

THE TWENTY-SECOND DAY

CARSON CITY (Wednesday), December 1, 2004

Senate called to order at 8:14 a.m.

President Hunt presiding.

Roll called.

All present.

Prayer by the Chaplain, Pastor Albert Tilstra.

O God, our help in ages past, our hope for years to come, our shelter from the stormy blast, and our eternal home! In this the day that You have made, help us to appreciate its beauty and to use its opportunities rightly.

Deliver us, we pray, from the tyranny of trifles. May we give our best thought and attention to what is important, that we may accomplish something worthwhile. Teach us how to listen to Your promptings, and save us from floundering in indecision that wastes time, subtracts from our peace, divides our efficiency and multiplies our troubles.

These things we ask from Him who delights to answer prayers.

AMEN.

Pledge of allegiance to the Flag.

Senator Raggio moved that further reading of the Journal be dispensed with, and the President and Secretary be authorized to make the necessary corrections and additions.

Motion carried.

MOTIONS, RESOLUTIONS AND NOTICES

Senator Raggio moved that the following persons be accepted as accredited press representatives, and that they be assigned space at the press table and allowed the use of the appropriate media facilities: NEW YORK TIMES: John M. Broder; RENO GAZETTE-JOURNAL: Lisa Tolda.

Motion carried.

Senator Raggio moved that the Senate resolve itself into a Committee of the Whole for the purpose of hearing the Articles of Impeachment against Nevada State Controller Kathy Augustine, with Senator Amodei as Chair of the Committee of the Whole.

Motion carried.

IN COMMITTEE OF THE WHOLE

At 9:01 a.m.

Senator Amodei presiding.

The Articles of Impeachment against State Controller Kathy Augustine considered.

SENATOR AMODEI (Chair):

The December 1, 2004, meeting of the Committee of the Whole of the Nevada State Senate of the Twenty-first Special Session of the Nevada Legislature will come to order. Madam Secretary, please show the members present.

Senator Coffin mentioned that some of the exhibits in the binders may be farther along than the anticipated presentation or may not be in some of your binders. We have talked to staff and

that has been rectified. There have been inquiries about the use of laptops in the Committee meeting. The rule was adopted while sitting as the Senate. If any members would like to discuss modification of that rule, please feel free to bring that up when we reconvene on the Senate floor. Until it is changed, I ask that you respect the rule we voted for regarding these devices.

We will begin with opening statements. The rules indicate a 45-minute opening statement for each side. Mr. Greco, you have the floor.

DANIEL J. GRECO (Special Prosecutor):

It is an honor and a privilege to address you in this unique and historic constitutional exercise. On Monday, you heard the words "de minimis" and "incidental." Now, you are going to hear evidence in which you will see that the words "de minimis" and "incidental" have nothing to do with this case.

The evidence presented in the State's case will show that four employees were directed to do campaign work during normal office hours on the taxpayers' dime. They did as they were told because they were afraid of losing their jobs, afraid of retaliation, afraid of the Controller of the State of Nevada, Kathy Augustine's famous temper, which, as you will see, could explode instantly for no good reason. You will learn that one of those four employees, Jennifer Normington, was directed to do an amount of work that evidence will clearly show can best be described as overwhelming.

In its simplest terms, the State's evidence will show you that the Controller's Office was, in fact, campaign central for Controller Augustine for 2002. She had no traditional campaign headquarters. You are going to learn the address on the required paperwork to be filed with the Secretary of State's Office listed her house as her campaign headquarters. You are going to find that, at a minimum, her office was an auxiliary campaign headquarters, or at best, it was her entire campaign headquarters. You are going to learn from the evidence there was not enough separation between office employees and campaign volunteers, and there was not enough separation between office equipment and campaign equipment. The evidence will show you that a substantial portion of Controller Augustine's campaign was paid for, not by traditional campaign donations, but rather by the taxpayers of the State of Nevada. The employees were the ones who were paid their regular daytime salaries while doing work at Controller Augustine's behest. You are going to hear that in the case of one of the four employees, and I am not talking about Ms. Normington, the employee was actually required to work after hours for Controller Augustine and was paid overtime for that after-hours work. You are going to hear from her in detail about that work and why she put overtime on her card for the work Controller Augustine made her do.

Let me lay out for you the nine or ten types, or categories, of tasks Controller Augustine directed the employees to do on state time. She had employees write campaign speeches, draft requests for contribution letters and maintain donor or contributor lists on state computers. She had employees solicit campaign contributions on state telephones, call donors including donors whom she had learned had contributed to her opponent. When she learned those donors had given more to the opponent, she had her employees call those donors back and ask for more money. She directed her employees to question those donors as to why they were giving the opponent more money than they were giving Controller Augustine. She had employees draft fund-raising invitations, and stuff, label and place stamps on campaign envelopes. She had employees draft campaign-related reports that, by law, were required to be filed with the Secretary of State's Office.

Again, I do not want to go over every single transaction, but if you break them down into individual tasks she assigned and add them up, we are talking about literally hundreds of individual transactions. They fall into those nine or ten general categories that I described a few moments ago.

You are going to hear there were other employees involved in addition to the four who actually did work for Controller Augustine. There were one or more employees who were asked to do campaign work on state time, but these employees stood up to Controller Augustine and said, "no." You will learn Controller Augustine does not like hearing the word "no" from anyone but, especially, not from one of her employees. You will hear what happened to one or more of

the employees who had the audacity to say "no" to Controller Augustine, and I should probably use the word "ex-employees" rather than employees.

I want to thank you in advance for your time and consideration. Please remember throughout the proceeding the statements of the lawyers, including opening statements and closing arguments, are not evidence. The only evidence you can properly consider is the testimony of the witnesses on the stand and any documentary exhibits submitted during the course of the proceeding. Since this is a bifurcated proceeding, we cover guilt first. You will hear an extended amount of evidence that goes to guilt. The Defense will be allowed to offer defense they think is relevant or germane to guilt, and you will deliberate guilt. Before you do that, I will address you in closing argument, and at that point, I will ask that you find Controller Augustine guilty of all three of the Articles of Impeachment. Penalty will come later. The lawyers will not talk about penalty during this phase of the proceeding. By law, we cannot do that, but if you sustain one or more of the Articles of Impeachment, we will address you in brief penalty arguments after the guilt phase of the proceeding is over.

JOHN L. ARRASCADA (Counsel for Controller Augustine):

Senator Amodei, with your permission, I would advise the members of the Senate we do have PowerPoint on the screen to your left that will be ongoing during my opening statements.

Let us answer the question, "Why are we here?" That question has been asked throughout this Legislative Building from the beginning. Why are we here? None of you wants to be here; Controller Augustine never envisioned she would be here, nor does she want to be here. Nobody truly wants to be here for these proceedings. However, we must be here, and why must we be here? We must be here because the charges alleged do not rise to the level of an impeachable offense, and the unwarranted remedy of removal must be avoided. Removal is what is being sought, as was said on Monday.

MR. GRECO:

I am going to interpose an objection at this point. The law is clear on a bifurcated proceeding. You have to get through the guilt phase first. Penalty cannot be discussed, brought up or considered during the guilt phase of any bifurcated trial. Of course, if the Senate does not sustain any of the Articles, there is not going to be a penalty hearing. However, in any bifurcated case, you go through guilt first, then penalty, and in fact, the jury cannot consider penalty during the guilt phase of the trial.

SENATOR AMODEI:

I appreciate that, Mr. Greco, but as we indicated in the rules, for purposes of gathering evidence, it will not be bifurcated. We will hear all evidence, and then, if the Senate votes to sustain or not sustain the Articles, there will be a separate opportunity, as the rules are set right now, to argue penalty. For purposes of taking evidence, this hearing is going to be for taking evidence on all aspects.

MR. ARRASCADA:

As I was saying, removal is what is being sought throughout the proceedings. Controller Augustine was already punished for these Articles of Impeachment. Why are we here? We are here to avoid that extreme and unfair punishment of removal from office. We know Controller Augustine stipulated to an ethics' violation. She admitted she reasonably should have known Jennifer Normington was working on her campaign during state time, using and storing information on the computer.

I started this by saying, "Why are we here?" The other question that keeps coming around, and it came from the other side is, "If she has admitted this, why do we not go home? She should not even be here." It is important to understand in these proceedings the framework that if an ethics' violation equaled impeachment, we would not be here; we would be home, because the Commission on Ethics would remove Controller Augustine immediately from office. The Ethics Commission decided the evidence by preponderance. What is important is that you have a higher burden, the burden to do justice. If ethics' violations equaled impeachment, we would not be here, but you would also be abrogating your powers to an appointed commission. We are here because after Controller Augustine entered the stipulation, a fair penalty was invoked. It was not

the maximum penalty that could have been invoked. That is an indicia, an indication, of where the Ethics Commission was heading. This was not the worst of the worst offenses they had seen; although, it was the highest penalty they had ever imposed.

So why are we here? It is pointless to impose the ultimate sanction. People ask, "Why doesn't she just resign? Why are we here? Why is she bringing us through this?" I would ask all of you to reflect upon what you would do if you were, here, sitting in Controller Augustine's seat. After having honestly, and with integrity, polled the people of the State of Nevada, "I made a mistake; the buck stops here, and I admitted to the ethical violations. I reasonably should have known these matters were going on." However, nothing stopped there.

It is important you also reflect on the statutory framework of why we are here. The statute states if you have a willful violation, you "shall be referred" for impeachment. It does not say, "shall impeach." It is a referral, but what happened with that referral? There is no review of the evidence. The binders in front of you and on these desks were never created. There was no cross-examination of the witnesses or opportunity to put on a case. All that was said from the date the Ethics Commission met was, "Off with your head—we have had it—move on." That is not how our system is established, and we cannot do that.

Why are we here and why is Controller Augustine here? We know that Controller Augustine is not a saint, but we also know that she has not committed offenses that rise up to the level that requires removal from office. How do we know that? There have been no allegations there is a breach of trust. Without having any true law on this, we need to look at what is a breach of trust? When we review the evidence, you need to look at that. It is a breach of the public trust for the office you were put into if you were not conducting the business of that office. That is an impeachable offense. That is how you breached the public trust. You pocket their money, or if you are the Attorney General, you refuse to prosecute certain cases; if you are the Secretary of State, you refuse to accept certain people's applications to incorporate. That is a breach of the public trust, and that is an impeachable offense. Controller Augustine is not accused of that, and the evidence will not support it. You do not see any allegations of theft or embezzlement. Those are crimes. We are not here on crimes. We are here on ethics' violations.

There are no allegations that Controller Augustine misused her power. Remember, the framework for which we need to be here, her power in office. She did not use her position as Controller to do something that was not correct or accurate in the functions of the Controller, which is signing the checks for the State of Nevada and making sure the balances are there. If there were dereliction of these duties, we would not be here. We also know there are no allegations she failed to perform her duties. The evidence will show that she has won many awards. The office has won many awards and national recognition for what the Controller's Office has done and established. Controller Augustine did not fail to perform her duties.

Why Controller Augustine? Everything started out all right. Here is a photo of Controller Augustine and Jeannine Coward, one of her prime accusers; they are happy, and they are fine. They are at a NASC, National Association of State Controllers' dinner. Then things began to change. The office became unfun for Jeannine Coward. You will hear from our witnesses that Jeannine took it upon herself to be the office representative. Why did it become unfun for Jeannine? The evidence will show she was originally given a position of running the Debt Collection Department in Controller Augustine's office. This was a new department and division charged with collecting bad debt the State was not bringing in. You heard the amounts of money, almost \$4 or \$5 million that have been collected and put back into state coffers. Jeannine Coward was removed from that position, and that led to her resignation. That is in our Exhibits D-5, D-6 and D-7. I refer the members to Exhibit D-6, Ms. Coward's resignation letter stating, "I told you in December I would let you know my decision regarding my position by the middle of January. I have made the decision to terminate my employment in this office." What was that decision based on? It was based on her being removed from her position in the office as running the debt collection, and we know Jeannine Coward was upset, and the office became unfun based on Exhibit D-7, a personal letter sent by Jeannine Coward to Controller Augustine February 13, 2002. I urge you to read all three pages; we will be dealing with it in depth. She stated on the last page, "The decision made regarding debt collection was seen by staff as a demotion for me, and the fact that you told some that you offered me the accounting position

under Christi, was even more humiliating." We are here because an employee became humiliated and felt she was demoted.

So, why Controller Augustine? What is the motivation? Is this a conspiracy of disgruntled employees, partially. When the Attorney General's investigation began, you are going to hear that the two primary accusers in this case, Jennifer Normington and Jeannine Coward, took Sheri Hutter and Sherry Valdez to lunch. They had not seen them since they both resigned on the same exact day in January. They were there to fuel the fire, fuel the flames.

But why is Controller Augustine here? Controller Augustine is here because she had courage to not favor employees who did assist on her campaign. You will see, in your binders, Jennifer Normington was reprimanded in December, after the campaign. I urge all of you, when hearing the evidence, to think about this. We know Controller Augustine may be many things, but one thing we do know for sure is she is not dumb. As you hear the testimony, and the fact there was a reprimand, ask yourself, "If this was a terrible plot, a nefarious plot, that Controller Augustine planned to carry out on her campaign, would she punish the person who knows the most? Would she punish her co-conspirator?" The answer is no. The other thing that will show, "why Controller Augustine," is the fact that she has an unpopular personality. There is a polarizing effect with that personality, but a bad personality and being mean in office do not rise up to that level to impeach and remove from office.

One thing you also must note, and I ask you to turn to Exhibit D-21, when you are deciding this case over the next few weeks, one thing you need to look at and reflect upon is, what was Controller Augustine's state of mind while these matters were going on? Exhibit D-21 is a polygraph, which Controller Augustine passed. Significant are the two questions that are asked. Number one, "Did you ever, in any way, pressure any state employee to work on your 2002 campaign," and number two, "Did you believe at the time of your reelection campaign that Jennifer Normington was working less than ten hours in the office on your campaign?" Controller Augustine answered, "yes" to both of them, and she was found by Dennis Arnoldy, whose resume is Exhibit D-22, a former FBI agent who has conducted over 500 polygraphs, to have passed on those two issues. Why is that significant? Because, it shows her intent. When you remove a person from office, it is because either they are refusing to do the job or they cannot do the job. We know she can do the job, and we know she has not refused to do the job. We know she did not intend, based on this polygraph, to do the things that are alleged. However, she reasonably should have known. That is why she went through the Ethics Commission.

The other thing you will hear, contrary to the Special Prosecutor, is no one truly was forced to work on this campaign. They were asked. There is not a single witness that will not tell you that Controller Augustine always told them, "If you are doing work on the campaign, do not do it on state time." Jennifer Normington says that throughout her statements. Jeannine Coward says that throughout her statements. So why are we here? At the Assembly and here, you are going to be told there is a mountain of paper evidence, the paper trail that will lead to Controller Augustine's impeachment. Those are in three binders from computer disks that Jennifer Normington and Jeannine Coward sat at a computer on their last day in office, the day they resigned, and started moving around files. They put them onto Controller Augustine's F-drive. Jeannine Coward told the Attorney General, "I don't even think she knows that they are there." That goes to intent. These files were then put onto a computer disk and whisked away to a person named Forest Fox, who is a technology person who handles computers in the building Controller Augustine's office is in. That is what is in here. But what is more important, and this is just binder one of three, is for you to look at the documentary evidence, and see this mountain, before you hear any evidence, is unsound and really a molehill.

When you begin going through these documents, this entire area is a forensic report. It has nothing to do with any of the evidence against Controller Augustine; it is just an analysis. Next, there are blank calendars and more blank calendars. What does that have to do with forcing someone to work in the office? Then, ENCASE does something unique. Every time it looks at a document, it also prints out a blank document. Therefore, you have these dividers—more pages. Just to put it into perspective, I have gone through less than a quarter of this binder, and not all of it is relevant to what was done. What does that show you? That shows you the amount of time worked was not anywhere close or proportionate to what was represented by Jeannine Coward or

Jennifer Normington. These binders are false bulk to make the violation seem greater than de minimis.

The other thing about why we are here is because a lot of misleading evidence has been brought out to date, in the Assembly, the Ethics Commission and in the press. The majority of the statements are inundated and filled with testimonial evidence of character assassination. They will tell you Controller Augustine is mean; she throws paper; she yells; she reprimands people in front of others. That is not an impeachable offense, removal-from-office conduct. More significantly, Controller Augustine has never, in her ten years as State Controller, fired anyone. What else do they do to assassinate her character? You will see in these statements and in the evidence, they criticize her for her personal life. She remarried too soon after the loss of her husband. That is not grounds for impeachment. That is a violation of her privacy. They find fault in every action she does, which you will see throughout Jeannine Coward's statements. Jeannine Coward said something significant in her statement to the Attorney General. She stated, at page 29 of her statement, "Kathy Augustine wants higher office. She does not deserve it. She should be stopped." Where is the intent?

The other thing we know from the misleading evidence is, when you hear Jennifer Normington speak that she interviewed with the Attorney General's Office in February of last year and said 25 percent of her time during the year was spent on the campaign. In her sworn testimony to the Assembly, she said 75 percent of her time was spent on the campaign, a three-times exaggeration. On Monday, we heard from Mr. Greco, it was 50 percent of her time. We have a moving timeframe you will see used in order to try to impeach Controller Augustine. We do not know what the time really was.

When you are looking at impeachment, we need to give you a framework on establishing what impeachment means. Impeachment and removal from office is for the worst of the worst. It is the death penalty for an elected official. Even if you assume everything you hear from the Special Prosecutor's case is true, does that rise to the level where you impose the death penalty of impeachment and removal from office? The answer is no. Research has shown that no other public officer in the United States has been impeached for such minor transgressions. When I say minor, I am talking in relation to true impeachment: lying to the public, stealing from the public, refusing to do your duties. Those are impeachable offenses; this is not.

The people of Nevada spoke when they elected Controller Augustine to office, and we know that removal is only necessary in extreme situations. Where is the harm to the public, which is part of your analysis, by Controller Augustine finishing her term? She is term limited. There have been zero complaints regarding Controller Augustine's performance in office. It is just the opposite; we see awards. We also know the public is not being violated with debt collection at over \$4 million; she is gaining the public's trust. What you have to decide when looking at these impeachable offenses is where do we set the bar for an impeachable offense? We have never done it in this State before.

What do we do? I urge you not to look at it like the limbo contest, where you can raise the bar up and down, depending on the person or personality of the person you are dealing with. "Well, we like this person; let us raise the bar up here, no impeachment. Well, we do not like this person; let us put it down real low so we can impeach them." That is arbitrary; that is anarchy. We need to set the bar at a proper area based on the evidence and the facts as we do justice.

Let me show you the problem with that moving limbo bar. We do not know where the bar should be. What is an impeachable offense? Can I campaign for the President during the day? Can I speak to my campaign manager from my office? Can I reprimand an employee, or if I do so, will they find some conduct that they think is an ethics' violation, which will then put me in front of the Senate on an impeachment hearing? Can I speak to my supporters while in office? What does that mean? Is it impeachable to go to speak to your own party, say the Republican Women of Reno or the Democratic Party of Pahrump? If you are of that party and are running for reelection, are you prohibited from speaking to them? The answer is no. Can my staff drive me to campaign events? We will not know if we do not set the bar properly. Because you have to set that bar, this body has an awesome responsibility. Frankly, it has overwhelmed my cocounsel and me. You have the responsibility and duty to this State, in fairness, to the State Controller. We have talked about protection of the people and how the people are not in harm's way, but you are also setting precedence for future generations. We do not want to be a state like Arizona,

where we get into the quagmire of impeachment on almost a yearly basis—over and over again. That is why you need to set the bar at the right place for the worst of the worst. What we see here is that if this awesome responsibility is not handled fairly and appropriately, that we, like Arizona, will be heading for the train wreck.

Let us get back to why we are here. We are not here to waste your time. We are here to tell you the truth. We are here to do justice. In the eyes of justice, no offense, Controller Augustine is charged with, comes close to an impeachable offense or warrants removal from office.

SENATOR AMODEI:

Mr. Greco, are you ready to proceed?

MR. GRECO:

Yes, Senator Amodei, the State's first witness is Stacy Jennings.

SENATOR RAGGIO:

I have a question of our Legislative Counsel. I want us to understand the terminology. It is my understanding that impeachment is the act of charging. Controller Augustine has been impeached by the act of charging. The same thing occurred, for example, in the proceedings against President Clinton. The lower House impeaches by charging, so she has been impeached. They are talking about impeachable offenses. I think we are at the point now of whether or not she should be convicted of the charges. Am I wrong in that?

BRENDA J. ERDOES (Legislative Counsel):

No, you are correct. We are talking about the terminology used in the *Nevada Constitution*. The Assembly has already impeached, and you are now looking at conviction.

MR. GRECO:

While we are waiting, this might be a good time to enter a stipulation that the lawyers reached yesterday afternoon. The lawyers stipulated to admit most of the exhibits that have been marked by both the State and the Defense. The lawyers have stipulated to agree that each exhibit is admissible, except for, Exhibit P-1, Exhibit P-2, Exhibit P-3, Exhibit P-4, Exhibit P-39 and Exhibit P-41. Specifically, as to Exhibit P-1, Exhibit P-2, Exhibit P-3 and Exhibit P-4, the State will be required to lay foundation for those exhibits. Additionally, the State will be required to lay foundation for Exhibit P-43. Exhibit P-39 is going to be withdrawn. Except for those exceptions, all other exhibits are to be admitted per the stipulation of the lawyers. The lawyers, as in any case, are free during argument, to argue the relevancy or weight of those exhibits. I would defer to Mr. Arrascada or Mr. Gentile. They can add in anything they wish.

MR. ARRASCADA:

I am not going to ask that Exhibits P-1 through Exhibit P-4 be withdrawn from the binders. I request withdrawal of Exhibit P-39 and Exhibit P-41. Mr. Greco may have something to say.

SENATOR WIENER:

I was going to ask about Exhibit P-41 because the Prosecutor mentioned that for Exhibit P-43 a foundation needs to be laid. Are Exhibit P-39 and Exhibit P-41 the requests for withdrawal, and does Exhibit P-43 require a foundation be laid?

MR. GRECO:

That is correct. Exhibit P-39 is withdrawn, and Exhibit P-41 is withdrawn.

SENATOR WIENER:

Exhibit P-43 requires a foundation?

MR. GRECO:

Yes.

SENATOR AMODEI:

Along with Exhibit P-1 through Exhibit P-4?

MR. GRECO:

Along with Exhibit P-1 through Exhibit P-4.

SENATOR AMODEI:

Those are in the Plaintiff's Exhibit Binders for the committee members. The ones asked to be withdrawn are Plaintiff's Exhibits P-39 and P-41?

MR. GRECO:

That is correct, Senator Amodei.

SENATOR AMODEI:

Foundations will be required for Plaintiff's Exhibit P-1, Exhibit P-2, Exhibit P-3, Exhibit P-4 and Exhibit P-43?

MR. GRECO:

That is correct.

SENATOR COFFIN:

I was here, yesterday, reading these exhibits, and I read Exhibit P-39. I read all the ones that are being withdrawn and the ones that are in dispute. I had many questions based on that. Are we saying, as a jury is sometimes instructed, to ignore the elephant in the room? We will be doing that?

SENATOR AMODEI:

For those who have already looked at those exhibits, I will have the Legislative Counsel contact you in the interim while the proceedings are moving forward, find out the nature of your review and disclose that to counsel from both sides. I will then allow them to argue appropriately based on what conclusions you may or may not have drawn from reviewing those exhibits. In an effort to keep this relatively crisp, I would ask the committee members who have those binders in front of them to remove those two exhibits at this time. The Sergeant at Arms will circulate once through the Committee, pick them up, and keep them sequestered in a location from which, if we need to redistribute at some time, can be done expeditiously. While we are doing that, Madam Secretary, would you please swear in the witness?

CLAIRE JESSE CLIFT (Secretary of the Senate):

Will the witness please stand and raise your right hand. Do you solemnly swear or affirm that the testimony and any evidence you shall give in this matter shall be the truth, the whole truth, and nothing but the truth?

STACY JENNINGS (Executive Director, Nevada Commission on Ethics):

I do.

MRS. CLIFT:

Please be seated. State your name and spell it for the record.

MS. JENNINGS:

My name is Stacy Jennings, s-t-a-c-y, -j-e-n-n-i-n-g-s.

SENATOR AMODEI:

We will have Mr. Greco begin. Are there any committee members who have any further questions on the removal of those two exhibits?

MR. GENTILE (Counsel for Controller Augustine):

Senator Amodei, I do not know if it is appropriate for me to ask, but at least as far as Controller Augustine is concerned, the State Controller has no problems whatsoever with any question that any Senator wants to ask, whether it comes from having read Exhibit P-39 and Exhibit P-41 earlier, or not. We just did not want to have them as part of the evidence.

MR. GRECO:

Ms. Jennings, what do you do for a living?

MS. JENNINGS:

I am the Executive Director of the Nevada Commission on Ethics.

MR. GRECO:

How long have you been employed by the Commission on Ethics?

MS. JENNINGS:

Approximately, two and one-half years.

MR. GRECO:

Could you describe for the Senate your duties as Executive Director?

MS. JENNINGS:

Our Commission is an executive legislative commission. It is charged with enforcing compliance with the Nevada Ethics in Government Law for public officers, public employees, state, city and county government, and the Legislature. In addition to administrative and operational duties, Nevada Revised Statute (NRS) 281.4365 requires the Executive Director to conduct investigations regarding ethics complaints and to make recommendations regarding just and sufficient cause pertaining to the factual basis of ethics complaints. Additionally, NRS 281.4365, subsection 1, paragraph (b), designates the Executive Director as the custodian of records for the Commission.

MR. GRECO:

Late yesterday, the lawyers reached a stipulation that eliminates the need to lay foundation for two exhibits you are going to be talking about. Please ignore our conversation about that the other day at the pre-trial conference. Exhibit P-40, the ethics stipulation, has already been admitted. Please open the blue binder to Exhibit P-40. Did Controller Augustine sign and execute the original stipulation on file with the Commission on Ethics?

MS. JENNINGS:

Yes, she did.

MR. GRECO:

Referring your attention to page 7 of Exhibit P-40, is that Controller Augustine's signature on the bottom of the text of the document?

MS. JENNINGS:

Yes, it is.

MR. GRECO:

Do you see the signatures of her lawyers, as well?

MS. JENNINGS:

Yes.

MR. GRECO:

Please read those into the record.

MS. JENNINGS:

John Arrascada, Esq., Counsel to Kathy Augustine; Dominic Gentile, Esq., Counsel to Kathy Augustine.

MR. GRECO:

Was the stipulation actually adopted and approved by the Commission?

MS. JENNINGS:

Yes, the stipulation was adopted as the official opinion resolving the request for opinion against Controller Augustine on September 22, 2004.

MR. GRECO:

Please turn to page 3 of the Exhibit P-40. Please read into the record Findings of Fact paragraphs 3 through 8.

Ms. JENNINGS:

Finding No. 3: Kathy Augustine was first elected to office as the Controller, State of Nevada, in 1998, and reelected to that office in 2002. Prior to her election as Controller, State of Nevada, she was an elected member of the Nevada Legislature for two terms. Paragraph 4: Kathy Augustine was a candidate for reelection to office of the Controller, State of Nevada, on the 2002-election ballot. Paragraph 5: Jennifer Normington was employed by the State of Nevada as Executive Assistant to Controller Kathy Augustine from October 4, 2001, through January 31, 2003. During this period of time, Kathy Augustine caused Jennifer Normington, on state time, to perform, from time to time, functions related to Kathy Augustine's 2002-reelection campaign, including, but not limited to, maintaining campaign records for official filing, coordinating certain campaign fund raisers, designing certain campaign invitations and maintaining databases for campaign contributions. Paragraph 6: Throughout the 2002-reelection campaign, computer equipment owned by the State of Nevada and located in the office of the Controller was used, from time to time, for creating, maintaining, storing and printing documents relating to Kathy Augustine's 2002-reelection campaign. Paragraph 7: Throughout the 2002-reelection campaign, equipment and facilities provided by the State of Nevada for use by the Office of the Controller were used, from time to time, for business and purposes related to Kathy Augustine's 2002-reelection campaign. Paragraph 8: Kathy Augustine as the elected Controller of the State of Nevada at no time sought guidance from the Nevada Commission on Ethics in the form of an advisory opinion pursuant to NRS 281.511, subsection 1, on questions of the propriety of her past, present or future conduct as a public officer using state resources for her campaign activities.

MR. GRECO:

Now, Ms. Jennings, I would like you to next turn to page 5 of the exhibit. Do you have that in front of you?

Ms. JENNINGS:

Yes.

MR. GRECO:

I would like you to read into the record the Opinions and Conclusions of the Commission, specifically, paragraphs 3 through 6 on page 5.

Ms. JENNINGS:

Paragraph 3: NRS 281.4375 defines "willful violation" to mean that a public officer or employee knew or reasonably should have known that his conduct violated the provisions of Nevada's Ethics in Government Law provided in Nevada Revised Statutes 281.411 through 281.581. Paragraph 4: By a preponderance of the evidence, Kathy Augustine willfully violated NRS 281.481, subsection 7, as she reasonably should have known that causing state employee, Jennifer Normington, on state time to perform functions related to Kathy Augustine's 2002-reelection campaign violated the provisions of NRS 281.481, subsection 7. Paragraph 5: By a preponderance of the evidence, as a second act, Kathy Augustine willfully violated Nevada Revised Statutes 281.481, subsection 7, as she reasonably should have known that the act of causing computer equipment, owned by the State of Nevada and located in the Office of the Controller, to be used for creating, maintaining, storing and printing documents relating to her 2002-reelection campaign violated the provisions of NRS 281.481, subsection 7. Paragraph 6: By a preponderance of the evidence, as a third act, Kathy Augustine willfully violated NRS 281.481, subsection 7, as she reasonably should have known the act of causing equipment and facilities, provided by the State of Nevada for use by the Office of the Controller, to be used for business and purposes

related to Kathy Augustine's 2002-reelection campaign violated the provisions of NRS 281.481, subsection 7.

Did you also want me to read paragraph 7?

MR. GRECO:

No, we will be offering testimony about that. Ms. Jennings, as a result of those three violations stipulated to by Controller Augustine and found and adopted by the Commission, were certain sanctions imposed by the Commission on Controller Augustine?

MS. JENNINGS:

Yes.

MR. GRECO:

Tell the Senators what those sanctions were.

MS. JENNINGS:

As far as the civil penalty, for the first violation of the statute, the Commission imposed the maximum penalty allowed under statute which is \$5,000. For the second willful violation, the Commission imposed an additional penalty of \$5,000, and for the third willful violation, the Commission imposed an additional civil penalty of \$5,000. Additionally, the Commission, pursuant to NRS 281.551, subsection 5(a), referred Controller Augustine to the Assembly for impeachment, and the Commission referred Controller Augustine to the Office of the Attorney General for potential criminal prosecution.

MR. GRECO:

Now, Ms. Jennings, please turn to page 6 of the exhibit. Would you please read Opinion and Conclusion paragraph 9 of the Ethics Commission.

MS. JENNINGS:

Paragraph 9: Kathy Augustine is an elected public officer removable from office by impeachment only. Kathy Augustine's willful violations of NRS 281.481, subsection 7, therefore, implicate the provisions of NRS 281.551, subsection 5(a), and pursuant thereto, the Commission shall file a report with the appropriate person responsible for commencing impeachment proceedings as to its findings.

MR. GRECO:

Were all of those Findings of Fact, Conclusions and Opinions of the Commission stipulated to by Controller Augustine before the stipulation was actually approved and adopted by the Commission?

MS. JENNINGS:

Yes, they were.

MR. GRECO:

Did you personally take part in any of the negotiations that preceded this stipulation?

MS. JENNINGS:

Yes.

MR. GRECO:

In what context were you involved?

MS. JENNINGS:

The Executive Director is authorized by the Commission to enter into negotiations to resolve any matter pending before the Commission in lieu of a public hearing by stipulation pursuant to Nevada Administrative Code (NAC) 281.109. The Executive Director negotiates those provisions with attorneys and brings to the Commission a draft stipulation for their consideration and adoption.

MR. GRECO:

Was it your understanding of the negotiations that in exchange for Controller Augustine's signature on this document, no criminal charges would be pursued?

MS. JENNINGS:

No, the Commission is required by statute, if they find evidence of criminal activities, to refer those to the appropriate prosecutorial body. The Commission did that. The Commission has no ability to make any kind of a binding recommendation regarding criminal charges or whether or not they are pressed.

MR. GRECO:

Were you personally involved in any of the discussions where the topic of criminal charges, and whether they would be pressed, were discussed?

MS. JENNINGS:

No.

MR. GRECO:

That is not part of your job; correct?

MS. JENNINGS:

Correct.

MR. GRECO:

Ms. Jennings, next I would like you to turn to Exhibit P-45. Again, pursuant to the lawyers' stipulation, that document has been admitted. Please explain to the Senators what that document is.

MS. JENNINGS:

This document is an acknowledgement that is required by NRS 281.552 that requires all public officers to file an acknowledgement they have received, read and understand the statutory ethical standards and agree to abide thereby.

MR. GRECO:

When you say a public officer, would that include the State Controller?

MS. JENNINGS:

Yes.

MR. GRECO:

And all state level elected officials?

MS. JENNINGS:

Yes.

MR. GRECO:

Are the public officers asked to review and acknowledge this document at the beginning of their terms?

MS. JENNINGS:

Pursuant to NRS 281.551, subsection 2, public officers are required to file the acknowledgement with the first financial disclosure statement they file once they take office.

MR. GRECO:

If a person is once elected and then reelected to another four-year term, would they have to acknowledge a second document?

MS. JENNINGS:

It would be my understanding they should execute the Acknowledgement form and file it every time they are elected to office.

MR. GRECO:

Is the exhibit you are looking at the Acknowledgement of Controller Augustine for her current term as State Controller?

MS. JENNINGS:

Yes, it is.

MR. GRECO:

Please read the text of the acknowledgement, starting with the bold word "Acknowledgement."

MS. JENNINGS:

Acknowledgement required by NRS 281.552. I hereby acknowledge that I have received, read and understand the Nevada Code of Ethical Standards set forth in the Nevada Ethics in Government Law, NRS 281.411 through 281.581, attached to this acknowledgement. I understand that refusal to execute and file this acknowledgement with the Nevada Commission on Ethics constitutes nonfeasance in office and is grounds for removal pursuant to NRS 283.440.

