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September 08, 2020

RYAN SANTHUFF v. STATE OF WASHINGTON

19-2-04610-4

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF KING

RYAN SANTHUFF, an individual,

Plaintiff,

No. 19-2-04610-4

VS.

STATE OF WASHINGTON, and
DAVID JAMES NOBACH, an
individual,

Defendants.

VERBATIM REPORT OF PROCEEDINGS

VOLUME II

APPEARANCES :

FOR THE PLAINTIFF:

JACK SHERIDAN
MARK ROSE
Attorneys at Law

FOR THE DEFENDANTS:

ANDREW BIGGS
SCOTT MARLOW
KELSEY BAYE
Attorneys at Law

Before the Honorable Mafe Rajul

September 8, 2020
Seattle, Washington

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1 TUESDAY, SEPTEMBER 8, 2020; SEATTLE, WASHINGTON

2 --oo0oo--

3 COURT STAFF: King County Superior Court is
4 now in session with the Honorable Mafe Rajul presiding.

5 THE COURT: Good morning. Please be seated.

6 MR. SHERIDAN: Good morning.

7 THE COURT: All right.

8 We're here in the matter of Ryan Santhuff v. State
9 of Washington and David Nobach, Cause No. 19-2-04610-4,
10 and today's the first day of our trial.

11 I believe we have -- oh. We don't have the laptop
12 yet. Or do we?

13 COURT STAFF: Yeah.

14 THE COURT: Oh, okay. Perfect.

15 It is so strange to see people like this. Anyway.
16 So a few things before we bring in the jury. Juror
17 No. 11 --

18 COURT STAFF: Correct.

19 THE COURT: -- indicated that apparently his
20 father took a turn for the worse. I don't think he
21 brought up anything about his father being sick. So my
22 suggestion is that right before lunch, we talk to Juror
23 No. 11 to find out what's going on.

24 He said that he could be here today, but I want to
25 make sure that he understands that it's not a day at a
COLLOQUY

1 time. And if he -- if he's going to be distracted or
2 if things are bad with his dad, we may need to excuse
3 him.

4 I think that was -- oh, yes. I would like for
5 counsel to please tell me what exhibits they anticipate
6 on a given day with their witnesses just so that I
7 don't have here all the binders since there are, like,
8 12 binders. So if you could please just let me know.
9 And I understand that things change, but at least give
10 me a sense of what you anticipate is going to be used
11 or just so -- so I can prepare myself.

12 MR. SHERIDAN: Okay.

13 THE COURT: So with that, Mr. Sheridan, did
14 you have -- can you please tell me what exhibits you
15 anticipate will be used today?

16 MR. SHERIDAN: Sure.

17 THE COURT: And what witnesses you will be
18 calling today.

19 MR. SHERIDAN: Sure. Your Honor, so we are
20 calling Chief Mathesen is our first witness, and we
21 have mostly regulations to admit that have no major
22 objections. But some of them are objected to for your
23 information so let me give you those.

24 Exhibit 5, Exhibit 204, 205, 102, 113, 260, and
25 106.

COLLOQUY

1 THE COURT: Okay.

2 MR. SHERIDAN: And there is an exhibit that
3 we've redacted. It's 225. But we took to heart when
4 you said renumber. Don't keep it in. So we've
5 renamed -- renumbered it as 263, which we think is the
6 next number in order, I hope.

7 THE COURT: Okay.

8 MR. SHERIDAN: Okay. So that's the redacted
9 version.

10 And then I believe my staff has sent it to
11 everybody. And the redactions are based on our
12 position that the outcome of the EEOC investigation is
13 not admissible and should not be mentioned.

14 THE COURT: Okay.

15 MR. SHERIDAN: So it's -- and we gave paper
16 copies to the other side.

17 THE COURT: Okay.

18 MR. SHERIDAN: I think that's it for -- with
19 him.

20 And then I'm not really ready to tell you the
21 afternoon fellow yet who's -- the second witness is --
22 is chief -- assistant -- is it assistant chief --

23 (Indiscernible crosstalk.)

24 MR. SHERIDAN: -- Alexander, and so we'll get
25 you that list. I just have to have somebody send it to
COLLOQUY

1 me.

2 THE COURT: Okay. And defense, did you
3 anticipate any exhibits other than the ones that have
4 been mentioned during -- is it deputy?

5 MR. MARLOW: Captain Mathesen.

6 THE COURT: Captain Mathesen?

7 MR. MARLOW: No, Your Honor.

8 THE COURT: No. Okay. All right.

9 So thank you for that. Plaintiff also filed a for
10 the Court to take judicial notice of three things: The
11 definition of public official, the WSP's 2016
12 regulations manual, and the RCW on reprisal or
13 retaliatory action.

14 I did not receive an objection from defense. Does
15 the defense have any objection to the Court taking
16 judicial action -- judicial action -- judicial notice
17 to these three?

18 MR. BIGGS: We do, Your Honor.

19 As -- as far as the first two topics, there's no
20 objection. That is the -- if you look at the bullet
21 points on page 2, at the bottom of the -- he's got
22 three bullet points. The third one, first of all, he
23 says he wants to introduce this during certain witness,
24 and that third bullet point does not apply to those
25 witnesses.

COLLOQUY

1 That bullet point applies to the plaintiff
2 himself, and I think that it's -- it's -- it's out of
3 order, and it's unduly highlighting the nature.

4 We have a jury instruction on that topic, and I
5 think it's -- well, there's -- there's no dispute about
6 what the statute says. It does not apply to Saunders
7 or Mathesen, which are the two people he wants to
8 introduce this with.

9 THE COURT: I'm not sure I understand what
10 your objection is. Is it -- I mean, what's your
11 objection?

12 MR. BIGGS: Well, Your Honor, what he wants
13 to do is he wants to have Court read this --
14 essentially a jury instruction -- in anticipation of
15 these two witnesses' testimony. And it's -- it
16 unfairly highlights to the jury something that doesn't
17 pertain to those witnesses -- that is, whether or not
18 good faith was used and so on.

19 It's -- I think it's not an appropriate time to do
20 that, and there may never be an appropriate time.

21 THE COURT: You're talking about reprisal --
22 reprisal retaliatory action; correct? You said the
23 third one.

24 MR. BIGGS: The third one.

25 THE COURT: Okay.
 COLLOQUY

1 MR. BIGGS: Yes. Right.

2 THE COURT: Okay. Mr. Sheridan?

3 MR. SHERIDAN: Well, evidence rule 20 says
4 that judicial notice may be taken at any stage of the
5 proceeding so, I mean, we just want to -- we want to
6 get it in early, and then, you know, some of the people
7 that -- obviously the relevance will be established as
8 we go for any particular witness.

9 THE COURT: So were you intending on using
10 all three with Chief Mathesen?

11 MR. SHERIDAN: Not necessarily Mathesen, no.
12 But -- but it could be. I mean, these are adverse
13 witnesses so --

14 THE COURT: I understand.

15 MR. SHERIDAN: -- we never know where they're
16 going to go.

17 THE COURT: All right. So the Court can
18 certainly take judicial notice of a statute or a law
19 if -- is there -- is mister -- Mr. Sheridan is the
20 reason why you want this so that you can specifically
21 question the witness about retaliation or reprisal
22 or -- give me a little bit more as to --

23 MR. SHERIDAN: And some of its scope --

24 (Indiscernible crosstalk.)

25 THE COURT: -- just arguing the law.
COLLOQUY

1 MR. SHERIDAN: Right. Yeah. Did you look at
2 this? Did you do this? Blah, blah, blah.

3 THE COURT: Okay. Let me think about that.
4 I'm going to reserve on that. And then the other --
5 and if you anticipate that you're going to be using
6 that this morning, then let me know, and I'll --
7 I'll -- I'll issue my ruling.

8 MR. SHERIDAN: And with the third one is the
9 one that --

10 THE COURT: Right. And --

11 (Indiscernible crosstalk.)

12 THE COURT: And then number --

13 MR. SHERIDAN: Okay.

14 THE COURT: -- and then when did you want me
15 to --

16 MR. SHERIDAN: Okay.

17 THE COURT: -- take judicial notice of these
18 two? Of the first two? At what time?

19 MR. SHERIDAN: Can I just say at the time
20 that I want to do it?

21 THE COURT: Okay. You want both at the same
22 time?

23 MR. SHERIDAN: Yeah.

24 THE COURT: Okay. So with respect to the
25 regulation manual, I understand it's only this stuff
COLLOQUY

1 that -- the two sections that are highlighted -- the
2 agency designee includes the deputy chief, commander of
3 the Office of Professional Standards and the commander
4 of the Human Resources Division. Correct?

5 MR. SHERIDAN: Right.

6 THE COURT: And then the other one is
7 whistleblower complaints received by the Office of
8 Professional Standards commander shall be forwarded to
9 the State Auditor's Office within 15 days.

10 MR. SHERIDAN: Right.

11 THE COURT: Okay. All right.

12 There was another motion in limine that was filed
13 by plaintiffs regarding defense use of character
14 evidence.

15 Anything that you would like to add, Mr. Sheridan?

16 MR. SHERIDAN: No. We just wanted to make
17 sure, based on some of the voir dire, that this is --
18 it's okay to talk about performance, but if somebody
19 tries to characterize him by personality, then that
20 would obviously be character 404(a) and not admissible.

21 THE COURT: Right. And --

22 MR. SHERIDAN: So I just wanted to avoid it
23 in opening, having to object.

24 THE COURT: Anything from defense?

25 MR. BIGGS: Yes, Your Honor. We --
 COLLOQUY

1 absolutely disagree with that. For the -- partly for
2 the reasons that Mr. Sheridan just pointed out.

3 He says we're beginning to look at the good faith
4 of this man, at whether or not he was acting in good
5 faith when he made these complaints. That's part of
6 the case.

7 And for us to say that Mr. Santhuff may have been
8 doing this for improper reasons is part of the case.
9 We have evidence -- and Mr. Santhuff will tell us -- he
10 withheld this evidence for years before he filed what
11 he calls a whistleblower complaint.

12 We should be entitled to say to the jury, "Why is
13 that? Why did this fellow do this?" It's not just the
14 facts. His motivations are front and center, Your
15 Honor.

16 THE COURT: Isn't character evidence
17 admissible when it goes to a claim or a defense?

18 MR. SHERIDAN: It -- it may be. But what was
19 just said is fact based. It's not personality based.
20 Right?

21 So they can -- if -- if you rob a bank, you can be
22 crossed on robbing a bank, but you can't be crossed on,
23 "Yeah. But isn't it true that you're slothful and
24 you're lazy, and you're" -- blah, blah, blah. Right?
25 That's character evidence.

COLLOQUY

1 So I think what counsel described is fair game.

2 Right? I think --

3 THE COURT: Okay.

4 MR. SHERIDAN: I think that's fine. He's
5 allowed to -- he's allowed to go into facts that
6 support -- and question motive. Right? Motive's not
7 character. So that's fine.

8 But I was thinking of a different angle that was
9 going on during voir dire.

10 THE COURT: What specifically?

11 MR. SHERIDAN: Well, just this idea that --
12 one of the questions -- and I may mischaracterize it,
13 but it was sort of some people always think, you know,
14 like, the world's out to get them? Right. So that's
15 character. Right. So that's -- that's what I'm
16 talking about.

17 THE COURT: And that's not where you're
18 going. Right?

19 MR. SHERIDAN: And that's --

20 MR. BIGGS: Your Honor, I disagree entirely
21 with that. That is -- that is admissible. We are --
22 we are able to argue that Mr. Santhuff, for whatever
23 reasons, is doing bad things. He's going after his
24 lieutenant for bad motives, bad reasons, and that is
25 part of the case.

COLLOQUY

1 And we characterize it a certain way, that is
2 permissible. We're not talking about that we're
3 calling him a bank robber or saying he's a felon. We
4 are entitled, Your Honor, to talk about what makes this
5 fellow do what he does because that's all part of the
6 case.

7 THE COURT: So are you -- were you thinking
8 of what Mr. Sheridan is saying of things always go
9 wrong with Mr. Santhuff and so he's -- is that where
10 you're going with it?

11 MR. BIGGS: Your Honor, we -- we should be
12 entitled to say, for example, that he sees the world
13 that way, that he may think he's proceeding in good
14 faith, but he is not.

15 THE COURT: Isn't that argument?

16 MR. SHERIDAN: Yeah.

17 MR. BIGGS: Well, of course it's argument.

18 THE COURT: Yeah. But that's not proper for
19 opening.

20 MR. BIGGS: Oh, no. Are we -- if we're
21 talking about just openings --

22 MR. SHERIDAN: My motion's about openings.

23 THE COURT: Yeah.

24 MR. BIGGS: Well, okay. We are still
25 entitled to tell the jury that, "You'll be asked to
COLLOQUY

1 decide what makes this fellow do what he does." That
2 is part of their job. Good faith, bad faith,
3 telling --

4 THE COURT: So --

5 MR. BIGGS: -- withholding information,
6 telling certain information, piling on at opportune
7 times, all those things are going to be questions the
8 jury will face.

9 THE COURT: Right. Okay. So opening
10 statements -- the purpose of opening statements is
11 really to just outline -- tell the jury what it is that
12 your position is and what you're going to ask them at
13 the very end and outline the facts as you expect them
14 through the trial.

15 So I think that with what you're saying, you're
16 getting a little bit too much into argument. I think
17 that that's proper during closing but not opening.

18 MR. BIGGS: Well, Your Honor, we intend to
19 say in opening that the jury will be asked to evaluate
20 his motives.

21 THE COURT: And that's fine, but not -- I
22 mean, if you have some factual basis -- like, for
23 instance, the evidence will show that these things
24 happened and -- I'm just worried about you going with
25 motives because I think that that's just getting too
COLLOQUY

1 close to argument.

2 MR. BIGGS: Well, Your Honor, that is one of
3 the instructions the jury will have to answer.

4 THE COURT: Right. But I just don't think
5 that you should be -- I'm not just not going to allow
6 any argument during opening statements. So you can
7 craft your opening statements as to what you anticipate
8 the evidence show. And if you anticipate that there
9 is -- of course I don't know the evidence as much as
10 you do.

11 MR. BIGGS: Uh-huh.

12 THE COURT: But if you anticipate that
13 there's evidence that is going to show that he did
14 some -- that he did something because his motive --
15 well, I just don't even think that you should really be
16 able to say what his motivation was because that's for
17 the jury to decide.

18 So I'm just going to limit you to what -- what
19 your facts are and what you anticipate that's going to
20 show without arguing what his motivation was because I
21 just don't think that's proper for opening. I think
22 that's proper for closing but not for opening.

23 MR. BIGGS: Your Honor, if I may, part of
24 what we do in opening statement is to tell the jury
25 what to watch for, what they will be asked to review at
COLLOQUY

1 the end, and the questions that they will be confronted
2 with at the end.

3 THE COURT: Right.

4 MR. BIGGS: And one of those questions is did
5 this man act in bad faith. That is one of the
6 questions, and I should be entitled to ask the jury --
7 tell the jury, "That is a question that you will have
8 to determine. And as you listen to the evidence,
9 that's something you need to consider."

10 THE COURT: And that's the extent of it, I
11 think. I mean, you can't -- I'm not going to allow
12 argument during opening statements.

13 MR. BIGGS: Your Honor, I'm -- I'm not sure
14 where we're drawing the line with argument.

15 What Mr. Sheridan doesn't want to hear doesn't
16 make it argument. Okay. It is the jury will have
17 certain instructions. They'll be -- they'll be asked
18 to do certain things.

19 THE COURT: Right.

20 MR. BIGGS: And they should be aware in
21 opening of what those -- those issues will be -- what
22 they will be asked to do. And then we're going to say
23 that, "We want you to find certain things."

24 THE COURT: Right. But I don't think it's
25 proper for you to say during opening what his
COLLOQUY

1 motivation was --

2 MR. BIGGS: For me to say it.

3 THE COURT: I think it's fair -- I think --
4 and, Mr. Biggs, I don't want go -- keep going back on
5 this, but I think it's fair for you to say, "You will
6 be asked to make a determination of whether he acted in
7 good faith or not or what his motivation was," but
8 that's the extent of it.

9 MR. BIGGS: Okay. Now I think I understand,
10 Your Honor. In other words, I'm not going to say what
11 his motivation was. I'm going to say that's the jury's
12 job. They'll have to figure that part out.

13 THE COURT: Right. And I think that that's
14 what Mr. Sheridan was concerned, that you were going to
15 be going into the --

16 MR. SHERIDAN: Right. Right. I mean, I
17 understand opening is what we intend to prove. Right?
18 So we're going -- and it's fact based.

19 THE COURT: Right.

20 MR. SHERIDAN: So my opening is all fact
21 based, and that's what I would hope.

22 So I'm just trying to avoid having to object
23 during opening. That's all.

24 THE COURT: All right. And I'm just saying I
25 will not allow argument, but I think it's fair to
COLLOQUY

1 simply say, "You will have to determine whether he was
2 acting in good faith or not or he had a motive," but
3 not go into what his motivation was.

4 MR. BIGGS: I understand, Your Honor. Thank
5 you.

6 THE COURT: All right. So I will grant your
7 motion.

8 How long do you anticipate your opening statements
9 to last, Mr. Sheridan?

10 MR. SHERIDAN: Probably -- if everything goes
11 right technically, probably 40 minutes.

12 THE COURT: All right. Defense?

13 MR. BIGGS: It will be much shorter than
14 that.

15 THE COURT: Okay. All right.

16 So it may be that we do openings, and then we may
17 just take our morning break.

18 I also want to remind the parties that we did make
19 special accommodations for juror number --

20 MR. SHERIDAN: 42. We all --

21 (Indiscernible crosstalk.)

22 THE COURT: Which is seated in -- what seat
23 now?

24 COURT STAFF: Are we talking about the dental
25 appointments?

COLLOQUY

1 THE COURT: Yes.

2 COURT STAFF: Yes. No. 12.

3 And just FYI, she told me this morning that she
4 needs to be taken to the bus to downtown Seattle so
5 that's going to change things a little bit.

6 THE COURT: Oh.

7 COURT STAFF: Yeah. So --

8 THE COURT: Because that's like an hour.

9 So I'm -- so her appointment was at 11:30. We
10 were thinking we would resume -- we would leave at --
11 we will resume at 10:30 so she would have plenty of
12 time. I think an hour should be enough to get downtown
13 by bus.

14 COURT STAFF: Depends on the bus schedule.
15 We should probably check with her to see how long she
16 needs, depending on her situation.

17 THE COURT: Yeah. I was just going to tell
18 the jurors what the schedule was going to be. So I'm
19 thinking -- so let's tell them that we anticipate going
20 until 10:00 because I don't want to just waste the
21 whole morning. And then we can just check with her on
22 the schedule issue. All right.

23 The other thing is defense wanted to have somebody
24 from WSP sitting at counsel table or -- other than
25 Lieutenant Nobach.

COLLOQUY

1 MR. BIGGS: Yes, Your Honor. Assistant chief
2 Johnny Alexander's in the back of courtroom today.

3 THE COURT: All right. All right. And he
4 will be the only person from --

5 MR. BIGGS: He is our designated --

6 THE COURT: -- WSP.

7 MR. BIGGS: -- representative for the State
8 Patrol.

9 THE COURT: Okay. All right. Anything else?

10 MR. SHERIDAN: I just wanted to make sure we
11 have commitment from the defense counsel that during
12 opening, they will not talk about the EEOC decision.
13 We don't have to worry about --

14 MR. BIGGS: Please don't ask me for
15 commitments in open court. I mean, that's not
16 appropriate.

17 MR. SHERIDAN: Well, then --

18 MR. BIGGS: If you want to bring a motion,
19 fine.

20 MR. SHERIDAN: I -- I'm asking the Judge if I
21 can't get agreement.

22 THE COURT: Well, if you had concerns, you
23 should have brought a motion in limine about that.
24 Again, I have no idea what --

25 MR. SHERIDAN: Well, no. It is -- it is in
COLLOQUY

1 our motion in limine, and I think it was reserved as
2 motion in limine 7. And -- and so -- but it would be
3 basically taking the EEOC as a second jury making a
4 decision about his claim under federal law. So it's
5 clearly inadmissible. It's inadmissible under
6 Grundrage. There's other case law pertaining to EEOC
7 opinions.

8 But I just wanted to make sure counsel won't be
9 saying that in opening statement and make me move for a
10 mistrial.

11 MR. BIGGS: Your Honor, I'm not going to make
12 any move for a mistrial, and I would appreciate if
13 Mr. Sheridan doesn't say things like that.

14 We do not intend to address that issue in opening
15 statement. However, his position that it's not
16 admissible is potentially incorrect, depending on how
17 the testimony goes.

18 And on that topic, there's one other issue we
19 should talk about, and that is whether or not in
20 opening statements we can talk about prior good acts.
21 That was reserved. If the plaintiff can get up here
22 and say, "Hey. I got all these awards when I was a
23 trooper on the road," because that has not been ruled
24 on, Your Honor.

25 THE COURT: I have not ruled on that.
COLLOQUY

1 MR. SHERIDAN: I wasn't --

2 MR. BIGGS: Right.

3 THE COURT: So --

4 MR. SHERIDAN: -- for your information, I
5 wasn't going to do it in opening --

6 THE COURT: Okay.

7 MR. SHERIDAN: -- because you hadn't ruled on
8 it. Okay.

9 THE COURT: Okay.

10 MR. BIGGS: Great.

11 MR. SHERIDAN: Yeah.

12 MR. BIGGS: Thank you, Your Honor. That's
13 all I think I have.

14 THE COURT: All right.

15 MR. SHERIDAN: And --

16 THE COURT: And -- I mean, as you all know,
17 if the Court reserved on some evidentiary issue, you
18 should not be really addressing that in opening
19 statement.

20 MR. SHERIDAN: Right.

21 THE COURT: I mean, that's -- that's the
22 rule.

23 MR. SHERIDAN: Okay.

24 THE COURT: Anything else?

25 MR. SHERIDAN: I just wanted to bring to the
COLLOQUY

1 Court's attention I got a text from Mark saying he
2 can't hear on the Zoom call, and I don't know --

3 COURT STAFF: We had it on -- through the
4 telephone. Can he hear anything? Or is he -- is it
5 possible it's on his end? Can he hear me --

6 MR. SHERIDAN: Oh, is he hearing through the
7 laptop?

8 COURT STAFF: No. I think he should be
9 hearing --

10 MR. SHERIDAN: Through there? So he's fair
11 to hear that. Because we all heard -- we did business
12 all last week through that then; right?

13 COURT STAFF: Correct.

14 MR. SHERIDAN: I'll have him --

15 COURT STAFF: Is it -- is it like he can't
16 hear anything? Or is it just --

17 MR. SHERIDAN: It says the view -- it says
18 the Zoom is on mute.

19 THE COURT: Oh.

20 MR. SHERIDAN: So --

21 COURT STAFF: We always log in through our
22 telephone so I always have it mute. Can he really not
23 hear anything?

24 MR. SHERIDAN: He said on mute so he couldn't
25 hear anything, but that was a couple minutes ago. I

COLLOQUY

1 could check with him again.

2 COURT STAFF: Can you check to see? Because
3 everybody always hears through our speakerphone. If I
4 take it off mute, then we get the feedback.

5 MR. SHERIDAN: Yeah.

6 COURT STAFF: So --

7 THE COURT: All right.

8 COURT STAFF: Mr. Rose, can you hear?
9 (inaudible).

10 THE COURT: Well, he will let Mr. Sheridan
11 know.

12 MR. SHERIDAN: Thank you.

13 THE COURT: All right.

14 COURT STAFF: You can check to see --

15 (Indiscernible crosstalk.)

16 MR. SHERIDAN: No, he said no.

17 COURT STAFF: Can Tony hear anything?

18 MR. SHERIDAN: I'll see. I'll see if --

19 THE COURT: Do you have anybody listening,
20 defense?

21 MR. MARLOW: No.

22 THE COURT: Well, we can play with that
23 during did recess.

24 MR. SHERIDAN: Will do.

25 THE COURT: And, Mr. Sheridan, my clerk just
COLLOQUY

1 indicated that the next exhibit is 262 and not 263.

2 MR. SHERIDAN: Oh, can we pen and ink on
3 those?

4 COURT STAFF: (inaudible) .

5 MR. SHERIDAN: Yeah. Yeah. That's 260, the
6 books. The flat -- the flat one pagers are a bunch of
7 263s that should be --

8 COURT STAFF: Oh, these are --

9 MR. SHERIDAN: -- 262.

10 COURT STAFF: -- exhibits as well? Oh, I'm
11 sorry.

12 MR. SHERIDAN: Yeah.

13 UNIDENTIFIED SPEAKER: (inaudible).

14 MR. SHERIDAN: Thanks.

15 THE COURT: All right. Are we ready to bring
16 in the jury?

17 MR. SHERIDAN: Ready.

18 MR. BIGGS: Yes, Your Honor.

19 THE COURT: Please bring in the jury.

20 And I know you guys had asked about sanitizers.
21 There's sanitizer over there.

22 MR. SHERIDAN: Oh, yes.

23 Does the jury come from through here? We're
24 trying to decide if we should put up the screen or not.

25 THE COURT: No, that's the jail.
COLLOQUY

1 MR. SHERIDAN: Oh, okay.

2 THE COURT: The jail door.

3 MR. SHERIDAN: Thank you.

4 THE COURT: I hope they don't come through
5 there. I don't know if Mary's going to bring them from
6 the back or from the front, but we cannot have that
7 blocked on Fridays. So on Thursday we need to make
8 sure that that's clear because that's our --

9 MR. SHERIDAN: Okay. It goes --

10 THE COURT: -- jail door.

11 MR. SHERIDAN: -- squishes.

12 THE COURT: Oh, who's going to be doing
13 opening on behalf of defense so I know who to tell the
14 jury?

15 MR. MARLOW: Mr. Biggs.

16 THE COURT: Mr. Biggs. Okay.

17 During my criminal trial, the table was more
18 facing this way, and there was only just the
19 prosecutor. So we didn't have that issue of the
20 witness being behind the attorneys. But --

21 MR. BIGGS: Your Honor, would you have any
22 objection if we just pivot this table a little bit
23 right now?

24 COURT STAFF: All rise for the jury.

25 THE COURT: No objection.
COLLOQUY

1 MR. BIGGS: We'll wait.

2 THE COURT: Not that you can do it.

3 Good morning. Please be seated.

4 Typically, in normal times, I would have seen all
5 of you in person. But given our current situation, I
6 have only seen you on video. So welcome to -- welcome
7 again to department 35 of the King County Superior
8 Court. I appreciate you being here and your service as
9 jurors. This is really important. Even in the time of
10 a pandemic, justice needs to continue, and we must go
11 on so I really appreciate you being here.

