENDOZA WASN'T ACTUALLY FUNCTIONING AS HIS

12:44:26 1 SUPERVISOR?

2 A. I'M NOT SURE WHAT YOU'RE ASKING ME.

3 Q. MS. MENDOZA CONTINUED TO FUNCTION AS MR. JOHNSON'S  
4 SUPERVISOR UNTIL MR. JOHNSON TRANSFERRED FROM THE CITY CLERK'S  
5 OFFICE TO THE PUBLIC UTILITIES DEPARTMENT; IS THAT CORRECT?

6 A. AS FAR AS I KNOW.

7 Q. THE WORKPLACE BEHAVIOR THAT YOU TESTIFIED EARLIER OCCURRED  
8 AFTER THE GRIEVANCE AND CAUSED MR. JOHNSON TO ASK TO MOVE TO A  
9 DIFFERENT DEPARTMENT OR A DIFFERENT SUPERVISOR IN JANUARY OF  
10 2016. YOU DIDN'T ACTUALLY WITNESS ANY OF THAT CONDUCT IN THE  
11 WORKPLACE, DID YOU?

12 A. NO.

13 Q. I HAVE NOTHING FURTHER. JUST A SECOND. SORRY, I FORGOT  
14 ONE ITEM. DURING THE TIME THAT YOU WERE REPRESENTING MR.

12:45:50 15 JOHNSON'S INTEREST AS A REPRESENTATIVE OF THE MUNICIPAL  
16 EMPLOYEE'S ASSOCIATION, YOU NEVER AUTHORIZED MR. JOHNSON TO  
17 SPEAK DIRECTLY TO THE H.R. DEPARTMENT ABOUT THE TERMS AND  
18 CONDITIONS OF HIS EMPLOYMENT; IS THAT CORRECT?

19 A. I WOULDN'T AUTHORIZE AN EMPLOYEE TO SPEAK TO H.R. THAT'S  
20 UP TO THEM IF THEY WANT TO.

21 Q. ISN'T IT A MATTER OF THE MEYERS-MILIAS ACT AND COLLECTIVE  
22 BARGAINING THAT -- AND CUSTOMARY FOR H.R. TO COMMUNICATE WITH  
23 THE UNION REPRESENTATIVE WHEN THERE HAVE BEEN REQUESTS MADE BY  
24 THE UNION WITH RESPECT TO CONDITIONS OF THE WORKPLACE?

25 MR. VANDERPOOL: ASSUMES FACTS NOT IN EVIDENCE.

12:46:44 1 FOUNDATION. SPECULATION.

2 THE COURT: YES, I SUSTAIN THE OBJECTION. WE'RE  
3 INVOLVED WITH SOME ACT THAT I'VE NEVER HEARD OF BEFORE, AND I  
4 THINK YOU CAN JUST BYPASS THAT AND ASK THE QUESTION MORE  
5 DIRECTLY.

6 BY MS. ADEMA:

7 Q. IS IT CUSTOMARY WHEN YOU'RE WORKING ON BEHALF OF AN  
8 EMPLOYEE WITH REGARDS TO A GRIEVANCE THAT YOU'VE SUBMITTED TO  
9 THE HUMAN RESOURCES DEPARTMENT AT SAN DIEGO, IN SAN DIEGO, THAT  
10 YOU WOULD BE DIRECTLY COMMUNICATING WITH THE H.R. DEPARTMENT  
11 AND THAT THE H.R. DEPARTMENT WOULD NOT GO DIRECTLY TO THE  
12 EMPLOYEE WITHOUT GOING TO YOU?

13 A. CORRECT.

14 Q. OKAY. THANK YOU.

12:47:37 15 THE COURT: ALL RIGHT. MAY THIS WITNESS BE  
16 EXCUSED?

17 MR. VANDERPOOL: YOUR HONOR, I DO HAVE TWO QUESTIONS.

18 THE COURT: ALL RIGHT. GO AHEAD.

19 MR. VANDERPOOL: I'LL ADMIT THIS IS A SUBJECT I  
20 DIDN'T ASK THE WITNESS. MY MISTAKE. PERHAPS I CAN JUST ASK IT  
21 AND SEE IF THERE'S AN OBJECTION.

22 THE COURT: ALL RIGHT.

23 REDIRECT EXAMINATION

24 BY MR. VANDERPOOL:

25 Q. MR. CRUZ, DID YOU HEAR FROM MR. JOHNSON AFTER HE

12:47:56 1 TRANSFERRED TO PUBLIC UTILITIES ABOUT THAT JOB?

2 A. YES.

3 MS. ADEMA: I WOULD OBJECT TO ANYTHING FURTHER.  
4 OUTSIDE THE SCOPE.

5 THE COURT: SUSTAINED.

6 MR. VANDERPOOL: I'M SORRY, YOUR HONOR.

7 THE COURT: SUSTAINED.

8 MR. VANDERPOOL: ALL RIGHT. THANK YOU.

9 THE COURT: ALL RIGHT. YOU CAN STEP DOWN THEN.  
10 ALL RIGHT. NEXT WITNESS?

11 MR. VANDERPOOL: YOUR HONOR, SUBJECT TO MOVING  
12 EXHIBITS AND REBUTTAL, PLAINTIFF RESTS.

13 THE COURT: OKAY. WE DO HAVE ALL OF THE EXHIBITS, I  
14 ASSUME, HERE, AND THEY ARE ALL ENTERED AT THIS POINT. LET ME  
12:48:58 15 ASK MY CLERK: IS THERE ANYTHING OUT THERE THAT YOU KNOW OF?

16 (THE COURT AND THE CLERK CONFER.)

17 THE COURT: THERE'S A FEW FROM THE EXHIBIT LIST I  
18 GUESS THEY WEREN'T EVEN SUBMITTED, WHICH IS FINE, 10, 11, 15,  
19 30, 31, 35, 42 AND 56, WHICH I ASSUME ARE NOT PART OF THE  
20 GROUP. OKAY. THOSE HAVE NOT --

21 MR. VANDERPOOL: YOUR HONOR, WE'D LIKE TO REVIEW  
22 THEM.

23 THE COURT: YES, GO AHEAD.

24 MR. VANDERPOOL: RIGHT NOW? OKAY.

25 THE COURT: WHY DON'T YOU DO THAT? IT'S 10, 11, 15,

12:49:25 1 30, 31, 35, 42 AND 56.

2 MR. VANDERPOOL: I DIDN'T GET THOSE.

3 THE COURT: I'M SPEAKING TOO FAST. I'LL LET HER DO  
4 IT.

5 THE CLERK: EXHIBIT 10 WAS MARKED BUT WAS NOT  
6 ADMITTED; EXHIBIT 11, 15, 30, 31, 35 WERE NOT MARKED OR  
7 ADMITTED. THEY HAVE NOT BEEN USED. 42 WAS MARKED BUT NOT  
8 ADMITTED, AND 56 WAS MARKED BUT NOT ADMITTED.

9 MR. VANDERPOOL: PLAINTIFF WOULD MOVE EXHIBIT 10.

10 THE COURT: ANY OBJECTION TO EXHIBIT 10?

11 MR. SCHAEFER: YES, YOUR HONOR. WE DO HAVE AN  
12 OBJECTION TO THAT PARTICULAR EXHIBIT.

13 THE COURT: IS IT SOMETHING THAT YOU CAN SAY IN FRONT  
14 OF THE JURY, OR DO YOU WANT A SIDEBAR?

12:50:59 15 MR. SCHAEFER: I THINK IT WOULD BE BEST SIDEBAR.

16 THE COURT: WELL, I TELL YOU WHAT: WELL, YOU'RE  
17 ALREADY FINISHED. SO LET'S MOVE ON, AND WE CAN DEAL WITH THIS  
18 AFTER THE TESTIMONY.

19 MR. SCHAEFER: YES, YOUR HONOR.

20 MR. VANDERPOOL: THAT WOULD BE OUR RECOMMENDATION.  
21 THANKS, YOUR HONOR.

22 THE COURT: ALL RIGHT. VERY GOOD.

23 MS. ADEMA: YOUR HONOR, THE CITY DOES HAVE A MOTION  
24 THAT'S CUSTOMARY TO MAKE AT THIS TIME SHALL. I MAKE IT IN THE  
25 PRESENCE OF THE JURY?

12:51:28

1 THE COURT: NO, LET'S DO SIDEBAR.

2 (THE FOLLOWING PROCEEDINGS WERE HELD AT SIDEBAR:)

3 MS. ADEMA: YOUR HONOR, I WOULD NOW MOVE FOR A  
4 JUDGMENT AS A MATTER OF LAW UNDER RULE 50 AT THIS TIME AS TO  
5 THE CLAIM OF RETALIATION. MR. JOHNSON HAS NOT SHOWN THROUGH  
6 THE EVIDENCE THAT HE HAS PRESENTED ANY SPECIFIC ACTS THAT RISE  
7 TO THE LEVEL OF ADVERSE EMPLOYMENT ACTION THAT ARE, WERE  
8 COMMITTED AGAINST HIM FOR THE ONLY REASON, FOR ONLY THE  
9 PROTECTED ACTIVITY THAT HE ENGAGED IN BY FILING HIS GRIEVANCE,  
10 AND SPECIFICALLY, THE CITY BELIEVES THERE'S NO EVIDENCE TO  
11 SUPPORT THAT HIS DUTIES AS IMAGING SUPERVISOR NOR HIS TITLE  
12 WERE REMOVED FROM HIM AFTER DECEMBER 15, 2015.

12:52:53

13 THE COURT: WELL, I'M GOING TO DENY THE MOTION AT  
14 THIS TIME SUBJECT TO RENEWAL AT THE END OF THE CASE. BUT IT  
15 APPEARS TO ME THAT THERE'S A PRIMA FACIE CASE AT ISSUE TO A  
16 CERTAIN DEGREE UNDER TITLE 7 WHETHER IT'S MATERIAL OR JUST KIND  
17 OF INCIDENTAL TO A NORMAL WORK PROCESS, AND I THINK THAT'S A  
18 JURY QUESTION. SO AT THIS TIME IT'S DENIED.

19 MS. ADEMA: THANK YOU.

20 (SIDEBAR CONCLUDED.)

21 MR. SCHAEFER: YOUR HONOR, THE CITY IS CALLING ELENA  
22 MENDOZA.

23 (OATH ADMINISTERED.)

24 THE CLERK: THANK YOU. YOU MAY LOWER YOUR HAND.

25 PLEASE BE SEATED UP HERE. STATE YOUR FIRST AND LAST NAME AND

12:54:10 1 SPELL IT FOR THE RECORD.

2 THE WITNESS: HI. MY NAME IS ELENA MENDOZA. FIRST  
3 NAME, E-L-E-N-A. LAST NAME IS M-E-N-D-O-Z-A.

4 DIRECT EXAMINATION

5 BY MS. ADEMA:

6 Q. GOOD AFTERNOON, MS. MENDOZA. WHERE DO YOU CURRENTLY  
7 WORK?

8 A. I'M CURRENTLY WORKING FOR CITY OF SAN DIEGO OFFICE OF THE  
9 CITY CLERK.

10 Q. HOW LONG HAVE YOU WORKED FOR THE CITY OF SAN DIEGO?

11 A. I'M WORKING AT CITY OF SAN DIEGO FOR 18 YEARS AND SIX  
12 MONTHS.

13 Q. HOW LONG HAVE YOU WORKED FOR THE OFFICE OF THE CITY  
14 CLERK?

12:54:51 15 A. TEN YEARS.

16 Q. HOW LONG WAS THAT?

17 A. TEN YEARS.

18 Q. THANK YOU. ARE THERE SPECIFIC DIVISIONS WITHIN THE OFFICE  
19 OF THE CITY CLERK?

20 A. YES. I WORK FOR 3 YEARS ON THE ELECTION INFORMATION  
21 DIVISION, AND THEN I TRANSFERRED TO RECORDS MANAGEMENT DIVISION  
22 IN 2010.