It is signed by Controller Augustine on March 29, 2000.

MR. GRECO:

In your position with the Commission, are you familiar with the provisions of NRS 281.411 through 281.581?

MS. JENNINGS:

Yes.

MR. GRECO:

Are you familiar with the provisions of NRS 281.481, specifically, subsection 7?

MS. JENNINGS:

Yes.

MR. GRECO:

And, at my request, did you bring a copy of that with you?

MS. JENNINGS:

I did.

MR. GRECO:

Go ahead and read the first sentence of that section.

MS. JENNINGS:

Subsection 7. A public officer or employee, other than a member of the Legislature, shall not use governmental time, property, equipment or other facility to benefit his personal or financial interest.

MR. GRECO:

That statute would have been included in the booklet of statutes that Controller Augustine received when she signed this acknowledgement; correct?

MS. JENNINGS:

Correct.

MR. GRECO:

Are you familiar with the NAC sections pertaining to political activities by state officers or state employees?

MS. JENNINGS:

Yes.

MR. GRECO:

Are there certain bars regarding political activities that pertain to state officers and state employees?

MS. JENNINGS:

Yes.

MR. GRECO:

What section, specifically, in the NAC applies?

MS. JENNINGS:

Nevada Administrative Code 284.770.

MR. GRECO:

Go ahead and read the text of that administrative code section into the record, please.

MS. JENNINGS:

NAC 284.770 Political Activities. Employees may vote as they choose and express their political opinions on all subjects without recourse, except that no employee may: 1. Directly or indirectly solicit or receive or be in any manner concerned in soliciting or receiving, any assessment, subscription, monetary or non-monetary contribution for political purpose from anyone who is in the same department and who is a subordinate of the solicitor; 2. Engage in political activity during the hours of his state employment to improve the chances of a political party or a person seeking office or at any time engage in political activities to secure a preference for a promotion, transfer or increase in pay.

MR. GRECO:

Thank you, Ms. Jennings. The State has no further questions of this witness.

SENATOR AMODEI:

Mr. Arrascada, please proceed.

MR. ARRASCADA:

Good morning, Ms. Jennings.

MS. JENNINGS:

Good morning.

MR. ARRASCADA:

Ms. Jennings, you are the Chairman of the Ethics Commission; correct?

MS. JENNINGS:

No.

MR. ARRASCADA:

What is your position, again?

MS. JENNINGS:

I am the Executive Director.

MR. ARRASCADA:

You are the Executive Director of the Ethics Commission?

MS. JENNINGS:

Yes.

MR. ARRASCADA:

You are familiar with the burden of proof to have an ethics' violation; right?

MS. JENNINGS:

Yes.

MR. ARRASCADA:

That is a preponderance of the evidence; correct?

MS. JENNINGS:

That is correct.

MR. ARRASCADA:

Even when you find a state elected official culpable of a willful violation by a preponderance of the evidence, you do not have the power or authority to impeach that person, do you?

MS. JENNINGS:

No, the Commission does not have any authority to impeach anyone under statute. We merely have the ability to refer them for those proceedings.

MR. ARRASCADA:

It is a referral?

MS. JENNINGS:

Correct.

MR. ARRASCADA:

Do you recall, you were at the Ethics Commission hearing; correct?

MS. JENNINGS:

Yes.

MR. ARRASCADA:

As was Mr. Gentile?

MS. JENNINGS:

Yes.

MR. ARRASCADA:

Controller Augustine?

MS. JENNINGS:

Yes.

MR. ARRASCADA:

Myself?

MS. JENNINGS:

Yes.

MR. ARRASCADA:

Do you recall one of the Commissioners there was Commissioner Flangas; correct?

MS. JENNINGS:

Yes.

MR. ARRASCADA:

Commissioner Flangas wanted to impose a \$25,000 fine on Controller Augustine; is that correct?

MS. JENNINGS:

That is correct.

MR. ARRASCADA:

Commissioner Flangas voted against approval of the stipulation because, in his opinion, the fine was not high enough.

MS. JENNINGS:
Correct.

MR. ARRASCADA:
If you take each count, \$25,000 would have been the maximum penalty that could be imposed; is that correct?

MS. JENNINGS:
No.

MR. ARRASCADA:
What would have been the maximum penalty?

MS. JENNINGS:
The maximum penalty would have been \$40,000.

MR. ARRASCADA:
The maximum penalty would have been \$40,000, and that is \$5,000 for the first offense; is that correct?

MS. JENNINGS:
Correct.

MR. ARRASCADA:
Then, \$10,000 for the second offense.

MS. JENNINGS:
Correct.

MR. ARRASCADA:
And, \$25,000 for the third offense.

MS. JENNINGS:
Correct.

MR. ARRASCADA:
Controller Augustine admitted that she reasonably should have known that she violated the ethics code on three offenses; correct?

MS. JENNINGS:
Yes.

MR. ARRASCADA:
Commissioner Flangas, who opposed adoption of this stipulation, did not even ask for the highest penalty under the law that you have with the Ethics Commission, did he?

MS. JENNINGS:
No.

MR. ARRASCADA:
The other four Commissioners were in agreement regarding the \$15,000—that it was appropriate.

MS. JENNINGS:
No.

MR. ARRASCADA:
There was one commissioner, Commissioner Hutchinson, who opposed it; correct?

MS. JENNINGS:
Correct.

MR. ARRASCADA:

But, the reason he was opposed was that he wanted a public hearing not regarding the fine. Is that correct?

MS. JENNINGS:

To the best of my recollection, yes.

MR. ARRASCADA:

Let us talk just for a moment about the ethics statutes that you are reading and the stipulation. The definition of "willful" has two meanings in the Ethics Commission. Is that right?

I refer you to page 5 of Exhibit P-40. Willful, at the top of paragraph 3, is defined in the disjunctive. Is that correct?

MS. JENNINGS:

I do not understand the term.

MR. ARRASCADA:

The definition of willful says that a public officer or an employee knew, or reasonably should have known, that his or her conduct violated the provision of the ethics code. That is the definition of willful; correct?

MS. JENNINGS:

Yes.

MR. ARRASCADA:

Someone can have a willful violation if they have actual knowledge or knew; correct?

MS. JENNINGS:

Yes.

MR. ARRASCADA:

Or, they reasonably should have known that something was going on even if they did not know it was going on; right?

MS. JENNINGS:

Yes.

MR. ARRASCADA:

What Controller Augustine admitted to was that she reasonably should have known that these activities were going on in her office; right?

MS. JENNINGS:

The way the stipulation reads, I will reference the first violation in paragraph 4, on this same page, says that by a preponderance of the evidence, Controller Augustine willfully violated NRS 281.481, subsection 7, as she reasonably should have known that causing Jennifer Normington on state time, to perform functions.

MR. ARRASCADA:

Can I stop you on that one?

MS. JENNINGS:

Yes.

MR. ARRASCADA:

What she admitted to is that she reasonably should have known; correct?

MS. JENNINGS:

She reasonably should have known that she caused it to happen, yes.

MR. ARRASCADA:

But, it does not say that she actually knew.

MS. JENNINGS:
It does not say that.

MR. ARRASCADA:
Thank you. Let us try to save some of the Senators' time. That is the same for paragraph 5 and paragraph 6; is that right?

MS. JENNINGS:
That is correct.

MR. ARRASCADA:
I have no further questions.

SENATOR AMODEI:
Any redirect, Mr. Greco?

MR. GRECO:
Just briefly, Senator Amodei. Ms. Jennings, Mr. Arrascada covered the topic of the burden of proof of an Ethics Commission hearing. I want to talk about that. If you have a case where the parties do not resolve the matter and it actually goes to an ethics hearing, what is the burden of proof that the plaintiff has to meet? What I am asking, Ms. Jennings, is the burden of proof in an ethnics hearing a preponderance of the evidence?

MS. JENNINGS:
Yes, it is.

MR. GRECO:
The same as in a civil case; correct?

MS. JENNINGS:
Yes.

MR. GRECO:
By signing the stipulation and agreeing to the terms of the stipulation, Controller Augustine expressly admitted in the stipulation that the three allegations were provable by a preponderance of the evidence; correct?

MS. JENNINGS:
Yes.

MR. GRECO:
In fact, in the sections you read earlier, in terms of the findings or conclusions, those three sections include the actual words, "by a preponderance of the evidence"; correct?

MS. JENNINGS:
That is correct.

MR. GRECO:
Specifically, that language "by a preponderance of the evidence" was stipulated to by Controller Augustine in paragraphs 4, 5, and 6 of page 5 that is before you; correct?

MS. JENNINGS:
That is correct.

MR. GRECO:
Do you have that page in front of you?

MS. JENNINGS:
Yes.

MR. GRECO:
Can you see those words there, "by a preponderance of the evidence"?

MS. JENNINGS:

Yes.

MR. GRECO:

In paragraph 4?

MS. JENNINGS:

Yes.

MR. GRECO:

In paragraph 5?

MS. JENNINGS:

Yes.

MR. GRECO:

In paragraph 6?

MS. JENNINGS:

Yes.

MR. GRECO:

Controller Augustine stipulated that these allegations were sustainable by a preponderance of the evidence; correct?

MS. JENNINGS:

Yes.

MR. GRECO:

That burden of proof is greater than the burden of proof that the Senators have to find in this case; correct?

MR. GENTILE:

We are going to have to object there. We have not discussed the burden of proof, but I believe that if you ask the Legislative Counsel Bureau (LCB), they are going to say you are to do justice based on law and evidence.

SENATOR AMODEI:

We will sustain the objection. Please continue, Mr. Greco.

MR. ARRASCADA:

May I offer a brief response to that, Senator Amodei?

SENATOR AMODEI:

Yes, you may.

MR. ARRASCADA:

The Senate must do justice according to the law and evidence, but the State has no particular burden. The Defense has no particular burden. Our position is that since neither side has a burden; obviously, that must be less than a burden of a preponderance of the evidence. That is self-evident.

SENATOR AMODEI:

I understand the argument; it is a legal argument, Mr. Greco, and I do not believe Ms. Jennings has been established as someone who is qualified to testify on the law regarding those matters. On that basis, I will sustain the objection.

MR. GRECO:

That is all the questions I had for this witness.

SENATOR AMODEI:

Is there any recross, Mr. Arrascada?

MR. ARRASCADA:

No, thank you.

SENATOR AMODEI:

Are there any questions of Ms. Jennings from members of the Committee?

SENATOR RAGGIO:

In order to understand why we are here, it is my understanding that if there is a finding of a willful violation, whether it is by the evidence presented at the Ethics Commission or by stipulation, the Ethics Commission does not have any choice as to whether or not it refers it to the Assembly for impeachment purposes.

MS. JENNINGS:

No, it does not. Pursuant to NRS 281.551, subsection 5(a), if the Commission finds a willful violation has been committed by a public officer, removable from office by impeachment only, we shall file that report.

SENATOR RAGGIO:

A state officer is a public officer who can be removed only by impeachment. Is that correct?

MS. JENNINGS:

Controller Augustine does meet those criteria. It is my understanding the group of persons subject to that provision of statute consists of all of the State Constitutional Officers and members of the Legislature.

SENATOR RAGGIO:

My question is, the Ethics Commission, once a willful violation had been stipulated to, had no choice but to refer this to the Assembly.

MS. JENNINGS:

That is correct.

SENATOR CARE:

Ms. Jennings, you were not asked this; I think it was implied, but just so everybody understands, you do not have any first-hand or personal knowledge of the conduct that Controller Augustine stipulated to in the stipulation. Is that a fair statement? You were not a witness, in other words?

MS. JENNINGS:

That is correct.

SENATOR CARE:

Who drafted the stipulation?

MS. JENNINGS:

The Commission Counsel for the Nevada Commission on Ethics created an original draft, and then, I believe, it was provided to Mr. Arrascada, and presumably, Mr. Arrascada and Mr. Gentile worked on language in the stipulation. There was some back and forth between their office and our office.

SENATOR CARE:

You participated in the back and forth?

MS. JENNINGS:

Yes.

SENATOR CARE:

Could you elaborate a little, again, on how the figure of \$15,000, or a total of \$15,000, was settled on as opposed to a higher or lesser figure? Who said what?

MS. JENNINGS:

In the stipulation that was presented to the Commission for its approval, the fine recommended by myself and agreed to by Controller Augustine's Counsel for presentation had a \$10,000 civil penalty. It would have been \$5,000 for the first violation and \$2,500 for the second and third willful violations. In the discussions the Commission had on the record, it was decided they would fine \$5,000, the maximum under statute, for the first and \$5,000 each for the second and third. It was my recommendation to them to impose a civil penalty that was less than the statutory maximum because, as I said to them in the closed session, it was my belief that Controller Augustine, by admitting just to the first willful violation for which we would be imposing the statutory maximum penalty, would have to be referred for impeachment, and that was a far harsher process and penalty than anything the Commission itself could impose through a monetary fine.

SENATOR CARE:

In your discussions with Controller Augustine or her counsel, did you ever discuss the possibility of Controller Augustine resigning from office?

MS. JENNINGS:

I believe that the first draft of the stipulation had a provision that if she did not resign from office within 5 days of the opinion being adopted by the Commission, if it were, we would file the papers for impeachment with the Assembly. Her attorneys took that section of the stipulation out. Other than that, I do not believe there were any discussions.

SENATOR WASHINGTON:

Ms. Jennings, you stated in NRS 281.411, paragraph (a), that it was a personal benefit.

I am wondering, did the Commission find that the willful violation of aiding and assisting Controller Augustine in her campaign to aid or help or increase her personal benefit in any way?

MS. JENNINGS:

I do not believe I understand the question.

SENATOR WASHINGTON:

I do not know the entire statute, but in paragraph (a) it stated regarding "a personal benefit." I am concerned about the willful violation as you stated in the statute of her using the computer equipment or her personal secretaries to stuff, stamp or send out invitations in her reelection bid. Did this aid her in her personal gain or personal benefit, or did the Commission find it just a willful violation of campaign ethics laws?

MS. JENNINGS:

In order to violate the provisions of NRS 281.481, subsection 7, the statute states that public officers shall not use government time, property, equipment or other facility to benefit their personal or financial interest. I believe it would be implied that as there is a violation of statute. There was a personal benefit there.

SENATOR WASHINGTON:

Therefore, Ms. Jennings, you are saying the Commission found that there was a personal, financial gain on Controller Augustine's benefit because of the aid and assistance of the equipment or the aid of her personal secretaries.

MS. JENNINGS:

Correct.

SENATOR COFFIN:

We heard a good explanation of the fact that there are two definitions of willful. I believe you were led through that by the Defense under cross-examination. I am a layman, and I have been a lay member of commissions before. If there are two definitions, were the two definitions of "willful" explained to the members of the Commission in either the closed or the open session? You told the Commission that based upon the fact, there was a willful violation. However, did

you explain to the Commissioners and did they have a clear understanding, there were two definitions of willful?

MS. JENNINGS:

I do not believe, in my experience, in two and one-half years serving as Executive Director of the Commission, the Commission has ever made a distinction of two definitions of willful as I was led through under cross-examination by Counsel Arrascada. The Commission deals with that statute often. We have had four cases where we had to go through a determination regarding willful violations this year. The Commission is familiar with the definition of willful. I have never heard members of the Commission make the distinction that Counsel Arrascada did.

SENATOR COFFIN:

You just made those distinctions yourself when you said they did exist. I would like to know if those members were informed in advance, that there was a lesser penalty in the wording or were they committing her to impeachment not knowing there was another alternative, that being a higher fine? I only know what I read in the papers because we do not have any of the record here, but I do recall Mr. Flangas saying he wanted to fine more. Let us suppose the Commission had been aware that there was the possibility someone could make a decision and say, "There was another definition of willful," and they did not know it. It would have been stressed that this definition of willful really means that she knew. They apparently were not given that discussion. I do not have your record, but they might have chosen to go with a higher fine.

MS. JENNINGS:

The way the statute is constructed regarding the referral for impeachment, regardless of the amount the Commission chose to fine Controller Augustine, we still had to refer it. We would still have to refer it regardless of the amount of the civil penalty.

SENATOR COFFIN:

I just want to establish that members of your Commission did not have the same information spelled out to them by either the legal counsel or you prior to their voting.

MS. JENNINGS:

Did not have what information?

SENATOR COFFIN:

The two definitions of willful.

MS. JENNINGS:

Our Commissioners were provided with much of the same evidence that may have been provided to you, certainly all the evidence that was provided to the Assembly after our proceedings, and that included the definition of willful in statute. They had that information.

SENATOR COFFIN:

We have a lot of information in front of us here. This is the first time today that I had heard there were two definitions of willful. They seem to be materially different in terms of an ultimate penalty. I guess what you are saying is you have, by not saying it, the Commission did not parse that sufficiently before they voted.

MS. JENNINGS:

It is my understanding the Commission has never parsed the definition of willful.

SENATOR RHOADS:

Did the Commission determine the total amount of hours that staff worked on her campaign, the postage that was spent or other costs? Was it \$100,000 total to the State or less, or more? Was anything established there?

MS. JENNINGS:

In my initial report and recommendations to the two-member panel of the Commission, I believe I estimated somewhere between \$10,000 and \$15,000, as a cost to the State, based on Ms. Normington's time alone. To the best of my recollection, there was never any evidence that

any postage costs were incurred by the State because of Controller Augustine's campaign. No evidence was provided to us that that actually happened.

SENATOR SCHNEIDER:

I guess I am getting confused here, and that leads to my question. If Controller Augustine requested someone, on government time, to write a speech for her and drive her somewhere and deliver that speech, would that be a violation of the ethics?

MS. JENNINGS:

I would have to ask what the content of the speech would be. If the content of the speech is reelect me to office and the speech was written on state time, and the employee took her to deliver the speech on state time, then, that could be a violation of statute. If the speech is merely something that she would do in the normal course of her employment regarding functions of the Controller's Office or issues therein and it does not have any political content, then, it most likely would not be.

SENATOR SCHNEIDER:

If a speech were delivered to the Keystone Club or the Republican Women's Club, would that be construed as a political speech?

MS. JENNINGS:

I think, again, in my view, the violation arises over the content of the speech not, necessarily, who you are giving it to.

SENATOR SCHNEIDER:

When you estimated the \$15,000 on the employee's time, did the Commission ask that the money be reimbursed?

MS. JENNINGS:

No, we did not. We do not have that authority under statute. We do have a provision in NRS 281.551 that says if we find a violation of a revision of our chapter by a public officer or public employee that results in the realization by another person of a financial benefit, we can require twice the amount the other person realized. That would be paid as a civil penalty in addition to any penalty we might impose pursuant to our violation statute. However, in looking at that, it says, "by another person." Here the benefit was realized by Controller Augustine and not by another person so that recourse was not available to us.

SENATOR BEERS:

Would a legislative campaign qualify as for "personal benefit"? Most of us actually lose money by engaging in this activity.

MS. JENNINGS:

The Legislature has slightly different provisions in NRS 281.481, subsection 8, that apply to members of the Legislature. Whether your campaign is a personal benefit would depend upon the facts and circumstances of the campaign.

SENATOR BEERS:

The statute right now says, "personal or financial benefit." There is an implied interpretation by the Ethics Commission that your campaign is one of those things. Did they look at Controller Augustine's ability to earn a wage outside of government and determine it was lower than the wage of the Controller? Was there any attempt, other than a blanket, "a campaign must be for your personal benefit because of the notoriety that you get," to define "personal benefit"? I am curious about where they made the jump from a personal campaign to the statutory, "a personal or financial benefit."

MS. JENNINGS:

Actually, NRS 281.481, subsection 7, the last part of that sentence says, "to benefit his personal or financial interest." It would be my conclusion that the intent of the statute is if it benefits their personal interest, and I would gather that ...

SENATOR BEERS:

Because she wanted to be Controller, it is in her personal interest?

MS. JENNINGS:

I would believe so.

SENATOR BEERS:

Following up on Senator Schneider's question, did the Commission look at the content of the speeches alleged to have been written by staff on government time? Were they determined to be "reelect me" or "here is what has happened in the Controller's Office. We have had this debt-collection program and have recovered X millions of dollars," type of thing?

MS. JENNINGS:

I reviewed all of the forensic computer evidence, that had been compiled by the Attorney General's Office in the course of their investigation and was submitted to our office, to look at the content of those particular things.

SENATOR BEERS:

Was the term "reelect me" in those speeches? You understand where I am going? I guess my follow-up question is, was there any discussion with Controller Augustine as to whether or not these were, in fact, legitimate speeches that were written or just simply documents written on a computer and passed along through the chain of evidence?

MS. JENNINGS:

There was very little, if any, discussion with Controller Augustine regarding the content of the forensic evidence because in her response to the complaint she admitted that she reasonably should have known those campaign activities were taking place on state time, using state resources and state employees. The evidence, as to whether those speeches were political in nature, was not a point of dispute between Controller Augustine and her counsel and our office.

SENATOR BEERS:

Is it implied by the stipulation that they are political in nature? There really was nothing specific, or was there?

MS. JENNINGS:

Look at Exhibit P-40, which is the stipulation, on page 5, paragraphs 4 through 6, and look at the three violations. It says "she should have known that causing Jennifer Normington, on state time, to perform functions relating to her campaign." The second violation in paragraph 5 says, "the act of causing computer equipment to be used on documents relating to her reelection campaign." In the third violation under paragraph 6 it says, "the act of causing equipment and facilities to be used for business and purposes related to her campaign. Additionally, if you look back on page 3, the Findings of Fact go more specifically into, in paragraph 5, what those activities were. They were maintaining campaign records for official filing, coordinating certain campaign fund-raisers, designing certain invitations and maintaining databases for campaign contributions.

SENATOR BEERS:

Regarding the estimate of the cost of Ms. Normington's time, you mentioned earlier of \$10,000 to \$15,000, we have had a couple of different estimates of Ms. Normington's time. Which is it? Do we need to look at this in terms of the number of hours or number of dollars? How many hours does that equate?

MS. JENNINGS:

In my report and recommendations to our panel, I was trying to give them some idea, at least for the employee that seemed to be the most egregiously used in the course of conduct, what the cost of that might be. After talking to Ms. Normington and reviewing her statements to the Attorney General's Office, it appeared to me that if you looked at the number of hours, it was about a quarter of a work year, which is 2,080 hours, so it would be about 500 hours. As an

unclassified employee, her salary was listed in the unclassified pay bill, and I looked at that salary and took 25 percent of it.

SENATOR BEERS:

You used 100 percent of her time for 3 months as the value?

MS. JENNINGS:

Yes.

SENATOR BEERS:

I believe we have some discussion underway that she said it was 25 percent of her time for 3 months and 75 percent of her time for 3 months. Maybe Counsel could clarify that.

SENATOR AMODEI:

Actually, I think the counsel on either side will clarify that as we go forward. I believe Ms. Jennings can testify as to what her foundations were and what her testimony was, and she has done that.

SENATOR NOLAN:

Ms. Jennings, in reference to Exhibit P-40, which we are discussing, paragraph 9 indicates the Commission shall file a report with the appropriate person responsible for commencing the impeaching proceedings as to its findings. I looked through our exhibit books and did not see that report filed as an exhibit. I may have overlooked that. With respect to that report, I am assuming that report would have been filed with the Attorney General's Office?

MS. JENNINGS:

I do not believe that is correct. I did not know, myself, as we went forward through this process, which person that was. I contacted Mrs. Erdoes and asked if she could do some research for me on that issue, and Mrs. Erdoes got back to me and said the Legislature was the appropriate body, and that report should likely be filed with the Chief Clerk of the Assembly. On September 22, after our meeting held, here in the building, the Commission took its opinion, which would be the report of our findings we filed pursuant to statute, we drafted a cover letter to Nancy Tribble, the Chief Clerk of the Assembly, and filed a cover letter saying the Commission met, and pursuant to provisions of NRS 281.551 5(a), we were filing a report of our findings, which was the opinion.

SENATOR NOLAN:

Was it implied, either in that report or in any discussions before the Commission, that Controller Augustine should be removed from office or undergo the impeachment process?

MS. JENNINGS:

The Commission does not have any power or authority to make any recommendations or decisions regarding removal from office. The only thing I recall being discussed and presented by the Commission was the provision of section 9, which highlights the statute that says we shall file that document in this instance.

SENATOR NOLAN:

Just for clarification, there was no discussion, either formally or informally, that you are aware of among the Commissioners, that would have led you to believe it was their intent to remove Controller Augustine from office for the offenses which she admitted to have committed or that she should undergo the impeachment process?

MS. JENNINGS:

To the best of my recollection, our Commissioners did not talk about Controller Augustine being removed from office, as again, that is not within the scope or power of our duties. There was limited discussion, I believe, regarding her referral for impeachment. That was part of the stipulation they were approving.

SENATOR CEGAVSKE:

My question comes from a comment I believe I heard you make in a statement from Senator Schneider's comment, you said, "elected official, employee" referring to what I understood, under the context of "willful misconduct." Is an employee held at the same, or any type of, standard that the elected official is if they have done something in violation? Is the employee held responsible?

MS. JENNINGS:

The Ethics in Government Law applies equally to public officers and public employees. If an employee was working on their own campaign on state time, it is my belief that would be something that could implement the statutes.

SENATOR CEGAVSKE:

I am not trying to deviate; I am just trying to get an understanding. If employees, on their own, decided to do campaigning or the things that have been found in violation of Controller Augustine, they are not held responsible; there is nothing that can be done to them for doing something other than their job? They are not held liable at all?

MS. JENNINGS:

Are you asking about under the ethics laws or under other laws? There are prohibitions in the State Personnel Office that prohibit those activities by employees on state time. Could the employee be held equally as liable for performing the work? Under the statute, what would be the personal interest of the employee for doing someone else's campaign work? That would be my question.

SENATOR CEGAVSKE:

It is the division of ethics versus the other law?

MS. JENNINGS:

Yes.

SENATOR CEGAVSKE:

They could be held accountable under another set of NRS? Is that correct?

MS. JENNINGS:

I believe so.

SENATOR CARLTON:

My question goes back to Exhibit P-40, under the Findings of Fact. What weight do the Findings of Fact have within this document?

MS. JENNINGS:

The Findings of Fact are those things on which the Commission bases its opinion. They are the backbone of why they reached the decision they did.

SENATOR CARLTON:

On page 3, paragraph 5, in the third line, if this is the backbone of what you based your opinion on, you used the word "caused." "Controller Augustine caused Jennifer Normington, on state time," what would the definition of "caused" be? What definition did you use of "caused"?

MS. JENNINGS:

I do not believe there is any significant legal meaning, in my mind, to it. It just means that caused it to happen. She facilitated it.

SENATOR CARLTON:

It is the normal meaning that everyone would read into it? There is no other she caused it to happen? She was a proponent of it?

MS. JENNINGS:

That was my belief in working on the stipulation with our attorney, yes.

SENATOR CARLTON:

We went to the standard of "reasonably should have known," which in the layman's mind and my mind is less than caused. Am I correct to assume that within the bargaining, there was a little bit of plea-bargaining going on, or in general terms, it was lowered from caused?

MS. JENNINGS:

It said, "reasonably should have known" in the initial draft prepared by our counsel. It said "knew or should have known," and Controller Augustine's counsel insisted that the word "knew" be taken out.

SENATOR CARLTON:

In your Findings of Fact, you are using the word "caused," but in the final agreement, "reasonably should have known," and the difference was in what the Defense Counsel asked to be in the final document.

MS. JENNINGS:

If you look at it, it does say, "reasonably should have known," but it also says, "that causing." To me, it was phrased that way for a reason.

SENATOR HORSFORD:

I would like to follow up on a question that Senator Schneider asked regarding Ms. Normington's work time. Based on the amount of time the Commission determined she did work and was agreed to in the stipulation, can you clarify for me the explanation you gave as to why the Ethics Commission could not get the taxpayers' money reimbursed for that employee's time in addition to the civil penalty?

MS. JENNINGS:

Yes. I have a copy of my statutes in front of me that I keep referring to. The provisions of NRS 281.551, subsection 3 says:

If the Commission finds that a violation of a provision of this chapter by a public officer or employee, or former public officer or employee has resulted in the realization by another person of a financial benefit, the Commission may, in addition to other penalties provided by law, require the current or former public officer to pay a civil penalty of not more than twice the amount so realized.

The actions that were the subject of the conduct of the complaint resulted in a realization of a benefit by Controller Augustine, not of another person.

SENATOR HORSFORD:

Who filed the complaint subsequently heard by the Ethics Commission?

MS. JENNINGS:

The complaint was filed by Gerald Gardner of the Attorney General's Office.

SENATOR HORSFORD:

Have similar complaints been filed against other state public officials for conduct similar to this?

MS. JENNINGS:

I reviewed previous opinions issued by the Commission relating to violations of NRS 281.481, subsection 7, and did not find anything that was similar to this in that review. As far as anything that would be pending before the Commission, statute would grant confidentiality to any complaint that has been filed until it is through our investigative process.

SENATOR HARDY:

The thought process of the Commission with regard to the commencement of impeachment proceedings is a threshold issue to me. In the stipulation, it references a statute and says "pursuant thereto." Was this referred to the Assembly or the Legislature for impeachment simply because that is required by the statute? Was there some further discussion that this warranted that kind of a proceeding or was it just simply because it is required by statute?

MS. JENNINGS:

The statute says "shall."

SENATOR HARDY:

That is the only reason? There was no further discussion about, "As part of the penalty for this, we have the fines and court, but this also should be considered for impeachment?" or was the discussion simply, "We need to send it over there because statute requires it?"

MS. JENNINGS:

To the best of my recollection, yes.

SENATOR TITUS:

In all this discussion about two definitions of willful violation and did she know or should she have known, I think we have lost perspective. It is not that she knew or should have known that these events were occurring, but that she knew or should have known that causing these events to occur was in violation of the statute. Is that right?

MS. JENNINGS:

That is correct.

SENATOR AMODEI:

Who investigated this for you? Was it your staff? Was it the Attorney General? Was it a combination? Could you describe the investigation?

MS. JENNINGS:

The investigation was conducted by me. The investigation entailed reviewing all of the documents that had been provided to the office by the Attorney General's Office—witness statements, e-mails, payroll records, those types of things. All of which was provided to the Assembly. Additionally, I reviewed all three binders of forensic evidence that the Attorney General's Office had compiled from the computer back-up tapes they had gotten from the Controller's Office. Additionally, I reinterviewed four of the witnesses just to verify the accuracy and content of their statements to the Attorney General's Office.

SENATOR AMODEI:

Based on that answer, were you the lead fact-finding person, or ground-level person, as far as what the Ethics Commission's involvement in the investigatory stage was?

MS. JENNINGS:

Yes. Under statute, that is my responsibility.

SENATOR AMODEI:

How did you come to coordinate with the Attorney General's Office to get this information to begin with, if you could describe your recollection?

MS. JENNINGS:

The information was provided with the complaint on the day it was filed with the Commission.

SENATOR AMODEI:

Did you speak with anyone in the Attorney General's Office before the day the complaint was filed?

MS. JENNINGS:

Yes.

SENATOR AMODEI:

Would you describe the nature of those discussions?

MS. JENNINGS:

On a number of occasions, throughout the spring of this year and early summer prior to the complaint being filed, I was contacted by both Counsel Arrascada and the Attorney General's

Office regarding hypothetical scenarios of violations of statutes similar in nature to those that were filed in the complaint. All of those conversations were hypothetical. No public officer was ever identified. No specific activities were identified, but both the Attorney General's Office and Counsel Arrascada contacted me on several occasions to discuss this type of conduct and if it would be appropriate for violations of the ethics statutes.

SENATOR AMODEI:

As these discussions proceeded and your review of the documents proceeded, that culminated in you preparing what you referred to earlier as a report or presentation to your Commission? Is that correct?

Ms. JENNINGS:

If I can correct you for a minute, I never actually got any documents or anything from the Attorney General's Office until the day the complaint was filed. After the complaint was filed, I went through my investigation including reviewing responses submitted to our office by Controller Augustine or her counsel. Then, I made my report to the two-member panel, yes.

SENATOR AMODEI:

That was the result of looking through the documents that came with the complaint. Did the discussions you have just described go into that mix when you prepared your report?

Ms. JENNINGS:

No.

SENATOR AMODEI:

Did you formally coordinate with any other offices in preparing your report for submission to your Commission?

Ms. JENNINGS:

No.

SENATOR AMODEI:

You did not coordinate with the Attorney General's Office or anybody else in preparing that report?

Ms. JENNINGS:

No.

SENATOR AMODEI:

Was any informal coordination done?

Ms. JENNINGS:

No.

SENATOR AMODEI:

Do you know if there was any formal or informal coordination with other offices by any other members of your staff?

Ms. JENNINGS:

There really is no other staff.

SENATOR AMODEI:

You would be in a position to know if it had been done?

Ms. JENNINGS:

I believe so, yes.

SENATOR AMODEI:

Your response is, "It all came through me"?

MS. JENNINGS:

Yes.

SENATOR CARE:

To follow up on that, Ms. Jennings, when you received the request for opinion, or the complaint, did you have any thought as to whether that was a criminal investigation or an ethics complaint?

MS. JENNINGS:

Our process is purely noncriminal. Anything that was submitted to me would be civil in nature and as long as it met our jurisdictional criteria it would be an appropriate subject for us to investigate.

SENATOR CARE:

Let me rephrase the question. You received a request from a prosecutorial branch, an entity such as the District Attorney's Office and Attorney General's Office. Did it cross your mind that you were in receipt of a criminal investigation as opposed to the ordinary requests filed by a requester acting in his individual capacity or the public official who requests an opinion in advance of whether conduct may or may not run afoul of the statutes?

MS. JENNINGS:

I do not know if it directly crossed my mind, but I guessed that the source of the information could have been a criminal investigation, yes. I do not know that it crossed my mind, but under the jurisdiction of the Commission, we have jurisdiction to investigate and take action regarding alleged violations of the Ethics in Government Law by public officers or employees for any proceeding commenced by the filing of a request for an opinion with the Commission. It does not specify from whom it comes. It is just the mere filing of that complaint.

SENATOR CARE:

I understand that. Does your office have a policy about making a distinction between a complaint received from a prosecutorial entity as opposed to a private citizen or public official?

MS. JENNINGS:

No, this is the first time that has occurred.

SENATOR CARE:

Did you know the complaint was going to be submitted prior to it being submitted to you?

MS. JENNINGS:

Yes.

