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*September 09, 2020*

**RYAN SANTHUFF v. STATE OF WASHINGTON**

19-2-04610-4 KNT

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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, )

vs. )

No. 19-2-04610-4 KNT

State of Washington and David )

James Nobach, an individual, )

Defendants. )

Trial  
Report of Proceedings

Appearances:

John P. Sheridan, Attorney at Law, appeared on behalf of the Plaintiff.

Andrew T. Biggs and Scott Marlow, Attorneys at Law, appeared on behalf of the Defendants.

BE IT REMEMBERED that on September 9, 2020, the above-captioned cause came on for hearing before the Honorable Mafé Rajul, Judge of the Superior Court in and for the County of King, State of Washington; the following proceedings were had, to-wit:

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Wednesday, September 9, 2020

Morning Session

\* \* \*

THE CLERK: King County Superior Court is now in session with the Honorable Mafé Rajul presiding.

THE COURT: Good morning. Please be seated. Are we ready to bring in the jury?

MR. BIGGS: One quick issue, Your Honor. Assistant Chief Alexander notified me this morning that he's not feeling 100 percent: Smoke related, not COVID related. He checked his temperature downstairs. He's good, but if you have any questions or want to ask him anything, please do. And he said he may -- he's nauseous, and he may have to, you know, raise his hand and take a quick break.

THE COURT: That's fine. Just let us know. Are you okay continuing today?

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

THE COURT: Okay.

MR. ALEXANDER: Yes.

THE COURT: Okay. And one thing that I forgot to tell the jurors yesterday, so I will tell them, I have a note here, is that if any of them are exposed to people with COVID, to let us know right away because we do have protocols in place as to what to do

1 when somebody has been exposed. So I just need to tell  
2 them, remind --

3 MR. SHERIDAN: I'm glad you reminded me. We  
4 got a contact, I think it was late last week, one of  
5 our witnesses, Merrill, who said he's been in contact  
6 with somebody with the bug, so he's quarantined, so we  
7 want to Zoom him, I would say next Monday or Tuesday,  
8 something like that, if that's okay with you.

9 THE COURT: That's fine.

10 MR. SHERIDAN: Okay.

11 THE COURT: And you know, there are King  
12 County testing areas that have the result within 36  
13 hours. I got one done last week.

14 MR. SHERIDAN: Oh?

15 THE COURT: And I got it within 36 hours.

16 MR. SHERIDAN: Are they considered accurate,  
17 those ones? Who knows. I know. I know. Okay.

18 THE COURT: I don't know.

19 MR. BIGGS: One last thing, Your Honor. I  
20 know we have a Zoom feed going. Is there any caution  
21 going out to anybody about recording or screenshots or  
22 that sort of thing? Are there any restrictions on  
23 that?

24 THE COURT: They are not -- people are not to  
25 record, and I think that that has been disabled. I

1 mean, I can't control what they do in their house.

2 MR. SHERIDAN: I think that's right. I think  
3 it --

4 MR. BIGGS: Right.

5 THE COURT: I mean, we do have that disabled  
6 so they cannot just record from Zoom and the other --  
7 and they can do screenshots. And then the other thing  
8 is, what I told you before, to let your witnesses know  
9 that if they are watching -- that counsel has  
10 permission to ask them if they have watched or  
11 listened, and they would be held in contempt.

12 MR. BIGGS: Right. I guess my concern is  
13 that we don't see a photograph on The News Tribune  
14 that's a screenshot from the trial testimony.

15 THE COURT: Right.

16 MR. BIGGS: That sort of thing. So I assume  
17 that -- that the attorneys know this, and if we know of  
18 anybody that is tuning in, we should be advising them  
19 of these restrictions.

20 MR. SHERIDAN: Right.

21 THE COURT: Yes. And I don't know, has  
22 anyone joined in to view Zoom?

23 THE CLERK: So far, I mean, it's just been  
24 staff from Sheridan's -- Mr. Sheridan's -- (inaudible).

25 MR. BIGGS: Okay. Not a major concern. I

1 just want to know what the parameters were.

2 THE COURT: Yeah. They're not allowed to  
3 record or anything.

4 MR. BIGGS: Thank you.

5 THE COURT: I know that there's a way that we  
6 can prevent that, but if they have their phone  
7 recording --

8 MR. BIGGS: Right. I'm pretty sure I could  
9 record it if I wanted to. I don't think it's that hard  
10 to do.

11 MR. SHERIDAN: Right. And thank you. I  
12 understand that -- that Detective Santhuff's mom may be  
13 listening in.

14 THE CLERK: She is not in the waiting room.

15 MR. MARLOW: But it's okay if she does.

16 THE COURT: Well, yeah. The courtroom is  
17 open. I mean, the only reason why I did that is  
18 because you indicated that there were people that maybe  
19 wanted to watch and see, and I do believe in open  
20 courts, and so I want to make sure to keep it as open  
21 as possible, considering what's going on, but I'm  
22 trying to figure out if maybe there's a way to have,  
23 like some -- something on Zoom that says do not record,  
24 do not -- but I don't know if we can see if there's a  
25 way to do that.

1 THE CLERK: (Inaudible) do not record. I  
2 mean --

3 THE COURT: Maybe. Oh, yeah. That's a good  
4 point.

5 THE CLERK: I'm sure that you could type  
6 whatever you wanted within reason. I mean,  
7 character --

8 THE COURT: Maybe I will just at the  
9 beginning. If you would let me know when somebody else  
10 comes into Zoom, I will just give the warning every  
11 time somebody comes in.

12 THE CLERK: Okay. Okay.

13 THE COURT: I'm not connected so I don't know  
14 who is logging in, but you are.

15 THE CLERK: Right.

16 THE COURT: So you can just let me know.  
17 Send me an IM, and I will say something.

18 THE CLERK: And right now we just have me,  
19 the witness and Mark Rose and Tony (inaudible).

20 THE COURT: All right.

21 THE CLERK: All right. I'll get the jury?

22 THE COURT: Yes.

23 MR. SHERIDAN: I also wanted to bring to your  
24 attention, Your Honor, that we'll be using depositions  
25 today, and we would ask that you read our proposed jury



1 Instruction No. 22 to -- it's that one, the WPI that  
2 says you're about to hear deposition testimony.

3 And then also under CR 32, which says that a  
4 deposition of a party can be used for any purpose, we  
5 intend to use excerpts from Lieutenant Nobach's  
6 deposition in some of the examination of this witness,  
7 with the Court's permission.

8 THE COURT: Lieutenant Nobach's examination?

9 MR. SHERIDAN: Deposition.

10 THE COURT: -- of Captain Alexander.

11 MR. SHERIDAN: During the cross of Alexander,  
12 right.

13 THE COURT: Okay. Hold on. So what -- what  
14 instruction -- what deposition are you planning on --  
15 so is that the only thing, the excerpts from the  
16 deposition from Nobach's --

17 MR. SHERIDAN: From Nobach -- right. And  
18 then we have -- we're probably going to play some  
19 deposition testimony of the witness himself, again  
20 under CR 32. And so what we did is we gave the Court,  
21 in advance, the things that we thought we might use  
22 even though these witnesses -- the book we gave you  
23 wasn't in lieu of their testimony, it was just under  
24 CR 32.

25 THE COURT: Right. Which instruction did you

1 tell me it was? Did you say 21?

2 MR. SHERIDAN: I'm sorry?

3 THE COURT: Which jury instruction did you  
4 say?

5 MR. SHERIDAN: It's Instruction 22, Your  
6 Honor.

7 THE COURT: Oh, 22. Um... Yes. All right.

8 MR. SHERIDAN: Okay.

9 THE COURT: Mr. Biggs?

10 MR. BIGGS: Yes, Your Honor. Mr. Sheridan  
11 totally glossed over, there are objections that the  
12 Court hasn't ruled on on these deposition transcripts.  
13 He provided a list of excerpts. We provided a counter  
14 list that is contemplated by the rule. He raised some  
15 objections, and those have not been ruled on.

16 MR. SHERIDAN: Right.

17 THE COURT: So he can't show it without  
18 having those ruled on.

19 When were you planning on doing that?

20 MR. SHERIDAN: It would be sometime in the  
21 morning, probably in the next hour, but we would just  
22 kind of -- I was just going to have Greg play their --  
23 they don't object to ours. They just wanted to say  
24 more, so I was going to have Greg play --

25 THE COURT: Mary, can you please bring me

1 the -- the binder that has the depositions?

2 MR. BIGGS: Play them all.

3 MR. SHERIDAN: Well, no. No. No. I mean,  
4 like -- so the book is yellow, I think, and blue. So  
5 if I give -- if I have him play something that has  
6 yellow; you have blue. I was just going to have Greg  
7 play the blue rather than deal with the objection.

8 THE COURT: I don't think --

9 MR. BIGGS: I'm not sure I follow you.

10 MR. SHERIDAN: What I mean is, for expediency  
11 sake, I wasn't going to fight you on the stuff you  
12 added.

13 MR. BIGGS: Right. So you play both: What  
14 you suggested and what I countered with.

15 MR. SHERIDAN: Yes. Yes.

16 MR. BIGGS: Okay. That's fine.

17 MR. SHERIDAN: That's all. Just to make it  
18 easy. And the way I do it is I say, so we're going to  
19 get -- we're going to offer the dep, and I'm going to  
20 turn everybody to that page, and so everybody gets to  
21 put their eyes on it before I start the process, right.  
22 So if anything else comes up funky, there's time to  
23 object, and -- but I think it's going to be pretty  
24 straightforward. There's no objections from your side.

25 THE COURT: Okay. So let me look at -- okay.

1 So I see what you mean by the yellow and the blue.

2 MR. SHERIDAN: Yeah.

3 THE COURT: So are there any issues,  
4 Mr. Biggs?

5 MR. BIGGS: Well, sounds like -- I just want  
6 to double check. It sounds like there aren't.

7 MR. SHERIDAN: Yeah.

8 MR. BIGGS: So if you were going to play --  
9 let me just give you an example.

10 MR. SHERIDAN: Yeah.

11 MR. BIGGS: Pages 73-15 to 75-2.

12 MR. SHERIDAN: Okay.

13 MR. BIGGS: That's what I countered as a  
14 counter designation.

15 MR. SHERIDAN: Okay.

16 MR. BIGGS: If you're going to play those  
17 sections uninterrupted -- in other words, you can't say  
18 this is the defense stuff; this is my stuff. You play  
19 it. All the -- everything that we have as counter  
20 designations is played.

21 MR. SHERIDAN: That's right.

22 MR. BIGGS: Front to back with the rest.

23 MR. SHERIDAN: That's right.

24 MR. BIGGS: Then I have no objection.

25 THE COURT: Okay.

1 MR. SHERIDAN: That's right.

2 THE COURT: All right. Anything else?

3 MR. BIGGS: Thank you for bringing that up,  
4 Jack.

5 THE COURT: Anything else?

6 MR. SHERIDAN: That's it. And --

7 THE COURT: And...

8 MR. SHERIDAN: Okay. That's it.

9 THE COURT: Are you sure?

10 MR. SHERIDAN: Yeah. And -- and there is --  
11 oh, this is not a -- this is an audio courtroom, right?

12 THE COURT: Yes. We don't have a court  
13 reporter.

14 MR. SHERIDAN: So that means the video -- is  
15 there a court reporter?

16 THE COURT: No.

17 MR. SHERIDAN: No. So that means that the  
18 video, the sound of the video will go on the tape for  
19 appellate purposes? Yeah. Okay. Phew. Good.

20 And, Greg, should we do a sound check, or are we  
21 okay?

22 MR. GLOVER: No, I did one this morning.

23 THE COURT: Anything else?

24 MR. SHERIDAN: Nothing. Thanks, Judge.  
25 Thanks for your patience.

1 THE COURT: Anything from Defense?

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

3 THE COURT: All right. Bring in the jury.

4 THE CLERK: I'm just admitting Suzanne  
5 Sherman, which is Plaintiff's mother, into Zoom.

6 THE COURT: All right.

7 THE CLERK: (Inaudible).

8 THE COURT: No. You can admit her.

9 THE CLERK: I'll get the jury.

10 THE COURT: Good morning, everybody who is  
11 joining us via Zoom. I cannot see you, but I know that  
12 there are some that are connected via Zoom. I just  
13 want to make sure that you know you are prohibited from  
14 recording this proceeding. We can only have one  
15 official proceeding which is being kept by our clerk.  
16 You cannot take screenshots of the witnesses or  
17 anything that is happening in the courtroom. Any kind  
18 of recording via photo or audio recording would be a  
19 violation of my court order, and there could be  
20 sanctions for that, including being held in contempt.

21 (Jury present.)

22 THE COURT: Good morning. Please be seated.  
23 Welcome back, members of the jury, to Day No. 2.

24 One thing that I forgot to tell you yesterday is  
25 that if at any time you learn that you have been

1 exposed or had come in contact with anybody that has  
2 COVID, please let Mary know right away because we do  
3 have a protocol set in the courthouse, and, of course,  
4 we just want to make sure that everybody stays healthy  
5 and safe, so please do let us know or let Mary know.  
6 Thank you.

7 Mr. Sheridan, are you ready to continue with your  
8 examination of Captain Alexander?

9 MR. SHERIDAN: Yes. Thank you.

10 THE COURT: Captain Alexander, if you could  
11 please take the witness stand. And you are still under  
12 oath.

13 Johnny Alexander, having been previously  
14 sworn by the Court, testified as  
15 follows:

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

17 DIRECT EXAMINATION

18 BY MR. SHERIDAN:

19 Q Okay. Good morning.

20 **A Good morning.**

21 Q Captain Alexander, just to sort of summarize quickly  
22 what happened yesterday, you testified that neither  
23 Nobach nor Biscay either denied or admitted the breast  
24 rubbing incident, correct?

25 **A That's correct.**

1 Q You also treated that, in your mind, as a denial --  
2 was -- by not denying it, was also an admission.

3 A Yes, sir.

4 Q And you said that Sweeney implicated himself in  
5 engaging in similar behavior --

6 MR. BIGGS: Your Honor, I hate to object at  
7 this point, but this is all asked and answered.

8 THE COURT: Just ask questions. The jury is  
9 expected to remember what happened yesterday, so --

10 MR. SHERIDAN: Sure. Sure. That's fine.

11 THE COURT: -- I'll sustain the objection.

12 MR. SHERIDAN: That's fine. Okay.

13 Certainly, Judge.

14 Q (By Mr. Sheridan) All right. So, yesterday, you  
15 implicated both Sweeney and Santhuff in engaging in  
16 improper behavior; is that right?

17 A Yes, sir.

18 Q And it's true, is it not, that those are the only two  
19 people who came forward to report Nobach's and Biscay's  
20 breast rubbing incident?

21 A Yes, sir.

22 Q So -- and you have no documents to support these  
23 allegations that they told you that, correct?

24 A The only document that I have is the 095s.

25 Q The 095 that you gave to Nobach and to Biscay?



1     **A     That's correct.**

2     Q     And let's -- can you tell us why, if they engaged in  
3           misconduct, you did not document it as required by  
4           procedure?

5     **A     Say that again, please.**

6     Q     Yes. Can you tell us why, if both Ryan Santhuff and  
7           his sergeant, Sweeney, engaged in misconduct, you did  
8           not document it as required by procedure?

9     **A     It's not required by procedure that I document that.**

10    Q     Well, if they were engaging in similar behavior --  
11           maybe we should put Exhibit 57 up so we can make  
12           reference to it. And, sir, let me get you 57.

13                 MR. SHERIDAN: So, Greg, it's the last  
14           sentence of that first paragraph, if you'll pull that a  
15           little higher. Yeah. Okay.

16    Q     (By Mr. Sheridan) So that -- so you wrote, "It's  
17           alleged that similar behavior by members of your staff  
18           has become an acceptable practice for an extended  
19           period of time." And did you mean to refer to Ryan  
20           Santhuff in that sentence?

21    **A     To include -- yes, sir.**

22    Q     So you were not just saying that -- you're telling us  
23           today that you were not just saying that Ryan Santhuff  
24           confessed to this wrongdoing, but you're saying that he  
25           also confessed to doing it for some extended period of

1 time, correct?

2 **A Repeat that, please.**

3 Q Sure. You're telling us not only did he confess to  
4 you -- this was apparently when you were having coffee,  
5 right?

6 **A Yes, sir.**

7 Q When you're having coffee, not only did he confess to  
8 you that he engaged in similar improper behavior, but  
9 he did it for a period -- extended period of time,  
10 right?

11 **A Yes.**

12 Q Okay. All right. And... All right.

13 So, um, why did you say "similar behavior by  
14 co-workers" in the last sentence?

15 **A Because that's what I was told, that there was**  
16 **inappropriate behavior that was going on in the unit**  
17 **that was similar to joking around, being loosey-goosey.**  
18 **That was inappropriate.**

19 Q Now, would you agree with me that if Santhuff believed  
20 that he had actually engaged in similar behavior, it  
21 would make little sense for him to turn in Lieutenant  
22 Nobach in March of 2016 and then confess to you?

23 **A What's your question?**

24 Q Yeah. Would you agree that it doesn't make a lot of  
25 sense that if he was one of the people participating in

1 the misconduct, he would come to you and tell you  
2 there's a problem?

3 **A You know, I thought that same thing.**

4 **Q** Uh-huh. And what did you do about it?

5 **A What do you mean, what did I do about it?**

6 **Q** Well, if you thought it didn't make any sense, then why  
7 didn't you do an investigation as required by policy?

8 **A Well, when Santhuff came to me and he indicated that he**  
9 **was also part of the group, this work group that was**  
10 **performing -- that was engaged in this improper**  
11 **behavior, I thought that, okay, well, made -- I don't**  
12 **know why. I can't tell you what he's thinking, but I**  
13 **kind of thought it was -- well, he just wanted to bring**  
14 **it forward.**

15 **Q** Mm-hm. Okay. So -- so he -- he is -- he is -- did he  
16 express to you his concern -- this is during the coffee  
17 meeting, right?

18 **A Yes, sir.**

19 **Q** So there's a violation of procedure since two people  
20 aren't there, right? Two people aren't there to do the  
21 interview, right?

22 **A Um, the -- there was no need to have anyone else there.**  
23 **This was a conversation between me and my -- my -- one**  
24 **of my staff members.**

25 **Q** Well, he's not your staff member, right? He's simply

1 in your chain of command down many levels.

2 **A Well, he's still part of my staff.**

3 Q Okay. But -- but let's say that actually happened.

4 Would you agree with me that once he told you that

5 there was a larger number of people, that meant that

6 somebody in that group of 11 might have been offended

7 by that improper behavior?

8 **A What's your question?**

9 Q My question is, did you connect the dots? You said

10 that, well, I determined, in talking to Santhuff, that

11 he was not offended, right?

12 **A That's correct.**

13 Q And because he was not offended, that was not

14 third-party sexual harassment, right?

15 **A Correct.**

16 Q And because -- but when he told you that there were

17 other people involved, if any one of them was offended,

18 that would be third-party sexual harassment, correct?

19 **A If someone came -- if someone came and, yes, say that**  
20 **they were offended, yes, then that would be a problem.**

21 Q But you didn't write any of this down, correct?

22 **A There was no need to write it down.**

23 Q Let me ask you this: You were deposed by me, correct?

24 **A Yes, sir.**

25 Q And I asked you under -- you were under oath, correct?

1     **A     Yes, sir. Yes, sir.**

2     Q     And I asked you questions about what he said to you,  
3             correct?

4     **A     Yes.**

5     Q     And you never told me that he confessed to you that he  
6             engaged in improper actions himself -- this is  
7             Santhuff -- right?

8     **A     I don't remember not telling you that.**

9     Q     Okay. Well, we would like to publish your deposition.  
10            And --

11                   MR. SHERIDAN: Is this it? We would move to  
12            publish the deposition, and we have a copy for the  
13            judge.

14                   THE COURT: All right.

15                   MR. SHERIDAN: We'll be playing, for record  
16            purposes, Pages 13-1 to 20.

17                   MR. BIGGS: Excuse me, Your Honor. We just  
18            had an agreement that our portion would be played as  
19            well.

20                   MR. SHERIDAN: (Inaudible.)

21                   MR. BIGGS: No, but it's -- they're,  
22            they're -- our counter designations.

23                   THE COURT: Is this Captain Alexander's?

24                   MR. SHERIDAN: Look at 13 --

25                   MR. BIGGS: There's no counter designation.

1 MR. SHERIDAN: There's no counter. Look at  
2 13.

3 MR. BIGGS: I see, yes.  
4 That's fine, Your Honor.

5 MR. SHERIDAN: Okay.

6 THE COURT: All right. Let me give the --  
7 members of the jury, you will be given testimony from a  
8 deposition. A deposition is testimony of a witness  
9 taken under oath outside of the courtroom. The oath is  
10 administered by an authorized person who records the  
11 testimony word for word. Depositions are taken in the  
12 presence of lawyers for all parties. The deposition  
13 will be read out loud to you or presented by video. It  
14 will be -- do you have the video or is it just a  
15 recording?

16 MR. SHERIDAN: We have the video.

17 THE COURT: Okay. So it will be by video.  
18 Insofar as possible, you must consider this form of  
19 testimony in the same way that you consider the  
20 testimony of witnesses who are present in the  
21 courtroom. You must decide how believable the  
22 testimony is and what value to give to it.

23 **A copy of the deposition will not be admitted into**  
24 **evidence and will not go to the jury room with you.**

25 MR. SHERIDAN: All right. You can go ahead

1 and --

2 (Audio recording played and transcribed  
3 as follows:)

4 **THE WITNESS: I did talk to Trooper Santhuff.**

5 Q (By Mr. Sheridan) You did, and what did he tell you?

6 **A Lieutenant -- or Trooper Santhuff told me that Brenda**  
7 **rubbed her breast against the head of Lieutenant**  
8 **Nobach.**

9 Q Okay. And when did that meeting occur?

10 **A That meeting occurred after I spoke to Sweeney --**  
11 **Sergeant Sweeney, and it occurred at a coffee shop in**  
12 **Tumwater Boulevard because I wanted to hear it directly**  
13 **from -- from Trooper Santhuff.**

14 Q All right. And -- and it was your -- did you have an  
15 understanding as to whether or not this may involve  
16 discrimination, this incident?

17 UNIDENTIFIED SPEAKER: Objection, form of the  
18 question.

19 **THE WITNESS: Discrimination, no.**

20 Q (By Mr. Sheridan) How about sexual harassment?

21 **A Sexual harassment, when I first heard it, yes.**

22 Q Captain --

23 (End of audio.)

24 Q (By Mr. Sheridan) And you were under oath when you gave  
25 that testimony, right?

1     **A     Yes, sir.**

2     Q     And did you offer -- this deposition lasted for several  
3           hours, did it not?

4     **A     I think it did.**

5     Q     All right. And during -- and at no time during that  
6           deposition did you talk about the idea that he was a  
7           co-conspirator who also engaged in the improper  
8           behavior?

9     **A     No, I did not.**

10    Q     Okay. So that was your chance to tell me. Did you  
11          tell anyone else that he engaged in improper behavior?

