

CLOSING ARGUMENT

TERI TUCKER V. JOURNAL REGISTER CO., ET AL. 3:06CV307(Hon. Stefan G. Underhill)

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

MR. BAGNELL: Thank you, Your Honor.¹

Members of the jury, on Monday morning when I gave you my opening statement, I told you what the evidence would show in this case. I would like to take you through a brief summary of what I said in the opening statement, and then compare it with what the evidence actually showed at trial.

I said that the evidence would show that Ms. Tucker was a good performer and, in fact, the testimony showed beyond any dispute that she was a good performer. It wasn't disputed in any respect that Teri's performance was good. They admitted that she was a good performer.

I said that in late 2002, the evidence would show that another female employee brought charges of serious sexual harassment against one of Teri's subordinates, Davis Smith, one of the two supervisors in her telemarketing department and the evidence showed that. There's no dispute that she did bring that charge.

I said that the evidence would show that Teri worked with the company to defend that claim. She did everything she could to defend the company. She put in many hours to respond to the allegations that Ms. Johnson made, as a loyal employee of the Register, and to put The Register's actions in the best light possible.

I said back on Monday morning that as the months wore on, she realized that the allegations Ms. Johnson was making may be true. The evidence submitted to you during the

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trial establishes that she had valid reasons for suspecting that those allegations may have been true.

I said that she observed, that the evidence would show that she observed Smith engaging in other sexually harassing behavior. The evidence showed that she personally observed one incident of sexual harassment by Mr. Smith against Ms. Rogers, very graphic sexual harassment behavior by him. And, also, that she was told of another incident of sexual harassment against another female employee, and that she brought that information to the Human Resources Department.

I said that the evidence would show that she communicated this information about the harassment she witnessed after compiling her initial defense to the management of the Register, as she learned it, and the evidence showed that she did that. She testified quite clearly that when she became aware of these two other female employees who had been harassed by Mr. Smith, she took it to HR and was met with, "Make it go away."

I said that the evidence would show, ladies and gentlemen, that Ms. Tucker discovered ultimately that the accused harasser, Mr. Smith, had lied on his employment application about a long criminal record involving dishonesty, forgery of checks and similar offenses. The evidence, we submit, showed that that was the case. I think you saw an exhibit with over 20 pages of more than 69 counts of larceny against Mr. Smith, and you also saw his employment application, which proves he had lied on his employment application.

I said that the evidence would show she would take this information also to management, and would tell them that her heart was no longer in defending the harassment case. The evidence proved just that, that she did take that information to management. She said her heart was no longer in the defense of the Johnson matter, and was immediately terminated within two days.

I said back on Monday morning that when she went to Mr. Davis in the Human Resources Department with the information about Mr. Smith' criminal record, that she was told

very angrily by Mr. Davis that she just better get her heart in it. Ms. Tucker testified quite clearly that that is what Mr. Davis said to her, although Mr. Davis, of course, we know he denies that.

I told you that the evidence would show that two days after she said this, she was fired. There is no dispute about that.

I said the evidence would show that there were no warnings given Ms. Tucker and the evidence showed that, that there was no progressive discipline of any kind. That was admitted by the Register. Again, she had no record of poor performance. That was admitted by the Register. And finally, she was told to get her things and leave The Register, and that is exactly what happened.

I said back on Monday morning that the evidence would show you that the termination severely harmed Teri and was unjustified. And you heard a lot of evidence about the terrible impact this had on Ms. Tucker in terms of the distress it caused her, that she was the sole support of her family at the time, she'd just had a child, there were complications regarding her pregnancy. The stress from the termination did not help in any manner and in some ways may have exacerbated that problem she was having regarding her new child.

You heard Ms. McCoy testify that Ms. Tucker was extremely distressed over the unannounced termination that she went through.

I told you that my opponent Mr. Barringer was going to tell you that Teri was fired for accepting a collect call from a former employee who was in prison, and that is what he argued. The evidence, however, showed that that was a pretext for firing Ms. Tucker because she was not going to testify the way The Register wanted her to testify in the Johnson sexual harassment case.

I said that he would talk about the sentencing hearing with Judge Thompson that happened two years before. He did that. That incident was more than two years before she was fired and it was not a valid reason to terminate her. The evidence allows you to conclude that this was not the reason she was terminated, but really simply because she said "my heart's

not in this;" this sent a message to management that she was not going to play ball with them in defending this sexual harassment case.

I also told you back on Monday morning that the evidence would show that the New Haven Register had a long practice of hiring ex-convicts, and that Ms. Tucker cannot be blamed for that practice, and you heard evidence to that effect. Mr. Davis stated that that practice had been going on, I think, for ten years. It was not Ms. Tucker's idea. Mr. Carr said he did not hold her responsible for it. And that's exactly what the evidence showed.