SENATOR CARE:

Who told you it was going to be submitted?

MS. JENNINGS:

I believe the first indication was from Counsel Arrascada, and the second indication would have been from the Attorney General. I also read about it in the newspaper before it was actually filed.

SENATOR CARE:

Were there any comments made by anyone to you prior to you receiving the complaint about what needed to be done with Controller Augustine, either removed from office or fined or anything like that?

MS. JENNINGS:

No. I was careful in any conversations I had with Mr. Arrascada and Mr. Gardner to let them know if a complaint was filed with our office, it would come under the jurisdiction of the Commission; our regular investigative process would be followed, and there would be no deviation from that regardless of the source of the complaint.

SENATOR NOLAN:

Would you refresh my memory on the initial stipulation you had written? I believe you indicated that one of the recommendations in that initial stipulation included the resignation or the request for resignation from office within a certain number of days?

MS. JENNINGS:

Yes, to the best of my recollection, we had initially put something in the stipulation that said if she did not resign within five days of the approval of the stipulation by the Commission, we would file our report with the Assembly. The reason I thought we should put that in, from my individual perspective, was to give her a chance to avoid these proceedings knowing we would be required to file for them.

SENATOR NOLAN:

It sounds like there was an option to either resign or we will file. Up to this point, until you made this last comment, it sounded like there was no option, by statute, other than to file for proceedings of impeachment. Am I mistaken?

MS. JENNINGS:

I do not believe there would have been an option. However, if she was no longer in office, she could not be impeached. Therefore, it would make the filing moot.

SENATOR AMODEI:

Mr. Greco, do you have any follow up for Ms. Jennings as a result of the Committee questioning?

MR. GRECO:

Just in one area. Ms. Jennings, you were asked a series of questions about removal, and if I understood your responses to the Senators, it is not the job of the Commission or the Executive Director to reach an official determination regarding that topic. Is that correct?

MS. JENNINGS:

Correct.

MR. GRECO:

Because that is left to another body?

MS. JENNINGS:

Yes.

MR. GRECO:

When you compiled your ethics report, did you review all of the statements from the complaining witnesses and other participant witnesses very carefully?

MS. JENNINGS:

Yes.

MR. GRECO:

Did you review Controller Augustine's response very carefully?

MS. JENNINGS:

Yes.

MR. GRECO:

Did you reach any personal opinion whether Controller Augustine should be removed?

MS. JENNINGS:

Senator Amodei, I hesitate to answer that question, because I want people to understand any opinion I give is not the opinion of any of my bosses or any members on the Commission. Do you still want me to answer that question?

SENATOR AMODEI:

That caveat will be on our record. Please answer. You are Mr. Greco's witness, and he has asked you a question so we would ask you to respond.

MS. JENNINGS:

In my opinion, this case consists of the most egregious violations.

MR. ARRASCADA:

Actually, we are going to object. She is not listed as an expert witness, and she is just giving lay opinion. If the Senate wants to hear lay opinion, that is fine, but I do not know if she is qualified or has been qualified as an expert witness.

SENATOR AMODEI:

I would indicate to you, Mr. Arrascada, there has been no indication that this is an expert opinion. Her personal opinion has been asked for, and I expect other witnesses will follow whose personal opinions will be relevant. We will allow this.

MS. JENNINGS:

In my personal opinion, this case consisted of what I believe to be the most egregious violations I have seen in my tenure with the Commission or in my review of previous opinions. It would be my personal belief that it supports removal from office.

SENATOR AMODEI:

Anything else, Mr. Greco?

MR. GRECO:

No, Senator Amodei.

SENATOR AMODEI:

Mr. Arrascada?

MR. ARRASCADA:

Yes. Ms. Jennings, back to Exhibit P-40. I direct you to the area of the stipulation that says "should have known." Is that on page 7? Regarding the newer "should have known," you have been asked several questions on that?

MS. JENNINGS:

The part about the violations?

MR. ARRASCADA:

Correct.

MS. JENNINGS:

Yes.

MR. ARRASCADA:

Normally, in your tenure as the Executive Director of the Ethics Commission, a willful violation is traditionally put into opinions as "knew or should have known." Is that correct?

MS. JENNINGS:

That is correct.

MR. ARRASCADA:

In this specific opinion, the language is "should have known"; correct?

MS. JENNINGS:

Yes.

MR. ARRASCADA:

I have one final question. This is following up on Senator Horsford's question. Without identifying the office or the person, can you tell the Senators if similar complaints have been filed against other elected officials since this stipulation has been entered and highly publicized?

MR. GRECO:

I am going to lodge an objection at this point. Although the Nevada Evidence Code does not apply in this proceeding, the Senate has adopted one evidence rule—that the evidence must be relevant and germane. That evidence is completely irrelevant; it is not germane, and it would be the equivalent of, in a regular criminal trial, the Defense attempting to bring out information that another defendant had committed a similar act, and he either was not charged or the District Attorney's Office plea-bargained the case down. That is not allowed in a criminal case, and it should not be allowed in this case where she has fewer rights than a criminal defendant.

SENATOR AMODEI:

Mr. Arrascada?

MR. ARRASCADA:

No, we have no comment at this time.

SENATOR AMODEI:

I will sustain the objection based upon the record Mr. Greco has made to support the objection. Any other questions?

MR. ARRASCADA:

No, thank you.

SENATOR AMODEI:

Is there any objection to dismissing this witness or does either side wish to place a hold on her?

MR. ARRASCADA:

We do not need a hold. She can be free to go from the Defense.

MR. GRECO:

We have no objection to releasing her.

SENATOR TOWNSEND:

Does the Senate have the right to reserve the opportunity to examine witnesses once they have been released by both sides?

SENATOR AMODEI:

If necessary, we can resubpoena or reinvite Ms. Jennings to join these proceedings. Unless and until that happens, Ms. Jennings, thank you for your testimony, and you are free to go. Mr. Greco, your next witness, please.

MR. GRECO:

Susan Kennedy.

MRS. CLIFT:

Would the witness please stand and raise your right hand. Do you solemnly swear or affirm that the testimony and evidence you shall give in this matter shall be the truth, the whole truth, and nothing but the truth?

MS. KENNEDY (Management Analyst, Department of Human Resources):

I do.

MRS. CLIFT:

Please be seated. State your name and spell it for the record.

MS. KENNEDY:

My name is Susan Kennedy, s-u-s-a-n,-k-e-n-n-e-d-y.

MR. GRECO:

Are you currently employed?

MS. KENNEDY:

Yes.

MR. GRECO:

What do you do for a living?

MS. KENNEDY:

I work for the State of Nevada in the Department of Human Resources.

MR. GRECO:

What is your specific job title?

MS. KENNEDY:

I am a Management Analyst.

MR. GRECO:

Where were you employed from February 2000 to September 2001?

MS. KENNEDY:

I was employed with the State Controller's Office.

MR. GRECO:

During the timeframe you were employed there, who was the State Controller?

MS. KENNEDY:

State Controller Augustine.

MR. GRECO:

When you first started working for Controller Augustine, can you remember the exact date?

MS. KENNEDY:

I went to work for Controller Augustine on February 14, 2000.

MR. GRECO:

When did you leave employment in the Controller's Office?

MS. KENNEDY:

September 14.

MR. GRECO:

Of what year?

MS. KENNEDY:

2001.

MR. GRECO:

When you first started working for Controller Augustine, was your position classified or unclassified?

MS. KENNEDY:

It was a classified position.

MR. GRECO:

Please describe what classified means.

MS. KENNEDY:

It means that I am on a one-year probationary period and salaried.

MR. GRECO:

At some point, while you were employed in the Controller's Office, did the status of your position change?

MS. KENNEDY:

Yes.

MR. GRECO:

To what?

MS. KENNEDY:

It changed to an unclassified position.

MR. GRECO:

Please explain the difference between an unclassified position versus a classified position.

MS. KENNEDY:

In my thinking, the unclassified position is a position where you can be let go at any time.

MR. GRECO:

For any reason?

MS. KENNEDY:

For any reason.

MR. GRECO:

What is your understanding of the classified position? Once you get past your probationary period, what is your status in terms of being let go for any reason at any time?

MS. KENNEDY:

It is difficult to let a person go during that period, but it is certainly something that happens through the course of disciplinary action.

MR. GRECO:

Once you have survived your probationary period and are a classified employee, do you gain certain job rights that you do not have as an unclassified employee? If you know?

MS. KENNEDY:

I do not.

MR. GRECO:

Let me ask you this, then, do you know who was responsible for changing your position from classified to unclassified?

MS. KENNEDY:

That was Controller Augustine.

MR. GRECO:

Describe how that position came to be changed from classified to unclassified?

MS. KENNEDY:

Session was in during that period, and there was a bill proposed for, I believe, five positions in the office. One of them was mine. The bill asked those five positions be changed from classified to unclassified.

MR. GRECO:

Did Controller Augustine back that bill?

MS. KENNEDY:

Yes.

MR. GRECO:

During your entire tenure in the office, did you ever volunteer to do work on Controller Augustine's reelection campaign?

MS. KENNEDY:

No.

MR. GRECO:

At any point during your employment in the Controller's Office, did you ever consider yourself a campaign volunteer for Controller Augustine?

MS. KENNEDY:

No.

MR. GRECO:

While employed by Controller Augustine, did she ever direct you to perform any campaign-related duties?

MS. KENNEDY:

Yes.

MR. GRECO:

Let us start with the construction industry. Did Controller Augustine ever ask you to do any campaign-related tasks pertaining to individuals in the construction industry?

MS. KENNEDY:

With relation to the construction industry, there was a time when Controller Augustine was going to be taking a class at Harvard and she solicited the construction industry to pay for that class.

MR. GRECO:

Did she ask you to make any contacts, either telephone or live, to any individuals to further that goal?

MS. KENNEDY:

To make sure that she could pick up the money or that the money was coming in, yes.

MR. GRECO:

Please describe, specifically, what you were asked to do by Controller Augustine and what you did. In other words, just describe what happened.

MS. KENNEDY:

She would ask me to call various companies.

MR. GENTILE:

Senator Amodei, can I interpose an objection to ask for some sort of a time reference, something that tells us when this occurred?

SENATOR AMODEI:

Mr. Greco, if you could please incorporate that into your line of questioning.

MR. GRECO:

In terms of the requests made by Controller Augustine that you just testified to, can you give us a month estimate?

MS. KENNEDY:

Yes. She attended Harvard during the month of July, 2001, so I am going to say this occurred during the months of May and June, 2001.

MR. GRECO:

All right, please tell the Senators exactly what she asked you to do, and then, what you did.

MS. KENNEDY:

She asked me to call various construction companies. She gave me contact names and phone numbers to ask them if the check was ready. I would be given the amount, if they had confirmed an amount with her, and she asked me to confirm a time when she could come by and pick it up.

SENATOR AMODEI:

Mr. Greco, I think also Mr. Gentile's concern was regarding days of the week and hours of the day when these things transpired.

MR. GRECO:

Yes, Senator Amodei, I am getting there. When the first request in that regard was made to you by Controller Augustine, was that made during normal business hours?

MS. KENNEDY:

Yes.

MR. GRECO:

Did you make those contacts during normal business hours?

MS. KENNEDY:

Yes, I did.

MR. GRECO:

When Controller Augustine made those requests, did she ever make any specific requests in terms of how rapidly she wanted the tasks performed?

MS. KENNEDY:

In relation to her schedule, yes. She would say, "I'm going to be driving by there. I need to know whether I can pick that check up now or during this timeframe."

MR. GRECO:

Was that said to you during normal business hours?

MS. KENNEDY:

Yes.

MR. GRECO:

Did you make any other contacts within the construction industry beyond the types of contacts you just talked about?

MS. KENNEDY:

No.

MR. GRECO:

How many total contacts, either by telephone or live, would you say you made pursuant to her request?

MS. KENNEDY:

No more than five.

MR. GRECO:

Were all those made, though, by you during office hours?

MS. KENNEDY:

Yes.

MR. GRECO:

Let us move next to spreadsheet tasks. Did Controller Augustine ever direct you to do any campaign-related work that involved spreadsheets?

MS. KENNEDY:
Yes.

MR. GRECO:
Can you recall when?

MS. KENNEDY:
I believe it was around October, 2000, that I received my first instruction.

MR. GRECO:
What specific instruction did Controller Augustine give you?

MS. KENNEDY:
There were reports that were due around that period to the Secretary of State's Office.

MR. GRECO:
Were those campaign-related reports?

MS. KENNEDY:
Yes.

MR. GRECO:
Continue.

MS. KENNEDY:
We actually took a walk downstairs to the basement where the reports were housed. She wanted to show me where they were. Then we went back upstairs. The reports were on disks. The disks were brought to me by the Deputy Chief Controller, and I put them into the computer at my desk. I was given a manila folder and inside the folder were copies of checks.

MR. GRECO:
Let me stop you there. Who gave you the manila folder?

MS. KENNEDY:
Controller Augustine.

MR. GRECO:
All right. There were checks inside the folders. Is that correct?

MS. KENNEDY:
Correct. Well, no, there were copies of checks inside the folders.

MR. GRECO:
Did you glance at any of the copies of the checks?

MS. KENNEDY:
Yes.

MR. GRECO:
Did you notice whom any of the checks were made out to?

MS. KENNEDY:
They were all made out to "the Committee to Elect Kathy Augustine."

MR. GRECO:
Every single check was made out to the Committee to Elect Kathy Augustine; correct?

MS. KENNEDY:
Yes.

MR. GRECO:

Once you were given the file and the copies of the checks by Controller Augustine, what specifically did she have you do? Tell us physically what you did. What data from the checks did you enter and in what type of file or program did you enter it?

MS. KENNEDY:

The files were all on a disk. I want to say they were an Excel spreadsheet, but I am not quite certain it was Excel. It could have been Access, not Access, but some sort of Word document.

MR. GRECO:

That is fine. You do remember entering the data into a spreadsheet? Is that correct?

MS. KENNEDY:

Yes.

MR. GRECO:

Did you do that during normal business hours?

MS. KENNEDY:

Yes.

MR. GRECO:

How many separate times did you enter data into the spreadsheet?

MS. KENNEDY:

I would say no less than three, no more than five.

MR. GRECO:

On what computer did you enter the data? Where was the spreadsheet located?

MS. KENNEDY:

The spreadsheet was located on the disk.

MR. GRECO:

You made actual computer entries to add more data. Is that correct?

MS. KENNEDY:

Yes.

MR. GRECO:

Was that on your computer at work or did you go home and do that?

MS. KENNEDY:

No, it was always at work.

MR. GRECO:

You said a spreadsheet. Did you enter the amount of the checks on the spreadsheet?

MS. KENNEDY:

Yes, I did.

MR. GRECO:

Did you enter any other relevant data of the checks, for instance, date, name of contributor, etc.?

MS. KENNEDY:

Yes, I did.

MR. GRECO:

Both of those?

MS. KENNEDY:
Yes.

MR. GRECO:
For each check?

MS. KENNEDY:
Right.

MR. GRECO:
Now, you mentioned the Secretary of State's reports. In addition to entering the spreadsheet data, did you actually assist in compiling a report or a portion of a report that would be filed with the Secretary of State's Office?

MS. KENNEDY:
I believe that those reports I worked on were all for the Secretary of State's Office.

MR. GRECO:
The spreadsheet was part of the report that would ultimately be filed with the Secretary of State?

MS. KENNEDY:
That is correct.

MR. GRECO:
Did you ever actually complete the report that needed to be filed with the Secretary of State's Office?

MS. KENNEDY:
The information in the folder that I had available to me, I loaded whatever I had onto that report.

MR. GRECO:
Let me ask you this way. Did you ever actually print out a completed report prior to the time you left service there?

MS. KENNEDY:
I do not remember if I printed one out.

MR. GRECO:
Did you do all of the things we have talked about thus far during normal business hours?

MS. KENNEDY:
Yes.

MR. GRECO:
What month did you say you left the Controller's Office?

MS. KENNEDY:
I left September 14, 2001.

MR. GRECO:
Did you resign or were you terminated?

MS. KENNEDY:
I resigned.

MR. GRECO:
Why did you resign?

MS. KENNEDY:
I resigned because it was very hard to work for Controller Augustine.

MR. GRECO:

Please elaborate. Why? Ms. Kennedy, is this difficult for you to sit here in this very formal proceeding and give testimony?

MS. KENNEDY:

Yes, it is.

MR. GRECO:

You are under oath, and you are being asked a specific question. Let me try it this way. Did you feel it was right to be directed to do campaign work during state hours?

MS. KENNEDY:

Yes.

MR. GRECO:

Did you feel it was right to do that?

MS. KENNEDY:

Oh, no.

MR. GRECO:

Is that one of the reasons you resigned?

MS. KENNEDY:

That would be one of the reasons why I resigned.

MR. GRECO:

Having her direct you to do that, did that bother you?

MS. KENNEDY:

Yes, and I heard Controller Augustine ...

MR. GENTILE:

Objection. While I recognize, again, the rule of evidence deals with: is it pertinent, is it relevant, I think we all know, especially this body knows because it passed the Nevada Evidence Code, that hearsay is inherently untrustworthy. At a minimum, before anything should be testified to, if you are going to accept hearsay, there should be a foundation laid in terms of "Where were you? Who did you hear say it?" My objection is one of hearsay, but it is also one of relevance; because without a foundation, this is marginally relevant. Rumor, is what it is.

SENATOR AMODEI:

I appreciate that, Mr. Gentile. Mr. Greco, would you please respond. I am not certain where the witness was heading. It might have been a statement the Controller had made or not made.

MR. GRECO:

Yes, it was.

SENATOR AMODEI:

Would you please, for our edification, respond to the objection?

MR. GRECO:

The only statements asked for thus far, other than her own, were the statements of the Controller, and as you just alluded to, even if this were an actual trial with the evidence code applicable, if the party opponent offers a statement of the other party against them, it is deemed not hearsay. There are no hearsay issues. We are not going to get into what third parties said through this witness. I would note, however, certainly with later witnesses, the State and the Defense are going to be getting into some hearsay statements, but we are not there yet. I would also note, I thought it humorous that Mr. Gentile was the first lawyer who said, "I am laboring at a disadvantage. I thought if any lawyer in this proceeding said that, it would be me given that I was appointed two and one-half weeks ago.

SENATOR AMODEI:

Without indicating what is going to happen with further witnesses, Ms. Kennedy, I am not sure where you were heading with your answer. Please respond to the question. However, keep in mind if you are going to indicate matters you heard from other people, other than the Controller, if Mr. Gentile objects, there is a good chance that this will be sustained.

MR. GRECO:

Did you feel it was right to be directed or asked to do campaign work on state time? I do not know if you ever gave an answer to that question.

MS. KENNEDY:

I do not feel it is correct.

MR. GRECO:

Were there any other reasons besides having to do the campaign work that caused you to resign?

MS. KENNEDY:

It was very difficult to work for Controller Augustine. The last thing I remember, she screamed at me one day over the telephone in her car because I had told the Assistant Controller about an appointment for them first instead of telling Controller Augustine about the appointment first. Controller Augustine also talked to me about campaigning in months coming up. She really wanted me to campaign with her out in Elko. She could hardly wait to show me the scenery and have me meet people out there. I knew I did not want to go there.

MR. GRECO:

There are some exhibit binders in front of you. Would you please open the first binder and look at Exhibit P-7. Do you see the date-stamped pages on the bottom of the page? The stamped digits?

MS. KENNEDY:

Yes.

MR. GRECO:

On Exhibit P-7, I am going to ask you to refer your attention specifically to date-stamped pages 174 to 179. Refer to those pages, Ms. Kennedy, and when you get to them, take a few moments and look them over. Have you had a chance to look over those pages?

MS. KENNEDY:

Yes, I have.

MR. GRECO:

Let me ask you in terms of the general format, do you recognize this report format?

MS. KENNEDY:

Yes, I do.

MR. GRECO:

Where from?

MS. KENNEDY:

This was one of the reports I worked on.

MR. GRECO:

You said earlier, you were not sure whether the actual report was filed before you left; correct?

MS. KENNEDY:

That is correct.

MR. GRECO:

Do these pages reflect the types of entries you were asked to make by Controller Augustine?

MS. KENNEDY:

Yes.

MR. GRECO:

Sitting here several years later, do you remember any of the specific entries on those pages?

MS. KENNEDY:

Yes, I do.

MR. GRECO:

Give me a page number first so I can display it on the screen. Use the date-stamp number at the bottom.

MS. KENNEDY:

One-seventy-four.

MR. GRECO:

Please tell us which specific entry or entries you recognize.

MS. KENNEDY:

I recognize Mary Burgoon.

MR. GRECO:

Do you recognize any other entries on that page?

MS. KENNEDY:

No, I do not, but the checks that I entered were for the year 2000.

MR. GRECO:

Referring to Exhibit P-7 pages, 175, 176, 177, 178, and 179, do you recognize any of the actual names on those pages or the amounts?

MS. KENNEDY:

Well, I recognize Jeannine Coward. I recognize Nancy ...

MR. GRECO:

Let me stop you there. You need to say the page reference. What is the date-stamp number on that page?

MS. KENNEDY:

One-seventy-five.

MR. GRECO:

Please wait a moment. Do you recognize the name Jeannine Coward?

MS. KENNEDY:

Right.

MR. GRECO:

What other names do you recognize on that page?

MS. KENNEDY:

Nancy Doring.

MR. GRECO:

Any others?

MS. KENNEDY:

I do not remember them.

MR. GRECO:

Proceeding through the next few pages, if you see any others that you recognize tell me the page number first, and then, give me a moment so that I can place it on the screen.

MS. KENNEDY:

Page 176, Ruth Halvorson.

MR. GRECO:

Please spell that.

MS. KENNEDY:

h-a-l-v-o-r-s-o-n.

MR. GRECO:

Do you recognize any other names on that page?

MS. KENNEDY:

Mimi Jobe.

MR. GRECO:

Any others?

MS. KENNEDY:

No.

MR. GRECO:

Same question for the next page.

MS. KENNEDY:

Page 177, I recognize Sally Miller. I recognize Pamela Ferente, Velma Rowe.

MR. GRECO:

The next, page 178?

MS. KENNEDY:

I recognize Lela Rude.

MR. GRECO:

Any others?

MS. KENNEDY:

Yes, Barbara Vocanovich.

MR. GRECO:

Any others on that page?

MS. KENNEDY:

No.

MR. GRECO:

Moving next to page 179, do you recognize any of the names on that page?

MS. KENNEDY:

I believe I recognize World Curio, but there again, it is after I left.

MR. GRECO:

As to any of the names you said you specifically remembered, do you remember entering the data that appears on the spreadsheet for those particular individuals?

MS. KENNEDY:

Yes, I do.

MR. GRECO:

How many on the list we just went over? Just give me an approximation—most of them or all of them?

MS. KENNEDY:

I am sorry. I do not understand your question.

MR. GRECO:

We started by asking you if remember making the actual entries, and as we went on, you said you knew, or recognized, the names of many of the others. What I am asking you is, as to all those names you recognize, do you believe that you made entries on the spreadsheet for those names based upon the check information, or the copied checks, given to you by Controller Augustine?

MS. KENNEDY:

Yes.

MR. GRECO:

Five or six pages are enough for now. I am going to move on to another topic. Did you make all of those entries in the spreadsheet you just described via their names, during normal office hours?

MS. KENNEDY:

Yes.

MR. GRECO:

Let us move, next, to the topic of soliciting campaign contributions. Did Controller Augustine ever direct you or ask you to solicit campaign contributions?

MS. KENNEDY:

No.

MR. GRECO:

Were you ever asked to compile lists of contributors for fund-raising events?

MS. KENNEDY:

Yes.

MR. GRECO:

By whom?

MS. KENNEDY:

Controller Augustine.

MR. GRECO:

Can you give us a rough timeframe; what month are we talking about?

MS. KENNEDY:

It was just as I was leaving; I believe it was just as I was leaving. It was August and September, 2001.

MR. GRECO:

What specifically did Controller Augustine ask you to do?

MS. KENNEDY:

There was a fund-raiser in the Las Vegas area. There was a list of people invited by the company putting on the fundraiser, and she asked me to put together a list of those people. The list was from the company.

MR. GRECO:

Was this a campaign-related fund-raising event?

MS. KENNEDY:
Yes, it was.

MR. GRECO:
Did you actually do what she asked you to do?

MS. KENNEDY:
Yes.

MR. GRECO:
Tell us, physically, how you went about that. What did you do?

MS. KENNEDY:
I believe that I was given a list, or I was asked to call the company and get the information from the company. They either faxed it to me or sent it to me in an e-mail.

MR. GRECO:
Once you received that information, did you compile it in some form, report, file or piece of paper?

MS. KENNEDY:
We had it in our office.

MR. GRECO:
What I am asking, and you need to be specific, Ms. Kennedy, did Controller Augustine ask you to place it on a computer file? Did she ask you to type it on a typewriter? What were you asked to do in terms of the format this information was placed in?

MS. KENNEDY:
I was asked to create a list on my computer on a spreadsheet. I used a spreadsheet.

MR. GRECO:
Was that your office computer in the Controller's Office?

MS. KENNEDY:
Yes, it was.

MR. GRECO:
By the way, do you know the name of the administrative assistant who assumed your duties after you resigned?

MS. KENNEDY:
Yes.

MR. GRECO:
What was her name?

MS. KENNEDY:
Lela Rude.

MR. GRECO:
Do you know, to your personal knowledge, how long Ms. Rude worked there?

MS. KENNEDY:
I believe it was three weeks.

MR. GRECO:
Do you know the name of the administrative assistant who took over after Ms. Rude lasted three weeks?

MS. KENNEDY:
Yes.

MR. GRECO:
Who was that?

MS. KENNEDY:
Jennifer Normington.

MR. GRECO:
When you were leaving and Ms. Rude was coming on, was she assigned the same computer you had utilized as Controller Augustine's administrative assistant, if you know?

MS. KENNEDY:
I do not know.

MR. GRECO:
Fair enough. Did you have to do any campaign-related work ever after 5 p.m.?

MS. KENNEDY:
From time to time, I was invited by Controller Augustine to attend certain events with her. It was the Nevada Day parade; she asked me to ride with her in the car, and I felt privileged and was proud to have that opportunity. Before the parade, I went to the pancake breakfast with her, and she had brought with her some lapel labels, stickers saying "Kathy Augustine State Controller," and she wanted me to go pass them out at the door. I felt uncomfortable doing that.

MR. GRECO:
Did you know you were going to do that when you got into the vehicle?

MS. KENNEDY:
No.

MR. GRECO:
Did you ever have to do any of the other tasks that Controller Augustine assigned you, which you described earlier, after 5 p.m.?

MS. KENNEDY:
I was asked to attend events when she could not attend certain events, and she wanted to be represented, and no one else in the office was going to attend the event. There were times when I did not offer, but I did attend the event for her.

MR. GRECO:
Were you ever paid for any campaign-related work that you did after 5 p.m.?

MS. KENNEDY:
I do not remember ever being paid for any of that work. I was paid for 16 hours of overtime much later, much past the time I had worked those 16 hours of overtime, but I do not remember that those 16 hours were related to anything that I did to represent her after work.

MR. GRECO:
You testified earlier that you did not consider yourself a campaign volunteer; correct?

MS. KENNEDY:
That is correct.

MR. GRECO:
Would you please explain to this body, then, why you did the work for Controller Augustine?

MS. KENNEDY:
There were times when I thought it was a privilege to be there so I did attend. There were times when I really did not want to be there, and I felt I had been really forced into being there; I did not want to be there. There were both times.

MR. GRECO:

Ms. Kennedy, are you uncomfortable testifying here about these matters?

MS. KENNEDY:

Yes, I am.

MR. GRECO:

Do you recall meeting with myself and my investigator for a pretrial conference approximately a week ago?

MS. KENNEDY:

Yes.

MR. GRECO:

Do you remember stating there that you "had no choice"?

MS. KENNEDY:

There were times when I had no choice, absolutely.

MR. GRECO:

I am not asking you about your entire tenure. I am asking you, were there times when she asked you to do campaign-related activities that you felt you had no choice?

MS. KENNEDY:

Absolutely, the reports, I had no choice.

MR. GRECO:

Please explain why you feel you had no choice.

MS. KENNEDY:

My job was in jeopardy at all times while I was there. I knew that. The first two weeks I was there I was told by Controller Augustine that "Jeannine was right. I should have hired a 25-year old."

I went right to the State Department of Personnel, and I was told there was nothing that could be done. Controller Augustine was an elected official.

MR. GRECO:

That is fine; you have answered my question. Let me move to another topic. You said earlier that your position changed from classified to unclassified during your tenure. Is that correct?

MS. KENNEDY:

Yes.

MR. GRECO:

Once you became unclassified, did you have any worries in terms of what would happen if you refused to do her campaign requests?

MS. KENNEDY:

I would have been fired.

MR. GRECO:

Is that one of the reasons you did the requests?

MS. KENNEDY:

Absolutely.

MR. GRECO:

While you were at the Controller's Office, did Controller Augustine ever conduct any sales of jewelry or precious stones?

MS. KENNEDY:

Yes.

MR. GRECO:

Can you recall approximately what month that occurred?

MS. KENNEDY:

I am thinking it was around October, 2002.

MR. GRECO:

Please tell the Senators how this sale was transacted.

MS. KENNEDY:

Controller Augustine had met a person who purchased pearls in the Asian areas of the world and wanted to sell them.

MR. GRECO:

Did that person, or did some person, actually sell the pearls at the Controller's Office?

MS. KENNEDY:

Yes.

MR. GRECO:

You gave us a rough estimate of the month. Can you recall what time of day this sale occurred?

MS. KENNEDY:

It occurred during the noon hours between 11 a.m. and 1 p.m.

MR. GRECO:

Was the total time of the sale approximately two hours?

MS. KENNEDY:

Correct.

MR. GRECO:

Was Controller Augustine present at the sale?

MS. KENNEDY:

Yes.

MR. GRECO:

Was the woman who delivered the pearls present at the sale?

MS. KENNEDY:

Yes.

MR. GRECO:

Did the two of them sell very many pearls?

MS. KENNEDY:

A fair amount.

MR. GRECO:

Do you know where the proceeds of that pearl sale went?

MS. KENNEDY:

I remember after the pearl sale was completed, hearing ...

MR. GRECO:

Let me stop you there. It is important whether you hear it from Controller Augustine or from some other person. Did you hear what you are about to testify to from Controller Augustine?

MS. KENNEDY:

Yes, I did.

MR. GRECO:

Did she tell you where the proceeds went?

MS. KENNEDY:

Ten percent of the proceeds of the sale went to her campaign fund.

MR. GRECO:

Where did the other 90 percent go?

MS. KENNEDY:

To the person who was selling the pearls.

MR. GRECO:

Would you please open up Binder No. 1 again? Please go to Exhibit P-10, and specifically, go to date-stamped page 306 of Exhibit P-10. Let me know when you are at that page.

MS. KENNEDY:

I am.

MR. GRECO:

You have not talked about this document. Do you recognize this document?

MS. KENNEDY:

Yes, I do.

MR. GRECO:

What is it?

MS. KENNEDY:

It is a report of campaign contributions.

MR. GRECO:

Is this similar to the report you were testifying about before?

MS. KENNEDY:

Correct, it is.

MR. GRECO:

Do you recognize any names on that page?

MS. KENNEDY:

Yes, I do.

MR. GRECO:

Whose name do you recognize?

MS. KENNEDY:

I recognize several names. I recognize Casey Peterson.

MR. GRECO:

Where do you recognize the name Casey Peterson from?

MS. KENNEDY:

At the bottom of the page.

MR. GRECO:

Where did you know Ms. Casey Peterson from?

MS. KENNEDY:

Casey Peterson is the person who was selling the pearls.

MR. GRECO:

Casey Peterson was the woman who sold the pearls along with Controller Augustine; is that correct?

MS. KENNEDY:

That is correct.

MR. GRECO:

She also, according to this chart, was a campaign contributor for Controller Augustine; correct?

MS. KENNEDY:

That is correct.

MR. GRECO:

Can you, specifically, remember whether you were the one who logged in the information for Casey Peterson into this report?

MS. KENNEDY:

Yes, I did.

MR. GRECO:

Did you ever complain to anyone in the Controller's Office about having to do campaign-related work during office hours?

MS. KENNEDY:

Yes, I did.

MR. GRECO:

Who did you complain to?

MS. KENNEDY:

I complained to the Assistant Controller, Jeannine Coward.

MR. GRECO:

Did you ever complain to any offices or officials outside the Controller's Office?

MS. KENNEDY:

I believe I talked to the State Personnel Office.

MR. GRECO:

Was the situation ever remedied while you were still employed?

MS. KENNEDY:

No.

MR. GRECO:

That is all.

SENATOR AMODEI:

Cross-examination, Mr. Gentile?

MR. GENTILE:

Ms. Kennedy, you became an unclassified employee on July 1, 2001. Am I correct?

MS. KENNEDY:

That is correct.

MR. GENTILE:

Prior to that, you were a classified employee.

MS. KENNEDY:
That is correct.

MR. GENTILE:
When you became an unclassified employee, you got a raise; did you not?

MS. KENNEDY:
I did get a raise.

MR. GENTILE:
Do you recall how much?

MS. KENNEDY:
No, I do not recall.

MR. GENTILE:
Prior to your working for the State Controller, had you been in state government before?

MS. KENNEDY:
Yes, for one month.

MR. GENTILE:
One month?

MS. KENNEDY:
Yes.

MR. GENTILE:
Where did you work for that one month?

MS. KENNEDY:
I worked for the State of Nevada Department of Motor Vehicles (DMV).

MR. GENTILE:
You worked a month there. Then, you went to work on Valentine's Day, 2000, for the State Controller.

MS. KENNEDY:
That is correct.

MR. GENTILE:
You remained there until September 14, 2001.

MS. KENNEDY:
That is correct.

MR. GENTILE:
So for the month of July and the month of August and the first two weeks of the month of September, 2001, you were an unclassified employee.

MS. KENNEDY:
That is correct.

MR. GENTILE:
That is about ten weeks; correct?

MS. KENNEDY:
If you say so.

MR. GENTILE:
Do you recall that it was the month of July, the first month that you were unclassified, the month of July, 2001, that Controller Augustine went to Harvard for a month?

MS. KENNEDY:

That is correct.

MR. GENTILE:

Just prior to that, on June 20, 2001, you received your overtime. Do you recall that?

MS. KENNEDY:

I do not recall when I received it.