12    **A     I did.**

13    Q     Who?

14    **A     What I did is I shared that information that Trooper**  
15          **Santhuff indicated that the behavior that was going on**  
16          **involved -- involved a lot of the parties in that unit,**  
17          **and he admitted to me that it was almost as if he was**  
18          **talking to -- to Sweeney as well, because Sweeney came**  
19          **in and basically said the same thing. This has been**  
20          **going on for some time, and Sweeney, as a matter of**  
21          **fact, said that um -- um, you know, you may as well**  
22          **sign me up too.**

23                 So I took it, when Santhuff says that he was --  
24                 that he was -- that everyone in that work group was  
25                 involved in this type of behavior that was rampant, I'm



1           **assuming that he was saying the same thing; that he was**  
2           **involved in it as well.**

3       Q     Okay. So even though you heard these -- you're saying  
4           the two people who were in fact blowing the whistle on  
5           the misconduct confessed that they were part of the  
6           problem, you never wrote it down, and you never told  
7           anybody in your chain of command?

8       A     **That's not true, sir.**

9       Q     Well, who did you write it down for? Who?

10      A     **I didn't write it down. I don't know that I -- that I**  
11           **wrote it down anywhere, but I do remember sharing the**  
12           **conversation with -- with -- I'm pretty sure I shared**  
13           **the conversation with the HR commander or the HR**  
14           **manager as well as the captain of the Office of**  
15           **Professional Standards.**

16      Q     So you mean you saved (sic) -- you saved it with  
17           Captain Matheson, the fella who testified first? You  
18           said it to him? I should say -- I jumbled my words.  
19           Let me say it again.

20               Your testimony is you shared the allegation that  
21           Mr. Santhuff had confessed to you that he was also part  
22           of the inappropriate behavior?

23      A     **The HR manager that I'm referring to -- I don't**  
24           **remember which HR manager it was, but at some point in**  
25           **time, in a conversation, I'm sure that I talked to**

1           **Captain Matheson as well, yes, sir.**

2       Q     Okay. And so Captain Matheson, you have no evidence  
3           that he's ever written any of this down, right?

4       A     **No, sir, I do not.**

5       Q     He's the one that testified ahead of you, right?

6       A     **That's correct.**

7       Q     And you saw his testimony, right?

8       A     **Yes, sir.**

9       Q     And you saw that he testified that, in his mind, he did  
10           consider at the time whether he was a whistleblower,  
11           but he wasn't because he said it involved some kind of  
12           personnel manager -- matter, right? You were here when  
13           he said that?

14      A     **Say that again.**

15      Q     You were here when Matheson testified that he was aware  
16           of the whistle -- alleged whistleblower activity, but  
17           he felt it wouldn't be a whistleblower because -- he  
18           couldn't be a whistleblower because, in his mind, it  
19           was a personnel action and thus excluded, right? You  
20           were here for that?

21      A     **I remember Captain Matheson saying something about a**  
22           **personnel issue.**

23      Q     Okay. And do you recall that he also said he never  
24           wrote any of that down?

25      A     **No, I don't remember.**

1 Q Okay. And you said you must have told it to, who,  
2 Captain Saunders?

3 A Yes, sir.

4 Q But you have no specific recollection, right?

5 A I remember having a conversation with Captain Saunders  
6 about that issue.

7 Q All right. And tell us everything you told Captain  
8 Saunders. Tell us where you were and when it happened.

9 A This has been over four years ago. What I can tell you  
10 is that it occurred in the State Patrol building.

11 Q Because that's where Saunders was assigned at the time?

12 A Yes, sir.

13 Q All right. And tell us what -- what you said to him  
14 and what he said to you?

15 A I don't remember exactly what was said, but I can tell  
16 you that when I had the conversation with Captain  
17 Saunders, I shared with him the information that was  
18 provided to me by Sergeant Sweeney as well as Trooper  
19 Santhuff.

20 Q Okay. That's all you recall?

21 A Yes.

22 Q Okay. And do you remember when that was? Was that  
23 after the lawsuit was filed?

24 A No. That would have been before the lawsuit was filed.  
25 Well, actually, I don't know when the lawsuit was

1           **filed, but what I can tell you is that that**  
2           **conversation occurred before I counseled Lieutenant**  
3           **Nobach and Brenda Biscay.**

4    Q       I see. So what day did you interview Trooper  
5           Santhuff -- Santhuff?

6    A       **I don't know.**

7    Q       Well, let's see. Is it fair to say it must have been  
8           oh, say, a week before you actually gave out the 095?

9    A       **What I can tell you is that it was before the 095 was**  
10           **issued.**

11   Q       What time of day did you get the -- what time of day  
12           did you learn that -- that Trooper Santhuff had talked  
13           to -- had reported this breast rubbing incident?

14   A       **I don't know.**

15   Q       Okay. Well, let's put up 57 again, if we can, and  
16           focus on the bottom -- on that bottom paragraph.

17                   MR. SHERIDAN: I'm sorry. The first  
18           paragraph, Greg.

19   Q       (By Mr. Sheridan) It says on March 29th that you were  
20           informed, right?

21   A       **Yes.**

22   Q       And -- and on March 30th, you're meeting with -- with  
23           Nobach and Biscay to hand out the 095, right?

24   A       **Correct.**

25   Q       So that means that you must have been pretty busy on

1 the 29th, right?

2 **A I don't know what my day looked like on the 29th.**

3 Q Okay. So you must have interviewed at least two people  
4 on the 29th, made a decision to find that Santhuff and  
5 Biscay had engaged in improper conduct, met with  
6 Saunders to do that, and then typed up the 095s.  
7 Right?

8 **A That's correct.**

9 Q Okay. And -- and in all of that time, you didn't take  
10 additional time to interview any of the other members  
11 of the 11 group -- 11-member group that was Aviation at  
12 the time?

13 **A The concern regarding this situation here was the**  
14 **sexual -- the alleged sexual harassment issue. It**  
15 **involved -- didn't involve the other 11 people or**  
16 **however many people were in the unit. This involved**  
17 **the witness that saw it, which was Trooper Santhuff,**  
18 **and him reporting it to Sergeant Sweeney who reported**  
19 **it up the chain of command. So I had no need to**  
20 **interview the other parties or involve them.**

21 Q I understand that, but -- but isn't that based on the  
22 idea that -- that the incident happened in a bubble and  
23 it was just those three people, right?

24 **A Yes.**

25 Q But -- but you yourself -- you authored this document,

1 right?

2 **A I sure did.**

3 **Q** So you tell us it wasn't a bubble. You tell us that  
4 the similar behavior by co-workers has become an  
5 acceptable practice. So it's all 11 people,  
6 potentially, correct?

7 **A** The -- you're twisting it around. The -- this 095 was  
8 generated as a result of the allegation that -- of  
9 alleged sexual harassment -- or... Yes, alleged sexual  
10 harassment, the incident that occurred between Nobach  
11 and Brenda Biscay.

12 Now, through -- the other information in this  
13 document here is to let the lieutenant know. So that  
14 first part is dealing with the allegation. And then  
15 further down where it talks about other behavior that's  
16 going on in the unit that needed to be addressed as  
17 well, and I -- that's why I addressed it there -- in  
18 there. But the only persons that I felt that I needed  
19 to talk to regarding the alleged Brenda rubbing her  
20 breasts up against Jim Nobach's head was Santhuff and  
21 Jim Nobach and Brenda and Sweeney. There was no need  
22 to talk to the other 11 people about that.

23 **Q** Sir, would you take a look at the date of your  
24 deposition and tell us what date that was?

25 **A** I'm looking at a date at the bottom of this document,

1           **and I'm assuming that's it. September 20th, 2019.**

2       Q     All right. So you've had -- that's what you said in  
3           your deposition. Isn't it true, sir, that this new  
4           information that you're telling us today about them  
5           being -- Sweeney and Santhuff -- essentially conspiring  
6           in the improper behavior, you made this up for trial?

7       A     **Absolutely not.**

8       Q     Isn't it true that one of the reasons that the policies  
9           say you shall document incidents of improper behavior  
10          is not just to protect the victim, but to protect you?

11      A     **We don't document every -- we don't provide**  
12          **documentation of dual law (phonetic) for every policy**  
13          **violation. That's not a requirement.**

14      Q     But, sir, you divide misconduct into three categories,  
15          the highest being major misconduct, don't you?

16      A     **Yes.**

17      Q     And, in fact, major misconduct almost always is subject  
18          to an investigation, is it not?

19      A     **Yes.**

20      Q     And if there is sexual harassment, that is major  
21          misconduct, is it not?

22      A     **As I indicated yesterday, this was not determined to be**  
23          **a major investigation. It wasn't a major -- it was --**  
24          **it was classified not as sexual harassment. Had it**  
25          **been classified as sexual harassment, then we would**

1       have did an investigation through the Office of  
2       Professional Standards, but this situation did not  
3       warrant that. It didn't rise to that level.

4   Q     So, in fact, you have put Lieutenant Sweeney and  
5       Detective Santhuff in the position of not being given  
6       notice of an alleged act of misconduct because you  
7       never -- you say this happened and you never said  
8       anything.

9   A     As division commander, I decided to handle the  
10      situation at the lowest level possible which was at my  
11      level instead of through the Office of Professional  
12      Standards. Again, every violation did not -- violation  
13      of policy is not investigated by the Office of  
14      Professional Standards. If you want an example of  
15      that, I can give you one.

16  Q     I just need a moment.

17           Now, you received this information about the  
18      breast rubbing incident from Chief Drake, right?

19  A     Yes, sir.

20  Q     Okay. And then you and Chief Saunders talked about  
21      what to do about it sort of at the other end of the  
22      process, right?

23  A     Yes, a conversation was had between -- that involved  
24      Captain Saunders and an HR manager.

25  Q     Okay. Oh, you're not committing that to being



1 Matheson; it could be somebody else?

2 **A Yes.**

3 Q All right. And it's true, is it not, that both of  
4 these encounters, had you kept a case log, you would  
5 have written down what happened in those two  
6 encounters, correct?

7 **A If I did a case log, yes.**

8 Q And if you did a case log, you would have written down  
9 what Ryan Santhuff allegedly said to you in the case  
10 log, right?

11 **A Yes.**

12 Q And Lieutenant Sweeney, right? I'm sorry, and Sergeant  
13 Sweeney?

14 **A Yes, sir.**

15 Q Okay. But because you didn't keep a case log, nothing  
16 is written down, correct?

17 **A I didn't keep a case log, no.**

18 Q Okay. Now, during the time that you were supervising  
19 Lieutenant Nobach, you understood that he was in the  
20 2016 time frame, you understand that he was the only  
21 certified flight instructor, correct?

22 **A Hmm, I'm not sure.**

23 Q Okay. And you're aware that the certified flight  
24 instructor is the person who is designated to do flight  
25 training, or you didn't know that?

1     **A**     To my understanding, Lieutenant Nobach, as well as both  
2             of the sergeants, provided training. So if that -- if  
3             you're telling me that that requirement is required,  
4             that certified for a training -- for them to train,  
5             then I would have to say that Lieutenant Nobach and  
6             both sergeants had that qualification.

7     **Q**     Okay. When did you supervise -- what years did you  
8             supervise Lieutenant Nobach?

9     **A**     (Pause.) I think I was an SOD commander for three  
10            years, so I guess that would probably be maybe between  
11            2015 and 2018.

12    **Q**     Thank you. Okay.

13            And you're aware that in 2016, towards the end of  
14            the fall time frame, that two new pilots were hired,  
15            Jared Elliott and Anson Statema?

16    **A**     Yes, sir.

17    **Q**     And did you have anything to do with hiring them?

18    **A**     I -- well, I'm a division commander, so I would assume  
19            that, yes, I would have to have some role in accepting  
20            them into the unit, into the division.

21    **Q**     Okay.

22    **A**     Yes, sir.

23    **Q**     And were you aware that they were both certified flight  
24            instructors?

25    **A**     I don't remember.

1 Q Okay. Fair enough. Did you ever direct that  
2 Lieutenant Nobach should stop doing training and give  
3 other people the training duties?

4 **A I don't remember that.**

5 Q Okay. Now, let's look at Exhibit 122. And let me see  
6 if I need to get you a book. Would you mind checking  
7 if that one has it in there?

8 **A This one is 43 through 112.**

9 Q So 113. I have it. Thank you. Ah. Here it is.

10 You're going to 122, sir.

11 **A 122, yes.**

12 Q All right. And you recognize this, do you not?

13 **A It looks like one of the pages for Lieutenant Nobach's**  
14 **job performance appraisal.**

15 Q Why don't you turn the pages over and see if you see  
16 whether or not that's a document that you created, and  
17 then see if you have an electronic signature on there.

18 **A (Witness perusing document.) Okay. This is -- I did**  
19 **create this job performance appraisal on -- for Jim**  
20 **Nobach. And as far as the signature, I -- I don't**  
21 **remember providing an electronic signature so that's**  
22 **the thing -- (inaudible).**

23 Q All right. That's fine.

24 All right. This is a document that you created in  
25 the usual course of business?

1     **A     Yes, sir.**

2     Q     And it was meant -- this document, although it is -- it  
3           refers to a period of time, I believe it's signed in,  
4           what, February 2017, or something like that, but, in  
5           fact, it covers the year 2016, correct?

6     **A     Yes, sir.**

7     Q     All right. And you are the author of the pages in this  
8           document?

9     **A     Yes, sir.**

10           MR. SHERIDAN: Plaintiff offers Exhibit 122.

11           THE COURT: Any objection?

12           MR. BIGGS: No objection, Your Honor.

13           THE COURT: All right. Plaintiff's Exhibit  
14           122 is admitted.

15           MR. SHERIDAN: All right. Thank you. Greg,  
16           go ahead and put up -- oh, may we publish?

17           THE COURT: You may.

18     Q     (By Mr. Sheridan) Okay.

19           MR. SHERIDAN: And Greg -- thanks for blowing  
20           that up.

21     Q     (By Mr. Sheridan) This has a title heading of  
22           "Lieutenant Job Performance Appraisal."

23           Would you just explain to the jury what the  
24           process is and what the procedures are for giving  
25           performance evaluations to the people you supervise,

1 frequency and such?

2 **A** Okay. The job performance appraisal, it's basically an  
3 evaluation of the employee's performance. And in this  
4 particular appraisal here, it's conducted annually, and  
5 it's an opportunity for the supervisor to share  
6 information about what they observe, you know,  
7 regarding their employees. It's -- it's an opportunity  
8 to provide positive feedback as well as negative  
9 feedback because the whole goal here is to try and help  
10 our employees succeed. And so it's critical that we  
11 provide honest, meaningful feedback regarding their  
12 appraisal so that they can make improvements where they  
13 need to make improvements at or so that we can, you  
14 know, also, you know, tell them when they're doing a  
15 good job, you know, to keep going.

16 So that's what the appraisal is for. So it's --  
17 it's a report of my observations of Jim Nobach  
18 throughout the year of 2016.

19 **Q** All right. And it contains -- it contains headings  
20 that aren't made by you; they're made by the Washington  
21 State Patrol, right, or the State of Washington?

22 **A** I'm not following.

23 **Q** Headings like "Leadership"?

24 **A** Yes.

25 **Q** So these are categories that you're to comment on,

1 right?

2 **A Yes, sir.**

3 Q All right. Let's turn to the leadership page. It's  
4 the second page, please.

5 **A Okay.**

6 Q And let's look at the top -- yeah. So it says  
7 "Leadership," and then under "Expectations," what did  
8 you write?

9 **A I wrote -- I gave him a "fails to meet expectations."**

10 Q All right. And then just below that, this is some of  
11 the preprinted information about what the leadership  
12 category pertains to, right?

13 **A Yes, sir.**

14 Q All right. So it pertains to -- it says, "A leader  
15 influences human behavior to achieve organizational  
16 goals that serve the public while developing  
17 individuals, teams, and the organization for future  
18 service." And then it gives some examples: "Builds  
19 trust and confidence, delegates authority, instructs  
20 subordinates formally/informally, takes charge and  
21 responds appropriately to situations," et cetera. Then  
22 this narrative, you wrote it, right?

23 **A Yes, sir.**

24 Q All right. And you begin by writing that, "Lieutenant  
25 Nobach is the aviation section commander --" oh, and by

1 the way, this narrative pertains to the leadership  
2 grade you gave him, right?

3 **A Yes, sir.**

4 Q Okay. And you say -- you write, he reports -- "Reports  
5 of retaliation slash harassment allegations against the  
6 lieutenant were reported by section troopers." And  
7 when you wrote that, you wrote it because it was true,  
8 right?

9 **A Yes.**

10 Q So I notice that you didn't say by one trooper, you  
11 said section troopers, plural, right?

12 **A Yes.**

13 Q Because more than just Trooper Santhuff complained  
14 about sexual harassment and retaliation, right?

15 MR. BIGGS: Your Honor, excuse me. We are  
16 now getting into areas where we have motions in limine  
17 pending that have not been ruled on, and we're talking  
18 about other witnesses who have nothing to do with this  
19 case. At least that's the allegation.

20 THE COURT: Let's take our morning break.  
21 It's 10:05. So let's take our recess. Members of the  
22 jury will be on recess until 10:20.

23 (Jury exits.)

24 THE COURT: Thank you. Please be seated.

25 Are you talking about the 404(b) because that -- I

1 don't think that the 404(b) had anything to do with  
2 this.

3 MR. BIGGS: Your Honor, we have motions in  
4 limine that deal with issues for other workers, other  
5 complaints against the lieutenant that may or may not  
6 have been filed.

7 Scott, do you have any -- Mr. Marlow is the one  
8 that kind of argued these motions. But, basically,  
9 we're talking about, now they're trying to introduce  
10 evidence -- they say they're not making a sexual  
11 harassment claim in this case and they're not making a  
12 hostile work environment claim in this case, and that's  
13 exactly how you get that sort of information in. This  
14 has nothing to do with the case here, which is, did  
15 somebody retaliate against this person.

16 THE COURT: All right. Mr. Sheridan.

17 MR. SHERIDAN: Yes, well --

18 THE COURT: And I guess I just -- well, I'll  
19 hear from you.

20 MR. SHERIDAN: Sure. Thanks. So this is --  
21 the reality is that there's more than one person who  
22 have complained, and it seems to us that what I was  
23 going to do -- and I suppose we could ask him out of  
24 the presence of the jury. I was just going to ask him  
25 who those people are that accused Nobach of retaliation



1 and their sexual harassment because that's what he  
2 wrote.

3 THE COURT: How is that relevant to the issue  
4 before the jury, which is that because Detective  
5 Santhuff reported the sexual -- the alleged sexual  
6 harassment, then it was retaliation against him?

7 MR. SHERIDAN: Because he's contradicted  
8 himself multiple times on this whole business about  
9 Santhuff confessing, essentially is here for the first  
10 time at trial. And so what they're doing is they are  
11 saying that -- they're saying that there's an  
12 environment of sexual harassment, but he says in part  
13 of his testimony, it was only the little bubble, so he  
14 didn't have to worry about it. So he's being  
15 disciplined -- this is a discipline -- I mean, I  
16 shouldn't say this. This is a counseling memo that  
17 addresses the workplace that he created. That's why  
18 he's getting substandard leadership. So all -- what  
19 happens in the workplace is very relevant, and what  
20 happens in the workplace -- the atmosphere in the  
21 workplace -- we've briefed it in our trial brief. This  
22 is one of the ways that we've proved this through  
23 circumstantial evidence.

24 THE COURT: Well, and Captain Alexander  
25 testified that there was the joking around and the

1 inappropriate behavior, and that has been already  
2 testified about. So I'm trying to understand what  
3 specific information -- I'm afraid that you're getting  
4 into some specific allegations that have nothing to do  
5 with what happened with Mr. Santhuff.

6 MR. SHERIDAN: May I just ask him the  
7 question out of the presence of the jury?

8 THE COURT: Go ahead.

9 MR. SHERIDAN: Thank you.

10 OFFER OF PROOF

11 Q (By Mr. Sheridan) Sir, we're back on the record for  
12 your purposes, sir.

13 Can you tell us, when you used the plural about  
14 complaints of sexual harassment and retaliation, who  
15 were you referring to?

16 A I couldn't tell you who I was referring to at this  
17 time. That was four years ago. "Troopers" could also  
18 include -- when I say "troopers," it also includes,  
19 Your Honor, Sergeant Sweeney who brought this forward.  
20 It -- it includes -- and Trooper Santhuff.

21 I'm not sure what my mindset was when I was  
22 identifying the troopers. I don't know if the  
23 investigation -- I -- I think -- I'm not sure if it was  
24 the OPS investigation, and I made a ruling on that as  
25 well. Maybe I pulled information out of there. I  
Alexander, J. - Offer of Proof by Mr. Sheridan

1     don't know. I can't tell you what troopers -- who I  
2     meant. I can't identify or attach specific people to  
3     "troopers."

4             THE COURT: So you're not expecting any  
5     testimony, and I don't know if you can provide any  
6     testimony that Trooper Noll, just because it's a name I  
7     remember --

8             **THE WITNESS: Yeah.**

9             MR. SHERIDAN: Sure.

10            THE COURT: -- that he also reported?

11            **THE WITNESS: I don't remember, Your Honor.**

12            THE COURT: All right. Because I think  
13     that's what we cannot have happen, but that's not where  
14     you're going, correct?

15            MR. SHERIDAN: No. And apparently he's going  
16     to say "I don't know." All right. So no harm, no  
17     foul.

18            MR. BIGGS: That is not true, Your Honor.  
19     That is not no harm, no foul. He's making a point that  
20     there were other complaints, and that is not  
21     appropriate.

22            MR. SHERIDAN: It's not me that's making the  
23     point. It's his document.

24            MR. BIGGS: No, you --

25            THE COURT: Well, I think that the question  
              Alexander, J. - Offer of Proof by Mr. Sheridan

1 of what he meant by "troopers," the jury is going to  
2 have "the troopers" and his explanation that it could  
3 include Sweeney when there's already been testimony  
4 that -- you know what --

5 MR. SHERIDAN: This is character evidence.

6 THE COURT: Hold on a second. The document  
7 speaks for itself. So the document has been admitted.  
8 The jury will have the document, and that will be the  
9 end of it.

10 MR. BIGGS: Thank you, Your Honor.

11 **THE WITNESS: Can I talk to him?**

12 MR. BIGGS: Oh, we'll have a break.

13 THE COURT: Well, we're going to be on break,  
14 so you can talk to him.

15 **THE WITNESS: Thank you, Your Honor.**

16 THE COURT: All right. We'll be in recess.

17 (Recess taken.)

18 THE COURT: Thank you. Please be seated.

19 THE CLERK: I'll get the jury.

20 THE COURT: Please.

21 Are you feeling okay?

22 **THE WITNESS: Yes, ma'am -- Your Honor.**

23 **Thank you.**

24 MR. SHERIDAN: Take a look at Page 40 of  
25 Nobach's deposition, and I'll give you, in advance, the  
Alexander, J. - Offer of Proof by Mr. Sheridan

1           cites.