12 At any time if you need to stand up, please feel
13 free to stand up. If you need to take a recess before
14 we recess, please make sure to raise your hand and let
15 us know. We want to be as accommodating as possible.
16 We always are but especially now.

17 I will say a few words about the role and function
18 of each of us plays during the jury trial. Oh,
19 juries -- as I told you during jury selection, I asked
20 you to not look into any evidence from the outside and
21 not do any research or talk about the things that we
22 had discussed about.

23 You must not allow yourself to be exposed to any
24 outside information about this case, and you do not
25 permit anyone to discuss or comment about in your

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1 presence, and do not remain within hearing of such
2 conversations. This includes electronic conversations
3 as well oral ones. You must keep your minds free of
4 outside influences so that your decide will be based
5 entirely on the evidence presented during the trial and
6 on my instructions to you about the law.

7 If at any time you run into witnesses on the
8 outside, do not talk to them. Do not wave at them. Do
9 not -- because even if you're just asking about, "Did
10 you have a nice lunch? Or do you enjoy the weather?"
11 it can be perceived as having inappropriate
12 conversation.

13 And the same with the attorneys and the same with
14 the staff with the exception, of course, of Mary who is
15 the person that you will be having contact with.

16 So I have instructed the attorneys and the parties
17 do not talk to you, do not wave at you, or if you see
18 each other during the lunch break.

19 Until you are dismissed at the end of this trial,
20 you must avoid any outside sources. And that includes
21 newspaper, magazine, blog, the internet, or radio, or
22 television broadcast that may discuss this case or
23 issues involving this trial.

24 If you start to hear or read information about
25 anything related to the case, you must act immediately

PRELIMINARY JURY INSTRUCTIONS

1 so that you no longer hear or see it.

2 By giving this instruction, I do not mean to
3 suggest that this case is newsworthy. I give this
4 instruction in every case.

5 During the trial, do not try to determine on your
6 own what the law is. Do not seek out any evidence on
7 your own. Do not consult dictionaries or other
8 reference materials. Do not conduct any research into
9 the facts, the issues, or the people involved in this
10 case.

11 This means you may not use Google or any other
12 internet search to look into anything that is related
13 to this case or the parties.

14 Do not inspect the scene of any event that is
15 involved in this case. If your ordinary travel will
16 result in passing or seeing the location of any event
17 involved in this case, do not stop or try to
18 investigate. You must keep your mind clear of anything
19 that is not presented to you in this courtroom.

20 During the trial, do not provide information about
21 the case to other people, including any of the lawyers,
22 parties, witnesses, your friends, members of your
23 member, or members of the media.

24 If necessary, you may tell people, such as your
25 employer, that you are a juror and let them know when

PRELIMINARY JURY INSTRUCTIONS

1 you need to be in court. If people ask for more
2 detail, you should tell them that you're not allowed to
3 talk about the case until it's over.

4 Similar to what I told you during jury selection,
5 if anybody says something, just blame it on the
6 Judge -- "Judge Rajul is not allowing me to talk about
7 anything that is related to the case."

8 I want to emphasize that the rules prohibiting
9 discussions include your electronic communications.
10 You must not send or receive information about anything
11 related to the case by any means, including, text
12 message, email, telephone, internet chats, blog, social
13 networking websites.

14 Do not even mention being on a jury when using
15 social media such as updating your status on Facebook
16 or sending a message on Twitter. You don't want to do
17 anything that will invite others to talk to you about
18 your jury duty.

19 You may find that if you just post something like,
20 "I am in a civil jury trial," people are going to start
21 liking it and asking questions, and it's just not worth
22 it. So do not communicate with anyone by any means
23 concerning what you see or hear in the courtroom, and
24 do not try to find out more about anything related to
25 this case by any means other than what you learn in the

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1 courtroom.

2 These rules ensure that the parties will receive a
3 fair trial. If you have any questions about any of
4 these restrictions, please talk to Ms. Gallenger
5 (phonetic).

6 If you become exposed to any information other
7 than that you learn in the courtroom, that could be
8 grounds for a mistrial. A mistrial would mean that all
9 of the work that you and your fellow jurors put into
10 this trial would be wasted. Retrials are costly and
11 burdensome to the parties and the public.

12 Also, if you communicate with others in violation
13 of my orders, you could be fined or held in contempt of
14 Court.

15 After you have delivered your verdict, you will be
16 free to do any research you choose and to share your
17 experiences with others.

18 And I'm -- I'm going to ask at this time that,
19 please, everybody make sure that your phones are muted
20 or turned off. I just heard a beeping.

21 Throughout this trial, you must come and go
22 directly from what has been now designated the jury
23 room, which is really the courtroom next door. And
24 just follow all of Ms. Gallenger's instructions as to
25 where to go, where to meet.

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1 Do not remain in the hall or the courtroom as
2 witnesses and parties may not recognize you as juror,
3 and you may accidentally overhear some of the
4 discussions about this case.

5 Even a communication about an unrelated topic
6 might give a bad impression to others. Therefore, as I
7 already indicated, I have instructed the lawyers to not
8 talk to you at all.

9 They're not trying to be rude if you wave and they
10 don't respond. Don't take it personal.

11 I want to comment on one other aspect of your
12 role, and that is the importance of keeping an open
13 mind throughout the various stages of these
14 proceedings. The trial has a sensible order to it as
15 each side presents and develops its position.

16 First, the lawyers will have an opportunity to
17 make opening statements outlining the testimony of
18 witnesses and other evidence that they expect to be
19 presented during trial.

20 Next, the plaintiff will present the testimony of
21 witnesses or other evidence to you.

22 When the plaintiff has finished, the defendant may
23 present the testimony of witnesses or other evidence.

24 Each witness may be cross-examined by the other
25 side.

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1 When all of the evidence has been presented to
2 you, I will instruct you on what the law applies to
3 this case. I will read the instructions to you out
4 loud. You will have individual copies of the written
5 instructions with you in the jury room during your
6 deliberations.

7 The lawyers will then make closing arguments.

8 Finally, you will be taken to the jury room by the
9 bailiff where you will select a presiding juror.

10 The presiding juror will preside over the
11 discussions of the case, which are called
12 deliberations.

13 You will then deliberate in order to reach a
14 decision, which is called a verdict.

15 During your deliberations, you must apply the law
16 that I provide to you in my instructions to the facts
17 that you find have been proven.

18 Until you're in deliberations, you must make sure
19 you maintain open minds. If you were to form premature
20 opinions about the case, this would interfere with your
21 ability to get the benefit of each of the subsequent
22 stages.

23 The attorneys' role is to represent an advocate
24 for the position of the respective clients. The
25 lawyers' remarks, statements, and arguments are

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1 intended to help you understand the evidence and apply
2 the law. However, the lawyers' statements are not
3 evidence or the law.

4 The evidence is the testimony and the exhibits.
5 The law is contained in my instructions.

6 You must disregard anything the lawyers say that
7 is at odds with the evidence or the law in my
8 instructions.

9 You may hear objections made by the lawyers during
10 trial. Each party has a right to object to questions
11 asked by another lawyer. These objections should not
12 influence you. Do not make any assumptions or draw any
13 conclusions based on the lawyer's objections.

14 When there is an objection, it is my job to rule
15 on it. One of my duties as a Judge is to decide
16 whether or not evidence should be admitted during this
17 trial.

18 What this means is that I must decide whether or
19 not you should consider evidence offered by the
20 parties. For example, if a party offers a photograph
21 as an exhibit, I will decide whether it is admissible.
22 Do not be concerned about the reasons for my rulings.
23 You must not consider or discuss any evidence that I do
24 not admit or that I tell you to disregard.

25 Our State constitution prohibits a trial judge
PRELIMINARY JURY INSTRUCTIONS

1 from making a comment on the evidence. For example, it
2 would be improper for me to express my personal opinion
3 about the value of a particular witness testimony.

4 Although I will not intentionally do it, if it
5 appears to you that I have indicated my personal
6 opinion concerning any evidence, you must disregard
7 that opinion entirely.

8 The reason for the constitutional rule is that
9 it's solely the role of the jurors to weigh and
10 evaluate the evidence in the case. And I want to give
11 you an example of some -- what may happen where you may
12 think that I am commenting on the evidence or the
13 witnesses.

14 You will see me that I'm still in my computer.
15 That's not because I'm shopping or I'm bored, I'm
16 reading the news. It's because I have to be doing
17 other things. So maybe -- Mary may be emailing me,
18 telling me that something that we had for tomorrow
19 morning is being rescheduled or canceled, and I may
20 react to that. So don't think that I'm just -- I think
21 that I'm placing any importance on the testimony or the
22 witness that is testifying at the time.

23 You will be allowed to propose written questions
24 to witnesses after the lawyers have completed their
25 question -- questioning.

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1 You may ask questions in order to clarify the
2 testimony, but you are not to express my opinion about
3 the testimony or argue with a witness.

4 If you ask any questions, remember that your role
5 is that of a neutral fact finder, not an advocate.

6 I excuse each witness, I will offer you the
7 opportunity to write out a question on a form provided
8 by the Court. Do not sign the question. I will review
9 the question to determine if it's legally proper.

10 There are some questions that I will not ask or
11 will not ask in the wording submitted by the juror.
12 This might happen either due to the rules of evidence
13 or other legal reasons or because the question is
14 expected to be answered later in the case.

15 If I do not ask a juror's question or if I
16 rephrase it, do not attempt to speculate as to the
17 reasons and do not discuss the circumstances with other
18 jurors.

19 By giving you the opportunity to propose
20 questions, I am not requesting or suggesting that you
21 need to do so. It will often be the case that a lawyer
22 has not asked a question because it is legally
23 objectionable or because a later witness may be
24 addressing that subject.

25 When you receive your notepads, you will have
 PRELIMINARY JURY INSTRUCTIONS

1 the -- you will have three questionnaires. And if you
2 need more, I will provide you with more -- or Mary will
3 provide more copies.

4 All proceedings in this trial are recorded by our
5 clerk, Ms. Berger. Deliberating jurors are rarely, if
6 ever, given access to transcripts or recordings of
7 trial testimony. For this reason, you must pay close
8 attention as the testimony is being presented.

9 The related point is that you are allowed to take
10 notes during trial. So you will have the -- a little
11 notepad where you can take notes.

12 I am not instructing you to take notes, nor am I
13 encouraging you to do so. Taking notes may interfere
14 with your ability to listen and observe.

15 If you choose to take notes, I must remind you to
16 listen carefully to all testimony and to carefully
17 observe all witnesses.

18 At an appropriate time, Ms. Gallenger will provide
19 a notepad and a pen or pencil to each of you. That
20 will not happen until opening statements because, as I
21 indicated, what the lawyers indicate at opening
22 statements is not evidence.

23 Your juror number will be on the front page of the
24 notepad. You must take notes on this pad only, not any
25 other paper. You must not take your notepad from the

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1 courtroom or the jury room for any reason.

2 When you recess during the trial, please leave
3 your notepads on the chair. At the end of the day, the
4 notepads must be left on the chair.

5 While you are away from the courtroom or the jury
6 room, no one else will read your notes. I will not
7 read your notes. Ms. Gallenger will not read your
8 notes. Ms. Berger will not read your notes. Nobody
9 will read your notes.

10 You must not discuss your notes with anyone or
11 show your notes to anyone until you begin deliberating
12 on your verdict. This includes other jurors.

13 During deliberation, you may discuss your notes
14 with the other jurors or show your notes to them.

15 You're not to assume that your notes are
16 necessarily more accurate than your memory. I am
17 allowing you to take notes to assist you in remembering
18 clearly, not to substitute your memory.

19 You're also not to assume that your notes are more
20 accurate than the memories or notes of other jurors.

21 After you have reached a verdict, your notes will
22 be collected and destroyed by the bailiff. No one will
23 ever read your notes unless you share them during
24 deliberations with other jurors.

25 Now that you have -- that we have -- that you as
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1 impaneled jurors, you will need to take another oath.
2 So please stand and raise your right hand, and the
3 clerk will swear you in.

4 COURT STAFF: Do you and each of you solemnly
5 swear or affirm that you will truthfully try the matter
6 at hand and return a true verdict based on the
7 instructions and evidence provided?

8 If so, please say I do.

9 (Group response)

10 COURT STAFF: Thank you.

11 THE COURT: Please be seated.

12 Did everybody answer?

13 UNIDENTIFIED SPEAKER: Yes.

14 THE COURT: Did everybody answer in the
15 affirmative?

16 (Group response)

17 THE COURT: Anybody who did not answer? All
18 right.

19 Having taken your oath as jurors, you are now what
20 the law calls officers of this court. As much, you
21 must not let your emotions overcome your rational
22 thought process.

23 You must decide the case solely on the evidence
24 and the law before you and must not be influenced by
25 any personal likes or dislikes, opinions, prejudices,

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1 sympathy, or biases, including unconscious bias.

2 Unconscious biases are stereotypes, attitudes, or
3 preferences that people may consciously reject but may
4 be expressed without conscious awareness, control, or
5 suspension. Like conscious bias, unconscious bias too
6 can affect how we evaluate information and make
7 decisions.

8 To assure that all parties receive a fair trial,
9 you must act impartially with an earnest desire to
10 reach a just and proper verdict.

11 As I told you prior to jury selection, this is a
12 civil case brought by Detective Ryan Santhuff,
13 Plaintiff, against the State of Washington and
14 Lieutenant David Nobach, Defendants.

15 Detective Santhuff brings the claim against his
16 employer, the State of Washington -- specifically the
17 Washington State Patrol -- for whistleblower
18 retaliation under the Washington State Whistleblower
19 Act and for retaliation under the Washington law
20 against discrimination.

21 Detective Santhuff also brings a claim against
22 detective Nobach for it -- not detective -- Lieutenant
23 Nobach for retaliation.

24 During jury selection, you are able to meet
25 Detective Santhuff, as you saw him during Zoom, but you
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1 did not get a chance to meet Lieutenant Nobach.

2 So, Lieutenant Nobach, if you could please stand.
3 Thank you.

4 Detective Santhuff alleges that in or around March
5 of 2016, while working in the aviation section of the
6 Washington State Patrol, he observed an incident of
7 sexual harassment involving Lieutenant Nobach.

8 Detective Santhuff reported this incident through
9 his chain of command.

10 Detective Santhuff alleges that from that time
11 forward, Lieutenant Nobach and his chain of command
12 retaliated against him.

13 Detective Santhuff further alleges that in
14 September of 2016, he made two additional reports
15 against Lieutenant Nobach through his chain of command.

16 Detective Santhuff left the aviation section in
17 October of 2016 and transferred to a detective
18 position.

19 Detective Santhuff alleges he has suffered
20 economic and non-economic damages because of the
21 defendants' actions.

22 The defendants, the State of Washington and
23 Lieutenant Nobach, deny each of plaintiff's allegations
24 and claim that their actions were proper and justified.

25 Defendants also deny the nature and extent of the
PRELIMINARY JURY INSTRUCTIONS

1 damages Detective Santhuff is claiming in this case.

2 When jurors are given the job of resolving a
3 dispute like this one, they do it by applying what is
4 called the burden of proof.

5 Burden of proof refers to the measure or amount of
6 evidence required to prove a fact. In this case, the
7 burden of proof is proved by the preponderance of the
8 evidence.

9 A preponderance of the evidence means the greater
10 weight of the evidence. If a proposition has been
11 shown to be more likely than not true, there is a
12 preponderance of evidence in favor of that proposition.

13 This is a lower burden than the proof beyond a
14 reasonable doubt standard applied in a criminal trial.

15 During our deliberations, you must apply the law
16 to the facts that you find to be true. It is your duty
17 to accept the law from my instructions regardless of
18 what you personally believe the law is or what you
19 think it ought to be.

20 You are to apply the law you receive from my
21 instructions to the facts and, in this way, decide this
22 case.

23 Thank you for your willingness to serve this
24 Court, our system of justice. And at this time, if you
25 could please turn your attention to Mr. Sheridan who

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1 would give opening statements on behalf of the
2 plaintiff.

3 MR. SHERIDAN: Thanks, Your Honor. Taking us
4 to get the (inaudible) here.

5 THE COURT: You may proceed.

6 MR. SHERIDAN: Thank you very much for
7 serving. This is my first trial where the jury's
8 spread out all over the room, and I hope you feel safe,
9 and I hope you feel safe for the entire time. And if
10 you don't, please speak up.

11 I have permission to use -- we attorneys have
12 permission to use need -- these screens so that you can
13 see our faces for some portions of this and so I'm
14 taking advantage of that and here we go.

15 So this case involves, as you heard, two claims of
16 retaliation: One whistleblower, one under the
17 Washington law against discrimination.

18 Most of the events happened out at the Washington
19 State Patrol hanger in Tumwater at the regional
20 airport, and that's where the aviation unit is
21 stationed.

22 The State Patrol itself has over 2,000 employees,
23 but in 2016, Mr. Santhuff -- or Detective Santhuff's
24 chain of command started out at the bottom level as his
25 sergeants -- Sergeant Hatteberg and Sweeney reporting

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1 to Lieutenant Nobach who is one of the name defendants.

2 He in turn report -- report to Captain Johnny
3 Alexander who's seated in the back there as the State's
4 corporate representative. And so he will be called to
5 testify by the plaintiff in this case as what we call
6 an adverse witness.

7 He reported in 2016 to Assistant Chief Randy
8 Drake, who then reported in turn to Chief John Batiste.

9 The organization that is the aviation group is
10 actually rather small. It's run by Lieutenant Nobach
11 and has been for the -- for the past and currently has
12 two sergeants, four pilots at the beginning of 2016,
13 and then the name changed, but it was about that
14 number. And these numbers go up and down. And three
15 mechanic, one office staff. And her name through the
16 relevant time period has been -- is Brenda Biscay.

17 So there -- the airplanes in 2016, there were
18 seven of them -- three Cessna 182s, a Cessna 206, and a
19 King Air, which is a twin prop.

20 This particular assignment was a dream come true
21 for -- for Detective Santhuff. Since he was a kid, he
22 will tell you, he has dreamed of being a pilot.

23 He went to school to become a commercial pilot.
24 And then when 9/11 happened, it affected lives all over
25 the world, and one of the lives affected was him

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1 because it also changed the availability and the need
2 to have pilots.

3 So he actually thought at that point -- and he'll
4 tell you this -- that he was never going to be a pilot.
5 And he never had thought about law enforcement, but he
6 attended a birthday party as a young adult, and one of
7 the senior people there was a senior State Patrol
8 captain who talked -- talked up the benefits of being a
9 State -- on the State Patrol. And they arranged a ride
10 along for him, and -- and that was it. He was ready to
11 join.

12 In December 2006, he was hired into the Washington
13 State Patrol as a cadet. He went to the academy and
14 graduate April 2008, and was commissioned as a trooper.

15 In 2013, the aviation section may have had an
16 opening in the future, and it was on the promise that
17 they may have an opening that he changed his life again
18 to get back to aviation. He hadn't flown in seven
19 years.

20 In 2013, he got this State Patrol award that --
21 that allowed him to take time off from work. It
22 allowed him to cross-train with detectives. But,
23 instead, he convinced his management to let him go to
24 school at his own expense and get his commercial
25 pilot's license so he could compete for that job.

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1 And that's exactly what he did -- using his own
2 time and money, Ryan found a flight training schools
3 with openings during the little window that he had. So
4 he had to travel around. He -- and he had to study all
5 day long. And he did -- he doubled up on the training
6 and did two a day. And he went to Boeing Field for his
7 instrument rating, and he went to Boise, Idaho for his
8 commercial license because that fit into those few
9 weeks that he had free. I think he did it in six or
10 seven weeks.

11 Then the pilot position did open up. And keeping
12 in mind that there's hardly any pilots -- four pilots.
13 Right? So he had -- he had the needed qualifications.
14 At the time, he needed four years' experience as a
15 trooper, he needed good performance evaluations,
16 commercial pilot's license, and recommendations, and he
17 had all of those things. And he applied for the job.

18 And he interviewed with a panel that included
19 Lieutenant Nobach, and he was hired. And he was
20 hired -- I think he transferred as of January 1, 2014,
21 and his reporting date was the 2nd in 2014.

22 The progression is sort of standardized. People
23 come -- people get hired for the pilot position with
24 varying degrees of experience and time in, but they all
25 have the commercial pilot's license. But everyone is

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1 hired as what's called the Cessna 182 traffic pilot.

2 And so the -- some of the planes are used actually
3 to catch speeders on the highway and other things. But
4 that's the first job you get no matter how experienced
5 you are. And the first thing they do is they send you
6 to Cessna -- it's a 90-day Cessna training program. In
7 fact, it may last longer than 90, but that's what they
8 call it.

9 And after graduation, you're authorized to do
10 solely missions. You can fly for yourself, and he did.

11 This is a picture of the Cessna 182 just to give
12 you an idea of what size planes these are. These are
13 the single-engine ones that do the traffic.

14 He got signed off on the Cessna 206 in April of
15 2014. He'd already been signed off on the Cessna 182.
16 The 206 is a little bigger.

17 Late in 2014 or early in 2015, he was allowed to
18 carry passengers, which is a big deal.

19 This is a picture of the 206 in the air, and these
20 things get -- get hooked up with those FLIR -- flair --
21 FLIR things that are sort of telescopes that allows
22 ground surveillance and that stuff -- that kind of
23 stuff.

24 In February 2015, he attended the multiengine
25 school -- this is just part of his progression -- at
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1 the Renton Airport, and he passes. And he's tested by
2 an FAA flight examiner, and they do these things where
3 they change the attitude and you fly for a couple of
4 hours, and he passed.

5 So now he's got his multiengine, and that means
6 that he can now begin training for the Beechcraft King
7 Air. There's two of them. And these are the
8 twin-engine planes. They're faster.

9 In -- in the State Patrol -- this isn't an FAA
10 requirement, but you'll hear testimony that in the
11 State Patrol, they always have two pilots. So one is
12 typically a person learning, and the other is what's
13 called a command pilot. And a command pilot means that
14 you are now qualified to do everything. And so there
15 are certain amount of command pilots that have existed
16 through the time.

17 This is just another angle of the twin-engine King
18 Air.

19 So his progression continues.

20 Now, they have this thing called King Air
21 training. It's -- it's done by a company called Flight
22 Safety. And you're going to hear said over and over
23 again the phrase Flight Safety. I'm going to Flight
24 Safety. That means they're going to -- to King Air
25 training.

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1 Three times a year was an accelerated program that
2 he had been put on. The idea getting them qualified as
3 soon as they can.

4 There's another trooper named Chris Noll who was
5 also doing this at the same time.

6 On October 23, 2015, there's what's called an
7 employee action request, and this is basically -- it's
8 an -- it's a benefit that you get after you're there a
9 while and you've proven yourself. It's signed by
10 Lieutenant Nobach and by Captain Alexander, and it
11 gives -- it gave Ryan a ten-percent pay increase.

12 So remember. This is in October the end of the
13 year 2015. And -- and in -- you're going to see this
14 document. And in the document, it says, "Santhuff met
15 or exceeded the section's criteria for King Air
16 co-pilot." So that was his status in October 2015.

17 In December 2015, Lieutenant Nobach submits
18 paperwork for Ryan to attend King Air school in
19 February 2016. So now the end of '15 has happened.
20 We're into 2016, and he's going to King Air school
21 again.

22 And just so you know, King -- you'll hear this,
23 but King Air school is they have this -- this -- this
24 set up where you basically -- even though you're on the
25 ground the whole time, you're in a simulator, and it's

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1 as though you're flying, and they do bad things to you
2 to make you think about crashing and how are you going
3 to avert it. And so it's -- the pilots apparently
4 really love it because it is so realistic, and it's
5 just a great training program.

6 So February 21st, he's -- he's at the school. On
7 the 24th of 2016, he comes home. Now he's back at work
8 February 24th.

9 And, again, this is the -- this is part of the
10 staffing. So Lieutenant Nobach runs the organization.
11 And even though he's a lieutenant and not a captain, he
12 runs the organization. He doesn't do the budgeting,
13 but every other decision is his decision to make.

14 His one office staff person is Brenda Biscay.
15 She's ten years with the State Patrol. She's been
16 administrative assistant three most of the time, five
17 years in aviation.

18 In 2016, they did one of those things where they
19 look at your job and they reevaluate, and she got --
20 she became an office manager under Lieutenant Nobach.