Now, I'd like to go into some more detail about what inferences you can draw from the evidence.

First, regarding Teri's performance, there's no dispute, ladies and gentlemen, from the New Haven Register, as I said, that Teri's performance was fine. They admitted there's no negative performance review, there's no written record of any kind criticizing her performance. She got salary increases during her employment.

The second area was the Johnson case. You heard evidence that Ms. Johnson claimed that she was sexually harassed by Mr. Smith. Now, Mr. Smith, as you know, was a convicted felon with a very substantial criminal record. He had been hired before Ms. Tucker came to The Register. As Mr. Carr said, he was extremely concerned about this lawsuit. This is a sexual harassment lawsuit by a female employee against a male employee - - who just so happened to be an ex-convict who The Register let into its employment. They did no background check on him. A reasonable inference, ladies and gentlemen, for you to draw is that they were very concerned about this lawsuit. How is it going to look to a jury, like you, if they have to go to trial and defend a sexual harassment claim when it becomes clear that they hired someone without even checking if he had a criminal background?

And then Ms. Johnson discovers that he does have a criminal background. They are hiring ex-convicts who come into the workplace, and some of them start sexually harassing their female employees. No checks were done at any time. This is a serious problem, ladies and

gentlemen, the evidence will allow you to make that conclusion, and all of the executives at The Register were extremely concerned about this. You heard Mr. Carr say that he was very aware that sexual harassment cases could lead to multi million dollar verdicts. Mr. Davis said the same thing, and I think that's something that everyone is familiar with.

So the evidence allows you to conclude, members of the jury, that this was a major problem, the Johnson case. To defend it, they relied on Ms. Tucker. She, as they both said, as Mr. Carr said and Mr. Davis said, was going to be their key witness in the CHRO case. She spent many hours interviewing people in the telemarketing department, doing everything she could to try to defend the company against what could be a major liability down the road at some point.

She puts together that 10 page document that I showed you, I think Exhibit 21, where she tries to rebut in detail all of the allegations that Ms. Johnson is making. She works with the Human Resources Department, who then gets a law firm involved because the state of Connecticut retained Ms. Johnson's complaint of sexual harassment for a full investigation. So that case was getting more serious, it was getting more severe, and Teri's involvement, the evidence would allow you to infer, becomes that much more important for the Register. They need her to defend this case.

After she compiles that document, ladies and gentlemen, that is when the first incident of sexual harassment occurs involving Mr. Smith, this is the Tanya Bell issue where Ms. Bell, Ms. Tucker testified, complained that Mr. Smith was hovering over her looking down her shirt towards her breasts, making comments that she was sweaty, all kinds of more inappropriate sexually based comments that obviously give her great pause. And she meets with Ms. Bell, she says Ms. Bell was terribly upset. She makes HR aware of this incident and is met with the response from Mr. Davis, "make it go away," it will "not look good" for us with the Johnson case.

That kind of statement, ladies and gentlemen, is evidence of a cover-up. They are trying to cover up what's going on with Mr. Smith because they've already been sued. Any more incidents of harassment against Mr. Smith is just going to make the case ten times worse. So make it go away, cover it up.

Now Ms. Tucker is having all kinds of, as she testified, she's having major reservations about the defense at this point. Then a second incident happens with Ms. Rogers, where the gesture is made by Mr. Smith imitating oral sex towards Ms. Rogers, stating that she had just come from underneath Phil Ford's desk. The second time she goes to Bob Davis, and again receives the response "make it go away." Nothing is done. Smith is not disciplined in any way. Mr. Davis, as he testified, was under the impression that Smith was not to be touched. He got, he said he got that impression. He didn't know it firsthand, but he had the impression from speaking to Mr. Ford that someone higher up had put out the word Mr. Smith was not to be touched.

You can infer reasonably, ladies and gentlemen, from that evidence that there was a reason why he was not to be touched, and it was because of the Johnson case. They could not have more women coming forward and saying Smith harassed me also. Because Ms. Johnson eventually would find out about those people, and now they've got a huge liability on their hands.

Most of the places where you work I'm sure do not have the kind of policy that The Register had, of hiring ex-convicts. It's highly unusual. Most employers just won't do that but here they did. So imagine how it would appear in court when the accused of a company is not only an employee - - he's an ex-convict. I mean how is that going to sound to a jury, ladies and gentlemen?

And again, the policy is not Ms. Tucker's fault. She didn't originate it. There may have been some good aspects to it, there's nothing wrong with giving people a second chance. You saw Mr. Adams who expressed remorse about what he had done. There's nothing wrong

with giving people a second chance, but it has to look terrible to Mr. Carr, although he denied he had any real involvement in this case. He's the chief executive of this company. He's the person who knows, as he said, that this could be a big liability, a big problem for the company.