2                   MR. BIGGS:  Are these some that you had  
3           designated?

4                   MR. SHERIDAN:  These are new.  This  
5           particular one is new.  The next one is desig --  
6           pre-designated, but this came up in the testimony.

7                   MR. BIGGS:  I'm looking for my sheet.

8                   MR. SHERIDAN:  Do you have the -- you have  
9           the thing, the deposition?

10                  MR. BIGGS:  Just one second.  I've got it  
11           here.

12                  MR. SHERIDAN:  It's -- it's Page 40-13  
13           through 41-10.  Page 40-13 through 41-10.

14                  MR. BIGGS:  It's right here.

15                           (Jury present.)

16                  THE COURT:  Thank you.  Please be seated.  
17           Go ahead.

18                  MR. SHERIDAN:  Thank you.

19                           DIRECT EXAMINATION (resumes)

20   Q        (By Mr. Sheridan) All right.  You still have the  
21           exhibit open?

22   A        **Yes, sir.**

23   Q        All right.  Again, still in the narrative section, you  
24           write that, "The investigation did -- did reveal a lack  
25           of communication by the lieutenant which contributed to

1 a misunderstanding by members of his staff." Is that  
2 what you wrote?

3 **A Yes, sir.**

4 **Q** Is that your explanation of what his actions were, sort  
5 of, in a nut shell?

6 **A Which actions are you referring to, sir?**

7 **Q** Meaning -- meaning when people complained about him,  
8 it's your view that it was just a communication issue.

9 **A** When the -- there were discussions that were had  
10 between -- meetings that occurred between -- that  
11 included Trooper Santhuff as well as Jim Nobach that I  
12 had, and when I brought them in to -- to sit down and  
13 throw everything on the table, what it revealed is that  
14 there was a lack of communication and misunderstanding  
15 between the lieutenant and Trooper Santhuff. So that's  
16 what I'm referring to, sir.

17 **Q** All right. You're actually referring to one or two  
18 meetings in which you basically presided over meetings  
19 with them in the room, right?

20 **A Yes, sir.**

21 **Q** And your -- you're not -- so you didn't find that there  
22 was retaliation against Trooper Santhuff. You found  
23 that it was just a communication problem, right?

24 **A That's what it revealed, yes, the meeting with the**  
25 **three of us.**

1 Q Okay.

2 A Well, at least the three of us were in the room.

3 Q And still, in this paragraph, you write, "In addition,  
4 inappropriate behavior in the workplace was tolerated  
5 over a period of time, some of which the lieutenant was  
6 a participant, contributing to some staff questioning  
7 his ability to lead." And so, basically, it was your  
8 view that that was simply bad judgment on his part?

9 A Yes, sir.

10 Q And that's why you marked him down as a leader?

11 A Yes, sir.

12 Q Now, the next paragraph begins, "The lieutenant  
13 acknowledged his shortcomings and successfully made  
14 adjustments to his leadership style." Was that your  
15 understanding, sir?

16 A Yes, sir.

17 Q Are you aware that he has testified in this case?

18 A That he's testified?

19 Q That he's been deposed.

20 A Yes.

21 Q And did you have an opportunity to read his deposition?

22 A No, sir.

23 Q All right. Are you aware that he says that the  
24 incident never happened?

25 A Hmm.

1 MR. BIGGS: Objection, Your Honor. That is  
2 not the testimony.

3 THE COURT: Sustained.

4 MR. SHERIDAN: Well --

5 THE COURT: You can ask him what he knows.

6 Q (By Mr. Sheridan) Well, you -- do you know -- do you  
7 know about this issue with the shoulder holster?

8 A **The shoulder holster?**

9 Q Yeah. Have you heard that his -- that his line was  
10 that there was -- in a conference room, there was a  
11 shoulder holster adjustment that happened; that that's  
12 all he knows about?

13 A **No, sir.**

14 Q Okay. Did you expect him to basically fess up and tell  
15 the truth about what he was doing with Ms. Biscay?

16 A **When I -- are you referring to the counseling, sir?**

17 Q Yes. I'm referring to the 095.

18 A **Okay. So with the 095, it's more than me just reading**  
19 **the 095 to Jim Nobach. It was me bringing him in,**  
20 **saying, okay, here's what -- the information that I**  
21 **have. And I went through and explained that Brenda**  
22 **allegedly rubbed her breast up against the back of your**  
23 **head; that's inappropriate. And then I lay out my**  
24 **expectations and, um -- and then -- and then I -- so**  
25 **there's much more broader conversation that's**



1           happening. It's not just a short conversation.

2           So then the -- then I read the 095 to Jim, and  
3           then I say, okay, well, if you don't -- do you have  
4           anything you want to say? And he said nope, and I said  
5           well, okay, then you can sign. So that's how that  
6           went.

7       Q     Okay. But it's fair to say that you confronted him at  
8           the meeting with the idea that Brenda was rubbing her  
9           breasts on the back of his neck?

10      A     Yes.

11      Q     Okay. And neither denied it nor admitted to it?

12      A     No, sir.

13      Q     You're agreeing with me? You're agreeing with me?

14      A     Right. He neither denied nor came out and admitted it.  
15           I just took it that, okay, he didn't have anything --  
16           he didn't refute it; therefore, I'm assuming that --  
17           that he's acknowledging it.

18      Q     Okay.

19           MR. SHERIDAN: Okay. So, Your Honor, I would  
20           like to move to publish the deposition of the  
21           defendant, Lieutenant Nobach, and I have a copy --

22           THE COURT: I have one copy -- I have a copy  
23           here.

24           MR. SHERIDAN: Oh, you have one?

25           MR. BIGGS: There's no objection, Your Honor,

1 to publishing the deposition. However, counsel has  
2 just advised me a few minutes ago that he intends to  
3 use some of this. It's not designated in advance.

4 THE COURT: Hold on a second. I had a hard  
5 time hearing.

6 THE CLERK: Yeah. Sorry. I needed to get  
7 that open.

8 MR. BIGGS: It was not designated in advance  
9 as is required by the pretrial order, and now there  
10 are -- I think there are some lines that we would like  
11 to have read with the sections that Plaintiff is  
12 designating.

13 THE COURT: So there's sections -- lines that  
14 you would like to have read?

15 MR. BIGGS: In addition to what Plaintiff  
16 just mentioned to me.

17 MR. SHERIDAN: If counsel will show me  
18 whatever the passages are -- I mean, CR 32 says that in  
19 fairness --

20 THE COURT: I would have -- I don't want to  
21 have this argument in front of the jury.

22 MR. BIGGS: Right.

23 THE COURT: Just tell me what pages.

24 MR. BIGGS: It's Pages 13 to 18.

25 MR. SHERIDAN: It's Page 40-13 through 41-10.

1 THE COURT: 40 --

2 MR. SHERIDAN: 13.

3 THE COURT: They have been designated.

4 MR. SHERIDAN: Yeah, that is --

5 THE COURT: Yeah.

6 MR. SHERIDAN: It's just so that we're not  
7 reading the whole thing that's multiple pages, I've  
8 narrowed it down to address this piece.

9 THE COURT: Oh, I see.

10 MR. BIGGS: Right.

11 MR. SHERIDAN: So there's no -- I could be  
12 wrong, but I think there's no counter designation to  
13 that.

14 MR. BIGGS: I've never designated that  
15 section.

16 MR. SHERIDAN: We did. It's a sub part.

17 MR. BIGGS: Yes. The designation that I  
18 would like to have, Your Honor, is from Line 9 -- Line  
19 8.

20 THE COURT: Which one?

21 MR. BIGGS: Line 8 forward.

22 MR. SHERIDAN: From Page 40?

23 MR. BIGGS: Yes.

24 THE COURT: All right. Okay.

25 MR. SHERIDAN: We have no objection to that.

1 And, Greg, can you pull that off?

2 THE COURT: And, again, members of the jury,  
3 you will be given testimony from a deposition. And I'm  
4 sorry if I'm repetitive. A deposition is testimony of  
5 a witness taken under oath outside the courtroom. I  
6 need to do this because this is a different deposition  
7 of a different witness. The oath is administered by an  
8 authorized person who records the testimony word for  
9 word. Depositions are taken in the presence of lawyers  
10 for all parties. The deposition will be read out loud,  
11 correct?

12 MR. SHERIDAN: It's by video.

13 THE COURT: So you will do by video, this  
14 part as well?

15 MR. SHERIDAN: Yes.

16 THE COURT: All right. By video. Insofar as  
17 possible, you must consider this form of testimony the  
18 same way that you consider the testimony of witnesses  
19 who are present in the courtroom. You must decide how  
20 believable the testimony is and what value to give to  
21 it. A copy of the deposition will not be admitted into  
22 evidence and will not go to the jury room with you.  
23 All right.

24 MR. SHERIDAN: Thank you. Are you ready?

25 (Inaudible.)

1 (Audio recording played and transcribed  
2 as follows:)

3 UNIDENTIFIED SPEAKER: So you're telling us  
4 that you knew that she was disciplined and that you  
5 were disciplined. You understood it was for an  
6 interaction between the two of you, did you not?

7 **THE WITNESS: No.**

8 UNIDENTIFIED SPEAKER: So you thought that  
9 she was being separately disciplined for something that  
10 was not something that you would try to find out about,  
11 correct?

12 **THE WITNESS: I thought that she was being**  
13 **disciplined for flipping the shoulder holster strap**  
14 **over on my shoulder that was upside down.**

15 UNIDENTIFIED SPEAKER: While she was standing  
16 behind you?

17 **THE WITNESS: Yes.**

18 UNIDENTIFIED SPEAKER: And while you were  
19 seated at your desk?

20 **THE WITNESS: I wasn't at my desk.**

21 UNIDENTIFIED SPEAKER: Where were you?

22 **THE WITNESS: We were sitting at a conference**  
23 **room table.**

24 UNIDENTIFIED SPEAKER: Okay. All right. And  
25 so she stood behind you, and the story is -- what

1       you're telling us now is that she flipped your  
2       holster --

3               UNIDENTIFIED SPEAKER: Objection. Form of  
4       the question.

5               UNIDENTIFIED SPEAKER: If I said it wrong,  
6       help me clarify that.

7               **THE WITNESS: My story has always been the**  
8       **shoulder holster strap on my left shoulder, she flips**  
9       **it over.**

10              UNIDENTIFIED SPEAKER: All right. And she  
11       was standing behind you?

12              **THE WITNESS: Yes.**

13                      (End of audio.)

14   Q        (By Mr. Sheridan) So when you met with Lieutenant  
15              Nobach on the 30th, he didn't tell you that story, did  
16              he?

17   A        **No, he didn't.**

18   Q        Okay. Let's go to 206, if we can. I just want to get  
19              this admitted. Do you have that in front of you, sir,  
20              206? It's an org. chart.

21   A        **Okay.**

22   Q        All right. And I'm just looking at the first chart.

23              MR. SHERIDAN: And for everybody reading, it  
24       looks like it's Bates stamped in the lower right-hand  
25       corner, SAN5295.

1 Q (By Mr. Sheridan) And do you recognize this org. chart,  
2 sir?

3 A Yes. It looks like a flowchart for the Special  
4 Operations Division.

5 Q And that's your division?

6 A Was.

7 Q All right. And -- so I think --

8 MR. SHERIDAN: Your Honor, this actually has  
9 multiple org. charts, and I think perhaps the parties  
10 can work out what portion of this gets shown to the  
11 jury, but I would like to just talk about the first  
12 page and offer the first page, if that's appropriate.

13 THE CLERK: If it's going to be the first  
14 page, it needs to be -- the first page removed.

15 THE COURT: It has not been offered yet.

16 MR. SHERIDAN: All right. Thanks -- thank  
17 you, Judge.

18 All right. Right now, we're just offering the  
19 first page of the exhibit, and I think we may wind up  
20 submitting more pages, but I hadn't talked to the other  
21 side about it.

22 So we offer the first page, and that's it.

23 MR. BIGGS: There's no objection to the first  
24 page, Your Honor. The only thing is we should have  
25 some foundation. There's a date that's obscured at the

1 bottom of the page. Make sure that we all know what  
2 that says.

3 MR. SHERIDAN: I'll ask him, Your Honor.

4 THE COURT: So I think this needs to be  
5 marked as Plaintiff's Exhibit 262?

6 THE CLERK: 263.

7 MR. SHERIDAN: All right.

8 THE COURT: All right. So it will be 263.

9 MR. SHERIDAN: All right. And we'll  
10 substitute another copy in the record for 263. Will  
11 you note that, Greg?

12 Q (By Mr. Sheridan) So you're looking at what is going to  
13 be 263, and that org. chart we can put up on the screen  
14 now with the Court's permission to publish?

15 THE COURT: Um, you may.

16 Q (By Mr. Sheridan) All right. And will you just help  
17 guide us through what you were in charge of during the  
18 time that you were in Special Operations? And I want  
19 to note that apparently in the lower right-hand corner,  
20 it looks like it's a 2018 version. Okay?

21 A Okay.

22 Q So this would have been the year that you left.

23 A Okay.

24 Q In 2017 and 2016, would this be an accurate portrayal  
25 of your org. structure?



1     **A     Yes, sir.**

2     Q     All right.  So let's talk about -- what was the  
3           Executive Service Section?

4     **A     The Executive Services Section, that's the protection**  
5           **veto for the governor.**

6     Q     Okay.  These are the people that are sort of the, what  
7           do they call it, Secret Service of the President?

8     **A     Yes.**

9     Q     Okay.  And, um -- and you were in charge of them?

10    **A     Yes, sir.**

11    Q     Okay.  And then Admin III.  Who was that during the  
12          time -- say, the 2016 time frame?

13    **A     You know what, let's back up a little bit here.  The**  
14           **Executive Services Section, that also includes two**  
15           **other detachments.  So you've got the detachment that's**  
16           **with the governor all the time, kind of like a secret**  
17           **service, and then you have capitol campus security.**  
18           **Those are troopers that protect the -- patrol and**  
19           **protect the capitol campus.  And then you have mansion**  
20           **security.  Those consist of -- that unit consists of**  
21           **cadets that pull security directly at the governor's**  
22           **mansion.**

23    Q     Okay.  All right.  And then how about the Admin III  
24          assistant?  Who was that in 2016?

25    **A     That was my assistant.  I've had one, two -- I think**

1           **that person there would be Ms. Lillian Dyous.**

2       Q     Okay. All right. And then the aviation section, you  
3           were also in charge of, and that was Lieutenant Nobach,  
4           right?

5       A     **Yes, sir.**

6       Q     All right. And then I see that there's four subparts  
7           to his org. chart. Could you just explain to the jury  
8           what they were?

9       A     **L&I security is Labor & Industries. We have a contract**  
10           **to pull security over at their -- their location in**  
11           **Tumwater.**

12      Q     And, sir, is that security in sort of the normal sense  
13           to have bodies present to prevent harm?

14      A     **Yes, sir.**

15      Q     Okay. So it's not technical security. It's not  
16           computer security kind of stuff?

17      A     **No, sir.**

18      Q     Got it. All right. And how about the next one?

19      A     **Let's see here. And then the -- okay. So the other**  
20           **three: Technology and air operations, maintenance**  
21           **supervisors, that all falls under, within that section,**  
22           **the aviation section, in that building.**

23      Q     Okay. All right. Including maintenance and such?

24      A     **Yes, sir.**

25      Q     Okay. All right.

1                   Now, I want to go back to Exhibit 113, if I may.  
2                   And this is already admitted. So, sir, I'm going to  
3                   direct you, if I may, to -- that whole book is Exhibit  
4                   113. And I'm going to ask you to turn to Chapter 8.

5     **A     Okay.**

6     Q     And it's Page 127.

7     **A     Okay.**

8     Q     Okay. All right.

9                   MR. SHERIDAN: And, um, Greg, I'm going to  
10                  focus on A-1, if that's okay.

11    Q     (By Mr. Sheridan) So this is rules of conduct, right?

12    **A     Yes, sir.**

13    Q     And you are bound by the rules of conduct?

14    **A     Yes, sir.**

15    Q     And so is every other employee of the Washington State  
16                  Patrol, right?

17    **A     Yes, sir.**

18    Q     So it says under A -- it says, "The Washington State  
19                  Patrol -- this is No. 1 -- the Washington State Patrol  
20                  rules of conduct shall govern the official and  
21                  unofficial actions of all employees. A violation of  
22                  the rules of conduct may be sufficient cause for  
23                  disciplinary action." You understood that to be the  
24                  case in 2016, right?

25    **A     Yes. That's what the policy is.**

1 Q All right. And then if you would, turn to Page 128,  
2 which is unacceptable conduct -- employee conduct.  
3 Okay. That's 128?

4 **A Page 128?**

5 Q Yes, please.

6 **A Okay.**

7 Q And the first one under "policy" is "unacceptable  
8 conduct." Did you see that, sir?

9 **A Yes.**

10 Q It says, "Employees may not engage in conduct which  
11 impedes the ability of the Department to effectively  
12 fulfill its responsibilities."

13 Would you agree, sir, that the actions of  
14 Lieutenant Nobach with Brenda Biscay would have impeded  
15 the ability of the Department to effectively fulfill  
16 its responsibilities?

17 **A Yes, sir.**

18 Q Number -- I'm sorry, Letter B, "Causes a lessening of  
19 public confidence in the ability of the Department to  
20 perform its functions."

21 And would you agree that the actions by Lieutenant  
22 Nobach would have caused a lessening of public  
23 confidence if it got out?

24 **A Yes, sir.**

25 Q And C says, "Causes an adverse effect on the discipline

1 and efficiency of the Department."

2 And would you agree that the actions -- the breast  
3 rubbing incident causes an adverse effect on the  
4 discipline and efficiency of the department?

5 **A Yes, sir.**

6 Q And going on to the next page, on D, would you agree  
7 that the actions of Lieutenant Nobach and Ms. Biscay  
8 impaired their ability to perform their job,  
9 considering it was during the workday?

10 **A I think they could still get their job done.**

11 Q Fair enough.

12 And looking at F, F is the one that you've said  
13 did not apply, creates a hostile or discriminatory work  
14 environment?

15 **A Yes, sir.**

16 Q Okay. I would like you to look at B now. And it's on  
17 the same page. B deals with immoral conduct. It says,  
18 "Employees shall maintain a level of moral conduct in  
19 their personal and business affairs which equates with  
20 the high ethical standards expected by the public of  
21 law enforcement agencies and which will not constitute  
22 unacceptable conduct as described in these rules."

23 Would you agree that the actions of Lieutenant  
24 Nobach and Ms. Biscay regarding the breast rubbing  
25 incident would fall under this category?

1     **A     Um, yes. The actions of Brenda, yes.**

2     Q     Okay. And then -- okay. Now I would like you to take  
3           a look at Chapter 7, and it will be Page 120 in Chapter  
4           7. Tell me when you're there, sir.

5     **A     I'm there.**

6     Q     Okay. And just for record purposes, if you would go  
7           back to Page 119. You'll see that the heading is  
8           "Employee rights. Personnel files. Polygraph  
9           examinations." So this section pertains to employee  
10          rights. Okay?

11    **A     Okay.**

12    Q     All right. So I'm on Page 120 now, and I'm looking at  
13          **A. It says "Employees under investigation shall be**  
14          **informed of the nature of the investigation prior to**  
15          **any questioning." You would agree that's the case,**  
16          **right?**

17    **A     For an OPS investigation, yes.**

18    Q     Okay. You can conduct investigations in house, can't  
19          you?

20    **A     Yes, sir.**

21    Q     Wouldn't you agree that if you're conducting an  
22          investigation in house, that this also applies as an  
23          employee right?

24    **A     Yes, of course. The employee is -- there will be a**  
25          **conversation with the employee at some point in time,**

1           **yes, sir.**

2       Q     Okay. And the -- looking at B, it says, "The employee  
3           under investigation shall be informed of the name of  
4           the person in charge of the investigation and the name  
5           of the questioners and all persons to be present during  
6           the questioning. The employee shall be informed of  
7           what investigative section the investigator  
8           represents." And you agree that that should happen as  
9           well, right?

10      **A     For an OPS investigation, yes, sir.**

11      Q     Okay. And I guess if it's an in-house, everybody would  
12           realize it's you and -- right?

13      **A     Yes, sir.**

14      Q     All right. Now, I would like you to look at Chapter  
15           12, and -- turn to Chapter 12, and then if you would  
16           turn to Page 343.

17      **A     Okay.**

18      Q     All right. And this section pertains to agency  
19           accountability, correct?

20      **A     Yes.**

21      Q     And the heading for Chapter 12 is "Complaint and  
22           disciplinary procedures." Right?

23      **A     Yes, sir.**

24      Q     Okay. Do you happen to know what CLEA is, C-L-E-A?

25      **A     I know what it is, yes.**

1 Q What is it?

2 A I don't know -- I can't say --

3 Q Put it in words?

4 A -- what the acronym means.

5 Q Okay. Fair enough.

6 I'm on Page 43, "Public --" let's see, 43. And  
7 this -- this has to do with employee accountability  
8 under Section A.

9 It says, "Like all public service agencies, the  
10 Washington State Patrol is accountable for the acts and  
11 omissions of its employees. To ensure and exercise its  
12 accountability, the Department utilizes an internal  
13 review system to examine official acts and omissions."

14 Can you tell us, what is that internal review  
15 system, if you know?

16 A No, I don't know.

17 Q Okay. And it's fair to say that with regard to your  
18 actions pertaining to the breast rubbing incident and  
19 your work on it, you would agree that there really was  
20 no oversight of you; is that true?

21 A Yes, there is oversight. I have an assistant chief  
22 that I respond to -- that I report to.

23 Q So the oversight in the decision not to do an  
24 investigation, are you telling us that it was Captain  
25 Drake?



1     **A**     No. The decision as far as how to handle it, that was  
2             my decision as the commander.

3     **Q**     Who did the oversight to see if your decision was  
4             right, if anyone?

5     **A**     Well, I -- I -- I would think that if I'm following  
6             what you're asking me, it's a combination of the Human  
7             Resource division as well as the Office of Professional  
8             Standards whom I did consult with which -- to come up  
9             to the decision that I decided to make regarding how it  
10            was going to be handled.

11    **Q**     But, sir, wouldn't you agree with me that they are your  
12            peers, not your managers?

13    **A**     Well, the Office of Professional Standards, that  
14            commander, he is the standard officer. So if I was  
15            going to make a decision that -- and he didn't --  
16            didn't agree with, then he'd -- he'd let me know that,  
17            and if we still couldn't agree, then I guess we would  
18            push it up the chain of command to have a mediator  
19            determine which direction we're going to go.

20    **Q**     So... But in this case, he was right on board with you,  
21            right?

22    **A**     Yes, sir.

23    **Q**     And -- and when you say "we would push it up," you were  
24            direct report to Drake at the time, Captain Drake?

25    **A**     Yes. Assistant Chief Drake, yes.

1 Q And was -- I'm sorry, assistant chief.

2 And Saunders, he was a direct report to whom in  
3 2016?

4 A Oh, well, that would be Assistant Chief Drake as well  
5 because he's the commander over the Investigative  
6 Services Bureau which includes the Office of  
7 Professional Standards.