MR. GENTILE:

Okay. Do you recall that Controller Augustine was not the person who signed off on your overtime voucher?

MS. KENNEDY:

No, I do not.

MR. GENTILE:

Would you look at Exhibit D-9 that should be in the red binder in front of you? There are two pages to that exhibit. Do you see that?

MS. KENNEDY:

Yes.

MR. GENTILE:

Does your signature appear on both of those pages or just on the first page?

MS. KENNEDY:

Just on the first page.

MR. GENTILE:

The first page indicates, essentially, when you became unclassified. You became unclassified July 1, 2001. Do you see that in the upper right-hand corner in a box?

MS. KENNEDY:

Yes, I do.

MR. GENTILE:

The second page is the special paid-time adjustment sheet. Do you see that?

MS. KENNEDY:

I do.

MR. GENTILE:

Does that refresh your memory that when you got the overtime pay, it was a few days after you left the office? You were no longer working there.

MS. KENNEDY:

That is not correct.

MR. GENTILE:

It is dated, I believe, down on the bottom it says 9/18/01.

MS. KENNEDY:

It does say that.

MR. GENTILE:

All right. When did you get your overtime?

MS. KENNEDY:

I believe I was paid 16 hours of overtime prior to June 1, 2001.

MR. GENTILE:
That is your memory?

MS. KENNEDY:
That is my memory.

MR. GENTILE:
It was prior to becoming unclassified?

MS. KENNEDY:
Yes, and this ...

MR. GENTILE:
There is no question pending right now, Ms. Kennedy. If I have any questions about the document, I will ask you.

MS. KENNEDY:
Okay.

MR. GENTILE:
You said one of your responsibilities was keeping the appointment calendar of the State Controller. Am I correct?

MS. KENNEDY:
That is correct.

MR. GENTILE:
Would you look at Exhibit D-23 that is before you? Do you see it, Ms. Kennedy?

MS. KENNEDY:
Yes, I do.

MR. GENTILE:
Would you look at that, and tell me if you recognize your handwriting in it?

MS. KENNEDY:
Yes, I do. I recognize my handwriting.

MR. GENTILE:
Does your handwriting appear throughout this exhibit until the time that you left the office? I am not saying that it is all your handwriting, but does your handwriting appear in it until the month of September?

MS. KENNEDY:
Yes.

MR. GENTILE:
In fact, I think you said you left on September 14. Let us look at the date of September 14, and tell me if your handwriting actually appears on this even later than that.

MS. KENNEDY:
Yes, my handwriting does appear past September 14.

MR. GENTILE:
That makes sense; because when you are making appointments for someone, the appointments are into the future; are they not?

MS. KENNEDY:
That is correct.

MR. GENTILE:

One of your jobs was to make appointments so that the State Controller knew where she had to be.

MS. KENNEDY:

Or, I would record the appointment that she had made.

MR. GENTILE:

Exactly, either you made the appointment for her, or she made the appointment and told you, and it went into this book.

MS. KENNEDY:

That is correct.

MR. GENTILE:

Among the things you could tell from looking at this book is when the State Controller was out of Carson City, perhaps, even out of the State. Am I right?

MS. KENNEDY:

There are instances where you can tell that Controller Augustine is out of the office.

MR. GENTILE:

If we look at the month of July, there are entries in there with respect to the Government Summit 2001. Am I right? In other words, the entries reflect that Controller Augustine is not in the State of Nevada that she is in Massachusetts.

MS. KENNEDY:

Yes.

MR. GRECO:

Senator Amodei, could I ask that he narrow it down a little bit with the day so the witness knows what he is looking at because I do not think she does.

MR. GENTILE:

If a specific day becomes important, I will do that. Right now, I am just having her take a look through this to see if it is her handwriting and if she recalls some things. With respect to that program at Harvard, that had nothing at all to do with the campaign, did it?

MS. KENNEDY:

I do not know that.

MR. GENTILE:

You do not know what it was about?

MS. KENNEDY:

I did not say that.

MR. GENTILE:

Okay.

MS. KENNEDY:

I answered your question.

MR. GENTILE:

Okay. At the time she attended Harvard University, it was for a month, was it not?

MS. KENNEDY:

Yes.

MR. GENTILE:

It was an intensive program at which state-elected officials attended?

MS. KENNEDY:

It was an intensive program and that is all I know.

MR. GENTILE:

Okay. You said that you spoke with the Controller, and she asked you to call certain people to see if a check or checks were ready for her relating to this Harvard program. Am I correct?

MS. KENNEDY:

That is correct.

MR. GENTILE:

You would make those calls?

MS. KENNEDY:

Yes.

MR. GENTILE:

It was in relation to, if I understand your testimony, the State Controller telling you that she was, essentially, in the neighborhood or going by that particular area, and she wanted to know if she could go there and pick up the check at that time.

MS. KENNEDY:

That is correct.

MR. GENTILE:

You said that you made no more than five such contacts. Am I right?

MS. KENNEDY:

That is what I recall.

MR. GENTILE:

But, you did them all during office hours.

MS. KENNEDY:

That is correct.

MR. GENTILE:

If I understand you now, you are saying you do not know if that was campaign-related or not.

MS. KENNEDY:

I do not know. I know that money was coming in for her trip and the cost of the class.

MR. GENTILE:

You are not saying it was campaign related?

MS. KENNEDY:

I do not know. I just know it was coming in for the class.

MR. GENTILE:

Did you see any of the checks?

MS. KENNEDY:

I believe I did.

MR. GENTILE:

The one you saw or those you saw were made out to Harvard, were they not?

MS. KENNEDY:

I do not believe they were.

MR. GENTILE:

You do not remember?

MS. KENNEDY:

Oh no, I do not believe they were made out to Harvard.

MR. GENTILE:

Okay. Are you saying they were made out to Kathy Augustine?

MS. KENNEDY:

I believe they were made out to Kathy Augustine.

MR. GENTILE:

Did you deposit these checks?

MS. KENNEDY:

No, I did not.

MR. GENTILE:

But you are saying you believe they were made out to Kathy Augustine?

MS. KENNEDY:

Yes, I do.

MR. GENTILE:

You said in October of the year 2000, you were still a classified employee; right?

MS. KENNEDY:

I am sorry, say that again.

MR. GENTILE:

In October, 2000, you were classified?

MS. KENNEDY:

Correct.

MR. GENTILE:

It was in October, 2000, that I think you said you went downstairs with Controller Augustine, and she showed you where certain disks were located.

MS. KENNEDY:

No, she showed me where certain forms were located.

MR. GENTILE:

That was at the Secretary of State's Office?

MS. KENNEDY:

Correct.

MR. GENTILE:

You went downstairs to the Secretary of State's Office.

MS. KENNEDY:

Correct.

MR. GENTILE:

You did, ultimately, obtain disks relating to the Secretary of State forms?

MS. KENNEDY:

Yes, I did.

MR. GENTILE:

Those were placed on your computer?

MS. KENNEDY:

They were handed to me by the Chief Deputy Controller, and I put them into the computer at my desk to work on them.

MR. GENTILE:

You said you entered data into those forms. You think it was an Excel spreadsheet or perhaps just a word processing document.

MS. KENNEDY:

One or the other.

MR. GENTILE:

You entered data not less than three or more than five times.

MS. KENNEDY:

Correct.

MR. GENTILE:

Each time you did that, you had the numbers in advance and the data that needed to be entered?

MS. KENNEDY:

Yes. I had a folder with copies of the checks in that folder.

MR. GENTILE:

What I am getting at is that, you have said before you spent in total, the whole period of time that you worked for Controller Augustine, not more than five hours working on campaign-related matters on state time. Is that right?

MS. KENNEDY:

I believe that, probably, it was between five and ten hours.

MR. GENTILE:

All right. But when you spoke with the Attorney General's investigator, you told him it was not more than five hours; did you not?

MS. KENNEDY:

Probably, yes.

MR. GENTILE:

That was certainly a lot closer to the event than today's; was it not?

MS. KENNEDY:

I do not see that there is a difference.

MR. GENTILE:

Back in August, 2003, you remembered it being not more than five hours, but now, you are saying it was between five and ten hours. Am I right?

MS. KENNEDY:

I honestly do not see the difference.

MR. GENTILE:

I am not asking if you see the difference. I am asking you if you told the investigator it was less than five hours in August 2003, and now, you are telling the Senate that it was more than five hours.

MS. KENNEDY:

It was between five and ten hours.

MR. GENTILE:

Would you look at Mr. Greco's Exhibit P-7, please. Do you have it in front of you?

MS. KENNEDY:

Yes, I do.

MR. GENTILE:

Is it open to date-stamp 000175?

MS. KENNEDY:

It is now.

MR. GENTILE:

You said that you recognized some names.

MS. KENNEDY:

Yes.

MR. GENTILE:

You said that you recognized the names; I think you said, Jeannine Coward and Nancy Doring. Am I right?

MS. KENNEDY:

Yes.

MR. GENTILE:

You recognized those names because you know those people?

MS. KENNEDY:

No, I recognize, and I do know Jeannine Coward.

MR. GENTILE:

You mean yes?

MS. KENNEDY:

Yes, I do know Jeannine Coward. However, I recognize them from recalling working on the report.

MR. GENTILE:

I see. You worked on this report in the year 2000, and now you remember entering their names on this report four plus years ago. Right?

MS. KENNEDY:

Right.

MR. GENTILE:

In between those two names, there is the name "Judith Cox." Do you know a woman named Judith Cox?

MS. KENNEDY:

Yes, I do.

MR. GENTILE:

Did you know her in the year 2000?

MS. KENNEDY:

Yes, I did.

MR. GENTILE:

How did you know her?

MS. KENNEDY:

She worked for the Lieutenant Governor's Office.

MR. GENTILE:
What did she do there?

MS. KENNEDY:
I do not really know what she did.

MR. GENTILE:
I guess, today, you do not remember Judith Cox and making this entry with respect to Judith Cox back then.

MS. KENNEDY:
Now, that I see that, yes, I do. I, absolutely, do.

MR. GENTILE:
That was just an oversight on your part?

MS. KENNEDY:
Yes, it was.

MR. GENTILE:
You have that document in front of you. You left the State Controller's Office September 14, 2001.

MS. KENNEDY:
Yes.

MR. GENTILE:
It sounds like you were not happy when you left the office. Am I right?

MS. KENNEDY:
That is correct.

MR. GENTILE:
Would you turn to date-stamp 000200 in that document?

MS. KENNEDY:
All right. I have it.

MR. GENTILE:
You were gone by June, 2002; you had been gone from the office for nine months already; right?

MS. KENNEDY:
Correct.

MR. GENTILE:
Would you look and tell me; there is a Susan Kennedy named as having given a contribution to Controller Augustine on June 2, 2002, for \$40.

MS. KENNEDY:
That is correct.

MR. GENTILE:
Was that you?

MS. KENNEDY:
Yes.

MR. GENTILE:
Oh, thank you.

MS. KENNEDY:

You are welcome.

MR. GENTILE:

I think you said that you were asked to compile a list of contributors, and it was just as you were leaving the office, you think, in August or September of 2001. Do you remember saying that this morning?

MS. KENNEDY:

I do.

MR. GENTILE:

It was your memory that it was a fund-raiser in Las Vegas, and the list of invitees was sent by the company.

MS. KENNEDY:

I do believe that.

MR. GENTILE:

Can you recall, at this time, what company sent the list?

MS. KENNEDY:

I do not know what page this is on, but there is a company by the name of Ostrovsky & Associates. I believe that was the company.

MR. GENTILE:

You were compiling that list in August or September?

MS. KENNEDY:

As I recall, yes.

MR. GENTILE:

Did you also compile a list at that time for the Women's Executives, a meeting that was to take place in Lake Tahoe?

MS. KENNEDY:

I believe there was a list that was already created.

MR. GENTILE:

You created it?

MS. KENNEDY:

No.

MR. GENTILE:

Oh. You received it created?

MS. KENNEDY:

It was already created, yes.

MR. GENTILE:

Was it created in digital format so that it was on your computer?

MS. KENNEDY:

Yes.

MR. GENTILE:

Somebody handed you a disk?

MS. KENNEDY:

I am sorry. I just do not remember.

MR. GENTILE:

You said that from time to time you were invited to attend events with Controller Augustine.

MS. KENNEDY:

Yes.

MR. GENTILE:

The one you mentioned was Nevada Day, 2000. Am I right?

MS. KENNEDY:

It was Nevada Day, 2000.

MR. GENTILE:

It would not have been 2001 because you were already gone by then; right?

MS. KENNEDY:

Correct.

MR. GENTILE:

You said you felt privileged to attend that with her and ride in the car in the parade.

MS. KENNEDY:

Absolutely, I did.

MR. GENTILE:

You did not consider riding in that parade a part of this five hours or ten hours I take it?

MS. KENNEDY:

No.

MR. GENTILE:

When you would attend these events, there were other people in the office that were also invited to attend events. Am I correct?

MS. KENNEDY:

Yes.

MR. GENTILE:

You never expressed to Controller Augustine that you felt like you were being forced to attend the event; did you?

MS. KENNEDY:

I did not.

MR. GENTILE:

You were classified on Nevada Day, 2000, so you did not express it then, and you did not express it later even when you were unclassified. Am I correct?

MS. KENNEDY:

That is correct.

MR. GENTILE:

After you left the Controller's Office, you went to work at the Public Employees' Benefits Program?

MS. KENNEDY:

That is correct.

MR. GENTILE:

Did you also get a raise there? In other words, did you make more money than when you were at the Controller's Office?

MS. KENNEDY:

I do not remember that.

MR. GENTILE:

You are not working there anymore. Where are you working now?

MS. KENNEDY:

I work for the Department of Human Resources.

MR. GENTILE:

Are you making more there than when you were with Public Employees?

MS. KENNEDY:

Yes, I am.

MR. GENTILE:

During the time you were, by the way, you were classified at the Public Employees?

MS. KENNEDY:

That is correct.

MR. GENTILE:

You are classified now?

MS. KENNEDY:

That is correct.

MR. GENTILE:

You were classified for all but 10 or 11 weeks of the time that you worked at the State Controller's Office?

MS. KENNEDY:

That is correct.

MR. GENTILE:

Would it be fair to say that you feel more secure in your job when you have a classified position?

MS. KENNEDY:

I think it would be fair to say that I would feel comfortable in any position as long as I had a boss who I felt was not going to fire me.

MR. GENTILE:

During the time, you worked for Controller Augustine, starting on Valentine's Day, 2000, and ending on September 14, 2001, you handled all the personnel, did you not? That was part of your job.

MS. KENNEDY:

I handled the personnel records.

MR. GENTILE:

You were careful with those. You made sure they were dealt with in the right way.

MS. KENNEDY:

I did my best.

MR. GENTILE:

Right. You did not leave them loose under your desk for any person to see; did you?

MS. KENNEDY:

I left one record up on top of my filing bin. Yes, I did. It was on the bottom of the pile. Yes, I did.

MR. GENTILE:
You did that once?

MS. KENNEDY:
Yes, I did that once.

MR. GENTILE:
Did you get into trouble for it?

MS. KENNEDY:
You bet.

MR. GENTILE:
But, you did your job effectively.

MS. KENNEDY:
Absolutely, I did.

MR. GENTILE:
During that time that you were handling all the personnel matters, you never knew of even one person being terminated from employment by Controller Augustine, did you?

MS. KENNEDY:
No, I do not know that.

MR. GENTILE:
Can you remember anyone ever being terminated by Controller Augustine in the time that you handled all the personnel matters there?

MS. KENNEDY:
No, I do not remember anybody being terminated during that time.

MR. GENTILE:
You, certainly, did not feel that you were in danger of being fired when you were a classified employee, certainly, not as much as you did when you became unclassified. Am I right?

MS. KENNEDY:
No, that is incorrect. I felt very intimidated and felt that I could lose my job at any time during that one-year probationary period.

MR. GENTILE:
During the probationary period. But then after you vested, it got a little bit more secure; did it not?

MS. KENNEDY:
It became a little bit secure.

MR. GENTILE:
Then the next thing that happened is you got unclassified.

MS. KENNEDY:
Correct.

MR. GENTILE:
Now, you were back to feeling more insecure again.

MS. KENNEDY:
I thought that the position could end for any reason.

MR. GENTILE:
The answer to my question is; yes, you felt more insecure.

MS. KENNEDY:

Insecure about my job, yes.

MR. GENTILE:

That is what I meant.

MS. KENNEDY:

About my longevity.

MR. GENTILE:

Then, when you left that office, and since you have left that office, you have always maintained a classified position.

MS. KENNEDY:

That is correct.

MR. GENTILE:

When you had that job, your assignments were maintaining the State Controller's calendar and travel arrangements; correct?

MS. KENNEDY:

Correct.

MR. GENTILE:

To do correspondence, reports and memos for the State Controller's Office, am I right?

MS. KENNEDY:

That is correct.

MR. GENTILE:

Open the mail for the office?

MS. KENNEDY:

That is correct.

MR. GENTILE:

Answering the phones; correct?

MS. KENNEDY:

Correct.

MR. GENTILE:

Maintaining all the incoming checks?

MS. KENNEDY:

For the Controller's Office.

MR. GENTILE:

For the Controller's Office.

MS. KENNEDY:

Yes.

MR. GENTILE:

Maintaining the vacation and leave calendars?

MS. KENNEDY:

A spreadsheet was created in this office at my desk. I do not remember maintaining a leave calendar. I remember putting a calendar of reviews for the supervisory staff and creating that spreadsheet so that the supervisors knew when a review was due on one of their employees. I do not remember at all maintaining a leave or vacation calendar.

MR. GENTILE:

Was that a personnel matter?

MS. KENNEDY:

I do not know if it was a personnel matter. I took care of the file folders. I made sure the paperwork was signed off and handed in to the State Personnel Office. Those were my responsibilities.

MR. GENTILE:

When you work for the State Controller, you have to have a review from time to time. Am I right?

MS. KENNEDY:

That is correct.

MR. GENTILE:

And you always got a really good review; did you not?

MS. KENNEDY:

I had one review, and I wrote it.

MR. GENTILE:

You wrote it?

MS. KENNEDY:

I wrote it.

MR. GENTILE:

That is not a bad boss, is it? You were not going to write anything bad about yourself; were you?

MS. KENNEDY:

I was told by Controller Augustine that I was not to have a review above a two.

MR. GENTILE:

Let me see if I can refresh your memory about what you wrote.

Regarding rating of your principal assignments, the Administrative Assistant position to the Controller is a unique position requiring skills to meet the financial mission of the Controller's Office and the needs of an elected official.

Do you remember writing that?

MS. KENNEDY:

Actually, if it is in paragraph form, Jeannine Coward wrote those.

MR. GENTILE:

Did you see it?

MS. KENNEDY:

Oh, I saw it.

MR. GENTILE:

It was your review?

MS. KENNEDY:

Yes.

MR. GENTILE:

It was approved by Controller Augustine?

MS. KENNEDY:

She signed it.

MR. GENTILE:

She went on to say, "While not having prior experience in the public sector," which was true, except for one month, "Susan has managed to use the skills learned in the private sector to enhance this position and fulfill its mandates." Do you remember that?

MS. KENNEDY:

Yes, I do.

MR. GENTILE:

"The position requires attention to detail in every area, from recording incoming checks to the schedule of the Controller."

MS. KENNEDY:

Correct.

MR. GENTILE:

"She works," she meaning you, "closely with the Controller and deals directly with rapidly changing requirements." Remember that?

MS. KENNEDY:

Yes, I do.

MR. GENTILE:

"The fast pace of the office requires Susan to be alert, attentive and flexible in dealing with new situations." Remember that?

MS. KENNEDY:

Yes, I do.

MR. GENTILE:

"She," meaning you, "reflects a unique professionalism in the way she approaches all her duties." That is a pretty good review, is it not?

MS. KENNEDY:

Yes.

MR. GENTILE:

Then she said, "Susan's greatest asset is her ability to adjust and adapt to the rapid pace of the office." Remember that?

MS. KENNEDY:

I do not remember that, but ...

MR. GENTILE:

"She understands the mission of the Controller's Office and competently manages the office in my absence." Not my absence, I was not there; we are talking about the State Controller. Remember that?

MS. KENNEDY:

I remember.

MR. GENTILE:

It was true; was it not?

MS. KENNEDY:

Yes.

MR. GENTILE:

Because she was absent a lot; was she not?

MS. KENNEDY:

It is true to my job responsibilities.

MR. GENTILE:

I understand that. Believe me, I am not arguing with you.

MS. KENNEDY:

I understand.

MR. GENTILE:

Okay. What I am trying to say to you is that, she went on to say, "Susan willingly works extended hours to complete the job." Remember that?

MS. KENNEDY:

I do not remember that.

MR. GENTILE:

Can I refresh your recollection? May I approach the witness, please? If you saw this review, you did see the review, did you not?

MS. KENNEDY:

Yes, I did.

MR. GENTILE:

Let me approach the witness, if I may.

MS. KENNEDY:

It would be in there. That is where it usually is.

MR. GENTILE:

You have to understand that we are not having a discussion here. So, if that refreshes your recollection, it does or it does not.

MS. KENNEDY:

I have to say that the way this is set up, what I remember and what I have at home ...

MR. GENTILE:

I do not have any pending question. Does that refresh your recollection?

MS. KENNEDY:

I do recall this. I am not quite sure this was in my review.

SENATOR AMODEI:

Mr. Gentile, she has indicated that her recollection is refreshed so let us continue with the questioning based on that.

MR. GENTILE:

Do you recall that in your review it says, "Susan unselfishly offers her assistance to the entire office staff and is always prepared to honor a request or help them in any way she is able." Do you remember that?

MS. KENNEDY:

Yes, I do.

MR. GENTILE:

Do you remember it saying, "She contributes to the morale of the staff with her positive attitude and cooperative spirit"? Do you remember that?

MS. KENNEDY:

I do not remember that being in my review.

MR. GENTILE:

You say that you were not to give yourself any score over a two?

MS. KENNEDY:
Total score over two.

MR. GENTILE:
Do you recall that your summary rating score was a three for principal assignments and for related factors, was a four?

MS. KENNEDY:
I am sorry; I do not remember. Those are individual scores.

MR. GENTILE:
Whereas you were told by the Controller not to give yourself over a two, when it wound up actually being filed, you got a three and a four, and she signed it. Am I right?

MS. KENNEDY:
That is correct.

MR. GENTILE:
Would you look at, by the way, do you know when Bosses' Day is?

MS. KENNEDY:
I am sorry; I do not recall right now.

MR. GENTILE:
Would you look in the defense binder, Exhibit D-16?

MS. KENNEDY:
Okay.

MR. GENTILE:
I suggest to you that Exhibit D-16 is a copy of a greeting card; is it not? Are you in the right binder?

MS. KENNEDY:
Yes.

MR. GENTILE:
Would you turn to the second page of that exhibit?

MS. KENNEDY:
Yes.

MR. GENTILE:
Do you recognize any signatures there?

MS. KENNEDY:
On the second page?

MR. GENTILE:
On the second page, or perhaps, it is the third. It is the second in mine.

MS. KENNEDY:
Yes, I do.

MR. GENTILE:
Let us look at the first page; let us go back to the first page.

MS. KENNEDY:
All right.

MR. GENTILE:
Do you see your handwriting on anything on the first page?

MS. KENNEDY:
Yes, I do.

MR. GENTILE:
Where?

MS. KENNEDY:
On the envelope.

MR. GENTILE:
Is that you who wrote, "For a fabulous boss, Kathy"?

MS. KENNEDY:
Yes, yes, I did.

MR. GENTILE:
Then on the second page. Do you see your handwriting on there?

MS. KENNEDY:
No, I do not.

MR. GENTILE:
You do not? I mean the second page of the exhibit, not the second page of the card. Oh, you have the original. Just flip it over, if you will. Do you have a color copy; is that what you have?

MS. KENNEDY:
Yes.

MR. GENTILE:
Do you see your handwriting on that page?

MS. KENNEDY:
Yes, I do.

MR. GENTILE:
What did you write in your handwriting?

MS. KENNEDY:
I said, "Hope your day is a great one. You're the best."

MR. GENTILE:
You signed it, "Susan"?

MS. KENNEDY:
Susan, yes, I did. I would like to say more about that.

MR. GENTILE:
I am sure you will be asked questions later, but not by me.

MS. KENNEDY:
All right.

MR. GENTILE:
Did you have form letters on your computer when you worked for the Controller? When I say on your computer, I mean the state computer.

MS. KENNEDY:
Form letters? I cannot say we had a form letter.

MR. GENTILE:
You do not remember?

MS. KENNEDY:

I cannot say we had a form letter. We had letters we used the wording, adjusted.

MR. GENTILE:

That is what I am getting at. Maybe, my communication skills are lacking.

MS. KENNEDY:

It was not a form letter. It was not letter No. 1.

MR. GENTILE:

What I meant was, did you ever have letters on the computer that you would use over and over again but make changes to?

MS. KENNEDY:

There were certain formats we did use.

MR. GENTILE:

When you would do that, it would not take as long to do the changes as it did to do the original letter; would it?

MS. KENNEDY:

From time to time, yes. We would spend some time on a letter that should have been simple. It was a similar letter, but we had several drafts on it for various reasons.

MR. GENTILE:

I am not talking about drafts. I am talking about the time that you, Susan Kennedy, spent inputting data onto the computer each time a change was made. If you were only going to make one change, it certainly did not take you as long as it did to do it the first time, did it?

MS. KENNEDY:

That is correct.

MR. GENTILE:

You are good with word processing?

MS. KENNEDY:

That is right.

MR. GENTILE:

The fact of the matter is you always got your work done.

MS. KENNEDY:

That is right.

MR. GENTILE:

When Controller Augustine gave you what you considered to be campaign work, we are not going to get into whether I do, but what you considered to be campaign work, she did not yell and scream at you for not getting it done, did she?

MS. KENNEDY:

She did not yell and scream at me for not getting it done because I got it done.

MR. GENTILE:

Right. Once you did it, she would say to you, "Try to do it after work; try to get it done after 5 p.m.," would she not?

MS. KENNEDY:

She did say that.

MR. GENTILE:

Just to make it clear, the specific question that was asked to you by the Attorney General's investigator, back on August 22, 2003, was, "I am putting you on the spot, and I know you

probably have not even thought about this. How many hours do you think you put in for the campaign on state time?" Your response was, "I am going to say five." He said, "Just five hours?" You said, "At the most, yes."

I do not have any further cross-examination.

SENATOR AMODEI:

Redirect, Mr. Greco.

MR. GRECO:

You actually wrote your own review; is that correct?

MS. KENNEDY:

That is correct.

MR. GRECO:

Was that your idea or Controller Augustine's idea?

MS. KENNEDY:

That was Controller Augustine's idea.

MR. GRECO:

Did it strike you as unusual that your employer was asking you to write your own review?

MS. KENNEDY:

Yes.

MR. GRECO:

Did she contribute to the content? In other words, did she suggest things that you should put in there?

MS. KENNEDY:

She only told me that it was standard practice to not have an above-satisfactory review.

MR. GRECO:

She directed you to not place in the language above-satisfactory or similar language, and you did what she told you?

MS. KENNEDY:

That is right.

MR. GRECO:

But, in the end, did Controller Augustine sign off on the review?

MS. KENNEDY:

Yes.

MR. GRECO:

Controller Augustine gave you a very positive review; correct?

MS. KENNEDY:

Yes.

MR. GRECO:

She read it before she signed it; correct?

MS. KENNEDY:

To my knowledge, she did.

MR. GRECO:

You gave it to her, and later, you saw it come back with her signature; correct?

MS. KENNEDY:

That is correct.

MR. GRECO:

Now, you told Mr. Gentile that you felt intimidated, and you felt, "you could lose your job." Please explain why you felt those ways.

MS. KENNEDY:

Well, in the very beginning of the employment, I was ostracized at least six times a day, sometimes ...

MR. GRECO:

By Controller Augustine or by other persons?

MS. KENNEDY:

By Controller Augustine.

MR. GRECO:

All right. Continue on.

MS. KENNEDY:

You know, I did not file this record right, I did not type this record right, I was not going fast enough. There was one day where I was in her office, and she said, "You know, if you were working for any other elected official, you'd be fired."

MR. GRECO:

When you told Mr. Gentile you felt intimidated or that you could lose your job, was that in response to any age-related statements that Controller Augustine made to you?

MS. KENNEDY:

Yes.

MR. GRECO:

What did she tell you, specifically?

MS. KENNEDY:

She told me a few days after I had started that, "You know, Jeannine was right. I should have hired a 25-year-old."

MR. GRECO:

Despite the fact she gave you a very positive review?

MS. KENNEDY:

She gave me the review after I had been there a year.

MR. GRECO:

You also went over the birthday card with Mr. Gentile?

MS. KENNEDY:

Yes.

MR. GENTILE:

Objection. It was a Bosses' Day card.

MR. GRECO:

I stand corrected. You did go over the Bosses' Day card with Mr. Gentile; correct?

MS. KENNEDY:

Yes.

MR. GRECO:

You did write on there the two statements that Mr. Gentile had you bring out a few minutes ago; correct?

MS. KENNEDY:

Correct.

MR. GRECO:

Why did you write those things on there?

MS. KENNEDY:

I had made a decision in the first month I was there. I considered leaving, but I thought it was an opportunity for me to do something. I would do my best to learn everything I could. It was a new field of work for me, and I really wanted to make a commitment to that. During the course of employment, Controller Augustine was, I would have to say, mean. What I chose to do was to ask God to forgive her during the course of my employment there, and that helped me get over my anger with her. It allowed me to stay and work and do the job that I wanted to do and make a contribution. I felt if someone was going to fire me, I was going to quit first. I was going to do the best I could to make things happen and make them happen successfully in that job. That is how I handled it. That is why I did my very best to make myself successful and her successful even though there were many times during my day that were hard.

MR. GRECO:

All right. You told Mr. Gentile that, in terms of at least one or more of the campaign-related requests, Controller Augustine did tell you, "Try to get the work done after 5 p.m." Is that correct?

MS. KENNEDY:

That is right.

MR. GRECO:

You testified at the beginning that you were never a campaign volunteer; correct?

MS. KENNEDY:

That is right.

MR. GRECO:

Did you want to work on Controller Augustine's campaign?

MS. KENNEDY:

No. I was told to by Assistant Controller, Jeannine Coward ...

MR. GENTILE:

I object; that it is hearsay. It has marginal relevance. That is our rule.

MR. GRECO:

That is fine, Senator Amodei. I am not trying to get to Ms. Coward's statements. I am trying to get to her, then, existing mental thoughts, impressions and feelings. More just in what the witness was thinking; this is admissible.

SENATOR AMODEI:

Please have your witness testify in the context you are looking for as opposed to the other statements.

MR. GRECO:

Ms. Kennedy, when Controller Augustine told you, in relation to those campaign-related tasks she wanted you to do, "Try to get it done after 5 p.m." How did that make you feel, and what were you thinking? What I am asking is did you feel you had a choice?

MS. KENNEDY:

I did not feel that I had a choice.

MR. GRECO:

That is all I have, Senator Amodei.

SENATOR AMODEI:

Recross, Mr. Gentile?

MR. GENTILE:

Nothing, thank you.

SENATOR AMODEI:

Questions for Ms. Kennedy by members of the Committee?

SENATOR CARE:

Ms. Kennedy, I want to be sure that I correctly characterize your testimony from this morning. You were asked, if you recall, why did you leave, and I think you testified that Controller Augustine was hard to work for, and the things she asked you to do did not feel right. Then, you were asked further, and you said, there was this trip to Elko, and you did not want to go to Elko. Do you recall?

MS. KENNEDY:

Yes, I do.

SENATOR CARE:

Have I correctly characterized your testimony?

MS. KENNEDY:

Yes.

SENATOR CARE:

When did you begin to feel that what you had been asked to do did not feel right? When did it start not to feel right?

MS. KENNEDY:

Things did not feel right from the very beginning.

SENATOR CARE:

How soon after you went to work for Controller Augustine did you start actively looking for employment elsewhere as opposed to just thinking about it?

MS. KENNEDY:

It was about six months into the position, I went over to the State Personnel Office and started actively looking at that time. Nothing came up, then, but I did continue, and I think there was something in the spring of 2001. We were right in the middle of session. Then, the day that she was screaming at me on the cell phone. It was after she got back from her trip to Harvard. It must have been in August. I marched right over to the State Personnel Office and was given an opportunity to interview for a position.

SENATOR CARE:

You were not looking for a job outside of state government?

MS. KENNEDY:

No.

SENATOR CARE:

You also, I think, said this morning, you were replaced by someone named Rude who worked for approximately one month?

MS. KENNEDY:

Yes.

SENATOR CARE:

Did you have an opportunity to talk with her before she took over that position?

MS. KENNEDY:

I think Lela and I attended the Republican Women's meeting in Carson City, a luncheon. I think we may have talked before she went to work for Controller Augustine, but I do not know. Lela and I knew each other.

SENATOR CARE:

You do not have any recollection of telling her what your experience had been like at the Controller's Office before she went to work there?

MS. KENNEDY:

No, I did not, but Lela told me that she was coming to work there with caution.

SENATOR CARE:

You testified you had complained to Jeannine Coward; is that correct?

MS. KENNEDY:

Yes.

SENATOR CARE:

Was that during the time you were at the Controller's Office? What was the date, roughly?

MS. KENNEDY:

The entire time.

SENATOR CARE:

Then, you said you believed you had talked to State Personnel. Is that a reference to you going over there to see if there was anything available, or are we talking about the complaint, itself?

MS. KENNEDY:

Correct.

SENATOR CARE:

Do you remember the name of the person you talked to?

MS. KENNEDY:

Yes. Her name, I believe, is Kris Ross.

SENATOR CARE:

When was that?

MS. KENNEDY:

It was the time Controller Augustine mentioned that she should have hired a 25-year-old. I felt that was against federal law, and I went directly to the State Personnel Office.

SENATOR CARE:

While you were discussing what you thought may be a violation of federal law, did you also tell Ms. Ross the campaign activities that you had been involved in?

MS. KENNEDY:

There were no campaign activities at that time.

SENATOR CARE:

Do I understand your testimony to be that in June, 2002, you wrote a campaign-contribution check to Controller Augustine?

MS. KENNEDY:

Yes, I did.

SENATOR CARE:

Why would you do that for someone who had ostracized you, six times a day?