21 He's been her direct supervisor -- she doesn't
22 report to the sergeants. She reports directly to him.

23 Then this happens on February 26th. Ryan and
24 Lieutenant Nobach are in Nobach's office at the hanger
25 talking about an icing issue that had come up over a

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1 recent flight.

2 During the meeting, Nobach makes a derogatory
3 comment to his office manager, Brenda Biscay, while
4 she's in the hallway outside.

5 Don't take it -- derogatory -- don't take it as
6 whether it's joking or not joking. It doesn't matter.

7 Ms. Biscay comes into the office. She walks
8 behind Nobach and begins massaging his shoulders while
9 he's seated there in front of Trooper Santhuff.

10 Nobach makes another comment to Ms. Biscay, and
11 she replies, "I know what you really want," and then
12 she leans forward, placing Nobach's head in her breast
13 cleavage. Ms. Biscay begins moving her chest to the
14 left, to the right, rubbing her breasts on his head,
15 and he smirks.

16 This is during the workday at work. Ryan says
17 nothing and exits the room immediately. So this is
18 February 26th.

19 The chain of command at the time dictates that he
20 would go to Sergeant Sweeney if he was going to make a
21 complaint. That's his direct supervisor.

22 Around March 16th -- so these -- that many days
23 pass. He's not sure -- Ryan's not sure about the
24 specific date, but he's -- he is -- he will tell you he
25 was worried that, if he said something, he could blow

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1 the whole arrangement. He finally got to be a pilot.

2 So up to this time, he has a good relationship
3 with Lieutenant Nobach. They talk about projects
4 together. They borrow tools together. They decided --
5 they had a friendly relationship. When they flew
6 occasionally, they would talk back and forth,
7 comfortable. It was fine.

8 So he decides he's going to talk to Sweeney, and
9 he's hoping he can do it in confidence. And he tells
10 Sweeney what happened. What I told you is what he
11 tells him.

12 Sweeney gets mad, says, "you're not the first
13 person to talk to me about this kind of behavior." And
14 he cools off, and he promises that he won't burn Ryan.

15 But Sweeney says he thinks this is a big deal. He
16 doesn't have the opportunity -- he doesn't have the
17 discretion to not report it. Once it happens, he's got
18 to report it. It's in their regulations.

19 So he does. But first he goes down, and he's
20 worried too about what's going to happen to him, and he
21 goes down and he confronts Lieutenant Nobach.

22 And he went to Nobach and said words to the effect
23 of that, "You know, you need to cool it with Brenda."

24 Nobach denies there's a relationship.

25 Sergeant Sweeney says, "Did this happen in front

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1 of Ryan?"

2 And at that moment, of course, the connection's
3 made. After Lieutenant Nobach said he didn't remember,
4 Sweeney made a decision. He himself decided he
5 needed -- he needed to report it. He didn't have an
6 opportunity. He said he -- he waited a few days,
7 talked to his wife, and decided, "I got to do it," and
8 he did it.

9 So he goes -- you know, in his chain of command,
10 if you're going to skip over Lieutenant Nobach, Captain
11 Alexander is the next person in the chain.

12 But he makes a decision to go to outside the
13 chain. He says -- and these witnesses have been what
14 we call deposed, meaning they've sworn to tell the
15 truth. They've been asked questions and given answers,
16 and you will hear some of what we call deposition
17 testimony.

18 He says his reason for going outside the chain, he
19 says in sworn testimony, "I wanted to just report it to
20 somebody that would listen and do something about it."

21 So he didn't think Captain Alexander would do
22 anything about it, and he'd been assigned to Internal
23 Affairs. You've seen on TV Internal Affairs, the
24 people that police the police. Everybody goes through
25 assignment there, and he had a brief stint there. So

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1 he knew -- he had worked for a Captain Riley, and he
2 said he respected him. And he said, "He's somebody I
3 knew and trusted." So he reports the breast-rubbing
4 incident to Captain Riley.

5 Now, Captain Riley now is a captain in district
6 five. He calls Assistant Chief Drake. Randy Drake
7 calls Captain Alexander, and Captain Alexander calls
8 Sweeney.

9 So it didn't really work because it -- it really
10 became an issue between Captain Alexander and Sergeant
11 Sweeney.

12 So -- so the chain of command, as you can see,
13 went up to Drake appropriately, but royally called
14 Drake.

15 So in March of 2016, Ryan goes to Lieutenant
16 Nobach's office on a routine matter. And he knocks and
17 enters, and Nobach stands up in what they call the
18 ready position -- which is like a police training
19 position -- and as soon as he saw him do that, he knew
20 that the cat was out of the bag and he had been
21 identified.

22 So -- so Santhuff walked upstairs to Sweeney's
23 office and asked him if he said something about the --
24 that act. And he say, "What happened?"

25 And Sweeney tells him to shut the door. He
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1 explains that he was required to report the incident by
2 regulation, and he apologizes. And he said he first
3 went to Nobach to say, "Cool it with Brenda," and
4 Nobach died -- denied being inappropriate.

5 Sweeney said, "Okay, Jim. Did this happen in
6 front of Brian -- Ryan?" And then he denied it. So
7 that was Sweeney's piece of puzzle.

8 So -- and he explained that to Ryan. And so he
9 explained how he went to Riley and it went up to Drake
10 and back down to Alexander.

11 He also said -- remember that he is the boss. He
12 is Ryan Santhuff's immediate boss. He say, "Look. If
13 something else happens with Lieutenant Nobach, let me
14 know."

15 Santhuff expresses fear.

16 So Sergeant Hatteberg is the other sergeant in
17 this group in aviation, and so he's also sort of in the
18 know and also a resource for the troopers.

19 And so in March 2016, he says that he tells Ryan
20 that Captain Alexander is dealing with the sexual harm
21 situation, and that's how they refer to it. They call
22 it the sexual harassment situation.

23 So in April -- on April 1, 2016, Lieutenant Nobach
24 reads out loud an email on a workplace expectations to
25 aviation employees. It's written -- it's sort of

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1 notice to the group. It says, "Inappropriate office
2 conduct will not be accepted in the workplace."

3 And the whole time, Ryan will tell you, he's
4 staring at Ryan Santhuff.

5 On April 1st, sitting in the pilot's office,
6 Sweeney asks Ryan if he saw Nobach's email. So an
7 email has now gone out from Lieutenant Nobach to Ryan
8 Santhuff. He hadn't seen it yet, but he opened it. He
9 had his laptop. He opened it in Sweeney's presence.
10 And what he saw was -- this is April 1st now. There's
11 suddenly a six-month extension in his time to progress
12 to the next level.

13 So he's just been -- so what he understood to be
14 the facts was, as of that moment, his progression was
15 being extended by six months by Lieutenant Nobach.

16 Sweeney says to him, "I think he's messing with
17 you."

18 So this is -- this is the tract to become a
19 command pilot. It affects your salary -- it can affect
20 your salary. And the command pilot is the person who
21 has full authority over the King Air so it's
22 everybody's goal.

23 So Sweeney went and talked to Lieutenant Nobach,
24 and no changes were made in the progression.

25 In April 2016, Santhuff begins to be avoided and
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1 ostracized by the mechanics. There's only three. Both
2 started to distance themselves from him. Before they
3 would hang out with him. They'd tell stories. But he
4 noted that Brenda and her husband were friends with one
5 of the -- with one of them.

6 Santhuff questioned Hatteberg regarding the change
7 in the workplace, and Hatteberg explained that Biscay
8 told maintenance manage -- the maintenance mechanic
9 supervisor, Sam Laska (phonetic) about the sexual
10 harassment complaint.

11 So in April, Hatteberg tells Ryan -- I better get
12 a drink, with the Court's permission.

13 So Hatteberg in April, he tells Ryan that both
14 Lieutenant Nobach and Ms. Biscay got what they called
15 095s. It's the lowest form of written counseling.
16 It's -- it's basically -- 095s can be positive, and
17 they can be negative. If you get a positive 095,
18 you're getting sort of an attaboy for having done
19 something good that goes into your record for a period
20 of time, or you can get a bad one, which is if you've
21 done something wrong, you can get a 095. And it tells
22 you what you did wrong and tells you to, you know, stop
23 it.

24 So when Ryan hears that, he's actually thinking
25 maybe this whole thing's over and he's going to weather

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1 the storm.

2 Nobach's -- you're going to see a copy of Nobach's
3 095, and it's dated March 30th -- so now we're at the
4 end of the month -- 2016. And it says that there's
5 been inappropriate conduct in the workplace. It
6 doesn't describe that particular incident. It
7 confirms -- it says that it confirms that Nobach met
8 with Alexander, they agreed the conduct was
9 unacceptable and won't be tolerated, and it says it's
10 alleged that similar behavior by members of staff has
11 become an acceptable practice for an extended period of
12 time. This is at the aviation organization that
13 Lieutenant Nobach is in charge of.

14 Nobach is assigned the obligation of doing a third
15 party sexual harassment training for the -- for the
16 aviation section.

17 You should also know that this can impact your pay
18 and your promotion. It's -- it usually is recommended
19 on your next performance evaluation, and it's one of
20 those -- you know, they stack up numbers like pancakes
21 to decide who's the best qualified. In a competitive
22 promotion process, it can hurt you.

23 So Biscay gets one also on March 30th, and these
24 are signed by Captain Alexander. And he's the one who
25 talked to them. And it, again, says inappropriate

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1 conduct in the workplace. It confirms Biscay met with
2 Alexander. And it says that the two of them agreed
3 that the conduct was unacceptable and won't be
4 tolerated. It's alleged similar behavior by members of
5 staff has become an acceptable practice for an extended
6 period of time in that little organization. And it
7 says, "You will immediately refrain from such
8 behavior."

9 So April 4 to 8th now -- that was March 30th. We
10 talked about April 1st. Now April 4 to 8th is
11 non-standard training.

12 Now, Lieutenant Nobach doesn't do a lot of
13 training. By this time, Trooper Santhuff hasn't needed
14 a lot of training because he's flying two -- two of the
15 three planes. What he needs is a lot of time in the
16 King Air so he can get qualified on that, and there's
17 this -- this thing that he has to finish with -- with
18 instrument flying where you wear this hood and you
19 practice flying as though you're, you know, flying in
20 bad weather? And so he needs to get that signed off so
21 that he can fly non-State Patrol passengers. That's
22 it.

23 So Nobach wants him to sit in the right seat. So
24 the pilots that are training are left seat. The pilot
25 that is doing the training is right seat. So

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1 Lieutenant Nobach has him sit in the right seat instead
2 of the left, and he tells him that's so that he could
3 get training in that. But in the right seat,
4 everything is backwards. Right? Everything's turned
5 around. It's a different angle for what you're doing,
6 and he'd never done it before. But he -- he does it
7 anyway, and he thought it went well.

8 But Nobach says to Sweeney -- he says, "Each
9 flight, Ryan is getting worse and worse." So instead
10 of being that fast-track guy that he was in 2015, now
11 he's getting worse and worse in the eyes of Lieutenant
12 Nobach.

13 So he tells Sweeney that. And Sweeney tells
14 Nobach -- tells Trooper Santhuff -- now Detective
15 Santhuff that he's -- he's never had to do that.
16 That's out of normal training.

17 On the 9th of April, Hatteberg appears stressed
18 trying to manage the issues between Nobach and
19 Santhuff.

20 Hatteberg asked Ryan to go downstairs and
21 apologize to Lieutenant Nobach so we can put this
22 behind you. And they have an interaction about,
23 "Apologize for what? I didn't do anything wrong."

24 "Just apologize. Put it behind you."

25 There's witnesses in the room, and -- and by this
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1 time, Trooper Santhuff is feeling like he's being
2 ganged up on by his boss to apologize for something he
3 says he felt like he didn't do wrong.

4 So Hatteberg actually breaks down in tears due to
5 the high stress. And when he -- and when Ryan sees the
6 meltdown, he says, "Okay. I'll go talk to Nobach."

7 So on the 9th -- he says, "I'll go right now," and
8 he does it -- he does it for -- for Hatteberg.

9 So he meets on or about the 9th. We're not
10 100 percent sure it's -- it could be a little later.
11 But it's about the 9th. Might be the same day. He
12 says to -- he -- he goes to his office and say, "We
13 need to talk."

14 And he say, "What do you want, Ryan?"

15 Nobach appears to -- to Santhuff -- he appears to
16 be angry. Santhuff sat down across him at the round
17 table at his office, and explained his side of the
18 sexual harassment situation.

19 He explained how he didn't want Sweeney to say
20 anything, but it had to happen, and, you know, that was
21 it.

22 So -- so they talked for about an hour and a half,
23 just talking in circles, not really resolving anything.
24 But Nobach does raise his voice, and he said that, "If
25 he's" -- this is what he says. "If I" -- that if he's

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1 going to be held accountable for sexual harassment
2 situation, then Santhuff and everyone else will be too,
3 and he's pounding his fingers on the table.

4 So this is what Ryan Santhuff says to him. He
5 say, "Look. We've been contacted by members of the
6 public from that coffee place you and Brenda go, and
7 they're complaining. They're asking what's going on?"

8 Both sergeants don't go there because he takes
9 these long luncheons, as does Brenda, and they're gone
10 for hours at a time.

11 And he tells -- he's -- he's saying it right to
12 the lieutenant. And he says, "When I saw she was
13 rubbing her breasts on you, I knew there was a lot more
14 going on."

15 So he tells he went to Sweeney, and -- and this is
16 interesting. So Lieutenant Nobach denies that he's
17 having an affair but he never denied that the
18 breast-rubbing incident happened. And he was getting
19 red in the face, and this is where he say, "Goddamn
20 it -- goddamn, Ryan. If -- if I'm going to be held
21 accountable for this shit, then you and everyone else
22 will be too."

23 So now we're from April to October. After that,
24 Nobach and Biscay begin to time his breaks, and it's a
25 change from the previous casual environment. In

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1 between April and September, Santhuff advised Sweeney
2 that Hatteberg -- and Hatteberg on numerous occasions
3 that Nobach had been retaliatory, and he believes
4 Nobach would continue in that vain. He tells both
5 sergeants.

6 He suggested they get somebody from the outside to
7 come in and try to figure this out.

8 Hatteberg's response to the retaliation notice is
9 Hatteberg seemed irritated, and he seemed very
10 frustrated. He says to Ryan, "Did you want Nobach's
11 job?"

12 "No."

13 Stating, "If they remove Nobach, someone will have
14 to do his job," and Hatteberg didn't want to be the
15 person to do it.

16 He says he's also concerned on who may come into
17 aviation if Nobach is gone -- if he's removed.

18 Sweeney's on notice. He advises Sweeney and
19 Hatteberg he believed Nobach is retaliating. And --
20 and the thing that you will hear is that he's the chief
21 pilot. He has total control over the training program.
22 He has total control over progression. He can do
23 whatever he wants, and there's no accountability.

24 If Santhuff -- strike my last sentence.

25 In Santhuff's training manual, Nobach documented
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1 in training records his flying abilities and they
2 were -- and that -- so now he's writing down in his
3 training records that his flying abilities are getting
4 worse. And he's not telling Ryan that he's writing it
5 down, and Ryan is denied access to the training
6 documents for a couple of weeks.

7 After the -- after the training flight of the 182,
8 at the end of the flight, Ryan tried to do a debrief,
9 and Nobach said, "There's nothing glaring but a couple
10 of little things." So it's a good answer, and Ryan's
11 feeling pretty good about it. He's getting a good
12 answer. "How's the flight go?"

13 But behind his back, he tells Sweeney that Ryan
14 almost crashed the plane. Now, this is a huge thing.
15 This is a huge safety thing. This could get you
16 grounded. That's what he tells him. And Ryan says
17 this didn't happen.

18 So Ryan being Ryan, he goes to confront Lieutenant
19 Nobach. He says, "Let's go to meet them right now. If
20 he told you that I almost crashed the plane, I didn't,
21 and let's go talk to him."

22 So he goes down and talks to him, and there's no
23 yelling, but you can see -- he can see that Lieutenant
24 Nobach is tense.

25 And he does -- remember. He's wearing a hood so
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1 he's following the demands of Lieutenant Nobach.

2 Lieutenant Nobach says, "go higher. Go lower. Go
3 left. Go right." Right? All of those things he's
4 being told what to do, and he has to trust him.

5 So he's down at one point to -- as they -- as I
6 they're getting ready to land -- I don't believe they
7 land with the hood on. And he say -- he says, "Jim
8 said that you were low." This is that -- that was said
9 by Santhuff. I'm sorry. That was said by Sweeney.

10 And he says to Santhuff -- sorry. He says to Nobach,
11 "You told me to go 100 feet lower," but Nobach doesn't
12 back down. And he said -- and so Ryan says, "In the
13 future, just tell me honestly what's going on."

14 So after that comment, Ryan asked Sweeney if he
15 can put a GoPro in plane. That's a simple solution.
16 Let's let there be other eyes to judge how he's doing.

17 And Sweeney says, "Let me check, and I'll come
18 back." He's checking with Lieutenant Nobach. He's
19 told no. They have two of them. He's not allowed to
20 use them.

21 So on May 18th -- this is a big day. Lieutenant
22 Nobach decides to train Ryan in the right seat. And
23 he's sitting down. And when they take off, he's
24 wearing the hood. But he can see -- he can hear
25 there's a rustle of papers, and he kind of turns his

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1 head, and he can see there's papers on -- on Lieutenant
2 Nobach's lap and that he's writing. And it turns out
3 what he has -- he has -- he has a document that he made
4 up himself that was originally used for applicants.
5 So, like, it has things like, you know, "Did you tell
6 the passenger where the -- where, you know, the exit
7 door is? Did you tell the passenger where the fire
8 extinguisher is?" those kinds of things. He's writing
9 down that kind of detail saying that Ryan is failing
10 based on this -- what's called the check ride.

11 And he doesn't give him any notice that he's doing
12 it. And he's making quick changes to flying
13 instructions. So, again, when you have that hood on,
14 you can mess somebody up by -- by, you know, going too
15 fast. And that's not me saying that. That's
16 Lieutenant Nobach saying that in sworn testimony.

17 So you'll get to see this handwritten thing that
18 Lieutenant Nobach made saying how terrible a pilot Ryan
19 is. This is what he says in sworn testimony. This is
20 Lieutenant Nobach. He's asked the question, "Now,
21 would you agree with me that as the instructor --
22 that -- that you, as the instructor, can affect how
23 well a person is flying the plane does -- that -- you
24 can affect that by how quickly you give them things to
25 do."

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1 And Lieutenant Nobach answers, "Like in any field,
2 you can bury anyone you want to. I can sit here and
3 start speaking extremely fast and get in front of the
4 court reporter. So -- and you can do that for pilots
5 as well." And he says, "Any field. Yes."

6 THE COURT: Mr. Sheridan, your 45 minutes
7 ended, and I do need to give the jury a break.

8 MR. SHERIDAN: Oh, okay.

9 THE COURT: How much longer do you think you
10 have?

11 MR. SHERIDAN: Okay. About seven minutes.

12 THE COURT: Okay. All right.

13 MR. SHERIDAN: Okay. So he -- so he -- after
14 they land, this thing goes in his training record --
15 this handwritten thing goes in his training record
16 because Nobach puts it there.

17 Santhuff requests a meeting with Alexander because
18 he's had it. He want -- he's going up the chain of
19 command. He says -- that's what he'll tell you -- and
20 he's not -- Alexander had not ever met with him
21 following the incident. Although, according to
22 Alexander, he had coffee with him at one point but no
23 investigation.

24 Nobach adds to the training file, and he keeps --
25 he does say over and over again that Ryan's getting

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1 worse and worse.

2 He also tells Ryan for reasons known only to him
3 that he can't remove training records from the
4 building.

5 On May 20th, Ryan meets with Alexander. But in
6 the meeting, Captain Alexander -- it's in Captain
7 Alexander's office. And Santhuff reports retaliation,
8 the training incident, the pilot aircraft safety
9 concern issue, time breaks, micromanagement. And when
10 Santhuff begins to explain the retaliation began at
11 the -- after the sexual harassment situation, Alexander
12 interrupts him and says that, "Look. That's been dealt
13 with. We're not going to talk about it." So he cuts
14 him off. And during that meeting, Alexander asks
15 Santhuff to explain what concerns he has with training.

16 So he's not letting him tell his story about the
17 link between having spoken up in -- in March and this
18 treatment he's receiving.

19 So -- so he tries to explain his experiences, and
20 then Nobach jumps in and says, "I'm going to stop you
21 right there. This is about you and only you."

22 And Ryan say, "With all due respect, Lieutenant
23 Nobach, the captain asked me a question."

24 So Nobach face -- his face becomes flushed,
25 crosses his arms, and the meeting ends without a

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1 solution.

2 So Alexander tell -- this is important. Alexander
3 tells Santhuff, if Nobach and Santhuff can't work
4 together, then one of them will be removed from
5 aviation.

6 Hatteberg is -- you'll hear from Hatteberg. He
7 confirms that this was said. Even though Alexander has
8 this slight -- Captain Alexander has a slight deviation
9 on what was actually said.

10 So things did improve for a couple of weeks. And
11 then in June, the -- Ryan's King Air school is
12 canceled -- the June one by Lieutenant Nobach. He
13 cancels it because Chris Noll is having a baby and he's
14 out on FMLA but he's going to be back before July. So
15 Ryan says, "Okay. How about I go to the July class?"

16 And he says, "No." But he will let him go to fly
17 King Air -- the King Air training if he will give up
18 his vacation. So he's the only one that's having to do
19 this.

20 And he says, "Okay. I want to go in August. I'll
21 give up his vacation. Can I reschedule?" And Nobach
22 says no.

23 So -- so he feels -- he feels at this point that
24 he's not getting any help from the chain -- from the
25 command. On July 13th, the six-hour training that was
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1 required in the 095 takes place, and that doesn't make
2 things better.

3 In August, Nobach requires Santhuff to purchase
4 his own logbook. Usually in the past they'd been given
5 out. Months later, he finds that he didn't -- that
6 Mr. Cayton, a new -- a new pilot didn't have to buy
7 his, but he had to buy his.

8 Another -- this all starts to sound pretty petty,
9 but he asked if he can have time off to go get his
10 driver's license, and Nobach says no. Having a license
11 is a requirement for being a trooper so he has to take
12 vacation.

13 He's on vacation and does attend the flight
14 school. He receives a negative 095 himself from
15 Hatteberg in September for allegedly not being
16 available -- giving enough notice that he was
17 unavailable for a flight. We'll talk about this in
18 more detail when we get there. But now he's got an 095
19 that can affect him.

20 So in the end of September, the union person,
21 Kenyon Wiley, he talks to the chain of command to get
22 an understanding of what's going on and why there's no
23 investigation.

24 OPS then -- he points out that OPS did not
25 investigate the whole incident with -- OPS. It's

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1 OPS -- did not investigate the sexual harassment thing.

2 You're going to hear from Captain Saunders who was
3 the head of that group at the time saying, "Well, that
4 was because they admitted it so they didn't have to
5 investigate."

6 In September, it continues. By the end of
7 September, he -- there's agreements on the 095 that's
8 given to him. And he raises issues from 2014 when he
9 starts talking.

10 Now, this is going to be something that you will
11 hear a lot about, and that is when he first joined in
12 2014. He happened to be -- before he -- so he's doing
13 that 90-day training. He happens to be there -- and --
14 when a -- when the Governor's office calls Ms. Biscay
15 and says, "Hey, do you have a flight available for the
16 Governor?"

17 And he says -- he yells from his office into her,
18 "Tell them no."

19 Well, Ryan can see the calendar -- there's a big
20 calendar that talks about maintenance. He can see that
21 that's not the case -- that there is a King airport
22 available. But he's telling the Governor -- apparently
23 in the background, they're fighting over budgets.

24 So he didn't tell anybody. He didn't do anything
25 about it because it was 2014 when he just started. And

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1 truly, he decided that he wanted that -- to be able to
2 fly more than anything so he keeps his mouth shut.

3 Similarly, at -- on May Day, there's -- Lieutenant
4 Nobach tells his team -- the people in aviation, to
5 destroy emails that are going to be requested in a
6 Public Records Act request.

7 Everybody does it. Ryan does it. He doesn't tell
8 anybody.

9 And, again, why doesn't he tell anybody? He knows
10 it's wrong. He doesn't tell anybody because he's put
11 his career as a pilot over those two incidents.

12 But now it's September. He feels like he's going
13 out the door. He tells them. He tells them about
14 that.

15 You will hear that, again, this was investigated.
16 This -- this stuff was investigated by Captain
17 Alexander. There isn't a secondary investigation as to
18 the emails in 2017, and we get to 2018. Captain
19 Alexander leaves. Lieutenant Nobach outlasts him, and
20 he's still there.

21 So now he's being -- in September, he's being
22 excluded from morning meetings. He's now -- his --
23 he's having -- Hatteberg is now papering his file. And
24 the mechanics aren't talking to him and walk out when
25 he walks in.

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1 So in October, he meets with -- he meets with
2 the -- with Captain Alexander again, and Captain
3 Alexander say, "I hear you're thinking of leaving," and
4 he just decides at that point he is going to go. And
5 he -- he transfers out of aviation and gives up his --
6 his career hope, and he goes back into the trooper
7 world and becomes a detective and so now he's a
8 detective.

9 But we're going to ask you, as one of the things
10 that we hope you get to do, to recommend that he go --
11 allow -- be allowed to go back to the aviation
12 organization but with protections so that nothing can
13 happen to him.