8 Q Is it fair to say that in making the decision to  
9 only -- to not investigate and to give Nobach an 095,  
10 you did that without the approval of Assistant Chief  
11 Drake?

12 A I didn't need Assistant Chief Drake's approval to  
13 provide the 095; however, I did consult with him  
14 regarding what direction I was going to take.

15 Q And he approved?

16 A Yes.

17 Q Okay. All right. Now, I'm still on the same page.  
18 I'm on Page 343 of Chapter 12 of Exhibit 113. Under  
19 relationship -- Section B, "Relationship between  
20 employees and the public," the rule says "Public  
21 confidence in the ability of the Department to  
22 investigate and properly adjudicate all complaints  
23 against its employees must be maintained." Do you  
24 agree with that?

25 A Well, I mean, it's a policy. Yes, I believe it.

1 Q Okay. And the second sentence says, "The Department  
2 has the responsibility to seek out and discipline those  
3 whose conduct discredits the Department or impairs the  
4 effective operation."

5 And you would agree with that as well, correct?

6 **A It's a policy. Yes, sir.**

7 Q Okay. But you would agree with the underlying purpose,  
8 correct?

9 **A Yes. It's a policy. I believe everything in this**  
10 **manual. It's a policy, and that's what I'm adhered to**  
11 **follow.**

12 Q All right. Now let's go back to Exhibit 260, if we  
13 can, and let's see. Do you have that there? You  
14 might. Oh, nope -- it's a thin book. Oh, maybe this  
15 is it. Oh, this is it. I have it. I'm sorry.

16 And for everybody's, I hope, assistance, I'm going  
17 to refer to Bates stamp numbers.

18 Sir, in the lower right-hand corner of this  
19 exhibit are unique numbers that the lawyers put on  
20 documents, and I'm going to -- I'm going to -- I'm  
21 going to say those numbers and -- and ask you to turn  
22 to it. The first one is Page 2657, and the subject is  
23 the complaint.

24 **A Okay. What do you want me to turn to now?**

25 Q It's Bates stamped in the lower right-hand corner in

1 sort of a big font, and it's 2657.

2 **A Gotcha.**

3 Q Thank you.

4 **A Okay.**

5 Q Okay. Okay. Now, this is -- this is basically a  
6 guidance for people who are investigating as sort of  
7 explaining what the process is, right?

8 **A Yes.**

9 Q Okay. All right. And this is Chapter 1, and it says  
10 it's for administrative investigations of commissioned  
11 personnel. So under "complaint," it defines a  
12 complaint as "An allegation of circumstances amounting  
13 to a specific act or omission that, if proven true,  
14 would amount to employee misconduct." And you would  
15 agree that that's the working definition of a  
16 complaint, right?

17 **A Okay. Yes.**

18 Q Okay. And then "misconduct," below that, "Is an act or  
19 omission by an employee which, if proven true, would  
20 normally result in some sort of disciplinary action."  
21 And you agree with that as well, right?

22 **A Yes.**

23 Q And some of the bullets that they give for illumination  
24 include committing an unlawful act; violation of a  
25 department policy, procedure, rule; conduct which may

1 reflect unfavorably, and I think we may have been  
2 through some of this yesterday.

3 This -- you would agree that the acts of  
4 Lieutenant Nobach and his assistant would fall under  
5 this section as misconduct?

6 **A Neglect of duty, yes.**

7 **Q** And violation of department policy and procedures --

8 **A And violation of department policies and procedures,**  
9 **yes.**

10 **Q** Okay. All right. And then turn to 2660, if you would.  
11 2660.

12 **A Okay.**

13 **Q** And, again, this pertains to the Internal Incident  
14 Report, the IIR.

15 So when a complaint is received and it appears  
16 more -- there may be a violation of a policy, the  
17 applicable Internal Incident Report shall be completed,  
18 and you understand that that is the procedure, right?

19 **A Yes.**

20 **Q** Okay. And the second paragraph says, "A summary of the  
21 allegations shall outline the details of the complaint  
22 sufficiently to apprise the employee of the nature of  
23 the charges." And that -- you agree with that as well;  
24 that that is the purpose -- or a purpose of the IIR?

25 **A Correct -- yes, for an IIR when it involves an**

1 investigation that is going to be investigated by the  
2 Office of Professional Standards.

3 Q Okay. All right. And then if you would turn to 2661.

4 A (Witness complies.)

5 Q And this is just to sort of give some background about  
6 the process. It says complaints -- "Complainants --  
7 people who complain -- don't have to appear in person  
8 or prepare their own complaint form." You would agree  
9 with that, right?

10 A I agree with everything that's in the manual.

11 Q Okay. Under "preliminary investigation," Section F, it  
12 says, "In certain circumstances, a preliminary  
13 investigation may be initiated before an administrative  
14 investigation. A preliminary investigation is used to  
15 determine if factual information exists indicating a  
16 violation of policy occurred and whether there's  
17 department personnel --"

18 Would you degree that that is the purpose of a  
19 preliminary investigation, to see if -- if there's  
20 factual information to support, I guess, an  
21 investigation?

22 A I believe everything that's in the manual. Yes, sir.

23 Q Okay. And it says also that there's a time limit, that  
24 it takes ten -- no more than seven days. Do you try to  
25 follow that?

1     **A**     **If a preliminary investigation is going to be**  
2             **initiated, yes, we follow it.**

3     Q     Okay. And then it says that if the appointing  
4             authority rejects the complaint, the preliminary  
5             investigation shall be closed and the reason for the  
6             closure documented in the case log. And that is your  
7             understanding of the procedure if there's a finding  
8             that there is -- that no factual information exists  
9             indicating a violation of public policy?

10    **A**     **Yes, sir.**

11    Q     Okay. So at the bottom of Page 2661 are some bullet  
12             lists that say, "Each preliminary investigation must  
13             result in one of the following determinations: Either  
14             no factual determination, the allegation is not a  
15             complaint, or a factual information of a violation  
16             exists, and then determination of alleged criminal  
17             misconduct." Those are the four findings that have to  
18             be found, right?

19    **A**     **Where are you reading from?**

20    Q     Sorry. So I'm at 2661 onto 2662. So start at the  
21             bottom of 2661.

22                     MR. SHERIDAN: Greg, can you go over to the  
23             second page?

24                     **THE WITNESS: Okay. And your question, sir?**

25    Q     (By Mr. Sheridan) Yeah. Whether or not you agree with

1           those four bullets. You have to come up -- you have to  
2           follow one of those -- find one of those bullets in  
3           order to not move forward.

4     **A     Yes.**

5     Q     Okay. On the same second page -- this is Page 60 --  
6           2662. Under "Processing the Internal Incident Report,"  
7           it says, "The appointing authority --" that's you,  
8           right, regarding Lieutenant Nobach in 2016?

9     **A     That's correct.**

10    Q     "The appointing authority determines whether the  
11           complaint against an employee, if proven, constitutes a  
12           violation of regulations sufficient to warrant  
13           discipline -- warrant discipline and can be resolved  
14           without using the formal process."

15                 And then if we follow the bullets down to the -- I  
16           guess it's two, four -- fourth bullet, it says, "Once  
17           OPS receives an IIR, a case number will be assigned."  
18           And I want to skip to the last sentence. It says "The  
19           OPS commander will assign the case either to OPS or the  
20           division district in which the allegation occurred."

21                 Could you explain to the jury a little bit about  
22           that, about who gets assigned a complaint?

23    **A     While I was a detective in internal affairs, but I was**  
24           **never the commander, so you're going to have to ask the**  
25           **commander.**



1 Q Oh. Okay.

2 Let's take a look at -- let's go up to the  
3 flowchart, if we can, and for your reference, it's at  
4 Chapter 1, Section 16.

5 A Okay.

6 Q All right.

7 MR. SHERIDAN: So, Greg, we're going to look  
8 at the section -- I guess that's a good view. It looks  
9 readable.

10 Q (By Mr. Sheridan) So it says -- so if there's an IIR  
11 and it's sent to the district division commander, it  
12 can either be accepted or rejected, right?

13 A Yes.

14 Q All right. And -- and you can also request a  
15 preliminary investigation, right?

16 A Correct.

17 Q Okay. Now, above the IIR at the point where the  
18 supervisor determines that the complaint violates  
19 policy, there's -- instead of issuing an IIR, you can  
20 issue an N-I-M, a NIM.

21 Can you tell the jury what that is?

22 A A NIM is a non-investigated matter. That's what it  
23 stands for. And let's say we get a complaint -- a  
24 speed complaint from the public. What that does is  
25 that gives -- gives the agency an opportunity to talk

1 to the complainant and hear what they have to say  
2 and -- and then once -- so let's say if I got a NIM on  
3 a trooper, okay? What I would do is have a  
4 conversation with the person that's filing the  
5 complaint, and then what I would do is give them -- ask  
6 them, Do you want to file a formal complaint, or I can  
7 handle this through a non-investigated matter, meaning  
8 that I can have a conversation with the trooper and get  
9 the trooper's side of the story.

10 And then if the trooper -- depending on what the  
11 trooper says, if the trooper admits to it, then I will  
12 discipline the trooper with an 095 or what -- other  
13 levels, and then I would have -- I would get back with  
14 the complainant and explain to them what happened, you  
15 know, how I handled the process.

16 But if the complainant wants to file a formal  
17 complaint and doesn't want it to be a non-investigated  
18 matter, they want it investigated, then it would be  
19 investigated.

20 Q So even if you thought there was no violation of  
21 policy, it's if the person who is the alleged victim  
22 said they wanted it investigated, it would be?

23 A Yes, sir.

24 Q Okay. So that requires you to converse with the  
25 alleged victim, right?

1     **A     That's right.**

2     Q     Okay. And looking at the definition, I'm about the  
3           third paragraph down. Well, I guess -- we might as  
4           well cover the whole thing.

5                 Looking at the second paragraph, it says, "If the  
6           alleged misconduct is minor in nature and would require  
7           only counseling or minor supervisory intervention, it  
8           may be classified as a NIM, and no formal investigation  
9           will be conducted." And you would agree with that,  
10          right?

11    **A     I agree with everything that's in the manual. Yes,**  
12           **sir.**

13    Q     Okay. And so -- and I'm -- right now, I'm looking at  
14           Page 2731, and I'll ask you to turn to that. 2731.

15    **A     Okay.**

16    Q     All right. And this is the section referring to the  
17           non-investigated matter, right, the NIM?

18    **A     Yes.**

19    Q     Okay. So it says here that if the alleged misconduct  
20           is minor in nature and would require only counseling or  
21           minor supervisory intervention, it may be classified as  
22           a NIM and no formal investigation will be conducted."

23                 Now, you're not saying that that's what happened  
24           with regard to Lieutenant Nobach and Ms. Biscay, right?

25    **A     The NIM -- we would never use a NIM for -- the NIMs are**

1       mostly used for complaints that we receive from the  
2       public regarding -- regarding an action by a trooper,  
3       and if they get so many NIMs, then it will trigger --  
4       we call them red flags. It will trigger a red flag.  
5       So if we get three NIMs that are similar in nature,  
6       then that would automatically trigger an OPS  
7       investigation.

8       Q     Okay.

9       A     So I would never -- NIM would have nothing to do with  
10      the situation that we're talking about today.

11      Q     Right. And, for example, if a person who was arrested  
12      complained that their, say, cuffs were too tight, that  
13      would -- that might be a NIM because tough -- cuffs  
14      being tight might be part of the game when you're  
15      arrested?

16      A     I don't know that I would consider that -- I would use  
17      that as a NIM.

18      Q     Okay. Fair enough.

19      A     I wouldn't use that. That -- that's -- no, I wouldn't  
20      use a NIM for that.

21      Q     Can you give us an example? That was my effort.

22      A     Of a NIM?

23      Q     Yeah.

24      A     Of a NIM?

25      Q     Yeah.

1     **A**     Okay.  If a person called and said that the trooper  
2             blew through a stop sign --

3     **Q**     Okay.

4     **A**     -- and they don't think that that's proper, then that's  
5             something that I might have a conversation with the  
6             trooper about.

7     **Q**     Okay.  Thank you.  So this is basically for the public?

8     **A**     **Yes, sir.**

9     **Q**     Thanks.

10            Now, you know how to do an investigation, do you  
11            not?  I mean, you've done them before?

12    **A**     **Yes, sir.**

13    **Q**     Right.  Let's take a look at Exhibit 239, if we can.

14    **A**     **239?**

15    **Q**     Yes, please.

16    **A**     **I don't think I have that.**

17    **Q**     Okay.  I'm sorry.  You're correct.  You do not.  My  
18            apologies.

19    **A**     **Okay.**

20    **Q**     All right.  And this is a State Patrol investigator's  
21            case log, correct?

22    **A**     **Yes.**

23    **Q**     And this is one that you completed -- you begun it  
24            around May 6, 2016, correct?

25    **A**     **Correct.**

1 Q And this is basically -- this was in response to a  
2 complaint by a civilian regarding how Lieutenant Nobach  
3 did an investigation?

4 MR. BIGGS: Pardon me, please, Your Honor.  
5 We are well outside of reasonable range here.

6 THE COURT: Are you objecting to the  
7 admission of this exhibit?

8 MR. BIGGS: Yes, Your Honor. Yes. I'm  
9 objecting to --

10 THE COURT: I'll sustain the objection.

11 MR. BIGGS: -- talking about it or recording  
12 it.

13 THE COURT: Sustained.

14 MR. SHERIDAN: Fair enough.

15 THE COURT: The jury will disregard that last  
16 comment.

17 Q (By Mr. Sheridan) All right. Did there come a time  
18 that -- so let me just summarize. You know that if  
19 you're conducting an investigation, you know to take a  
20 complaint, you know to do an IIR, you know to do a case  
21 log.

22 A That's not always -- you keep trying to make it seem  
23 like you automatically do that. It's not -- you don't  
24 do that all the time, you don't do one all the time.

25 Q Well, you do it whenever there's an investigation,

1 right?

2 **A I'm sorry?**

3 **Q** You do it whenever there's an investigation?

4 **A** You do it when it's an OPS investigation. If it's  
5 going to be an investigation that's going to be  
6 conducted by the Office of Professional Standards,  
7 then, yes, you do a log and you do an IIR.

8 **Q** Well, we've just been going through the administrative  
9 investigations file, and you've said that the NIMs  
10 don't apply. Can you point me to the place in Exhibit  
11 260 that says that you don't have to do a case log, you  
12 don't have to do an IIR? Show me where it says you  
13 don't have to do that.

14 **A** It's not in there.

15 **Q** It's not in there?

16 **A** No.

17 **Q** Well, how do you have authority to ignore the -- the  
18 policy and procedure? When did you get to not listen  
19 to it?

20 **A** As indicated before, if it's going to be a case that's  
21 going to be investigated by the Office of Professional  
22 Standards, then those cri -- then we have to follow the  
23 criteria that's in the administrative manual,  
24 investigative manual. This situation here was not  
25 going to be investigated by the Office of Professional

**Standards.**

Q So -- so let me get this right. Are you saying -- so are you saying that -- let's say I'm a trooper and you're my friend and I commit a serious crime, oh, I don't know, I hit somebody or shoot somebody. Are you saying that you have the discretion to say this is not going to be an investigation so we don't have to follow any of the procedures?

A Common sense would say that I would conduct -- that would have the need for a very thorough investigation.

Q Well, are you saying you're the person who gets to decide when the policy applies and when it doesn't?

A The policy, sir -- the policy that you're referring to, all those steps we just went through, that's pertaining to an investigation that's going to be conducted by the Office of Professional Standards. Our troopers, as imperfect as they are, they -- not every violation of a policy is going to be investigated by the Office of Professional Standards. Not every violation of a policy is going to require an investigator log. Not every violation of a policy is going to require an Internal Incident Report or the IIR.

Q Well, there's -- there's a process here that doesn't seem to have any of the language that you're now telling the jury. Is there any place that it's written



1 down that you get to decide when something is going to  
2 the -- to internal -- what is it? Internal?

3 UNIDENTIFIED SPEAKER: OPS?

4 Q (By Mr. Sheridan) Yeah. OPS and when it doesn't? Is  
5 that your decision?

6 A Yes, sir. Yes.

7 Q So the example that I gave, although it's sort of way  
8 out there, if you wanted to not do one, you could?

9 A I can try and say that I'm not going to do it, but  
10 that's not the way that it will go down.

11 Q Okay. So what I want to understand is how is it that  
12 you think when there's not a shred of writing in here  
13 that says that you have the power to not have an  
14 investigation done, I guess, as the appointing  
15 authority? Where is it that that comes from?

16 A I don't know where it is in the manual, but the  
17 appointing authority, as the commander over the  
18 division, it's my decision whether we're going to go  
19 forward with an investigation. It, of course -- if  
20 it's -- if it's something that's so horrendous as you  
21 just indicated like a murder or something severely  
22 criminal occurred, then we're going to do an internal  
23 affairs investigation.

24 Q But you're the one who gets to decide if it's  
25 important? It has to be criminal now?

1     **A     Those are your words, sir.**

2     Q     Okay.

3                 So take a look at Page 345, if you would, of  
4     Exhibit 113.

5     **A     345?**

6     Q     Yes, please.

7                 MR. SHERIDAN: And, Greg, we're going to be  
8     looking at B, the process.

9     Q     (By Mr. Sheridan) Yeah. 113 is the one that takes up  
10    the whole book.

11    **A     So you want me to go to 113 or 345?**

12    Q     No. No. 113, Page 345.

13    **A     113, Page 345.**

14    Q     Right. Tell me when you're there.

15    **A     What Chapter?**

16    Q     Chapter 12, please.

17    **A     Okay. Okay.**

18    Q     All right. So it says under "complaint process" -- do  
19    you see that, No. 1?

20    **A     Yes.**

21    Q     "Supervisory and commanded employees shall initiate a  
22    local investigation when the alleged misconduct is  
23    reported or is a part of a routine supervisory  
24    management disciplinary process. Local investigations  
25    shall follow the procedures outlined in the

1 administrative investigation manual," and that's  
2 Exhibit 260.

3 So it says "shall," right?

4 **A Yes.**

5 Q So it doesn't say "may," correct?

6 **A Correct.**

7 Q So you have to do -- you have to follow the rules  
8 without variation, right?

9 **A Of course. We follow the rules. We're bound to follow**  
10 **the rules in the manual.**

11 Q Okay.

12 Let's talk about the May 20th, 2016, meeting. And  
13 I'll ask you to turn your attention to Exhibit 65,  
14 please. And I believe you have it. It's one of your  
15 books.

16 **A Okay.**

17 Q All right. And this is a calendar entry for a meeting  
18 in which you were the organizer, correct?

19 **A According to this document, yes.**

20 Q All right. And that's your name under "organizer"?

21 **A Yes, sir.**

22 MR. SHERIDAN: All right. Plaintiff offers  
23 Exhibit 65.

24 MR. BIGGS: No objection, Your Honor.

25 THE COURT: Exhibit 65 is admitted.

1 MR. SHERIDAN: Okay. May we publish?

2 THE COURT: You may.

3 MR. SHERIDAN: Thanks. Okay. And, Greg,  
4 blow that up a little bigger. Thanks.

5 Q (By Mr. Sheridan) All right. This is basically an  
6 invite from you for a meeting to be held on the 20th of  
7 May in -- involving Jim Nobach, Jeff Hatteberg, and  
8 Ryan Santhuff, right?

9 A **Correct.**

10 Q And can you give the jury some background as to why you  
11 called this meeting?

12 A **I have no idea.**

13 Q Fair enough.

14 All right. You do remember attending such a  
15 meeting, right?

16 A **I remember attending meetings, yes.**

17 Q Okay. Do you remember attending a meeting in which  
18 Trooper Santhuff talked about his view that he was  
19 being -- he was a victim of retaliation from Lieutenant  
20 Nobach?

21 A **Yes, sir.**

22 Q All right. And is this the meeting, as best as you  
23 recall?

24 A **That could be the meeting, yes.**

25 Q All right. So -- it's true, is it not, that you

discussed issues like retaliation, training, pilot and aircraft safety concerns, timed breaks and micromanagement?

**A I don't remember everything that was addressed in that meeting.**

Q Okay. And is it fair to say that you remember at least some of the list I just gave you?

**A Yes.**

Q Okay. And you also discussed a phone call to Human Resources referencing the on-call requirements for pilots and the importance and use of the chain of command; is that right? If you recall?

**A No, I don't recall.**

Q Okay. Do you recall any of that?

**A I don't remember a call -- remember discussing any phone call with HR.**

Q Okay. Did you have phone calls with HR at that time regarding issues like when do pilots have to be on call?

**A I remember having a conversation about on call.**

Q Yes.

**A I just don't remember when -- when that conversation took place.**

Q Okay. All right. And it's true, is it not, that during the meeting, then-Trooper Santhuff began to

1 explain the retaliation that began after the sexual  
2 harassment situation with Nobach and Biscay, and you  
3 interrupted him and said words to the effect, "This has  
4 been dealt with and we're not going to talk about it"?

5 **A I don't remember saying anything like that.**

6 Q Would -- would you agree that that was sort of how you  
7 viewed the issue at the time?

8 **A Meaning that the situation involving Brenda and Nobach,**  
9 **that it was dealt with?**

10 Q It was dealt with --

11 **A Yes.**

12 Q -- and therefore not relevant anymore?

13 **A I don't know what I was thinking at that time.**

14 Q Fair enough. All right. But you understood that the  
15 purpose of the meeting was for Trooper Santhuff to  
16 report retaliation?

17 **A The purpose of the meeting was to -- to have them --**  
18 **both of them throw everything out on the table. Let's**  
19 **sit down. Let's have a discussion. How can we work**  
20 **this out?**

21 **Both of those individuals are critical to that**  
22 **unit, and I wanted to figure out, you know, being the**  
23 **mediator, how are we going to work this out.**

24 Q Okay. Okay. At the meeting, he said, Hey, I feel  
25 retaliated because of this, and he laid out -- meaning

1 Trooper Santhuff. He gave examples of how he felt.

2 MR. BIGGS: Is that a question?

3 MR. SHERIDAN: Yeah.

4 Q (By Mr. Sheridan) Did that happen at the meeting?

5 **A Trooper Santhuff -- he -- he expressed his concerns.**

6 Q Okay. Let's take a look at Page 58 of your --

7 MR. SHERIDAN: Greg, can you put this up or  
8 is it -- okay.

9 For everybody's benefit, we're going to look at  
10 Page 58, Question No. 4, and so -- question -- Line 4  
11 to Line 11.

12 THE COURT: Are you talking about the  
13 deposition?

14 MR. SHERIDAN: Pardon?

15 THE COURT: Are you talking about the  
16 deposition?

17 MR. SHERIDAN: Um, this is impeachment.

18 THE COURT: Right. Are you talking about the  
19 deposition?

20 MR. SHERIDAN: I can't hear you.

21 THE COURT: Are you talking about the  
22 deposition? Is that what you're referring to?

23 MR. SHERIDAN: Yes. Yes. Thanks, Judge.

24 MR. BIGGS: That's not designated.

25 MR. SHERIDAN: It doesn't matter. It's

1 impeachment.