So, this is a time line, I'm going to put up a time line for you, ladies and gentlemen, so I can refer to this as I speak.

In the time line we're really now – we're at January 2003 where Teri compiles the defense. We're talking about the incidents of Ms. Rogers and Ms. Johnson. Ms. Tucker couldn't recall the exact date but we know that it was some time in this period before she went on maternity leave.

She goes on maternity leave in September of '03. She returns. She went out on maternity in July of '03, so the two women, their complaints are happening somewhere in this timeframe.

Now, as Ms. Tucker testified, nothing was done about these two incidents. She went back to work, was doing her normal job. And then goes out for maternity leave in July of 2003. Before she goes out, she gets a phone call from Ms. Johnson herself, who tells her that Mr. Smith has a criminal record. She's at a bar, she's drinking, and Ms. Tucker said she didn't really feel she could rely on that.

But by the time she goes out on maternity leave, she has all this information that what she had been saying about Mr. Smith - - that there was no reason to perform a background check on him, a criminal background check, that there'd been no incident of sexual harassment that she'd ever seen, and all those lengthy statements she had put together - - she now has real reservations about whether they were still true.

So while she's out in on maternity leave, still doing work for the company at her home office, receiving calls and responding to queries from Register employees, which she did not have to do but which she did, she looked into his criminal background. The Register should have done this. It should not have been Ms. Tucker's responsibility to do this, but she had

people calling her and saying he's got a criminal background, he's a felon. And she's the key witness. So she says, well, let me check into this because I've taken a position on this and I'm going to be a key witness in the case, and I will be asked most likely to take the same position and say there was no reason to do a background check on him. That we had no information that he's a felon.

She does the background check, ladies and gentlemen, and she finds a criminal record, to speak figuratively, a mile long. There's 20 pages in that criminal record and it details severe criminal activity involving dishonesty, forgery of checks, embezzlement from prior employers, some other issues that I'm forgetting, but you have the criminal packet there.

So now Ms. Tucker knows that he is a convicted felon. She looks at the application and realizes he's lied on his employment application and realizes that everything she had said in the defense, or at least a lot of what she said in the defense she put together back in January, was not true and she was no longer comfortable stating that.

So she comes back from maternity leave, goes back to work and starts running the department again, and then brings this information, this packet, when she has a chance, she brings it to Mr. Davis's attention. This is October 14, 2003, ladies and gentlemen.

The very same day that she brings this packet, this packet of information to the attention of the Register's management, there was supposed to be a meeting about the Johnson case. Ms. Tucker testified about that in great detail, and I believe Mr. Davis may have said that also, but Ms. Tucker certainly testified to that. There was supposed to be a meeting that day and Ms. Tucker brings this packet, three copies of the criminal information, gives one to Mr. Martin, she testified she gave one to Mr. Davis, and Mr. Davis tells her that he is bringing it up to Mr. Carr for his review.

All of a sudden, the meeting about the Johnson fact finding hearing, which is coming up in the near future, is cancelled. It just doesn't happen.

A day goes by, and now she's called into Mr. Carr's office about a collect call issue. Again, I don't want to belabor this, you heard lots of evidence about this, but the evidence would allow any reasonable person, ladies and gentlemen, to conclude that this was a pretext. They were furious with Ms. Tucker at this point. She had not "made it go away." She was told back before she went on maternity leave we don't want to hear anything about Mr. Smith, we don't want to hear about Ms. Rogers, the harassment of her. We don't want to hear about Ms. Johnson, it will not look good for us. But she's not listening to them and they are getting angry. The evidence allows you to conclude that. She's not being a "company person" at that point.

However, Ms. Tucker's conscience is bothering her at this point. She feels she has to tell the truth. This is a legal proceeding with the state of Connecticut. This is not strictly an internal company matter, ladies and gentlemen. This involves the State. And she's going to be a witness in this proceeding. So almost immediately, I mean almost no time goes by after she presents the criminal information and says my heart's no longer in this, she's fired.

She's fired two days later, ladies and gentlemen.

That's an incredible turnaround. A good performer. No progressive discipline of any kind. Is called in two days after saying my heart's not in this and gets fired.

What does "my heart is not in this" mean? It's a reasonable inference, I went over this with Mr. Davis, when you say that, it means you've changed your position. Mr. Davis agreed with me on that in terms of generalities, but when I said, well, in this case obviously didn't you conclude that Ms. Tucker had changed her position? And he said "no." That's not a credible response, ladies and gentlemen.