MS. KENNEDY:

You know, as I said, my relationship with Controller Augustine was that I asked God to forgive her, and that was my relationship. I do not know how to explain it any other way. I wanted her to be successful.

SENATOR CARE:

Did you write campaign contributions to any other candidates for the year 2002?

MS. KENNEDY:

I am sure I did. I cannot remember right now for whom I did. I worked on Senator Ensign's campaign.

SENATOR HECK:

Ms. Kennedy, you testified before the break that you had attended events either with or on behalf of Controller Augustine. Is that correct?

MS. KENNEDY:

Yes.

SENATOR HECK:

Can you tell me about how many times that occurred during your employment?

MS. KENNEDY:

I do not remember.

SENATOR HECK:

When you attended these events, was it during business hours, after business hours or both?

MS. KENNEDY:

Both.

SENATOR HECK:

From the ones that you went to, would it seem that the purpose of these meetings were related to the official duties of the Controller's Office, or were they more campaign-related type events?

MS. KENNEDY:

They were more related to her office.

SENATOR HECK:

When you went to the ones that were after office hours, were you in any way compensated—overtime, comp time, anything in that regard?

MS. KENNEDY:

No.

SENATOR BEERS:

In both the Prosecutor and Defense Binders Nos. 1 (Special Prosecutor's State's Trial Statement Pursuant to Senate Rule 53(1), Written Statement, Susan Kennedy and Defense Exhibit P-20), there exists a document that appears to describe the previous testimony by Citizen Kennedy. There are some differences in this testimony and what was discussed. I think they are quite pertinent to what we are talking about here. In that, in the fourth paragraph, Ms. Kennedy was told by Controller Augustine to call specific people within the construction industry during regular business hours in relation to a campaign fund-raiser, and that she expected results from the calls to them on the same business day. I am confused. That sounded to me like what you were discussing on the Harvard seminar program. Are those one and the same things?

MS. KENNEDY:

They are.

SENATOR BEERS:

Was the characterization of this as a campaign fund-raiser without any elaboration, as you gave us here, also given to the people who helped you prepare this statement?

Ms. KENNEDY:

I prepared this statement.

SENATOR BEERS:

You typed this statement?

Ms. KENNEDY:

I did.

SENATOR BEERS:

And gave it to who?

Ms. KENNEDY:

I gave it to the head of the Assembly.

SENATOR BEERS:

Two weeks ago?

Ms. KENNEDY:

Yes.

SENATOR BEERS:

This had not been done prior to that point?

Ms. KENNEDY:

No.

SENATOR BEERS:

This was not part of the Attorney General's investigation?

Ms. KENNEDY:

I typed this up two weeks ago, and gave it to the head of the Assembly.

SENATOR BEERS:

The concern I have is that one could characterize the Harvard incident not as a campaign activity. My concern is it is on this document and was part of the data that fed the decision to send this issue to the Legislature. That this was characterized as a campaign fund-raiser rather than a professional seminar that had the potential for improving the Controller's skills set.

Ms. KENNEDY:

Correct. To me, I do not know if it was money coming in for the campaign or money coming in for Harvard.

SENATOR BEERS:

This is the same incident that here ...

Ms. KENNEDY:

It is.

SENATOR BEERS:

... you called a campaign fund-raiser that you have told us this afternoon is actually the seminar at Harvard.

Ms. KENNEDY:

I do not know that. I just know that the money was coming in. She was collecting money, at that time, from construction companies for her trip to Harvard to pay for the class. At the same time, there was campaign fund-raising going on.

SENATOR BEERS:

One was the Harvard thing, and one was campaign fund-raising? You can see the separation between the two?

Ms. KENNEDY:

I can, but I did not know if that money was for the campaign or for the construction companies for Harvard.

SENATOR BEERS:

Then, in the second paragraph from the end, it says that it was not until the Controller was out of town that you were able to work on campaign reports before 5 p.m.

Ms. KENNEDY:

When Controller Augustine was out of the office, there was more time in my day to get things done before 5 p.m., and so there was a day when I was able to work on those campaign reports prior to 5 p.m.

SENATOR BEERS:

But, it did not happen until the Controller was out of town?

Ms. KENNEDY:

Correct.

SENATOR BEERS:

In the final paragraph, in discussing your subsequent, eventually paid-for hours of overtime, which I think in that time voucher we looked at earlier was described as comp time, your last sentence says, "I was paid months later for my overtime as Assistant Controller Coward informed Controller Augustine that it was against the law not to pay me for my overtime." I am looking at the relative source of that information. Were you told that by Ms. Coward? Did she say, "I talked to Kathy Augustine, and we got it approved," or did the Controller say, "Ms Coward has convinced me that we should pay you this?"

Ms. KENNEDY:

The day the overtime was discussed, it was discussed in Jeannine Coward's office. After that discussion, Controller Augustine came back into my office, was extremely angry and told me to take whatever spreadsheet on which I had been keeping track of my overtime and to delete that and never do that again. I was to fill out a timecard for the overtime that day, and they were going to submit it. That is what I remember. The sheet of paper, the book number, or whatever, this book, I guess—I got paid for the 16 hours, but it was the other time that, how do I say, I did not get paid overtime; I got paid 16 hours.

SENATOR BEERS:

At regular pay instead of time and one-half.

Ms. KENNEDY:

At regular pay, yes. This was to make up; that was the day I was leaving. They wanted to make sure everything was taken care of, and all my comp time was paid out. I did not have much comp time, but all my comp time was to be paid out on that particular sheet.

SENATOR CEGAUSKE:

I am a little confused on the hours, if I could get that clarified. In some of the reports, we have heard five hours. Today, I heard, when you were first being questioned, three to five hours. Then, I heard five to ten hours. The sheet I am looking at is the same that Senator Beers was looking at; it says 16 hours of work. Are you confused about the hours?

Ms. KENNEDY:

No.

SENATOR CEGAVSKE:

I am wondering what are the different increments of time that you are giving us, and then, just now, if I heard you correctly, you said that you got paid for the 16 hours of work that you worked from the statement you have in here, the third paragraph says, "I worked at least three occasions to perform functions related to her campaign for reelection." The State paid you for the 16 hours that you worked?

MS. KENNEDY:

The 16 hours is not necessarily related to any campaign.

SENATOR CEGAVSKE:

But, if I might, and I am sorry to interrupt, that is what the statement in here says. That is the third paragraph. That is how I read the statement. If you would like to read it, maybe that would help you. It is in the red binder, and it is under the blue tabs, and it has your name on it.

MS. KENNEDY:

In the third paragraph?

SENATOR CEGAVSKE:

Yes, see at the end, it says approximately 16 hours of work. But in the first sentence of that paragraph, the terminology was that this was the amount of hours you thought you had worked to perform functions for her ...

MS. KENNEDY:

On the campaign.

SENATOR CEGAVSKE:

... on the campaign. That is where I am confused with the different hours today.

MS. KENNEDY:

The 16 hours relates to not, necessarily, campaign work; although, there is some campaign work in there.

SENATOR CEGAVSKE:

Is this statement not correct that is in here?

MS. KENNEDY:

Well, let us see here, "I estimate the timeframe occurred from October, 2000, throughout the remainder of my employment and resulted in," well, it resulted in approximately five to ten hours of overtime for me—the campaign work. The 16 hours relates to work that I worked on for the session. We worked overtime, and I was not paid.

SENATOR CEGAVSKE:

You got paid for the five hours that you worked, and then the 16 hours is hours that you never got paid for? Because that was campaign-related, but you are saying that you never got paid for that?

MS. KENNEDY:

I did get paid for it later on. The five hours is included in the 16 hours. As time goes on, as I am questioned about this, as things come up in my mind, the number of hours in the campaign work increases. That is why it has gone to ten hours.

SENATOR CEGAVSKE:

That is fine. It is just helping me understand the timeframe, and I appreciate it. And in the second to the last paragraph, you had stated you tried to do the campaign reports after 5 p.m. as she instructed, which I assume was the Controller, "but this was not always possible because of my personal schedule." Was it your choice to work on the campaign during hours of your job and not to work after hours as you had been instructed? Was it your choice to do that?

MS. KENNEDY:

I suppose the answer is yes, but I would like to talk about that for a moment. I was given instruction to get this done. The instruction was to work after 5 p.m. I was not being paid for work after 5 p.m., and I was not volunteering my work.

SENATOR CEGAVSKE:

Did the Controller know that you were not?

MS. KENNEDY:

Yes, Controller Augustine knew that.

SENATOR HARDY:

I would like to get a little better feel for what your mindset was when you sent the card, or when you filled out the card. If I understood your testimony, you were trying to either heal or develop a relationship of some kind, and this was your effort to do that.

MS. KENNEDY:

That is right.

SENATOR HARDY:

In light of that, can you, to the best of your knowledge, definitively say you did not do anything in that spirit to lead the Controller to believe you might be willing to help with her campaign, after hours? In other words, you were reaching out; you were trying to be kind; you were trying to be nice. Is it possible you lead her to believe you may be willing? You testified she instructed you to work on the campaign after hours. Is it possible you lead her to believe you would be willing to do that in this spirit?

MS. KENNEDY:

I do not believe so because I did say to her many times, "I do not want to go here. I do not want to go there." I made it very clear I did not want to go to Elko on any campaign.

SENATOR HARDY:

I must have misunderstood earlier testimony, then. I thought you said that you never communicated to her that you were uncomfortable doing the campaign work. Is that not accurate?

MS. KENNEDY:

I told her that I did not want to do certain things. I did not tell her that I was uncomfortable. I just told her that I did not want to do certain things.

SENATOR HARDY:

Related to the campaign?

MS. KENNEDY:

Right.

SENATOR HARDY:

In your mind, it is not possible you could have lead her to believe you were okay with after-hours work on the campaign?

MS. KENNEDY:

I believe I made it clear to her. In fact, I know I did because she kept on coming back saying, "We are going to have to change you. You are going to have to change. You are going to have to change your thinking."

SENATOR COFFIN:

I want to ask you if this statement you prepared for the Assembly impeachment was the same that you might have prepared for the investigator for the Ethics Commission or something like that?

MS. KENNEDY:

Let us see, here. It is not the same. It has the same information in it, but it is not the same. It is a different writing. I wrote this two weeks ago.

SENATOR COFFIN:

How long ago did you prepare one for the Ethics Commission investigating mission?

MS. KENNEDY:

I am sorry. I do not remember.

SENATOR COFFIN:

But, you did give them a written statement?

MS. KENNEDY:

For the Ethics Commission? I believe I prepared a statement for the Attorney General's Office.

SENATOR COFFIN:

Did you interview with the investigator from the Ethics Commission or the Attorney General's Office?

MS. KENNEDY:

The Attorney General's Office.

SENATOR COFFIN:

There have been some changes here in the testimony from what you told the Assembly and what you have given to us today. That may be because finally you have had some questions asked of the testimony, and it has helped to sharpen your memory. But, in the process of the Ethics Commission, apparently the Ethics Commission relied upon your testimony, or was it given to the Commission, or was it given to an investigator?

MS. KENNEDY:

Sir, I do not know.

SENATOR COFFIN:

You interviewed with an investigator though?

MS. KENNEDY:

I did.

SENATOR COFFIN:

To the best of your knowledge, that was the end of it for you, personally? You never went to an Ethics Commission hearing?

MS. KENNEDY:

I did.

SENATOR COFFIN:

You did?

MS. KENNEDY:

I did not testify.

SENATOR COFFIN:

You were a witness in the hearing?

MS. KENNEDY:

I was a witness in the hearing, but I was not called to testify.

SENATOR COFFIN:

They did not ask for your testimony. However, they did have something from you. You had been interviewed or had been ...

MS. KENNEDY:

From the Attorney General's Office.

SENATOR COFFIN:

Therefore, they probably relied upon you in making their decision, among others. Were you in a meeting that was closed to the public?

MS. KENNEDY:

No. Not that I recall.

SENATOR COFFIN:

All right. I am going to shift gears a little bit, to go into the legislative session in which you became an unclassified employee. When did you first find out Controller Augustine was going to put you in for an unclassified-employee position?

MS. KENNEDY:

Probably, in February, March of 2001, when the bills were being written.

SENATOR COFFIN:

Do you know that frequently we see these positions come in, and we look at them skeptically because what it means, usually, is either one of two things. Either the person has topped out in their pay, and they are doing job duties that are bigger than what the description calls for and maybe we would like to match the pay to help the superior out or it is also considered a great favor. I realize there is a little risk involved, and you must have felt some risk later, but did you understand that you had been given a great favor of a political nature by being made an unclassified employee?

MS. KENNEDY:

No.

SENATOR COFFIN:

Have you heard of the Unclassified Pay Bill?

MS. KENNEDY:

I probably have, but I do not recall what it is.

SENATOR COFFIN:

It is a bill that separates out unclassified from classified people, and it comes to the Legislature. The person who is asking for it for an employee requests this and stakes their reputation on the fact these people are good enough to go in there. It is a political thing and is handled by the money committees.

MS. KENNEDY:

Right.

SENATOR COFFIN:

You actually knew for quite some time she had a high opinion of you, then, I guess. This is not bestowed on just anybody.

MS. KENNEDY:

I did not know that. I did not know about the bill and the honor. I did not know that. I did not feel that it was an honor at all.

SENATOR COFFIN:

Is that time in February when you spent the time in the legislative session for which you were not compensated until later? You were in a legislative session. Were you watching the hearing where your position might have been considered?

MS. KENNEDY:

I was not here in this building; I was working at my desk, and it is difficult to listen to proceedings at my desk. I was very busy.

SENATOR WASHINGTON:

Ms. Kennedy, let me ask you, just to follow up on Senator Coffin's question, moving from classified to unclassified and bestowing the honor upon you, you also mentioned in your testimony that Controller Augustine also asked you to ride in the Nevada Day parade which you felt was an esteemed honor as well.

MS. KENNEDY:

Yes.

SENATOR WASHINGTON:

During the parade or at the pancake breakfast, she asked you to place buttons or give out buttons. I am relating this to your testimony you provided to the Assembly. In the last paragraph you wrote, "I reported my concerns to Assistant Controller Jeannine Coward and State Personnel throughout my entire employment with the Controller's Office."

Can you tell me, and be a little more specific in your concerns with the Controller, what caused you to look at these opportunities as honors and then turn around and make complaints to the Assistant Controller regarding concerns during your entire employment?

MS. KENNEDY:

Yes. Working for Controller Augustine, there were many times when everyone got along. There were many times when she was very good to work for, and then there were times when you did not know what you did, but the roof was coming off. You might do the same thing tomorrow, but the roof does not come off. You could not gauge from one day.

SENATOR WASHINGTON:

Let me ask you this, if I might interrupt you. These concerns were not concerns about her performance as the State Controller; these concerns were more in line with, maybe, her management style or personality, her reaction to certain events that may have taken place throughout the course of a day. Is that correct?

MS. KENNEDY:

It could be that way or for no reason whatsoever.

SENATOR WASHINGTON:

You would not say that her performance as a Controller was in question maybe just the concerns of reelection, the Harvard trip, the extra overtime hours. Are those the concerns, or is it you disapproved of the way she managed her office or managed the personnel or related with the personnel on her staff?

MS. KENNEDY:

I did not agree with the way she related with the personnel on the staff.

SENATOR HORSFORD:

In relation to your statement, when you indicated you were directed by Controller Augustine, on at least three occasions related to the campaign, at any time prior or when that direction was given, was there any explanation between what was campaign-related work and what was work on behalf of the Controller's Office as a state function either as a policy for the entire staff or for you, individually?

MS. KENNEDY:

I do not recall any verbal communication to me from anyone on the differences between the campaign and working in the office.

SENATOR HORSFORD:

When functions or responsibilities were assigned to you, it would not be clear to you whether it was for a campaign function or a state function. Is that correct?

MS. KENNEDY:

That is correct.

SENATOR HORSFORD:

You said something about, Kris Ross in the Human Resource office. When you complained about the age-discrimination issue, was there any written or formal process followed up in relation to that complaint, or was it dismissed, as you indicated in your testimony?

MS. KENNEDY:

What I recall was it was dismissed. There was nothing written. They took no statement, nothing, and I was told that because Controller Augustine is an elected official, there was nothing that could be done.

SENATOR AMODEI:

Other questions of Ms. Kennedy from the Committee? Seeing none, without objection, Ms. Kennedy, thank you for your testimony, and you should consider yourself dismissed. Your next witness, Mr. Greco.

MR. GRECO:

Judy Hetherington.

MRS. CLIFT:

Will the witness please stand and raise your right hand. Do you solemnly swear or affirm that the testimony and any evidence you shall give in this matter shall be the truth, the whole truth and nothing but the truth.

JUDITH HETHERINGTON (Management Analyst III, Office of the State Controller):

I do.

MRS. CLIFT:

Please be seated. State your name and spell it for the record.

JUDITH HETHERINGTON:

My name is Judith Hetherington, j-u-d-i-t-h,-h-e-t-h-e-r-i-n-g-t-o-n.

SENATOR AMODEI:

Mr. Greco, please proceed.

MR. GRECO:

Thank you, Mr. Chair. What do you do for a living?

MS. HETHERINGTON:

I work for the Office of the State Controller. I am a Management Analyst III.

MR. GRECO:

When did the Controllers Office first hire you?

MS. HETHERINGTON:

It was November of 1999.

MR. GRECO:

In 2002, did you have the same position in the Controllers Office that you have today?

MS. HETHERINGTON:

I was a Management Analyst II at that point.

MR. GRECO:

Before the 2002 campaign were you and Controller Augustine on friendly terms?

MS. HETHERINGTON:

Yes.

MR. GRECO:

Do you still consider yourself and Controller Augustine to be on friendly terms?

MS. HETHERINGTON:
Yes, I do.

MR. GRECO:
Referring to March of 2002, do you recall receiving any e-mails from Controller Augustine?

MS. HETHERINGTON:
Yes, I did.

MR. GRECO:
Do you recall on what date you received Controller Augustine's e-mail?

MS. HETHERINGTON:
I received it on March 6.

MR. GRECO:
In the e-mail, did Controller Augustine ask you to do something?

MS. HETHERINGTON:
Yes, she did.

MR. GRECO:
What did she ask you?

MS. HETHERINGTON:
She asked me to help her label some envelopes.

MR. GRECO:
Did she tell you approximately how many envelopes she wanted you to help label?

MS. HETHERINGTON:
I believe it was 200.

MR. GRECO:
When she asked you for help in labeling the envelopes, did she ask anything about assisting in stamping the envelopes?

MS. HETHERINGTON:
Yes, she did.

MR. GRECO:
Specifically, what?

MS. HETHERINGTON:
She asked me to help her on a Friday morning to address, label and stamp the envelopes.

MR. GRECO:
Was that Friday morning a regular workday?

MS. HETHERINGTON:
Yes, it was.

MR. GRECO:
At that time, was there any work-related reason you could think of why Controller Augustine would need you to help stuff 250 envelopes?

MS. HETHERINGTON:
No.

MR. GRECO:
From the context of the e-mail, did it appear to you at the time the stuffing of envelopes was campaign related?

MS. HETHERINGTON:
Yes, it was.

MR. GRECO:
Were you a campaign volunteer for Controller Augustine?

MS. HETHERINGTON:
Not on state time.

MR. GRECO:
Did you want to do campaign work for her on state time?

MS. HETHERINGTON:
No.

MR. GRECO:
Given that e-mail she sent to you, did you send her a reply?

MS. HETHERINGTON:
Yes, I did.

MR. GRECO:
What did you tell her?

MS. HETHERINGTON:
I would not be able to assist her with that because it was on state time. It was against our policy, and I would not be able to do it.

MR. GRECO:
When you told her it was against the policy, did you make specific reference to the office employee manual?

MS. HETHERINGTON:
Yes, I quoted from the manual.

MR. GRECO:
In response to your reply e-mail, did Controller Augustine contact you again?

MS. HETHERINGTON:
Yes, she did.

MR. GRECO:
Was this last contact by e-mail or by telephone?

MS. HETHERINGTON:
It was by telephone.

MR. GRECO:
What did Controller Augustine say? Can you recall how many days after you sent your reply e-mail until Controller Augustine telephoned you back?

MS. HETHERINGTON:
I responded on the sixth, and she called me on the seventh.

MR. GRECO:
When she called you on the seventh, what did she tell you?

MS. HETHERINGTON:
She said she did not mean for me to put aside my regular work. She thought I could do it on my break.

MR. GRECO:

Had she said those same things in the original e-mail two days earlier? "I did not mean for you to put aside your regular work? I meant for you to do it on your break." Had those things been in her original e-mail?

MS. HETHERINGTON:

No, they were not.

MR. GRECO:

How did you react to her statement on the telephone, "I did not want you to put aside your regular work?" What were you thinking?

MS. HETHERINGTON:

It is still state time whether it is on a break or not.

MR. GRECO:

Have you ever heard the phrase backtracking?

MS. HETHERINGTON:

Yes, I have.

MR. GRECO:

Did it appear to you Controller Augustine was backtracking in that telephone call?

MS. HETHERINGTON:

Yes.

MR. GRECO:

Do you recall my investigator, Cynthia Wyatt, contacting you by telephone after I was appointed as Special Prosecutor?

MS. HETHERINGTON:

Yes, I do.

MR. GRECO:

Can you recall how long ago that was?

MS. HETHERINGTON:

I believe it was last week. I am not sure.

MR. GRECO:

Was that the first time someone from the Office of the Special Prosecutor telephoned you?

MS. HETHERINGTON:

Yes, it was.

MR. GRECO:

During that telephone conversation, did you personally use the word backtracking?

MS. HETHERINGTON:

I do not recall if I did or not.

MR. GRECO:

There are some blue binders in front of you. Would you please open to Exhibit P-43, which I believe is in the third binder? Please go to the second page of that exhibit. That should be a copy of an e-mail. Is that correct?

MS. HETHERINGTON:

That is correct.

MR. GRECO:

How many e-mails are on that page?

MS. HETHERINGTON:
There are two.

MR. GRECO:
Do you recognize those e-mails?

MS. HETHERINGTON:
Yes, I do.

MR. GRECO:
Where from?

MS. HETHERINGTON:
The one on the lower portion is the one I received from Controller Augustine, and the one on the top is my reply.

MR. GRECO:
Are those true and accurate copies of the original e-mails, both the one you originally received and viewed and then the one that you sent?

MS. HETHERINGTON:
Yes, it is.

MR. GRECO:
Mr. Chair, I would move for admission of page 2 of Exhibit P-43.

SENATOR AMODEI:
Is there any objection?

MR. ARRASCADA:
Yes, we do still object as far as the relevance and the content. There are some markings that have been put on the e-mails. I would like to know the origination before the foundation is properly laid.

SENATOR AMODEI:
I think the foundation has been properly laid which is what was in the stipulation. I am going to admit them based on the foundation. However, Mr. Arrascada, you are free to explore that with the witness during your opportunity to cross exam and to argue weight or whatever you think is appropriate. For our record, we should say that Exhibit P-43 has been admitted. Please proceed, Mr. Greco.

MR. GRECO:
Miss Hetherington, is the bottom portion of that page on the screen in front of you the original e-mail from Controller Augustine that you refer to?

MS. HETHERINGTON:
It is a copy of the original. When I reply, I always put the original I am responding to.

MR. GRECO:
Is that the copy of the original that you were referring to a few moments ago?

MS. HETHERINGTON:
Yes, it is.

MR. GRECO:
Read that into the record, including the date and time of the e-mail, the "to" and "from" columns.

MS. HETHERINGTON:

The lower one would be from Controller Augustine on March 5, 2002, at 4:59 p.m.

I hope your schedule is light enough on Friday morning to assist me in labeling and stamping 250 envelopes. I have both the return and addressee labels ready to go. I will pick up the invitations and the RSVP cards around noon at Century Graphics and then my friend Jenny and I will get them stuffed Friday afternoon. I will put them in the mail before I leave on Sunday. I also have the calling list. Hopefully you can drop it off at State headquarters on West Sahara and Durango sometime next week. Did Jennifer tell you I was scheduled to speak at the county convention on Friday night at 6:15 p.m. at Castaways? Also I will be coming down again on the 18th for the DRI (Desert Research Institute) dinner at Caesar's Palace since I will miss their dinner here in Reno on the 20th. Will you please RSVP to the NDA (Nevada Development Authority) breakfast for me on the 19th at the Stardust, and for both of us for the Women's History tea at the Las Vegas Academy the same afternoon? Thanks. Did you want to join us for dinner on the 20th with Tom Creal and Mark Doyle from Prime Recovery?

MR. GRECO:

Now, read your reply, including the date, time and the to and from fields.

MS. HETHERINGTON:

It is to Controller Augustine, from Judy Hetherington on March 6, 2002, at 11:17 a.m.

Good Morning. I have made your reservations for the NDA breakfast on March 19th and the Women's History tea on the 20th. I will not be able to attend the tea with you as I am taking a class that day and it is not over until 3:30 p.m. Will attend the dinner on the 20th. Where, when, etc.? Has Jennifer RSVP'd for the DRI dinner on the 18th at Caesar's Palace? Or do you want me to do that? Regarding the envelopes since our employee manual states "No employee shall engage in political activity in or about the Office of the State Controller during the hours of state employment," I feel that I should not work on your campaign at the office. I believe this is also in the Nevada Revised Statutes. Government employees' working on campaigns during working hours has been an issue in some past races and I would not want it to have a negative impact on your reelection. But I will be happy to drop off the calling list to the State headquarters on my way home from work. Hope you are having a great day. jh

MR. GRECO:

There are asterisks on the document. Do you know who placed those on there?

MS. HETHERINGTON:

Yes, I placed them there.

MR. GRECO:

Why did you do that?

MS. HETHERINGTON:

When I faxed them to your office I marked the parts that were relevant to this proceeding.

MR. GRECO:

Now that the exhibit has been admitted, would you please go forward two pages? Mr. Chair, did I understand correctly; did you admit the whole exhibit? Thank you. Do you recognize that document?

MS. HETHERINGTON:

Yes, I do.

MR. GRECO:

What is that?

MS. HETHERINGTON:

It is a copy of an e-mail and a reply.

MR. GRECO:

What is the date and time of that e-mail?

MS. HETHERINGTON:

They are both on March 13. The one stamped to Jim was at 2:29 p.m.; the one received from him was at 3:33 p.m.

MR. GRECO:

Who is Jim? What is his last name?

MS. HETHERINGTON:

Jim Wells.

MR. GRECO:

During this time frame of 2002 what was his position?

MS. HETHERINGTON:

At this time, he was the Chief Deputy Controller.

MR. GRECO:

Go ahead and read into the record your e-mail including the date and time fields. Then, please, read Mr. Wells reply to you including the date and time fields.

MS. HETHERINGTON:

The e-mail from me on March 13, 2002, at 2:29 p.m.:

Hi Jim. Kim told me yesterday that you found the statute that applies to campaign work on state time. Please let me know the statute number so I can be prepared should the issue rise again. Hope all is going well. jh

MR. GRECO:

Miss Hetherington what made you send that e-mail to Mr. Wells?

MS. HETHERINGTON:

I knew there was a statute. I could not find the number. I had asked Kim and Jim, both, about the statute. Kim had told me in a conversation that Jim had found it.

MR. GRECO:

Did Mr. Wells reply to your e-mail?

MS. HETHERINGTON:

Yes, he did.

MR. GRECO:

Read his e-mail including the date and time field.

MS. HETHERINGTON:

From Jim Wells, to Judy Hetherington on March 13, 2002, at 3:33 p.m.

Hi Judy. Kim told me she talked to you about this yesterday. So far, I think we have handled it the best we can. NAC (Nevada Administrative Code) 284.770 discusses political activities in the workplace. You can view it on-line at the Department of Personnel's website under Personnel Policies and Practices. Have a great week. Talk to you soon. Jim

MR. GRECO:

Jumping forward to May of 2002, during that month did Controller Augustine ask you to book time for her for any campaign related events?

MS. HETHERINGTON:

Yes, she did.

MR. GRECO:

Please tell the Senators about that.

MS. HETHERINGTON:

I received a call from Controller Augustine asking me to make some calls for her. One concerned a campaign related radio program.

MR. GRECO:

Can you remember the name of the radio program?

MS. HETHERINGTON:

It was VegasCable.com.

MR. GRECO:

How did you know that was a campaign related program as opposed to some other type of programming?

MS. HETHERINGTON:

She told me about them contacting her to be on this radio show.

MR. GRECO:

Did she mention anything about candidates appearing on the show?

MS. HETHERINGTON:

Yes, she said they were giving free time to come on the show and discuss the campaign.

MR. GRECO:

Having heard that, what was your response to Controller Augustine, specifically, with regard to booking the campaign event?

MS. HETHERINGTON:

I told her I would not be able to do that. It was a campaign-related issue.

MR. GRECO:

Showing the last page of the exhibit, do you recognize the Xerox document?

MS. HETHERINGTON:

Yes, I do.

MR. GRECO:

What is that?

MS. HETHERINGTON:

It is a copy of an e-mail I sent to Controller Augustine, with her reply.

MR. GRECO:

Is that pertinent or germane to the topic you were just talking about?

MS. HETHERINGTON:

Yes, it is.

MR. GRECO:

Read the original e-mail and the reply e-mail including the date and time fields.

MS. HETHERINGTON:

The original e-mail reads:

Welcome back. The following have been booked during your next trip to Las Vegas. June 1, 1:00 p.m., Lite 100.5 taping with Herb Perry. June 5, 10:30 a.m. Endeavor tour with Vince Triggs followed by lunch. I did not book a spot for you on VegasCable.com radio show on KLAV AM 1230. You said that you e-mailed them and I do not know if you have heard anything back. Plus this is definitely a campaign event and should be

booked by your campaign manager or someone outside of state business hours. Hope all is going well. Jh

Her reply:

From Controller Augustine, to Judy Hetherington, Thursday, May 23, 2002, 3:18 p.m. Are you going on the Endeavor tour? I have not heard back from KLAV AM. I will have Kim Riggs follow up with them.

MR. ARRASCADA:

Ms. Hetherington, you are a classified employee. Is that correct?

MS. HETHERINGTON:

Yes, it is.

MR. ARRASCADA:

Since the time of these e-mails in March and May of 2002, you have been promoted. Is that right?

MS. HETHERINGTON:

That is correct.

MR. ARRASCADA:

You have received a higher pay scale.

MS. HETHERINGTON:

That is correct.

MR. ARRASCADA:

I want to talk to you, generally, right now, about these e-mails. When you sent these e-mails back to Controller Augustine, she never gave you a written reprimand about refusing to do this work did she?

MS. HETHERINGTON:

No, she did not.

MR. ARRASCADA:

She did not turn hostile to you because you refused to do this; did she?

MS. HETHERINGTON:

No, she did not.

MR. ARRASCADA:

She did not look for a way to criticize you and yell at you; did she?

MS. HETHERINGTON:

No, she did not.

MR. ARRASCADA:

You were a one-woman show in that office. Is that correct?

MS. HETHERINGTON:

Yes.

MR. ARRASCADA:

You have basically a one-woman office down there for the State Controller; correct?

MS. HETHERINGTON:

It was for the first three and one-half years approximately.

MR. ARRASCADA:

You had e-mail contact with everyone; right?

MS. HETHERINGTON:
Yes.

MR. ARRASCADA:
You were not isolated from the rest of the office after this e-mail of March 6; were you?

MS. HETHERINGTON:
No.

MR. ARRASCADA:
You also stated you worked on your own time on Controller Augustine's campaign; correct?

MS. HETHERINGTON:
I have on my own time, yes.

MR. ARRASCADA:
I am not trying to trick you. I am going to talk about your own time. After the e-mail of March 6, 2002, and the e-mail of March 13, 2002, did you continue to work on private-time campaign work for Controller Augustine?

MS. HETHERINGTON:
I attended fundraisers and that, yes.

MR. ARRASCADA:
This is where I need your help—about these different events and what they are for. In your March 6, 2002, e-mail, at the very top of the page, it talks about an NDA breakfast. Can you tell me what that is?

MS. HETHERINGTON:
It is Nevada Development Authority.

MR. ARRASCADA:
This breakfast, you did not have any qualms or discussions with Controller Augustine in making this reservation, did you?

MS. HETHERINGTON:
No, I did not.

MR. ARRASCADA:
You had made a determination in your mind this was not a political event; is that correct?

MS. HETHERINGTON:
That is correct.

MR. ARRASCADA:
If Controller Augustine went to the breakfast and was handing out her flyers, buttons and pins, has it all of a sudden transformed into a campaign event?

MS. HETHERINGTON:
I am not certain. I do not know.

MR. ARRASCADA:
If she got up and spoke at the event, gave a speech about the Controller's Office and, at the end, said something in the nature of it is 2002 and I am up for reelection. I hope you all support me and the rest of the Republicans in November. Does that change that breakfast into a campaign event?

MS. HETHERINGTON:
When I scheduled it in the book, it was not a campaign event.

MR. ARRASCADA:

I understand that. I am just trying to differentiate. I am asking if she did that at the function, would that turn that into a campaign event?

MS. HETHERINGTON:

Again, when I scheduled it, it was not a campaign event. That was my concern.

MR. ARRASCADA:

I understand that, but if she intended on speaking there, and said please vote for me, shaking hands and handing out fliers during this election year, would that breakfast have become a campaign event?

MS. HETHERINGTON:

If I knew she was going to do that, I would not have scheduled it for her.

MR. ARRASCADA:

The Woman's History tea, can you tell me what that is?

MS. HETHERINGTON:

I am not sure. I did not attend it.

MR. ARRASCADA:

You had a class that day?

MS. HETHERINGTON:

Yes, I did.

MR. ARRASCADA:

Was that work related?

MS. HETHERINGTON:

Yes, it was.

MR. ARRASCADA:

Would it help you along in your advancement and getting all these promotions?

MS. HETHERINGTON:

I have no idea.

MR. ARRASCADA:

The Women's History tea, you had no problem making a reservation for that did you?

MS. HETHERINGTON:

No, I did not.

MR. ARRASCADA:

During 2002, would it be a fair statement to say that was the election year?

MS. HETHERINGTON:

Yes, it was.

MR. ARRASCADA:

Controller Augustine was running for reelection.

MS. HETHERINGTON:

Yes, she was.

MR. ARRASCADA:

Did you ever ride in her car during that election year?

MS. HETHERINGTON:

Probably.

MR. ARRASCADA:

Do you recall if there were campaign flyers, buttons and magnets on the side of her doors?

MS. HETHERINGTON:

I do not recall.