2 MR. BIGGS: Your Honor, I'm going to object  
3 if the plaintiff is going to read from the testimony,  
4 which I gather he's going to do.

5 THE COURT: What page?

6 MR. SHERIDAN: It's Page 58, Line 4 through  
7 11.

8 THE COURT: Lay the foundation.

9 MR. SHERIDAN: Yeah. This is just  
10 impeachment.

11 THE COURT: You still have to lay the  
12 foundation.

13 MR. SHERIDAN: I thought I already did.

14 Q (By Mr. Sheridan) So is it fair to say that you don't  
15 recall saying that -- that he said that he felt he was  
16 retaliated because of this? That he laid out -- he  
17 gave examples of how he felt? You don't recall that,  
18 right?

19 A No.

20 Q All right. So we're going to play 58, Line 6 --

21 MR. GLOVER: Do you want to play it, or do  
22 you want to show the transcript?

23 MR. SHERIDAN: Which can you do? I'll go  
24 with whatever works for you.

25 MR. GLOVER: I can do both, but --



MR. SHERIDAN: All right. Let's do the video, and we'll start on Line 4 and we'll go to 11.

Q (By Mr. Sheridan) While he's looking at that, would you just remind the jury what the date of your deposition is?

A **This deposition is July 10th, 2020.**

Q 2019?

A **2020.**

MR. SHERIDAN: Is -- am I doing something?

THE COURT: Mr. Sheridan, I don't think I have the same thing you're looking at.

MR. SHERIDAN: Oh, okay. I'm sorry.

THE COURT: September 20, 2019, is the deposition that I have.

MR. SHERIDAN: Okay. You don't have that on 58, Judge?

THE COURT: What I have is September 20th, 2019.

MR. SHERIDAN: Oh. Oh. I get it. Yeah. Well, when he said 2020, I thought maybe I handed him the wrong book.

THE COURT: Okay.

Q (By Mr. Sheridan) Is that -- is that book you, with your name on it?

A **No.**

1 Q Is that Nobach?

2 A Yes.

3 Q I apologize. I've got to find it then. Is it up there  
4 already, sir?

5 A Yes.

6 Q Okay. I'm sorry. Go ahead and read that date. My  
7 mistake. That makes sense.

8 A Okay. The date is September 20, 2019.

9 Q Okay. Thanks.

10 MR. SHERIDAN: Go ahead.

11 (Audio recording played and transcribed  
12 as follows:)

13 UNIDENTIFIED SPEAKER: Right. And what did  
14 Trooper Santhuff tell you at the time?

15 THE WITNESS: I don't remember the specifics.  
16 I can tell you that he had an opportunity -- he laid  
17 out his concerns. He said, Hey, I feel retaliated  
18 because of this, and he laid out -- gave -- he gave  
19 examples of how he felt, and then the other -- and then  
20 everyone else laid out what they had to say on the  
21 table as well.

22 (End of audio.)

23 Q (By Mr. Sheridan) Okay. All right. So it's true, is  
24 it not, that you were well aware that then-Trooper  
25 Santhuff had said that he felt like he was a victim of

1           retaliation?

2     **A     Yes, sir.**

3     Q     Okay. Okay. Also during the meeting, did Trooper  
4           Santhuff begin to explain his experience with other  
5           pilot concerns and Lieutenant Nobach --

6                     MR. BIGGS: Objection, Your Honor.

7                     THE COURT: Sustained.

8                     MR. SHERIDAN: What?

9                     THE COURT: Sustained.

10                    MR. SHERIDAN: Okay.

11    Q     (By Mr. Sheridan) At the end of the meeting, it's true,  
12           is it not, that you told Santhuff words to the effect  
13           that if Nobach and Santhuff can't work together, then  
14           one of them is going to be removed from Aviation?

15    **A     I did not.**

16    Q     All right. Let's look at Page 62. And this is a --  
17           this is a passage, and we're going to go from Line 21  
18           through 7 on, it looks like -- I'm sorry. 62, Line 21  
19           through 63, Line 7. And we'll add your counter.

20                    MR. SHERIDAN: Greg, will you just say for  
21           the record what page numbers the counter is.

22                    MR. GLOVER: Counter is Page 63-8 through 13.

23                    MR. SHERIDAN: Go ahead and put that up.

24     /////

25                               (Audio recording played and transcribed

as follows:)

Q (By Mr. Sheridan) Okay. Um, is it also true that at this meeting, you told Trooper Santhuff if Nobach and Santhuff couldn't work together, then one of them will have to be removed from Aviation, or words to that effect?

A I'm trying to remember how that statement was made. It wasn't -- wait a minute. I didn't say anything about somebody was going to be moved out. It was more along the lines of, if you guys can't get together, then we're going to come back to the table, and I'll figure it out and there are going to be some changes that are going to be made. That's the way that went. I don't remember saying anything about someone would be moved out, but that could be a possibility.

Q And it's fair to say that you were considering that at this time?

A I don't know what I was considering at the time. My -- my objective was to try and get everyone to work together, you know. We have limited pilots in the agency and losing Trooper Santhuff, you know, I didn't want.

(End of audio.)

Q (By Mr. Sheridan) So is that an accurate portrayal of your memory at the time?

1     **A     Yes.**

2     **Q     Okay. All right. And, um, so after the meeting**  
3     **happened, the May 20th meeting, did -- did you observe**  
4     **any type of change within the organization, the**  
5     **aviation organization?**

6     **A     Okay. Would you ask that question again, please?**

7     **Q     Yeah. After the meeting, did you observe any changes**  
8     **within the organization, say, positive or negative?**

9     **A     Yes. Things got much better. One of the unfortunate**  
10    **things, you know, is Trooper Santhuff decided to leave**  
11    **the unit, which, you know -- something that I didn't**  
12    **want. We needed Trooper Santhuff in the unit. We were**  
13    **low on pilots and, in my opinion, I think we could have**  
14    **worked this thing out.**

15    **Q     Is it true that you never took any action to prevent or**  
16    **ensure that Trooper Santhuff was not retaliated against**  
17    **by Lieutenant Nobach?**

18    **A     If I remember correctly -- it's been so long -- there**  
19    **was an OPS -- Office of Professional Standards**  
20    **investigation into the allegations of retaliation. Not**  
21    **only that, I had conversations with the sergeants that**  
22    **were in Aviation, checking just to keep a pulse on**  
23    **things to see how things were going. Not only that, I**  
24    **increased my visits to the aviation section to see what**  
25    **was going on, and I think I've had conversations with**

1           **Trooper Santhuff as well to see how he was doing.**

2       Q       So is it your testimony that Trooper Santhuff said all  
3           was well?

4       A       **No. No. Sometimes he would just say there -- things**  
5           **are -- they're just going, something along those lines.**

6       Q       So it's your testimony that he never gave you any  
7           details about what his concerns were regarding how he  
8           was being treated by Lieutenant Nobach?

9       A       **No, sir. That's not what I'm saying.**

10      Q       Okay.

11      A       **Trooper Santhuff --**

12      Q       Go ahead. What were you saying?

13      A       **Trooper Santhuff did express to me his concerns about**  
14           **retaliation.**

15      Q       Okay. And what, if anything, did you do about it? You  
16           said that there was another investigation, but what did  
17           you do?

18      A       **There was an investigation by the Office of**  
19           **Professional Standards. I spoke with the sergeants on**  
20           **a regular basis to see how things were going. I made**  
21           **constant visits to the -- to the aviation section.**

22      Q       Well, shouldn't you have -- you considered that to be a  
23           complaint, did you not, a complaint of retaliation?

24      A       **It was an allegation, yes. It was a complaint.**

25      Q       Okay.

1     **A**     **Which I took was a complaint and got the Office of**  
2             **Professional Standards involved.**

3     Q     But he made the complaint to you in May, correct?

4     **A**     **I don't know when he made the complaint to me.**

5     Q     Well, would you agree with me that in response to a  
6             complaint in May, in May you should have filled out a  
7             case log and done an IIR?

8     **A**     **I don't remember when the retaliation complaint was**  
9             **made.**

10    Q     Okay.

11   **A**     **So I'm not sure what you're asking.**

12    Q     Can you tell us who was at the meeting?

13   **A**     **Who was at which meeting?**

14    Q     The meeting where the retaliation complaint was made  
15             that you've been talking about?

16   **A**     **Trooper Santhuff was there, Jim Nobach was there, and**  
17             **Sergeant Hatteberg.**

18    Q     Okay. And we've shown you a calendar entry for a  
19             meeting just like that on the 20th of May, right?

20   **A**     **Yes.**

21    Q     Okay.

22   **A**     **I think that was the date.**

23    Q     Would you agree -- so without -- without -- okay. You  
24             think it was the date, but you're not sure.

25             But let's just talk for a minute as though it were

1 the date. Would you agree with me that, upon receipt  
2 of these allegations of retaliation, you should have  
3 begun a case log, you should have done an IIR and got  
4 an investigation going?

5 **A No, sir.**

6 **Q Why not?**

7 **A Because the whole thing was to bring everything to the**  
8 **table, give them the opportunity to lay out their**  
9 **concerns and -- and -- and at this meeting -- if I'm**  
10 **remembering the same meeting, at this meeting, it was**  
11 **determined that there was miscommunications between the**  
12 **both of them. There was misunderstanding by both of**  
13 **them. Jim's communication to Santhuff was received**  
14 **differently than -- it wasn't communicated, basically,**  
15 **in a nutshell. There was miscommunications. And then**  
16 **at the end of the meeting, if this is the same meeting,**  
17 **everyone got up from the meeting. We were feeling**  
18 **good. We shook hands. We hugged and said, okay, let's**  
19 **go to work. Let's go get the sting. Let's go**  
20 **accomplish the mission. So there was no need to fill**  
21 **out an IIR.**

22 Again, not every complaint, not every policy  
23 violation is going to go to the Office of Professional  
24 Standards. Me, as the commander, I felt that that -- I  
25 felt that handling it at the division level, at my



1           level, was the appropriate thing to do; therefore, no  
2           OPS investigation was -- was started.

3       Q     Okay. It's true, is it not, that on or about  
4           September 21st, you met with Union Representative  
5           Wiley, and he reported complaints to you on behalf of  
6           Trooper Santhuff?

7       A     Yes, I remember meeting with Kenyon Wiley.

8       Q     And can you tell us what -- what he told you on  
9           September 21st, or at least summarize it?

10      A     I think Kenyon brought something up along the lines  
11           that Santhuff felt retaliated -- I think. I'm not  
12           sure. I think he brought something up about, something  
13           about deleting e-mails. And I know he brought this  
14           issue up indicating that the lieutenant grounded the  
15           airplane, the aircraft so that the governor couldn't  
16           use it. That one, I do remember was part of the  
17           conversation.

18      Q     All right. And then did you complete an IIR -- IIR  
19           after that?

20      A     I'm sure -- yes. I would assume that I did complete an  
21           IIR on something like that.

22      Q     And did Union Representative Wiley suggest to you that  
23           the retaliation allegedly was caused from the report of  
24           sexual harassment back in March?

25      A     I don't remember that.

1 Q Okay. Let's take a look at Exhibit 89, if we can.

2 A Okay.

3 Q All right. Take a look at Exhibit 89, and tell me when  
4 you've had a chance to look at it.

5 A Okay. (Witness perusing exhibit.)

6 Okay.

7 Q All right. And did you author this document?

8 A Yes.

9 Q Document created in the usual course of business by you  
10 and saved electronically?

11 A Yes.

12 MR. SHERIDAN: Plaintiff offers Exhibit 89.

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

14 THE COURT: Plaintiff's Exhibit 89 is  
15 admitted.

16 MR. SHERIDAN: All right. Go ahead and put  
17 that up on the screen, Greg.

18 Q (By Mr. Sheridan) This is an IIR, is it not?

19 A That's correct.

20 Q And let's look at the very top, if we can?

21 MR. SHERIDAN: Thanks, Greg.

22 Q (By Mr. Sheridan) Okay. This is -- this is a -- an IIR  
23 that was generated after your conversation with Union  
24 Member Wiley, right?

25 A I would assume that's why it was generated. I'm not

1           **sure.**

2       Q     Okay. All right. And what's the date of this  
3           document?

4       **A     The date --**

5       Q     Your signature date. At the bottom. Oh, yeah.

6                       MR. SHERIDAN: Greg, show them.

7                       **THE WITNESS: September 26th.**

8       Q     (By Mr. Sheridan) So on September 26th, you filed an  
9           IIR and you wrote the content under "Summary of  
10          Allegations," right?

11      **A     That was a collaboration between myself -- when we do**  
12           **an IIR, what we do as commanders, we go and we have a**  
13           **conversation with the Office of Professional Standards.**  
14           **What we do at the time -- the majority of the time is**  
15           **we do what's called a roundtable where the commander**  
16           **will throw out the allegations, and then we will go**  
17           **to -- with the detectives, we'll go and we figure out**  
18           **what policy violations may have been violated, and then**  
19           **we -- we get together, and we build the narrative**  
20           **there.**

21      Q     All right. And so it was basically -- it was you --  
22           would this have included Chief Saunders?

23      **A     I would assume that Chief Saunders was at the table.**

24      Q     I should have said Captain?

25      **A     Or Captain. Captain Saunders, yes, sir.**

1 Q Okay. You don't recall the roundtable, but that's --  
2 you're telling us the process that you would have  
3 expected to have happened?

4 **A That's what -- that's what I do.**

5 Q Okay. All right. So it's written here by you folks.  
6 "It is alleged on March 30th, the lieutenant allegedly  
7 told Trooper Ryan Santhuff he may retaliate against him  
8 because counseling the lieutenant received in an 095  
9 from Captain Johnny Alexander.

10 "It is further alleged on September 19th, the  
11 lieutenant retaliated against Trooper Santhuff by  
12 ordering Sergeant Hatteberg to negatively counsel  
13 him -- Santhuff -- for not reviewing the master flight  
14 schedule.

15 "It's further alleged that the lieutenant  
16 manipulated the aircraft maintenance schedule to  
17 purposely ground the King Air for political reasons  
18 making it unavailable for certain executive missions."

19 And this is what you -- you in the roundtable  
20 decided to list -- this is how you described -- decided  
21 to describe the content?

22 **A Yes, sir.**

23 Q Okay. All right. And it doesn't mention e-mail  
24 deletions here.

25 **A Like I said, that may be -- I wasn't sure what the --**

1           **when the meeting occurred -- what was discussed between**  
2           **Kenyon Wiley and myself. It's been over four years**  
3           **ago.**

4    Q    Okay. So did -- with regard to the content, do you  
5           know why you talked about the 095 as being the thing  
6           that's precipitating the retaliation versus the report  
7           of the sexual harassment, or we've been calling it the  
8           breast rubbing event?

9    A    **Because that's what Santhuff -- that's the information**  
10           **that I got from Kenyon Wiley.**

11   Q    From Wiley. I see. Okay.

12           And then you were -- were you aware that an 095  
13           was given to Trooper Santhuff by Hatteberg?

14   A    **I later found that out, yes, sir.**

15   Q    Okay. So when you said that you were checking on how  
16           things were going, you missed that fact? You said that  
17           you were talking to Santhuff and other people to make  
18           sure that the environment was a good one. And you  
19           recall that testimony?

20   A    **Say that again.**

21   Q    Yeah. You've testified that after the May 20th  
22           meeting, things got somewhat better, and you were  
23           checking on everybody to make sure that everything was  
24           okay, including Santhuff.

25   A    **No. You're twisting -- well, I'm not going to say**

1       you're twisting it, but -- the meeting on the 26th, if  
2       I remember correctly, if we're talking about the same  
3       meeting, that was the meeting where I talked to --  
4       where Santhuff indicated that he wanted to leave the  
5       unit. And what I asked Santhuff to do, you know, I  
6       basically told him, I said, Hey, look, man; I need you.  
7       We can work this out. Let's -- let's -- let's sit  
8       down. Let's try and work this thing out, and I'm  
9       confident that we can work this out.

10           And so he said, Well, no, I'm leaving. And I  
11          said, Okay. Do me a favor. Think about it on the  
12          weekend -- over the weekend, and then come back on  
13          Monday and then let me know what you want to do.

14           So Santhuff came back and he --

15   Q       Let me stop you because I think you're missing my  
16           question. I was asking you about after the meeting  
17           where you admitted you said there are going to be some  
18           changes that are going to be made. That's the meeting  
19           I'm talking about.

20   A       Yes.

21   Q       After that meeting, is it true that that's when you  
22           were checking on everybody to make sure the work  
23           environment was good?

24   A       Hmm, well, I go down there to check on them anyway, but  
25           the point I'm trying to get across here is Santhuff

1           decided to leave on Monday. So when he left,  
2           everything got better. So that's what I'm talking  
3           about, when you asked me did everything get better.

4   Q       Do you think he left in September?

5   A       I don't know which meeting. That's what I'm trying to  
6           get to you. Which meeting are you talking about?

7   Q       Okay. Fair enough. So you've just told us that when  
8           he left, things got better, right?

9   A       Yes.

10   Q       Okay. Fair enough.

11           So, um --

12           THE COURT: Mr. Sheridan, just keep an eye on  
13           the clock because I don't want to keep the jury past  
14           lunch.

15           MR. SHERIDAN: Yeah.

16           THE COURT: So...

17           MR. SHERIDAN: That's fine.

18           THE COURT: Just giving you the heads-up to  
19           keep an eye on the clock.

20           MR. SHERIDAN: Okay. Do you want to break  
21           here? This would be fine.

22           THE COURT: It's up to you. I don't want to  
23           stop it.

24           MR. SHERIDAN: No. This will be fine.

25           THE COURT: Okay. All right. Members of the

1 jury, it is time for our lunch break. Remember my  
2 orders: Do not talk about the case. If you see any of  
3 us, ignore us; we won't take it personal. And we will  
4 see you at 1:30.

5 All rise.

6 (Jury exits.)

7 THE COURT: All right. We'll be back at  
8 1:30.

9 (Pause in proceedings.)

10 THE COURT: Go ahead.

11 MR. SHERIDAN: Okay. So the motion in limine  
12 about using -- me using leading questions and those  
13 using -- them using for managers and the defendant  
14 using open-ended questions, I think we won that motion.  
15 I think you agreed with us. It's our Motion in Limine  
16 1, but when I was dealing with leading questions from  
17 the first guy who testified, Matheson, you overruled  
18 me, and I was confused.

19 THE COURT: Well, there was -- the question  
20 called for a yes-or-no answer, so that's not a leading  
21 question.

22 MR. SHERIDAN: But if it goes "isn't it true"  
23 or something like that, then -- I mean, perhaps I  
24 perceived it wrong, but are we all on the same page  
25 that they can't ask leading questions of their own



1 witness?

2 THE COURT: And I didn't think that --

3 MR. BIGGS: My question wasn't leading, Your  
4 Honor.

5 THE COURT: -- the question. That's why I  
6 overruled it.

7 MR. SHERIDAN: Okay. Fair enough.

8 (Noon recess taken.)  
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Wednesday, September 9, 2020

Afternoon Session

\* \* \*

THE COURT: Do we have anybody?

THE CLERK: There we go.

King County Superior Court is now in session with  
the Honorable Mafé Rajul presiding.

THE COURT: You may be seated.

MR. BIGGS: I'm going to be standing because  
I have to talk, Your Honor. Just a very brief matter.  
Just witness availability and things. We've had a  
witness all day here today. He's got another job he  
needs to try to work out, and things, so Mr. Sheridan  
and I were trying to decide how long additional it's  
going to be for Chief Alexander -- Chief Alexander, and  
then our additional questioning, et cetera, whether we  
should let him go till tomorrow. And Mr. Sheridan also  
wanted to identify for ourselves, which I appreciate,  
as well as for the Court, that he's switching up the  
witness order. There's going to be another witness  
jumping in at 1:30 tomorrow afternoon.

THE COURT: So how much longer do you think  
you have with Captain Alexander? It seems like some of  
it has been a little bit repetitive.

MR. SHERIDAN: It has, and I keep -- I told

1 these folks that I think less than an hour, more than a  
2 half.

3 THE COURT: And then you have...

4 MR. SHERIDAN: And then we have Saunders.

5 THE COURT: No, but then you --

6 MR. SHERIDAN: Mr. Biggs.

7 MR. BIGGS: Time is hard to say. Obviously,  
8 there's been a whole lot of dirt plowed here, but I'm  
9 going to try and say an hour.

10 THE COURT: So... And what time does Captain  
11 Alexander need to leave?

12 MR. BIGGS: Pardon me?

13 THE COURT: What time does Captain Alexander  
14 need to leave? Does he need to leave?

15 MR. SHERIDAN: It's not Captain Alexander  
16 needs to leave. It's former Captain Saunders, Michael  
17 Saunders, that's been -- he was --

18 THE COURT: Oh, I see. So you want to call  
19 Saunders first? Or no?

20 MR. SHERIDAN: No. I think their evaluation  
21 is whether they have enough to keep us busy through the  
22 end of the day. So I was like -- I'm fine with him  
23 leaving as long as they're sure that they're going to  
24 carry us till four; otherwise, I don't have very long  
25 with Saunders.

1 THE COURT: Well, that really is up to you.  
2 I mean, you're the ones that know. I don't have a  
3 problem with getting witnesses out of order.

4 I will say that Captain Alexander's testimony has  
5 been a little bit repetitive, so we don't need to have  
6 it be that repetitive. I mean, not just for him, but  
7 in general. Um, so... I mean, if you think that --  
8 you're the one -- how long do you think you're going to  
9 need with the other witness?

10 MR. SHERIDAN: With Saunders?

11 THE COURT: Yeah.

12 MR. SHERIDAN: My guess is a half hour.

13 THE COURT: Okay. And what about you?

14 MR. MARLOW: Probably half that.

15 THE COURT: All right.

16 MR. MARLOW: Instead of half hour, I'll be  
17 15.

18 THE COURT: Okay. And you had said that you  
19 were -- you were planning on calling your client today  
20 anyway.

21 MR. SHERIDAN: Oh, that's true. We could --

22 THE COURT: So if we call those two witnesses  
23 and we still have time, you could start with your  
24 client.

25 MR. SHERIDAN: That's a good idea. We'll

1 have a filler, yeah. That's fine.

2 Captain, thank you. So you may go and 1:30  
3 tomorrow. So 1:30 tomorrow.

4 **THE WITNESS: Okay. Thank you.**

5 THE COURT: All right.

6 MR. SHERIDAN: And then the other thing, Your  
7 Honor, is a witness by the name Speckmaier said he's  
8 leaving town tomorrow -- or next week on a motorcycle  
9 trip, so tomorrow is the only day we can get him. So  
10 we've got him coming at 1:30.