23 Q. OKAY. AND WHEN YOU TRANSFERRED TO THE RECORDS MANAGEMENT  
24 DIVISION IN 2010, WAS MR. RASEAN JOHNSON WORKING IN THE  
25 RECORD'S MANAGEMENT DIVISION?

12:55:32 1 A. YES.

2 Q. DID YOU BECOME MR. JOHNSON'S SUPERVISOR IN JANUARY 2016?

3 A. YES.

4 Q. AND WAS THAT, DO YOU RECALL THAT BEING ON JANUARY 26TH,

5 2016?

6 A. THAT WAS LIKE FOUR YEARS AGO. ABOUT TOWARDS THE END OF

7 JANUARY.

8 Q. THANK YOU. AND WHEN YOU BECAME MR. JOHNSON'S SUPERVISOR,

9 DID HE ASK YOU WHY -- OR DID YOU ASK HIM WHY HE HAD CHOSEN YOU

10 TO SUPERVISE HIM?

11 A. YES.

12 Q. AND WHAT WAS HIS RESPONSE? TAKE YOUR TIME.

13 A. HE PROBABLY -- I DON'T RECALL WHAT HIS RESPONSE WAS, BUT I

14 THINK HE'S COMFORTABLE DEALING WITH ME.

12:56:49 15 Q. DID HE LET YOU KNOW WHO HIS OTHER CHOICE OF A SUPERVISOR

16 WAS?

17 A. YES.

18 Q. WHO WAS THAT?

19 A. IT'S GEORGE BIAGI FROM THE LEGISLATIVE DIVISION.

20 Q. OKAY. THANK YOU. AND DID YOU CONTINUE TO SUPERVISE MR.

21 JOHNSON UNTIL HE TRANSFERRED OUT OF THE PUBLIC UTILITIES

22 DEPARTMENT?

23 A. YES.

24 Q. AND DURING THE TIME THAT YOU WERE SUPERVISING MR. JOHNSON

25 FROM FEBRUARY OF 2016 UNTIL HE TRANSFERRED TO THE PUBLIC

12:57:27 1 UTILITIES DEPARTMENT, WAS HE PERFORMING THE ROLE OF IMAGING  
2 DEPARTMENT SUPERVISOR?

3 A. IT'S THE IMAGING SECTION SUPERVISOR.

4 Q. HE WAS THE SUPERVISOR OF THAT SECTION?

5 A. YES.

6 Q. AND HE HAD BEEN THE SUPERVISOR OF THAT SECTION FOR QUITE A  
7 WHILE; CORRECT?

8 A. YES.

9 Q. AND ARE YOU FAMILIAR WITH THE DUTIES HE PERFORMED BEFORE  
10 YOU ACTUALLY BECAME HIS DIRECT SUPERVISOR?

11 A. YES.

12 Q. AND WITH RESPECT TO THE IMAGING SECTION, DID HE SUPERVISE  
13 EMPLOYEES?

14 A. YES.

12:58:18 15 Q. AND DID HE CONTINUE TO DO SO AFTER MR. JOHNSON WAS  
16 TRANSFERRED UNDER YOUR SUPERVISION?

17 A. YES.

18 Q. AS HIS SUPERVISOR, DID YOU PERFORM THE FUNCTION THAT IS  
19 TYPICALLY PERFORMED BY A WORKING SUPERVISOR WHO IS SUPERVISING  
20 SOMEONE WHO IS ALSO SUPERVISING PEOPLE?

21 MR. CADIEUX: VAGUE AND AMBIGUOUS.

22 THE COURT: SUSTAINED. REPHRASE.

23 BY MS. ADEMA:

24 Q. AS HIS SUPERVISOR, DID YOU START TO CARRY ON THE FUNCTIONS  
25 OF APPROVING HIS TIME?

12:59:06 1 A. YES.

2 Q. AND SO WHEN HE WORKED, HE WOULD SUBMIT HIS TIME WORKED OR  
3 HE, IF HE WAS NOT WORKING, A DAY OFF, THROUGH THE COMPUTER  
4 SYSTEM, AND YOU WOULD BE THE ONE THAT WOULD ULTIMATELY APPROVE  
5 THE TIME; CORRECT?

6 A. YES.

7 Q. AND DID YOU SET UP MEETINGS WITH MR. JOHNSON AFTER YOU  
8 BECAME HIS SUPERVISOR SO THAT YOU COULD DISCUSS THE STATUS OF  
9 PROJECTS?

10 A. YES.

11 Q. AND DID YOU RECEIVE WRITTEN REPORTS FROM MR. JOHNSON AS TO  
12 WHAT HE WAS WORKING ON?

13 A. YES.

14 MR. CADIEUX: LEADING.

12:59:49 15 THE COURT: SUSTAINED.

16 BY MS. ADEMA:

17 Q. AT ANY TIME, DID MS. BEALE INSTRUCT YOU TO REMOVE ANY OF  
18 MR. JOHNSON'S DUTIES IN SUPERVISING THE IMAGING SECTION?

19 A. NO.

20 Q. DID SHE INFORM YOU THAT HIS TITLE WOULD NO LONGER BE  
21 IMAGING DEPARTMENT SUPERVISOR?

22 A. NO.

23 Q. NOW DO YOU RECALL WHEN MR. JOHNSON TRANSFERRED TO THE  
24 PUBLIC UTILITIES DEPARTMENT?

25 A. YES.

13:00:25 1 Q. AND DID YOU HAVE AN OPPORTUNITY TO SPEAK WITH HIM AFTER HE  
2 LEFT THE CITY CLERK'S OFFICE?

3 A. YES.

4 Q. AND HOW -- WHAT DO YOU RECALL IN TERMS OF DID YOU SEE MR.  
5 JOHNSON AFTER HE LEFT THE CITY CLERK'S OFFICE?

6 A. YES.

7 Q. AND WHAT WAS THE REASON THAT YOU SAW MR. JOHNSON?

8 A. HE HAS THE KEY. MR. JOHNSON HAS THE KEY FOR OUR DISPLAY  
9 CABINET. SO I REQUEST THAT KEY TO, CAN HE BRING IT BACK TO THE  
10 OFFICE.

11 Q. SO HE CAME BACK TO THE CITY CLERK'S OFFICE AFTER HE  
12 TRANSFERRED TO PUD; IS THAT CORRECT?

13 A. YES.

14 Q. TO BRING YOU THE DISPLAY TO, THE KEY TO THE DISPLAY  
15 CABINET?

13:01:14

16 A. YES.

17 Q. AND DID YOU ACTUALLY INTERACT PERSONALLY WITH MR. JOHNSON  
18 WHEN HE CAME BACK AND DID THAT?

19 A. YES.

20 Q. AND DID YOU ASK HIM HOW HE LIKED IT AT THE PUBLIC UTILITIES  
21 DEPARTMENT?

22 MR. CADIEUX: LEADING.

23 THE COURT: SUSTAINED.

24 BY MS. ADEMA:

25 Q. DID YOU HAVE A CONVERSATION ABOUT HIS CURRENT JOB?

13:01:34 1 A. YES.

2 Q. AND THAT CURRENT JOB WAS AT THE PUBLIC UTILITIES  
3 DEPARTMENT?

4 A. YES.

5 Q. WERE YOU AWARE HE WAS WORKING AT THE CHOLLAS LOCATION?

6 A. I THINK THAT'S THE LOCATION. I'M NOT POSITIVE ON THE  
7 LOCATION.

8 Q. ALL RIGHT. HOW DID MR. -- WHAT DID MR. JOHNSON SAY ABOUT  
9 HIS POSITION AT THE PUBLIC UTILITIES DEPARTMENT?

10 A. HE SAID HE LIKES IT AND HE HAS THE 9/80 SCHEDULE, AND HE'S  
11 MORE -- HE'S RELAXED BECAUSE THE CITY CLERK'S OFFICE IS A  
12 FAST-PACED ENVIRONMENT, AND WE HAVE MULTIPLE PROJECTS THAT WE  
13 NEED TO FINISH IN A TIMELY MANNER. SO IN THE PUBLIC UTILITIES  
14 IT'S MORE RELAXING, THAT HIS PROJECTS OR WHATEVER, ASSIGNMENTS  
15 GIVEN TO HIM IS NOT THAT FAST, QUICK, TO BE COMPLETED.

13:02:33

16 Q. DID HE MENTION HIS OFFICE AT THE PUBLIC UTILITIES  
17 DEPARTMENT?

18 MR. CADIEUX: LEADING.

19 THE COURT: SUSTAINED.

20 BY MS. ADEMA:

21 Q. DID HE MENTION ANYTHING ELSE?

22 A. NO.

23 Q. ALL RIGHT. OKAY. JUST A COUPLE OF MINOR ITEMS TO FOLLOW  
24 UP ON. YOU MENTIONED THAT GEORGE BIAGI IS A DEPUTY DIRECTOR AS  
25 WELL; IS THAT RIGHT?

13:03:50 1 A. YES.

2 Q. AND WHAT IS THE DIVISION OF THE CITY CLERK'S OFFICE THAT HE  
3 DIRECTS OR IS THE DEPUTY DIRECTOR OF?

4 MR. CADIEUX: CUMULATIVE.

5 THE COURT: OVERRULED. I DON'T REMEMBER WHAT IT WAS.  
6 YOU CAN ANSWER.

7 THE WITNESS: THE LEGISLATIVE DIVISION DEALS WITH THE  
8 COUNCILS, THE MAYOR'S -- THEY'RE THE ONE THAT'S HELPING THE  
9 CITY COUNCILS, THE MAYOR'S LIKE DURING COUNCIL MEETINGS,  
10 DOCKETING, OR HEARING, AND THEY ALSO HAVE AN IMAGING SECTION IN  
11 THAT DIVISION.

12 BY MS. ADEMA:

13 Q. WHEN YOU MEAN AN IMAGING SECTION, YOU MEAN THE SAME KIND OF  
14 SECTION, IMAGING SECTION THAT MR. JOHNSON OVERSAW IN THE  
15 RECORD'S MANAGEMENT DIVISION?

13:04:51

16 MR. CADIEUX: LEADING.

17 THE COURT: SUSTAINED.

18 BY MS. ADEMA:

19 Q. ARE YOU AWARE OF THE DUTIES PERFORMED BY THE PERSONNEL IN  
20 THE IMAGING SECTION OVERSEEN BY MR. BIAGI?

21 A. SORT OF BECAUSE THEY ALSO -- THEY'RE THE ONE THAT SCANNING  
22 THE DOCUMENT THAT NEED TO BE UPLOADED ONLINE.

23 Q. WHO DID GEORGE BIAGI REPORT TO?

24 A. MS. LIZ MALAND, ELIZABETH MALAND.

25 Q. DID HE REPORT TO MS. BEALE AT ALL?

13:05:43 1 A. NO.

2 Q. DID HE SUPERVISE MS. BEALE?

3 A. NO.

4 Q. IF MR. JOHNSON HAD CHOSEN TO GO TO WORK IN GEORGE BIAGI'S  
5 DEPARTMENT, WOULD MS. BEALE HAVE ANY KIND OF INFLUENCE OVER THE  
6 TERMS AND CONDITIONS OF HIS EMPLOYMENT OR THE WORKING  
7 CONDITIONS?

8 MR. CADIEUX: SPECULATION.

9 THE COURT: SUSTAINED.

10 BY MS. ADEMA:

11 Q. DOES MS. BEALE HAVE ANY CONTROL OVER GEORGE BIAGI THAT  
12 YOU'RE AWARE OF IN TERMS OF THE ORGANIZATIONAL STRUCTURE?

13 A. NO.

14 Q. NOW WHEN MR. JOHNSON CAME TO RETURN THE KEY TO YOU AFTER HE  
13:06:51 15 WAS AT THE PUBLIC UTILITIES DEPARTMENT, DO YOU REMEMBER HIM  
16 MENTIONING THE OFFICE THAT HE WORKED IN?