When you say yes, I agree with you that when someone says "my heart is no longer in" something, it means you've changed your position - - but when Ms. Tucker says it, it doesn't mean she changed her position? Of course that's what it means. It meant she did not think he was telling the truth, Mr. Smith. Mr. Smith was not innocent. And she's conveying this to him, not out of a sense of protecting herself personally, but of doing the right thing. She wants to tell

the truth in a legal proceeding. She's really helping the company because giving false testimony is not going to help the company in the long run. It's illegal obviously to give false testimony in a legal proceeding.

Two days later, again, we're not talking about a week later, or a month later, she's fired. Her file is not documented with any performance issues of any kind. She's simply fired and the reason is one collect call that was worth about eight dollars that Ms. Tucker initially said yes, I may have accepted that, and then comes back and says no, I didn't accept that. That was a toll call from Mr. Adams, he was in Hartford. And she went into great detail about how she knew it was a toll call and the reason was because Mr. Adams was calling from Hartford at that time. There was no federal correctional facility in Hartford, ladies and gentlemen. The phone records from the correctional institutes are all from other places. And her memory was specific that this call came from Hartford before he went to a correctional Institute.

She testified again in great detail that she conveyed this information to Mr. Carr after she had gone down to make some copies. She said Mr. Carr asked her to make some copies of those letters. While she's making the copies she remembers, she's thinking about the call. She's obviously very jarred by this turn of events. She's thinking we're going to have a meeting about the Denise Johnson case - - all of a sudden he's threatening her job with an eight dollar phone call and some others he admitted later he can't prove that she accepted. Can't prove that anyone accepted them because of the way the system was set up.

So she is extremely upset but she – and her mind is racing obviously and she remembers that the call, that was from Hartford, goes back, tells Mr. Carr that. Mr. Carr would have you believe that Ms. Tucker sat through this meeting mute, didn't say anything. While he, you heard him testify yesterday she didn't say anything, she just sat there, she was just prepared to be fired. We submit, ladies and gentlemen, that the evidence doesn't support that. That's not a credible claim. And Mr. Carr's credibility I think is highly suspect for several reasons that I'll get into, but the two things you have to consider here in his version, ladies and

gentlemen, are that Ms. Tucker sat there, didn't say "anything" at all when her job was about to be terminated, doesn't say anything, not one word of protest. That's what he wants you to believe.

Against Ms. Tucker who says, no, I went back there after he asked me to make some copies, I told him it was not a collect call, and what's really going on with that? If you think back to his testimony, ladies and gentlemen, what he ultimately said when he called her to the final meeting and terminated her, he didn't say it was for a collect call. You'll remember he said it was "we need to go in another direction." Normally, ladies and gentlemen, I think based on your own common sense, your life experience, I think many of you have been in the workplace for a long time, if you're going to terminate an employee, you give them the true reason why you're terminating them. You don't say, well, we need to go in another direction.

If Mr. Carr, if his testimony is to be believed, the acceptance of this collect call, which Ms. Tucker denies, in great detail she denied it, if it was so awful, and so egregious as he claimed, why, why wouldn't he state that somewhere? Why wouldn't he state it verbally? He didn't say that. He said we're going in another direction.

The reason is, and you can infer this based on your own common sense, ladies and gentlemen, is he knew, he knew it was a bogus reason. *He didn't believe it himself.* They are trying to dig up something on her at that point because she's not going to, I used the expression play ball in the Johnson proceeding. She's going to give evidence against them, not because she wants to hurt the company but because her conscience is telling her I have to tell what's true. I'm not going to lie for the company. I'm loyal to the company but it doesn't extend to lying in a legal proceeding. That's not a bad attitude. That attitude should have been rewarded (pause) not penalized, ladies and gentlemen.

Now the timing issue again, ladies and gentlemen, I don't want to belabor it but it really does speak for itself. You heard testimony or evidence, you have evidence about the policies in

the workplace at The Register. They had the progressive discipline policy, they had the phone policy, they had the open door policy. None of those policies were followed here.

And The Register doesn't dispute that. There's no progressive discipline. Even if she had accepted the eight-dollar collect call, ladies and gentlemen, if you read that phone policy, it's probably true it doesn't say anything about collect calls, but Mr. Carr said monetarily, it doesn't make a difference if it's an eight dollar expense incurred by the company, either from an outgoing personal call or an incoming collect call. It's an eight-dollar expense. And everyone else on that list you saw was allowed to reimburse The Register - - everyone except Ms. Tucker. No one else was fired, no one was disciplined in any way. Mr. Smith, as I said, was never fired, even though he had lied on his application. The only person they are firing is her. And she's the only person who's the key witness in the Johnson case.

Use your common sense, ladies and gentlemen. You can infer from that that these are not legitimate reasons. This is a cover up, just like she was told to make all this information go away, you can infer that instruction was to do a cover up. We're not going to get the truth out about this guy, we're going to protect the company at all costs. If it involves concealing the truth, well, so be it, and, you know, we're paying you a salary and be thankful and you better do what we ask you to do.