14 So that's pretty much the case. The damages done
15 are damages that are called front pay, if he doesn't go
16 back. It's lost opportunity to become a pilot, and
17 you'll hear from an expert who will say how much money
18 he's lost as a result of not being able to be a pilot
19 to retirement and then go to out into the commercial
20 world.

21 The other damages are the damages we spoke of
22 pertaining to not statutory -- we call it emotional
23 harm (inaudible) that. Stress, anguish, fear, these
24 are the damages that will be discussed.

25 But thank you very much for your time.
 OPENING STATEMENT BY PLAINTIFF

1 THE COURT: Thank you.

2 Members of the jury, let's take our 15-minute
3 break before you hear from the defense so you can
4 stretch.

5 And, again, please do not talk among yourselves
6 about what you have heard so far, and we'll be in
7 recess until 11:20.

8 COURT STAFF: All rise.

9 THE COURT: All right. We'll be in recess
10 until 11:20.

11 (Recess.)

12 THE COURT: Thank you. Please be seated.
13 (inaudible) the jury.

14 Mr. Sheridan.

15 MR. SHERIDAN: Yes.

16 THE COURT: When you're not speaking, do you
17 mind putting on your -- do you have a face covering --
18 a mask?

19 MR. SHERIDAN: Oh, yes.

20 THE COURT: Thank you.

21 MR. SHERIDAN: I -- I started liking that.

22 THE COURT: Thanks.

23 MR. SHERIDAN: Thanks. Thank you.

24 COURT STAFF: All rise.

25 THE COURT: Thank you. Please be seated.
OPENING STATEMENT BY PLAINTIFF

1 Members of the jury, at any time you need to get
2 up and stretch, please feel free to do so.

3 And at this time, if you could please turn your
4 attention to Mr. Biggs on behalf of the defense.

5 MR. BIGGS: Thank you so much, Your Honor.

6 Promise I'll be brief this morning. I'd like you
7 to go with me back in time to February 2016. If you
8 don't hear me, please let me know. It's a little bit
9 of after feedback inside this shield so please just
10 raise your hand. I'll try and talk louder.

11 What I'd like you to do is go with me back to
12 February of 2016 -- late February -- February 26th, in
13 fact.

14 That day, there was a single-engine Cessna plane
15 flying from Walla Walla, across the Cascades, toward
16 Olympia. If you know anything about these Cessnas,
17 they're small planes. You could reach your hands out
18 and touch both sides.

19 Inside that plane in a passenger seat was
20 lieutenant -- I'm sorry -- Assistant Chief Mark
21 Lamoreaux. The pilot that day was the plaintiff, Ryan
22 Santhuff.

23 You'll see a fairly young, not terribly
24 experienced pilot, trying to make this crossing in what
25 would turn out to be not the best of weather.

OPENING STATEMENT BY DEFENDANTS

1 You can hear the noise of the engine in these
2 planes. You can feel the bumpy ride. You can -- you
3 can detect the weather. And Plaintiff Santhuff will
4 tell you that he did. He knew that this was going to
5 be a weather-related flight.

6 About halfway across the Cascade Mountains,
7 plaintiff, flying this small plane, looked out and saw
8 what can only be described as a huge wall of clouds.
9 Look out, and this is a major, major weather event.

10 He will tell you that, at that point in time, he
11 had a choice to make. He had to either try to climb
12 over that wall or pick a different route.

13 The plaintiff picked the first. He decided --
14 despite the fact that he's in a small plane that
15 doesn't climb very well. When it gets to that
16 altitude, it starts to have problems. It lugs. He
17 decided that he was going to climb over that wall of
18 clouds, 12,000 feet.

19 As he was doing that, he started to realize that
20 he didn't have the power and that that choice was not a
21 good choice.

22 The problem is the Cessna doesn't climb at that
23 altitude, and when it starts to lug, you get too close
24 to the wall of clouds before you can get up and over
25 it. It just doesn't have the horsepower to do that.

 OPENING STATEMENT BY DEFENDANTS

1 Here's what you see as this plane is approaching
2 this wall of clouds. The Cessna was beginning to
3 accumulate some ice. Now, they'll tell us -- the
4 witnesses will tell us. Ice is the absolute enemy of a
5 little plane like this. Ice can bring you down.

6 The plaintiff knows he's getting ice, and he has
7 to decide, "What am I gonna do?"

8 What he will tell you is that he put himself in
9 what he called in his own words -- he put himself in a
10 potentially deadly situation. That's what he did that
11 day with himself and with Assistant Chief Lamoreaux in
12 the plane.

13 It was a very scary, tense, white-knuckle event
14 for the plaintiff, the pilot of that plane. And he
15 knew -- he knew it was his responsibility to make the
16 right decision. He knew he was in trouble.

17 Fortunately, he was able to find a different way
18 out. He couldn't get over those clouds. He was icing.
19 He found a different way. Fortunately for everybody,
20 he was able to get back to Olympia with the chief, with
21 himself intact. He did not have the deadly event that
22 he feared could happen from that choice.

23 After Chief Lamoreaux went about his business, the
24 plaintiff was called in to speak with his lieutenant.

25 Now, as you -- as you know from earlier
 OPENING STATEMENT BY DEFENDANTS

1 information, the lieutenant is two steps above the
2 plaintiff. Sergeants are first. The lieutenant is
3 next. But the lieutenant is the chief pilot. He's the
4 one who would address a situation like this. So he
5 calls Mr. Santhuff to come in and talk to him.

6 And the lieutenant made it clear to the
7 plaintiff -- very clear -- that the plaintiff had put
8 himself in an unnecessary and a dangerous situation,
9 and he had put an assistant chief in an unnecessary and
10 dangerous situation.

11 The lieutenant will tell you he wasn't angry. He
12 wasn't going to fire somebody for this. But it's
13 extremely -- extremely important when you are a --
14 you're an instructor, when you're the leader of the
15 team, it's extremely important to make sure that your
16 student, your pilot -- a person that's learning from
17 you -- that they understand it's your responsibility.
18 And if you make a poor judgment, if you make a poor
19 decision, you have to own it, and you have to learn
20 from it.

21 We'll hear evidence in this case that talks about
22 whether or not the plaintiff owned it, whether he
23 accepted that he made that poor choice, that he put his
24 life at risk.

25 He will tell you, "Nope. Nope." The lieutenant
OPENING STATEMENT BY DEFENDANTS

1 will tell you the same thing. No. He claims the
2 lieutenant. He says, "The lieutenant gave me bad
3 advice. He sent me on a course that caused all these
4 problems. Yeah. I may have made a couple of decisions
5 that weren't correct, but it was the lieutenant's
6 fault. That's why I was there." That's what the
7 testimony's going to tell us.

8 The plaintiff was angry. He had been scared. A
9 lot of us get angry if we're scared. That's what he
10 did. He was angry then, and four and a half years
11 later, he's angry now.

12 This litigation is a result of that anger. You
13 will hear from witnesses in this case -- a number of
14 different witnesses. And some of those will have very
15 interesting stories to tell. You should listen to
16 those stories. You should listen to the different
17 versions of how certain things happened. And use your
18 intellect. Use your logic to put those pieces together
19 for you to decide what actually happens.

20 In this case, you will meet Lieutenant Nobach
21 who's sitting right here today. Lieutenant Nobach is
22 the chief pilot for the aviation section of the
23 Washington State Patrol. That is an important position
24 within aviation. He not only leads the aviation
25 section, but he's the chief pilot.

OPENING STATEMENT BY DEFENDANTS

1 Lieutenant Nobach has over 30 years of flying
2 experience. He's what we call a CFI, certified flight
3 instructor. At the time that this happened, there was
4 only one certified flight instructor in the aviation
5 section, and that was Lieutenant Nobach. That's the
6 person who was ultimately responsible for your
7 training. That's the person who signs off things when
8 you're -- you've accomplished your goals. It's not the
9 person who does the day-to-day training. The sergeants
10 are out there doing that training. But Lieutenant
11 Nobach -- whoever the CFI is -- that's the person who
12 passes you or doesn't pass you.

13 For many years, Lieutenant Nobach has turned
14 young, inexperienced pilots into highly proficient,
15 safe and dedicated pilots.

16 You will hear that the State Patrol holds itself
17 to very high standards. You heard it mentioned earlier
18 with Mr. Sheridan. The King Air, for example. FAA
19 says you can fly it with one pilot. One pilot is all
20 you need. The Patrol doesn't do that. The State
21 Patrol says, "Our standard is two pilots. We're better
22 than that. We hold ourselves to higher standards."

23 You will hear a discussion about how the patrol
24 and how aviation operates. Safety is the highest
25 priority. Every pilot within that aviation section

OPENING STATEMENT BY DEFENDANTS

1 is -- they are expected to grow and learn and improve
2 all the time.

3 You'll also hear, though, some pilots, they don't
4 have the skills or they don't have the temperament or
5 they don't have the drive to get to the next level.
6 Some plateau and they never become command pilots.

7 The sergeants to whom the plaintiff reported were
8 command pilots -- Sergeant Sweeney and Sergeant
9 Hatteberg. They had the ultimate authority to fly what
10 are whatever equipment needed to be flown.

11 When a bad event like the Oso mudslide happens,
12 the State Patrol is called onto come out and deal with
13 those issues. They need to rely on command pilots.

14 The plaintiff was not a command pilot. He was not
15 capable of flying a King Air on his own. He wasn't
16 even fully certified or fully cleared on the Cessna,
17 and this is something that you have to do as you get
18 your progression.

19 Now, you'll learn that his progression up to that
20 point was okay. He had done some good work. He had
21 made some good moves, but he wasn't the ace that some
22 people might have suggested he was. You'll need to
23 decide for yourselves how his training progression was
24 up to that point.

25 Limitations on your -- your progress, they're like
OPENING STATEMENT BY DEFENDANTS

1 little check boxes. You got to check off this, this,
2 this, and he still had limitations. That's not
3 unnatural, and it's not unnatural for one pilot to be
4 different from the next pilot. They all progress at
5 different rates. They all learn different things, and
6 they all have different, you know, skills. Some are
7 better at certain things than others.

8 One of the things that the plaintiff didn't do so
9 well -- and not Lieutenant Nobach, but his sergeants
10 will tell you that he wasn't so good with what you call
11 IFR. That's instrument flight rules.

12 Okay. IFR -- yeah. There's visual flight rules,
13 and there's instrument flight rules. Visual flight
14 rules are where you're flying in the kind of weather,
15 you can look around and see -- you can see where you're
16 going. You don't have to have instruments to tell you
17 what you're doing. IFR -- instrument flight rules --
18 is when you can't see and you don't have landmarks.
19 You're flying at night. You're flying in bad weather.
20 You're flying how Washington flying is very often,
21 which is you just don't have very good -- very good
22 visibility.

23 The plaintiff wasn't the greatest IFR pilot. And
24 you heard talk about training with the hood on. That's
25 how you learn to be a better IFR better. So he was

OPENING STATEMENT BY DEFENDANTS

1 going to get there, and I think that his sergeants will
2 probably tell us that, had he dedicated himself, had he
3 done what most pilots want to do when they're in this
4 position, he would have improved, and he probably would
5 have been eventually a command pilot.

6 Now, we don't know that. He'll tell us we don't
7 know. The lieutenant will say, "I can't assure you of
8 that." But that's the track he was on. He was -- he
9 was doing okay.

10 You will also meet Assistant Chief Alexander
11 sitting here in the back. Johnny Alexander as he likes
12 to be called.

13 Assistant Chief Alexander was the captain at that
14 time who oversaw the aviation area. He's since been
15 promoted. He's not doing that work anymore. But at
16 the time we're going to talk about, he was the captain
17 who was over Lieutenant Nobach and oversaw the program.

18 Now, Assistant Chief Alexander will be the first
19 to tell you, he's not a pilot. He can't go in the King
20 Air or the Cessna and fly around, but he managed the
21 Department as well as others, and he was aware of what
22 was going on. And he was the person responsible for
23 handling certain kinds of problems.

24 Assistant Chief Alexander has been with the State
25 Patrol for nearly 30 years. He'll tell you about

OPENING STATEMENT BY DEFENDANTS

1 rising through the ranks, his progression from, you
2 know, being a trooper and moving up and how some people
3 don't make that next level. He has, and he's now
4 sitting in a chair that is really at the second level
5 next to the chief only.

6 Assistant Chief Alexander will tell us that
7 Lieutenant Nobach is a skilled and valued leader of the
8 State Patrol. Those are the words he will use to
9 describe Lieutenant Nobach.

10 Assistant Chief Alexander will also tell you
11 something else. He will tell you that he has no
12 tolerance -- he has no stomach for discrimination. He
13 has no tolerance for harassment. He has no tolerance
14 for retaliation.

15 If he gets wind of one of those areas --
16 discrimination, harassment, retaliation -- he will not
17 turn away. He will not say, "Oh, no. We don't deal
18 with those things here." He will wade into the
19 problem, and he will handle it the way that it's
20 intended to be handled.

21 And he will describe for us how that process works
22 and what decisions are his decisions to make and what
23 decisions belong to somebody else.

24 You will hear that the plaintiff has made numerous
25 complaints against his own lieutenant and others.

OPENING STATEMENT BY DEFENDANTS

1 Assistant Chief Alexander will tell you that he has
2 participated personally in some of those complaints.
3 Some of those things land on his desk, his decision.
4 He does what is necessary. And some complaints are of
5 a nature that he refers off to Internal Affairs.

6 And I think all of our witnesses will tell you,
7 Internal Affairs is not someone you take likely. If
8 they're involved in an investigation, you pay
9 attention, you show up, you do what you're told. If
10 they ask you questions, you give them answers. It's
11 under oath, and they then make findings, which go back
12 to the person who's in charge of that -- that call to
13 make the final decision.

14 Assistant Chief Alexander will tell us -- and some
15 other subordinates of his will tell us -- he tries very
16 hard to be a fair and open person, a fair and open
17 captain, a fair and open assistant chief, and a leader
18 to his people.

19 You might be surprised to hear that the plaintiff
20 has referred to Assistant Chief Alexander with a very
21 special word. He called him corrupt.

22 The plaintiff has also called Internal Affairs
23 corrupt. You'll hear the evidence. You will decide
24 for yourselves whether that description -- corrupt --
25 is true. That will be your job.

OPENING STATEMENT BY DEFENDANTS

1 The Judge will give you instructions also about
2 the burden of proof in a case. That is what a
3 plaintiff, such as Mr. Santhuff, has to do to win his
4 case, what he has to prove to you to prevail.

5 For example, you'll be instructed that it's
6 unlawful for an employer to retaliate against somebody.
7 You'll get an instruction like that. You will be asked
8 to determine whether or not that's been proven. The
9 end of the case, that will be your job. "Did the
10 plaintiff prove that to me?"

11 You will likely also be instructed that an
12 employer can make legitimate business decisions.

13 MR. SHERIDAN: Your Honor, I'm going to
14 object to the instructions -- instructing the jury at
15 this point.

16 THE COURT: Members of the jury, what you are
17 hearing during opening statements is just what the
18 attorneys anticipate the evidence will show. At the
19 end of the trial, I will instruct you on the law.

20 MR. BIGGS: Yes. Yes. The Judge will
21 instruct you, and it will be your job to use those
22 instructions and to look at what the State Patrol did,
23 to look at what Lieutenant Nobach did and many others,
24 if they're accusing of problems. Look at those and
25 determine whether the plaintiff's case is proven. That
 OPENING STATEMENT BY DEFENDANTS

1 will be your job -- one of your jobs.

2 As you hear from the witnesses, please pay close
3 attention to whether or not certain claims make sense.
4 You will need to deal with that as part of your job.

5 Listen to the evidence. Use your logic and see if
6 those claims make sense as they come in. You've got to
7 catalog this stuff so you can analyze it all at the
8 end.

9 Listen to see if the evidence shows that
10 Lieutenant Nobach was trying to make the plaintiff a
11 better pilot, that he was trying to move the plaintiff
12 forward with his training progression.

13 The evidence will show that the plaintiff asked to
14 be accelerated. He asked to be documented heavily. He
15 said, "I want to know. If you have problems with my
16 flying, I want to know. I want you to tell me in
17 detail what I need to do." That's one of your
18 decisions.

19 There's also what will be termed whistleblower
20 issues in this case. As you go through the evidence --
21 as you're hearing it, as it's coming in -- you need to
22 consider and you'll need to consider at the end whether
23 the plaintiff was acting in good faith or bad faith
24 when he raised some of these issues.

25 Was the plaintiff trying to report improper
OPENING STATEMENT BY DEFENDANTS

1 governmental actions, as he says, or was he motivated by
2 something else.

3 When you hear various witnesses and when the end
4 comes around, you will be asked to assess level of
5 knowledge of the various witnesses. Do they have a
6 basis for saying what they're telling you?

7 You'll need to assess their bias. Do those
8 witnesses have personal connections? Is there some
9 reason why they're taking positions? Do they have
10 emotional issues with the plaintiff?

11 MR. SHERIDAN: I hate to do this, Your Honor.
12 I'm going to object again. This is argument, not
13 opening.

14 THE COURT: Again, members of the jury, you
15 will be instructed at the end of the case whether --
16 well, you'll be instructed on the law, and you will be
17 instructed on the jury instructions.

18 MR. BIGGS: Thank you, Your Honor.

19 You also will be asked to Judge the witness's
20 sincerity. That will be part of your job looking at
21 these witnesses and making those judgments.

22 Now, in connection with some of these things that
23 have been called retaliation, you'll hear from the
24 sergeants -- that's Sergeant Hatteberg, Sergeant
25 Sweeney. These are the people that were at various
OPENING STATEMENT BY DEFENDANTS

1 times the next person up from the plaintiff.

2 The sergeants will tell you that the plaintiff
3 lacked focus. After this business happened with the
4 095s and some of the things that he's complaining
5 about, they will tell you the plaintiff lacked focus.

6 They will tell you that the plaintiff could have
7 done and should have done much better if he got his
8 head in the game.

9 You've heard a little bit about damages. The
10 plaintiff is expected to call what's called an expert
11 witness to say that he lost millions of dollars because
12 he can't be a commercial airline pilot now. Listen
13 carefully to that witness. See if that witness tells
14 you whether he knows what the odds are if a person like
15 the plaintiff ever becoming a large commercial pilot.

16 Listen to see whether that expert can tell us
17 whether the plaintiff still, if he wanted to, could be
18 a large-scale commercial pilot.

19 Listen to this expert who's going to talk dollars
20 and cents with you. See if this expert can tell us how
21 little a starting pilot makes for a regional airline --
22 Horizon and some of these.

23 Listen to see if this expert can tell you what
24 credentials are needed to go from Cessnas to 747s.
25 Listen for that.

OPENING STATEMENT BY DEFENDANTS

1 Listen if this expert can tell you how long that
2 takes, what the career trajectory looks like.

3 Listen to see if this expert can tell you how many
4 small airline flyers like the plaintiff ever make it to
5 the big leagues.

6 Listen to see if this expert can tell you if any
7 Washington State Patrol pilot has ever flown a United
8 747 or similar plane. Because he's going to tell you
9 about what he perceives as wage loss. Listen. Listen
10 to these issues.

11 Listen to hear whether or not his testimony helps
12 you understand and analyze a case.

13 At the end of the case, you'll be asked to make
14 decisions about what really happened. You will ask to
15 decide whether, as the plaintiff claims, he became a
16 victim of a campaign of retaliation against him.
17 You'll be asked to decide whether that happened. Or
18 whether he became an angry disillusioned man who would
19 do what he thought was necessary to take down the
20 lieutenant.

21 Was this Ryan being Ryan? What does that mean?
22 Ryan being Ryan?

23 MR. SHERIDAN: I'm going to object to
24 argument again, Your Honor.

25 THE COURT: I am --
OPENING STATEMENT BY DEFENDANTS

1 MR. BIGGS: He used it.

2 THE COURT: Let's stick with the facts and --

3 MR. BIGGS: Thank you, Your Honor.

4 (Indiscernible crosstalk.)

5 THE COURT: -- of the evidence.

6 MR. BIGGS: Let's talk a little bit about
7 whether or not the plaintiff is a whistleblower.
8 You'll be instructed by the Judge what that means, and
9 you'll be instructed that some people who try to be
10 whistleblowers aren't. They don't have good faith,
11 that they're proceeding in bad faith.

12 You will learn that a whistleblower doesn't have
13 to do it openly. Plaintiff will say, "Well, I didn't
14 want to turn these things in two years ago because I
15 was afraid of retaliation."

16 You will hear testimony that these kinds of
17 complaints can be made anonymously, that the system is
18 designed for exactly that purpose.

19 Watching the clock just for a second. There's --
20 too long.

21 At the end of the case, I'll come back, and I'll
22 talk to you again. I will talk about whether or not
23 the plaintiff actually put on enough evidence to prove
24 this case. I will ask you that question.

25 The Judge will instruct you about what that means.
OPENING STATEMENT BY DEFENDANTS

1 When the testimony's over and the dust settles, I will
2 be asking you to find that the plaintiff has not met
3 his burden of proof. He hasn't proved his case.

4 I will ask you to look the plaintiff straight in
5 the eye and respectfully tell him he failed. He has
6 not proven retaliation against him.

7 I will ask you to return a verdict in favor of
8 Lieutenant Nobach and in favor of the Washington State
9 Patrol.

10 Thank you very much.

11 THE COURT: Thank you.

12 All right. Members of the jury, we will now break
13 for lunch. Please follow Mary's instructions as to
14 where to meet and where to go.

15 Again, please remember to not discuss the case.
16 Do not talk with each other about what you have heard
17 so far. You can talk about a lot of other things but
18 just not the case.

19 And Juror No. 11, if you don't mind staying in the
20 courtroom for a minute, that would be great.

21 Please rise for the jury.

22 Thank you, please be seated.

23 Juror No. 11, Ms. Gallenger indicated that you
24 have some concerns about a relative?

25 JUROR: Yeah.

COLLOQUY

1 THE COURT: And you didn't know if you could
2 continue to serve?

3 JUROR: I was just trying to be proactive. I
4 don't know -- my dad's in the hospital, but I think
5 he's going to be okay. I hadn't received an update
6 when I gave that correspondence to Mary. So I did last
7 night -- so I think he's going to be okay these next
8 three to four weeks at least so --

9 THE COURT: Is that going to be a distraction
10 for you?

11 JUROR: No. No. I just -- yeah.
12 (inaudible) something bad happens. But I don't think
13 that's -- foresee that's going to happen.

14 THE COURT: Okay. All right.

15 Mr. Sheridan, any followup questions?

16 MR. SHERIDAN: No. Thank you. Thank you.

17 THE COURT: Anything from defense?

18 MR. BIGGS: No. Thank you, Your Honor.

19 THE COURT: All right.

20 Thank you so much. And I know that Mary's going
21 to rearrange so that you can be in a more comfortable
22 chair as well -- you and Juror No. 12, I believe. So
23 she'll tell you how that would work.

24 JUROR: Awesome.

25 THE COURT: And we'll be in recess. Thank
COLLOQUY

1 you.

2 COURT STAFF: All rise.

3 (Recess.)

4 COURT STAFF: King County Superior Court is
5 now in session with the Honorable Mafe Rajul presiding.

6 THE COURT: Good afternoon. Please be
7 seated.

8 All right. So before we bring in the jury. Few
9 things. On the request for judicial notice, I am
10 reversing myself.

11 So I had reserved on the issue of the definition
12 of the reprisal retaliatory action, what it means. And
13 I don't think it's appropriate to take judicial notice
14 of an instruction that is going to be given to the
15 jury, and that is an instruction that has been proposed
16 to go to the jury.

17 And along the same lines, even though the defense
18 did not object to the Court taking judicial notice on
19 the definition of public official, that is also an
20 instruction that is given to the jury.

21 I read the cases that were cited by plaintiff.
22 The case of Gross v. City of Lynnwood, it was the issue
23 of the appellate Court taking judicial notice to
24 determine whether or not the statute created a civil
25 cause of action.

COLLOQUY

1 The case of State v. Harris had to do with the
2 Court taking judicial notice as to whether cocaine was
3 commonly known as salt of coca leaves for purposes of
4 instructing the jury whether or not cocaine was a
5 controlled substance.

6 And then plaintiff cites judicial notice of
7 constitutional laws, every court of this state shall --
8 in bold -- take judicial notice of the constitutional,
9 common law, civil case, and statutes of every case in
10 the United States. And that was in the case of -- let
11 me see. Which case was that one? Was that also
12 Groves? May be. No. That wasn't Groves. What case
13 was that one? Oh, that was Rosen v. Oregon, I believe.

14 Which case was that one? Let me see.

15 In any event, the issue in that case was whether
16 the state of Oregon is a common law state and has
17 similar laws or doesn't have similar laws to the common
18 property law in Washington so it was appropriate to
19 take judicial notice of a statute or a law in a
20 different state.

21 I find that if I take judicial notice of two
22 instructions that the Court is going to be giving to
23 the jury, it is placing emphasis on those jury
24 instructions, and that is not proper. So I am not
25 providing the judicial notice on those two, but I will

COLLOQUY

1 on the 2016 regulations manual.

2 MR. SHERIDAN: Okay. And you will on the
3 manual. Okay. Let me find that.

4 THE COURT: All right.

5 Okay. On the issue of exhibits, just because I
6 want to avoid the number of times we get people in and
7 out of here -- the jury.

8 Exhibit No. 5 is a 2011 aviation manual. And is
9 any -- any objection to the aviation manual from 2011
10 being admitted, defense?