17 MR. CADIEUX: LEADING. ASKED AND ANSWERED.

18 THE COURT: SUSTAINED.

19 BY MS. ADEMA:

20 Q. DID HE MAKE ANY MENTION OF THE PHYSICAL CONDITIONS OF THE  
21 WORKPLACE AT THE PUBLIC UTILITIES?

22 MR. CADIEUX: LEADING.

23 THE COURT: I'LL ALLOW IT TO GET THROUGH THIS.

24 THE WITNESS: NO.

25 BY MS. ADEMA:

13:07:22 1 Q. HE DID NOT? I'M SORRY. ONE MORE. DID HE EVER TALK ABOUT  
2 HIS SUPERVISOR THERE?

3 A. YEAH. ACCORDING TO HIM, HIS SUPERVISOR IS NICE IN THE  
4 PUBLIC UTILITIES.

5 Q. OKAY. THANK YOU. THAT WAS IT.

6 CROSS-EXAMINATION

7 BY MR. CADIEUX:

8 Q. HI, MS. MENDOZA.

9 A. HI.

10 Q. DEPUTY DIRECTOR BEALE IS YOUR CURRENT SUPERVISOR;  
11 CORRECT?

12 A. YES.

13 Q. SHE PERFORMS YOUR PERFORMANCE EVALUATIONS EVERY YEAR?

14 A. YES.

13:08:06 15 Q. SHE'S ALSO THE ONE WHO CONTROLS YOUR ASSIGNMENTS WITHIN  
16 YOUR DEPARTMENT?

17 A. YES.

18 Q. OKAY. AND SHE WOULD BE THE ONE TO RECOMMEND YOU FOR A  
19 PROMOTION; CORRECT?

20 A. YES.

21 Q. YOU'RE NOT LOOKING TO TRANSFER OUT OF HER DEPARTMENT, ARE  
22 YOU?

23 A. NOT YET.

24 Q. OKAY. WE MENTION IN JANUARY 2016 THAT THERE WAS A CHANGE  
25 IN MR. JOHNSON'S SUPERVISOR, AND THAT CHANGE WAS YOU;

13:08:34 1 CORRECT?

2 A. YES.

3 Q. DID MS. BEALE TELL YOU WHY YOU WERE GOING TO BE MR.

4 JOHNSON'S NEW SUPERVISOR?

5 A. NO.

6 Q. SHE JUST TOLD YOU THAT YOU WERE GOING TO TAKE OVER THOSE

7 DUTIES?

8 A. YES.

9 Q. OKAY. SHE DIDN'T TELL YOU THAT YOU WOULD BE TAKING OVER AS

10 IMAGING SECTION SUPERVISOR THOUGH, RIGHT?

11 A. NO.

12 Q. YOUR UNDERSTANDING WAS THAT YOU WERE TAKING OVER SOME OF

13 MS. BEALE'S DUTIES IN SUPERVISING MR. JOHNSON, NOT IN MR.

14 JOHNSON'S DUTIES?

13:09:02 15 A. YES.

16 Q. SO AM I RIGHT, THEN, THAT ESSENTIALLY YOU WERE INTENDED TO

17 BE A BUFFER BETWEEN MS. BEALE AND MR. JOHNSON?

18 A. YES.

19 Q. DID YOU KNOW THAT MS. BEALE HAD LISTED YOU ON HER

20 OUT-OF-OFFICE AUTO-REPLY E-MAIL AS IMAGING SECTION

21 SUPERVISOR?

22 A. YES.

23 Q. WHEN DID YOU FIND THAT OUT?

24 A. JUST RECENTLY.

25 Q. OKAY. IN FEBRUARY WHEN THAT AUTO-RESPONSE WAS SENT, DID

13:09:38 1 YOU RECALL SEEING IT AT THAT TIME?

2 A. I CAN'T REMEMBER.

3 Q. OKAY. DID YOU EVER TALK TO MR. JOHNSON OR MS. BEALE ABOUT  
4 THAT AUTO-RESPONSE?

5 A. NO.

6 Q. DID YOU HAVE ANY DISCUSSIONS WITH ELIZABETH MALAND ABOUT  
7 YOU TAKING OVER MR. JOHNSON'S SUPERVISION?

8 A. NO.

9 Q. HOW ABOUT ANYONE FROM H.R.?

10 A. NO.

11 Q. AND YOU WEREN'T GIVEN ANYTHING IN WRITING TO CONFIRM THIS  
12 CHANGE IN DUTIES, RIGHT?

13 A. NO.

14 Q. AND YOU WEREN'T GIVEN A RAISE BECAUSE YOU WERE TAKING ON  
15 EXTRA DUTIES?

13:10:20

16 A. NO. I WISH.

17 Q. IF I WOULD HAVE BEEN THERE, I WOULD HAVE TOLD YOU TO DO  
18 THAT. WHEN MS. BEALE TOLD YOU THAT YOU WOULD BE SUPERVISING  
19 MR. JOHNSON, SHE TOLD YOU IT WAS GOING TO BE A TEMPORARY THING,  
20 RIGHT?

21 A. NO.

22 Q. SHE DIDN'T?

23 A. SHE DIDN'T.

24 Q. AT THAT TIME IN JANUARY 2016, DID YOU KNOW THAT MR. JOHNSON  
25 WAS GOING TO BE TRANSFERRING OUT OF THE DEPARTMENT?

13:10:44 1 A. YES.

2 Q. YOU DID. HOW DID YOU FIND THAT OUT?

3 A. HE DID MENTION IT TO ME.

4 Q. OKAY. THAT WAS SOMETHING THAT HAD BEEN DISCUSSED. OKAY.

5 DID YOU HAVE ANY CONCERNS ABOUT BEING REASSIGNED AS MR.

6 JOHNSON'S SUPERVISOR?

7 A. NO, JUST SURPRISED.

8 Q. YOU WERE SURPRISED BY THAT. WHY WERE YOU SURPRISED?

9 A. BECAUSE HE HAS THE OPTION TO CHOOSE GEORGE BIAGI, BUT HE

10 CHOOSE ME.

11 Q. WERE YOU HONORED BY THAT?

12 A. SORT OF.

13 Q. SORT OF?

14 A. YES.

13:11:20 15 Q. WHAT DO YOU MEAN BY "SORT OF"?

16 A. I'M HONORED THAT HE CHOOSE ME. THAT MEANS HE TRUST ME.

17 BUT AT THE SAME TOKEN, THAT'S ANOTHER RESPONSIBILITY IN A LOT

18 OF MY OTHER TASKS.

19 Q. GOT YOU. BECAUSE YOU WERE ALSO DOING YOUR OWN JOB,

20 RIGHT?

21 A. YES.

22 Q. MR. JOHNSON KNEW HIS JOB WELL THOUGH; CORRECT?

23 A. YES.

24 Q. SO HE DIDN'T REQUIRE A TON OF SUPERVISION, DID HE?

25 A. NO.

13:11:51 1 Q. NOW WHEN YOU WERE SWITCHED TO BE MR. JOHNSON'S SUPERVISOR,  
2 YOU WERE AWARE THAT HE HAD MADE A COMPLAINT AGAINST DEPUTY  
3 DIRECTOR SHEILA BEALE, RIGHT?

4 A. YES.

5 Q. IN FACT, YOU HAD BEEN INTERVIEWED BY THE EQUAL EMPLOYMENT  
6 INVESTIGATION OFFICE ABOUT THAT COMPLAINT?

7 A. YES.

8 Q. DO YOU RECALL TELLING MR. JOHNSON THAT YOU REALLY DIDN'T  
9 WANT TO GET INTO THE MIDDLE OF THAT INVESTIGATION PROCESS?

10 A. NO.

11 Q. OKAY. EVEN AFTER THE CHANGE IN SUPERVISOR, YOU DIDN'T HAVE  
12 THE AUTHORITY TO FIRE MR. JOHNSON, RIGHT?

13 A. NO.

14 Q. AND YOU DIDN'T HAVE THE AUTHORITY TO HAVE HIM TRANSFERRED;  
15 CORRECT?

13:12:30

16 A. NO.

17 Q. OR TAKE AWAY HIS JOB DUTIES?

18 A. NO.

19 Q. THOSE ARE ALL DECISIONS THAT ELIZABETH MALAND WOULD MAKE;  
20 CORRECT?

21 A. NO.

22 Q. WHO WOULD MAKE THOSE DECISIONS?

23 A. HE HAS A PERFORMANCE PLAN AND THAT PLAN NEEDS TO BE  
24 FOLLOWED. LIKE IT HAS THE, WHAT IS EXPECTED FROM HIM.

25 Q. RIGHT. SO THAT PERFORMANCE PLAN LAYS OUT WHAT HIS JOB DUTY

13:13:00 1 AND EXPECTATIONS ARE; CORRECT?

2 A. YES.

3 Q. MS. MALAND, THOUGH, RETAINED THE AUTHORITY TO FIRE MR.  
4 JOHNSON, RIGHT?

5 A. YOU CANNOT FIRE ANY REPRESENTATIVE OF CIVIL -- WHAT THEY  
6 CALL IT -- LIKE CIVIL COMMISSION BECAUSE IT HAS A PROCESS.

7 Q. OKAY. HOW ABOUT TRANSFERS? TO YOUR UNDERSTANDING, DOES  
8 MS. MALAND HAVE AUTHORITY TO TRANSFER MR. JOHNSON OUT OF HER  
9 DEPARTMENT?

10 A. NO. IT'S A CHOICE THAT AN EMPLOYEE CAN DO BECAUSE WE HAVE  
11 A FORM AND THE CITY HAS A FORM THAT YOU NEED TO FILL OUT IF YOU  
12 FEEL LIKE YOU WANT TO BE TRANSFERRED TO ANOTHER DEPARTMENT.

13 Q. THAT'S THE TRANSFER LIST; IS THAT WHAT YOU GUYS REFER TO IT  
14 AS?

13:13:48 15 A. IT'S A TRANSFER FORM. IT'S NOT A TRANSFER LIST. A  
16 TRANSFER LIST IS A LIST WHERE ONCE YOU FILL OUT THAT TRANSFER  
17 FORM YOUR NAME WILL BE PUT ON THAT TRANSFER LIST TO BE SENT TO  
18 WHATEVER DEPARTMENT NEEDS THAT POSITION.

19 Q. SO IT'S YOUR UNDERSTANDING THAT MR. JOHNSON HAD REQUESTED,  
20 FILLED OUT A TRANSFER FORM ASKING TO BE MOVED TO THE PUD; IS  
21 THAT RIGHT?

22 MS. ADEMA: OBJECTION. I BELIEVE IT MISSTATES HER  
23 TESTIMONY.

24 THE COURT: WELL, HE CAN ASK IT. GO AHEAD. SHE CAN  
25 SAY NO. YOU CAN ASK THE QUESTION.

13:14:31 1 BY MR. CADIEUX:

2 Q. WOULD YOU LIKE ME TO REPEAT IT?

3 A. YES, PLEASE.

4 Q. DARN IT. OKAY. LET ME TRY TO THINK. WAS IT YOUR  
5 UNDERSTANDING THAT MR. JOHNSON HAD FILLED OUT A TRANSFER FORM  
6 ASKING TO BE MOVED TO THE PUBLIC UTILITIES DEPARTMENT?

7 A. WHEN YOU FILL OUT THE TRANSFER FORM, OR YOU KNOW, THAT  
8 TRANSFER FORM, WHEN YOU FILL THAT TRANSFER FORM, YOU DON'T  
9 SPECIFY IN THERE WHAT DEPARTMENT YOU WILL BE TRANSFERRED  
10 WITH.

11 Q. RIGHT. THE EMPLOYEE ULTIMATELY, THOUGH, HAS THE OPTION --  
12 SO ONCE THEY FILL OUT THAT TRANSFER FORM, THEY'RE PLACED ON THE  
13 TRANSFER LIST; CORRECT?

14 A. YES.

13:15:11 15 Q. THEN IN RESPONSE TO BEING ON THAT TRANSFER LIST,  
16 DEPARTMENTS MAY CONTACT THE EMPLOYEE AND OFFER THEM SPECIFIC  
17 POSITIONS IN THE DEPARTMENTS; CORRECT?