I wanted to go into some of the testimony of Deborah McCoy and Mr. Adams, which you heard yesterday. They came across, ladies and gentlemen, as credible witnesses. Obviously Mr. Adams, we know he has a criminal background too, some serious criminal offenses. Mr. Barringer asked him a lot of questions about the letter where he said he would do anything for Ms. Tucker, repeatedly asked him if that would - repeatedly suggesting perhaps he might give testimony here that was not accurate. He very, very clearly said I'm not going to do that. I am extremely grateful to Ms. Tucker for the help she gave me regarding the sentencing hearing with Judge Thompson. I owe her a debt. She spoke up for me. A natural reaction, and anyone in that position probably would have gratitude. He used a lot of jargon, expressions,

“mad love.” I think that’s kind of a – that’s jargon. There was no evidence that he was having any relationship with Ms. Tucker, but that he was extremely grateful. The evidence was that he was having a relationship with Joanne Rivera.

The Register shouldn’t be surprised, ladies and gentlemen, when they hire ex-convicts through the second chance policy, they shouldn’t be surprised when those ex-convicts get re-incarcerated on some new offense and that they are calling back to the Register. You know, they’ve been in the workplace, they’ve made friends there. And in this case Mr. Adams had a relationship with someone. They should not be surprised that this is happening. But the only time there’s any investigation of collect calls, ladies and gentlemen, there’s no investigation at any time in the history of the company as far as we know from Mr. Davis, of collect calls at this company, even though they’ve been hiring ex-cons for quite sometime. The only investigation is *the day that they fired her*. That’s when the results come out in this memo. It’s the exact same day. It’s not a week before, it’s not month before, it’s the same day. The memo comes out, she’s gone.

Mr. Carr, this busy CEO – you heard him testify how busy he was. He has these great responsibilities, which I don’t doubt. He’s not a micromanager. Lots of employees work for him. Fully aware of the policies in the employee handbook had just come out and progressive discipline is in there. Said he had never terminated anyone except one other person from some other area without notice. But she’s out the door the same day the results of this, quote, “investigation” come out. No one else is fired. And Mr. Carr testified quite clearly that to his knowledge no one else was disciplined in any way, even though other people were confronted and they got to pay the money back.

He could have asked her for eight dollars. Ladies and gentlemen, I’m sure Ms. Tucker would have paid eight dollars, even though she made it very clear she did not accept the collect call.

If you went into a meeting with the CEO of a company, your common sense, ladies and gentlemen, would allow you to infer that you would probably be very nervous. You're thinking this is a meeting about the Johnson harassment case. All of a sudden, it's a meeting about your job and you're being accused of having done something wrong. She's nervous. She blurts out I may have accepted one call and then he says she didn't do it.

But going back to Ms. McCoy and Mr. Adams, Mr. Adams clearly testified, he said it outright, ladies and gentlemen, Ms. Tucker never accepted a collect call from me. I did not call her collect at The Register. Ms. McCoy said I accepted collect calls from Mr. Adams and Mr. Smith did also and Joanna Rivera did also, which isn't surprising because he was having a relationship with Ms. Rivera. Ms. McCoy, as I just said, said the same thing. I accepted the calls. Teri was not accepting the calls. Teri, in fact, was a pretty strict manager who told us don't use the phones for personal reasons. And Ms. McCoy was clearly, even today you could still see her reaction that she wanted to keep any information like that from Ms. Tucker. She was afraid of her in the sense that that was her ultimate superior, and she would not want her superior to know that she was using the phone for personal reasons.

We have then the testimony of Mr. Carr and Mr. Davis, ladies and gentlemen. Mr. Davis's testimony is not credible in a lot of respects. I'm sure he's a good person, he's done many good things in his life, but not in this case, ladies and gentlemen, *not here*. His testimony regarding my heart is not in it, it's not credible, ladies and gentlemen. He wants you to believe that it didn't have any impact, any significance to him whatsoever, that it didn't mean anything to him one way or the other.

It's not credible in human experience, ladies and gentlemen, if I say or if someone says, for example, my heart is no longer in sailing, and someone had been a sailor, well, obviously it means that the person's not going to sail anymore. It obviously indicates there's going to be a change, a significant change in a person's conduct. But he wants you to believe it had no impact on him whatsoever.

And he didn't say "you'd just better get your heart in it." No, I never said that. You have to balance her credibility against his credibility on that, ladies and gentlemen. That's something you have to resolve.

He admitted, again, ladies and gentlemen, Teri was a good employee. He said there was no performance criticism, she was a good employee.