11 THE COURT: Okay. All right.

12 MR. MARLOW: And they notified us of that.  
13 So thank you very much, Mr. Sheridan.

14 THE COURT: All right. Do we have anybody  
15 else in the Zoom call?

16 THE CLERK: We do have --

17 THE COURT: Any new parties?

18 THE CLERK: I believe it's somebody from your  
19 firm that was here yesterday.

20 MR. SHERIDAN: Oh, is it a 425?

21 THE CLERK: It's an Andra Kranzler.

22 MR. SHERIDAN: Oh. Yeah, she's an associate.

23 THE CLERK: Okay.

24 MR. SHERIDAN: Oh, Your Honor, I totally did  
25 that last week. I thought that 425 number was hers.

1 It turns out it was Tony's, but it was somebody from  
2 our office.

3 THE COURT: Oh, okay. I just want to make  
4 sure that I don't need to give the admonishment again  
5 if we don't have anybody.

6 THE CLERK: Nobody additional.

7 MR. MARLOW: So our witnesses for Thursday  
8 are Speckmaier, and then you're going to put your  
9 client on?

10 MR. SHERIDAN: Speckmaier, Saunders and  
11 client.

12 MR. MARLOW: Okay.

13 THE COURT: And remember, tomorrow we just  
14 have afternoon.

15 MR. MARLOW: Half day.

16 MR. SHERIDAN: Afternoon, correct.

17 THE COURT: Okay. Anything else?

18 MR. SHERIDAN: That's it, Your Honor.  
19 Thanks.

20 THE CLERK: I'll get the jury.

21 MR. SHERIDAN: And we have -- let me give you  
22 a designation for Nobach again. I've got to find it.

23 MR. GLOVER: Who is up next, Saunders?

24 MR. SHERIDAN: No. No. Saunders is coming  
25 tomorrow at 1:30. So we're just finishing with

1 Alexander. We may put Ryan on.

2 So it's Nobach at 102-4 through 17. This was one  
3 of the pre-stated ones, and I understand you guys have  
4 no counter.

5 MR. BIGGS: Um, correct.

6 MR. SHERIDAN: Okay.

7 THE COURT: So, Mr. Sheridan, are you still  
8 going to have me take judicial notice of the 2016  
9 whistleblower -- no, the regulations manual?

10 MR. SHERIDAN: Well, it turns out, I admitted  
11 it.

12 THE CLERK: All rise.

13 THE COURT: Okay. I'm starting to worry  
14 about this.

15 MR. SHERIDAN: Yeah.

16 (Jury present.)

17 THE COURT: Thank you. Please be seated.

18 I just want to remind you, members of the jury,  
19 that if at any time you need to get up and stretch,  
20 don't be shy. I won't be offended; the parties won't  
21 be offended. So please feel free to do that.

22 Mr. Sheridan.

23 MR. SHERIDAN: Yes. We would ask to recall  
24 our witness to the stand, and give everybody a  
25 heads-up, we're going to be looking at Exhibits 89 and

1 83.

2 THE COURT: And Captain Alexander, you remain  
3 under oath.

4 THE WITNESS: Yes, ma'am.

5 Q (By Mr. Sheridan) All right. Good afternoon.

6 A Good afternoon.

7 Q So we're still talking about this September 21st  
8 meeting, and we talked about the filing of the various  
9 documents. I want to show you a document that is --  
10 that is 89.

11 MR. SHERIDAN: And has that been admitted?

12 THE COURT: Yes.

13 MR. SHERIDAN: It has, okay.

14 Q (By Mr. Sheridan) Then let me skip ahead to 260, and  
15 tell me if you have that. You should.

16 A Okay. I have 260.

17 Q Say again?

18 A I have it.

19 Q Okay. Thank you. And do you recognize this document?

20 A Yes, sir.

21 Q And what is it?

22 A It's the administrative investigation manual.

23 Q Okay.

24 MR. SHERIDAN: Oh, that's the one we already  
25 did?



1 MR. GLOVER: Yes.

2 Q (By Mr. Sheridan) My mistake. Okay. 91. I'm sorry.  
3 91 and 92, we'll be looking at. Okay. And do you --  
4 oh, I'm sorry.

5 A Okay. I'm looking at 91.

6 Q All right. And this is a -- this is a case  
7 investigative log, right?

8 A Yes, it is.

9 Q And it's one that was created by Detective Sergeant  
10 Maier, M-a-i-e-r?

11 A That's correct.

12 Q And it pertains to what subject matter?

13 A Preliminary investigation.

14 Q Okay. And a preliminary investigation into what  
15 issues? And maybe let me help you. Start out at 92,  
16 and then we'll come back to 91. We'll get them  
17 admitted separately.

18 A Okay. On 92.

19 Q 92, yeah. All right. And, um, what is this?

20 A This is an investigator log regarding a meeting that I  
21 had with Kenyon Wiley.

22 Q All right. And this is -- this is -- this is --  
23 basically, you're the author of this document, correct?

24 A Yes, sir.

25 Q And it begins, "On or about September 21st, 2016,"

1 right?

2 **A That's correct.**

3 Q And it's a document kept in the usual course of  
4 business by you electronically?

5 **A It's a document that I used for this incident, yes,**  
6 **sir.**

7 Q Okay.

8 MR. SHERIDAN: So Plaintiff offers 92.

9 MR. BIGGS: One moment, please.

10 (Pause.) No objection, Your Honor.

11 THE COURT: All right. Plaintiff's Exhibit  
12 No. 92 is admitted.

13 MR. SHERIDAN: All right.

14 Q (By Mr. Sheridan) Now let's look at 91, and tell me if  
15 you recognize this document.

16 **A It's an investigator log authored by Sergeant Maier.**

17 Q All right. And does it pertain to the same subject  
18 matter as Exhibit 92?

19 **A (Witness perusing exhibit.) Yes.**

20 Q All right.

21 MR. SHERIDAN: Plaintiff offers 9 -- is it  
22 92?

23 THE COURT: 91.

24 MR. SHERIDAN: 91.

25 MR. GLOVER: 91.

1 THE COURT: Any objection?

2 MR. BIGGS: Your Honor, there's quite a bit  
3 of hearsay -- that's all right. No objection.

4 THE COURT: All right. Plaintiff's Exhibit  
5 No. 91 is admitted.

6 MR. SHERIDAN: All right. And, Greg, go  
7 ahead and put 92 up first.

8 Oh, may we publish that?

9 THE COURT: You may.

10 MR. GLOVER: You want 91?

11 MR. SHERIDAN: 92, please.

12 Q (By Mr. Sheridan) Okay. And, Captain, we're going to  
13 turn your attention to the second page of Exhibit 92.  
14 This is a list of -- this is Maier. This is your list  
15 of allegation summary against Lieutenant Nobach, is it  
16 not?

17 A Yes.

18 Q And the first one is, "Hindered pilot advancement  
19 opportunities for Trooper Ryan Santhuff." You wrote  
20 that?

21 A Yes, sir.

22 Q 2 is, "Canceled scheduled out-of-state training as a  
23 form of retaliation." You wrote that?

24 A Yes, sir.

25 Q "Changed office procedures to specifically target

Trooper Santhuff." You wrote that?

**A I wrote everything that's on that list there.**

**Q** All right. Including, "Treated Trooper Santhuff differently than co-workers"?

**A Yes, sir. That was an allegation.**

**Q** "Singled out Trooper Santhuff during group meetings where section improvement was addressed"?

**A Yes, I wrote that.**

**Q** "Directed Sergeant Jeff Hatteberg to discipline Trooper Santhuff as a form of retaliation"?

**A I wrote that.**

**Q** And "Manipulated the King Air maintenance schedule," right?

**A Yes, sir.**

**Q** All right. And that was -- that complaint was found to be -- was turned down after a preliminary investigation by Maier; is that right?

**A Yes.**

**Q** Okay. And are you the person who made the decision to say that it had no merit?

**A Yes, sir.**

**Q** So -- and -- and the preliminary investigation that was conducted by Maier was simply -- was under the rules that we've been talking about for preliminary investigations; is that correct?

1     **A     Yes.**

2     **Q     Meaning that it was really just to see if there was any**  
3           evidence to go forward, right?

4     **A     I needed additional information to determine if it was**  
5           going to be considered an OPS investigation, a  
6           formalized investigation. That's what a preliminary  
7           investigation gives the commanders an opportunity to  
8           receive additional information so that they can make a  
9           decision on which way to proceed, whether it's going to  
10          go to the Office of Professional Standards or if it's  
11          going to stay within the unit or it's not just going to  
12          be -- well, we'll just leave it there.

13    **Q     Well, we looked at the definition of "preliminary**  
14          investigation." I'm not going to pull it up again, but  
15          you would agree, would you not, that a preliminary  
16          investigation is basically -- it's designed to  
17          determine whether or not there's actually been a  
18          violation or possible violation if everything's true,  
19          and if there's any evidence, right?

20    **A     Yes.**

21    **Q     And so, typically, in a preliminary investigation,**  
22          there are no witness interviews, right?

23    **A     As far as I know, the -- the only person -- well, the**  
24          preliminary investigations that I've been involved in  
25          have only interviewed the -- the accused.

1 Q Okay. All right.

2 A To my knowledge.

3 Q All right. And in this particular one, was anyone else  
4 interviewed, to your knowledge?

5 A I don't know.

6 Q All right. So you didn't -- you didn't allow this to  
7 go forward to be a real, full-steam investigation,  
8 correct? If it would help to refresh your  
9 recollection, take a look at Exhibit 96.

10 THE COURT: 96 has not been admitted, just so  
11 you know.

12 THE WITNESS: Okay. What's your question  
13 now?

14 Q (By Mr. Sheridan) Sure. Whether or not it's true that  
15 the investigation that was a preliminary investigation  
16 about retaliation into King Air, you didn't let it go  
17 forward to a full-blown investigation?

18 A Based on the information that I received through the  
19 preliminary investigation, no. It did not go forward  
20 as an investigation to be conducted by the Office of  
21 Professional Standards.

22 Q All right. And then Exhibit 96 is the e-mail that you  
23 wrote to Lieutenant Nobach to tell him that you made  
24 findings that it wasn't supported by the evidence and  
25 it wasn't going forward?

**A Yes, sir; that's correct.**

MR. SHERIDAN: All right. And so Plaintiff offers 96.

MR. BIGGS: No objection.

THE COURT: Plaintiff's Exhibit No. 96 is admitted.

MR. SHERIDAN: Okay. And go ahead and put that up. Show the first paragraph, if you would, Greg.

Q (By Mr. Sheridan) All right. And I'm just going to start on the first paragraph, second sentence.

"Although a recent preliminary investigation revealed you did not commit any agency policy violation, information was presented suggesting the need for better communication skills on your behalf." And that you wrote, correct?

**A Yes, sir.**

Q Okay. All right.

Now, you were aware, were you not, that Santhuff felt like when he was in the cockpit with Nobach, Nobach was basically improperly rating him lower than he should have been?

**A Is that -- what's the question?**

Q Yeah. You were aware that was one of the complaints, right, how he was treated in the airplane?

**A I'm not sure.**

1 Q Okay. Well, it -- it's fair to say that he complained  
2 in the May meeting -- going all the way back to the May  
3 meeting -- about how he was being treated by -- by  
4 Nobach in terms of training, right?

5 **A Yes.**

6 Q Okay. All right.

7 MR. SHERIDAN: I've already given notice to  
8 the other side. We're going to be playing the Nobach  
9 video, Pages 102-4 through 17.

10 THE COURT: And members of the jury, I  
11 already gave you the instruction on the deposition for  
12 this particular deposition so I'm not going to read it  
13 again.

14 MR. SHERIDAN: Thank you.

15 (Audio recording played and transcribed  
16 as follows:)

17 Q (By Mr. Sheridan) Okay. All right. Now, would you  
18 agree with me that you can -- you would, as the  
19 instructor, you can affect how well a person flying the  
20 plane does based on how quickly you give them things to  
21 do?

22 UNIDENTIFIED SPEAKER: Objection. Form of  
23 that question.

24 Q (By Mr. Sheridan) You can answer, if you can.

25 **A Just like any field, you can bury anybody if you want**



1           to. I can sit here and start speaking extremely fast  
2           and get in front of the court reporter, so...

3                               (Cross talking.)

4   Q       (By Mr. Sheridan) And you can do that for pilots as  
5           well, right?

6   A       **Any field, yes.**

7   Q       Okay. Got it.

8                               (End of audio.)

9   Q       (By Mr. Sheridan) And, sir, did you ever discuss with  
10          Lieutenant Nobach whether or not he in fact did harm or  
11          poorly evaluate Trooper Santhuff's flying?

12   A       **I'm pretty sure that somewhere along the lines, I did**  
13          **have -- I may have had a conversation with him. I**  
14          **don't remember.**

15   Q       Okay. But it's fair to say that because it was a  
16          preliminary investigation, those kind of questions  
17          weren't asked of him?

18   A       **I don't know -- I don't know what questions the OPS**  
19          **asked him.**

20   Q       Okay. But it's true, is it not, that in a preliminary  
21          investigation, there is no interview that we've talked  
22          about to witnesses, recorded; that just didn't happen?

23   A       **You're correct. That's not part of the preliminary**  
24          **investigative process.**

25   Q       Okay. Now, on October 21st, you became aware that --

1           that, basically, Trooper Santhuff had reported you and  
2           claimed that you failed to properly investigate his  
3           retaliation claim?

4   **A    At some point in time, yes, that was an allegation.**

5   Q    Okay. I'm going to show you Exhibit 98 and ask if you  
6           recognize that.

7   **A    I mean, I don't remember seeing this.**

8   Q    Okay.

9   **A    Um -- well, let me take a look at it a little closer.**

10  Q    Yeah. Thank you.

11           And, sir, give attention to the last paragraph  
12           when you have a chance, if you would.

13  **A    Okay. I don't ever remember seeing this.**

14  Q    Is it fair to say there came a time --

15                   MR. SHERIDAN: And so I won't offer it at  
16           this time.

17  Q    (By Mr. Sheridan) Is it fair to say that there came a  
18           time that you learned that Trooper Santhuff had, in  
19           fact, filed a complaint saying you didn't do your job  
20           because you didn't investigate -- adequately  
21           investigate his retaliation claim?

22  **A    Yes.**

23  Q    Okay. And, to your knowledge, how did you hear about  
24           that, from whom, and can you tell us if you were  
25           interviewed regarding that?

1     **A**     **I don't remember who I heard it from, and I don't even**  
2             **remember if I was interviewed.**

3     **Q**     Okay. So -- so you don't remember -- could you tell us  
4             who made the determination as to whether the claim had  
5             merit, if you know?

6     **A**     **Regarding --**

7     **Q**     Yes, turned against you.

8     **A**     **-- me being accused? I don't know.**

9     **Q**     Okay. All right. So, if you would, take a look at  
10            Exhibit 103 and tell me if you recognize that.

11    **A**     **(Witness perusing exhibit.) It's a letter that's**  
12             **addressed to me.**

13    **Q**     All right. And it's from Captain Saunders, right?

14    **A**     **Yes, sir.**

15    **Q**     And it's dated October 31st, 2016?

16    **A**     **That's correct.**

17    **Q**     And you did receive it, right?

18    **A**     **I'm pretty sure I received it. I just don't remember**  
19             **receiving it.**

20                   MR. SHERIDAN: All right. Plaintiff offers  
21             Exhibit 103.

22                   THE COURT: Any objection?

23                   MR. BIGGS: One second, please, Your Honor.  
24             No objection.

25                   THE COURT: All right. Plaintiff's Exhibit

1 No. 103 is admitted.

2 MR. SHERIDAN: Thank you. All right. Go  
3 ahead and put it up, Greg.

4 MR. MORRIS: Do you want to ask the judge?

5 THE COURT: Yes.

6 MR. SHERIDAN: May I publish? Thanks.

7 Q (By Mr. Sheridan) Okay. So this is a letter from  
8 Saunders to you saying that a complaint was lodged  
9 against you on the 21st, ten days before this letter,  
10 stating, "It's alleged that Captain failed to properly  
11 investigate a sexual harassment complaint and that it  
12 was not accepted."

13 Can you tell us -- can you tell us whether you  
14 talked to anybody about that?

15 A I don't remember.

16 Q Okay. So I'm going to show you a case log, and I don't  
17 know --

18 MR. SHERIDAN: Are the defendant's books  
19 available? I need 552.

20 THE COURT: Defendant's binders.

21 Did you say 562? Did you say 562?

22 MR. SHERIDAN: 552, yes. Thanks.

23 THE COURT: This is my copy.

24 MR. SHERIDAN: Oh, okay. Oh. Fair enough.

25 THE COURT: You'll get yours.

1 MR. SHERIDAN: Thank you.

2 (Pause.)

3 THE CLERK: Here you go.

4 MR. SHERIDAN: Okay. Thank you.

5 Q (By Mr. Sheridan) Okay. 552. So my question, sir, is  
6 whether you recognize it.

7 A Okay. This is an investigator log that was created by  
8 Assistant Chief Randy Drake.

9 Q Okay. And does it involve the circumstances regarding  
10 the investigation of your case? I think the first  
11 paragraph should help.

12 A I'm a little confused, meaning... I mean, it's --  
13 it's -- the question that you're asking me, I think  
14 what you're asking me is, does this case log from  
15 Assistant Chief Randy Drake -- is this pertaining to  
16 the allegation that I didn't investigate the sexual  
17 harassment case properly?

18 Q Yes.

19 A Well, I don't think that that's what this is.

20 Q Okay. Take a look at the first paragraph.

21 A Right. It says Captain Saunders -- well...

22 Q Yeah. You can't read that. And if you look at the  
23 second to the last paragraph, that might help.

24 A Okay. Yes.

25 Q Okay. Got it. Because it's a defense exhibit, I'm

1 going to offer that even though you may not have seen  
2 it so...

3 MR. SHERIDAN: Plaintiff offers Exhibit 552.

4 MR. BIGGS: No objection.

5 THE COURT: All right. Defendant's Exhibit  
6 No. 552 is admitted.

7 Q (By Mr. Sheridan) All right. And can you go ahead and  
8 put it --

9 MR. SHERIDAN: May we publish?

10 THE COURT: You may.

11 MR. SHERIDAN: Go ahead and put up the first  
12 page.

13 Q (By Mr. Sheridan) And now if you would go down to the  
14 bottom and see whose signature that is.

15 **A It appears to be Assistant Chief Randy Drake's.**

16 Q And basically this reflects his work, correct?

17 **A Yes.**

18 Q This is what he did to investigate the claim against  
19 you, correct?

20 MR. BIGGS: Your Honor, I think we might be  
21 dealing with a lack of foundation here.

22 THE COURT: Or just lack of personal  
23 knowledge.

24 Q (By Mr. Sheridan) Let me ask you this: Typically, a  
25 case log is an account of what was done in a particular

1 case, right?

2 **A Yes, sir.**

3 Q So, typically, you would write it down if you did it,  
4 right?

5 **A Typically, yes.**

6 Q Do you know if there was an IIR issued in this case?

7 **A No, I don't remember.**

8 Q Okay. But you would agree that if there was one, it  
9 would have gone to you, correct, to give you notice of  
10 the investigation?

11 **A Yes, sir.**

12 Q Okay. Now, on the 21st, you met with Alexander (sic),  
13 Hatteberg and Santhuff to discuss his future; is that  
14 right?

15 **A I don't know what date, but there was a meeting where I**  
16 **did meet with Hatteberg and Jim Nobach and Ryan**  
17 **Santhuff.**

18 Q Okay. And is it true that at that meeting, you told  
19 Santhuff that, first of all, you were unhappy with --  
20 you didn't appreciate some of the information that  
21 Santhuff provided to Internal Affairs?

22 **A No, I didn't.**

23 Q It's true, is it not, that you said that -- that you  
24 had been hearing that Santhuff was considering leaving  
25 Aviation?

1     **A**     **I don't remember that. I could have, but I just don't**  
2           **remember.**

3     **Q**     All right. And it's true, is it not, that you told  
4           Santhuff at this meeting that if he wants to stay in  
5           Aviation, he will have to let everything go that's  
6           happened in the past?

7     **A**     **I don't remember that.**

8     **Q**     Stop interrogating employees?

9     **A**     **I don't remember if -- I don't remember if that**  
10          **conversation was had at that meeting. I just don't**  
11          **remember it. I wouldn't put it past saying that**  
12          **because that was a concern; that employees in the**  
13          **aviation section had reported that he was basically**  
14          **making them feel uncomfortable and interrogating --**  
15          **interrogated.**

16    **Q**     Okay. So you told him to stop making others feel  
17          uncomfortable in the workplace?

18    **A**     **That could have happened. I'm not sure if it happened**  
19          **at that meeting, but I wouldn't put it past me to**  
20          **mention that.**

21    **Q**     Okay. And then sometime during that meeting, isn't it  
22          true that Ryan Santhuff said he can't stay here  
23          anymore?

24    **A**     **I don't remember that.**

25    **Q**     Did you walk away from the meeting feeling that he was



1 leaving?

2 **A I don't remember.**

3 **Q** Okay. All right and --

4 **A Again --**

5 **Q** I'm sorry?

6 **A I'm not sure which meeting you're referring to. Is**  
7 **this the meeting that he said that he wanted to -- that**  
8 **he wanted to leave Aviation?**

9 **Q** Well, let me ask you this: Did you attend a meeting  
10 where he said he was going to leave Aviation?

11 **A Yes, sir.**

12 **Q** Okay. Tell us what he said to you.

13 **A Okay.**

14 **Q** Tell us what he said to you, please.

15 **A He told me that he wanted -- that he was going to leave**  
16 **Aviation, in so many words.**

17 **Q** Did you try to stop him?

18 **A I did.**

19 **Q** What did you say?

20 **A I told him -- I asked him, I almost -- literally almost**  
21 **begged Ryan Santhuff to stay in the unit. I told**  
22 **Santhuff that I needed him in the unit, and that I was**  
23 **confident that we can work this thing out that they had**  
24 **between -- between Jim Nobach and him. I was confident**  
25 **we can work this out. Stay in the unit. Let's work**

1           this out. And he said that he wanted to leave, and so  
2           that's when I told him -- I said, Okay. Do me a favor.  
3           Take the weekend. Think about it and then come back  
4           and let your sergeant know if you're going to leave or  
5           not.

6       Q     If you would -- actually, you don't need to look at  
7           this one, but let me ask you: Did there come a time  
8           when you had a meeting with a union president by the  
9           name of Merrill?

10      A     I've had several meetings with Merrill. I don't know  
11           if I met with Merrill on this particular incident. I  
12           just don't remember.

13      Q     Okay.

14                       MR. SHERIDAN: I just need a moment, Your  
15           Honor. My computer is slowing down.

16      Q     (By Mr. Sheridan) All right. Going back to October --  
17           I'm sorry. Going back to November 2016.

18                       Do you recall meeting with -- with Jeff Merrill  
19           who was then the president of the WSPTA?

20      A     I don't remember.

21      Q     Okay. Do you recall saying at some point during any  
22           meeting with Chief Merrill -- with Mr. Merrill that --  
23           words to the effect of, If Ryan doesn't drop any  
24           claims, that you're going to, I guess, go after him on  
25           truthfulness issues?