18 A. NOT TO OFFER BUT TO GIVE YOU A COURTESY TO BE  
19 INTERVIEWED.

20 Q. SO THEY'LL OFFER YOU AN INTERVIEW FOR A SPECIFIC POSITION  
21 IN THAT DEPARTMENT?

22 A. YES. YES.

23 Q. OKAY. AND WAS IT YOUR UNDERSTANDING THAT THAT WAS THE  
24 PROCESS MR. JOHNSON WENT THROUGH WHICH RESULTED IN HIS TRANSFER  
25 TO THE PUD?

13:15:38 1 A. IF I CAN RECALL, I KNOW RASEAN FILLED OUT THE TRANSFER LIST  
2 BECAUSE HE'S BEEN APPLYING TO OTHER DEPARTMENTS BEFORE THIS  
3 THINGS HAPPEN. AND IF YOU'RE APPLYING TO OTHER DEPARTMENT IN  
4 THE SAME CLASSIFICATION, THAT MEANS YOUR NAME IS IN THE  
5 TRANSFER LIST.

6 Q. OKAY. WE MENTIONED THAT YOU GAVE AN INTERVIEW AS PART OF  
7 THE INVESTIGATION INTO MR. JOHNSON'S EEO COMPLAINT. OTHER THAN  
8 THAT INTERVIEW, DID ANYONE FROM THE EEIO COME TO YOUR WORK SITE  
9 TO DISCUSS A RESOLUTION TO THAT INVESTIGATION?

10 A. NOT THAT I'M AWARE OF.

11 Q. OKAY. WHILE YOU WERE ACTING AS MR. JOHNSON'S SUPERVISOR,  
12 DID ANYONE FROM THE EEIO FOLLOW UP WITH YOU AS TO WHETHER MR.  
13 JOHNSON WAS SUFFERING ANY POOR TREATMENT?

14 A. NO.

13:16:41 15 Q. HOW ABOUT CITY H.R.? DID ANY OF THEM CONTACT YOU AS MR.  
16 JOHNSON'S ACTING SUPERVISOR TO DISCUSS COMPLAINTS THAT MR.  
17 JOHNSON WAS NOT BEING FAIRLY TREATED?

18 A. NO.

19 Q. AT ANY TIME DID ANYONE FROM THE CITY RECOMMEND, SUGGEST, OR  
20 OTHERWISE DISCUSS A REMEDY FOR MR. JOHNSON'S EEO COMPLAINT WITH  
21 YOU, HIS ACTING SUPERVISOR?

22 A. NO.

23 Q. DID YOU THINK HAVING -- DO YOU THINK THE CITY'S DECISION TO  
24 HAVE YOU ACT AS A BUFFER BETWEEN MS. BEALE AND MR. JOHNSON WAS  
25 EFFECTIVE AT MENDING HIS RELATIONSHIP WITH MS. BEALE?

13:17:18 1 MS. ADEMA: OBJECTION. ARGUMENTATIVE AND LEADING.

2 THE COURT: REPHRASE IT.

3 BY MR. CADIEUX:

4 Q. SURE. WHILE YOU WERE ACTING AS MR. JOHNSON'S SUPERVISOR,  
5 DID YOU SEE ANY EFFORTS ON THE PART OF MS. BEALE TO REPAIR THE  
6 RELATIONSHIP BETWEEN HERSELF AND MR. JOHNSON?

7 A. POSSIBLE.

8 Q. NO FURTHER QUESTIONS.

9 REDIRECT EXAMINATION

10 BY MS. ADEMA:

11 Q. MS. MENDOZA, IN 2016, DID YOU SEE MS. BEALE ACT IN AN  
12 UNPROFESSIONAL MANNER TO MR. JOHNSON?

13 A. NO.

14 MR. CADIEUX: VAGUE AND AMBIGUOUS AS TO

13:18:40 15 "UNPROFESSIONAL MANNER."

16 THE COURT: SUSTAINED.

17 BY MS. ADEMA:

18 Q. DID YOU SEE MS. BEALE ACT IN A NEGATIVE MANNER TOWARDS MR.  
19 JOHNSON IN 2016?

20 MR. CADIEUX: SAME OBJECTION REGARDING "NEGATIVE."

21 THE COURT: SUSTAINED. YOU KNOW, THIS IS REALLY  
22 OUTSIDE. I MEAN, WE'VE ALREADY BEEN BACK AND FORTH, AND IT HAS  
23 SOME BEARING ON WHAT THE LAST TESTIMONY WAS. BUT I THINK I'M  
24 GOING TO SUSTAIN THE OBJECTION AS JUST OUTSIDE THE SCOPE OF THE  
25 LAST RESPONSE BECAUSE IT STARTS DOWN ANOTHER PATH. SO I'M

13:19:27 1 GOING TO DENY THIS LINE OF QUESTIONING.

2 MS. ADEMA: THANK YOU, YOUR HONOR.

3 THE COURT: ANYTHING ELSE?

4 MR. CADIEUX: NO, YOUR HONOR.

5 THE COURT: OKAY. MS. MENDOZA, THANK YOU VERY MUCH.  
6 YOU MAY BE EXCUSED.

7 MR. SCHAEFER: YOUR HONOR, MAY WE HAVE A MOMENT TO  
8 CONFER ABOUT OUR NEXT WITNESS?

9 THE COURT: SURE. WHILE THEY'RE CONFERRING, YOU CAN  
10 TAKE ABOUT FIVE MINUTES IF YOU NEED TO DO ANYTHING. FEEL FREE.

11 (RECESS.)

12 MS. ADEMA: THE CITY WOULD CALL IT'S NEXT WITNESS,  
13 ELIZABETH MALAND.

14 THE COURT: ALL RIGHT.

13:25:59 15 (OATH ADMINISTERED.)

16 THE CLERK: PLEASE BE SEATED UP HERE. PLEASE STATE  
17 YOUR FIRST AND LAST NAME AND SPELL IT FOR THE RECORD.

18 THE WITNESS: ELIZABETH MALAND, M-A-L-A-N-D.

19 DIRECT EXAMINATION

20 BY MS. ADEMA:

21 Q. GOOD MORNING, MS. MALAND. WHAT IS YOUR CURRENT  
22 EMPLOYMENT?

23 A. I'M CITY CLERK FOR THE CITY OF OF SAN DIEGO.

24 Q. DID MR. RASEAN JOHNSON FORMERLY WORK IN THE CITY CLERK'S  
25 OFFICE?

13:26:32 1 A. YES, HE DID.

2 Q. AND IN ABOUT OCTOBER OF 2015, DID YOU BECOME AWARE THAT MR.  
3 JOHNSON HAD FILED A GRIEVANCE THROUGH HIS UNION WITH THE H.R.  
4 DEPARTMENT WITH THE CITY?

5 A. YES, I DID.

6 Q. IN JANUARY 2016, DID YOU TAKE SOME STEPS IN RESPONSE TO THE  
7 GRIEVANCE IN THE CITY CLERK'S OFFICE?

8 MR. VANDERPOOL: LEADING.

9 THE COURT: YES. SUSTAINED.

10 BY MS. ADEMA:

11 Q. WHAT DID YOU DO IN JANUARY 2016 IN RESPONSE TO THE  
12 GRIEVANCE?

13 A. AS SOON AS I FOUND OUT, I ACTUALLY STARTED TO TRY TO CREATE  
14 AS MUCH OF A WELCOMING AND NEUTRAL ENVIRONMENT AS I POSSIBLY  
13:27:24 15 COULD. SO I TOOK FIVE SEPARATE STEPS. NUMBER ONE, I STARTED  
16 TO IMPLEMENT DEPARTMENT-WIDE TRAINING EVERY MONTH SO THAT ALL  
17 OF MY STAFF COULD ATTEND SPECIFIC TRAININGS TO HELP THEM HAVE  
18 THE TOOLS THEY NEEDED. NUMBER TWO, I ALSO STARTED A TRACKING  
19 SYSTEM SO THAT ALL OF MY SUPERVISORS WERE, WE WERE ENSURING  
20 THAT THEY WERE GETTING THE PROPER TRAINING THEY NEEDED, EEO,  
21 INTERVIEW TRAINING, THAT SORT OF THING. AND WE WANTED TO MAKE  
22 SURE EVERY FIVE YEARS THEY WERE RENEWING THAT TRAINING SO IT  
23 WAS AS FRESH AS POSSIBLE.

24 I ALSO ASKED HUMAN RESOURCES TO HELP ME GET AN  
25 ORGANIZATIONAL EFFECTIVENESS PROFESSIONAL SO SOMEONE WHO COULD

13:28:03 1 ACTUALLY COME IN AND HELP WITH THE ENVIRONMENT IN THE OFFICE.  
2 I REALLY WANTED TO HAVE SOMEBODY WHERE IT WAS THEIR AREA OF  
3 EXPERTISE TO HELP US AS MUCH AS POSSIBLE CREATE THAT WELCOMING  
4 AND NEUTRAL ENVIRONMENT, AND I WAS LOOKING TO THE EXPERTS TO  
5 ASSIST. AND I ASKED OUR CHIEF OPERATING OFFICER TO ACTUALLY  
6 CREATE A NEW POSITION WITHIN MY BUDGET. I WANTED TO HAVE A  
7 POSITION THAT WAS NOT A PART OF THE MANAGEMENT TEAM BUT WOULD  
8 BE AN EXPERT IN H.R. SO THEY WOULD BE MY H.R. CONTACT, HUMAN  
9 RESOURCES CONTACT, SO THAT LINE STAFF COULD GO TO THAT PERSON  
10 IF THEY HAD QUESTIONS, AND THAT PERSON COULD ALSO THEN BE  
11 RESPONSIBLE FOR TRAINING AND FOR ADMINISTRATIVE DUTIES. SO  
12 THERE IS ANOTHER LAYER IN THERE.

13 AND FINALLY, I WANTED TO MAKE MYSELF MORE OF A  
14 PRESENCE. I TRY VERY HARD TO BE VISIBLE WITHIN THE DEPARTMENT,  
13:28:53 15 BUT I STARTED ATTENDING DIVISION-WIDE MEETINGS EACH MONTH SO I  
16 COULD INFORM EACH OF MY DIVISIONS WHAT WAS GOING ON IN THE  
17 DEPARTMENT AS A WHOLE AND ANSWER ANY QUESTIONS FOLKS HAD.

18 MS. ADEMA: THANK YOU. I DON'T HAVE ANYTHING  
19 FURTHER. THANK YOU, MS. MALAND.

20 THE WITNESS: THANK YOU.

21 THE COURT: ANYTHING BY THE PLAINTIFF?

22 MR. VANDERPOOL: YES.

23 CROSS-EXAMINATION

24 BY MR. VANDERPOOL:

25 Q. IN TERMS OF -- GOOD AFTERNOON.

13:29:29 1 A. HI.

2 Q. WE'VE NOT MET; CORRECT?

3 A. THAT'S CORRECT.

4 Q. JOHN VANDERPOOL, NICE TO MEET YOU.

5 A. NICE TO MEET YOU.

6 Q. DESPITE THE CIRCUMSTANCES. YOU'RE THE AUTHOR, MS. MALAND,  
7 OF THE CITY'S EEO POLICIES?

8 MS. ADEMA: OBJECTION. OUTSIDE THE SCOPE.

9 MR. VANDERPOOL: BACKGROUND, FOUNDATION, FOR HER ROLE  
10 IN THE CITY.

11 THE COURT: ALL RIGHT. IF IT'S JUST THAT QUESTION.  
12 WE'LL DEAL WITH THE NEXT ONE IF THERE'S ONE. GO AHEAD. YOU  
13 CAN ANSWER THAT ONE.

14 THE WITNESS: NO, I AM NOT THE AUTHOR OF THE CITY'S  
15 EEO POLICIES.

13:30:07

16 BY MR. VANDERPOOL:

17 Q. COULD WE SHOW THE WITNESS EXHIBIT 12? THE CITY'S JULY 1,  
18 2017, EQUAL EMPLOYMENT OPPORTUNITY POLICY, AND YOU'RE ONE OF  
19 THE "FROMS" ON THAT, RIGHT?