MR. ARRASCADA:

Have you seen those documents or items before, during, that campaign year?

MS. HETHERINGTON:

I do not recall seeing them.

MR. ARRASCADA:

You did not have a problem making the reservation for the Women's History tea; correct?

MS. HETHERINGTON:

That is correct.

MR. ARRASCADA:

If Controller Augustine went there and put out a little stand with her fliers before the tea started, would that have turned the Women's History tea into a campaign event?

MS. HETHERINGTON:

Again, when I booked it, it was not a campaign event. Therefore, I had no problem booking it. What happened after that I do not know.

MR. ARRASCADA:

You knew it was an election year; right?

MS. HETHERINGTON:

That is correct.

MR. GRECO:

Mr. Chair, if I could object to this point. I know the evidence code does not apply. These continual "I do not know's"—because she has no personal knowledge. She cannot answer what is in Controller Augustine's mind. I see this as being irrelevant and not germane.

MR. ARRASCADA:

I am not asking what is in Controller Augustine's mind. I am asking what is in Ms. Hetherington's mind.

SENATOR AMODEI:

I think it is germane, Mr. Greco. We are talking about the issue of this witness's background in terms of trying to sift campaign from non-campaign functions in her capacity. I am going to allow it.

MR. ARRASCADA:

When you book an event, in your e-mails, you say this is definitely campaign and I am not going to do it. Other things you do, like the Women's History tea; correct?

MS. HETHERINGTON:

That is correct.

MR. ARRASCADA:

When you book it, how do you make the differentiation whether it is the Women's History tea or the NDA breakfast or going to the Lions Club for lunch, that it is not campaign related in 2002, the election year?

MS. HETHERINGTON:

When I book it, I look at the invitation. I put it down in the book, the time, the date and so on.

MR. ARRASCADA:

On invitations, like the Women's History tea invitation, would it say to Controller Augustine at the bottom, "no campaigning allowed; tea drinking only"?

MS. HETHERINGTON:

No.

MR. ARRASCADA:

Would they all be addressed to the Controller?

MS. HETHERINGTON:

I do not know because many of the invitations were faxed from the Carson City office. I do not know how they are addressed.

MR. ARRASCADA:

For the NDA breakfast, would there be lines at the bottom saying, "no campaigning allowed; breakfast only"?

MS. HETHERINGTON:

I do not recall anything like that.

MR. ARRASCADA:

After you told Controller Augustine that stuffing envelopes was campaign related, she replied to you; correct?

MS. HETHERINGTON:

Yes, by telephone.

MR. ARRASCADA:

When she talked to you on the telephone, you wrote what was said in a note; is that correct?

MS. HETHERINGTON:

Yes, I did.

MR. ARRASCADA:

She told you she did not want you to put aside your regular work. She thought you could do this on your break. Was she yelling at you?

MS. HETHERINGTON:

No, she was not.

MR. ARRASCADA:

Nice?

MS. HETHERINGTON:

Yes.

MR. ARRASCADA:

Maybe somewhat apologetic?

MS. HETHERINGTON:

No.

MR. ARRASCADA:

Did somebody document or write this down? We see in the e-mails later on in the month you have some conversations with Jim Wells by e-mail.

MS. HETHERINGTON:

No, nobody told me to document anything.

MR. ARRASCADA:

You had the conversation with Jim Wells regarding campaign work during state time; right?

MS. HETHERINGTON:

I asked him if he knew what the statute was, yes.

MR. ARRASCADA:

You live by this statute and policy; correct?

MS. HETHERINGTON:

I believe if there is a law that says you are not supposed to do it, you should not do it.

MR. ARRASCADA:

You did not do it.

MS. HETHERINGTON:

No.

MR. ARRASCADA:

You put your foot down and said I am not going to do that; I think it is campaign related.

MS. HETHERINGTON:

I said I am not going to do it.

MR. ARRASCADA:

You would tell Controller Augustine when there was something you thought was campaign related that you would not do.

MS. HETHERINGTON:

I think it is evident that I do.

MR. ARRASCADA:

On the last page of your e-mails you talk about three bookings. The first is the Lite 100.5 taping with Herb Perry. You booked that for Controller Augustine; correct?

MS. HETHERINGTON:

I did.

MR. ARRASCADA:

That was not campaign related?

MS. HETHERINGTON:

No, it was not.

MR. ARRASCADA:

Did you talk personally with Herb Perry to book this?

MS. HETHERINGTON:

I believe I did.

MR. ARRASCADA:

Did he tell you, specifically, if Controller Augustine was on there, she was not to say she was running for reelection so it is not campaign related?

MS. HETHERINGTON:

No, he did not say that.

MR. ARRASCADA:

Did you listen to this taping ever?

MS. HETHERINGTON:

No, I did not.

MR. ARRASCADA:

What is the Endeavor tour?

MS. HETHERINGTON:

Endeavor is actually a workshop for disadvantaged children.

MR. ARRASCADA:

You booked the Endeavor Tour; correct?

MS. HETHERINGTON:

Yes, I did.

MR. ARRASCADA:

Would you agree with me that one thing that is important during an election year for an incumbent is to be out in public and be seen?

MS. HETHERINGTON:

That is true.

MR. ARRASCADA:

The Endeavor Tour is a human-interest work; right?

MS. HETHERINGTON:

That is true.

MR. ARRASCADA:

If Herb Perry had said, "please introduce yourself Controller Augustine," and Controller Augustine said, "I am Controller Augustine. I am running for reelection, and I would like to tell you about the Controller's Office. Does that turn that taping into the no-no land of campaign work?"

MS. HETHERINGTON:

Again, when I booked it, it was not a campaign event. It was Controller Augustine speaking on the debt-collection program.

MR. ARRASCADA:

On the VegasCable.com radio show, you said that was a candidate's forum. You did not have to know it was non-profit or non-paying; is that right?

MS. HETHERINGTON:

As I understand, it was they offered free time on the radio show; I believe it was at midnight. It was for candidates to come on and talk about their campaign

MR. ARRASCADA:

When you sent that e-mail to Controller Augustine, it looks like she replied the same day. Is that correct?

MS. HETHERINGTON:

I am not certain because there is no date when I wrote the original e-mail.

MR. ARRASCADA:

She says regarding the KLAV AM, "I will have Kim Riggs follow up with them." Is that right?

MS. HETHERINGTON:

That is correct.

MR. ARRASCADA:

She had asked you to do three bookings: Herb Perry, Endeavor Tour and Vegas Cable.com. In your mind, you differentiated what was campaign related in that election year and what was not. Is that correct?

MS. HETHERINGTON:

That is correct.

MR. ARRASCADA:

When you told her, that in your opinion, KLA V 1230 was definitely campaign related, she said she would have Kim Riggs follow up with them. Is that right?

MS. HETHERINGTON:

That is correct.

MR. ARRASCADA:

Kim Riggs does not work for the Controller's Office, does she?

MS. HETHERINGTON:

No, she does not.

MR. ARRASCADA:

She was a volunteer for Controller Augustine's campaign.

MS. HETHERINGTON:

Yes, she was.

MR. ARRASCADA:

In differentiating these different functions that you attended, what guidelines were given to you to determine what was campaign related and what was non-campaigned related?

MS. HETHERINGTON:

If the invitation was to an event that was not campaign related, then, I would book it. If it was definitely campaign related, I would not book it.

MR. ARRASCADA:

What I am asking you is, in making that determination, did you have guidelines provided to you or were you using your own smell test.

MS. HETHERINGTON:

I made the determination myself. There were no guidelines.

MR. ARRASCADA:

These were your own personal decisions.

MS. HETHERINGTON:

They were based on how the invitations read and my experience.

MR. ARRASCADA:

You talked about during your private time you would campaign for Controller Augustine; is that right?

MS. HETHERINGTON:

I attended her fundraisers, yes.

MR. ARRASCADA:

On the last page, there is a volunteer named Kim Riggs. Can you name other volunteers from 2002 for Controller Augustine's campaign?

MS. HETHERINGTON:

There was Candy Bowser. I do not remember anybody else.

MR. ARRASCADA:

Were there a number of volunteers?

MS. HETHERINGTON:

There were others who had fundraisers for her, yes.

SENATOR CARLTON:

How long have you been doing the booking for the Controller?

MS. HETHERINGTON:

I have worked for the Controller for five years.

SENATOR CARLTON:

A lot of the events that come across your desk are probably on an annual basis and would be attended whether they are in a political year or not.

MS. HETHERINGTON:

That is correct.

SENATOR CARLTON:

In a political year, there are a lot more invitations. You would be able to tell the difference between the two, simply, in the format and how often they occur?

MS. HETHERINGTON:

Right, as well as being familiar with different organizations.

SENATOR CARE:

In addition to responding on March 6, 2002, by e-mail, having received the e-mail the previous day, did you give any thought to approaching an outside entity such as the Attorney General or the Ethics Commission as a result of the e-mail sent on March 5, 2002?

MS. HETHERINGTON:

No, I did not.

SENATOR CARE:

You state in your response that government employees working on a campaign during working hours has been an issue in some past races. What races did you have in mind?

MS. HETHERINGTON:

I think about a week or two prior to this e-mail, there were several articles in the *Review Journal* about campaign fundraisers. Invitations to them were being faxed over county fax machines. There was quite a bit in there, and I knew there had been problems. That is what I was referring to.

SENATOR CARE:

Your knowledge was based upon the articles in the newspaper.

MS. HETHERINGTON:

Yes.

SENATOR CARE:

You also said in the e-mail to Jim Wells "Please let me know the statute number so I can be prepared should the issue rise again." It sounds to me as though you were anticipating the issue might rise again. Is that fair?

MS. HETHERINGTON:

There is always a possibility.

SENATOR CARE:

What made you think that it might arise again?

MS. HETHERINGTON:

Being a campaign year, there were a lot of things going on, and a lot of different events being held.

SENATOR CARE:

Did you discuss the e-mail request on March 5, 2002, in the days immediately following receipt of the e-mail? Did you discuss that with anybody other than Jim Wells?

MS. HETHERINGTON:

I discussed it with my husband.

SENATOR CARE:

Did you witness Controller Augustine causing state employee Jennifer Normington to perform, on state time, functions relating to Controller Augustine's 2002-reelection campaign.

MS. HETHERINGTON:

I did not witness it.

SENATOR CARE:

Do you have personal knowledge of Controller Augustine causing computer equipment owned by the State of Nevada and located in the Office of the Controller to be used for creating and maintaining, storing and printing documents related to the 2002-reelection campaign of Controller Augustine?

MS. HETHERINGTON:

I have no personal knowledge of that.

SENATOR CARE:

Do you have any personal knowledge of Controller Augustine causing equipment and facilities provided by the State of Nevada for use of the Office of the Controller to be used for business and purposes related to Controller Augustine's 2002-reelection campaign?

MS. HETHERINGTON:

No, I have no personal knowledge.

SENATOR BEERS:

You had this e-mail correspondence with the Controller culminating in you suggesting that someone involved with the campaign should do this because it is political. She had someone who was a volunteer with the campaign do it. You got your documentation in order in case it came up again. Did it come up again?

MS. HETHERINGTON:

Not that I am aware of.

SENATOR BEERS:

Once you pointed out to Controller Augustine this was improper, it never happened again.

MS. HETHERINGTON:

She did not ask me to work on her campaign on state time again.

MR. GRECO:

Ms. Hetherington, you never actually saw Jennifer Normington do campaign work with your own eyes; correct?

MS. HETHERINGTON:

That is correct.

MR. GRECO:

During the entire subject timeframe, out of which office were you working?

MS. HETHERINGTON:

I was working in the Las Vegas Office.

MR. GRECO:

What office was Miss Normington working in?

MS. HETHERINGTON:

The Carson City Office.

SENATOR AMODEI:

Thank you, Ms. Hetherington, for your testimony. Without objection from the Committee or the Counsels, you can consider yourself dismissed as a witness.

Your next witness, Mr. Greco.

MR. GRECO:

Sherry Valdez.

MRS. CLIFT:

Will the witness please stand and raise your right hand. Do you solemnly swear or affirm that the testimony and any evidence you shall give in this matter shall be the truth, the whole truth and nothing but the truth.

MS. VALDEZ (Accounting Assistant III, Office of the State Controller):

I do.

MRS. CLIFT:

Please be seated. State your name and spell it for the record.

MS. VALDEZ:

My name is Sherry Valdez, s-h-e-r-r-y,-v-a-l-d-e-z.

MR. GRECO:

Ms. Valdez, what do you do for a living?

MS. VALDEZ:

I work for the Office of the State Controller.

MR. GRECO:

What is your current job title?

MS. VALDEZ:

I am an Accounting Assistant III.

MR. GRECO:

How long have you been with the Office of the State Controller?

MS. VALDEZ:

Since October, 2001.

MR. GRECO:

During the calendar year, 2002, what was your job title?

MS. VALDEZ:

Administrative Assistant I.

MR. GRECO:

During 2002, was there an employee in the Office of the State Controller named Jennifer Normington?

MS. VALDEZ:

Yes.

MR. GRECO:

Are we talking about the Controller's main office in Carson City?

MS. VALDEZ:

Yes.

MR. GRECO:

What was Jennifer Normington's job title?

MS. VALDEZ:

She was the executive assistant to the Controller.

MR. GRECO:

Can you recall when she was hired?

MS. VALDEZ:

We were both hired around the same time, probably, October, 2001.

MR. GRECO:

Within a month or two?

MS. VALDEZ:

Yes.

MR. GRECO:

In late 2001 or in 2002, did you ever see Jennifer Normington working on campaign tasks?

MS. VALDEZ:

Yes.

MR. GRECO:

How often?

MS. VALDEZ:

Frequently, toward the end, almost daily.

MR. GRECO:

When you say towards the end, do you mean as the general election got closer?

MS. VALDEZ:

Yes.

MR. GRECO:

Would you please describe for the Senate the layout of the Office of the Controller in Carson City? Specifically, was there one or more than one office, and how they were separated?

MS. VALDEZ:

The Office of the Controller is in the State Capitol Building. I worked in the Annex which is across the breezeway. When you walk into the Annex, the main offices are in a circle. To the right were Jeannine Coward, then, Barry Morgan and Jim Wells. They sat around me. My desk was right in the middle.

MR. GRECO:

Was there a name for that particular suite or office? What did you call that?

MS. VALDEZ:

The Annex.

MR. GRECO:

Did Controller Augustine work in that Annex or in the other office?

MS. VALDEZ:

Controller Augustine and Jennifer Normington worked in the Capitol Building Office.

MR. GRECO:

There was a breezeway that separated the two offices.

MS. VALDEZ:

Yes, and a walkway across the walk.

MR. GRECO:

Toward the end you said you saw her doing a lot of campaign work. As the general election came closer in late September and October, did you see Ms. Normington doing campaign tasks almost daily?

MS. VALDEZ:

Yes.

MR. GRECO:

Please describe the types of campaign task you saw Jennifer Normington do.

MS. VALDEZ:

She would work on speeches or stuff campaign envelopes. She would work on expenditure reports.

MR. GRECO:

What do you mean by expenditure reports?

MS. VALDEZ:

I am not exactly sure. I think it was the totals of campaign donations. There were totals, and Jennifer Normington had discussed it with me because she was not an accountant, and she was worried.

MR. GRECO:

Did you actually see her entering data regarding donations?

MS. VALDEZ:

Yes, she showed me the spreadsheet on her computer.

MR. GRECO:

You saw that with your own eyes.

MS. VALDEZ:

Yes.

MR. GRECO:

When you say her computer, was that her regular administrative assistant computer in the Office of the Controller?

MS. VALDEZ:

Yes.

MR. GRECO:

You said that you and she were actually in separate offices, separated by the walkway; correct?

MS. VALDEZ:

Yes.

MR. GRECO:

You saw those things even though the two of you did not work in the same office; correct?

MS. VALDEZ:

Correct.

MR. GRECO:

As the campaign heated up during September, October and the first few days of November, did you see those things almost on a daily basis?

MS. VALDEZ:

Yes. I was over there frequently.

MR. GRECO:

Did Controller Augustine ever ask you to do any campaign-related tasks?

MS. VALDEZ:

Yes.

MR. GRECO:

What type of task?

MS. VALDEZ:

I attended a function.

MR. GRECO:

Was it a campaign-related function?

MS. VALDEZ:

Yes.

MR. GRECO:

Where was that campaign-related function?

MS. VALDEZ:

Lake Tahoe.

MR. GRECO:

Did Controller Augustine ask you to go to the function with her?

MR. ARRASCADA:

Objection. The rule is relevance. I believe we are arguing direct examinations and cross-examinations. I ask that Mr. Greco be instructed to perform a direct examination as opposed to a leading examination. We have to play by those same rules when we put on our case.

MR. GRECO:

The evidence code does not apply. By asking some leading questions, it is going to greatly expedite the matter. I do not believe I am planting deeds or thoughts in her mind. I am simply trying to speed up the question-and-answer process. I believe it is working.

SENATOR AMODEI:

I think, in that vein, I am going to allow this to continue as long as the leading does not go to ultimate issues. Also, I would exchange the same courtesy to you and Mr. Gentile when it comes time to put on your case.

MR. ARRASCADA:

Just so I am clear, Mr. Chair, it is okay to lead on direct or foundational issues, but not on relevant or germane issues?

SENATOR AMODEI:

It is okay to lead in the way Mr. Greco is leading right now with this witness. If you have concerns with additional witnesses, you should feel free to interpose those objections at the appropriate time.

MR. GRECO:

Ms. Valdez, where did you say that campaign function was located? In what township?

MS. VALDEZ:

Up at Tahoe.

MR. GRECO:

Can you remember what time you and Controller Augustine left for that function?

MS. VALDEZ:

Approximately, 4:00 p.m.

MR. GRECO:

Was that on a regular office day?

MS. VALDEZ:

Yes.

MR. GRECO:

How long did that campaign function last?

MS. VALDEZ:

We were up there a few hours.

MR. GRECO:

Do you remember what type of campaign function it was? What was the event?

MS. VALDEZ:

It was at the Hyatt, and it was where elected officials went to speak. That is all I remember.

MR. GRECO:

After the campaign function was over, did Controller Augustine make any other requests of you in terms of campaign-related work?

MS. VALDEZ:

We had already discussed prior that we were going to spend the night at the home of Jeannine Coward up at the Lake. After we got to Jeannine Coward's, we stuffed campaign envelopes.

MR. GRECO:

Were you aware when you left Carson City to go to Incline Village that you would be asked to stuff envelopes?

MS. VALDEZ:

When I was initially invited to Lake Tahoe, I did not know. I did find out prior to leaving.

MR. GRECO:

When she initially asked you, she did not say anything about campaign envelopes, but you found out sometime later.

MS. VALDEZ:

Yes, we did.

MR. GRECO:

Can you remember how many campaign envelopes Controller Augustine and whoever else was present may have stuffed?

MS. VALDEZ:

No. We stuffed until late that evening.

MR. GRECO:

More than a few hundred?

MS. VALDEZ:

Probably, I do not know.

MR. GRECO:

Were you ever asked to stuff envelopes on office time in the actual Office of the Controller in Carson City?

MS. VALDEZ:

We did stuff envelopes on work time.

MR. GRECO:

When you say we stuffed envelopes on work time, who is we?

MS. VALDEZ:

Jeannine Coward, Jennifer Normington, Sheri Hutter and myself.

MR. GRECO:

Can you remember if all four of you did that together?

MS. VALDEZ:

Yes.

MR. GRECO:

Can you remember approximately how many envelopes the four of you stuffed?

MS. VALDEZ:

No, I do not know that. I just know we stuffed quite a few. We did a conveyor type thing and got them done.

MR. GRECO:

More than 100?

MS. VALDEZ:

Yes.

MR. GRECO:

More than 200?

MS. VALDEZ:

Probably, I do not remember.

MR. GRECO:

Did you stuff envelopes in the Office of the Controller in Carson City on one occasion or more than one occasion?

MS. VALDEZ:

I helped Jennifer occasionally. At that time, I did it with them. Sometimes, I would help Jennifer get done.

MR. GRECO:

In addition to the time the four of you stuffed envelopes, how many times would you say you assisted Jennifer Normington doing that?

MS. VALDEZ:

Just a couple of times.

MR. GRECO:

Were all of those times during normal business hours?

MS. VALDEZ:

Yes.

MR. GRECO:

In 2002, did you know an individual named Jim Wells?

MS. VALDEZ:

Yes.

MR. GRECO:

Where did he work in 2002?

MS. VALDEZ:

He worked in the Annex as Deputy Chief Controller.

MR. GRECO:

Did Jim Wells ever express concern to you about you stuffing envelopes on office time?

MS. VALDEZ:

Yes.

MR. GRECO:

At the time, did you think it was right for you to be stuffing envelopes or doing any other campaign-related work on your state working time?

MS. VALDEZ:

At that time, I had no idea. Whenever duties were given to me, I did them. I did not question if it was something I should or should not be doing.

MR. GRECO:

At some point prior to the general election, did you begin to become uncomfortable doing those types of things?

MS. VALDEZ:

Yes.

MR. GRECO:

Did you discuss your concerns about doing campaign-related work on state time with any other employees in the office?

MS. VALDEZ:

Yes, with Jeannine Coward.

MR. GRECO:

Without getting into the content of your discussions, did you also discuss the situation with Jim Wells?

MS. VALDEZ:

He discussed it with me on one occasion.

MR. GRECO:

If you were uncomfortable doing these things, why did you do them?

MS. VALDEZ:

You do what you are told in the Office of the Controller. When you are given a job, you do it.

MR. GRECO:

Are you specifically talking about the 2002 year?

MS. VALDEZ:

Always.

MR. GRECO:

Were you afraid of consequences if you did not do those tasks?

MS. VALDEZ:

Yes.

MR. GRECO:

Can you describe your level of fear? Was it a little or a lot?

MS. VALDEZ:

It was a lot.

MR. GRECO:

I notice your voice has been trembling during your testimony. Are you scared right now?

MS. VALDEZ:

I am just extremely uncomfortable.

MR. GRECO:

After Jim Wells discussed the situation with you, did you ever see him go into Controller Augustine's office to speak to Controller Augustine?

MS. VALDEZ:

Yes.

MR. GRECO:

When Mr. Wells came out of that office, would you describe his facial expression?

MS. VALDEZ:

He was very frustrated when he walked by my desk.

MR. GRECO:

After you raised these concerns with Jeannine Coward, do you know if she ever went into Controller Augustine's office to confront her about those?

MS. VALDEZ:

I know she spoke to Controller Augustine about it.

MR. GRECO:

When Jeannine Coward came out, were you present so you could see her facial expressions?

MS. VALDEZ:

I cannot remember.

MR. GRECO:

Were you afraid if you objected to doing campaign work on state time that you might lose your job?

MS. VALDEZ:

Yes. I was a classified employee. I was worried about how I would be treated.

MR. GRECO:

Why did you have concerns about how you might be treated?

MS. VALDEZ:

I sat in that middle room, and I saw and heard a lot. I saw how Jim Wells reacted when he told Controller Augustine he was not going to do something. We found out that he had told her "no."

MR. GRECO:

That is all I have, Mr. Chair.

SENATOR AMODEI:

Cross examination, Mr. Arrascada.

MR. ARRASCADA:

You spoke about Jim Wells telling Controller Augustine he was not going to do anything on the campaign. Jim Wells was not fired; was he?

MS. VALDEZ:

No, he was not.

MR. ARRASCADA:

You have been in the Office of the Controller since October, 2001.

MS. VALDEZ:

Yes.

MR. ARRASCADA:

You still work there today.

MS. VALDEZ:

Yes, I do.

MR. ARRASCADA:

You have received promotions since 2001.

MS. VALDEZ:

I was reclassified.

MR. ARRASCADA:

Would that reclassification be considered a promotion?

MS. VALDEZ:

I have no idea. I would consider so, yes.

MR. ARRASCADA:

Are you making more money?

MS. VALDEZ:

Yes.

MR. ARRASCADA:

Did that come with the reclassification?

MS. VALDEZ:

Yes.

MR. ARRASCADA:

Controller Augustine's office is in the Capitol Building, and the balance of the employees are in the Annex. Is that correct?

MS. VALDEZ:

Yes.

MR. ARRASCADA:

That is separate from the office where the Controller and the executive secretary are; is that correct?

MS. VALDEZ:

Yes.

MR. ARRASCADA:

You are surrounded in that Annex by all of the other employees. Is that right?

MS. VALDEZ:

Yes.

MR. ARRASCADA:

It is a close-knit office; is that right?

MS. VALDEZ:

Yes.

MR. ARRASCADA:

From October, 2001, until today, December 1, 2004, do you know of a single person who has been fired from the Office of the State Controller?

MS. VALDEZ:

No.

MR. ARRASCADA:

The trip to Lake Tahoe was in the evening; correct?

MS. VALDEZ:

Yes.

MR. ARRASCADA:

You knew before you got in the car you would be stuffing envelopes later that night; is that correct?

MS. VALDEZ:

We found out, yes.

MR. ARRASCADA:

At that point, you did not say, "I am out of here; I do not want to participate." You went along on the trip; is that right?

MS. VALDEZ:

Yes.

MR. ARRASCADA:

You talked about that trip with Dale Liebherr, the investigator for the Office of the Attorney General; is that right?

MS. VALDEZ:

Yes.

MR. ARRASCADA:

You told him you were going to Jeannine's Lake Tahoe home. Is that right?

MS. VALDEZ:

That is where we were staying, yes.

MR. ARRASCADA:

It was going to be a fun thing, a lot of fun.

MS. VALDEZ:

We were going to the event and go back to Jeannine's home to stay the night, yes.

MR. ARRASCADA:

The event was a political event; correct?

MS. VALDEZ:

Yes.

MR. ARRASCADA:

That was after hours.

MS. VALDEZ:

The event started after hours, yes.

MR. ARRASCADA:

You told the investigator that it was not a forceful thing at all; is that right?

MS. VALDEZ:

Right.

MR. ARRASCADA:

You told him you enjoyed going up there with them to learn what Controller Augustine does and what an elected official does; is that right?

MS. VALDEZ:

I was happy to be invited. I thought that would be very interesting to learn what she does, yes.

MR. ARRASCADA:

You felt it would be very interesting to learn and to see what Controller Augustine does and how she speaks; is that right?

MS. VALDEZ:

Yes.

MR. ARRASCADA:

It was something you chose to do.

MS. VALDEZ:

Yes.

MR. ARRASCADA:

When you were stuffing those envelopes all night long, Controller Augustine did not force you to keep going. You were just doing it; is that right?

MS. VALDEZ:

Yes.

MR. ARRASCADA:

She did not say, "hey, wake up, it is only midnight, and we are stuffing envelopes until two in the morning or else."

MS. VALDEZ:

No, we just got it done.

MR. ARRASCADA:

Controller Augustine did not make any threats to you or to anyone else there to get those envelopes stuffed that night did she?

MS. VALDEZ:

No.

MR. ARRASCADA:

Everyone was a volunteer that night.

MS. VALDEZ:

We all went to the function. Yes, I think so.

MR. ARRASCADA:

You testified at the Assembly; is that correct?

MS. VALDEZ:

Yes, I did.

MR. ARRASCADA:

You had a typed statement you provided to the Assembly. Is that right?

MS. VALDEZ:

Yes.

MR. ARRASCADA:

Have you seen that typed statement since you delivered it to the Assembly?

MS. VALDEZ:

Yes.

MR. ARRASCADA:

When did you review it?

MS. VALDEZ:

A couple of weeks ago.

MR. ARRASCADA:

You are aware that on your typed statement, I will present to you, we received it with scratch outs on it.

MS. VALDEZ:

I scratched it out.

MR. ARRASCADA:

Originally, the first paragraph stated, "I have worked for the State Controller since 2001," and you scratched that out; correct?

MS. VALDEZ:

Correct.

MR. ARRASCADA:

Instead, what you placed in there, in your own hand, "I was hired by Jeannine Coward, assistant in 2001 to Jeannine's debt collection." Is that right?

MS. VALDEZ:

That is right. When I typed up that statement, I typed I worked for the Office of the State Controller. In reality, I was hired and worked for Jeannine Coward. I was very nervous when I typed that statement, and I just wanted to clarify that I was hired and worked for Jeannine Coward.

MR. ARRASCADA:

It is important for you to let the Assembly know, as opposed to working for the Office of the State Controller since 2001, you were hired by Jeannine Coward in Jeannine's debt collection. Is that right?

MS. VALDEZ:

I was hired by Jeannine Coward. Not in Jeannine's debt collection, in the Office of the Controller, Debt Collection Department.

MR. ARRASCADA:

In one of the binders is your statement. Maybe, I cannot read your handwriting. It looks like you wrote in there "assistant in 2001 to Jeannine's debt collection." Do you mind if I hand you the binder.

MS. VALDEZ:

That is fine.

MR. ARRASCADA:

I am going to show you the statement. Does that say "as assistant in 2001, Jeannine's debt collection"?

MS. VALDEZ:

No. "Jeannine's assistant in debt collection."

MR. ARRASCADA:

I want to talk to you about the envelopes that Jim Wells took away from you. You actually were not stuffing envelopes. You were crossing them out with a black marker. Is that right?

MS. VALDEZ:

Yes.

MR. ARRASCADA:

Those envelopes are Exhibit P-13. When you were doing that with the envelopes, was there also stationary you were running the black marker through?

MS. VALDEZ:

Yes, the stationary and the envelopes.

MR. ARRASCADA:

Controller Augustine had asked you to run the black marker across that area there; correct?

MS. VALDEZ:

Yes.

MR. ARRASCADA:

On those envelopes, the part we can see, it says Kathy Augustine, State Controller. Correct?

MS. VALDEZ:

Yes.

MR. ARRASCADA:

There is nothing on there that says, in the part you can see not blacked out, Committee to Reelect Kathy Augustine; is there?

MS. VALDEZ:

No.

MR. ARRASCADA:

It just says Kathy Augustine, State Controller. Right?

MS. VALDEZ:

Yes.

MR. ARRASCADA:

Do you remember in the area that you were blacking out what was in that blacked-out area?

MS. VALDEZ:

No. I did not read it. I just blacked out the area I was supposed to black out.

MR. ARRASCADA:

We provided the Senators with the original copy. I am actually showing you an envelope now. Does that appear to be an envelope you were blacking out that day with Jim Wells?

MR. GRECO:

May I see that new item before it is shown to the witness?

MR. ARRASCADA:

We provided the originals in brown manila folders. I will provide him a look at the original envelopes.

MR. GRECO:

I just do not know what it is. I cannot see it.

SENATOR AMODEI:

Please feel free to congregate about the witness, and look at the envelope while we continue.

MR. ARRASCADA:

Does that look like the envelope you were blacking out that day?

MS. VALDEZ:

Yes.

MR. ARRASCADA:

That envelope, if you hold it up to the light, can you see through the area you are blacking out?

MS. VALDEZ:

It says post office box, but I cannot read it all now.

MR. ARRASCADA:

Is there anything you can tell in there that says Committee to Reelect Controller Augustine—anything of that nature?

MS. VALDEZ:

No.

MR. ARRASCADA:

When Mr. Wells took these envelopes from you, there is nothing that would identify them being campaign related; is that right?

MS. VALDEZ:

Mr. Wells did not take the envelopes from me. He did not. Yes, to your question.

MR. ARRASCADA:

There is nothing to identify them as being campaign related; right?

MS. VALDEZ:

Correct.

MR. ARRASCADA:

May I furnish this to the Senators? We only have a few of these.

SENATOR AMODEI:

Would you have any objection to providing that to the Secretary, and she could make copies to be provided to the committee members.

MR. ARRASCADA:

I think the original is important to look at. You cannot see what is beneath the blacked out area from the copies.

SENATOR AMODEI:

Hand it to Senator Horsford, and he will pass it down to the members.

MR. ARRASCADA:

There was nothing on those envelopes that would indicate they were campaign related at all was there?

MS. VALDEZ:

No.

MR. ARRASCADA:

You talked about another time you were with Jeannine Coward and Jennifer Normington. The three of you stuffed envelopes on state time; is that right?

MS. VALDEZ:

Yes.

MR. ARRASCADA:

You remember giving a statement to the Attorney General; is that right?

MS. VALDEZ:

Yes.

MR. ARRASCADA:

You told him the amount of time was maybe a couple of hours; is that not right?

MS. VALDEZ:

Yes.

MR. ARRASCADA:

When you were stuffing those envelopes, was Controller Augustine in the office?

MS. VALDEZ:

No.

MR. ARRASCADA:

She was gone.

MS. VALDEZ:

Yes.

MR. ARRASCADA:

During that reelection year, 2002, she was gone quite a bit; is that right?

MS. VALDEZ:

Yes, she was.

MR. ARRASCADA:

In your direct examination, you talked about actually seeing Jennifer Normington working on the campaign. You did not make that same statement to the Attorney General; did you?

MS. VALDEZ:

I answered the questions the Attorney General asked me. I did not give any more or any less.

MR. ARRASCADA:

You told the Attorney General you were told a lot by Jennifer, but by actually seeing, "I do not know." You told the Attorney General's investigator back in April, 2003, you did not actually see Jennifer doing all this campaign work. Is that right?

MS. VALDEZ:

No, I did not tell him I did not see it. I saw Jennifer Normington do campaign work.

MR. ARRASCADA:

You told him you were told a lot by Jennifer, but by actually seeing, "I do not know." She did speeches, etc., and you could not pinpoint hours. Is that right?

MS. VALDEZ:

I cannot pinpoint hours, no.

MR. ARRASCADA:

With Jim Wells and those envelopes, you returned those to Controller Augustine. Is that right?

MS. VALDEZ:

After I was done, yes.

MR. ARRASCADA:

When you returned them after you were done, she did not yell at you.

MS. VALDEZ:

I just returned the envelopes and left her office. Nothing was discussed.

MR. ARRASCADA:

Regarding your work on the campaign, do you recall speaking to Dale Liebherr back in April, 2003?

MS. VALDEZ:

Yes.

MR. ARRASCADA:

You told him your work on the campaign was nothing major. Is that right?

MS. VALDEZ:

Yes.

MR. ARRASCADA:

It was a few envelopes; correct?

MS. VALDEZ:

Right.

MR. ARRASCADA:

You went to functions such as the Ron Knecht function. You also told him you were not forced to go to these functions.

MS. VALDEZ:

Right.

MR. ARRASCADA:

You were not threatened by Controller Augustine to go to these functions; were you?

MS. VALDEZ:

I was asked to go to these functions.