1     **A     No.**

2     Q     Did you ever say that to anybody?

3     **A     No, sir.**

4     Q     Did you ever claim to have several truthful issues on  
5           Santhuff that, if investigated deeper, might have dire  
6           consequences for him?

7     **A     There were -- I don't remember having that conversation**  
8           **with Merrill. Is that the question that you're asking**  
9           **me?**

10    Q     Yes.

11    **A     No, sir. I don't remember having that conversation**  
12           **with him.**

13    Q     Did you ever believe that you had several truthful  
14           issues on Santhuff?

15    **A     Some very questionable issues about his integrity, yes.**

16    Q     All right. Going back how far, sir?

17    **A     I don't know.**

18    Q     Okay. All right. Okay. I have one more thing to do,  
19           and that is Exhibit 214, if you'll take a look at that.

20    **A     Okay. Okay.**

21    Q     Okay. What do you have in front of you, sir?

22    **A     It looks like an e-mail from Debb Tindall to me on**  
23           **November 16, 2016.**

24    Q     All right. And that's a document that you did receive?

25    **A     Yes.**

1 Q Okay. And look at the second page, and there's some  
2 handwriting there.

3 A Okay. Okay.

4 Q And can you decipher that?

5 A No.

6 Q Okay. But you did get the first piece -- the first  
7 page, right?

8 A Yes.

9 Q And the second?

10 MR. SHERIDAN: All right. Plaintiff offers  
11 215 -- 214.

12 MR. BIGGS: It's in.

13 THE COURT: All right. So this had been  
14 provisionally admitted. We just needed Captain

15 Alexander to lay the foundation, which he has, so it's  
16 admitted.

17 MR. SHERIDAN: All right. We have no further  
18 questions.

19 THE COURT: Mr. Biggs?

20 MR. BIGGS: Yes, Your Honor, thank you.

21 CROSS-EXAMINATION

22 BY MR. BIGGS:

23 Q Good afternoon, Captain Alexander.

24 A Good afternoon, sir.

25 Q Let me correct myself. Assistant Chief Alexander.  
Alexander, J. - Cross by Mr. Biggs

1     **A     That's fine.**

2     **Q     Let's try to get away from some of this protocol stuff**  
3     **a little bit and let me ask you a little bit about your**  
4     **background. Can you just give us a snapshot of you,**  
5     **please, for the jury? You know, where you came from,**  
6     **how you made it up through the Patrol, how you ended up**  
7     **there, things like that.**

8     **A     Sure. Well, I was commissioned in 1991. I was a road**  
9     **trooper in Tacoma on the freeway for a number of years.**  
10    **And from a road trooper, I was recruited to Internal**  
11    **Affairs where I served as a detective. And then I went**  
12    **from Internal Affairs to the Executive Protection Unit**  
13    **for the governor. And then I was recruited to go to be**  
14    **a spokesperson for the agency in Tacoma, up in --**  
15    **Public Information Officer, which you may know it as.**  
16    **And from there, I was promoted to sergeant and went to**  
17    **the Human Resource Division where I spent probably**  
18    **about five years there. And then I went to North**  
19    **Seattle to the field as a sergeant there to take over a**  
20    **detachment, and then I went to South Seattle, and then**  
21    **I was asked to go to Bellevue as a sergeant in the**  
22    **field. And from there, I was promoted to lieutenant**  
23    **over the motor -- Commercial Vehicle Division, and then**  
24    **I was asked to go to the Motor Carrier Safety Division.**  
25    **From there, then I elected to go out to the field, to**  
          **Alexander, J. - Cross by Mr. Biggs**

1 Bellevue as a lieutenant, out there on the road. And  
2 then I was promoted to captain over the Special  
3 Operations Division. And then I was promoted to the  
4 assistant chief over the Commercial Vehicle Enforcement  
5 Bureau.

6 Q I may have missed it at some point. Were you at one  
7 time, a detective?

8 A Yes, sir.

9 Q And is that a rank?

10 A Um, I don't consider it a rank. It's not -- no, it's  
11 not a rank. It's just a specialty position.

12 Q Okay.

13 A You know --

14 Q So a trooper --

15 A A trooper detective, yes, sir.

16 Q Are there also sergeant detectives?

17 A Yes, sir.

18 Q Lieutenant detectives?

19 A You know, I guess we would refer to them as lieutenant  
20 detectives there in those units as well, so...

21 Q Okay. And can you give the jury just a little  
22 snapshot, how does a person move from trooper to  
23 sergeant?

24 A Well, there's a -- there's a written test -- well,  
25 first, they have to have four years on, and there's a  
Alexander, J. - Cross by Mr. Biggs

1 written test that we take and -- that we submit to, and  
2 then there is the assessment center that is conducted  
3 as well. There are a lot of other factors that play  
4 into that, your performance evaluation. I already  
5 talked about tenure, so, yeah.

6 Q Okay. And then when you want to be a sergeant, are you  
7 applying for a specific position or just sort of  
8 sergeant as a rank?

9 A No. Just as sergeant as a rank. We take the test, and  
10 there's a promotional list. So when a position opens  
11 up, then the Human Resource Division will call that  
12 individual according to their ranking on the top of the  
13 list and ask if they want to go, and then they can make  
14 a decision.

15 Q Do you know approximately what percentage of troopers  
16 ever become sergeants?

17 A No, sir, I don't.

18 Q And then when a sergeant wants to move into a  
19 lieutenant position, is it a similar -- you take a test  
20 and so on?

21 A Yes, sir.

22 Q Okay. And how do you get chosen to be a captain?

23 A That's a position that's appointed by the chief. The  
24 chief takes a look at the history and the performance  
25 of -- of these individuals, and then -- and then he  
Alexander, J. - Cross by Mr. Biggs

1 makes a decision -- he or she makes the decision  
2 whether they're going to promote that individual. So  
3 there's a lot of, you know, things that go in there,  
4 you know, that I think the chief -- if I were the chief  
5 of the Washington State Patrol, which I'm pretty sure  
6 the chief does, he takes a look and makes sure that  
7 it's going to be someone that he can trust to go in and  
8 fulfill that role.

9 Q Okay. So that's for captain. And then what about for  
10 assistant chief?

11 A The same thing for assistant chief. It's also an  
12 appointed position.

13 Q Okay. Is the level of assistant chief kind of like  
14 second only to the chief himself?

15 A Well, normally, it's the chief and then a deputy chief,  
16 but at this time, as of a couple years now, we haven't  
17 had a deputy chief. So you've got four assistant  
18 chiefs that answer directly to the chief, so second in  
19 control.

20 Q And how are their duties segregated?

21 A They're segregated according to -- there are four  
22 bureaus -- well, actually for the assistant chief,  
23 there are four bureaus. Again, I have the Commercial  
24 Motor Vehicle -- Commercial Vehicle Enforcement Bureau  
25 which oversees budget and fiscal services, the Motor  
Alexander, J. - Cross by Mr. Biggs



1           Carrier Safety Division, the Commercial Vehicle  
2           Division, and the Fleet Section.

3           And then there's a Technical Services Bureau that  
4           oversees the Human Resource Division, the Training  
5           Division, and the IT side of the house.

6           And then the Field Operations Bureau, that  
7           individual oversees all of the field operations --  
8           troopers that are driving up and down the road. And  
9           let's see here.

10          And then the other -- oh, and then there's the  
11          Investigative Services Bureau for the other assistant  
12          chief that oversees all the investigative side of the  
13          house, you know, Internal Affairs, which is one of  
14          those.

15   Q       And what is Internal Affairs?

16   A       Internal Affairs, it's also known as the Office of  
17           Professional Standards. That's where the serious  
18           investigations go for investigations.

19   Q       When a person is under investigation by Internal  
20           Affairs, are they required to cooperate with that  
21           investigation?

22   A       Yes, sir.

23   Q       And are they required to give answers that are true and  
24           honest to the best of their ability?

25   A       Yes, sir.

          Alexander, J. - Cross by Mr. Biggs

1 Q How long were you in Internal Affairs?

2 A Oh, less than two years.

3 Q Sounds like you've moved into a number of different  
4 programs over -- how many years you been there?

5 A I am 29 and a half years now.

6 Q Okay. And you've been in a bunch of different -- do we  
7 call them divisions?

8 A Yes.

9 Q And is that something that is typical, that you get  
10 moved around?

11 A It's typical, but, you know, you have some individuals  
12 that just decide to stay where they are, and that's  
13 quite all right, you know, quite fine as well, so...

14 Q Now, you said that you oversaw Aviation back in 2016.  
15 Can you -- can you tell us how many sergeants were in  
16 Aviation?

17 A Well, let's see here: One, two, three. During my time  
18 in the Special Operations Division, there were three  
19 sergeants that filtered through there that I can  
20 remember.

21 Q I'm sorry. How many positions for sergeants in  
22 Aviation?

23 A Um, two positions.

24 Q So if a person were going to promote from trooper to  
25 sergeant and they wanted to be in Aviation, is that a  
Alexander, J. - Cross by Mr. Biggs

1           job that comes open very often?

2     **A     Well, Aviation is a specialty position, and that**  
3           **requires an interview process. So you can't just**  
4           **promote into Aviation. You have to go through --**  
5           **troopers have to go through -- and sergeants have to go**  
6           **through an interview process.**

7     **Q     And you have two positions which, in those days, were**  
8           **Hatteberg and Sweeney, right?**

9     **A     Yes, sir.**

10    **Q     So if somebody wanted to be a sergeant in Aviation, you**  
11        **would have to wait for Hatteberg or Sweeney to be gone,**  
12        **right?**

13    **A     Yes, sir.**

14    **Q     Okay. You have been in a management position now, a**  
15        **leader position, for many years, right?**

16    **A     Yes, sir.**

17    **Q     Can you give us a little snapshot, please, about what**  
18        **are your goals and your -- your motivations as a**  
19        **manager?**

20    **A     Well, for me personally -- and, you know, this is**  
21        **something that I share with anyone that I'm**  
22        **supervising. You know, one of my main goals is to make**  
23        **sure that we work together to create a positive work**  
24        **environment to where everyone loves to come to work.**

25        **That's very important to me, and I work very hard to do**  
          **Alexander, J. - Cross by Mr. Biggs**

1           that, and that's something that I impress upon my  
2           sergeants --

3                   MR. SHERIDAN: Your Honor, I'm going to  
4           object. This is opinion, not fact.

5                   THE COURT: Overruled.

6                   THE WITNESS: Okay. That's something that I  
7           impress upon with my sergeants, my lieutenants, and now  
8           my captains. It's critical. That's very important to  
9           me.

10                   And so as a leader, that individual is responsible  
11           to make sure that the people that are under his or her  
12           control, that they're taken care of, making sure that  
13           they have all the resources they need to -- in order to  
14           get the job done, make sure that they're -- understand  
15           why we're asking them to do what we're asking them to  
16           do and just making sure that we're taking care of their  
17           needs. So I take being a leader very serious.

18   Q           (By Mr. Biggs) Do you have a philosophy with regard to  
19           cutting people loose if they're a problem versus  
20           retraining them or keeping them in the team? Do you  
21           have a philosophy about that?

22   A           Well, I believe in dealing with, you know, the small  
23           things, you know. You know, when I go to different  
24           locations and supervise, first thing that comes out of  
25           the trooper's mouth, Hey, Sarg; hey, Lieutenant. Are  
                  Alexander, J. - Cross by Mr. Biggs

1           you going to sweat the small stuff? And my response  
2           is, You better believe it. Yes, I'm going to sweat the  
3           small stuff. And it's critical to me that we do that  
4           as leaders because that's how we keep individuals from  
5           getting ahead of themselves and getting into deeper --  
6           deeper mess. If we handle the things when they're  
7           small, and we handle it -- do it immediately, then we  
8           can hopefully try to prevent individuals from being  
9           investigated by the Office of Professional Standards or  
10          even losing their jobs.

11        Q     And it sounds like nobody wants to be investigated by  
12              Internal Affairs; is that true?

13        A     Yes, sir.

14        Q     Now, let's talk about Aviation for a second. Did you  
15              have a level of expectation in terms of  
16              professionalism, skill, things like that for Aviation?

17        A     You better believe it.

18        Q     Tell us about that, please.

19        A     Well, Aviation, you know -- those individuals, they fly  
20              airplanes, and sometimes I'm on the airplane with them,  
21              okay, and I want to make sure that they are very well  
22              trained. I want to make sure that they're adhering to  
23              the rules and regulations of the FAA and internal  
24              rules, safety rules that are within the aviation  
25              section. I -- I expect my leaders, my subordinate  
              Alexander, J. - Cross by Mr. Biggs

1           leaders to lead.

2       Q     That would be Lieutenant Nobach?

3       A     Lieutenant Nobach and those sergeants as well because  
4           the bottom line, they answer to me as well, you know.  
5           So I expect those individuals to lead in a manner to  
6           where, you know, people feel respected.

7                    Again, it's very important to me that we create an  
8           environment to where people love to come to work. If  
9           I -- if we are doing that, then I feel accomplished.  
10          So I expect my -- my leaders to lead. Lead by example.

11       Q     And why do we have an aviation section? Why do you  
12           have that?

13       A     Well, Aviation -- well, we fly the governor around the  
14           state. And the other thing is we have traffic law  
15           enforcement duties for our aviation section as well.  
16           So they -- they work in conjunction with the troopers  
17           on the ground and communicate.

18       Q     Okay. And do you ever get called out for special  
19           emergencies or problems?

20       A     Yes. Our aviation section -- yes. You know, for  
21           instance, the -- the mudslide that we had up north,  
22           Oso.

23       Q     Oso?

24       A     Yes. So they got called out to participate in that as  
25           well. And they also transport detectives from Point A  
              Alexander, J. - Cross by Mr. Biggs

1 to Point B, you know. If we have a SWAT incident  
2 that's going to go down over in Eastern Washington,  
3 then we need to get the resources to where they need to  
4 be.

5 Q So if there was something happening in the Tri-Cities,  
6 an officer-involved shooting or some kind of thing,  
7 would Aviation be involved in that?

8 A Yes. They would more than likely be transporting the  
9 chief and -- over to that location.

10 Q And how did your work at Oso work out?

11 A Um, you know, to be honest with you, I don't remember,  
12 you know, how things went with the Oso. I'm not even  
13 sure if I was in there when Oso occurred.

14 Q Can you tell us who was in charge of Aviation's work at  
15 Oso?

16 A Yes. Lieutenant Nobach was in charge of Aviation at  
17 the time.

18 Q Okay. When you supervised Lieutenant Nobach, what was  
19 your general opinion of his work, his abilities, things  
20 like that?

21 A Lieutenant Nobach, he -- he knows aviation. That's his  
22 thing. He knows aviation inside and out, so I never  
23 questioned his ability, you know, when it came down  
24 to -- to the rules and regulations, you know, that are  
25 associated with the aviation program.

Alexander, J. - Cross by Mr. Biggs

1           He was -- he's always available. He's very  
2           dependable, very flexible. And what I mean by that is  
3           we were limited in the number of pilots that we had in  
4           the unit, and the lieutenant of that unit has a lot of  
5           administrative responsibilities, and Jim Nobach would  
6           work in the evenings, you know, to get that stuff done  
7           so he can also fly missions.

8           Again, we just didn't have a whole lot of pilots,  
9           so I appreciated his flexibility and willingness to  
10          step up and do that, and that's what I expect from my  
11          leader. You know, I expect that they lead by example,  
12          and they don't ask their people to do more than they're  
13          willing to do.

14       Q     Do you have an opinion about Lieutenant Nobach as a  
15              flight instructor?

16       A     You know, to be honest, I don't know a whole lot about  
17              that. You know, I've never flown a plane, nor do I  
18              desire to, but as far as I know, from what I've heard  
19              from -- from his sergeants, he's top notch.

20       Q     Let me ask you a question. Lieutenant Nobach was the  
21              only certified flight instructor at the time in that  
22              section, right?

23       A     Yeah -- I -- I'm not sure what classifies as a  
24              certified specialist.

25       Q     Let me just get directly to the question.  
              Alexander, J. - Cross by Mr. Biggs



1     **A     Okay.**

2     Q     In your opinion, was Lieutenant Nobach indispensable?  
3           If he did something stupid and got called out for it,  
4           would the whole program fall?

5     **A     No.  He's replaceable.**

6     Q     Okay.  On that topic, tell us a little bit, if you  
7           would, please.  What is your philosophy and your  
8           approach to things like discrimination in the  
9           workplace?

10    **A     That's something that I take very serious.  You know,**  
11       **that's also part of my spiel when I go to different**  
12       **sections.  You know, I lay it right out there:  Hey,**  
13       **guys, look, I love to have fun.  I love to create a**  
14       **great work environment, but under no circumstances will**  
15       **I tolerate -- what do you call it?  Boy, just drawing a**  
16       **blank right now.**

17    Q     Discrimination?

18    **A     Well, discrimination, but -- yeah, discrimination or**  
19       **off-color jokes.**

20    Q     Okay.

21    **A     Don't support that.  Gets you in trouble.  I've been**  
22       **around for a long time, and I've seen how things can**  
23       **get you in trouble.  So, yes, absolutely.**

24       **Discrimination, no.  Sexual harassment, no.**

25       **Retaliation, absolutely not.**

          Alexander, J. - Cross by Mr. Biggs

1 Q And if you get wind of a problem like that, harassment,  
2 retaliation, what do you do?

3 A **Immediately act.**

4 Q And I think you talked to us a little bit before. Do  
5 you have options in terms of how you act about those  
6 kinds of problems?

7 A **Yes.**

8 Q Tell us about those options, please.

9 A **Well, depending on the information, the first thing I'm**  
10 **going to do, any time I get something like a sexual**  
11 **harassment or discrimination complaint, the first place**  
12 **I'm going to is OPS or HRD because I'm not the subject**  
13 **matter expert on it, and I know that you can get**  
14 **yourself in trouble and the agency in trouble if you**  
15 **get that wrong. So the first place I go to for a**  
16 **consultation is to the subject matter experts, and**  
17 **that's what I normally do.**

18 Q Let me just stop you. You used a couple acronyms  
19 and --

20 A **Oh, I'm sorry.**

21 Q -- we've been hearing them, and I want to make sure.  
22 HRD, what's that?

23 A **The Human Resource Division.**

24 Q And OPS is the --

25 A **The Office of Professional Standards.**  
**Alexander, J. - Cross by Mr. Biggs**

1 Q And that's Internal Affairs?

2 A Yes, sir.

3 Q And you go to those in most cases where you get some  
4 kind of a problem involving harassment, retaliation,  
5 that sort of thing?

6 A Yes, sir.

7 Q Okay. And when you got this complaint that was raised  
8 up to you about Brenda Biscay, did you do that? You  
9 followed that procedure?

10 A Yes, sir.

11 Q And you've already described for us what -- what your  
12 conclusions were. It wasn't what you called a major  
13 violation, right?

14 A Correct.

15 MR. SHERIDAN: Now, Your Honor, I'm going to  
16 object to leading.

17 THE COURT: Overruled.

18 MR. SHERIDAN: All right.

19 Q (By Mr. Biggs) Thank you, Assistant Chief.

20 And you talked to us a little bit about how you  
21 coordinate with the two other departments, kind of a  
22 three-legged stool thing, right? What happens if you  
23 go to OPS and you say, Yeah, I don't think this really  
24 needs -- doesn't need to be in your bailiwick, and OPS  
25 says, Well, I don't know; I think we should grab this  
Alexander, J. - Cross by Mr. Biggs

1           one.   What happens then?

2   **A    Well, for me?  I'm going to probably -- I'm probably**  
3       **going to lean more towards OPS because that commander**  
4       **is the standards officer for the agency.**

5           **But, hypothetically, let's say if we didn't agree,**  
6       **then I would assume that it will go up to the next**  
7       **level in the chain which would be an assistant chief.**

8   **Q    Okay.  And then that person would be kind of the**  
9       **arbiter of what happens?**

10  **A    Yes, sir.**

11  **Q    Okay.  Now, let's talk a little bit about this issue**  
12       **with Ms. Biscay.  What information -- let me say, where**  
13       **did your information come from that you were acting on?**

14  **A    The -- my initial notice of it came from Assistant**  
15       **Chief Randy Drake.**

16  **Q    Okay.  And do you know where his information**  
17       **originated?**

18  **A    His got the information from Captain James Riley.**

19  **Q    And where did his information originate?**

20  **A    And he got the information from Sergeant Sweeney.**

21  **Q    And where did Sergeant Sweeney get the information?**

22  **A    He got the information from Trooper Santhuff.**

23  **Q    Okay.  So all the information that you had about what**  
24       **may or may not have happened that day started with**  
25       **Santhuff and then was filtered through three, four, or**  
          **Alexander, J. - Cross by Mr. Biggs**

1 five other people --

2 **A Yes, sir.**

3 Q -- until it arrived on your desk?

4 **A Yes, sir.**

5 Q And you mentioned that you talked to Sergeant Sweeney.

6 Sergeant Sweeney didn't have any actual knowledge of

7 what happened, right?

8 **A No, sir.**

9 Q He just knew what the plaintiff told him?

10 **A Yes, sir.**

11 Q After you made your decision, you'd mentioned that you

12 talked to the plaintiff.

13 **A Yes, sir. Well, hold on.**

14 Q Okay. I'm sorry.

15 **A After I made my decision?**

16 Q Oh, I'm sorry. Your decision not to -- that it was not

17 to be an OPS issue.

18 **A I talked to the plaintiff before I made that decision.**

19 Q I see. Okay. And that's when he told you the things

20 that you described earlier?

21 **A Yes, sir.**

22 Q Any doubt in your mind about what he told you?

23 **A No, sir.**

24 Q Did OPS push back and say, Oh, no, no, no; this should

25 be an Internal Affairs deal?

Alexander, J. - Cross by Mr. Biggs

1     **A     No, sir.**

2     Q     And did Human Resources push back and say, Nope, this  
3           is going to be a deal that we're going to look at?

4     **A     No, sir.**

5     Q     So as far as you could tell, they were all happy  
6           with --

7                   MR. SHERIDAN:  Objection.  Leading and  
8           speculation.

9     Q     -- you handling it?

10                   THE COURT:  I'll sustain on the speculation.

11    Q     (By Mr. Biggs) Did you have any doubt in your mind that  
12           those two programs gave you permission to go forward?

13    **A     Yes.**

14                   MR. SHERIDAN:  Objection.  Again,  
15           speculation.

16                   THE COURT:  Overruled.

17    Q     (By Mr. Biggs) I'm sorry.  Did you already answer?

18    **A     Yes.  The answer was "yes."**

19    Q     Okay.  We heard about this 095 thing, or 095, and that  
20           can be good or bad, right?

21    **A     That's correct.**

22    Q     Let's just talk about the negative ones that we're  
23           talking about here today.  How big of a deal is that?

24    **A     Well, no one likes to be written up.  You know, no one**  
25           **likes negative documentation in their files.  You know,**  
              Alexander, J. - Cross by Mr. Biggs

1           it can impact your ability to -- to move around within  
2           the agency or promote. It could affect a lot of  
3           different things, so it's -- it's not a fun thing.