20 A. THAT IS CORRECT.

21 Q. SO DOES "FROM" MEAN YOU DIDN'T AUTHOR IT?

22 A. THAT IS CORRECT.

23 Q. WHY ARE YOU ON THE "FROM" LIST?

24 A. I WAS A SIGNATORY ON IT.

25 Q. I'M SORRY. I CAN'T HEAR YOU.

13:30:40 1 A. IT WAS ROUTED TO THE FOLKS WHOSE NAMES ARE THERE TO SIGN  
2 OFF ONCE IT HAD BEEN CREATED BY THE EEO, OUR MANAGER, MR.  
3 BARCLAY.

4 Q. ARE YOU FAMILIAR WITH THIS POLICY?

5 A. YES.

6 MS. ADEMA: OBJECTION. WE'RE BEYOND THE SCOPE NOW.  
7 SHE WASN'T EXAMINED ON THE POLICY.

8 THE COURT: I DON'T LIKE TO HAVE SPEAKING OBJECTIONS.  
9 BUT WE'RE NOT BEYOND THE SCOPE. EEO POLICIES HAVE BEEN  
10 DISCUSSED IN THIS TRIAL BY BOTH SIDES. DEPENDS ON WHAT  
11 QUESTIONS ARE ASKED, OF COURSE, BUT IF IT RELATES TO THE EEO  
12 AND IS RELEVANT WITHIN THE TIMEFRAME, I BELIEVE IT'S  
13 ADMISSIBLE. SO YOU CAN CONTINUE.

14 MR. VANDERPOOL: THANK YOU, YOUR HONOR.

13:31:25 15 BY MR. VANDERPOOL:

16 Q. ON THE 2017 POLICY, MS. MALAND, WE'LL HIGHLIGHT IT HERE THE  
17 FIRST PARAGRAPH HERE, ELYSIA, THE FIRST PARAGRAPH GOING TO THE  
18 "WILL RESULT" LANGUAGE PLEASE. THIS POLICY SAYS: VIOLATIONS  
19 OF THE POLICY WILL RESULT IN DISCIPLINARY ACTION. CONTRAST  
20 THAT TO EXHIBIT 38, THE POLICY FROM 2015. CAN YOU REDUCE THEM  
21 SO THE WITNESS AND THE JURY CAN SEE WHICH POLICIES WE'RE  
22 LOOKING AT PLEASE? SO WE'RE LOOKING AT SIDE BY SIDE THE  
23 VERSIONS OF THIS EEO POLICY FROM 2015 WHICH IS EXHIBIT 38 AND  
24 THE 2017 WHICH IS EXHIBIT 12. NOW IF YOU COULD, ELYSIA,  
25 HIGHLIGHT THE TWO PARAGRAPHS OF BOTH. SO IN THE 2015 VERSION,

13:32:52 1 THE POLICY SAYS THAT VIOLATIONS MAY RESULT IN DISCIPLINARY  
2 ACTION. DID YOU HAVE ANY ROLE, MS. MALAND, IN CHANGING THE  
3 "MAY" TO A "WILL"?

4 A. NO, I DID NOT.

5 Q. DO YOU KNOW IF THAT CHANGE HAD TO DO WITH ANYTHING OF WHAT  
6 CAME OUT OF YOUR DEPARTMENT WITH RESPECT TO MR. JOHNSON?

7 A. I DO NOT.

8 Q. NOW, YOU ARE APPOINTED BY THE CITY COUNCIL?

9 A. THAT'S CORRECT.

10 Q. YOU DON'T REPORT TO THE MAYOR OF THE CITY?

11 A. I DO NOT.

12 Q. WE HEARD TESTIMONY THAT YOU ARE AN INDEPENDENT DEPARTMENT.  
13 DO YOU AGREE WITH THAT CHARACTERIZATION?

14 A. YES.

13:33:31 15 Q. AS AN INDEPENDENT DEPARTMENT, DO YOU AGREE THAT HUMAN  
16 RESOURCES IS NOT A DEPARTMENT IN THE CITY THAT CAN TELL YOU OR  
17 YOUR DEPARTMENT WHAT TO DO?

18 A. I'M NOT SURE I UNDERSTAND THE QUESTION.

19 Q. WELL, CAN HUMAN RESOURCES TELL YOU OR YOUR DEPARTMENT TO  
20 WILL IMPOSE SOME DISCIPLINE, YOU WILL IMPOSE SOME DISCIPLINE?

21 A. I'M ACTUALLY NOT SURE LEGALLY IF THEY CAN OR CAN'T DIRECT  
22 ME WITH REGARD TO THAT.

23 Q. DO YOU KNOW WHO JUDY VON KALINOWSKI IS?

24 A. YES, I DO.

25 Q. WE HAD TESTIMONY EARLIER TODAY THAT JUDY VON KALINOWSKI

13:34:16 1 STATED TO KELLY CRUZ THAT H.R. COULD NOT TELL THE CLERK'S  
2 OFFICE, AN INDEPENDENT DEPARTMENT, WHAT TO DO. DO YOU DISAGREE  
3 WITH THAT STATEMENT?

4 A. NO.

5 Q. NOW, WHEN YOU'RE APPOINTED -- HOW LONG HAVE YOU BEEN CITY  
6 CLERK?

7 A. SINCE 2005.

8 Q. WHEN YOU'RE APPOINTED, IS THAT ON AN ANNUAL OR SEMI-ANNUAL  
9 BASIS?

10 A. NO.

11 Q. WHEN YOU WERE APPOINTED, DID YOU TAKE AN OATH?

12 A. YES.

13 Q. AN OATH TO DO WHAT?

14 A. IT'S AN OATH THAT EVERY EMPLOYEE TAKES WHEN THEY'RE

13:34:57 15 EMPLOYED BY THE CITY OF SAN DIEGO TO UPHOLD AND DEFEND THE  
16 CONSTITUTION OF THE UNITED STATES AND THE CONSTITUTION OF THE  
17 STATE OF CALIFORNIA AGAINST ALL ENEMIES, FOREIGN AND DOMESTIC,  
18 TO BEAR TRUE FAITH AND ALLEGIANCE TO THE CONSTITUTION OF THE  
19 UNITED STATES AND THE CONSTITUTION OF THE STATE OF CALIFORNIA  
20 AND TO TAKE THE OBLIGATION FREELY, WITHOUT ANY MENTAL  
21 RESERVATION OR PURPOSE OF EVASION, AND TO WELL AND FAITHFULLY  
22 DISCHARGE THE DUTIES UPON WHICH I'M ABOUT TO ENTER.

23 Q. YOU KNOW THAT OATH VERY WELL.

24 A. I ADMINISTER IT.

25 Q. RIGHT. YOU ADMINISTER IT, AND YOU KEEP A RECORD OF EVERY

13:35:32 1 CITY OFFICIAL EMPLOYEE HAVING TAKEN THAT OATH IN THE CLERK'S  
2 OFFICE?

3 A. JUST THE CITY OFFICIALS.

4 Q. JUST THE CITY. BUT INCLUDING YOUR OWN OATH THAT YOU  
5 TAKE?

6 A. YES.

7 Q. AND AS OF 2015, WE'RE ABOUT 45, 44 EMPLOYEES IN YOUR  
8 OFFICE?

9 A. YES.

10 Q. AND YOU HAVE AUTHORITY IN THAT OFFICE TO HIRE AND FIRE  
11 EMPLOYEES?

12 A. I DO.

13 Q. INCLUDING YOUR DIRECT REPORT SHEILA BEALE?

14 A. I DO.

13:35:57 15 Q. AND AS OF 2016, HOW LONG HAD YOU BEEN THE SUPERVISOR OF MS.  
16 BEALE?

17 A. ABOUT FOUR YEARS.

18 Q. AND YOU SUPPORT HER; YOU ADMINISTER HER PERFORMANCE  
19 EVALUATIONS ON AN ANNUAL BASIS?

20 A. I DO.

21 Q. AND YOU'RE ALSO ENTRUSTED WITH THE POWER TO PROTECT CLERK'S  
22 OFFICE EMPLOYEES FROM RETALIATION; ISN'T THAT TRUE?

23 A. YES.

24 Q. NOW CAN WE AGREE THAT PRIOR TO -- YOU'VE KNOWN MR. JOHNSON  
25 ALL THE TIME YOU'VE BEEN CITY CLERK, RIGHT?

13:36:32 1 A. YES.

2 Q. IN FACT, ABOUT 11 YEARS AGO, YOU HOSTED A BABY SHOWER FOR

3 HIS CHILD; ISN'T THAT RIGHT?

4 A. I DIDN'T, MS. BEALE DID. BUT I ATTENDED.

5 Q. WHERE WAS THE BABY SHOWER?

6 A. IN RECORDS MANAGEMENT.

7 Q. I'M SORRY?

8 A. IN THE RECORDS MANAGEMENT DIVISION.

9 Q. IT WAS IN A CITY FACILITY?

10 A. YES.

11 Q. NOT AT YOUR HOME?

12 A. NO, I DIDN'T HOST IT.

13 Q. AND IS THAT KIND OF A FAMILY ENVIRONMENT, IF YOU WILL, BIG

14 FAMILY AT THE CLERK'S OFFICE; IS THAT KIND OF HOW YOU VIEWED

13:37:04 15 YOUR DEPARTMENT?

16 A. NO.

17 Q. OKAY. THAT'S FINE. WELL, CAN WE AGREE THAT PRIOR TO

18 SEPTEMBER 2015 THAT MR. JOHNSON WAS A SUPERIOR CLERK'S OFFICE

19 EMPLOYEE?

20 A. MR. JOHNSON WAS AN EXCELLENT EMPLOYEE.

21 Q. HE WAS AN EXCELLENT EMPLOYEE. THANK YOU. AND WE ALSO HAVE

22 AGREEMENT THAT YOU KNOW THAT HE SIGNED A GRIEVANCE AGAINST HIS

23 SUPERVISOR, MS. BEALE; YOU AGREE WITH THAT, RIGHT?

24 A. YES.

25 MS. ADEMA: OBJECTION. THIS IS CUMULATIVE AND BEYOND

13:37:36 1 THE SCOPE.

2 THE COURT: THIS IS NOT CUMULATIVE. I MEAN, THIS IS  
3 A NEW WITNESS. OVERRULED.

4 BY MR. VANDERPOOL:

5 Q. NOW ON OR AFTER DECEMBER 14, 2015, DID ANYONE AT CITY HUMAN  
6 RESOURCES INFORM YOU THAT MR. JOHNSON WAS COMPLAINING ABOUT  
7 RETALIATION -- EXCUSE ME -- COMPLAINING ABOUT BEING MISTREATED  
8 BY MS. BEALE?

9 A. ON DECEMBER 14TH?

10 Q. ON OR AFTER DECEMBER 14TH OF 2015?

11 A. I DON'T BELIEVE SO, NO.

12 Q. YOU DON'T BELIEVE SO. AT ANY TIME DID ANYBODY FROM HUMAN  
13 RESOURCES -- JUDY VON KALINOWSKI, KAREN DECRESCENZO, DARRIN  
14 SCHWABE, JOHN O'NEILL, ANYONE -- TELL YOU THAT MR. JOHNSON WAS  
15 SAYING, REPORTING HE WAS BEING MISTREATED BY MS. MALAND IN THE

13:38:23

16 WAKE OF HIS FILING A COMPLAINT AGAINST HER?

17 A. I DON'T RECALL THAT, NO. WE WERE -- NO.

18 Q. SO IT'S YOUR TESTIMONY THAT AT NO TIME DID YOU EVER KNOW  
19 ANY INFORMATION THAT MR. JOHNSON -- WHAT HE WAS FEELING LIKE HE  
20 WAS EXPERIENCING UNDER MS. BEALE'S SUPERVISION?

21 A. NOT FROM DECEMBER 14TH ON.

22 Q. OKAY. WELL, WHAT ABOUT JANUARY 1, 2016, DID YOU KNOW  
23 ANYTHING ABOUT ALLEGED MISTREATMENT BY MS. BEALE THEN?

24 A. NO.

25 Q. NO. YOU SEEM HESITANT. IS THERE SOME TIME WHEN YOU DID

13:39:07 1 FIND OUT ABOUT WHAT HE WAS EXPERIENCING?