MR. ARRASCADA:

You were not forced to go to those functions; were you?

MS. VALDEZ:

No, I was not.

MR. ARRASCADA:

You told Dale Liebherr your total time in the office spent for campaign work while Controller Augustine was not there was one or two hours. Is that not right?

MS. VALDEZ:

A few hours, yes. At that time, I thought when I was being questioned I was in trouble for doing campaign work. I was very nervous.

MR. ARRASCADA:

Regarding any of this work, you heard Controller Augustine tell you a few times do not do this during work time. Do it after work. Is that not right?

MS. VALDEZ:

There was an occasion I remember it was mentioned to do it after work. We said we could not stay after work to do it.

MR. ARRASCADA:

You told Dale Liebherr you never personally heard Controller Augustine threaten the job of Jennifer Normington; is that correct?

MS. VALDEZ:

That is correct.

MR. ARRASCADA:

You also told Dale Liebherr that Jennifer Normington just felt that way; is that correct? Just felt that her job was threatened.

MS. VALDEZ:

Yes.

MR. ARRASCADA:

Jennifer Normington never told you Controller Augustine said, "I am going to fire you here on the spot;" did she?

MS. VALDEZ:

No.

MR. ARRASCADA:

No one has been fired from the Office of the Controller since you have been there. Is that right?

MR. ARRASCADA:

That is right.

MR. ARRASCADA:

In December of 2002, did there come a time when Jennifer Normington was not at her desk. You were in the office of Controller Augustine, and something was discovered? Specifically, do you remember being with Controller Augustine and looking under Jennifer's desk and finding all kinds of documents?

MS. VALDEZ:

Yes.

MR. ARRASCADA:

Those documents were mail that was never sent?

MS. VALDEZ:

I am not sure what the documents were.

MR. ARRASCADA:

Did you assist in going through the documents?

MS. VALDEZ:

We pulled them out from under her desk. I was Jennifer Normington's backup executive assistant. I was in that office all the time so I do not know if it was in December. Yes, I remember pulling the documents at some time.

MR. ARRASCADA:

Those documents gave everybody concern because there were personnel records that had not been filed properly; is that not right?

MS. VALDEZ:

I am not certain what the documents were, now. I know they were documents Controller Augustine was concerned about.

MR. ARRASCADA:

I want to talk to you about the fundraiser at the Hyatt. It was not a fundraiser; it was a speaking event. Is that correct?

MS. VALDEZ:

Yes.

MR. ARRASCADA:

I misspoke. Just so we are clear for the Senate. It was an opportunity to speak for Controller Augustine, not a fundraiser. Is that correct?

MS. VALDEZ:

It was a function at Lake Tahoe where they all spoke. I do not know.

MR. ARRASCADA:
Several different candidates all spoke?

MS. VALDEZ:
Yes.

MR. ARRASCADA:
Like a candidate's forum.

MS. VALDEZ:
Okay.

MR. ARRASCADA:
This was July 11. Does that ring a bell?

MS. VALDEZ:
I do not remember the date now.

MR. ARRASCADA:
Do you remember the month? Was it in July?

MS. VALDEZ:
I think so.

MR. ARRASCADA:
You were asked to go, and you wanted to go; is that right?

MS. VALDEZ:
Yes.

MR. ARRASCADA:
To your knowledge Jennifer Normington wanted to go that night too; correct?

MS. VALDEZ:
I do not know if Jennifer Normington wanted to do it. I do not know.

MR. ARRASCADA:
You remember telling Dale Liebherr it was a fun thing for everyone.

MS. VALDEZ:
I remember telling Dale Liebherr it was suppose to be a fun thing, yes.

MR. ARRASCADA:
Jeannine Coward went. It was actually her home that was volunteered.

MS. VALDEZ:
Yes.

MR. ARRASCADA:
You did not hear Controller Augustine tell her you need to let me use your home tonight or else, anything of that nature; right?

MS. VALDEZ:
No, I did not hear that.

MR. ARRASCADA:
It was volunteered.

MS. VALDEZ:
Yes.

MR. ARRASCADA:

You talked about you saw Jennifer Normington working on the campaign in September and October; is that right?

MS. VALDEZ:

I saw Jennifer Normington work on the campaign a lot more toward the end, yes.

MR. ARRASCADA:

In July, before you went to Lake Tahoe, Jennifer Normington was not complaining about her job with Controller Augustine; was she?

MS. VALDEZ:

Jennifer Normington complained about her job a lot, yes.

MR. ARRASCADA:

I am drawing you to a timeframe here in July. Do you know if she complained about it before July?

MS. VALDEZ:

I do not know.

MR. ARRASCADA:

You do not recall?

MS. VALDEZ:

No, I do not.

MR. ARRASCADA:

After Jennifer Normington and Jeannine Coward left the office, did there come a time in February of this year ... Let me clarify; they both left in January of 2003; is that correct?

MS. VALDEZ:

Yes.

MR. ARRASCADA:

Did there come a time in February of 2004 when Jennifer Normington and Jeannine Coward had you and Sheri Hutter go to lunch?

MS. VALDEZ:

Yes.

MR. ARRASCADA:

Where was that?

MS. VALDEZ:

Tito's.

MR. ARRASCADA:

Is Tito's a Mexican restaurant?

MS. VALDEZ:

Yes, it is.

MR. ARRASCADA:

When you left Tito's, Jennifer Normington took you to the side and told you a few things; did she not?

MS. VALDEZ:

No.

MR. ARRASCADA:

Did she speak to you about the investigation?

MS. VALDEZ:

When we were walking away, she made a comment about the investigation.

MR. GRECO:

Objection. If we are going to apply the hearsay rule to the state as to Ms. Normington's comments, we should apply it to the Defense as well.

SENATOR AMODEI:

I am not sure we are going to apply the hearsay rule. For purposes of this objection, I think it is sufficient, Mr. Arrascada, if this witness indicates she had a discussion along those same lines, but I assume Ms. Normington will be available to testify as to what she said.

MR. GRECO:

Absolutely.

MR. ARRASCADA:

I appreciate Mr. Greco answering for me, but this area of questioning is going directly to the bias of Jennifer Normington. I would like a little leeway to get into that.

SENATOR AMODEI:

You may have it.

MR. ARRASCADA:

We were talking about lunch at Tito's right?

MS. VALDEZ:

Yes.

MR. ARRASCADA:

That was in February. At that time, you had not been interviewed by investigators, yet; right?

MS. VALDEZ:

Yes, I had already been interviewed.

MR. ARRASCADA:

I am sorry. It was the year after. Jennifer Normington told you certain things as you were walking out of the restaurant; is that right?

MS. VALDEZ:

She made one statement. I did not ask her what she said. I remember she made a statement, and I did not want to discuss it so I asked Jeannine something. I went somewhere else.

MR. ARRASCADA:

Jennifer's statement made you uncomfortable; right?

MS. VALDEZ:

I did not want to discuss this, and we did not during lunch. I did not want to discuss it at all.

MR. ARRASCADA:

The statement she made that made you uncomfortable was, "Get ready to pop the corks on the champagne; we are finally going to get the big hair."

MS. VALDEZ:

That is not what she said.

MR. ARRASCADA:

Was it something like that?

MS. VALDEZ:

There was nothing about popping champagne. It was a statement, but that was not it.

MR. ARRASCADA:

There was not anything about popping champagne. Was there talk about getting the big hair finally, or the big hair is going to topple? Something of that nature?

MS. VALDEZ:

I wish I would have asked her what she said exactly, but I did not ask. I did not want to elaborate what she said.

MR. ARRASCADA:

You heard her make a comment about the big hair.

MS. VALDEZ:

Something to that effect, I do not remember exactly.

MR. ARRASCADA:

It makes you uncomfortable talking about that in front of the Senators; does it not?

MS. VALDEZ:

It makes me uncomfortable talking about it at all.

MR. ARRASCADA:

That is because Jennifer Normington said some very derogatory things about Controller Augustine.

MS. VALDEZ:

Jennifer Normington never brought Controller Augustine up at all during that lunch nor have I ever heard her say ... No.

MR. ARRASCADA:

Now, you are telling us she did not say anything about the big hair?

MS. VALDEZ:

She made a comment about Controller Augustine and this investigation as we walking away. It was as we were walking out the door. It was not a discussion.

MR. ARRASCADA:

Can you please tell the Senators what Ms. Normington said when referring to Controller Augustine?

MS. VALDEZ:

I do not know exactly what she said. It was a comment regarding Controller Augustine and this investigation. I did not hear exactly, and I did not ask her to repeat what she said.

MR. ARRASCADA:

Were the words "big hair" used?

MS. VALDEZ:

It is possible. When people mentioned Controller Augustine, sometimes, they used that phrase.

MR. ARRASCADA:

I have nothing further on cross-examination.

SENATOR AMODEI:

Redirect, Mr. Greco?

MR. GRECO:

Mr. Arrascada asked you a number of questions where you paused for a lengthy period before you answered. Do you recall Mr. Arrascada asking you, in terms of the night going to Incline Village, if everyone was a volunteer that night? Remember your long pause?

MS. VALDEZ:
Yes.

MR. GRECO:
You said we all went to the function. Where he cut you off, did you want to add something to that phrase? You testified earlier when Controller Augustine first asked you to go up there she said nothing about stuffing envelopes; correct?

MS. VALDEZ:
Correct.

MR. GRECO:
You found out about that later?

MS. VALDEZ:
Yes.

MR. GRECO:
At the time, Controller Augustine asked you to go to Incline Village in Lake Tahoe, she did not put handcuffs on you; correct?

MS. VALDEZ:
Correct.

MR. GRECO:
She did not put leg irons on you; correct?

MS. VALDEZ:
Correct.

MR. GRECO:
She did not directly order you to go up there; correct?

MS. VALDEZ:
Correct.

MR. GRECO:
Did you feel compelled to go up there?

MS. VALDEZ:
Yes.

MR. GRECO:
What I am trying to get at is would you please explain to the Senators why you felt compelled to go up there even though she did not slap leg irons or handcuffs on you.

MS. VALDEZ:
Sometimes, she can be very intimidating.

MR. GRECO:
Who can be very intimidating?

MS. VALDEZ:
Controller Augustine.

MR. GRECO:
Was she very intimidating in 2002?

MS. VALDEZ:
Controller Augustine can be intimidating all of the time.

MR. GRECO:
Are you frightened right now?

MS. VALDEZ:
I am just very uncomfortable.

MR. GRECO:
Are you frightened of Controller Augustine?

MS. VALDEZ:
I am uncomfortable discussing it.

MR. GRECO:
In front of her? Did you answer that question?

MS. VALDEZ:
Yes.

MR. GRECO:
Was that a yes?

MS. VALDEZ:
Yes.

MR. GRECO:
Mr. Arrascada also spent some time bringing out that you gave slightly lower estimates of time you spent on campaign functions, specifically campaign envelopes than when you were first interviewed by the investigator from the Office of the Attorney General. Do you recall that line of questioning by Mr. Arrascada?

MS. VALDEZ:
Yes.

MR. GRECO:
When you testified on direct exam a little while ago about the number of envelopes and the times and the number of events, were you telling the truth?

MS. VALDEZ:
I do not know the amount of time. That is the truth. I do not know.

MR. GRECO:
Were you afraid when the investigator for the Office of the Attorney General first interviewed you that you might be in trouble for stuffing envelopes for Controller Augustine on office time?

MS. VALDEZ:
Yes.

MR. GRECO:
Is that the reason you underestimated the figures when you first talked to the investigator?

MS. VALDEZ:
I do not know the figures.

MR. GRECO:
Controller Augustine is the one who had you stuff those envelopes; correct?

MS. VALDEZ:
Yes.

MR. GRECO:
Do you recall seeing any icon on Ms. Normington's computer that appeared campaign related?

MS. VALDEZ:

Yes.

MR. GRECO:

Please describe the icons you observed on Ms. Normington's computer that appeared to be campaign related.

MR. ARRASCADA:

I would like a date timeframe when she saw this.

MR. GRECO:

That is fine. Can you narrow it down to any particular month?

MS. VALDEZ:

No.

MR. GRECO:

Was it before the general election or after the general election? Was it before the November final election?

MS. VALDEZ:

It was before that.

MR. GRECO:

Can you estimate approximately how many months before the general election it was? I just want an approximation.

MS. VALDEZ:

I do not know. They were on there every time I was over there.

MR. GRECO:

Every time you went over there you saw the same icons on the computer; correct?

MS. VALDEZ:

Yes.

MR. GRECO:

Please tell the Senators what kind of icons you saw that were campaign related.

MS. VALDEZ:

She had the campaign speeches and campaign fundraisers. I worked over there a lot. There were always invitations out on the desk. As far as the icons, I remember there were the speeches, the fundraisers and the expenditure reports.

MR. GRECO:

From time to time, when you were filling in near Ms. Normington's desk, did you see campaign invitations on her desk?

MS. VALDEZ:

Yes.

MR. GRECO:

Was that a regular occurrence?

MS. VALDEZ:

Yes.

MR. GRECO:

How many times did you see campaign invitations on the desk? Just estimate for us.

MS. VALDEZ:

I do not know. I worked over there frequently.

MR. GRECO:
More than ten?

MS. VALDEZ:
Probably, yes.

MR. GRECO:
That was despite the fact you did not even work in the same office as her full time; correct?

MS. VALDEZ:
I was over there quite often, yes, filling in for her. Sometimes when she was there, I was in there.

MR. GRECO:
Mr. Arrascada also asked you about your statement provided to the Assembly. Was Ms. Coward's title in 2001 Official Debt Collector for the State of Nevada?

MS. VALDEZ:
She was the Assistant Controller.

MR. GRECO:
Did part of her responsibility, when you were hired, include debt collection?

MS. VALDEZ:
Yes.

MR. GRECO:
Is that what you were trying to convey when you wrote that on your statement?

MS. VALDEZ:
Yes.

MR. GRECO:
Did you say you were very nervous when you first typed that statement?

MS. VALDEZ:
Yes.

MR. GRECO:
Were you scared of having to face the prospect of testifying in front of the Assembly?

MS. VALDEZ:
Yes.

MR. GRECO:
Is that for the same reasons you are scared of testifying here, today?

MS. VALDEZ:
Yes.

MR. GRECO:
You were nervous, but you saw an error, and you corrected it; correct?

MS. VALDEZ:
Yes.

MR. GRECO:
That is all I have Mr. Chair.

SENATOR AMODEI:
Recross, Mr. Arrascada?

MR. ARRASCADA:

Ms. Valdez, in the binder in front of you, there are some blue tabs. Do you see your name? Which binder number and color is that?

MS. VALDEZ:

It is red, and it is Binder No. 1.

MR. ARRASCADA:

In the red Binder No. 1 is your statement to the Assembly we discussed; is that right?

MS. VALDEZ:

Yes.

MR. ARRASCADA:

Regarding the Lake Tahoe trip, you made a specific statement to Dale Liebherr regarding the trip; is that right?

MS. VALDEZ:

Yes.

MR. ARRASCADA:

You spoke about Jeannine and how you had the utmost respect for her; correct?

MS. VALDEZ:

Yes, I do.

MR. ARRASCADA:

You were going to Lake Tahoe to stay the night at Jeannine's Lake Tahoe home; is that right?

MS. VALDEZ:

Yes.

MR. ARRASCADA:

It was going to be a fun thing. Is that right?

MS. VALDEZ:

Yes.

MR. ARRASCADA:

Then, you said it was not a forceful thing at all; correct?

MS. VALDEZ:

Correct.

MR. ARRASCADA:

Then, you said I enjoy going up there with them, learning what Controller Augustine does; right?

MS. VALDEZ:

Correct.

MR. ARRASCADA:

What an elected official does is what you wanted to learn about; right?

MS. VALDEZ:

Correct.

MR. ARRASCADA:

She was going to speak, and that was something you chose to do.

MS. VALDEZ:

Correct.

MR. ARRASCADA:

You felt it would be interesting to hear her speak; right?

MS. VALDEZ:

Correct.

MR. ARRASCADA:

You were asked in your redirect about computer icons on Jennifer Normington's computer, okay?

MS. VALDEZ:

Okay.

MR. ARRASCADA:

I am referring to the screen.

MS. VALDEZ:

Okay.

MR. ARRASCADA:

Among those icons, was there also an icon on her screen regarding Toastmasters?

MS. VALDEZ:

I think there was. I am not sure.

MR. ARRASCADA:

You are familiar with Toastmasters; right?

MS. VALDEZ:

Yes.

MR. ARRASCADA:

Are you a Toastmaster?

MS. VALDEZ:

No.

MR. ARRASCADA:

Toastmasters take a lot of time; does it not?

MS. VALDEZ:

Yes.

MR. ARRASCADA:

Jennifer Normington is very involved in Toastmasters; correct?

MS. VALDEZ:

Yes.

MR. ARRASCADA:

Toastmasters do not have anything to do with operations of the Office of the Controller or the activities of the executive assistant to the Controller; does it?

MS. VALDEZ:

No, it does not. I am not sure if there was an icon.

MR. ARRASCADA:

One of the other icons on her computer was the Home Shopping Network; is that right?

MS. VALDEZ:

I have no idea.

MR. ARRASCADA:

Regarding your statement to the Assembly, were you told by someone to type out a statement that you were going to deliver?

MS. VALDEZ:

I was told by the Office of the Attorney General I would be testifying at the Assembly and to type something that tells the truth about my statement of what occurred. I was told to type up something easy for me to remember. He knew I was very nervous in front of the Assembly.

MR. ARRASCADA:

Just as you are nervous here, today; right?

MS. VALDEZ:

Yes.

MR. ARRASCADA:

Just like you were nervous with Dale Liebherr.

MS. VALDEZ:

Yes.

MR. ARRASCADA:

Did anyone review the statement you typed?

MS. VALDEZ:

No.

MR. ARRASCADA:

Before you provided it to the Assembly?

MS. VALDEZ:

No.

MR. ARRASCADA:

Did you share it with anyone, like Jeannine Coward, who you have respect for?

MS. VALDEZ:

No, I do not talk to Jeannine Coward or Jennifer Normington.

MR. ARRASCADA:

You do not talk to them at all?

MS. VALDEZ:

Since that lunch, a long time ago, I have not spoken to them except for when I saw them.

MR. ARRASCADA:

Those times were at the Assembly hearing ten days ago; right?

MS. VALDEZ:

Yes.

MR. ARRASCADA:

At the Ethics hearing in September.

MS. VALDEZ:

Yes.

MR. ARRASCADA:

You had lunch with them in February.

MS. VALDEZ:

Right. Then, there was nothing with Jennifer, and there was one time with Jeannine. She was checking on me making certain I was okay.

MR. ARRASCADA:

At the office?

MS. VALDEZ:

No.

MR. ARRASCADA:

Just, in life, in general?

MS. VALDEZ:

Yes.

MR. ARRASCADA:

Jennifer and Jeannine both left in January of 2003; correct?

MS. VALDEZ:

Correct.

MR. ARRASCADA:

From January, 2003, to February, 2004, when you went to lunch with Jennifer Normington, had you had any contact with her during that time?

MS. VALDEZ:

Jennifer Normington, no.

MR. ARRASCADA:

Your contact with Jeannine Coward was just once or twice while she was checking on your general health?

MS. VALDEZ:

When Jennifer Normington left the Office of the Controller, she went to another job that was close by. We had lunch a couple of times, but we never discussed the Office of the Controller.

MR. ARRASCADA:

To your knowledge, that job was at Tourism; right?

MS. VALDEZ:

Yes.

MR. ARRASCADA:

She lasted at that job a couple of months.

MS. VALDEZ:

I do not know how long she worked there.

MR. ARRASCADA:

A short period of time?

MS. VALDEZ:

Yes.

MR. ARRASCADA:

Less than three months?

MS. VALDEZ:

I do not know.

MR. ARRASCADA:

You never went to Risk Management or Personnel or the Office of the Attorney General to complain about Controller Augustine; did you?

MS. VALDEZ:

No, I did not.

MR. ARRASCADA:

Your name was given to the Office of the Attorney General. When they called, you thought you were in trouble; right?

MS. VALDEZ:

When they called me over, I did not know what it was regarding.

MR. ARRASCADA:

Do you know who gave your name to the Office of the Attorney General?

MS. VALDEZ:

Now, I think I know. Yes.

MR. ARRASCADA:

Who is that?

MS. VALDEZ:

Probably, Jeannine or Jennifer.

MR. ARRASCADA:

Thank you, I have nothing further.

SENATOR AMODEI:

Are there any questions of Ms. Valdez from the Committee?

SENATOR COFFIN:

Did you give the same testimony as you have given here, today, to the Ethics Commission?

MS. VALDEZ:

We did not testify at the Ethics Commission. Do you mean at the Assembly?

SENATOR COFFIN:

No, at the Ethics Commission.

MS. VALDEZ:

We did not testify.

SENATOR COFFIN:

Who else did not testify?

MS. VALDEZ:

At the Ethics Commission?

SENATOR COFFIN:

Right.

MS. VALDEZ:

I did not testify there.

SENATOR COFFIN:

You did speak to the investigator.

MS. VALDEZ:

At the Office of the Attorney General?

SENATOR COFFIN:

Yes.

MS. VALDEZ:

Yes.

SENATOR COFFIN:

Did you provide anything in writing to the investigator or the Ethics Commission?

MS. VALDEZ:

No.

SENATOR COFFIN:

You say they did not call you to testify or ask you to attend a hearing?

MS. VALDEZ:

They asked me to attend, but I did not testify.

SENATOR COFFIN:

At that hearing, did you sit in the audience with Ms. Kennedy, for example?

MS. VALDEZ:

In the audience, I sat in the back row close to the door.

SENATOR COFFIN:

Where was Ms. Kennedy sitting at that time?

MS. VALDEZ:

I do not know.

SENATOR COFFIN:

You got the chance to hear everybody speak.

MS. VALDEZ:

At the Ethics Commission, no one testified that I know of.

SENATOR COFFIN:

There was no testimony?

MS. VALDEZ:

At the Ethics Commission, I sat at the back row and listened to people talk. I do not know if any witnesses spoke. As soon as they told me I could go, I went out the back door.

SENATOR CARLTON:

We have heard a number of times, and a number of people have been asked, about terminations. It seems to me there was a lot of turnover in this office in those few years. Could you hazard a guess as to how many people have come and gone in the amount of time you were there—classified and unclassified.

MS. VALDEZ:

Several, I do not know the exact amount, but a lot of people have left.

SENATOR CARLTON:

The total for your office when it is fully staffed is how many?

MS. VALDEZ:

Approximately, 40.

SENATOR CARLTON:

The people that would be involved in the inner core you were talking about between the Office of the Controller and the Annex, it seemed like there would be five people.

MS. VALDEZ:

No, including myself, ten.

SENATOR CARLTON:

You said how many people you thought had left?

MS. VALDEZ:

I am going to say, approximately, between eight and twelve or more. I do not know. I am guessing how many people have left the Office of the Controller since I have been there.

SENATOR CARLTON:

Those were all reassignments or resignations?

MS. VALDEZ:

Yes.

SENATOR HECK:

I would like to clarify something about the Incline Village event the Defense Counsel characterized as a candidate's forum. It was, therefore, clearly a campaign-type event. In your statement, referred to in your binder, you left work early and returned to work late the next day.

MS. VALDEZ:

Yes, I did.

SENATOR HECK:

In the time you were away from the office to attend this event, were you required to take leave or vacation or in any other way make up the hours you did not work?

MS. VALDEZ:

No.

SENATOR HECK:

Would it be a fair assumption to say that part of the cost of attending this event was at taxpayer expense?

MS. VALDEZ:

Yes.

SENATOR CARE:

Going back to 2002, without speculating, can you give us some idea when you first became aware Ms. Normington was working on Controller Augustine's reelection campaign in the Office of the Controller on state time?

MS. VALDEZ:

I wish I could give you a month and date. I do not know. It happened every day. I never paid attention to exactly when it started. I just do not know.

SENATOR CARE:

You were over near her workstation, probably, on a daily basis; correct?

MS. VALDEZ:

Yes.

SENATOR CARE:

Your knowledge of her working on Controller Augustine's campaign, other than what she may have told you, I am going to guess is confined to what you saw on the computer screen. Is that correct?

MS. VALDEZ:

Right.

SENATOR CARE:

For example, writing speeches, you would have been looking at the screen and see a work in progress; is that accurate?

Ms. VALDEZ:

That, and her asking my help sometime as a sounding board.

SENATOR CARE:

Is it possible for you to give us an educated estimate whether there were days when she worked 25 or 50 or 75 percent of the workday on Controller Augustine's campaign?

Ms. VALDEZ:

Jennifer Normington worked on the campaign. All I can say is what I saw. It was a good percent, 20 or 25 percent, except for the end. When it got to the end, the percentage went up. I guess, at the beginning, it was a lesser percent and much more towards the end.

SENATOR CARE:

As far as your involvement, there was the function at Lake Tahoe and later that evening at Ms. Coward's house stuffing envelopes. Stuffing envelopes on work time in the Office of the Controller and assisting Ms. Coward a couple of times. I do not think there was anything further. Do I have that correct?

Ms. VALDEZ:

That was the extent except for a Ron Knecht function that was on a weekend?

SENATOR CARE:

You testified about a conversation with Mr. Liebherr. The date I have is April, 2003. Is that when the conversation took place?

Ms. VALDEZ:

When I was called to the Office of the Attorney General?

SENATOR CARE:

Right.

Ms. VALDEZ:

I am terrible with dates. I do not know what date. I am sorry.

SENATOR CARE:

You have indicated you were fearful you might be in trouble when you were called to speak with the investigator from the Office of the Attorney General; right?

Ms. VALDEZ:

When he started asking me questions on the campaign, I knew I participated some.

SENATOR CARE:

Did anyone from the Office of the Attorney General, in that conversation, suggest you may have violated state law?

Ms. VALDEZ:

No.

SENATOR HORSFORD:

There is a lot of to-do about the stationary and the envelopes and the blacking out of those envelopes. Is this official state letterhead for the Office of the Controller?

Ms. VALDEZ:

No.

SENATOR HORSFORD:

Are you aware of whether this is the material used during the campaign by Controller Augustine?

Ms. VALDEZ:

I am not aware of that, no.

SENATOR NOLAN:

You implied that part of your involvement in these activities was a result of your fear of losing your job or having some other action taken by Controller Augustine. I did not hear any specific examples of that. If you could provide us with examples of things you say Controller Augustine did that would lead you to be frightened or fearful or intimidated. We have heard that nobody has been fired. Were there any other behaviors or activities on behalf of Controller Augustine that led you to be frightened?

Ms. VALDEZ:

You want me to give you specifics or just why I was worried about my position there.

SENATOR NOLAN:

I think specific behavior or examples of conduct by Controller Augustine to yourself or other employees in the office that caused you to be frightened or fear for your job.

Ms. VALDEZ:

When Jim Wells told Controller Augustine he would not work on her campaign on state time, she quit speaking to him. It was obvious in the office she was not speaking to him. I observed that behavior. He left shortly after that time. There were several arguments between Controller Augustine and Jeannine Coward that I witnessed and heard on several occasions. When I made an error sending out some things Controller Augustine got extremely upset with me. You just know not to get her angry. You do not want to say no and not do the job. You just want to do the job. I did not want to put myself into that situation of that kind of possible treatment.

SENATOR AMODEI:

Is there anything else for Ms. Valdez? Thank you, Ms. Valdez, for your testimony. Without objection from the Committee or the Counsels, you can consider yourself dismissed as a witness.

Mr. Greco, please call your next witness.

MR. GRECO:

Michelle Miles.

MRS. CLIFT:

Will the witness please raise your right hand. Do you solemnly swear or affirm that the testimony and any evidence you shall give in this matter shall be the truth, the whole truth and nothing but the truth.

Ms. MILES (Chief Accountant of Operations, Office of the State Controller, retired):

I do.

MRS. CLIFT:

Please state your name and spell it for the record.

Ms. MILES:

Michelle Miles, m-i-c-h-e-l-l-e,-m-i-l-l-e-s.

MR. GRECO:

Are you currently employed?

Ms. MILES:

I am retired.

MR. GRECO:

What line of work are you retired from?

MS. MILES:

I was an accountant for 30 years.

MR. GRECO:

Was any of the 30 years spent with a state agency?

MS. MILES:

Yes.

MR. GRECO:

What portion?

MS. MILES:

I worked for 27.5 years for the Office of the State Controller.

MR. GRECO:

In what year did the Office of the State Controller first hire you?

MS. MILES:

1975.

MR. GRECO:

Is that the agency you retired from?

MS. MILES:

Yes.

MR. GRECO:

In what month and year?

MS. MILES:

I retired December, 2002.

MR. GRECO:

When you retired, what was your official title?

MS. MILES:

My title was Chief Accountant of Operations.

MR. GRECO:

Explain for the Senate what your duties entailed as Chief Accountant of Operations.

MS. MILES:

The broadest description would be that we ran the daily activities of the accounting system for the whole State.

MR. GRECO:

When you retired who was the Controller for the State?

MS. MILES:

Controller Augustine.

MR. GRECO:

We have heard testimony about the layout of the two sections of the Office of the Controller. Were you in the section where Controller Augustine and her administrative assistant worked or in the section where Sherry Valdez worked?

MS. MILES:

I was closer to where Sherry Valdez worked, but I was on the second floor.

MR. GRECO:

You were not in the same suite of offices as Controller Augustine; is that correct?

MS. MILES:

Correct.

MR. GRECO:

During the 2002 year, did you see any employees doing campaign-related work at the office?

MS. MILES:

Yes.

MR. GRECO:

Who did you see?

MS. MILES:

I saw Sherry Valdez.

MR. GRECO:

What type of activities did you see her do that appeared to be campaign related?

MS. MILES:

Stuffing envelopes.

MR. GRECO:

A few envelopes or a lot of envelopes?

MS. MILES:

A lot.

MR. GRECO:

Did you see her do those things during normal business hours?

MS. MILES:

Yes.

MR. GRECO:

Did that cause you some concern?

MS. MILES:

She was not in my section. It was not any of my business.

MR. GRECO:

Did seeing an employee stuffing envelopes during normal business hours seem unusual to you for an employee on state time?

MS. MILES:

The only way it was unusual is that it was not for office purposes.

MR. GRECO:

Do you know who asked Ms. Valdez to stuff those envelopes?

MS. MILES:

No, I do not. It could have been her supervisor.

MR. GRECO:

You do not have any personal knowledge?

MS. MILES:

No, I do not have any personal knowledge.

MR. GRECO:

Did you see Ms. Valdez stuffing those campaign envelopes one time or more than one time?

MS. MILES:

I recall one time.

MR. GRECO:

During your last year in the office, did you come to know Jennifer Normington?

MS. MILES:

Yes, I did.

MR. GRECO:

Who was she?

MS. MILES:

Jennifer was Controller Augustine's executive assistant.

MR. GRECO:

Did you get to know her fairly well?

MS. MILES:

In my dealings with her, I did. I did not have time to get to know her very well.

MR. GRECO:

You dealt with her professionally on the job; correct?

MS. MILES:

Yes.

MR. GRECO:

You were not friends outside of the office?

MS. MILES:

Right.

MR. GRECO:

Prior to the dispute with Controller Augustine, did Ms. Normington appear to get along with other employees in the Office of the Controller?

MS. MILES:

Fairly well, it seemed like it.

MR. GRECO:

Did she appear to be a hard working individual?

MS. MILES:

Yes, very hard working, very capable.

MR. GRECO:

Did there come a time when Ms. Normington began falling behind on her work?

MS. MILES:

Yes.

MR. GRECO:

When was that?

MS. MILES:

I was trying to think about when that was. I think it was at the end of the fiscal year when we were all working on closing the accounting records for the fiscal year. The state offices in general were involved in budgeting for the legislative session.

MR. GRECO:

For state government are we talking about summer or the period right before the summer?

MS. MILES:

I recall it was about August.

MR. GRECO:

Of 2002?

MS. MILES:

Right.

MR. GRECO:

Did part of Jennifer Normington's duties in 2002 include the initial processing of incoming checks to the office?

MS. MILES:

Yes.

MR. GRECO:

At some point did Controller Augustine speak to you about taking that duty away from Ms. Normington?

MS. MILES:

Yes.

MR. GRECO:

Can you recall when that was?

MS. MILES:

No.

MR. GRECO:

Can you give an approximate time; spring, summer or fall of 2002?

MS. MILES:

I had so much to do at the office everything is running together.

MR. GRECO:

Was it before the general election in November?

MS. MILES:

Yes.

MR. GRECO:

When Controller Augustine told you she was going to take away that task from Ms. Normington, did she tell you why?

MS. MILES:

Yes, Jennifer had too many other things to do. She was very busy.

MR. GRECO:

Do you recall Controller Augustine using the phrase "so that she could focus on other work?"

MS. MILES:

Something to that effect. I do not know if those were her exact words.

MR. GRECO:

Did she elaborate at all?

MS. MILES:

No.

MR. GRECO:

As the general election came near, did Ms. Normington appear to become overwhelmed with campaign-related work?

MS. MILES:

Yes, it seemed so.

MR. GENTILE:

I object to the opinion without a foundation.

MR. GRECO:

I simply asked if she appeared to become overwhelmed. It does not call for an opinion. It calls for a visual observation.

SENATOR AMODEI:

Please respond to the question

MR. GRECO:

As the general election neared, did she appear to become overwhelmed with election-related matters?

MS. MILES:

Yes.

MR. GRECO:

During the time you worked in the Office of the Controller were the majority of the positions classified or unclassified?

MS. MILES:

The majority of the positions were classified.

MR. GRECO:

During the time of 1999-2002, was there ever an attempt to make more of the supervisory positions unclassified?

MS. MILES:

Yes.

MR. GRECO:

Please tell the Senators about that.

MS. MILES:

The bill draft request was to unclassify the managerial positions in the office.

MR. GRECO:

Do you know who was behind that bill draft request?

MS. MILES:

It was the Office of the Controller.

MR. GRECO:

I am asking which individual was pushed to do that. Was it Controller Augustine?

MS. MILES:

I believe so.

MR. GRECO:

Do you know whether that bill was passed by the Legislature?

MS. MILES:

I think the bill was amended and then passed. The employees concerned went to the State of Nevada Employees Association, and Bob Gagnier testified against it in committee. I believe those positions were left out of the bill.

MR. GRECO:

During your tenure in the Office of the Controller, did it appear to you that Controller Augustine understood the accounting functions of the office?