He also claimed that it was not his decision to fire her. This is one thing The Register wants you to believe, that Mr. Carr was the only person who made this decision. The evidence is completely contrary to that, ladies and gentlemen. By their own admission, three people participated in this decision to terminate her, Mr. Davis, Mr. Martin and Mr. Carr. For some reason Mr. Carr is up here claiming it was just me, no one else had any involvement, even though he said, in fact, Mr. Davis had some input. They admitted in their own documentation, ladies and gentlemen, that three people made this decision, participated in the decision.

And this was Exhibit 4: Identify all persons who participated in the decision to terminate Ms. Tucker's employment and it asks if they made any statements. They are right there, ladies and gentlemen. They wrote that. They submitted that earlier in the case. Now they want you to think, well, the other two really didn't have anything to do with it. It's there in black and white. All three of them participated in this decision. Mr. Davis was actually aware, he stated it himself, that she had expressed reservations about testifying in the Johnson case two days before she's fired.

Shortly before the Johnson hearing, Ms. Tucker testified that she made Mr. Martin aware of the criminal information regarding Mr. Smith at the same time. October 14, two days before she's fired, he took a packet up to Mr. Carr. Mr. Carr said, no, I never got any packet. Mr. Smith is long since gone. Still can't recall whether he saw any documents concerning a manager in his own company. Mr. Smith was a manager, he was not rank and file. He was accused of sexual harassment. And Mr. Carr, after firing her, doesn't have the curiosity

to even follow up and look at this rap sheet to Mr. Smith? That's what they want you to believe, ladies and gentlemen. It's not credible based on common sense and human experience.

Ms. McCoy' testimony, she stated quite clearly that she made Mr. Martin aware the day that Ms. Tucker was fired, she went to Mr. Martin - - identified right there as participating in the decision to fire her and said, Mr. Martin, this isn't fair. We accepted these calls. She didn't accept them. And, again, the typical response I don't want to hear it, go away, you know, don't worry about it, mind your own business. So, there's clear evidence that the people who participated in the decision to fire Ms. Tucker knew that, first of all, that she denied accepting the collect calls; secondly, that other people claim that they were the ones who accepted them, and that she had reservations about testifying in this Johnson proceeding.

Serious reservations, ladies and gentlemen, so serious that she brings in three photocopies of a criminal record to her manager. I mean this is not something that's common in the work place, ladies and gentlemen. Your own experience, I'm sure you know that. It's not often that you find out that one of your subordinates was convicted or arrested for over 69 counts of larceny over a seven or eight year period. That's not common.

She conveyed those concerns to Mr. Davis, and Ms. McCoy was very clear in saying she told Mr. Martin that this wasn't what happened. And nothing was done. She wasn't given - she wasn't called back in, she wasn't given any chance to explain in any more detail and no further investigation was done. Ms. McCoy was cleared. No one came down to the telemarketing department and went person to person saying "who accepted those calls?." No one did that. It would be the most simple thing to do, to go down there and say did you accept those calls?

You know, who's in jail that might be calling? Well, the only evidence of who was calling is Mr. Adams. There's no evidence that anyone else was calling. Mr. Adams said he was calling into Deborah McCoy to get transferred to Joanne.

It would have taken probably all of an hour to figure that out, ladies and gentlemen, if the Register's management went down there and asked these very simple questions. They didn't do it. Ask yourselves why they didn't do it.

I think the reasonable inference is they didn't do it because they didn't care. They wanted to get rid of Ms. Tucker. They knew she was going to testify the wrong way at this hearing and so once she's gone, we've solved the problem. We're not going to waste any time doing an investigation of these calls.

MR. BAGNELL: So, as I've said, ladies and gentlemen, there's plenty of evidence. There's more than a preponderance, there's convincing evidence in this case that they were fully aware that she had expressed reluctance to participate the way they wanted her to in this proceeding. There's also significant evidence that she spoke out really on a matter of public concern. When you're talking about testimony in an EEOC proceeding, ladies and gentlemen, that's not a personal workplace matter. That's a legal proceeding. That implicates the justice system, including what's happening right here. That's the epitome of a social community concern, not something that's private.

Now on the subject of damages, ladies and gentlemen, Ms. Tucker, you have her W-2s which show how much she had been making. The Register claims that the company was outsourced in December of 2006 and we don't dispute that. We acknowledge that that happened. However, she was not able to find other employment so there's no question there was a significant wage loss for Ms. Tucker during that period after she was fired. She could not find another job in the newspaper industry. She lost her home, has to go down to Florida. Can't find anything down there. So, you have information about her economic losses.