2 A. NO. I MEAN, WHEN HE FILED THE GRIEVANCE, I KNEW THAT THERE  
3 WAS AN ISSUE. BUT WE IMMEDIATELY TOOK THE CORRECTIVE ACTION WE  
4 COULD PRIOR TO GETTING THE FINDINGS. AND THEN I WAS NOT AWARE  
5 THAT THERE WERE ANY ISSUES WITH THE EFFORTS WE WERE TAKING TO  
6 TRY TO MAKE IT THE BEST POSSIBLE ENVIRONMENT FOR HIM.

7 Q. LET'S FOLLOW UP ON THAT. YOU SAID YOU KNEW HE FILED THIS  
8 GRIEVANCE AND MADE SURE IT WAS THE BEST WORK ENVIRONMENT FOR  
9 HIM. I THINK ON DIRECT YOU SAID YOU WANTED TO FACILITATE A  
10 WELCOMING ENVIRONMENT; CORRECT?

11 A. YES.

12 Q. DID YOU ASK TO MEET OR JUST GO IN AND TALK TO YOUR  
13 EMPLOYEE, MR. JOHNSON, WHOSE BABY SHOWER YOU HAD HOSTED, AND  
14 SAY, HEY, RASEAN, HOW YOU HOLDING UP?

13:39:55 15 THE COURT: WAIT A MINUTE. SHE DIDN'T HOST IT.

16 THE WITNESS: I DIDN'T HOST IT. BUT I WAS TOLD BY  
17 HUMAN RESOURCES NOT TO HAVE ANY DIRECT CONTACT WITH MR. JOHNSON  
18 ABOUT HIS GRIEVANCE IN ANY CAPACITY.

19 BY MR. VANDERPOOL:

20 Q. WHO TOLD YOU THAT?

21 A. MR. SCHWABE WAS THE ONE THAT I SPOKE WITH.

22 Q. WHEN DID HE TELL YOU THAT?

23 A. IT WOULD PROBABLY HAVE BEEN IN DECEMBER.

24 Q. OKAY. AS OF JANUARY 2016, WERE YOU AWARE THAT THE CITY'S  
25 EEIO INVESTIGATION, SPAWNED BY MR. JOHNSON'S GRIEVANCE, WAS

13:40:40 1 ONGOING?

2 A. YES.

3 Q. AND ISN'T IT TRUE THAT ON JANUARY 12TH, 2016, YOU E-MAILED  
4 HUMAN RESOURCES REPRESENTATIVES, JUDY VON KALINOWSKI AND DARRIN  
5 SCHWABE; RIGHT?

6 A. THAT IS CORRECT.

7 Q. AND AT THAT TIME MS. VON KALINOWSKI WAS ONE OF THE MOST  
8 SUPERIOR H.R. EXECUTIVES?

9 A. SHE WAS THE DIRECTOR OF HUMAN RESOURCES.

10 Q. SHE WAS THE DIRECTOR. AND YOU INDICATED IN THAT E-MAIL TO  
11 THOSE TWO OFFICIALS IN H.R. THAT YOU HAD UNDERSTOOD THAT MR.  
12 JOHNSON HAD INDICATED HE WOULD LIKE TO SEEK EMPLOYMENT OUT OF  
13 THE CLERK'S OFFICE?

14 A. THAT IS CORRECT.

13:41:23 15 Q. THAT'S WHAT YOU WROTE?

16 A. THAT IS CORRECT.

17 Q. AND AT THAT TIME, DID MS. VON KALINOWSKI OR MR. SCHWABE  
18 RESPOND TO YOU, TO THE EFFECT, YOU'RE AN INDEPENDENT  
19 DEPARTMENT, WE CAN'T ASSIST YOU?

20 A. NO.

21 Q. AND IN YOUR E-MAIL TO THOSE TWO H.R. EXECUTIVES, DID YOU  
22 CONVEY TO BOTH OF THEM YOUR HOPE TO RELY ON HUMAN RESOURCES,  
23 QUOTE, TO MAKE THIS HAPPEN, MEANING THE TRANSFER?

24 A. THAT IS CORRECT.

25 Q. AND YOU ALSO WROTE TO THEM AND YOU STATED IN THAT SAME

13:42:18 1 E-MAIL, YOU INDICATED YOUR HOPE THAT H.R.'S TRANSFERRING MR.  
2 JOHNSON OUT OF YOUR DEPARTMENT WOULD BE A, QUOTE, PRIORITY;  
3 RIGHT?

4 A. YES.

5 Q. AND IN THAT SAME E-MAIL OF JANUARY 12TH, YOU INDICATED TO  
6 THEM THAT YOU WERE CONCERNED ABOUT THE MORALE IN YOUR  
7 DEPARTMENT; CORRECT?

8 A. CORRECT.

9 Q. AND IT WAS THE MORALE IN YOUR DEPARTMENT THAT YOU'RE  
10 TELLING THEM WOULD BE FIXED OR RESOLVED IF MR. JOHNSON WAS  
11 TRANSFERRED?

12 A. I DON'T KNOW THAT THAT'S EXACTLY WHAT I MEANT.

13 Q. WELL, WITHOUT PUBLISHING, PLEASE SHOW THE WITNESS EXHIBIT  
14 40, ELYSIA, TO REFRESH THE WITNESS'S RECOLLECTION OF WHAT SHE

13:43:22 15 WROTE. IT'S THE THIRD LINE DOWN IN THE CIRCLED SECTION. I CAN  
16 ASSIST YOU, MS. MALAND. IT'S THE THIRD LINE; NEGATIVE FOR  
17 MORALE.

18 A. YES.

19 Q. SO YOU WERE CONCERNED; YOU WERE TELLING H.R. THAT YOU WERE  
20 CONCERNED ABOUT MORALE IN THE DEPARTMENT?

21 A. YES, THAT IS WHAT I WROTE IN THE E-MAIL.

22 Q. YOU ALSO WROTE IN THAT E-MAIL, YOU TOLD HUMAN RESOURCES  
23 THAT THE RECORDS AND MANAGE DIVISION -- EXCUSE ME, RECORDS  
24 MANAGEMENT DIVISION NEEDS TO, QUOTE, TURN A CORNER; IS THAT  
25 RIGHT?

13:44:17 1 A. THAT'S WHAT THE E-MAIL SAYS THERE, YES.

2 Q. TURN A CORNER, DID YOU MEAN WITHOUT MR. JOHNSON IN IT?

3 A. NOT NECESSARILY.

4 Q. YOU WROTE IN THAT E-MAIL THAT, QUOTE, TO PUT TOGETHER AN  
5 INTERIM REPORTING STRUCTURE TO ACCOMMODATE THE REQUEST OF THE  
6 EMPLOYEE HAS COMPLEXITIES?

7 A. THAT'S CORRECT.

8 Q. AND THE INTERIM REPORTING STRUCTURE YOU WERE REFERRING TO  
9 WAS MR. JOHNSON REPORTING TO SOMEONE OTHER THAN MS. BEALE?

10 A. THAT'S CORRECT.

11 Q. IN FACT, YOUR E-MAIL EVEN SAID THAT. YOU SAID THAT THERE  
12 ARE TWO MANAGEMENT ANALYSTS IN RECORDS; MR. JOHNSON COULD  
13 REPORT TO SABRINA TATUM OR ELENA MENDOZA, RIGHT?

14 A. THAT'S CORRECT.

13:45:15 15 Q. NOW AS OF THIS POINT IN TIME, JANUARY 12TH, HAD YOU SPOKEN  
16 AT ALL TO MR. JOHNSON TO SAY, HEY, HOW ABOUT A DIFFERENT  
17 REPORTING STRUCTURE, WOULD THAT HELP YOU, SIR?

18 A. I WAS TOLD VERY SPECIFICALLY BY HUMAN RESOURCES NOT TO HAVE  
19 ANY CONTACT WITH MR. JOHNSON, THAT THE CONVERSATION WOULD OCCUR  
20 BETWEEN MR. JOHNSON, HIS UNION REP AND HUMAN RESOURCES.

21 Q. SO YOU OBLIGED HUMAN RESOURCES TO TELL YOU WHAT TO DO ABOUT  
22 NOT TALKING TO YOUR EMPLOYEE?

23 A. ABSOLUTELY.

24 Q. YOU INDICATED TO H.R., PLEASE LET ME KNOW WHAT PREFERENCE  
25 -- MEANING FOR THE SHORT TERM REPORTING -- AND WE WILL MAKE

13:46:01 1 THAT HAPPEN ASAP, BUT IT IS NOT A PRODUCTIVE LONG-TERM  
2 SOLUTION. DID I QUOTE THAT RIGHT?

3 A. THAT'S CORRECT.

4 Q. AND ISN'T IT TRUE THAT AS OF THIS POINT IN TIME IT WAS YOUR  
5 TELLING -- YOU WERE TELLING H.R. THAT TRANSFERRING MR. JOHNSON  
6 OUT OF THE DEPARTMENT WAS THE LONG-TERM SOLUTION?

7 A. THAT IS NOT CORRECT.

8 Q. OKAY. WELL, ISN'T YOUR WRITING -- YOU CLOSE BY THANKING  
9 HUMAN RESOURCES FOR THEIR GUIDANCE, AND YOU SAID THE TRANSFER  
10 WILL MAKE MY DEPARTMENT A BETTER ONE.

11 A. MAY I EXPLAIN?

12 Q. I'D LIKE TO HAVE AN ANSWER TO MY QUESTION. IS THAT WHAT  
13 YOU WROTE?

14 A. THAT'S WHAT THE E-MAIL SAYS, YES, SIR.

13:46:48 15 Q. WHAT WAS THE SOURCE OF YOUR UNDERSTANDING THAT MR. JOHNSON  
16 WANTED A TRANSFER?

17 A. HUMAN RESOURCES.

18 Q. WHO?

19 A. MR. SCHWABE.

20 Q. NOT JUDY?

21 A. NO, I DON'T BELIEVE MS. VON KALINOWSKI WAS THE ONE TO  
22 CONTACT ME. I BELIEVE IT WAS MR. SCHWABE.

23 Q. DID JUDY OR MR. SCHWABE ASK YOU AROUND THIS TIME, JANUARY  
24 12, IF YOU WOULD CONSIDER REMOVING MRS. BEALE FROM DEPUTY  
25 DIRECTOR IN YOUR DEPARTMENT?

13:47:23 1 A. I DON'T RECALL THAT.

2 Q. YOU DON'T RECALL THAT, OR IT DIDN'T HAPPEN?

3 A. I JUST DON'T RECALL. I DON'T RECALL IF THEY SUGGESTED  
4 THAT.

5 Q. JUST TO BE CLEAR, ARE YOU TELLING US UNDER OATH THAT HUMAN  
6 RESOURCES NEVER RECOMMENDED THAT YOU REMOVE MRS. BEALE AS  
7 DEPUTY DIRECTOR IN YOUR CLERK'S OFFICE?

8 A. I DON'T RECALL THAT THEY DID THAT, HONESTLY.

9 Q. NOW THERE'S BEEN TESTIMONY FROM OTHER WITNESSES THAT YOU  
10 RECEIVED A DETAILED FINDINGS BY MR. BARCLAY, A REPORT OF HIS  
11 FINDINGS, AS PART OF THE EEO INVESTIGATIVE PROCESS; IS THAT  
12 RIGHT?

13 A. THAT'S CORRECT.

14 Q. ABOUT HOW MANY PAGES WAS IT?

13:48:16 15 A. I DON'T RECALL, 20 OR SO.

16 Q. DID YOU READ THE FINDINGS?

17 A. I DID.

18 Q. DID YOU GIVE A COPY OF THE COMPLETE FINDINGS TO DEPUTY  
19 DIRECTOR BEALE?

20 A. I BELIEVE I DID.

21 Q. DID ANYONE FROM HUMAN RESOURCES OR EVEN MR. BARCLAY SAY,  
22 DON'T SHARE THIS WITH MS. BEALE BECAUSE SHE'S THE SUBJECT OF  
23 THE COMPLAINT?