11 You still have to lay the foundation. I'm just
12 making the arguments on relevance, hearsay, et cetera,
13 et cetera. And so any objection, assuming foundation
14 is laid, to Exhibit No. 5 being admitted?

15 MR. BIGGS: Your Honor, the only objection is
16 that we're putting in a -- a 100-plus page document of
17 which we're going to have the jury to kind of find
18 certain pages. It would make a lot more sense to put
19 in the sections that we're talking about as an exhibit,
20 and there's no objection to that.

21 MR. SHERIDAN: Well, the problem with that
22 is -- is the people who are going to be on the stand,
23 they're the experts. And if I go cutting up their --
24 the thing that they use as their bible at the
25 beginning, then I may not -- I might cut something that
COLLOQUY

1 they need. At the end, that's a different story. If
2 -- you know, I guess I'd have to be asked at the end.
3 But at the end, there's no -- everybody knows what
4 pages got reviewed. But at the beginning, I -- he may
5 say, "Well, you've got to look at chapter 17 to
6 understand this," and I don't know what to do if I
7 can't.

8 THE COURT: And my initial reaction was just,
9 like, Mr. Biggs, like, you're going to have the jury
10 look at hundreds and hundreds and hundreds of pages
11 given all the different manuals.

12 So what I can do is that -- I mean, it is
13 relevant, and it should go -- and it's not really -- I
14 mean, it's admissible. The issue is whether the whole
15 thing should go in or not.

16 MR. BIGGS: Right.

17 THE COURT: So we can -- if that is the only
18 objection, then we can work around that.

19 MR. BIGGS: Okay. Yeah. Right. Parts are
20 clearly not relevant.

21 THE COURT: Right?

22 MR. BIGGS: Parts are clearly not --

23 THE COURT: Right.

24 MR. BIGGS: -- relevant to this case.

25 THE COURT: Right.
 COLLOQUY

1 MR. BIGGS: So I'm good with that, Your
2 Honor.

3 THE COURT: Okay.

4 MR. SHERIDAN: And --

5 THE COURT: Now, exhibit number -- so Exhibit
6 No. 204, No. 205, and No. 213, they're all regulation
7 manuals just from different years.

8 MR. SHERIDAN: Right. And we're actually
9 pulling 204 and 205. I don't think we need to confuse
10 them any more.

11 THE COURT: Okay.

12 MR. SHERIDAN: But 113 we're relying on, and
13 260 we're relying on.

14 THE COURT: Okay. So -- yes. Because I
15 don't find the relevance in the regulation manual from
16 2010 and 2017.

17 MR. SHERIDAN: Okay.

18 THE COURT: 2016 it would be relevant.
19 So any objection with defense of just having 113,
20 which is a 2016 --

21 (Indiscernible crosstalk.)

22 MR. SHERIDAN: And 260.

23 MR. BIGGS: Right, Your Honor.

24 (Indiscernible crosstalk.)

25 MR. BIGGS: I'm sorry. For the record --
COLLOQUY

1 THE COURT: I'm just talking about the
2 regulation manuals right now.

3 MR. SHERIDAN: Oh.

4 MR. BIGGS: Right.

5 THE COURT: 260's something else.

6 MR. BIGGS: Isn't -- I thought 260 was a
7 manual.

8 MR. SHERIDAN: 260's the administrative --

9 (Indiscernible crosstalk.)

10 THE COURT: It's the different.

11 MR. SHERIDAN: -- manual.

12 MR. BIGGS: Okay. No. There's no objection,
13 Your Honor.

14 So -- just so -- would you please repeat. So
15 we're on -- make sure we're on track?

16 Are the other exhibits -- 204, 205 -- withdrawn or
17 rejected? Just so we can keep track.

18 MR. SHERIDAN: We -- we would withdraw them.

19 THE COURT: Okay. So they're withdrawn.

20 All right. And then 2060 is the 200 -- 200 --
21 2011 administrative investigation manual.

22 MR. SHERIDAN: Right.

23 THE COURT: Any objection to that?

24 MR. BIGGS: No, Your Honor.

25 THE COURT: All right.
COLLOQUY

1 MR. BIGGS: Same -- just the same issue about
2 bulk.

3 THE COURT: All right. Now No. 106, that's
4 the one that you -- no. You didn't replace that; did
5 you?

6 MR. SHERIDAN: No.

7 THE COURT: All right. See which one is --

8 MR. SHERIDAN: Just looking to see what the
9 objection was to it.

10 THE COURT: 106 -- all right. So 106 is --
11 oh, right. I was confusing it with 225.

12 So 106, it's an email -- I, frankly, cannot read a
13 lot of what's in the handwriting. So it's --

14 MR. SHERIDAN: The only --

15 THE COURT: It's an email from Debb Tindall.

16 MR. SHERIDAN: Yeah.

17 THE COURT: And it has an employee annual
18 review checklist. I have no idea which employee this
19 is. I assume it's Detective Santhuff?

20 MR. SHERIDAN: I think we'll get it in
21 through this first witness, Your Honor, and I think --
22 I think their only objection is cumulative.

23 (Indiscernible crosstalk.)

24 THE COURT: Okay. That's fine, but I'm
25 trying to understand what this is.

COLLOQUY

1 MR. SHERIDAN: Oh.

2 THE COURT: So -- before I can rule on
3 whether it should be admitted or not.

4 MR. SHERIDAN: Sorry.

5 THE COURT: So this employee annual review
6 checklist, what is that? Is that --

7 MR. SHERIDAN: 106?

8 THE COURT: So there's an email from Debb
9 Tindall. And attached --

10 MR. SHERIDAN: Yeah.

11 THE COURT: -- there is an employee annual
12 review checklist.

13 MR. SHERIDAN: Okay.

14 THE COURT: I have no idea whose checklist
15 that is.

16 MR. SHERIDAN: (inaudible).

17 Yeah. This is -- I believe this is going to be
18 tied up -- I can lay a foundation through this witness
19 for -- for its admission. But it's basically --

20 THE COURT: Is it your client's?

21 MR. SHERIDAN: It's this -- it's -- our first
22 witness is Mathesen. He's the HR guy.

23 THE COURT: Okay.

24 MR. SHERIDAN: So we think that he'll be fine
25 on getting all this submitted.

COLLOQUY

1 THE COURT: And then it also has an email or
2 a letter, I guess, from Captain Alexander to Lieutenant
3 Nobach about expectations for assistant commanders.

4 MR. SHERIDAN: Right.

5 THE COURT: Dated February 3, 2016.

6 Defense, any objection to this exhibit 106?

7 MR. BIGGS: Only, Your Honor, that some of
8 these are other exhibits in the case. Some of these
9 same documents are listed elsewhere so it's -- that's
10 why the cumulative exhibit. As part of this package,
11 there's no objection.

12 THE COURT: Okay. So because -- who knows
13 what may happen later on. It may be the same -- or a
14 similar exhibit is not going to be admitted through a
15 different witness. So I am going to overrule your
16 objection on the issue of cumulative since it's the
17 first. All right.

18 And then last but not least, 262. My
19 understanding is that that replaces 225?

20 MR. SHERIDAN: Yeah. That's right, yeah.
21 262 is the renumbering for 225 because it -- this is
22 redacted.

23 THE COURT: All right. Any objection to the
24 redacted 225 that is now 262?

25 MR. BIGGS: Your Honor, the only -- it's not
COLLOQUY

1 clear to us what -- what was taken off was the EEOC
2 information. What's not clear is whether what's left
3 is also EEOC information. I can't tell that from just
4 looking at 262. I'm not sure what it tells us.

5 I mean, we're not -- we're not arguing about
6 authenticity or anything like that. We're just not
7 sure what this tells us.

8 MR. SHERIDAN: This -- this is an intake for
9 human resources at this time.

10 THE COURT: So what's your --

11 MR. BIGGS: For --

12 THE COURT: -- what's your objection?

13 MR. BIGGS: Well, the --

14 (Indiscernible crosstalk.)

15 MR. BIGGS: -- Your Honor, it's -- it's going
16 to need a foundation to tell --

17 THE COURT: Right.

18 MR. BIGGS: -- someone to tell us what it is
19 because, if it's an intake for an EEOC complaint, if
20 that's what it refers to --

21 MR. SHERIDAN: It's -- it's not.

22 MR. BIGGS: -- then the plaintiff has said
23 that doesn't apply to this case.

24 THE COURT: Yeah.

25 MR. BIGGS: So we need to have some -- some
COLLOQUY

1 explanation of what it is.

2 MR. SHERIDAN: Yeah.

3 THE COURT: Okay.

4 MR. SHERIDAN: Well, I -- I didn't want to
5 get too carried away. But it's dated -- the -- it has
6 an incident date of 10/20/16. OPS notified 10/21/16.
7 The EEOC complaint was, I believe, 2018. So -- so what
8 we did is we basically redacted the middle section that
9 talks about the EEOC stuff.

10 THE COURT: Okay. I'll reserve ruling on
11 this one because --

12 MR. SHERIDAN: Okay.

13 THE COURT: -- I have until foundation is in
14 and I know the purpose of this.

15 All right. Anything else?

16 MR. SHERIDAN: That's --

17 THE COURT: Before bringing the jury.

18 MR. SHERIDAN: That's it.

19 THE COURT: All right.

20 And, Mary, did you move the jurors so they're in
21 more comfortable --

22 COURT STAFF: I did. And --

23 THE COURT: Two jurors had back issues.

24 MR. SHERIDAN: Oh, right.

25 COURT STAFF: Yes.

COLLOQUY

1 THE COURT: Okay. Great. All right.

2 And this is the reason why I would like ahead of
3 time to know what exhibits you're going to be using so
4 that we can sort some of these things out.

5 MR. SHERIDAN: It does make it easier down
6 the road. This is quite challenging it --

7 THE COURT: I know.

8 MR. SHERIDAN: Plastic stuff everywhere
9 and --

10 THE COURT: Oh, and I don't like counsel
11 giving me their back. Not because of anything other
12 than I would like to be able to see you when I talk to
13 you.

14 MR. SHERIDAN: Exactly. Exactly.

15 THE COURT: It is what it is.

16 MR. SHERIDAN: Yep.

17 MR. MARLOW: I have a standing apology then.

18 MR. SHERIDAN: Oh, I should go get the
19 witness.

20 (Indiscernible crosstalk.)

21 COURT STAFF: All rise.

22 THE COURT: All right. Thank you. Please be
23 seated.

24 And, Mr. Sheridan, are you ready to call your
25 first witness?

COLLOQUY

1 MR. SHERIDAN: Yes. Thank you, Your Honor.

2 Plaintiff called Captain Travis Mathesen to the stand.

3 THE COURT: All right.

4 MR. SHERIDAN: Right up this way, sir.

5 THE COURT: Good afternoon. Please raise
6 your right hand.

7 Do you swear or affirm the testimony you're about
8 to give is the truth?

9 **THE WITNESS: Yes, Your Honor.**

10 THE COURT: Please have a seat. And I'm
11 going to ask you to please remove your face covering so
12 the jury can see you while you testify.

13 **THE WITNESS: Thank you.**

14 THE COURT: Mr. Sheridan.

15 MR. SHERIDAN: Thank you.

16 DIRECT EXAMINATION

17 BY MR. SHERIDAN:

18 Q. Please state your full name for the record.

19 **A. Travis Mathesen.**

20 MR. SHERIDAN: Do we want addresses, Your
21 Honor?

22 THE COURT: I'll leave it up to you.

23 MR. SHERIDAN: Not necessary. All right.

24 BY MR. SHERIDAN:

25 Q. Good afternoon.
Travis Mathesen/By Mr. Sheridan (Direct)

1 **A. Good afternoon.**

2 Q. With whom are you currently employed?

3 **A. The Washington State Patrol.**

4 Q. And what do you do there, sir?

5 **A. I'm a captain in charge of the property management**
6 **division, which is all of our fleet, supply, and**
7 **facilities across the state.**

8 Q. All right.

9 MR. SHERIDAN: And, Your Honor, just to let
10 the jury know, because of the rank of this witness, we
11 will be using cross-examination techniques on direct,
12 with the Court's permission.

13 THE COURT: All right.

14 MR. SHERIDAN: Thank you.

15 BY MR. SHERIDAN:

16 Q. All right. And in 2016, where did you work?

17 **A. The Washington State Patrol.**

18 Q. And where were you assigned?

19 **A. I was assigned to the Human Resource Division.**

20 Q. And were you the head of the Human Resource Division?

21 **A. Yes. I was the captain in charge there.**

22 Q. And how long did you have that position?

23 **A. About four and a half years.**

24 Q. Okay. And from when to when?

25 **A. Early 2015 to mid 2019.**

 Travis Mathesen/By Mr. Sheridan (Direct)

1 Q. All right. And what was your title?

2 A. Captain.

3 Q. Okay. It's not -- they don't call you the head or the
4 director or anything like that?

5 A. It's -- a little bit of both. So you're technically
6 the HR director, but in the State Patrol, we're also a
7 captain. So kind of depends on the day, I guess.

8 Q. All right. And how many people did you supervise as
9 the HR director?

10 A. A little over 50.

11 Q. Now, did you become familiar with the various policies
12 and procedures that were relevant to your -- your work?

13 A. Yes, sir.

14 Q. Okay. And is it true that, in your past, there was a
15 time that you had supervision over the aviation group?

16 A. I was, in my past, the captain of the Special
17 Operations Division, which includes -- one of the
18 sections of that division is aviation, yes.

19 Q. During that time -- do you remember what years that
20 was?

21 A. That was 2013, I believe? '12 and '13.

22 Q. Okay.

23 A. I may be off by a year or so.

24 Q. All right. And did you know Lieutenant Nobach?

25 A. Yes, sir. He reported directly to me at that time.
Travis Mathesen/By Mr. Sheridan (Direct)

1 Q. All right. Okay.

2 And during the time that you supervised him, did
3 you give him any 095s?

4 **A. I don't think so.**

5 Q. Okay. You don't have a specific recollection?

6 **A. I don't. I don't recall giving Lieutenant Nobach any**
7 **095s.**

8 Q. Okay. So we wanted to talk to you today about some of
9 the policies and procedures.

10 First of all, let's take a look at Exhibit No. 5,
11 if we can.

12 Oops, I think I have to give you another book.
13 You should have 113, 260, and now you have 5. I'll be
14 passing these through to you today, if that's okay.

15 So take a look at 5. And Exhibit 5 is the
16 Washington State Patrol Aviation Section, section
17 operations manual; is it not?

18 **A. It appears to be, yes.**

19 Q. All right. And this manual gets created in which
20 organization?

21 **A. This manual would typically be created in the Aviation**
22 **Section of the Special Operations Division of the**
23 **Washington State Patrol.**

24 Q. All right. And it's fair to say that during the time
25 that you were -- that Lieutenant Nobach was a direct
Travis Mathesen/By Mr. Sheridan (Direct)

1 report to you, you became somewhat familiar with this
2 manual?

3 **A. When I was a captain?**

4 Q. Yes.

5 **A. Yes. When I was a captain, Lieutenant Nobach**
6 **reported --**

7 Q. All right.

8 **A. -- directly to me. Yes.**

9 Q. All right.

10 MR. SHERIDAN: Plaintiff offers Exhibit 5,
11 Your Honor.

12 MR. MARLOW: No objection.

13 THE COURT: Any -- plaintiff's Exhibit No. 5
14 is admitted.

15 (Exhibit 5 Admitted)

16 BY MR. SHERIDAN:

17 Q. Okay. Now I'm going to ask you to put that aside, and
18 I'm going to ask you some questions about other
19 documents.

20 Could you tell us, during the time that you were
21 the head of HR, you were a public official for the
22 purposes of the Washington Whistleblower statute, were
23 you not?

24 **A. I believe so, yes.**

25 Q. All right.

Travis Mathesen/By Mr. Sheridan (Direct)

1 MR. SHERIDAN: And, Your Honor, do we still
2 get to read that -- all right. Then I'll use the --
3 I'll use --

4 THE COURT: No. Just --

5 MR. SHERIDAN: That's fine.

6 BY MR. SHERIDAN:

7 Q. Let's go to Exhibit 113, which is one of the three
8 books you have there?

9 A. Okay. You say 113?

10 Q. Yes, please. And I believe it's a book on its own.

11 A. Okay.

12 Q. Yeah. That's it.

13 And, sir, if you would, would you turn to -- these
14 things are by code so it's 800 -- I guess that means
15 Chapter 8.300.

16 A. 8 point -- I'm sorry. I was --

17 Q. Yeah. Let me give it to you again?

18 A. Okay.

19 Q. It's 800.300.

20 A. Okay.

21 Q. And it's -- try page 166.

22 A. Thank you.

23 Q. I think that might do it.

24 A. So I've got 8.00.300? Is that the one you're looking
25 for, sir?

Travis Mathesen/By Mr. Sheridan (Direct)

1 Q. Yeah. Okay.

2 So this Chapter 8 under rules of conduct contains
3 a section on whistleblower and improper governmental
4 action. And -- and I'm going to have you start out on
5 page 164, if that's okay.

6 A. Start out -- did you want me to read?

7 Q. No. No. No. We haven't admitted it yet.

8 A. Okay.

9 Q. But I wanted to get you to the place we're going to
10 talk about.

11 A. Yes. That's where I'm at.

12 Q. All right. And it's --

13 A. Yep.

14 Q. -- fair to say you recognize this as a policy that's
15 kept in the usual course of business within your
16 organization.

17 A. Yes, sir.

18 MR. SHERIDAN: All right. Plaintiff offers
19 Exhibit 113.

20 MR. MARLOW: No objection, Your Honor.

21 THE COURT: Plaintiff's Exhibit 113 is
22 admitted.

23 (Exhibit 113 Admitted)

24 BY MR. SHERIDAN:

25 Q. All right. And, sir, I want to bring your attention to
Travis Mathesen/By Mr. Sheridan (Direct)

1 the bottom of page 164 where it says "whistleblower,
2 improper governmental action."

3 **A. Yes, sir.**

4 Q. All right. (inaudible). Yeah. That looks good.

5 Okay. And we have -- we have screens. I think in
6 your specific position, you maybe relegated to the
7 paper.

8 **A. Yeah.**

9 Q. But if --

10 (Indiscernible crosstalk.)

11 **A. I actually have it everywhere because it's reflecting**
12 **off and so I've got it all over now.**

13 Q. Fair enough. Fair enough. All right.

14 So this has to do with reporting improper
15 governmental action. And it has the policies and
16 procedures that, in some way, mimic the statute; would
17 you agree?

18 **A. Yes, sir.**

19 Q. All right. Let's take a look at procedures, and that
20 now -- I'm asking you now jump ahead to page 166.

21 And if you look at sub (2) -- (a)(2)(a). And it
22 says, "The following are methods for reporting,
23 submitting a whistleblower complaint."

24 Did you have that there, sir?

25 **A. Yes, sir.**

Travis Mathesen/By Mr. Sheridan (Direct)

1 Q. Would you read into the record sub (a), please.

2 A. "Directly to the agency designee. The agency designee
3 includes the deputy chief, commander of the Office of
4 Professional Standards, and the commander of the Human
5 Resource Division."

6 Q. All right. In 2016, who was the deputy chief?

7 A. I -- if -- if we had a deputy chief at that time, it
8 was Curt Hattell. He left either shortly before that
9 or after that, and we did not fill that position. And
10 I don't recall if he was there in 2016 or not.

11 Q. All right. Who was the commander of the Office of
12 Professional Standards in 2016?

13 A. Oh, boy. I don't remember.

14 Q. Was --

15 A. I'm sorry.

16 Q. Was it Captain Saunders?

17 A. I was going to say Captain Saunders, yes.

18 Q. All right. And who was the commander of the Human
19 Resources Division?

20 A. That one I know. That was me.

21 Q. All right. All right.

22 And so it's true, is it not, that if somebody had
23 had a whistleblower complaint in 2016, they could go to
24 you. And if -- you, upon receiving it, had to do
25 something with it; is that right?

Travis Mathesen/By Mr. Sheridan (Direct)

1 **A. Yes, sir.**

2 Q. And do you recall what it was that you had to do?

3 **A. In -- what I -- what I would do with the whistleblower**
4 **complaint?**

5 Q. Yeah. Let -- yeah. Let's --

6 **A. Well --**

7 Q. -- I'll make it easier on you.

8 **A. Thank you.**

9 Q. Go to the bottom of the page, if you will, page --
10 you're on 166 sub -- sub (3).

11 **A. Yes, sir.**

12 Q. And if you'll read that slowly into the record.

13 **A. "Whistleblower complaints received by the deputy chief,**
14 **Office of Professional Standards commander, or the**
15 **Human Resource Division commander shall be forward to**
16 **the State Auditor's Office within 15 days."**

17 Q. All right. Fair enough. Okay.

18 And during the time that you were the head of HR,
19 isn't it true that, around the October/November time,
20 you had a face-to-face meeting with then Trooper
21 Santhuff regarding sort of an exit interview?

22 **A. I did have a meeting with Trooper Santhuff. I don't**
23 **remember the month. You had mentioned a couple months,**
24 **and I don't recall when it was.**

25 Q. Okay. But do you recall it being characterized as an
 Travis Mathesen/By Mr. Sheridan (Direct)

1 exit interview?

2 A. I don't -- I don't recall that as an exit interview.
3 It may have been, but I don't independently recall if
4 it was.

5 Q. Okay. Fair enough.

6 A. We typically don't conduct exit interviews for
7 employees staying within the agency.

8 Q. Okay.

9 A. So that characterization may be a little bit different.

10 Q. All right. And it's true, is it not, that at that
11 meeting, he told you that he had been the victim of
12 retaliation; right?

13 A. I don't specifically recall -- specifically recall
14 the -- that particular exchange, but something along
15 those line, yes.

16 Q. Okay. And he -- he explained to you that going back to
17 March of 2016, he had witnessed an act between
18 Lieutenant Nobach and his direct report Brenda Biscay
19 where she rubbed her breasts on the back of his head.

20 A. I remember something about that.

21 Q. Okay. All right.

22 And it's true, is it not, that upon receiving that
23 information, you actually took action to open a file.

24 A. I don't recall if it was at that point in time or if it
25 had -- if we had opened a file -- so to speak -- before
Travis Mathesen/By Mr. Sheridan (Direct)

1 **that.**

2 Q. Okay. All right.

3 And let's take a look at -- so in this skinny
4 binder --

5 **A. Okay.**

6 Q. -- there may be a document that looks like this. And
7 I'm going to ask you to see if you can find it.

8 And it's -- it's marked as 262.

9 **A. Okay.**

10 Q. See if you have that in there.

11 **A. Yes, sir. I think so.**

12 Q. Okay. So let's -- let's take a look at this and see if
13 this is a document that you recognize.

14 **A. This is a -- yes. I do recognize --**

15 Q. Okay. This is basically one of your internal data
16 points for creating and tracking cases; right?

17 **A. Yes.**

18 Q. All right. And looking at this particular document, it
19 says -- oh, before we talk about it, let me offer it.

20 MR. SHERIDAN: Your Honor, I'd like to offer
21 262 into evidence.

22 THE COURT: Any objection?

23 MR. MARLOW: No objection, Your Honor.

24 THE COURT: **Exhibit 262 is admitted.**

25 (Exhibit 262 Admitted)
 Travis Mathesen/By Mr. Sheridan (Direct)

1 MR. SHERIDAN: Thanks, Judge.

2 BY MR. SHERIDAN:

3 Q. All right. So it says -- it has a bunch of headings.

4 MR. SHERIDAN: And, Greg, is there any way
5 to -- I'm going to be looking at the top right-hand
6 corner. Okay.

7 BY MR. SHERIDAN:

8 Q. It says, "Workplace misconduct."

9 Do you know if you're the person who filled out
10 that form and marked "Workplace misconduct"?

11 A. I don't know for sure, but it -- relatively unlikely.
12 I -- I normally was not the one who -- who created or
13 even did much data entry on these forms.

14 Q. Okay. And what's the reported date? Look at the upper
15 left.

16 A. I'm sorry. Yeah. Thank you. October 21, 2016.

17 Q. All right. So it was in October 21, 2016, that you
18 caused -- perhaps not did yourself -- but you caused
19 this to be created; correct?

20 A. That would be the date, yes, that this information was
21 presented to the Human Resource Division, and then
22 shortly thereafter, this report would have been
23 created, yes.

24 Q. All right. And -- and just to help us with the --
25 the -- the various columns, under complaint, it -- or
Travis Mathesen/By Mr. Sheridan (Direct)

1 next to complaint, it says, "Reported incident by SOD
2 Captain Alexander after the fact of an alleged incident
3 by Lieutenant Nobach and his secretary."

4 And would it be -- Debb Tindall would be the
5 person who would have made that data entry, if you
6 know?

7 **A. I don't know. It may indicate on here, but --**

8 (Indiscernible crosstalk.)

9 Q. It says "Assigned to."

10 **A. Let me find that.**

11 (Indiscernible crosstalk.)

12 Q. Upper left.

13 **A. Okay, yes. I see that. Yes.**

14 **Most, typically, yes.**

15 Q. Okay.

16 **A. Yes.**

17 Q. Okay. And so was she a direct report to you?

18 **A. No, sir.**

19 Q. What was her job?

20 **A. He was one of our HR section managers, and she directly**
21 **reported to Dr. Lostimado who was our HR operations**
22 **manager.**

23 Q. Okay. Now, does the fact that this -- now you've seen
24 the reporting date as October 21, 2016. Does that in
25 any way refresh your recollection of when you spoke
Travis Mathesen/By Mr. Sheridan (Direct)

1 with Trooper Santhuff?