In terms of compensatory damages that Judge Underhill told you about, other than economic damages, we contend that you have substantial evidence to render a significant compensatory award to Ms. Tucker. She testified quite clearly, and Ms. McCoy corroborated that she was extremely distressed by the way she was terminated, that it was not justified. We

believe the evidence shows the consequences it had on her, coming as suddenly as it did. She was in a state of shock. Just had a second child [

So as Judge Underhill said, it's up to your own good judgment as to compensatory damages, but we don't have to prove that with any mathematical precision and, of course, we can't, so that's left to your good judgment to value the injury that she suffered in her own mind, mental distress and the mental suffering.

Punitive damages. Ladies and gentlemen, we submit there is sufficient evidence also to impose punitive damages against this company. There is evidence in the record that they acted completely recklessly with regard to Ms. Tucker's legal rights. We think you should come back and render a verdict against The Register that will include punitive damages and in an amount that you think is fair after calm deliberation. That amount can only be determined by you, but we think it should be sufficient to teach a lesson to this company that they cannot retaliate against employees who simply want to tell the truth in a proceeding.

Now, Mr. Barringer, I think, will get up here and say that she never said anything that was clear enough that she wanted to testify truthfully, that "my heart isn't in it" isn't clear. You have enough evidence, use your common sense, ladies and gentlemen. Just think about it. That's clear enough in the workplace. No employer says "we want you to lie." That's not what happens in the workplace. The evidence here is clear that she expressed serious reservations and, as she testified, was essentially threatened that she'd better not change her position. You'd better get your heart in it.

Use your common sense, ladies and gentlemen. You know what that means in your own experience. You'd better do what we're telling you to do or else.

I'll defer to my colleague. Thank you, Your Honor.

REBUTTAL ARGUMENT

THE COURT: Mr. Bagnell?

MR. BAGNELL: Thank you, Your Honor.

Just a few points, Ladies and Gentlemen.

I'm glad Mr. Barringer said a lot of what he said. He actually got up here and claimed that there was no evidence of any opposition to unlawful practices on the part of Ms. Tucker. There is convincing, overwhelming evidence that she opposed unlawful practices at the Register. Ms. Rogers, Davis Smith, she witnesses him sexually harassing her in a graphic disgusting manner and she lets HR know about it. The same thing with Ms. Bell. She makes the HR department aware about Ms. Bell. These two women are certainly relevant to the Johnson case because the same male employee is involved. There's nothing in the instructions that says Ms. Tucker has to witness Smith Mr. Smith commit the sexual harassment.

Now, Mr. Barringer also got up and rather incredulously based on the evidence said that Mr. Davis got a lump in his stomach that Ms. Tucker was being terminated. He participated in the decision to fire her and he wants you to believe he had a "lump in his stomach." This is the same person who said that even after he saw Mr. Smith, this person they rely on as their star witness, do these things, and still apparently that even after her knew that he'd falsified his application, had been convicted of forgery, embezzlement, larceny, you name it, he said he's still a credible person. And they are saying he was on the FMLA? - - there is not evidence, ladies and gentleman, in this case that he was on any kind of FMLA leave whatever. That is another attempt to mislead you into thinking what they did was not illegal. The only evidence was Mr. Davis said, well, we sent him the paperwork. Where's the paperwork? Did he ever send it back?

Members of the jury, no, there's been no evidence in front of you that he was on a medical leave. What is in front of you is evidence that Ms. Tucker before this letter from this convicted embezzler comes into the Register, as they claim, before those two incidents of sexual harassment occurred, Ms. Tucker went to HR long before this letter came and said this is still happening. This is happening to our female employees. It's Mr. Smith who's doing it. What does the HR department say? They say make it go away.

The fuse is burning against her, ladies and gentlemen. At that point she's already been told to make it go away. I don't want to hear it. Here she is again, after being given that warning, not letting it go, not making it go away, not covering it up.

Mr. Barringer also claimed, again incredulously based on the evidence, that Ms. Tucker allegedly did not participate in any legally protected activity. When you look at the court's instructions it's very clear on page eight, participation in a legal proceeding is broadly defined. Almost a day's worth of evidence was about her participation in the Johnson case. You heard that she was trying to help the company defend the case and then when she learned information that was against the company's position, she shared that with Mr. Davis and was told "you'd better get your heart in it." And she's going to be the key witness. She didn't say that, Mr. Davis said that she was going to be the key witness in this proceeding. That's participation in a legal proceeding under the law, ladies and gentlemen.

Mr. Barringer also said that her speech, I think he said was not of concern to the public. I'm not sure how to respond to that. The oath is extremely important. The right to tell the truth in a legal proceeding and in a state court or federal court or a state agency, that is the ultimate example of a public concern. We rely on policemen, for example, to tell the truth hopefully at legal proceedings in order to find out what happened and to bring justice to a given criminal situation. If that's not speech on a public concern regarding her reservations about how she was going to testify at this hearing, then I don't now what would be.