24 A. NO.

25 Q. YOU DIDN'T GET THAT INSTRUCTION. DID THE FINDINGS OF EEO

13:48:47 1 CONCERNING YOUR DEPUTY DIRECTOR CONCERN YOU AT ALL?

2 A. YES.

3 Q. AT ANY TIME DID MR. BARCLAY RECOMMEND TO YOU ANY CORRECTIVE  
4 ACTION BE TAKEN WITH RESPECT TO MRS. BEALE?

5 A. MR. BARCLAY WAS PART OF A GROUP THAT MET TO GIVE ME SOME  
6 GUIDANCE ON WHAT THE APPROPRIATE NEXT STEP WOULD BE, AND IT  
7 INCLUDED HUMAN RESOURCES AND EEIO AND THE CITY ATTORNEY'S  
8 OFFICE.

9 Q. AFTER YOU RECEIVED MR. BARCLAY'S FINDINGS AND THAT REPORT  
10 THAT CONCERNED YOU, DID YOU CONTACT MR. SCHWABE OR MS. VON  
11 KALINOWSKI TO ASK THEM WHAT'S YOUR GUIDANCE NOW?

12 A. YES, I DID ASK FOR GUIDANCE.

13 Q. AND WHAT GUIDANCE DID THEY GIVE YOU?

14 A. THEY PROVIDED ME WITH FEEDBACK ABOUT APPROPRIATE  
15 DISCIPLINARY STEPS.

13:49:47 16 Q. APPROPRIATE DISCIPLINARY STEPS AS TO MS. BEALE?

17 A. CORRECT.

18 Q. BUT IT WAS AT THAT POINT IN TIME, AROUND LATE MARCH, EARLY  
19 APRIL, THAT MR. JOHNSON WAS ALREADY HEADING OUT OF YOUR  
20 DEPARTMENT; ISN'T THAT TRUE?

21 A. I THINK THAT WOULD BE THE CORRECT TIMING, YES.

22 Q. SO AT ANY POINT AFTER YOU GOT THIS REPORT BUT BEFORE MR.  
23 JOHNSON REPORTED TO PUBLIC UTILITIES DEPARTMENT ON APRIL 25TH,  
24 DID YOU STOP AND ASK H.R. CAN WE DO ANYTHING FOR MY EMPLOYEE  
25 NOW THAT THE ALLEGATIONS HAVE BEEN SUSTAINED?

13:50:21 1 A. I DID ASK H.R. FOR GUIDANCE ABOUT THE APPROPRIATE NEXT  
2 STEPS.

3 Q. WHAT DID THEY TELL YOU WITH RESPECT TO PROTECTING OR DOING  
4 ANYTHING FOR MR. JOHNSON'S CIRCUMSTANCE?

5 A. AGAIN, I WAS TO HAVE NO CONTACT WITH MR. JOHNSON. THE  
6 CONTACT NEEDED TO COME THROUGH HIS UNION REP TO HUMAN  
7 RESOURCES.

8 Q. NOW WE'VE ESTABLISHED WELL IN THIS CASE I THINK BY NOW THAT  
9 THE POLICY WE LOOKED AT, EXHIBIT 12, EXHIBIT 38, PRESCRIBED  
10 THAT DISCIPLINE WILL BE IMPOSED. DID YOU PREPARE ANY WRITING  
11 OF ANY KIND TO MRS. BEALE TO DIRECT CORRECTIVE ACTION TO HER?

12 A. I DID.

13 Q. YOU DID. AND YOU GAVE THAT TO HER?

14 A. I DID.

13:51:13 15 Q. IS THAT AN EXHIBIT ANYWHERE IN THIS CASE?

16 A. NO. MY UNDERSTANDING IS THAT DISCIPLINARY ACTION IS  
17 CONFIDENTIAL.

18 Q. DID ANY PART -- AGAIN, WAS ANY PART OF THE CORRECTIVE  
19 ACTION TAKEN TO MR. JOHNSON'S BENEFIT, MEANING, TO ALLOW HIM TO  
20 CONTINUE TO BE AN EMPLOYEE IN YOUR DEPARTMENT?

21 A. HE WAS ALWAYS WELCOME TO CONTINUE TO BE AN EMPLOYEE IN MY  
22 DEPARTMENT.

23 Q. HOW WAS HE WELCOME BY ANYBODY?

24 A. WE IMMEDIATELY OFFERED HIM AN OPPORTUNITY TO WORK FOR A  
25 DIFFERENT DEPUTY DIRECTOR AND TO ACCOMMODATE HIM ON THE SECOND

13:51:46 1 FLOOR OF MY OFFICE IN A DIFFERENT WORK UNIT AND SO THAT WAS  
2 ALWAYS AN OPTION.

3 Q. IS THAT THE LEGISLATIVE POSITION WITH GEORGE?

4 A. IN THE LEGISLATIVE SERVICES DIVISION.

5 Q. YEAH. OKAY. I'M TALKING ABOUT AFTER THE FINDINGS CAME  
6 OUT, SO IN APRIL. THE FINDINGS, THE REPORT WAS MARCH 28TH OR  
7 THEREABOUTS IN 2016.

8 A. THAT WAS STILL ALWAYS AN OPTION, ABSOLUTELY.

9 Q. IT WAS ALWAYS AN OPTION. OKAY. AND WHO TOLD MR. JOHNSON  
10 THAT?

11 A. AGAIN, I WAS TOLD NOT TO COMMUNICATE WITH MR. JOHNSON  
12 DIRECTLY SO THAT WENT FROM ME TO HUMAN RESOURCES AND HUMAN  
13 RESOURCES COMMUNICATED WITH MR. JOHNSON THROUGH HIS UNION  
14 REP.

13:52:32 15 Q. A COUPLE OTHER AREAS, AND THEN I'LL SIT DOWN. YOU REVIEWED  
16 AND SIGNED ON TO THE EVALUATION THAT MS. BEALE GAVE TO MR.  
17 JOHNSON BEFORE HE LEFT?

18 A. THAT'S CORRECT.

19 Q. AND WHEN YOU REVIEWED IT AND SIGNED IT THREE WEEKS BEFORE  
20 MRS. BEALE DID, DID YOU EDIT IT AT ALL?

21 A. ABSOLUTELY NOT.

22 Q. YOU DIDN'T CHANGE A COMMA, A PERIOD, A SEMI-COLON?

23 A. NOT A SINGLE THING.

24 Q. YOU JUST SIGNED IT AS IT WAS PRESENTED TO YOU?

25 A. I READ IT, REVIEWED IT, HAD NO COMMENT AND RETURNED IT TO

13:53:02 1 MS. BEALE TO GO AHEAD AND TO GIVE TO MR. JOHNSON.

2 Q. AS PART OF ANY DISCIPLINARY ACTION, WITHOUT GETTING INTO  
3 ANY CONFIDENTIAL ASPECT OF IT, AS TO MS. BEALE, WAS THERE ANY  
4 IMPOSITION OF ANY SUSPENSION IMPOSED UPON HER?

5 MS. ADEMA: OBJECTION, YOUR HONOR. WE HAVE A  
6 STIPULATION ON THIS ISSUE, AND I BELIEVE THIS EVIDENCE HAS BEEN  
7 EXCLUDED.

8 MR. VANDERPOOL: NOT TO MY KNOWLEDGE, YOUR HONOR.

9 MS. ADEMA: COULD WE HAVE A SIDEBAR?

10 THE COURT: WHY DON'T YOU CHECK WITH HIM ABOUT THE  
11 STIPULATION YOU SAY EXISTS.

12 MS. ADEMA: I BELIEVE MR. CADIEUX IS AWARE OF THE  
13 TERMS OF THE STIPULATION. IT'S IN WRITING.

14 MR. CADIEUX: DO YOU HAVE A COPY YOU CAN SHOW ME?

13:54:05 15 I'M SORRY. MY MEMORY IS NOT THE BEST. I DON'T REMEMBER THAT  
16 STIPULATION.

17 (PAUSE IN THE PROCEEDINGS.)

18 BY MR. VANDERPOOL:

19 Q. ONE OTHER TOPIC AREA, YOUR HONOR, AND WE'LL MOVE ON. COULD  
20 I SHOW THE WITNESS EXHIBIT 52 PLEASE. IS THIS AN E-MAIL FROM  
21 YOU TO MR. JOHNSON? IT'S ADMITTED, I BELIEVE. YOU CAN SEE IT?

22 A. I CAN.

23 Q. THAT'S YOUR E-MAIL TO MR. JOHNSON. SO WAS THE EMBARGO  
24 LIFTED ABOUT YOUR COMMUNICATING WITH MR. JOHNSON?

25 A. YES. I ASKED HUMAN RESOURCES PRIOR TO SENDING THIS

13:57:09 1 E-MAIL.

2 Q. YOU ASKED THEM WHAT?

3 A. IF THAT WAS APPROPRIATE.

4 Q. AND WHO AT HUMAN RESOURCES? WAS IT AGAIN MR. SCHWABE?

5 A. MR. SCHWABE.

6 Q. WHY WAS IT NOW OKAY FOR YOU TO E-MAIL MR. JOHNSON OR EVEN  
7 COMMUNICATE WITH HIM AT ALL?

8 A. YOU'D HAVE TO ASK HUMAN RESOURCES.

9 Q. I SEE. BUT THIS WAS A TIME WHEN YOU KNEW MR. JOHNSON WAS  
10 ALREADY HEADED OUT OF THE DEPARTMENT?

11 A. THAT'S CORRECT.

12 Q. DID MR. JOHNSON RESPOND TO IT, THE E-MAIL?

13 A. I BELIEVE HE DID.

14 Q. WERE YOU BEING SINCERE IN THIS?

13:57:57 15 A. ABSOLUTELY.

16 Q. PASS THE WITNESS.

17 REDIRECT-EXAMINATION

18 BY MS. ADEMA:

19 Q. WOULD YOU PLEASE DISPLAY FOR THE WITNESS ONLY EXHIBIT 41?

20 DO YOU SEE IN FRONT OF YOU -- ACTUALLY, I THINK IT WAS EXHIBIT  
21 40, THE ONE THAT WAS BEING DISPLAYED EARLIER.

22 A. YES, I SEE IT.

23 Q. DO YOU RECOGNIZE THIS DOCUMENT?

24 A. I DO.

25 Q. WOULD YOU PLEASE DESCRIBE IT FOR ME?

13:59:04 1 A. YES. IT WAS AN E-MAIL THAT I SENT TO JUDY VON KALINOWSKI  
2 WHO WAS THE DIRECTOR OF HUMAN RESOURCES WITH A CC TO DARRIN  
3 SCHWABE ON JANUARY 12TH, 2016.

4 Q. ALL RIGHT. AND WHAT IS THE SUBJECT MATTER OF THE E-MAIL?

5 A. UPDATE AND REQUEST FOR INFORMATION.

6 Q. YOUR HONOR, I WOULD MOVE TO ADMIT EXHIBIT 40.

7 THE COURT: IT'S ALREADY BEEN MARKED, RIGHT?

8 MS. ADEMA: YES.

9 THE COURT: YES, IT WILL BE ADMITTED.

10 (EXHIBIT 40 ADMITTED.)

11 BY MS. ADEMA:

12 Q. WOULD YOU PLEASE GO AHEAD AND DISPLAY THE EXHIBIT TO THE  
13 JURY PLEASE? WHAT WAS YOUR PURPOSE IN SENDING THIS E-MAIL TO  
14 MS. VON KALINOWSKI?

13:59:52 15 A. I WANTED TO EARNESTLY SHOW HER HOW MUCH WE WERE TRYING AS A  
16 DEPARTMENT. I WAS TRYING TO BE AS RESPONSIVE AS POSSIBLE, AND  
17 AGAIN, TO CREATE THE BEST POSSIBLE ENVIRONMENT. FROM THE  
18 BEGINNING, THAT PARAGRAPH SIX THAT WAS CIRCLED WAS ALL ABOUT  
19 THE OPTION OF HAVING MR. JOHNSON CONSIDER THE LEGISLATIVE  
20 SERVICES OPTION. THERE WAS ALWAYS THE DESIRE IF HE WISHED TO  
21 STAY IN THE DEPARTMENT TO WORK IN A DIFFERENT PART OF THE  
22 DEPARTMENT BUT JUST TO BE AS RESPONSIVE AS WE POSSIBLY COULD BE  
23 TO TRY TO MAKE THE SITUATION AS RIGHT AS IT COULD BE.