2 A. No. I would guess it was after this, but I don't -- I
3 don't remember for sure. I'm sorry.

4 Q. Fair enough. Okay.

5 Now, it's true, is it not, that the human
6 resources organization within the Washington State
7 Patrol does not investigate claims of discrimination?

8 A. We don't investigate claims of discrimination, sexual
9 harassment from a policy violation point of view. That
10 is correct.

11 Q. Well, so let's say -- let's say in 2016 I am a State
12 Patrol person, and I feel like I've been a victim of
13 hostile work environment, and I come to see you folks.

14 A. Yes.

15 Q. What, if anything, could your organization do for me?

16 A. The Human Resource Division?

17 Q. Yes.

18 A. We would -- our role in that scenario would be to
19 provide protection for the employee. We would
20 communicate with the division commander, the direct
21 supervisor, if they weren't involved in the allegation,
22 to ensure that the employee was safe in the workplace.

23 We would also coordinate with the Office of
24 Professional Standards who would concurrently conduct
25 an internal investigation into whether there would be
Travis Mathesen/By Mr. Sheridan (Direct)

1 **any wrongdoing in a case like that.**

2 Q. So -- so it's your understanding that, under your
3 policies and procedures -- I guess some of them in 113,
4 and we'll talk about 260 in a minute. You would --
5 your main goal is to ensure the safety of the
6 workforce.

7 A. **I'm sorry. I didn't hear the very end --**

8 Q. Yes. Your main goal is to ensure the safety of the
9 workforce.

10 A. **Yes, sir.**

11 Q. So -- so if somebody is a victim of sexual harassment
12 and they feel afraid for their wellbeing -- physical
13 and, I guess, mental wellbeing -- you may -- your
14 people may get involved in order to make sure that that
15 person is in a safe place during the pendency of an
16 investigation?

17 A. **Yes, sir.**

18 Q. But you don't conduct the investigation yourself;
19 correct?

20 A. **We don't conduct the investigation into a policy
21 violation. That is correct.**

22 Q. Was it -- was it Chief Saunders' organization that
23 would have conducted any investigation?

24 A. **That would be Captain Saunders, and he was in charge of
25 Office of Professional Standards. And, yes, he would
 Travis Mathesen/By Mr. Sheridan (Direct)**

1 have been -- well, his section would have been
2 responsible for conducts that investigation into a
3 policy violation.

4 Q. Okay. Now, had you been consulted on this earlier, the
5 tracking date and reported date would reflect the date
6 that you were consulted; correct?

7 A. Typically, yes.

8 Q. Okay. Now, I have this Exhibit 214. Sir, I can't -- I
9 might -- can't tell if it's in that book, that little
10 book. Yeah. See if -- could you see if it's in there
11 for me?

12 A. Sure. No. This is 260 through 264.

13 Q. Okay. We're going to see -- let me see if I can track
14 down 216.

15 THE COURT: Did you state --

16 THE WITNESS: Which one are you looking for?

17 THE COURT: What number did you say?

18 MR. SHERIDAN: I said -- oh, did I say --

19 THE COURT: You said 214 first.

20 MR. SHERIDAN: Oh, yeah. I mean 214, Judge.

21 Yeah. Thank you.

22 BY MR. SHERIDAN:

23 Q. And let me see if I can get that for you. Huh. I'm
24 going to trouble you to see if you can find it in the
25 books that --

Travis Mathesen/By Mr. Sheridan (Direct)

1 **A. Sure.**

2 Q. So -- and on the front of the book, it should tell you
3 if it's -- if it's within those numbers.

4 **A. May I stand, Your Honor?**

5 THE COURT: You may.

6 **THE WITNESS: These are kind of heavy.**

7 **This is 1 through 42-ish. And this is 113 --**
8 **just 113.**

9 BY MR. SHERIDAN:

10 Q. Okay. We'll find it. 214. I probably have to take
11 some back and take a peek myself, if that's okay.

12 **A. Sure. This is just the (inaudible) manual.**

13 Q. And that's just 2013?

14 Could I take a look at that one, please. Hate to
15 think we're missing a book on the first day. It's not
16 there.

17 MR. SHERIDAN: Is there any chance there's
18 another book in the back?

19 MR. BIGGS: Jack, you're welcome to use ours
20 if you need.

21 MR. SHERIDAN: I may take you up on that
22 because I don't see -- do you guys see it?

23 THE COURT: It's on, I think, third binder.

24 MR. SHERIDAN: Okay.

25 THE COURT: So I have not made any notes on
 Travis Mathesen/By Mr. Sheridan (Direct)

1 this so I can give you my copy.

2 MR. SHERIDAN: Oh, that's very kind.

3 THE COURT: And then I just need to get one
4 back.

5 MR. SHERIDAN: Let me see if -- let me see if
6 my eyes are just not seeing it. My eyes are just not
7 seeing it. Sorry. My apologies.

8 Your Honor, in this unique situation, do we need
9 to ask permission to approach a witness?

10 THE COURT: It's a little bit late for that.

11 MR. SHERIDAN: Thanks. That's what I was
12 thinking.

13 BY MR. SHERIDAN:

14 Q. Okay. So why don't you take a look at that, sir, and
15 tell me if you recognize any of the names.

16 A. **On this email.**

17 Q. Yes.

18 A. **Yes, I do.**

19 Q. Can you tell us, who is Debb Tindall? And in 2016, did
20 she have some relation to you in term of her position?

21 A. **Yes. Again, Debb Tindall was the individual I just**
22 **described who reported to Dr. Lostimado who is our**
23 **operation -- HR operations manager. He reported to me.**

24 Q. All right. And she's writing to Johnny Alexander.

25 And, again, at the time he was the person who was in
 Travis Mathesen/By Mr. Sheridan (Direct)

1 charge of -- among other things -- Lieutenant Nobach;
2 right?

3 **A. Yes.**

4 Q. In this organization.

5 **A. Yes, sir.**

6 MR. SHERIDAN: All right. I'm going to offer
7 Exhibit 214.

8 MR. MARLOW: I object at this point in time,
9 Your Honor, just simply on relevancy. We also don't
10 have authenticity through this witness.

11 THE COURT: Hold on a second.

12 Did you say -- I was looking up 214; right?

13 MR. SHERIDAN: Right.

14 THE COURT: I was looking at the wrong -- I'm
15 going to sustain the objection on foundation.

16 MR. SHERIDAN: (inaudible) .

17 THE COURT: On foundation.

18 BY MR. SHERIDAN:

19 Q. I have to slow down with you, sir, and ask you some
20 questions.

21 First of all, do you recognize this as being an
22 email from your organization?

23 **A. It appears that way, yes.**

24 Q. All right. And during the time miss -- is it Tinsdall?

25 **A. Tindall.**

Travis Mathesen/By Mr. Sheridan (Direct)

1 Q. Tindall. She worked for -- she worked in your chain of
2 command; correct?

3 A. Yes, sir.

4 Q. All right. And would you look at the subject matter
5 and tell us if it's a subject matter that was related
6 to your organization at the time.

7 A. Yes, it is.

8 Q. All right. And does it appear to you to be a document
9 kept in the usual course of business pertaining to the
10 issue in the subject matter?

11 A. I didn't hear everything you said.

12 Q. Oh, yes.

13 And is that a document that's kept in the usual
14 course of business and that it pertains to subject --
15 the subject matter of the email?

16 A. It appears so, yes.

17 MR. SHERIDAN: All right. Plaintiff offers
18 it again.

19 MR. MARLOW: Same objection, Your Honor.
20 This witness is involved in this email. I mean,
21 we have a witness coming up that could authenticate
22 this document because he's Johnny Alexander, who the
23 email is to.

24 MR. SHERIDAN: Well, then we'll link it up
25 later, Your Honor, but I'd like to talk to him about it
Travis Mathesen/By Mr. Sheridan (Direct)

1 now, if that's okay with the Court.

2 THE COURT: I am going to admit it with the
3 understanding that you will --

4 MR. SHERIDAN: Tie it.

5 THE COURT: -- tie it with the --

6 MR. SHERIDAN: Will do, Your Honor.

7 THE COURT: With the other witness.

8 MR. SHERIDAN: Thanks.

9 (Exhibit 214 Admitted)

10 BY MR. SHERIDAN:

11 Q. All right. So take a look at -- you can put that up on
12 the screen now.

13 And, again, this is the November 16th -- so
14 November 2016 timeframe. And -- and she writes, "Good
15 evening, Captain. I wanted to follow up with you
16 regarding a previous case you handled under your
17 leadership which will help me button up the case file
18 on my end at HRD."

19 And this is in 2016. This has to do with alleges
20 made by Trooper Santhuff when assigned to aviation.

21 And then she writes, "If you would, would you
22 provide the following information -- the name of the
23 DES representative that provided training on site to
24 include training type."

25 And then she writes, "I will verify this
Travis Mathesen/By Mr. Sheridan (Direct)

1 information has been recorded on each employee's
2 training profile."

3 Can you give us sort of a big picture
4 understanding of what's going on here in terms of
5 recording documents in somebody's training file?

6 A. So it wouldn't -- as I read this, I seem to recall that
7 the -- the section -- is Aviation Section, following
8 these incidents, participated in some training that DES
9 provided.

10 I don't recall the exact nature of the training,
11 but it had to do with -- with this -- this course of
12 subject. And this is a request for verification of
13 that subject. And this would not be atypical. This
14 would be something that we would usually track and
15 monitor. That was part of our role in the Human
16 Resource Division was, as part of competing our
17 employees safe, if training was part of the solution,
18 was to memorialize that training had occurred and keep
19 those on training records.

20 Q. When you say the DES representative, would you give the
21 jury an understanding of what that person did --

22 (Indiscernible crosstalk.)

23 A. Sorry. That's the Department of Enterprise Services
24 which is sort of like the administrative services
25 agency for the State of Washington. So they do
Travis Mathesen/By Mr. Sheridan (Direct)

1 facilities and buildings, and they do a significant
2 component of training as well. And some of it they do
3 themselves. Most of it, I think, they contract out
4 to -- to training professionals in dozens if not
5 hundreds of different subject matters.

6 Q. Okay. Do you know if they do training on sexual
7 harassment at work?

8 A. They do. I don't know if it's actual DES employees or
9 if it's contract.

10 Q. Okay. Now let's look at the next page that has
11 handwriting, and let me ask you if you recognize the
12 handwriting.

13 THE COURT: Is that still 214?

14 MR. SHERIDAN: Pardon me?

15 THE COURT: Is that still Exhibit 214?

16 MR. SHERIDAN: As far as I know. It is, yes.

17 THE COURT: Okay.

18 THE WITNESS: Did you ask me if I recognize
19 the handwriting?

20 BY MR. SHERIDAN:

21 Q. Yes.

22 A. I -- I don't recognize the handwriting; although, I
23 think I recognize the signature. The initials there is
24 Debb Tindall.

25 Q. All right. And do you recognize the signature of
Travis Mathesen/By Mr. Sheridan (Direct)

Johnny Alexander, sir?

A. I don't believe that's his signature. I believe this is Debb Tindall's writing --

Q. Ah.

A. -- and she is saying something to the effect -- and I haven't read all of this -- all of -- so it's first two and a half lines, and then that's per Captain Alexander. And then Debb Tindall initialed it. So I don't know if she --

Q. Oh, I see.

A. -- spoke with him or talked to him on the phone or if there was an email conversation.

Q. I see.

A. That would be my assumption there.

Q. All right. And then she writes in the first line, "Please make a case file," and she's writing to Monica Simpson. Who's that?

A. Monica Simpson was one of our administrative support personnel in HR. She was actually my -- I believe at the time she was my secretary.

Q. Okay. And so she writes, "Please make a case file which will be an open-and-shut case. The allegations are against Lieutenant Nobach made by Trooper Santhuff."

Can you think of any business reason why she would Travis Mathesen/By Mr. Sheridan (Direct)

1 refer to this particular case as an open and shut?

2 **A. That would be a lot of speculation on my part. Yeah.**
3 **I'm not comfortable doing that. I'm sorry.**

4 **Q. Okay. Fair enough.**

5 Is it true that -- again, does this help you in
6 any way recall what -- when -- what time of the year he
7 came to see you?

8 **A. Oh, I'm sorry. If all of this was to help me remember**
9 **that, I don't -- I don't remember. I'm sorry.**

10 **Q. Fair enough. All right.**

11 **A. Clearly, it was -- I mean, this all occurred in**
12 **November -- November is when HR found about it. I**
13 **don't recall when Trooper Santhuff and I and Lieutenant**
14 **Motney (phonetic), I believe, had our conversation.**

15 **Q. Okay. All right.**

16 And is it fair to say that, if a person is removed
17 from a hostile work environment, then from your -- your
18 organization's perspective in HR, then your job is
19 done?

20 **A. No. I don't think so.**

21 **Q. Then what else is there to do? If a person is no**
22 **longer in the hostile work environment, since you don't**
23 **investigate, what role could HR still have?**

24 **A. So part of that would be the training that's referred**
25 **to in this -- the previous email. Another part could**
Travis Mathesen/By Mr. Sheridan (Direct)

1 be reintegrating either the employee back to the
2 workplace. Oftentimes -- not oftentimes -- sometimes a
3 supervisor's removed. Some -- there's been a few
4 occasions where we've altered the workplace setting.
5 So there's a -- there's other things that may occur.

6 Q. Now, so let's talk about some of those things.

7 Let's say there was an action to remove a
8 supervisor.

9 A. Okay.

10 Q. Would that be something that you could do as the head
11 of HR?

12 A. No.

13 Q. Who -- who gets to make the decision as to whether to
14 remove a supervisor?

15 A. That would ultimately be the decision of -- it depends,
16 you know, who -- what level the supervisor's at. It
17 could be the bureau commander, which would be the
18 assistant chief level. Or I could foresee the chief
19 weighing in on that decision as well, depending on the
20 rank of the person.

21 Q. Okay. The chief being Chief Batiste then?

22 A. Yes. Yes, sir.

23 Q. Okay. Okay.

24 Let's look at Exhibit 260?

25 A. 2-6-0?

 Travis Mathesen/By Mr. Sheridan (Direct)

1 Q. Yes, please.

2 A. Okay.

3 Q. And tell us what that is.

4 A. That's a different book.

5 Q. That's the -- yeah.

6 THE COURT: And, counsel, before you do
7 publish to the jury, please ask the permission to
8 publish.

9 MR. SHERIDAN: Did we do this? Okay.

10 So you guys know don't publish until it's
11 admitted; right? Sorry.

12 BY MR. SHERIDAN:

13 Q. All right. 260.

14 A. Yes, sir.

15 Q. All right. And you recognize this as the
16 administrative investigative manual?

17 A. I do.

18 Q. And what's contained in there in broad brush strokes?

19 A. This is procedural manual for administrative
20 investigations. In our terms and in most other terms,
21 those are investigations of policy violations or
22 potential policy violations.

23 And this particular version of the manual is for
24 commissioned employees.

25 Q. Okay. What does that mean? Commissioned employee?
Travis Mathesen/By Mr. Sheridan (Direct)

1 **A. All of the employees in the State Patrol that carry a**
2 **gun and wear a badge.**

3 Q. Okay.

4 **A. It's about half of our agency.**

5 MR. SHERIDAN: All right. Plaintiff offers
6 Exhibit 260.

7 THE COURT: Any objection?

8 MR. MARLOW: No objection, Your Honor.

9 THE COURT: Plaintiff's Exhibit 260 is
10 admitted.

11 (Exhibit 260 Admitted)

12 BY MR. SHERIDAN:

13 Q. Okay. Would you take a look -- let's see if you have
14 Exhibit 102 there.

15 **A. I don't think so.**

16 Q. Okay.

17 **A. 1-0-2?**

18 Q. Yeah.

19 **A. No.**

20 Q. Okay. I'm handing you what's been marked for
21 identification as Exhibit 102, and I'm going to ask if
22 you can tell us what that is.

23 **A. This is a daily bulletin from October 26, 2016.**

24 Q. All right. And did you author any of it?

25 **A. Yes, sir.**

 Travis Mathesen/By Mr. Sheridan (Direct)

1 Q. And what portion did you author?

2 A. I authored this portion of the daily bulletin that
3 talks about the Whistleblower policy.

4 Q. Okay. All right.

5 MR. SHERIDAN: Plaintiff offers 102.

6 THE COURT: Any objection?

7 MR. MARLOW: No objection, Your Honor.

8 THE COURT: Plaintiff's Exhibit 102 is
9 admitted.

10 (Exhibit 102 Admitted)

11 MR. SHERIDAN: Thank you, Your Honor.

12 And can we publish this to the jury?

13 THE COURT: You may. You may.

14 BY MR. SHERIDAN:

15 Q. All right. Why don't you take us through this and tell
16 us what were you writing about?

17 A. So the daily bulletin is what it sounds like. It's a
18 daily bulletin, a daily publication for agency-wide
19 distribution to all employees. It comes out via email,
20 and it covers a whole host of subject matter.

21 This particular subject is about the Whistleblower
22 policy that we've been reading from. And you see here
23 in the second paragraph is a clarification of the
24 person who's designated as the person in the agency
25 receiving the whistleblower complaints, the chief's
Travis Mathesen/By Mr. Sheridan (Direct)

1 **designee.**

2 Q. Okay. Did there come a time that you were no longer
3 the person to receive such complaints?

4 A. So it -- and I don't recall this -- this email by the
5 way. I'm not doubts the validity of it. I just don't
6 independently remember it.

7 It appears here that there's clarification, I
8 was -- I believe I was given direction to clarify that
9 Chief Lamoreaux -- Assistant Chief Lamoreaux is the
10 employee who is the chief's designee for whistleblower
11 complaints.

12 Q. Do you -- do you remember specifically when you were
13 removed in 2016?

14 A. When you say removed --

15 Q. From -- or if you were removed. I mean, maybe you
16 stayed on as the public official.

17 A. So I don't recall either way, no.

18 Q. Okay.

19 A. Sorry.

20 Q. All right. So Chief Lamoreaux held what position at
21 the time?

22 A. He was my assistant chief so he was a bureau commander.
23 I think there's four or five divisions -- one of them
24 being the Human Resource Division -- that reported to
25 him at the time.

 Travis Mathesen/By Mr. Sheridan (Direct)

1 Q. Okay. All right. And so he was a level above you?

2 A. Yes, sir.

3 Q. I see. Was he an assistant chief?

4 A. Yes, sir.

5 Q. Oh, so that -- he -- that might be the person who in
6 our list of three things, maybe he's the assistant
7 chief?

8 A. I'd have to look at it again. He may -- because
9 there's no longer -- was no longer a deputy chief --

10 Q. Yeah.

11 A. -- there may have been a clarification that because
12 there's no longer a deputy chief, now Assistant Chief
13 Lamoreaux is that person. I'd have to look at it
14 again.

15 Q. Okay.

16 A. But I don't remember.

17 Q. Okay. Fair enough. Okay. All right.

18 I think that's it. All right.

19 MR. SHERIDAN: That's all I have for this
20 witness.

21 THE COURT: Thank you. Defense, I don't know
22 if it's Mr. Marlow or Mr. Biggs.

23 MR. MARLOW: Mr. Marlow, Your Honor.

24 THE COURT: Mr. Marlow.

25 MR. MARLOW: Yes.
Travis Mathesen/By Mr. Marlow (Cross)

CROSS-EXAMINATION

BY MR. MARLOW:

Q. Good afternoon, Captain. How are you today?

A. Good. Thank you. How about yourself?

Q. Doing well. Thank you.

A. Good.

Q. So it sounds like you were the captain of the HR section during the -- shall we say the relevant timeframe of our case here today -- the 2016 timeframe.

A. Yes, sir.

Q. Okay. You went through a number of exhibits with Mr. Sheridan. Let's look at that last one, Exhibit No. 102.

Can you put it back up, or should we --

UNIDENTIFIED SPEAKER: (inaudible).

MR. MARLOW: (inaudible). Not working?

Okay.

BY MR. MARLOW:

Q. Well, captain, our technical difficulties, you know. State employees and all. State machinery, I suppose. Not employees.

UNIDENTIFIED SPEAKER: Yeah. I'm getting there.

BY MR. MARLOW:

Q. So go ahead and pull 102 out.
Travis Mathesen/By Mr. Marlow (Cross)

1 THE COURT: Mr. Sheridan, do you mind if
2 Mr. Marlow uses your projector?

3 MR. SHERIDAN: No. No.

4 THE COURT: All right.

5 (Indiscernible crosstalk.)

6 UNIDENTIFIED SPEAKER: Do we have 102?

7 MR. MARLOW: 102 is now up -- it's submitted.
8 She can look --

9 (Indiscernible crosstalk.)

10 MR. MARLOW: -- up on there. I don't have a
11 whole lot of questions about it.

12 UNIDENTIFIED SPEAKER: Okay.

13 MR. MARLOW: It's been admitted; so.

14 BY MR. MARLOW:

15 Q. So this is -- you indicated you don't have a specific
16 recollection of this -- writing this daily bulletin; is
17 that correct?

18 A. And to be -- to be fair, as I look at it again now and
19 as I read it the first time, I'm starting to gain a
20 little bit of recollection, but not very much.

21 Q. Okay. Some of the cobwebs are coming off of 2016?

22 A. Yeah. Right.

23 Q. Okay. Essentially what this is doing, it sounds like,
24 is indicating to WSP staff that Assistant Chief Mark
25 Lamoreaux is the person they should report
Travis Mathesen/By Mr. Marlow (Cross)

1 whistleblower complaints to; is that correct?

2 MR. SHERIDAN: Objection. Leading, Your
3 Honor.

4 THE COURT: Overruled.

5 THE WITNESS: Yes. That's my understanding.

6 BY MR. MARLOW:

7 Q. Are there other individuals that you -- that a
8 whistleblower complaint could be made to?

9 A. Within the State Patrol or --

10 Q. WSP employees are what?

11 A. They're encouraged to forward whistleblower complaints
12 to Assistant Chief Lamoreaux -- he works for the
13 Washington State Patrol. He was my boss -- or the
14 State Auditor's Office, the Attorney General's Office,
15 and/or the Executive Ethics Board.

16 Q. Okay. And do you happen to know whether or not, based
17 upon your experience as the captain of HR for -- I
18 believe we said about four and a half years -- whether
19 or not whistleblower complaints can be made
20 anonymously?

21 A. I don't know. I would imagine so but I don't know for
22 sure. I'm sorry.

23 Q. What is your understanding of the Whistleblower law?
24 Why is it there?

25 A. To protect individuals from retaliation if they report
Travis Mathesen/By Mr. Marlow (Cross)

1 **government wrongdoing.**

2 Q. Okay. And would it make sense to be able to have those
3 complaint be anonymous then in your --

4 MR. SHERIDAN: Objection. Speculation.

5 THE COURT: Sustained.

6 BY MR. MARLOW:

7 Q. In another document, it indicated that -- let's see.
8 Document No. 113 was the big binder. We were looking
9 at a particular section -- page 166 of that document --
10 of that big binder.

11 **A. Yes, sir.**

12 MR. MARLOW: Thank you again for (inaudible).
13 Appreciate it.

14 BY MR. MARLOW:

15 Q. Now, it indicates in here -- and we don't necessarily
16 need to -- to get too far into finding it, et cetera.

17 It says that the whistleblower complaints should
18 be reported to the State Auditor's Office within 15
19 days, procedures A sub (3)?

20 **A. Yes, sir.**

21 Q. Okay. Now, did you report the allegations regarding
22 Lieutenant Nobach and Ms. Biscay to the State Auditor's
23 Office?

24 **A. I did not.**

25 Q. And why not, sir?
 Travis Mathesen/By Mr. Marlow (Cross)

1 **A. I did not conclude that it rose to level of a**
2 **whistleblower complaint per the statute.**

3 Q. Okay. So you were familiar with the statute -- the
4 Whistleblower statute in your role as captain of HR?

5 **A. Yes.**

6 Q. In your opinion, the complaint that was raised
7 regarding Lieutenant Nobach and Ms. Biscay did not
8 arise -- or did not implicate the Whistleblower
9 statute?

10 **A. Correct.**

11 THE COURT: Mr. Marlow, I'm going to ask you
12 to please speak up a little bit louder.

13 MR. MARLOW: Oh, certainly.

14 BY MR. MARLOW:

15 Q. So -- I should make sure I get that last one then.

16 In your opinion as the HR captain, the complaint
17 made by Mr. Santhuff against Lieutenant Nobach and
18 Ms. Biscay, Mr. Santhuff was not a whistleblower under
19 the statute; is that correct?

20 **A. Correct.**

21 Q. Okay.

22 THE COURT: Members of the jury, if any of
23 you back there are having a hard time hearing either --
24 any of the attorneys or anybody, please raise your hand
25 so that we make sure that everything -- that you will
 Travis Mathesen/By Mr. Marlow (Cross)

1 hear everything.

2 Don't be shy.

3 BY MR. MARLOW:

4 Q. Captain Mathesen, what other provisions -- is there a
5 timing provision for whistleblower complaints within
6 the statute?