She wasn't saying I've got a major concern about the lunch break policy, Mr. Davis. I have a major concern about my vacation days. She's talking about something outside of the Register entirely, a legal proceeding designed to determine whether Ms. Johnson had been sexually harassed or not. And Ms. Johnson has a right to truthful testimony from all the witnesses, all of the witnesses in that case.

On the verdict form, ladies and gentlemen, the evidence you have heard justifies "Yes" answers on all of the verdict form questions. The amounts of the damages, as the Judge told you, are left to your determination, your good judgment, but there's more than enough evidence in front of you for you to answer Yes to all of the nine questions.

We contend that all Teri was trying to do, in addition to doing her job well, was tell the truth so that she could live with herself, and she could fulfill her obligations to the judicial system. That's all she was trying to do. Two days after she says I'm not going to be able to state what I had been stating, she's out the door. She's thrown under the bus, ladies and gentlemen. No one else is fired at all in this company, no one fired for the collect calls. The only person fired is Teri, a good employee.

Thank you.

Approximately three hours later, the eight-person federal jury returned a unanimous verdict for Ms. Tucker on all counts.

THE COURT: I have a note from the jury. It's dated today.

It reads, "We have reached a verdict."

Is there anything to take up before the we have the jury come in?

MR. BAGNELL: No, Your Honor.

MR. BARRINGER: No.

(Whereupon the jury entered the courtroom.)

THE COURT: Mr. Williams, have you been elected foreperson?

FOREPERSON: Yes.

THE COURT: And has the jury reached a unanimous verdict?

FOREPERSON: Yes, it has, Your Honor.

THE COURT: Have you completed and signed the verdict form?

FOREPERSON: Yes.

THE COURT: Would you hand that up, please?

(Hands Court.)

THE COURT: All right, I'm going to read the verdict out loud because each of you is going to be asked individually whether this is your verdict, so please listen carefully.

In the case of Teri Tucker v. Journal Register East, we, the jury unanimously find as follows:

One. Did the plaintiff, Teri Tucker, prove by a preponderance of the evidence that, A, she opposed activities of the Register that were unlawful under Title VII and CFEPA?

Answer: Yes.

B. The Register was aware of that opposition?

Answer: Yes.

C. Her opposition to the Register's unlawful activities was a substantial or motivating factor in the Register's decision to terminate her?

Answer: Yes.

Two. Did the plaintiff, Teri Tucker, prove by a preponderance of the evidence that, A, she participated in proceedings under Title VII and CFEPA?

Answer: Yes.

B. The Register was aware of that participation?

Answer: Yes.

C. Her participation in proceedings under Title VII and CFEPA was a substantial or motivating factor in the Register's decision to terminate her?

Answer: Yes.

Three. Did Teri Tucker prove by a preponderance of the evidence each of the elements of her claim under section 31-51q of the Connecticut General Statutes?

Answer: Yes.

Four. Did Teri Tucker prove by a preponderance of the evidence that she is entitled to either compensatory or nominal damages?

Is Tucker entitled to lost wages/back pay?

Answer: Yes.

Is Tucker entitled to compensatory damages other than lost wages/back pay?

Answer: Yes, damages in the amount of \$1 million.

Five. Did Teri Tucker prove by a preponderance of the evidence that she is entitled to punitive damages? If so, what amount of damages do you award?

Answer: Damages in the amount of \$3 million.

Signed and dated today by the foreperson.

THE COURT: I'm going to ask the clerk to ask each of you by your juror numbers whether this is your verdict.

(Whereupon at this time the jury was polled by the Clerk.)

THE COURT: Thank you. Your verdict will be recorded.

Ladies and Gentlemen, let me again thank you for your jury service. Your service now obviously is completed and you're free, of course, to talk about the case at this point. I want to remind you about your oath as a juror, which was that you would not discuss with anyone the vote or deliberations of any juror other than yourself. So, in other words, what other people said in the jury room should remain in the jury room. You're free of course to tell anybody else about your views of the case and so forth.

I'm going to need a few minutes with the lawyers but any of you who wish to stay back for a few minutes in the jury room, I'll be coming in in just a moment to see you to answer any questions you might have and to get any suggestions you might have for how we can make the service of future jurors more comfortable, so if you wish to stay I'd be happy to talk to you. You're not required to, you're free to go. And, again, thank you for your participation.

Take care.

(Whereupon the jury left the courtroom.)

THE COURT: All right. Are there issues to take up at this time?

MR. BAGNELL: Not for the plaintiff, Your Honor.

MR. BARRINGER: No, Your Honor.

THE COURT: All right. I want to thank you both for a good job during the trial and wish you all the best of luck. We'll stand in recess.