24 Q. WHAT WERE YOU BEING RESPONSIVE TO?

25 A. TO THE GRIEVANCE, THE FILING OF THE GRIEVANCE.

14:00:45 1 Q. WAS THAT GRIEVANCE INVESTIGATED BY A FACT-FINDING THROUGH  
2 THE H.R. DEPARTMENT?

3 A. THERE WAS A PORTION OF THE OVERALL COMPLAINT THAT WAS, THAT  
4 WAS HANDLED BY HUMAN RESOURCES AND A PART THAT WAS HANDLED BY  
5 MR. BARCLAY.

6 Q. AND THE PORTION THAT WAS HANDLED BY THE HUMAN RESOURCES  
7 DEPARTMENT, HAD THAT INVESTIGATION BEEN CONCLUDED WHEN YOU SENT  
8 THIS E-MAIL?

9 A. YES, IT HAD.

10 Q. IN THE MEETING YOU DESCRIBED WITH HUMAN RESOURCES AND THE  
11 CITY ATTORNEY'S OFFICE AND H.R. AND THE EEIO OFFICE, HAD THAT  
12 OCCURRED AT THIS TIME -- THAT HAD OCCURRED AT THIS TIME?

13 A. NO, IT HAD NOT OCCURRED AT THIS TIME.

14 Q. BUT YOU HAD STARTED IMPLEMENTING TRAINING?

14:01:32 15 A. ABSOLUTELY.

16 Q. AND YOU HAD NOT -- HAD YOU RECEIVED THE RESULTS OF MR.  
17 BARCLAY'S INVESTIGATION THAT WAS DONE BY THE EEIO OFFICE AT  
18 THIS TIME?

19 A. I HAD NOT.

20 Q. AND IN TERMS OF MR. JOHNSON REPORTING TO MR. BIAGI, CAN YOU  
21 DESCRIBE THE DISCUSSIONS ABOUT HOW THAT MIGHT WORK OUT FOR MR.  
22 JOHNSON?

23 A. ABSOLUTELY. AT THE CONCLUSION OF THE ORIGINAL FACT  
24 FINDING, SO THIS IS BACK IN DECEMBER OF 2015, ONE OF THE FIRST  
25 QUESTIONS HUMAN RESOURCES ASKED ME WAS WHAT WAS WITHIN MY POWER

14:02:25 1 TO PROVIDE MR. JOHNSON ALTERNATIVES WITHIN MY DEPARTMENT. AND  
2 THE VERY FIRST ONE THAT I OFFERED UP WAS TO WORK UNDER MR.  
3 BIAGI AND LEGISLATIVE SERVICES WHICH IS A SEPARATE DIVISION  
4 FROM RECORDS MANAGEMENT. BUT IT ALSO HAS A SCANNING AND  
5 IMAGING COMPONENT. SO IT WOULD BE A POSITION THAT WOULD BE  
6 EQUIVALENT TO THE ONE HE HAD IN RECORDS MANAGEMENT. THEN THE  
7 ONLY OTHER OPTION WITHIN MY POWER WAS TO TRY TO FIND A  
8 DIFFERENT REPORTING STRUCTURE WITHIN RECORDS MANAGEMENT  
9 DIVISION IF IT WAS HIS CHOICE TO STAY THERE.

10 Q. WOULD THE WORK MR. JOHNSON WOULD HAVE BEEN DOING UNDER MR.  
11 BIAGI HAVE BEEN VERY SIMILAR TO WHAT HE WAS DOING?

12 A. YES. AGAIN, IT'S SCANNING AND IMAGING WHICH IS IN THE SAME  
13 VEIN AS TO WHAT HE WAS DOING IN RECORDS MANAGEMENT.

14 Q. NOW YOU MENTION IN HERE THAT, YOU KNOW, THERE WAS A MORALE  
14:03:26 15 PROBLEM IN THE DEPARTMENT AT THAT TIME. CAN YOU DESCRIBE WHAT  
16 WAS GOING ON?

17 A. IT WAS JUST VERY DIFFICULT BECAUSE, AS I HAD MENTIONED, WE  
18 HAD TRIED VERY EARNESTLY TO TRY TO ADDRESS THE SITUATION AND  
19 WE'RE TRYING TO BE AS RESPONSIVE AS POSSIBLE WITH THE OPTIONS  
20 THAT HUMAN RESOURCES HAD GIVEN US, BUT THERE CONTINUED TO BE  
21 CONCERNS THAT MR. JOHNSON WAS COMMUNICATING THROUGH HIS UNION  
22 REP TO HUMAN RESOURCES THAT I WAS TRYING TO RESPOND TO AT THE  
23 SAME TIME. SO IT WAS CLEAR THAT HE WAS NOT HAPPY IN THAT  
24 POSITION.

25 Q. WERE THERE ANY OTHER PARTS OF THIS E-MAIL THAT YOU WISH TO

14:04:41 1 CLARIFY?

2 A. JUST THAT THAT PORTION THAT WAS SPEAKING ABOUT MAKING THE  
3 DEPARTMENT A BETTER PLACE. IT NEVER IN MY MIND DID THAT  
4 INCLUDE MR. JOHNSON LEAVING IF HE DID NOT WISH TO. WE WERE  
5 ALWAYS -- I WAS ALWAYS HAPPY TO FIND A PLACE WITHIN THE  
6 DEPARTMENT TO ACCOMMODATE MR. JOHNSON AND THAT WOULD HAVE BEEN  
7 ALSO A SUPER POSITIVE POTENTIAL RESOLUTION TO THE ISSUE.

8 Q. NOW EVENTUALLY YOU LEARNED IN APRIL OF 2016 THAT MR.  
9 JOHNSON WOULD BE LEAVING THE DEPARTMENT?

10 A. THAT'S CORRECT.

11 Q. DID YOU HAVE ANY INVOLVEMENT IN WHERE HE WOULD GO?

12 A. ABSOLUTELY NOT. HUMAN RESOURCES WAS THE VEHICLE TO  
13 COMMUNICATE WITH MR. JOHNSON THROUGH HIS UNION REP, AND I WAS  
14 REALLY JUST INFORMED OF WHAT THE OUTCOME WAS.

14:06:13 15 Q. AND DID YOU -- WHEN YOU FOUND OUT HE WAS TRANSFERRING TO  
16 PUD, DID YOU KNOW LIKE WHAT LOCATION HE WOULD BE AT?

17 A. NO, I DID NOT.

18 Q. AND MR. JOHNSON'S LAWYER ASKED YOU ABOUT AN E-MAIL THAT YOU  
19 WANTED TO SEND OUT THANKING MR. JOHNSON FOR HIS SERVICE IN THE  
20 CITY CLERK'S OFFICE. WHY DID YOU WANT TO DO THAT?

21 A. BECAUSE I WANTED TO THANK HIM FOR THE WORK THAT HE HAD DONE  
22 IN THE OFFICE AND FOR THE WORK HE HAD DONE IN RECORDS  
23 MANAGEMENT TO ACKNOWLEDGE THAT GOOD WORK.

24 Q. OKAY. THANK YOU. THANK YOU VERY MUCH, MS. MALAND.

25 THE COURT: ANYTHING ELSE?

14:06:59

1 MR. VANDERPOOL: YES, YOUR HONOR. JUST A FEW.

2 RE-CROSS-EXAMINATION

3 BY MR. VANDERPOOL:

4 Q. YOU INDICATE HUMAN RESOURCES WAS ADVISING YOU THAT MR.  
5 JOHNSON CONTINUED TO BE NOT HAPPY IN HIS POSITION. DID I HEAR  
6 THAT RIGHT?

7 A. YES.

8 Q. DID H.R. GO SO FAR AS TO TELL YOU WHY HE WAS NOT HAPPY?

9 A. NO. NO.

10 Q. OKAY. THEY DIDN'T TELL YOU HE WAS NOT HAPPY BECAUSE HE  
11 FELT HE WAS BEING RETALIATED AGAINST BY YOUR DIRECT REPORT?

12 A. NO. HE HAD SPECIFIC CONCERNS.

13 Q. YOU WOULD AGREE WITH ME THAT EXHIBIT 40 MAKES NO MENTION OF  
14 WHAT YOU CLARIFY HERE TODAY ABOUT ALWAYS HAVING A PLACE IN YOUR  
15 DEPARTMENT IN THE CLERK'S OFFICE FOR MR. JOHNSON? THERE'S  
16 NOTHING IN HERE ABOUT THAT; ISN'T THAT RIGHT?

14:07:50

17 A. NOT IN THIS E-MAIL, NO.

18 Q. AND THERE'S NOTHING IN THIS E-MAIL ABOUT LEGISLATIVE  
19 DIVISION OR GEORGE DOING ANY WORK THERE OR ANYTHING ABOUT THAT  
20 OPTION; CORRECT?

21 A. NOT IN THIS E-MAIL, NO.

22 Q. SO YOU COME TO COURT HERE TODAY TO CLARIFY THOSE THINGS  
23 THAT YOU COULD-A SHOULD-A WOULD-A PUT IN THE E-MAIL AT THE  
24 TIME?

25 A. I'M SORRY. ARE YOU ASKING --

14:08:21 1 Q. YEAH, YOU'RE TESTIFYING UNDER OATH THAT THOSE ARE ITEMS  
2 THAT YOU CLARIFY HERE UNDER OATH THAT YOU WISH WERE IN THIS  
3 E-MAIL?

4 MS. ADEMA: OBJECTION, YOUR HONOR.

5 THE COURT: THAT'LL BE SUSTAINED. THAT'S NOT EXACTLY  
6 THE WAY IT WENT DOWN.

7 BY MR. VANDERPOOL:

8 Q. LET ME ASK YOU THIS FINAL QUESTION, MS. MALAND. IS IT  
9 LOGICAL TO YOU THAT A 12-YEAR EMPLOYEE, EXCELLENT EMPLOYEE IN  
10 YOUR DEPARTMENT WOULD WANT TO TRANSFER OUT OF THE DEPARTMENT  
11 THREE MONTHS AFTER MAKING A COMPLAINT AGAINST HIS DIRECT  
12 SUPERVISOR BEFORE THERE HAD EVEN BEEN FINDINGS BY THE EEO  
13 OFFICE ABOUT HIS REPORT, ABOUT HIS COMPLAINT?

14 A. GIVEN THE TOTALITY OF THE SITUATION, I MEAN, I CAN'T SAY.

14:09:16 15 I'M SORRY, I CAN'T SAY. ONLY MR. JOHNSON KNOWS WHY HE MADE  
16 THAT REQUEST.

17 Q. DOES H.R. KNOW?

18 A. I DON'T KNOW. YOU'D HAVE TO ASK H.R.

19 Q. BECAUSE H.R. DIDN'T TELL YOU, RIGHT? THEY DIDN'T TELL YOU  
20 WHY HE WASN'T HAPPY?

21 A. CORRECT.

22 Q. NOTHING FURTHER.

23 THE COURT: OKAY. THANK YOU, MS. MALAND.

24 MS. ADEMA: NOTHING FURTHER, YOUR HONOR.

25 THE COURT: OKAY. THANK YOU. ALL RIGHT.

14:09:56

1 MS. ADEMA: THE CITY'S NEXT WITNESS IS DARRIN  
2 SCHWABE.

3 THE COURT: ANYBODY WANT A BREAK?

4 MS. ADEMA: YES.

5 THE COURT: ALL RIGHT. FIVE MINUTES. WE'LL MAKE IT  
6 REALLY CLOSE. FIVE MINUTES.

7 (RECESS.)

8 (WHEREUPON FURTHER REPORTING DUTIES WERE ASSUMED BY  
9 DANA PEABODY.)

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

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

20 DATED: JULY 10, 2019, AT SAN DIEGO, CALIFORNIA.

21

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