7 **A. There is. I don't recall.**

8 Q. If we look up further in the regulation, would that
9 assist you?

10 **A. Perhaps.**

11 Q. I think we're looking now at the very top of page 165.
12 It's a partial sentence.

13 **A. Within one year of occurrence of the action.**

14 Q. Okay. So that is another requirement of the statute to
15 be a whistleblower?

16 **A. Yes, sir.**

17 MR. SHERIDAN: I'm sorry, Your Honor. I
18 missed where -- what page that was on.

19 MR. MARLOW: Top of page 165.

20 MR. SHERIDAN: Thank you very much.

21 MR. MARLOW: Mr. Sheridan, see it there?

22 MR. SHERIDAN: Yep.

23 MR. MARLOW: Very well.

24 I have no further questions, Your Honor.

25 Thank you, captain.

 Travis Mathesen/By Mr. Marlow (Cross)

1 THE COURT: Any redirect?

2 MR. SHERIDAN: Yes. Just a moment.

3 REDIRECT EXAMINATION

4 BY MR. SHERIDAN:

5 Q. So did you just testify that you didn't think the
6 actions of Ms. Biscay and Lieutenant Nobach Rose to
7 improper governmental action under the State
8 whistleblower ordinance?

9 **A. Yes.**

10 MR. MARLOW: Objection, Your Honor.
11 Mischaracterizes the testimony.

12 THE COURT: Overruled. The witness answered.

13 BY MR. SHERIDAN:

14 Q. So you understood the facts; did you? The facts.

15 **A. The facts?**

16 Q. Yeah.

17 **A. Can you elaborate, please.**

18 Q. Well, so you just told us that you looked at the
19 complaint by -- by Trooper Santhuff, and you founded
20 the no merit; right?

21 MR. MARLOW: Objection, Your Honor.
22 Mischaracterizes the statement.

23 THE COURT: Sustained. Sustained.

24 MR. SHERIDAN: Oh. I'm sorry.

25 Travis Mathesen/By Mr. Sheridan (Redirect)

1 BY MR. SHERIDAN:

2 Q. What did you find?

3 A. I don't understand the question.

4 Q. Sure. Did he have a whistleblower complaint, or did he
5 not?

6 A. From my perspective?

7 Q. Yes.

8 A. He did not.

9 Q. And that was because why?

10 A. Because it didn't rise to the level of a whistleblower
11 complaint.

12 Q. That's what we're talking about.

13 A. Okay.

14 Q. It didn't rise to the level of the whistleblower.
15 What's it?

16 A. What is it?

17 Q. Yeah. What's it that didn't rise?

18 A. The circumstances surrounding the complaint.

19 Q. Tell us what they were. What were they, sir?

20 A. I don't -- I don't know. This was four plus years ago.
21 I don't recall, sir.

22 Q. You mean four or five years ago you made a finding that
23 his whistleblower claim didn't rise to the level of him
24 being a whistleblower, but you can't remember -- you
25 remember that, but you can't remember what the claim
Travis Mathesen/By Mr. Sheridan (Redirect)

1 was?

2 **A. That's correct.**

3 Q. I'll bet you must have written that down. If that's
4 something that you decided, you must have written it
5 down; right?

6 MR. MARLOW: Objection, Your Honor.

7 THE COURT: Sustained.

8 BY MR. SHERIDAN:

9 Q. Did you write -- record anywhere what you just told
10 this jury?

11 **A. I don't recall that.**

12 Q. Because, if you did, we would have a record of your
13 having made that decision; right?

14 MR. MARLOW: Objection, Your Honor.

15 THE COURT: Overruled.

16 **THE WITNESS: Not necessarily, no.**

17 BY MR. SHERIDAN:

18 Q. So you're the head of the human resources organization,
19 you've made a decision that affects his life by saying
20 he's not -- he -- his -- the facts don't rise to the
21 level of whistleblower, and you didn't write it down.

22 True?

23 **A. I don't know that.**

24 Q. Okay. So now what I'd like to do is ask you this.

25 Hypothetically, let's say a lieutenant has a direct
Travis Mathesen/By Mr. Sheridan (Redirect)

1 report who is female who comes up to him from behind,
2 rubs her breasts on the back of his head in front of a
3 third party who has nothing to do with it. Are you
4 going to tell us that you don't think that's gross
5 mismanagement by that lieutenant?

6 **A. There are -- I'm not going to characterize that in that**
7 **way at this time.**

8 Q. Right. Because, in fact, it would be hard to call that
9 anything less than gross mismanagement for a direct
10 report to allow his subordinate to do that; right?

11 **A. Those are your words, sir. I'm not saying that.**

12 Q. Say again?

13 **A. Those are your word, sir. I'm not saying that.**

14 Q. Okay. Well, let's see. Who is it that did
15 investigations in 2016? Was it your office or somebody
16 else's?

17 **A. So when you're -- can you clarify investigations,**
18 **please?**

19 Q. Yeah. Well, like, investigations into something like a
20 lieutenant having his direct report rub her breasts on
21 the back of his head. That would be something you
22 would not investigate; right?

23 **A. From an Internal Affairs perspective, that's correct.**

24 Q. Would you agree with me that -- that it would be

25 Captain Saunders' organization that would do such an
Travis Mathesen/By Mr. Sheridan (Redirect)

1 investigation; right?

2 A. Yes, sir.

3 Q. Would you also agree with me that, if Captain Saunders
4 found that that was obviously gross mismanagement, you
5 would defer your opinion to his; right?

6 A. Again, in terms -- I don't understand what you're
7 talking about in terms of gross mismanagement. That's
8 not a -- that's not a characterize I'm --

9 Q. Oh, I see.

10 A. -- familiar with it.

11 Q. Oh, I didn't know you weren't familiar with it.

12 Go to page 65, if you would, sir. I'm sorry. 165
13 of this exhibit.

14 A. Okay.

15 MR. SHERIDAN: And go ahead and put it up on
16 the screen.

17 BY MR. SHERIDAN:

18 Q. And it lists what is improper governmental action;
19 right? You see that?

20 A. Yes, sir.

21 Q. You say that D is gross mismanagement?

22 A. Yes.

23 Q. All right. So it's one of the elements of the claim;
24 right?

25 A. Of the claim or the RCW?
Travis Mathesen/By Mr. Sheridan (Redirect)

1 Q. Well, you take your choice. It says -- here's what
2 four says. It says, "Improper governmental action is
3 defined as any action by an employee undertaken in the
4 performance of the employee's official duties which is
5 a gross -- is gross mismanagement."

6 And you -- as you sit here today, you can't tell
7 us what your opinion is of the hypothetical I gave you;
8 right?

9 A. I can in that context of that, yes.

10 Q. What is it?

11 A. That it's not gross mismanagement.

12 Q. And why is that, sir?

13 A. Because it falls under the -- it does not include
14 personnel actions for which other remedies exist.

15 Q. It does not include personnel actions in which other
16 remedies exist.

17 A. Yes.

18 Q. So what you mean is because it could be sexual
19 harassment, it wouldn't -- it couldn't possibly be
20 gross mismanagement.

21 MR. MARLOW: Objection. Your Honor. This
22 mischaracterizes the witness's statement.

23 THE COURT: Rephrase your question.

24 MR. SHERIDAN: Yeah. Sure.

25 Travis Mathesen/By Mr. Sheridan (Redirect)

1 BY MR. SHERIDAN:

2 Q. Well, it's your view that -- it's your view that in
3 this particular case, if the top -- the person in
4 charge of the organization engaged in that conduct
5 regarding their subordinate, you would say that that's
6 not actionable because it's a personnel action?

7 A. I would say that's not actionable under the
8 whistleblower RCW and policy because it's not gross
9 mismanagement.

10 Q. Because it's not gross mismanagement. How do you --
11 you explain that by what?

12 A. It's a personnel matter.

13 Q. I see. Okay. I see.

14 And let's see. If a manager engages in that type
15 of behavior at work, does it violate any laws or
16 regulations?

17 A. I don't think I've heard enough -- well, it potentially
18 violates regulations. I don't know about laws.
19 There's a lot of other factors I would -- I would
20 imagine.

21 Q. Uh-huh. Okay.

22 And let's see what it says here. It says under 5,
23 "It does not include personnel actions for which other
24 remedies exist, included but not limited to employee
25 grievances, complaints, appointments, promotions,
Travis Mathesen/By Mr. Sheridan (Redirect)

1 transfers, assignment, et cetera."

2 So it also says that -- it says that, with regard
3 to personnel actions, you think that that -- that
4 paragraph trumps the statement of gross mismanagement?

5 **A. I think it's a qualifying paragraph of gross**
6 **mismanagement.**

7 Q. Okay. Fair enough.

8 And with regard to the timing, would you agree
9 that the year that you talk about only pertains to
10 governmental action that's going to be investigated?

11 **A. So it -- I don't know if you can skip ahead on the**
12 **screen. It says, "Reporting improper governmental**
13 **actions, for an improper governmental action to be**
14 **investigated, it must be provided to the State**
15 **Auditor's Office, agency designee, or State public**
16 **government official within one year of the occurrence**
17 **of the action."**

18 Q. Right. Okay.

19 **A. So I don't understand your question.**

20 Q. Okay. And so that's to be investigated; right?

21 **A. That's what it says, yes.**

22 Q. But that's not to have a claim; correct?

23 **A. I guess I don't --**

24 Q. Say again, sir.

25 **A. I don't understand. I'm sorry.**
Travis Mathesen/By Mr. Sheridan (Redirect)

1 Q. Well, you don't have -- in order -- if you're a
2 whistleblower, you don't need to have an investigation
3 before you can sue; right?

4 **A. I don't know anything about suing.**

5 Q. Oh, okay.

6 Do you know whether or not -- not -- your not
7 reporting it affects in any way the ability to sue?

8 **A. I do not know that.**

9 Q. Let me ask you this. Are you familiar with a perceived
10 whistleblower?

11 **A. No.**

12 Q. Well, let's see if we can find it.

13 Look at No. 10 on page 165.

14 **A. Okay.**

15 Q. Now, it says, "The whistleblower, perceived
16 whistleblower, and/or witness who provides information
17 during an investigation or perceived to have will not
18 be retaliated against."

19 Do you know if that's one of the ways to be a
20 whistleblower -- is you provide information?

21 **A. Yes. That's my understanding.**

22 Q. Do you know whether or not if somebody's perceived to
23 be a whistleblower, they don't really need to meet any
24 of the other criteria?

25 MR. MARLOW: Objection, Your Honor.
Travis Mathesen/By Mr. Sheridan (Redirect)

1 Mischaracterizes the law.

2 MR. SHERIDAN: That's not -- well, I'm not
3 going to argue with him.

4 THE COURT: Overruled.

5 BY MR. SHERIDAN:

6 Q. Go ahead.

7 **A. You please ask again.**

8 Q. Yeah. Do you know whether or not, if somebody is a
9 perceived whistleblower, there's no elements other than
10 the fact that he is retaliated against because he is
11 perceived to be?

12 **A. I don't know that. It seems that, but I don't know**
13 **that for sure.**

14 Q. Okay. Fair enough.

15 **A. I'm not -- I'm not familiar with that term, perceived**
16 **whistleblower, well enough.**

17 Q. But you are familiar -- you have seen it in the
18 statute.

19 **A. Yes, sir.**

20 Q. Fair enough. Okay.

21 MR. SHERIDAN: All right. No further
22 questions. Thank you.

23 **THE WITNESS: Thank you.**

24 THE COURT: Any recross?

25 MR. MARLOW: Yes, Your Honor. Briefly.
Travis Mathesen/By Mr. Marlow (Recross)

RECROSS-EXAMINATION

BY MR. MARLOW:

Q. So, Detective Travis, the hypothetical that Mr. Sheridan spun for you regarding the breasts, why would that not -- why would someone reporting that not be a whistleblower in your opinion?

A. Again, to me, that's a personnel action that would be investigated both from a Human Resource Division to make sure employees are safe within the workplace and from an Internal Affairs perspective to ensure that no -- no policy or policies have not been violated.

Q. So it wouldn't -- their not falling under the Whistleblower statute wouldn't necessarily mean they couldn't have a complaint or couldn't forward something up. It's just that they wouldn't be a whistleblower.

A. Correct.

Q. Okay. And with regard to an investigation of such -- the hypothetical, regarding an investigation of such things, would that investigation necessarily go to OPS or the Office of Professional Standards?

A. No.

Q. And what would -- another way of handling such an allegation be?

A. So sometimes -- oftentimes actually -- the local division or district commander, the captain level, will Travis Mathesen/By Mr. Marlow (Recross)

1 conduct what's referred to either formally as a
2 preliminary investigation or a fact-finding expedition
3 to discover facts and sometimes handle at the local
4 level.

5 Q. And the circumstances we were speaking of here in 2016,
6 that individual -- that captain would have been Captain
7 Johnny Alexander?

8 A. He was the captain of the Special Operations Division,
9 yes.

10 MR. MARLOW: Nothing further, Your Honor.

11 THE COURT: Any redirect on that issue?

12 MR. SHERIDAN: No. No, Your Honor.

13 THE COURT: All right. Members of the jury,
14 do any of you have any questions for this witness?

15 Nope. All right. May this witness be excused?

16 MR. SHERIDAN: Yes, Your Honor.

17 MR. MARLOW: No objection from defense.

18 THE COURT: All right. You are excused.

19 **THE WITNESS: Okay. It's a good thing we**
20 **stopped when we did.**

21 THE COURT: Members of the jury, it is three
22 o'clock so let's take our afternoon break. We'll be on
23 break for 15 minutes.

24 COURT STAFF: All rise.

25 THE COURT: Thank you. Please be seated.

1 Before we break -- you're excused.

2 The reason, Mr. Sheridan, why I said to ask for
3 permission to publish before you publish is because I
4 admitted 214 conditionally on authentication by Captain
5 Alexander, and then you published. And so now the jury
6 has seen it. And of course defense did not object to
7 it being published, and I didn't want to be on my own
8 saying -- so anyway. That's the reason why.

9 So please make sure that -- you don't need to ask
10 permission to approach. But please do ask permission
11 to publish any time that an exhibit has been admitted.

12 MR. SHERIDAN: Okay. All right. I thought
13 that was a conditional admitted as long as I tied it.
14 But you're saying wait until you've tied it up to put
15 it --

16 THE COURT: Correct. Because if -- if you
17 don't meet the authentication part of it --

18 MR. SHERIDAN: Right.

19 THE COURT: -- so then it doesn't go to the
20 jury, but then they have seen it.

21 MR. SHERIDAN: Got. Okay. All right. My
22 misunderstanding. Thank you.

23 THE COURT: All right.

24 We'll be in recess.

25 (Recess.)

1 THE COURT: Please be seated.

2 MR. BIGGS: See all the designer face masks.

3 MR. MARLOW: Exactly. I have a Ruth Bader
4 Ginsburg one at home that says, "I object." "I
5 dissent."

6 THE COURT: Which of the two of you is going
7 to be cross-examining -- okay.

8 MR. BIGGS: Thank you.

9 THE COURT: Thanks.

10 MR. BIGGS: The bald one.

11 MR. MARLOW: Hey.

12 COURT STAFF: All rise.

13 THE COURT: Thank you. Please be seated.

14 Mr. Sheridan, are you ready to call your next
15 witness?

16 MR. SHERIDAN: Yes. Thanks, Your Honor.
17 Plaintiff calls Captain Alexander.

18 THE COURT: Do you swear or affirm the
19 testimony you're about to give is the truth?

20 **THE WITNESS: I do.**

21 THE COURT: All right. Please have a seat.

22 DIRECT EXAMINATION

23 BY MR. SHERIDAN:

24 Q. Good afternoon.

25 A. Good afternoon, sir.

Johnny Alexander/By Mr. Sheridan (Direct)

1 Q. And please state your full name for the record.

2 A. **Johnny Robert Alexander.**

3 Q. Okay. I've been reminded that you are an assistant
4 chief now.

5 A. **Yes, sir.**

6 Q. All right. In 2016, where did you work?

7 A. **I was the commander of the Special Operations Division**
8 **with the Washington State Patrol.**

9 Q. All right.

10 And it's true, is it not, that you supervised
11 Lieutenant Nobach?

12 A. **That's true.**

13 Q. All right. Was he a challenge to supervise?

14 A. **No. Not typically. Not out of the ordinary. I mean,**
15 **all employees had their -- their challenges. But**
16 **nothing huge that I couldn't handle.**

17 Q. Okay. Fair enough.

18 Well, you gave him quite a poor performance
19 evaluation for 2016; did you not?

20 A. **It was an evaluation from what I can remember -- again,**
21 **that's been so long ago -- but that's one of the things**
22 **that I'm very thorough in. I believe in communicating**
23 **how an employee is doing because, in my opinion, if we**
24 **don't identify what their failures or struggles are,**
25 **then we don't give them an opportunity to fix that.**

Johnny Alexander/By Mr. Sheridan (Direct)

1 So in that evaluation, from the best of my memory,
2 there were some items of challenges that he needed to
3 work on. However, there were also a lot of areas to
4 where he did extremely well.

5 Q. Uh-huh. Okay.

6 And you never tried to remove him from his
7 position; did you?

8 A. No, sir.

9 Q. And was that because somebody up the chain higher than
10 you told you that they thought he was irreplaceable or
11 words to that effect?

12 A. Jim Nobach is a very talented pilot and commander for
13 the job that he performance. However, no one in the
14 Washington State Patrol is irreplaceable.

15 Q. Okay. And it's true, is it not, that -- let's see.
16 Was there a union representative named Kenyon Wiley in
17 2016?

18 A. Yes. Kenyon Wiley's a representative for the Trooper's
19 Association.

20 Q. All right. And did he talk to you about moving out
21 Mr. Nobach?

22 A. Repeat that, please.

23 Q. Did he talk to you about the idea of moving out
24 Mr. Nobach?

25 A. Yes. Trooper Wiley -- again, a representative of the
 Johnny Alexander/By Mr. Sheridan (Direct)

1 union -- did tell me and express to me on a couple of
2 occasions that he wanted Nobach out of aviation.

3 Q. Okay. And you did not.

4 A. That's correct.

5 Q. All right. And when you learned that mister --
6 Lieutenant Nobach and his direct report had engaged in
7 this business of her rubbing his breasts -- her breasts
8 up to the back of his head, you confronted him on it;
9 did you not?

10 A. Eventually, I did, yes.

11 Q. And he admitted to it, did he not?

12 A. Well, after we determined -- and when I say we, I mean,
13 I -- I spoke to the -- to the division -- the Office of
14 Professional Standards Captain Mike Saunders and a
15 manager of the Human Resource Division. And once I
16 shared with them the information that I got from
17 Sergeant Sweeney as well as Trooper Santhuff, we
18 determined that it wasn't sexual harassment.

19 And then as a result of that, I did counsel
20 Lieutenant Nobach and documented it in what you've
21 heard today as an 095.

22 Q. Okay. But I guess I asked a different question.

23 He admitted that he did it; didn't he?

24 A. He didn't deny nor did he admit it.

25 Q. Okay. And how about Ms. Biscay? Did she deny or admit
Johnny Alexander/By Mr. Sheridan (Direct)

1 it?

2 **A. No, sir.**

3 Q. So neither of them told you they did it.

4 **A. They didn't deny it.**

5 Q. They did not deny it. You confronted them both with
6 the idea that she was rubbing her breasts into the back
7 of his head, and neither of them denied it.

8 **A. That's correct, sir.**

9 Q. All right. And you took that as an admission; correct?

10 **A. Yes, sir.**

11 Q. All right. And that's when you decided on the 095;
12 right?

13 **A. No. The 095 was written during -- prepared prior to my**
14 **meeting with Lieutenant Nobach and Brenda Biscay.**

15 Q. So -- so you mean that you wrote the discipline
16 letter -- the counseling letter -- before you met with
17 them for the first time?

18 **A. That is correct. To the best of my knowledge.**

19 Q. Well, did you -- after -- between the time that you
20 learned that -- and you did learn that the -- that the
21 fact of that event, it came from a report from Trooper
22 Santhuff; right?

23 **A. It was initiated by Trooper Santhuff, yes, sir.**

24 Q. All right. And -- and tell us how that came to your
25 attention.

 Johnny Alexander/By Mr. Sheridan (Direct)

1 **A. Thank you for asking.**

2 Well, the information that I got from captain --
3 or correction -- Assistant Chief Randy Drake called me
4 into his office. And he indicated to me that Trooper
5 Santhuff relayed or communicated the incident between
6 Jim Nobach and Brenda Biscay.

7 That information Santhuff relayed to Sweeney --
8 Sergeant Sweeney -- his direct sergeant -- his
9 supervisor. And then his supervisor -- instead of
10 staying within the chain of command took it outside the
11 chain of command to Captain Riley.

12 And then Captain Riley communicated that
13 information to my assistant chief who was my direct
14 report -- direct boss was Assistant Chief Randy Drake.
15 And that's when Randy Drake called me in and relayed
16 the information to me.

17 Q. And he -- and Commander Drake told you that -- details
18 of the incident. You understood that this was a
19 breast-rubbing incident.?

20 **A. Yes, sir.**

21 Q. All right. And you also understood -- and yet you did
22 not talk to them -- you didn't talk to anybody
23 initially; correct?

24 **A. After Randy Drake communicated to me, what I did was I**
25 **went to Captain Saunders and the Human Resource**
 Johnny Alexander/By Mr. Sheridan (Direct)

1 Division manager -- and I don't remember which person
2 that was they spoke to. But it's -- that's routine
3 what we do when we get a situation -- something similar
4 to this. We bring in the OPS commander, and we also
5 communicate with HRD. They're the two subject-matter
6 experts.

7 And so after that, what I did is I met with
8 Sergeant Sweeney at a coffee stop, and captain -- or
9 Sergeant Sweeney explained to me that he was told
10 Brenda rubbed her breasts up against the back of
11 Nobach's head. He was told that by Trooper Santhuff.

12 Sergeant Sweeney went on through the conversation
13 to say that, you know, this is the behavior that goes
14 on out there. You know, everyone participates in this
15 type of behavior.

16 So that kind of blew me out the water because I go
17 down to Aviation Section quite often. I -- I'm that
18 type of person. I like to interact with my people to
19 see how they're doing, and I never saw that one coming.

20 So what I did -- we finished the conversation. I
21 told Sweeney, "Hey, I'd like for you to get ahold of
22 Santhuff -- just you and Santhuff -- and tell Santhuff
23 I want to meet with him for coffee as well."

24 So I met with Trooper Santhuff at the same coffee
25 stop. And Trooper Santhuff explained the same
Johnny Alexander/By Mr. Sheridan (Direct)

1 situation to me. And lo and behold, he said the same
2 thing. He admitted -- he said, "Yes. This type of
3 behavior -- everyone does it. You know, that's just
4 what we do out there."

5 And -- and so at that point and time -- and then I
6 asked Santhuff, can -- I kind of asked him, "well, when
7 did this happen?" And he couldn't tell me when it
8 happened. And so I asked him if he was offended.

9 And Trooper Santhuff told me, "No. I just think
10 someone should look into this."

11 And so I said, "Okay. Well, I'll take it from
12 here."

13 And then that's when I went back to the round
14 table or discussion with the OPS commander, Captain
15 Mike Saunders and the HRD manager, and shared with them
16 the information that I received from both Sweeney and
17 Santhuff indicating that, "Hey, look. This is just
18 what goes on out here." You know, we -- inappropriate
19 jokes, inappropriate comments.

20 And so what we decided, we looked at the -- the
21 manual, and Nobach didn't come forward and complain
22 about it, Brenda didn't complain, and Santhuff
23 indicated that he was not offended either. He just
24 felt that someone should look into it because it's --
25 it's a thing that's going on out there in the
Johnny Alexander/By Mr. Sheridan (Direct)

workplace. And so we deemed it not to be sexual harassment but inappropriate behavior in the workplace.

Q. All right. Now, so did you say that Trooper Santhuff told you that everybody was doing it?

A. Yes. He said that -- not -- not touching. We didn't go into details about, you know, what actually inappropriate behavior was. But he indicated that, you know, people are making comments. He -- he even indicated -- it was almost like him and Sweeney talked that -- that, "If you investigate him, you know, then you'll probably have to investigate me as well."

That was a direct quote from Sweeney and a direct quote you -- when you -- if you investigated, you may as well investigate me as well because it -- it goes on throughout the entire section.

And then Santhuff also indicated -- confirmed that, "Yes. This type of behavior goes on, and everyone participates in it." But he didn't say particularly or specifically that there were touching. If I remember correctly -- again, it's been four years ago -- over four years ago. He indicated something along the lines of inappropriate -- you know, people make comments, you know, and something along those lines.

Q. So -- so it's your testimony that this problem Johnny Alexander/By Mr. Sheridan (Direct)

1 permeated your organization; correct?

2 **A. Yes. That behavior was allowed to go on and occurred**
3 **out there in the Aviation Section.**

4 Q. So this wasn't just one incident of some kind of
5 inappropriate play between Nobach and Brenda Biscay.
6 This was -- this was an epidemic within the
7 organization; correct?

8 **A. That's not what I'm saying, sir.**

9 Q. Well, tell us. I understood that you gave this
10 counseling memo to each one of them, and the idea being
11 that that was the lowest form that would be appropriate
12 of discipline; right?

13 **A. It was -- it was the way they decided to deal with it,**
14 **with a counseling.**

15 Q. But -- but, in fact, what you're describing for us
16 today -- and you've claimed that -- that Trooper
17 Santhuff even told you this -- it was a problem of
18 absolutely inappropriate behavior among that entire
19 group of eleven people; correct?

20 **A. Not saying that all eleven people participated in this.**
21 **You know, whether it was verbal -- never came up about**
22 **the touching, but that there was verbal comments made.**
23 **So yes.**

24 Q. So -- so if this were true -- if this was just the boss
25 and his subordinate, you would treat that as not that
Johnny Alexander/By Mr. Sheridan (Direct)

big a deal; right?