MS. MILES:

I did a lot of explaining. The other accountants did also.

MR. GRECO:

Was Controller Augustine able to separate the accounting functions from the non-accounting functions of the office?

MS. MILES:

I think Controller Augustine had a general idea what the difference was.

MR. GRECO:

That is all I have, Mr. Chair.

SENATOR AMODEI:

Cross examination, Mr. Gentile.

MR. GENTILE:

You did not resign your position, you retired.

MS. MILES:

That is splitting hairs. I was at the point where I could retire, and I did.

MR. GENTILE:

You were interviewed by Dale Liebherr the Deputy Attorney General. He asked you some questions about Jim Wells. Do you remember that?

MS. MILES:

Yes.

MR. GENTILE:

Do you remember describing Mr. Wells as being surly, that he did not bend well?

MS. MILES:

Surly might be my word, but bend well is not. It was a couple of years ago.

MR. GENTILE:

You worked for Controller Augustine for four years.

MS. MILES:

Yes.

MR. GENTILE:

She was away from the office a lot; is that fair to say?

MS. MILES:

Yes.

MR. GENTILE:

Particularly, in the year 2002, the election year?

MS. MILES:

Not noticeably.

MR. GENTILE:

It was not noticeably more in 2002 than it was before that?

MS. MILES:

Right.

MR. GENTILE:

Did you describe to Mr. Liebherr the things you saw Jennifer Normington and Susan Kennedy do as things you did not know were political or not?

MS. MILES:

I can guess what I said. I do not remember.

MR. GENTILE:

Have you had a chance to read your statement recently?

MS. MILES:

Not the one I gave to the investigator for the Attorney General.

MR. GENTILE:

Do you know how they got to you? You did not go to them.

MS. MILES:

No, I did not go to them.

MR. GENTILE:

Somebody told them to go and talk to you.

MS. MILES:

Right.

MR. GENTILE:

You are a Democrat. You said that at the Assembly.

MS. MILES:

Yes. I changed my registration from Republican to Democrat because of Nixon.

MR. GENTILE:

It was not secret to you that Controller Augustine is a Republican.

MS. MILES:

Right.

MR. GENTILE:

A list was circulated at the Office of the State Controller with respect to various events. Employees of the office are advised of the events' existence and are asked if they want to attend. Are you familiar with that?

MS. MILES:

I recall a list sometimes. Other times, it was by e-mail.

MR. GENTILE:

You were a Democrat during your tenure with the Office of the Controller.

SENATOR HORSFORD:

I have a point of order, Mr. Chair. I am, personally, offended that a person's political affiliation has anything to do with these proceedings. I think state employees are there to do a job. If people are going to bring partisanship into this process, I am, personally, offended by the line of questioning.

SENATOR AMODEI:

Political ramifications have been rife in the press before we convened this Committee this morning. I am going to allow the line of questioning along the lines that the surface of that ice has been broken. Please proceed, Mr. Gentile.

MR. GENTILE:

Ms. Miles, my point was you were also invited to go to those events; were you not?

MS. MILES:

Yes. The lists are e-mailed to everyone in the office.

MR. GENTILE:

I have nothing further.

SENATOR AMODEI:

Redirect, Mr. Greco.

MR. GRECO:

Do you remember Mr. Gentile asking you the question you were not asked to resign; you retired; correct?

MS. MILES:

I did not interpret his question that way. He asked did you resign or did you retire.

MR. GRECO:

Do you recall responding, "well, that is kind of splitting hairs"?

MS. MILES:

Right.

MR. GRECO:

If the office environment had been more pleasant, is it possible you may have stayed longer at the Office of the Controller?

MS. MILES:

I might have, yes.

MR. GRECO:

Is that what you meant when you offered the answer to Mr. Gentile, "Well that is splitting hairs"?

MS. MILES:

Yes.

MR. GRECO:

That is all I have, Mr. Chair.

SENATOR AMODEI:

Recross, Mr. Gentile?

MR. GENTILE:

You worked hard that last six months you were there.

MS. MILES:

Yes, I worked for the whole of the last year. I was under a lot of stress.

MR. GENTILE:

In your testimony before the Assembly, I got the impression you had your head down and your back up and really did not see. You were that busy.

MS. MILES:

Yes.

MR. GENTILE:

I think you also used the term you were slammed in terms of the work you had.

MS. MILES:

Right, yes.

MR. GENTILE:

The environment with respect to your job was hard work.

MS. MILES:

Yes.

MR. GENTILE:

I do not have anything further.

SENATOR AMODEI:

Questions for Ms. Miles from the Committee?

SENATOR CARE:

You were asked if Ms. Normington was ever overwhelmed. Your response was, "It seemed so; it seemed she was overwhelmed with election matters." Does that sound familiar?

MS. MILES:

Yes.

SENATOR CARE:

Did you, personally, observe Ms. Normington engaging in any politically-related activities for Controller Augustine's 2002 campaign?

MS. MILES:

I cannot tell you. Jennifer's desk is situated in the office with her back to the wall and the front to the visitor. I would not have had the vantage point to see if she was working on election or office work. Frankly, I did not have the time to worry about it. I usually tried to be respectful and not be nosy.

SENATOR CARE:

Is it correct to say you have no first-hand knowledge?

MS. MILES:

I did not see her. I may have seen her do the work, but I did not know what she was doing.

SENATOR CARE:

Do you have any personal knowledge of Controller Augustine causing the equipment and facilities provided by the State of Nevada for use by the Office of the Controller to be used for business and purposes related to Controller Augustine's 2002 reelection campaign?

MS. MILES:

If you could call a desk a piece of equipment, she was stuffing envelopes.

SENATOR CARE:

Stuffing envelopes is a reference to Ms. Valdez?

MS. MILES:

Right.

SENATOR CARE:

Do you have any first-hand knowledge of Controller Augustine causing computer equipment owned by the State of Nevada and located in the Office of the Controller to be used for creating, maintaining, storing and printing documents relating to her 2002-reelection campaign?

MS. MILES:

No, I do not have any personal knowledge of that.

SENATOR NOLAN:

In the 27 years you had functioned in the Office of the Controller, you have seen Controller's come and go I imagine.

Ms. MILES:

I worked for Wilson McGowan and Darrell Daines as well as Controller Augustine.

SENATOR NOLAN:

Would you describe Controller Augustine as being challenging or demanding compared to those you worked for.

Ms. MILES:

Controller Augustine was more hands-on than either Wilson McGowan or Darrell Daines. Both of those gentlemen would appoint their Chief Deputy and allow that person to run the office, be available for policy decisions, to smooth the way politically or plea before the Legislature. Controller Augustine was more involved in daily matters.

SENATOR NOLAN:

Would you say Controller Augustine strove to make changes in that office that were unpopular?

Ms. MILES:

Yes.

SENATOR NOLAN:

We heard during opening statements the Office of the Controller under the administration of Controller Augustine had received national accolades that had not been received by the Office of the Controller prior. Would you say those accolades were in direct correlation with the work Controller Augustine did and the changes she was trying to affect in that office?

Ms. MILES:

I do not know which accolades you are referring to.

SENATOR NOLAN:

Perhaps, Defense Counsel, who made the opening statements, will refer to those.

SENATOR AMODEI:

We have the witness here, now. If she does not have any knowledge of it, then, her answer is she does not have any knowledge of it. If you would like that information provided as a result of the opening statements, we would be happy to get them for you, but let us just stick with what Ms. Miles can testify to in response to your questions right now.

Ms. MILES:

I do have a reply for you however. One of the accolades that the Office of the Controller receives every year is for the publication of the State Financial Statements for the State of Nevada as audited and accepted by the Government Finance Officers Association. That is a very big deal to all of the accountants in the office, a goal they strive to meet every year. The Office has been given that certificate for a good number of years, long before Controller Augustine became Controller.

SENATOR AMODEI:

Mr. Arrascada, are the references Senator Nolan referred to contained in the materials you provided the Committee?

MR. ARRASCADA:

It can be found in the Special Prosecutor's exhibits.

SENATOR BEERS:

Your statement provided in the blue tabs section of red Binder No. 1, bottom paragraph on the first page, discusses reassigning the work of logging incoming receipts to another employee. What were the other duties that employee had, the one they were reassigned to?

MS. MILES:

The other employee was a data-entry supervisor. Her other duties were to supervise the data-entry function, to do data entry, and backup preparing the biweekly payroll.

SENATOR BEERS:

Which cycles did she do actual data entries? Were they journal entries or payables vouchers?

MS. MILES:

She would do whatever was necessary.

SENATOR BEERS:

Invoicing?

MS. MILES:

After she was given the duties of logging in the checks and stamping them with the restrictive endorsement, I did not allow her to key in any deposit transactions. It may be a conflict of duties.

SENATOR BEERS:

Was she at all involved in the generation of invoices that would later result in a payment to the State?

MS. MILES:

No billing, the agencies would do their own billings.

SENATOR BEERS:

After this duty was assigned to her, her only involvement in the revenue cycle was logging incoming cash receipts?

MS. MILES:

I would say so.

SENATOR BEERS:

You raised the concern, in your written testimony, there might have been some separation-of-duties principle violated by assigning this to another employee. I was exploring what other duties that employee might have that would be a violation.

MS. MILES:

She was to not touch any deposit transactions after that.

SENATOR BEERS:

Had she historically touched deposit transactions before that, in the capacity of entering them in the computer?

MS. MILES:

Yes.

SENATOR BEERS:

You reassigned entering them in the computer to some other employee?

MS. MILES:

Right.

SENATOR BEERS:

In your opinion, do you believe that once you were done juggling all the duties, there was no violation of the separation of functions?

MS. MILES:

When we were finished juggling those duties, there was no problem with the separation of duties. The problem was this employee would work from 7:00 a.m. to 4:00 p.m., and the checks often did not come in until 3:00 p.m. That did not give her very much time, and it was a lot of stress. The other ten employees were engaged in work that would make their duties incompatible with logging in the checks and stamping them with the restrictive endorsement. I had to juggle around within the section. I would not have ordinarily assigned an accounting function to a data-entry person.

SENATOR RAGGIO:

Before this change occurred, Jennifer Normington would receive the checks that came into the Office of the Controller, process them herself and deposit them. Was that the function?

MS. MILES:

No, the executive assistant to the Controller would receive all of the mail that came to the office first. Jennifer would sort the mail and in the process, she would take any checks that came in along with the backup to the checks and do a simple log on the computer. The log was protected by password. It noted who the check was from, the amount and what it was for. She would print out a copy of the log, and in her distribution of the mail, she would give the log, the checks and the backup to one of the people who would deposit and account for the checks.

SENATOR RAGGIO:

I assume the policy was to deposit the checks as soon as possible.

MS. MILES:

Right.

SENATOR RAGGIO:

As I recall from my experience, it is supposed to be a same-day transaction in order to get the full use of the money.

MS. MILES:

Right.

SENATOR RAGGIO:

Did I understand, at some point, Controller Augustine indicated to you she was taking that check responsibility from Ms. Normington and reassigning it?

MS. MILES:

Yes.

SENATOR RAGGIO:

Did she ask you to do the reassigning?

MS. MILES:

Yes.

SENATOR RAGGIO:

That is what you are talking about. You reassigned that function to someone else.

MS. MILES:

Yes.

SENATOR RAGGIO:

What was your response to the reason for Controller Augustine doing that?

MS. MILES:

I am sorry. What is the question?

SENATOR RAGGIO:

What did Controller Augustine tell you the reason was she wanted that check responsibility reassigned from Jennifer Normington?

Ms. MILES:

Jennifer did not have time to do that.

SENATOR RAGGIO:

Did you speak to Jennifer Normington about that or the reason that responsibility was being reassigned?

Ms. MILES:

Yes, I got word from an employee who reported to me that the checks were getting to her two, three or four days late. They were being put in the vault at night because they had not been processed.

SENATOR RAGGIO:

Did Jennifer Normington tell you any reason why she felt they were being reassigned?

Ms. MILES:

Yes, I went to Jennifer to see if she could get the checks done in the same day, preferably, by 4:00 p.m. because the employee that was doing the checks at that time worked until 5:00 p.m. She was a very good employee and would efficiently get the accounting and the depositing done in time for her to take the checks to the bank on her way home. If she got the checks after 4:00 p.m., she would not have enough time or she would have to stay late. There were a number of times when those checks were put in safekeeping overnight because they had not been logged in.

SENATOR RAGGIO:

What did Ms. Normington tell you was the reason that responsibility was being reassigned from her if any? Did she tell you some reason herself?

Ms. MILES:

Yes, she said she was working on the campaign.

SENATOR RAGGIO:

She told you she was working on the campaign?

Ms. MILES:

Yes, it was general knowledge in the office that people in the office were working on Controller Augustine's campaign.

SENATOR RAGGIO:

Thank you.

SENATOR COFFIN:

Since 1991, have we added many positions in that office?

Ms. MILES:

I think it had changed just slightly, a little bit, not so it would help us. We added a Las Vegas office with a person there. We had a chief accountant who had to work on the accounting system project. I cannot remember all of the specifics, but we only had 44 people to do all the work we had to do.

SENATOR AMODEI:

Is there anything else, Mr. Greco, of Ms. Miles as a result of the Committee's questioning.

MR. GRECO:

No, Mr. Chair.

SENATOR AMODEI:
Mr. Gentile?

MR. GENTILE:
No, thank you.

SENATOR AMODEI:
Ms. Miles, thank you for testifying. Without objection from the Committee or either Counsels, you can consider yourself dismissed.

SENATOR RAGGIO:
I move the Committee rise and return immediately to the Senate Chamber.

SENATOR TITUS:
I object.

SENATOR AMODEI:
May the record show Senator Horsford, Senator Carlton and Senator Titus are objecting to the motion. All those in favor of rising and returning to the Senate Chamber please indicate by saying aye. Motion carries.

On the motion of Senator Raggio, the Committee did rise and return to the Senate Chamber.

SENATE IN SESSION

At 5:33 p.m.
President Hunt presiding.
Quorum present.

REMARKS FROM THE FLOOR

Senator Raggio requested the following legal opinion be entered in the Journal:

December 1, 2004

SENATOR TERRY CARE
Senate Chambers
Dear SENATOR CARE:

On the floor of the Senate on November 12, 2004, you asked this office whether the Legislature has the constitutional power to impeach and remove a state officer from her current term of office for offenses committed by the officer during a prior term in the same office. In answering your question, we first must consider the plain language of Section 2 of Article 7 of the Nevada Constitution. Second, we must consider several well-established rules of constitutional construction. Finally, we must consider case law from other jurisdictions, legal treatises and other legal sources for guidance in this area of the law.

DISCUSSION

When interpreting a constitutional provision, courts follow the same rules of construction that are used to interpret statutes. See *Nevada Mining Ass'n v. Erdoes*, 117 Nev. 531, 538 (2001). Under those rules of construction, any analysis of a constitutional or statutory provision must begin with the language of the provision itself. See *State v. Friend*, 118 Nev. 115, 120 (2002).

Section 2 of Article 7 of the Nevada Constitution identifies the state officers who are liable to impeachment and removal, and it also identifies the conduct which amounts to an impeachable offense. In full, Section 2 of Article 7 provides:

The Governor and other State and Judicial Officers, except Justices of the Peace shall be liable to impeachment for Misdemeanor or Malfeasance in Office; but judgment in such case shall not extend further than removal from Office and disqualification to hold any Office of honor, profit, or trust under this State. The party whether convicted or

acquitted, shall, nevertheless, be liable to indictment, trial, judgment and punishment according to law.

On its face, Section 2 of Article 7 does not contain any language specifically limiting the power of the Legislature to impeach and remove a state officer for offenses committed during a prior term in the same office. In addition, the Nevada Supreme Court has not interpreted Section 2 of Article 7 to contain such a limitation.

Under well-established rules of construction, when the Framers of the Nevada Constitution intended to limit the constitutional power of the Legislature, they provided for those limitations in specific terms. See Sarkes Tarzian, Inc. v. Legislature, 104 Nev. 672, 674-75 (1988). Thus, unless there is a specific limitation contained in the plain language of the Constitution, "the authority of the legislature to act is practically absolute." Id. at 675.

If the Framers had intended to limit the power of the Legislature to impeach and remove a state officer for offenses committed during a prior term in the same office, the Framers could have simply expressed that limitation in the Constitution. They did not. The only reasonable conclusion to be drawn is that the Framers did not intend to impose such a limitation on the power of the Legislature.

Another well-established rule of construction is that a constitutional provision should be interpreted consistently with what reason and public policy would indicate the Framers intended. See Nevada Mining Ass'n v. Erdoes, 117 Nev. 531, 538 (2001); Banegas v. State Indus. Ins. Sys., 117 Nev. 222, 225 (2001). Thus, a constitutional provision should be "construed according to its true spirit and with special reference to carrying out the intention of those who framed it; taking into view the evils that were to be remedied, the dangers sought to be guarded against and the protection to be afforded." Evans v. Job, 8 Nev. 322, 333 (1873).

If the intention of the Framers was for a constitutional provision to have a protective purpose, the constitutional provision should be construed liberally to fully achieve the benefits of its intended protection. See Besnilian v. Wilkinson, 117 Nev. 519, 523 (2001); Colello v. Administrator of Real Estate Div., 100 Nev. 344, 347 (1984). Accordingly, if a constitutional provision is intended to protect and safeguard the integrity of government or otherwise protect the public interest, that provision should be interpreted in its broadest possible sense to effectively carry out its intended protection. See Nevada Com'n on Ethics v. JMA/Lucchesi, 110 Nev. 1, 7 (1994); Brill v. State Real Estate Div., 95 Nev. 917, 919-20 (1979).

The primary purpose of the legislative impeachment power is to protect the public from unworthy public officers who have committed official wrongs. See Ferguson v. Maddox, 263 S.W. 888, 892 (Tex. 1924). In this regard, the legislative impeachment power is intended less as a punishment of the individual officer and more as means of protecting and safeguarding the public interest and the integrity of government. Id. Considering that the legislative impeachment power is intended primarily for protective purposes, it is reasonable to conclude, based on reason and public policy, that Nevada's impeachment provisions should be construed liberally and should be given their broadest possible interpretation to fully achieve their intended benefits and protection. Under such a liberal and broad interpretation, we believe the Legislature would clearly have the constitutional power to impeach and remove a state officer for offenses committed during a prior term in the same office.

In addition, the legislative impeachment power acts as an important part of the constitutional system of checks and balances among the three branches of government. See Nixon v. United States, 506 U.S. 224, 234-35, 113 S. Ct. 732, 738-39 (1993). In Nevada, a state executive branch officer who has been elected or appointed to office for a definite term may be removed from office for official misconduct only through impeachment proceedings conducted pursuant to Article 7 of the Nevada Constitution. See Robison v. First Jud. Dist. Ct., 73 Nev. 169, 170-75 (1957). Thus, under Nevada's system of constitutional government, the legislative impeachment power operates as a vital constitutional check against abuses of official power by state executive branch officers. Given the critical nature of this constitutional check in maintaining a proper balance of power among the three branches of government, we believe a narrow or restrictive construction of the legislative impeachment power "would be inconsistent with the Framers' insistence that our system be one of checks and balances." Nixon, 506 U.S. at 234-35, 113 S. Ct. at 738.

In interpreting a constitutional provision, courts will also consider the practical effects and consequences of each possible interpretation and will strive to avoid any interpretation which leads to unreasonable or absurd results. See Nevada Tax Comm'n v. Bernhard, 100 Nev. 348, 351 (1984). Thus, when a court is faced with two possible interpretations of a constitutional provision and one of those interpretations would produce results that are unreasonable or absurd in light of the purpose of the constitutional provision, the court will reject the unreasonable or absurd interpretation. See Nevada Mining Ass'n v. Erdoes, 117 Nev. 531, 539-42 (2001).

Again, the primary purpose of the legislative impeachment power is to protect the public. We believe it would be unreasonable and absurd to interpret Nevada's impeachment provisions in a manner that would allow a state officer to remain in office even though the officer committed impeachable offenses during a prior term in the same office. Under such an interpretation, a state officer who committed impeachable offenses during the latter part of a first term could escape responsibility for those impeachable offenses during a second term simply because of the practical and logistical difficulties involved in discovering and investigating the offenses in an expedited manner and in commencing appropriate impeachment proceedings before the expiration of the first term. It is highly unlikely that the Framers intended for the awesome power of impeachment to be so easily circumvented based on nothing more than fortuitous timing.

Furthermore, the Framers understood that, as a means of removing unworthy public officers, the legislative impeachment process would be a complex and time-consuming process and would not be well-suited for swift or expedited application. See Gay v. District Ct., 41 Nev. 330, 337 (1918). Thus, we believe the Framers fully anticipated that, in most cases, the political machinery of impeachment would not follow swiftly on the heels of the officer's impeachable offenses. Given the inherent lag between discovery of impeachable offenses and commencement of legislative impeachment proceedings, we believe it would be unreasonable and absurd to interpret Nevada's impeachment provisions in a manner that would systematically cut off the impeachment power at the expiration of a term of office.

Accordingly, after reviewing the plain language of Section 2 of Article 7 of the Nevada Constitution and after applying several well-established rules of constitutional construction, there is no reasonable basis to conclude that the Framers intended to limit the power of the Legislature to impeach and remove a state officer for offenses committed during a prior term. Therefore, it is the opinion of this office that the Legislature has the constitutional power to impeach and remove a state officer from her current term of office for offenses committed by the officer during a prior term in the same office.

In reaching this conclusion, we must note that in the context of different types of constitutional and statutory removal proceedings, some courts have followed the "prior term rule," which is a common-law rule that generally prohibits a public officer from being removed from office for misconduct occurring during a prior term in the same office. See State ex rel. Stovall v. Meneley, 22 P.3d 124, 149-50 (Kan. 2001). Generally speaking, most courts that have followed the prior term rule have based their decisions on the particular language in the constitutional or statutory provision governing the removal proceedings. See Thomas J. Goger, Annotation, Removal of Public Officers for Misconduct During Previous Term, 42 A.L.R.3d 691 (1972). There are at least an equal number of courts that have rejected the prior term rule and, generally speaking, those courts have also based their decisions on the particular language in the constitutional or statutory provision governing the removal proceedings. Id.

In researching Nevada cases, we have not found any case from the Nevada Supreme Court that discusses or applies the prior term rule. In researching cases from other jurisdictions, we have found only one case that discusses the prior term rule in the context of state legislative impeachment proceedings. Opinion of the Justices, 33 N.W.2d 275 (Mass. 1941). In the Massachusetts case, it was decided that the prior term rule does not apply to state legislative impeachment proceedings.

In 1941, the Massachusetts House of Representatives was conducting an impeachment investigation concerning a state officer who held the constitutional office of councillor on the Massachusetts Executive Council. Opinion of the Justices, 33 N.W.2d 275, 276-78 (Mass. 1941). During the impeachment investigation, the House uncovered facts which lead it to believe that the state officer had committed impeachable offenses during prior terms in the same office.

Id. at 276. Under the Massachusetts Constitution, the House was authorized to request an advisory opinion from the justices of the Massachusetts Supreme Judicial Court regarding important questions of law. Id. The House requested an advisory opinion from the justices on the issue of whether the state officer was subject to impeachment and removal from office for impeachable offenses committed by the officer during prior terms in the same office. Id.

After examining the plain language of the constitutional impeachment provisions and after interpreting those provisions "in the sense most obvious to the common understanding," the justices advised the House that the state officer was liable to impeachment and removal from office for impeachable offenses committed by the officer during prior terms in the same office. Id. at 279-80. The justices provided the following reasoning for their advice:

It cannot be doubted that in this situation misconduct or mal-administration of a councillor in a previous term may be of such a nature that it can be said reasonably to render him unfit to continue to hold the office of councillor during his present term. The obvious purpose of the provisions for impeachment would fail to a considerable degree if such misconduct or mal-administration in a previous term was not a ground for impeachment. And such misconduct or mal-administration of a councillor, in our opinion, would occur "in" his office, within the meaning of the Constitution, notwithstanding the intervention of one or more re-elections to the office of councillor. The office during his previous terms was the same constitutional office as that which he now holds. The constitutional duties of the office remain unchanged. Doubtless the election of a new Council and the qualification of its members, re-elected or newly elected, result in a break in the performance of these duties. And doubtless, technically, the life of the Council is the two-year period fixed by the Constitution as amended. But "in the sense most obvious to the common understanding" a councillor by successive elections continues to hold the same office.

Id. at 279-80 (citations omitted).

Additionally, the justices found that because the plain language of the Massachusetts Constitution permitted the judgment in an impeachment conviction to extend to disqualification to hold office in the future, there was a clear indication in the text of the Massachusetts Constitution that the impeachment provisions applied broadly to capture conduct that "does not relate solely to the existing term of office." Id. at 280. This finding is particularly notable because the Nevada Constitution, like the Massachusetts Constitution, expressly provides that the judgment in an impeachment conviction in the Nevada Senate may extend to disqualification to hold office in the future. Nev. Const. art. 7, § 2. Thus, consistent with the reasoning in the Massachusetts case, there is a clear indication in the text of the Nevada Constitution that the impeachment provisions in this state should be applied broadly to capture conduct that does not relate solely to the existing term of office.

Lastly, the justices in the Massachusetts case found that "the probable practical difficulty of discovering misconduct and mal-administration and trying an impeachment therefor during the term of office in which they occurred ... furnishes an additional reason for concluding that the provisions for impeachment were not intended to be interpreted to limit such proceedings so narrowly." Opinion of the Justices, 33 N.W.2d at 280. We believe the same reasoning would apply equally to the impeachment provisions in the Nevada Constitution.

Thus, based on the similarity between the impeachment provisions in the Nevada Constitution and the Massachusetts Constitution, we believe the Massachusetts case provides strong persuasive authority that supports our interpretation of the Nevada Constitution, as do several other state cases that have followed the reasoning of the justices in the Massachusetts case and have rejected the application of the prior term rule. See, e.g., In re Rome, 542 P.2d 676, 682-83 (Kan. 1975); Stanley v. Jones, 2 So. 2d 45, 48-50 (La. 1941); In re Briggs, 595 S.W.2d 270, 279 (Mo. 1980); In re Martin, 275 S.E.2d 412, 422-23 (N.C. 1981).

Finally, as a general rule of construction, "[w]here a doubt may exist as to the proper construction to be placed on a constitutional or statutory provision, courts will give weight to the construction placed thereon by other coordinate branches of government and by officers whose duty it is to execute its provisions." State ex rel. Springmeyer v. Brodigan, 35 Nev. 35, 39 (1912); State ex rel. Coffin v. Howell, 26 Nev. 93, 104 (1901). This rule of construction is

particularly compelling in the context of an impeachment trial because the Nevada Constitution has entrusted the Senate with the sole power to try impeachments. Nev. Const. art. 7, § 1.

When the Senate is sitting as a court of impeachment, "it is a court of original, exclusive, and final jurisdiction." Ferguson v. Maddox, 263 S.W. 888, 893-94 (Tex. 1924). As such, the Senate is empowered by Article 7 of the Nevada Constitution to decide all questions of law arising in an impeachment trial. See id. at 892-94; Kinsella v. Jaekle, 475 A.2d 243, 256-57 (Conn. 1984); modified, Office of Governor v. Select Comm. of Inquiry, 271 Conn. 540 (2004). Because the Senate has the constitutional power to decide all questions of law arising in an impeachment trial, we believe the Senate has the discretion to adopt or reject common-law rules in the same manner as any other court of law.

Generally, the Constitution must be understood and construed in light of and with the assistance of the common law. See 1 Thomas M. Cooley, Constitutional Limitations 133 (8th ed. 1927); NRS 1.030. However, "courts may reject the common law where it is not applicable to local conditions." Rupert v. Stienne, 90 Nev. 397, 399 (1974); Barry v. Truax, 99 N.W. 769, 772 (N.D. 1904). Thus, only those portions of the common law that are appropriate for local conditions have been adopted as the law of this state. See West Indies, Inc. v. First Nat'l Bank of Nev., 67 Nev. 13, 29 (1950); Reno Smelting, Milling & Reduction Works v. Stevenson, 20 Nev. 269, 276-77 (1889).

In determining whether to adopt or reject a common-law rule, courts typically examine the rationale supporting the rule. See Rupert v. Stienne, 90 Nev. 397, 401 (1974). The Kansas Supreme Court has explained the rationale supporting the prior term rule:

[T]he principal rationale of the rule is that reelection or reappointment of the officer amounts to condonation of his prior misconduct. Condonation of an offense implies knowledge of the offense, and, if the officer's misconduct in the prior term was concealed or not known to the electorate or the appointing official at the time of reelection or reappointment, several courts have refused to apply the rule.

State ex rel. Stovall v. Meneley, 22 P.3d 124, 149-50 (Kan. 2001) (quoting State ex rel. Londerholm v. Schroeder, 430 P.2d 304, 313 (Kan. 1967)); accord In re Carrillo, 542 S.W.2d 105, 110-11 (Tex. 1976). Thus, even if the Senate made the choice to adopt the prior term rule, that rule would not apply if the Senate found that the impeachable offenses committed by the officer during the prior term were concealed or were not otherwise widely known to the electorate before the officer was reelected.

Ultimately, the plain language of Article 7 of the Nevada Constitution establishes the sole constitutional standard that each Senator must follow during an impeachment trial. Under that constitutional standard, each Senator must "do justice according to Law and Evidence." Nev. Const. art. 7, § 1. Because the Senate has the constitutional power to decide all questions of law arising in an impeachment trial, we believe the Senate has the discretion to rule on such questions as it deems necessary and appropriate to "do justice according to Law and Evidence."

CONCLUSION

After reviewing the plain language of Section 2 of Article 7 of the Nevada Constitution and after applying several well-established rules of constitutional construction, there is no reasonable basis to conclude that the Framers intended to limit the power of the Legislature to impeach and remove a state officer for offenses committed during a prior term. Therefore, it is the opinion of this office that the Legislature has the constitutional power to impeach and remove a state officer from her current term of office for offenses committed by the officer during a prior term in the same office.

In reaching this conclusion, we must note that some courts in other jurisdictions have followed the common-law rule, known as the prior term rule, which generally prohibits a public officer from being removed from office for misconduct occurring during a prior term in the same office. However, there are at least an equal number of courts that have rejected the prior term rule. Moreover, in the only case involving impeachment provisions that are similar to the impeachment provisions in the Nevada Constitution, the justices of the Massachusetts Supreme Judicial Court concluded that the prior term rule has no application to legislative impeachment proceedings under the Massachusetts Constitution. Ultimately, because the Senate has the constitutional power to decide all questions of law arising in an impeachment trial, it is the

opinion of this office that the Senate has the discretion to rule on such questions as it deems necessary and appropriate to "do justice according to Law and Evidence."

If you have any further questions regarding this matter, please do not hesitate to contact this office.

Very truly yours,
BRENDA J. ERDOES
Legislative Counsel
SCOTT G. WASSERMAN
Chief Deputy Legislative Counsel
By KEVIN C. POWERS
Principal Deputy Legislative Counsel

Senator Titus requested that her remarks be entered in the Journal.

Thank you, Madam President. I want to comment about our adjourning at 5:30 p.m. tonight and explain why three of us objected to that time. We are here from southern Nevada at taxpayers' expense.

Every day that this goes on it is costing more taxpayers' dollars. We had the witnesses here who, by our rules we adopted, were suppose to have 30 minutes and to allow the lawyer to make us adjourn by saying this will be a lengthy witness. We will all be going out to dinner when we could be right here, I know everyone is tired, but this is important to get this done expeditiously to save taxpayers' dollars. Even though it is too late now, we could have had another witness. I would like to suggest we stay later in the evening; unless, you want to hear me say this everyday along with counting the dollars that we are spending of the taxpayers money. We could easily go to 7:00 p.m. or later. The lawyers will still have time to prepare for the next day because they have been preparing these cases for awhile now, and I doubt their agendas are going to change based on the testimony we have heard today. I want to put this on the record we are spending taxpayers' dollars. We should stay later, and I hope that we will see that happen tomorrow.

Senator Amodei requested that his remarks be entered in the Journal.

Thank you, Madam President. I would like to give a response to the Minority Leader's concerns and to discuss the agenda.

It was not at the request of any counsel today that we adjourned when we did. It was a decision I made pursuant to the rules. If there were eleven of you who wanted to stay, then we would still be in the hearing tonight. I agree and share the concerns of the Minority Leader with respect to the cost of the session. I remind the members of two things. First, we did not call ourselves into session. That decision was not made by anyone on this Committee as a whole. Secondly, there is a constitutional concept called due process, which we are supposed to provide. While I do not think any of us had planned or are excited about spending this time in Carson City for this purpose, we have a duty to provide a level of due process. I would not attempt to define that because people much smarter than I are having a hard time doing so. In our attempt to do so, for the first time in the history of this State, I submit to you, the primary consideration is not, despite all the human emotions we all feel, to set a specific schedule that rules everything. Those are my words and no one else's. I am not trying to put words in anyone's mouth.

I suggest the advocates on both sides of this issue are entitled to some level of discretion in presenting their cases in persuading two-thirds or a majority of members of this Committee. We are in the Committee of the Whole to do what is appropriate. That entails some preparation as a result of what the testimony is or is not each day in respect for those people. I have a timer on my desk in the hearing room which indicates how long people talk. A witness today went overtime in direct examination. I have not attempted to curtail questions by members of the Committee. It was my intent to start the next witness tonight, but members of the Committee decided to ask questions. By asking questions and reading the exhibits provided, it is my opinion they are doing that job which the Constitution requires.

I congratulate those of you who have inquired and have questions and have concerns and have used the opportunity the Constitution provides to do that. I have the same feelings about working expeditiously as everyone else here. We have talked to both counsels and have

indicated it is our intent, starting tomorrow, to take two breaks in the afternoon and proceed to 7:00 p.m. allowing for the flow of the witnesses and questioning. Today, we broke at 5:30 p.m. and started at 9:00 a.m. Tomorrow; we will start at 9:00 a.m. and continue until 7:00 p.m. We intend to do the same on Friday and on Saturday. We will talk to the Majority and Minority Leaders to gather the sense of what the Committee wants to do to work more hours into that schedule based on where we are after those days.

Senator Raggio moved that the Senate adjourn until December 2, 2004, at 8:30 a.m.

Motion carried.

Senate adjourned at 5:41 p.m.

Approved:

LORRAINE T. HUNT
President of the Senate

Attest: CLAIRE J. CLIFT
Secretary of the Senate