A. Say that again, please.

Q. Yeah. If it was just Nobach and Ms. Biscay, then that would -- you would be able to just discipline them and solve the problem. But it was bigger; right?

A. Yes. It was -- it was inappropriate behavior that everyone was participating in, in that unit.

Q. So this is what I want to understand.

There's only eleven people in that unit; right?
Plus or minus; right?

A. Okay.

Q. There's only one woman in the group; right?

A. That's correct.

Q. But it's your testimony that everybody was engaged in what? Sexual banter?

A. That's not what I said, sir.

Q. Well, please tell us what it is -- tell us in detail what it is that everybody was engaged in, in that group of eleven people.

A. As I indicated a minute ago, I didn't get any details as far as what type of behavior they were engaged in. It -- what it was shared with me from what I can remember is inappropriate comments and joking around.

Q. Well, I mean, how do you know the problem wasn't much more serious than you thought? You didn't do an
Johnny Alexander/By Mr. Sheridan (Direct)

1 investigation; did you?

2 **A. It was -- what we decided that it was not sexual**
3 **harassment again.**

4 Q. Okay. And I understand that.

5 **A. Okay.**

6 Q. And let me just make sure I got this right.

7 It was your view that because Ms. Biscay was a
8 willing participant and because Lieutenant Nobach was a
9 willing participant and because you say Trooper
10 Santhuff felt like he was not offended, you concluded
11 it was not hostile work environment; correct?

12 **A. I concluded based on the information and communication,**
13 **collaborate with the OPS commander Mike Saunders and**
14 **the HRD manager.**

15 Q. Okay.

16 **A. And we concluded --**

17 Q. But I'm asking you a direct question.

18 MR. BIGGS: Your Honor, may we have the
19 answer complete, please, before counsel steps in.

20 MR. SHERIDAN: Oh, did I? I'm sorry. I
21 didn't mean to interrupt.

22 THE COURT: I'm sorry?

23 MR. BIGGS: Yes. Counsel is stepping on the
24 witness's answer, Your Honor.

25 THE COURT: Yes. Yeah. Let's wait until the
Johnny Alexander/By Mr. Sheridan (Direct)

witness --

MR. SHERIDAN: I'll wait a beat.

THE COURT: -- finishes --

MR. SHERIDAN: Yes, ma'am.

THE COURT: -- answering.

MR. SHERIDAN: All right.

BY MR. SHERIDAN:

Q. All right. So -- so there's -- there were three elements to your calculation that it was not sexual harassment; right?

A. Correct.

Q. The first being that Nobach was a willing participant; right?

A. Correct.

Q. The second being that Biscay was a willing participant; right?

A. Correct.

Q. The third being that you found that Trooper Santhuff was not offended; correct?

A. Correct. Along with the totality of everything else -- meaning that the -- the totality what I'm talking about is -- I take a look at all of those three items that were talked about there. Okay.

The other thing that I took into consideration --
or we took into consideration as the two commanders and
Johnny Alexander/By Mr. Sheridan (Direct)

1 a manager HRD is that the -- that type of inappropriate
2 behavior -- whether it be joking around or any --
3 anything else -- that's what was going on out there.

4 So -- and -- so that's -- so what we -- what I
5 decided to do, based on the conversation that we've
6 had, is that -- that I would handle it at the division
7 level.

8 Q. Okay.

9 A. Instead of going through an OPS investigation.

10 Q. So you did not -- why don't you tell the jury. What's
11 an IIR?

12 A. It's an internal -- internal incident report.

13 Q. And -- and isn't it true that, when possible
14 inappropriate behavior comes to light, someone's
15 supposed to do an IIR?

16 A. That's not true.

17 Q. Please explain.

18 A. Well, in this particular incident here, we didn't do an
19 IIR. And the reason being is because it wasn't
20 considered a policy violation. It was inappropriate
21 behavior in the workplace.

22 Q. Well, what -- what -- are you saying that if somebody
23 rubs their breasts on the back of a boss's head, that's
24 not a policy violation?

25 A. It could be construed as inappropriate conduct or -- or
Johnny Alexander/By Mr. Sheridan (Direct)

1 **conduct unbecoming.**

2 Q. And those are policy violations; correct?

3 **A. Yes.**

4 Q. Okay. Let's -- let's take a look at Exhibit 57,
5 please. And I'm going to see if you have -- let me
6 see. Check those books there, if you would, sir, and
7 take -- tell me if you can find 57. I might have it
8 here.

9 THE COURT: 57 you said?

10 MR. SHERIDAN: Yeah. I think it's probably
11 back here.

12 May I peek over your shoulder?

13 **THE WITNESS: Sure. 1 through 42. 113**
14 **(inaudible).**

15 BY MR. SHERIDAN:

16 Q. There it is, yep. Go to 57, if you will.

17 Okay. Okay. So Exhibit 57, you recognize that as
18 the 095 that you gave to Nobach?

19 **A. Yes, sir.**

20 MR. SHERIDAN: Plaintiff offers Exhibit 57.

21 MR. BIGGS: No objection, Your Honor.

22 THE COURT: Plaintiff's Exhibit 57 is
23 admitted.

24 (Exhibit 57 Admitted)

25 MR. SHERIDAN: All right.
 Johnny Alexander/By Mr. Sheridan (Direct)

1 BY MR. SHERIDAN:

2 Q. Now, you -- are you author of this, sir?

3 A. Yes, sir.

4 Q. All right.

5 Well, let's take a look at it.

6 MR. SHERIDAN: And may I publish?

7 THE COURT: You may.

8 BY MR. SHERIDAN:

9 Q. All right. And is this sort of a form that's set up
10 for filling these out?

11 A. Yes, sir.

12 Q. And so that heading came without your -- it's just
13 basically a form that you fill out as -- if you do a
14 positive or a negative one.

15 A. Yes, sir.

16 Q. All right.

17 And it says, "on March 29, 2016, I being" --
18 that's you; is it not?

19 A. Yes.

20 Q. "I was informed that you participated in behavior that
21 was not consistent with agency policies, rules, and
22 regulations."

23 So that was your conclusion; right?

24 A. Yes, sir.

25 Q. So -- so rubbing her breasts on her boss's head was a
Johnny Alexander/By Mr. Sheridan (Direct)

violation of policies, rules, and regulations; right?

A. Yes.

Q. Okay. And it says, "Although it's alleged that the third party was not offended" -- that's Trooper Santhuff back then; right?

A. That's correct.

Q. Okay. "The existence of an offended party is not a requirement to support a violation of inappropriate conduct in the workplace."

And that was your conclusion; right?

A. Yes, sir.

Q. And this is what you were telling the jury before. You did -- you concluded it was not sexual harassment because of the three elements we've discussed; right?

A. Yes, sir.

Q. But that didn't mean that it wasn't inappropriate conduct in the workplace; right?

A. That's correct.

Q. Okay. And then you write, "In addition, it is alleged that similar behavior by members of your staff has become an acceptable practice for an extended period of time."

And as you sit here today, is it your testimony that you don't recall what specific acts these are you're describing?

Johnny Alexander/By Mr. Sheridan (Direct)

1 **A. That's correct, sir.**

2 Q. Okay. So we now know that it is a violation of
3 policies, rules, and regulations; right?

4 **A. That's correct.**

5 Q. Why did you not do an IIR?

6 **A. Every policy -- every violation of a policy does not**
7 **require an IIR. And in this particular situation,**
8 **again, I felt that it was behavior -- if I did an IIR**
9 **on him, then should I do an IIR on everyone, and that**
10 **was one of the questions that I asked myself. Should I**
11 **start an OPS investigation on everyone in the unit?**

12 In my -- my -- and so I came to the conclusion
13 that the best way to handle this is to deal with the
14 lieutenant and to deal with Brenda Biscay directly for
15 their actions and also to get training in the -- in
16 that section and to stop that behavior immediately,
17 which I did.

18 Q. Well, you got training -- and we'll talk about it in a
19 minute because it's in the 095.

20 You got training in sexual harassment for the
21 group; right?

22 **A. I'm sorry.**

23 Q. Sexual harassment was the training that you got.

24 **A. Yes.**

25 Q. All right. So you're saying this was not sexual
 Johnny Alexander/By Mr. Sheridan (Direct)

harassment, but you chose to train in sexual harassment. Right?

A. Yes.

Q. Okay. And you said you didn't do an IIR. Did you do a case log?

A. No. It wasn't deemed to be an OPS investigation; therefore, a case log was not warranted.

Q. Let's take a look at Exhibit 260, if we can. It's already admitted. And let's take a look at the flowchart on chapter 1.

And I believe -- so 260's a whole book on its own, sir. Yeah. It's one of the fat books on there.

A. Okay, sir.

Q. So do you have 260?

A. Yes, sir.

Q. Turn, if you would, to 116.

MR. SHERIDAN: And for those with -- who are using Bates stamps for searching, it's 2669.

THE WITNESS: You want me to turn to --

BY MR. SHERIDAN:

Q. Yeah. So chapter 1 and page 16.

If you're using Bates stamps in the lower right-hand corner, it's 2669.

A. 2669.

Q. And it's a flowchart.

Johnny Alexander/By Mr. Sheridan (Direct)

1 **A. Okay.**

2 Q. All right. And great?

3 MR. SHERIDAN: You can put that up there.

4 BY MR. SHERIDAN:

5 Q. All right. And that's it. Okay.

6 So this flowchart tells us how to -- with
7 commissioned personnel, how to do administrative
8 investigations. You're familiar with this chart; are
9 you not?

10 **A. Yes. I remember the chart.**

11 Q. Okay. So it says that, "Upon receipt of information,"
12 it says, "The information is forwarded to a supervisor,
13 and the supervisor case log gets started." And that's
14 where the timeline begins, but you didn't do any of
15 that; right?

16 **A. And if you look further down there, it talks about**
17 **where an IIR's going to be generated. There was no IIR**
18 **that was going to be generated, sir.**

19 Q. Okay. Well, then I'm actually trying to see if you
20 followed the procedures or not. Okay?

21 **A. Had there been -- had there been -- if there was going**
22 **to be an IIR that was going to be generated, then a**
23 **case log would have been -- would have been developed**
24 **or created.**

25 Q. Actually, doesn't it say case log first, if we followed
 Johnny Alexander/By Mr. Sheridan (Direct)

1 that from the top?

2 **A. Sure.**

3 Q. So -- so you start out with a case log; right?

4 **A. Again, if I was going -- if it was going to be an IIR**
5 **investigation, then I would have -- then I would have**
6 **put together -- started a case log.**

7 Q. So what you're saying -- tell me if I got this right.

8 **A. Yes, sir.**

9 Q. If you're saying that you decided at the outset that
10 you weren't going to do anything other than what you
11 did, which is an 095. So you didn't need a case log.
12 You didn't need an IIR.

13 **A. No, sir. That's not true.**

14 Q. Well, then why would you not follow these procedures as
15 outlined in the flowchart?

16 **A. I didn't do a case log because it wasn't going to be an**
17 **OPS investigation. When I sat down and talked to the**
18 **two -- myself and the OPS commander and the HRD**
19 **manager, we determined that it wasn't going to be an**
20 **IIR investigation. It wasn't going to go to OPS.**
21 **Therefore, there was no need to start an IIR.**

22 Q. Let -- could I slow you down there?

23 **A. Sure.**

24 Q. Because the jury doesn't know what you're talking about
25 when you say OPS and IIR.

 Johnny Alexander/By Mr. Sheridan (Direct)

1 **A. I'm sorry --**

2 **Q. So -- so let's -- let's talk about that.**

3 So it wasn't just you that got to decide what
4 happened to Lieutenant Nobach. It was also with input
5 from the head of OPS.

6 And why don't you tell the jury what's OPS.

7 **A. The Office of Professional Standards. Some better know**
8 **it as the Internal Affairs section, and that's where**
9 **Captain Mike Saunders was the division commander over**
10 **that unit at the time.**

11 **Q. So you and Captain Saunders got together before any of**
12 **the procedures were put into place, and you said, "This**
13 **is not going to be an IIR case; therefore, we're not**
14 **going to do any of the things that the policy and**
15 **procedure tells you to do in terms of investigating**
16 **improper behavior." Right?**

17 **A. Okay. I'll go back again.**

18 Based on the totality of all the information
19 they'd -- talking to Sweeney -- Sergeant Sweeney and
20 Santhuff -- so receiving all that information, we
21 deemed that it was not an -- it was not an OPS
22 investigation. It wasn't warranted for an OPS
23 investigation.

24 **Q. So it's true that when it is an OPS investigation, they**
25 **actually go through a fairly formal process of**
 Johnny Alexander/By Mr. Sheridan (Direct)

1 interviewing every witness; correct?

2 **A. Yes.**

3 Q. They usually record the conversations; correct?

4 **A. That's an Internal Affairs investigation, yes.**

5 Q. And they also usually have two people present during
6 the questioning; right?

7 **A. That is correct.**

8 Q. So instead of going through that process -- oh, by the
9 way, the person who typically does the investigation is
10 not you; correct? When it's OPS?

11 **A. If it's going to be an OPS investigation, no. The**
12 **Office of Professional Standards and their detectives**
13 **do the investigation.**

14 Q. Okay. So -- so by talking to Captain Saunders, you and
15 he concluded that there was no need to go and interview
16 witnesses to find out the depth of the problem;
17 correct?

18 **A. The witness was Trooper Santhuff --**

19 (Indiscernible crosstalk.)

20 **A. -- which was spoken to.**

21 I guess the best -- I'm trying to figure out
22 the -- a good way to explain this to you.

23 Just -- if -- not every complaint that comes
24 forward will automatically generate an Internal Affairs
25 investigation or an OPS -- Office of Professional
Johnny Alexander/By Mr. Sheridan (Direct)

Standards investigation. We have to -- we -- we will communicate with the witness to see if, in fact, we have a potential policy violation. And then we determine how that's going to be handled.

When I spoke to Santhuff, the information that he provided to me, as well as the information that Sergeant Sweeney provided to me, it was not sexual harassment. It was not going to be an OPS investigation.

Q. But isn't it true that the purpose of the case log is so you -- you are basically recording the facts that you uncover in doing whatever work you do?

A. That's what a case log can do, yes.

Q. So what you did is you did not make any record of the statements you say that Detective Santhuff said when he was a trooper. You didn't write down any of that; right? In a case log?

A. It was not applied in a case log, no, sir. But it was communicated to Captain Mike Saunders of the Office of Professional Standards and the Human Resource Division manager.

Q. And so there's only eleven people in the unit. You -- it's your testimony that you only talked to two over coffee and two more who at the time you gave them their 095; right?

Johnny Alexander/By Mr. Sheridan (Direct)

1 **A. Well, the only one that was in the room -- the other**
2 **ten people were not in the room. Or the other**
3 **individuals -- the only person that was in the room at**
4 **the time was Santhuff. There was no need to talk to**
5 **any other individuals.**

6 Q. But by your own authorship, you believed the problem
7 was throughout the entire organization; correct?

8 **A. The problem of inappropriate behavior, not sexual**
9 **harassment.**

10 Q. Well, the only difference between that incident having
11 been sexual harassment in your mind was that Trooper
12 Santhuff didn't say, "I was offended." Otherwise, it
13 would have been; right?

14 **A. If Trooper Santhuff would have said that he was**
15 **offended, yes, it would have -- we -- immediately an**
16 **Internal Affairs investigation.**

17 Q. Right. So -- so what you did -- you did not record him
18 saying that; correct?

19 **A. I didn't write it down. No, sir.**

20 Q. All right. And you also didn't explore what problems
21 might exist among other people -- like the mechanics,
22 for example. You just didn't look into that; right?

23 **A. Trooper Santhuff didn't say that they were involved in**
24 **sexual harassment or alleged that they were involved in**
25 **sexual harassment.**

 Johnny Alexander/By Mr. Sheridan (Direct)

1 Q. Can you give us one story that you can record where
2 somebody -- somebody said something that caused you to
3 write down that the problem is bigger than just these
4 two individuals? Any example.

5 **A. I'm not following.**

6 Q. Sure. Well, you basically -- let me just pull up what
7 you wrote.

8 You wrote, "It is alleged that similar behavior by
9 members of your staff" -- "your staff," this is
10 Nobach's staff -- "Has become an acceptable practice
11 for an extended period of time."

12 You don't tell us how many of "your staff," but
13 "your staff" means everybody that works for him; right?

14 **A. That's not everyone, but people that work for him, yes,**
15 **sir.**

16 Q. Okay. "Your staff," you write," has become an
17 acceptable practice."

18 "Similar behavior" -- right -- "Has become an
19 accepted practice." That's what you're writing down.

20 **A. Yes, sir.**

21 Q. All right. And so this -- this similar behavior is
22 this close to sexual harassment; isn't it?

23 Had he said, "I was offended," it would have been
24 a sexual harassment; right?

25 **A. Had Trooper Santhuff indicated or said that he was**
Johnny Alexander/By Mr. Sheridan (Direct)

1 offended, it would have been an Internal Affairs
2 investigation. That's one of the prongs.

3 Q. Right. And isn't it true that an investigation like
4 that would basically throw that unit into disarray?

5 A. I wouldn't say that it would -- it would throw the
6 whole unit in disarray.

7 Q. Well, there's eleven people. That's all that are in
8 the unit; right? Eleven people.

9 A. Okay. Let me back up.

10 If you wouldn't mind asking that question again
11 because I'm not sure what you're -- what you're saying.

12 Q. Well, I mean, it seems like if you -- if -- if -- if --
13 but for the words that you say were said -- but for the
14 words that "I was not offended," it would be eleven
15 people involved in sexual harassment; right? That
16 you'd be investigating.

17 A. Not necessarily.

18 Q. Because it might be ten. Because you didn't
19 investigate, you don't know; right? You don't know how
20 many people were engaged in the behavior.

21 A. That's correct.

22 Q. All right. So -- so had -- let's say that had happened
23 and -- my goodness -- he was offended, "We're going to
24 have to do a full-blown investigation," what would
25 happen to keeping the planes in the air? What would
 Johnny Alexander/By Mr. Sheridan (Direct)

1 happen to the mechanic, the pilots? What would happen
2 in that case?

3 **A. We conduct investigations all the time through the**
4 **Office of Professional Standards. Just because we**
5 **start an investigation of a detachment or a unit**
6 **doesn't mean that we stop operation. We still move on.**
7 **We have certain expectations that -- that we -- we**
8 **apply to make sure that operations continue.**

9 So, no, it would not have spun the aviation out of
10 control. We would not have been able to fly airplanes.

11 **Q.** What if -- what if ten of them had engaged in serious
12 misconduct? It would be.

13 **A. That's not true, sir.**

14 **Q.** Well, who was going to be the mechanic if the mechanics
15 were suspended?

16 **A. Just because we start an Internal Affairs investigation**
17 **doesn't mean that we send everyone home.**

18 **Q.** No. But at some point, they have to be ready to take
19 whatever discipline they're going to get; right?

20 **A. If there's going to be discipline imposed, then, yes,**
21 **they have to take their discipline. But it doesn't --**
22 **an information does not shut down an entire operation.**
23 **That's not the way that it works.**

24 **Q.** So would you agree with me that you did not follow the
25 procedure outlined in Exhibit 260 for investigating
 Johnny Alexander/By Mr. Sheridan (Direct)

misconduct?

A. If you're asking me did I -- by me not doing a case log -- is that what you're asking?

Q. Well, no. I -- no. The procedure's more than just the case log; isn't it, sir?

You -- let's go through the procedure.

A. Okay.

Q. Let's --

A. Thank you.

Q. -- look at it, the flowchart.

You have that open?

A. Okay. Yes.

Q. So the information's received. In this case, it was information about what?

A. About alleged sexual harassment.

Q. All right. And so what you were supposed to do, if you were following the procedure, is you were supposed to start a case log right away; right?

A. I didn't start a case log right away.

Q. No, but you were supposed to; correct?

A. I guess. I'm going to go ahead and say that, if following this chart right here, there's a case log that was supposed to have been started. I did not do a case log. And the reason being is because it was not going to be an OPS investigation.

Johnny Alexander/By Mr. Sheridan (Direct)

1 Q. Got it. Let's look at the next block down.

2 It says, "Supervisor determines if complaint
3 potentially violates WSP policy." And you determined
4 it did; correct?

5 **A. Supervisor determines if the employee potentially**
6 **violates -- I determined that it didn't violate -- it**
7 **didn't -- it wasn't sexual harassment.**

8 Q. Well, what did you determine it was?

9 **A. It could have been another policy violation.**

10 Q. Well, let's look in your -- in the letter you wrote --
11 or in the 095. You said, "It was -- it was a violation
12 of agency policies, rules, and regulations."

13 **A. Uh-huh.**

14 Q. "And although it didn't -- although the alleged third
15 party was not offended, the existence of the -- of the
16 offended party is not required to make it a violation
17 of an inappropriate conduct in the workplace."

18 That's what it was; right?

19 **A. Yes, inappropriate workplace behavior.**

20 Q. Now let's go back -- now let's go back to the
21 flowchart. And it gives you two choices; right?

22 One is you generate an IIR; right?

23 And why don't you tell the jury what's an IIR.

24 What -- what -- who does it go to?

25 **A. The IIR goes to -- if we get a policy violation that**
Johnny Alexander/By Mr. Sheridan (Direct)

1 we're going to investigate through the Office of
2 Professional Standards -- again, just because it's a
3 violation of a policy does not necessarily mean that
4 it's going to automatically go to the Office of
5 Professional Standards.

6 There are some violations of policy that we handle
7 at a lower level outside of Office of Professional
8 Standards.

9 If it's a policy violation that we're going to
10 send to the Office of Professional Standards, then what
11 we do is we complete this form that you keep hearing
12 about called the IIR or the internal incident report.

13 That report is created and authored by -- in
14 collaboration with the Office of Professional
15 Standards.

16 And as me being -- in this particular case here --
17 the appointing authority, if I agreed that there was a
18 policy violation, then this IIR would be completed.
19 And then it would go to the Office of Professional
20 Standards. And there, an investigation will occur,
21 whether it be a full-blown investigation or what's
22 called a preliminary investigation.

23 Q. Okay. So isn't it true that the IIR is actually
24 directed at the person who alleged did the wrongdoing?

25 A. Yes, sir.

Johnny Alexander/By Mr. Sheridan (Direct)

1 Q. So basically it was -- it's a document that was
2 designed to give Lieutenant Nobach and Ms. Biscay
3 notice of the specific allegations against them; right?

4 A. Again, it was not deemed to be an investigation by the
5 Office of Professional Standards. Therefore, we didn't
6 have to -- we didn't create and I didn't authorize an
7 Internal Affairs investigation or an IIR.

8 I handled it at the division level. Again, every
9 violation of policy does not automatically generate an
10 OPS investigation.

11 Q. But show me in the policy where it says that. Where
12 does it say that you can have a fact pattern like this
13 and not investigate.

14 A. It -- I don't know where it says that.

15 Q. Okay. This is a policy that -- this policy is the
16 policy of your organization to be followed in doing
17 investigations; right?

18 A. Say that again, please.

19 Q. This policy -- Exhibit 260 --

20 A. Yes.

21 Q. -- includes a policy for doing investigations; correct?

22 A. Yes.

23 Q. And -- and you're admitting that you did not follow
24 this policy; correct?

25 MR. BIGGS: Objection to the form of the
Johnny Alexander/By Mr. Sheridan (Direct)

1 question, Your Honor. That's misstating the testimony,
2 which he's now said several times.

3 THE COURT: Sustained.

4 And, Mr. Sheridan, I -- I am going to keep my
5 promise to the jury and they will be out of here at
6 4:00 so I don't want to interrupt your questioning, but
7 I don't know if you want to --

8 MR. SHERIDAN: This is a fine place to break.

9 THE COURT: Okay. All right.

10 All right. Members of the jury, we will finish
11 for today. And, again, please do not do any research,
12 talk with each other, or with anybody about what you
13 have heard.

14 I just wanted to also give you a little bit update
15 on scheduling. Again, I believe I already told you.
16 We start at 9:00 and go until 12:00, have a 15-minute
17 morning recess, and then in the afternoon, we go from
18 1:30 until 4:00.

19 But on the 10th, which is Thursday, we will not be
20 in session in the morning so we will start in the
21 afternoon at 1:30. All right?

22 I just wanted to tell you that in case others --
23 there's anything that, with enough notice, that if
24 there's anything that you can use that morning for, you
25 can certainly do that.

1 All right.

2 COURT STAFF: All rise.

3 THE COURT: Have a good evening, and we'll
4 see you tomorrow.

5 COURT STAFF: You guys can leave your
6 notebooks on your chairs.

7 THE COURT: Thank you.

8 And I hope this doesn't affect your scheduling of
9 witnesses, but I did not want to create stress for
10 Juror No. 12 that she needs to get downtown to her
11 dentist appointment. So with taking the bus and
12 everything, it just made sense to not have session in
13 the morning.

14 MR. SHERIDAN: Okay. 1:30.

15 THE COURT: So tomorrow, do we know what
16 witnesses will be testifying?

17 MR. SHERIDAN: So we'll finish with this
18 witness, and then it's chief -- or Captain Saunders.
19 And then it's -- it's Detective Santhuff.

20 THE COURT: All right. And, again, if you
21 could please just send me the anticipated exhibits,
22 both of you.

23 MR. SHERIDAN: Exhibits, yes. Will do.

24 THE COURT: Thank you. We'll be in recess.

25 (Hearing concluded.)

C E R T I F I C A T E

I, JAMIE L. BOOKER, Certified Court Reporter
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