4   Q       And what is it designed to do?

5   A       Well, in this -- when it comes down to discipline, it's  
6           designed to have a conversation -- it documents the  
7           counseling session. You know, this is what we talked  
8           about, and here are my expectations and here maybe is  
9           what's going to happen if it continues on. So it  
10          documents the -- it documents the behavior and -- in  
11          the -- in the conversation that leads into the  
12          conversation, and it's -- there -- it's not just a --  
13          there's a whole counseling session that goes with this  
14          095. It's not just, I write it up and slide it over to  
15          you and you sign it. No. We're going to sit down and  
16          we're going to have that hard conversation about what  
17          we're dealing with, why we're here to talk about and  
18          what we're here to talk about. We're going to have  
19          that conversation, and you're going to understand  
20          that -- you know, what my expectations are going  
21          forward. So that's what it does.

22   Q       Based on what you heard through these three or four  
23           people that told you what Trooper Santhuff was talking  
24           about, what is your conclusion or understanding about  
25           what Ms. Biscay actually did?

          Alexander, J. - Cross by Mr. Biggs

1     **A**     **As far as I understand, she rubbed her breasts up**  
2             **against the back of Lieutenant Nobach's head.**

3     **Q**     Did she ever say to you that she did that?

4     **A**     **No, she didn't.**

5     **Q**     Okay. And the only time that you talked to her about  
6             this was at the 095 sitdown, correct?

7     **A**     **Correct.**

8     **Q**     Okay. And about how long did that meeting last, would  
9             you say?

10    **A**     **Probably about, I'd say, between 20 and 30 minutes.**

11    **Q**     Okay. And what was it that you felt that she did  
12            wrong? Can you just classify it for us?

13    **A**     **Well, I -- she engaged in inappropriate behavior, you**  
14            **know, for the workplace. You know, I understand, you**  
15            **know, based on how she described it, that was kind of**  
16            **how things were done around there. And -- and -- and,**  
17            **you know, she went along with it because she was trying**  
18            **to fit in, which made me sick to my stomach when I**  
19            **heard that.**

20    **Q**     Okay. What do you mean by that, "She went along with  
21            it because she was trying to fit in"?

22    **A**     **Trying to be one of the boys, so to speak. You know,**  
23            **she was the only female out there, you know, and she**  
24            **said, Well, basically, engaging in the behavior, you**  
25            **know, inappropriate comments and so forth.**

          Alexander, J. - Cross by Mr. Biggs



1 Q Okay. And during this conversation with Ms. Biscay,  
2 did she say that she participated in this herself?

3 A Yeah. Again, in a roundabout way, saying that's just  
4 what happens out here in the area, yes.

5 Q That's talking about the whole aviation section?

6 A Yes. Yes. Within Aviation, yes.

7 Q Okay. And did Ms. Biscay tell you whether or not the  
8 plaintiff engaged in that kind of behavior?

9 A Yes, she did.

10 Q What did she say about that?

11 A Well, it was after I gave her the 095, and I asked  
12 her -- I said, Okay, Brenda. Do you have -- I called  
13 her "Miss Brenda." Do you have anything that you want  
14 to add before you sign? And she said no, and she  
15 signed, but she said, But I do have something I would  
16 like to talk about. And so she signed the document and  
17 I said, Okay, we're finished with the 095. Okay. Go  
18 ahead, what do you got? And that's when she went on to  
19 say, Look, that's what happens out here. And then she  
20 threw this out there and said, you know, Santhuff is no  
21 angel.

22 She said that Santhuff made inappropriate comments  
23 about her teenage daughters. And -- in Brenda's  
24 office, she has pictures in her office, you know, with  
25 her daughters, and you can -- there's no way that you  
Alexander, J. - Cross by Mr. Biggs

1 can't tell that those young ladies are -- they're not  
2 adults; they're teenagers. So she told me that  
3 Santhuff made some very inappropriate comments about  
4 her teenage daughters, and she said, But I didn't  
5 complain. I thought it was creepy, but I didn't  
6 complain because that's what -- the type of stuff that  
7 goes on out there at the aviation section.

8 Q Okay. And so you then gave her this 095 -- is it  
9 called discipline?

10 A Well, in the manual it's called a sanction. I would  
11 categorize it as a level of discipline.

12 Q Okay. And what happens to the 095s, you know, when you  
13 give it to someone, and they sign it and they give it  
14 back to you?

15 A Mm-hm.

16 Q Where does it go, and how does it work?

17 A It goes in the supervisory file. The supervisor's file  
18 stays in my office, for instance, and it's locked in my  
19 cabinet.

20 Q For how long is it retained?

21 A Um, I think it's retained for the entire year.  
22 However, if additional behavior that's similar  
23 continues, then it can stay in -- in the file beyond  
24 the year.

25 Q Okay. It's not like you --  
Alexander, J. - Cross by Mr. Biggs

1 THE COURT: Mr. Biggs --

2 Q (By Mr. Biggs) -- talking high school, and it's going  
3 on your permanent record. This is something that has  
4 a -- an expiration time on it?

5 A Yes, sir.

6 THE COURT: Mr. Biggs, let's take our  
7 afternoon break.

8 MR. BIGGS: Thank you, Your Honor.

9 THE COURT: It's 2:45, so let's take our  
10 15-minute break. We'll be back at 3:00.

11 All rise.

12 (Recess taken.)

13 THE COURT: Thank you. Please be seated.

14 (Pause in proceedings.)

15 THE CLERK: All rise.

16 (Jury present.)

17 THE COURT: Thank you. Please be seated.

18 Mr. Biggs.

19 MR. BIGGS: Yes. Thank you, Your Honor.

20 THE COURT: And you're still under oath.

21 MR. BIGGS: Still not used to this setup  
22 here.

23 Q (By Mr. Biggs) Assistant Chief, we were talking a  
24 little bit about the situation with Brenda Biscay and  
25 the resulting work that you did. As part of deciding  
Alexander, J. - Cross by Mr. Biggs

1           what -- what remedy you would have where you eventually  
2           said 095s would be good, did you talk to either  
3           Ms. Biscay or Mr. Nobach -- Lieutenant Nobach before  
4           you made the 095 decision?

5     **A     No.**

6     Q     Okay. And is that -- is that typically how you handle  
7           those things?

8     **A     Well, I mean, in this particular situation, I have the**  
9           **information that I -- that I needed. I -- I believed**  
10           **Ryan Santhuff.**

11    Q     Okay. And that is typical to talk to the complaining  
12           party?

13    **A     Yes.**

14    Q     When you went about this work -- now, we spent hours  
15           looking at procedures and all this today -- did you  
16           follow procedure?

17    **A     Yes, sir.**

18    Q     When the plaintiff's attorney showed you charts and  
19           things like that, did those apply to the work that you  
20           were doing?

21    **A     They do apply to work that I do, yes.**

22    Q     Okay. But did they apply to work that you were doing  
23           in what we -- the Biscay incident?

24    **A     Yes.**

25    Q     Okay. And it was whose call whether or not to follow  
            Alexander, J. - Cross by Mr. Biggs

1 the OPS track?

2 **A It was my call.**

3 Q Okay. As far as you know, you followed procedure all  
4 the way down the line?

5 **A Yes.**

6 MR. SHERIDAN: Objection, leading again.

7 THE COURT: Overruled.

8 Q (By Mr. Biggs) What I would like you to tell us, you  
9 told us what you thought Ms. Biscay actually did that  
10 was wrong, right?

11 **A Yes.**

12 Q Now, would you do the same, please, for Lieutenant  
13 Nobach? Tell us what you determined Lieutenant Nobach  
14 did that was wrong.

15 **A Well, I -- Lieutenant -- in my opinion, Lieutenant**  
16 **Nobach allowed behavior to exist in his -- in his unit,**  
17 **and that's what he did wrong.**

18 Q Okay. Did you conclude or have any evidence to support  
19 the notion that Lieutenant Nobach asked for this to  
20 occur?

21 **A No.**

22 Q Or that he encouraged it in any way?

23 **A No.**

24 Q Okay. So why did he get an 095?

25 **A He got an 095 because I felt that he needed to work on**  
**Alexander, J. - Cross by Mr. Biggs**

1 his leadership. He needed to take control of his unit  
2 and to stop that behavior, stop that type of a  
3 loosey-goose stuff, that playing around, and that's not  
4 what we expect in the workplace. What they do after  
5 work, that's on them, but as long as they're in work,  
6 that should not occur. It will not occur under my  
7 command.

8 Q No off-color jokes? None of that stuff?

9 A None of that stuff. No discrimination. No  
10 retaliation. No, it's not going to happen.

11 Q And then to support that 095 conclusion that you made,  
12 did you also order some training?

13 A I did. I ordered Jim Nobach to seek sexual -- to seek  
14 training for -- for the unit and sometimes, you know,  
15 we -- when we tell our troopers to go in and do this  
16 type of training, it's online, and I told Jim, nope, I  
17 want someone in our face talking and have some  
18 dialogues about this type of incident. I want to make  
19 sure that everyone in that unit knew that this was a  
20 serious deal and that they knew what behavior could be  
21 considered inappropriate, you know, as far as sexual  
22 harassment. I even attended the training to make it --  
23 to drive it home how important it is and how serious I  
24 was regarding what was going on, and that -- captains  
25 don't do that, but I did.

Alexander, J. - Cross by Mr. Biggs

1 Q Okay. All right. After the 095 to Lieutenant Nobach,  
2 after the training, how many problems did you have with  
3 him not running a tight ship after that?

4 A I had no problems along those lines, no problems with  
5 the horse playing or anything along that nature. It  
6 stopped immediately.

7 Q Did what you ordered, then, take care of the problem?

8 A Yes, it did.

9 Q Is that what you had in mind when you ordered it?

10 A Yes, sir.

11 Q Let's jump ahead a little bit in time. You talked a  
12 little bit earlier about Lieutenant Nobach. He  
13 actually filed a -- I'm sorry. Trooper Santhuff. He  
14 actually filed a formal complaint against you, didn't  
15 he?

16 A Yes, sir.

17 Q And what was that complaint about?

18 A To the best of my knowledge, that he felt that I didn't  
19 do a thorough -- I didn't handle the situation that  
20 occurred between Brenda and Lieutenant Nobach  
21 appropriately.

22 Q He thought you didn't do your job right?

23 A Yes, sir.

24 Q And does that make you angry?

25 A Hmm. I mean, that's his opinion, you know. And -- I'm  
Alexander, J. - Cross by Mr. Biggs

1 not surprised. I mean, that happens. Again, I've been  
2 around for 29 years, and, you know -- and that just  
3 doesn't surprise me that someone would say something  
4 like that, that he would say that.

5 Q And did that complaint that you didn't do your job  
6 right go to Internal Affairs?

7 A I think it did, yes.

8 Q And -- and were you vindicated?

9 A Yes, sir.

10 Q Ryan Santhuff -- Trooper Santhuff has sued your  
11 organization, the organization that you're near the top  
12 of. Are you angry with him for doing that?

13 A No. No, I'm not angry. It's -- I mean, that's his  
14 option. You know, when I see Ryan -- we work at the  
15 same building together, and I see him walking down the  
16 hall -- it's, "Hey, Bud; how you doing?" It's not  
17 personal for me. That's not personal to me.

18 Q Okay. Do you have any opinion about whistleblower  
19 complaints, whether that's a good or a bad process for  
20 the Patrol to have?

21 MR. SHERIDAN: Objection, speculation  
22 (inaudible).

23 THE COURT: Well, the question is, "Do you  
24 have an opinion," so that's not really speculation.

25 MR. SHERIDAN: It's opinion.  
Alexander, J. - Cross by Mr. Biggs



1 THE COURT: Um, I'm going to sustain the  
2 objection.

3 Q (By Mr. Biggs) Well, Assistant Chief, you're aware of  
4 the whistleblower process in the Patrol, right?

5 A Yes, I did. Yes, I am, and I support it.

6 Q You support it? Why?

7 A Well, I think it's a good accountability mechanism, and  
8 that's one of the big things why I joined the State  
9 Patrol right from the beginning is because the Patrol,  
10 it's a professional -- I was recruited by other law  
11 enforcement agencies, but the reason I chose the State  
12 Patrol is because it has a reputation as professional,  
13 high-level integrity, and the one big thing that I  
14 really like about the State Patrol that drew me to the  
15 State Patrol, and still holds true today, is  
16 accountability. We don't sweep stuff under the carpet.  
17 If we see something go down, we're going to deal with  
18 it.

19 Q Do you know whether or not a person can file a  
20 whistleblower complaint anonymously so his boss, his  
21 co-workers, nobody knows about it?

22 A Yes.

23 Q Is that part of the program, how it's set up?

24 A Yes, sir.

25 Q So, just for example, if you had a whistleblower  
Alexander, J. - Cross by Mr. Biggs

1 complaint to file against another assistant chief, you  
2 could do that and be totally anonymous?

3 **A Correct.**

4 **Q** Did the plaintiff ever use the anonymous system for any  
5 of his complaints?

6 **A Not that I know of.**

7 **Q** When you were talking to Trooper Santhuff about the  
8 Biscay incident, did he ever tell you whether or not he  
9 was trying to keep a lid on it, that is, keep it  
10 secret?

11 **A No.**

12 **Q** He did not say that he was trying to keep it secret?

13 **A No, sir.**

14 **Q** Did he tell you what he wanted?

15 **A Yes. He told me -- well, basically, I asked him, Were**  
16 **you offended? There was something that led to that**  
17 **question, and I think it was because it was a period of**  
18 **time that had passed. I asked him if he was offended.**  
19 **He said no, and he said -- immediately responded to**  
20 **that, I just wanted someone -- thought someone -- I**  
21 **just thought someone should look into it.**

22 **Q** So he did want someone to deal with it in some fashion?

23 **A Yes.**

24 **Q** He wasn't trying to keep it secret?

25 **A No.**

**Alexander, J. - Cross by Mr. Biggs**

1 Q There was a complaint that was talked about in passing  
2 here about some potential interference with the  
3 governor's flight. Did you get involved in that --  
4 that issue?

5 A Yes. That was, I think it was part of the preliminary  
6 investigation.

7 Q And what was the conclusion there?

8 A The conclusion was that it didn't -- it had no merit.  
9 It didn't occur.

10 Q He also made some complaints about e-mail deletion,  
11 right?

12 A Correct.

13 Q And was that a founded outcome?

14 A Um, I think that was -- if it's the same thing, I think  
15 it was founded -- the finding on that was undetermined,  
16 meaning that I couldn't prove that it happened and I  
17 couldn't prove that it didn't happen.

18 Q Okay. And you talked a little bit earlier in your  
19 direct examination about co-workers somehow being  
20 involved in what was going on around there. Did you  
21 ever talk about or hear about mechanics and any issues  
22 they had?

23 A Yes.

24 Q And what was that, please?

25 A Um, Sergeant Hatteberg called me. I don't remember  
Alexander, J. - Cross by Mr. Biggs

1           when, but he called me, and he was distraught. He was  
2           telling me that the mechanics came to him and told  
3           him -- they were frustrated when they came to him and  
4           they told him that -- that Ryan Santhuff was -- they  
5           felt that they were being interrogated by Ryan  
6           Santhuff. They felt that he was trying to get them to  
7           see a situation in -- in the way that he saw it when  
8           that wasn't the way, and he just kept pushing and  
9           pushing and pushing.

10       Q     This is what the sergeant reported to you?

11       A     Yes, Hatteberg.

12       Q     And then did you then instruct something to happen?

13       A     Yes. I told -- and -- and -- I think the discussion  
14           had to do with -- with the cancelation of the airplane  
15           so that the governor couldn't fly. So what I told  
16           Hatteberg to do is to -- and there was an investigation  
17           ongoing at that time. So what I told Hatteberg to do  
18           was, Hey, get everyone together, and I'm going to come  
19           down there and -- and I'm going to have a talk with  
20           everyone because there were some people in the section  
21           that didn't know that an investigation was actually in  
22           play.

23                   And so I went -- I met with the entire crew and  
24           asked them not to talk about the investigation  
25           internally. What they did outside the agency, I can't  
                  Alexander, J. - Cross by Mr. Biggs

1 control that, but internally, stop talking about it  
2 because they're eventually going to get interviewed  
3 and -- and -- and I needed that stuff to stop because  
4 it was causing a disruption. It was making the  
5 technicians feel very uncomfortable.

6 Q Okay. You talked a little bit about a couple other  
7 complaints that ended up in OPS's lap, if you will.  
8 Why were those different from the Biscay incident which  
9 did not go to OPS?

10 A Well, again, I felt that with all the information that  
11 I had, you know, it wasn't sexual harassment, number  
12 one, and then number two, it was -- it was something  
13 that I can handle at the division level.

14 All investigations and all policy violations don't  
15 go to OPS for an investigation. They can be handled at  
16 the division level. They can even be handled at the  
17 detachment level. So the detachment is just -- with  
18 the sergeant. So they don't all go to the Office of  
19 Professional Standards.

20 Q Okay. How many different times would you say that you  
21 met with Trooper Santhuff and sometimes others, I  
22 guess, to discuss all of his complaints?

23 A Oh, um... It seemed like -- I can't even give you a  
24 number, it's -- there were so many. It seemed like  
25 every week, Santhuff was indicating that he was being  
Alexander, J. - Cross by Mr. Biggs

1           **retaliated against. And so I -- I can't even attach a**  
2           **number to it.**

3       Q     Okay. During some of the meetings, you talked about  
4           one, I think, where Trooper was there, Lieutenant  
5           Nobach was there, maybe one of the sergeants. During  
6           any of these meetings where Lieutenant Nobach was  
7           present, was he ever hostile, red in the face, yelling?

8       A     **No.**

9       Q     Would you permit that kind of behavior in one of your  
10          meetings?

11      A     **Absolutely not.**

12      Q     You mentioned that after one of these early meetings,  
13          maybe in May, it sounds like, you said we all, you  
14          know, kinda got ourselves together, we shook hands,  
15          hugged. Did you actually hug after that meeting?

16      A     **Yes. They call me the hugging chief. I just hug. You**  
17          **know, I'm a hugger. But everyone, even Jim and**  
18          **Santhuff, we called it a bro hug, you know, gave each**  
19          **other a bro hug and said, Okay, good; now we're headed**  
20          **in the right direction. So, yes, sir.**

21      Q     Okay. So your impression at that point was that things  
22          were good?

23      A     **Yes.**

24      Q     Did you still get a lot of complaints from Trooper  
25          Santhuff after that?

Alexander, J. - Cross by Mr. Biggs

1     **A     Yes.**

2     Q     Okay.  And I mean, I don't mean this facetiously:  Did  
3           you take them seriously?

4     **A     Oh, absolutely.**

5     Q     You've mentioned, I think it was yesterday now, that  
6           when this -- well, first let me ask you:  Who is  
7           Trooper Wiley?

8     **A     Trooper Kenyon Wiley.  He's a road trooper, but at the**  
9           **time, he happened to be a representative of the**  
10          **trooper's association, so a union representative.**

11    Q     Okay.  So he didn't have anything to do with Aviation;  
12          he was just the union rep?

13    **A     Yes, sir.**

14    Q     Okay.  So you mentioned that you had a conversation  
15          with Mr. Wiley, Trooper Wiley, and he said -- or left  
16          you with the impression that he was trying to get rid  
17          of Lieutenant Nobach?

18    **A     Yes.**

19    Q     That is, Trooper Wiley was trying to get rid of  
20          Lieutenant Nobach?

21    **A     Yes.**

22    Q     He didn't work for Lieutenant Nobach, right?

23    **A     No.**

24    Q     And he said that a couple times?

25    **A     Yes.**

**Alexander, J. - Cross by Mr. Biggs**

1 Q Did he tell you whether or not the plaintiff was trying  
2 to get rid of Lieutenant Nobach?

3 A That, I don't remember.

4 Q Okay. Did you ever get the impression that the  
5 plaintiff was trying to get rid of the lieutenant?

6 A Well, I -- Brenda Biscay told me that she overheard  
7 Chris Noll and Ryan Santhuff talking and basically  
8 saying that they wanted to get rid of Jim Nobach and  
9 have another lieutenant, Korthuis-Smith, who was also a  
10 pilot, to come in and take Jim's place.

11 Q Lieutenant Korthuis-Smith had been in that aviation  
12 section previously?

13 A Yes, he was a sergeant that promoted out.

14 Q Okay. And you heard that the plaintiff and Noll got  
15 together and wanted to get rid of the lieutenant?

16 A That's the -- yes.

17 Q Okay. Did you ever see any action that made a step in  
18 that direction?

19 A Well, I'm going to say -- I'm going to say no because  
20 it's just speculation, you know, from what I see,  
21 what's going on right now.

22 Q Thank you. And let me -- let me ask you this question:  
23 Does Lieutenant Nobach hold the authority to fire a  
24 person like Trooper Santhuff?

25 A No, he did not.

Alexander, J. - Cross by Mr. Biggs



1 Q Okay. If -- if Lieutenant Nobach wanted to get rid of  
2 a trooper, who does have that authority?

3 A That authority is -- well, actually, the chief is the  
4 one that has the authority to do it. If myself as the  
5 commander, the captain at the time, if I felt that, you  
6 know, someone needed to be terminated, I would have a  
7 conversation with my assistant chief, and then I  
8 would -- well, today, I know the assistant chief would  
9 have a conversation with the chief who would ultimately  
10 make the decision whether someone is going to be  
11 terminated or not.

12 Q And would that have to go through a kind of process  
13 like Mr. Wiley was involved with?

14 A Yes. We would definitely get the associations involved  
15 in the conversation as well.

16 Q I'm trying to skip through a lot of things to kind of  
17 keep things on track. So let me just -- let me just  
18 kind of get into this.

19 How many times would you say you have testified  
20 under oath?

21 A More than a hundred times.

22 Q And you've done this for 30 years, practically?

23 A Almost 30 years.

24 Q Okay. Has any attorney ever stood up there and accused  
25 you of lying?

Alexander, J. - Cross by Mr. Biggs

1     **A     Never .**

2                     MR. SHERIDAN:  Objection, Your Honor.

3                     THE COURT:  Sustained.  The jury will  
4     disregard that comment.

5     Q     (By Mr. Biggs) Let me ask you this:  Have you heard  
6     that Trooper Santhuff, under oath in a public  
7     deposition, called you corrupt?

8     **A     I mean, I didn't hear it come out of his mouth.**

9     Q     Right.  What --

10    **A     I --**

11    Q     Did he ever say it to you?

12    **A     Did he ever say it to me?**

13    Q     Right.

14    **A     Um, not that I can remember.  I don't ever remember him**  
15    **calling me cor -- him saying verbally, calling me**  
16    **corrupt, I've never heard him say it, but I've heard**  
17    **that he identified me as corrupt.**

18    Q     Okay.  Are you?

19    **A     No.**

20    Q     Despite that allegation, others like that, are you  
21    telling us the truth today?

22    **A     Absolutely.**

23    Q     Thank you.  I don't have any more questions for you.

24                     THE COURT:  Mr. Sheridan.

25                     MR. SHERIDAN:  Yes.  Thanks.  
Alexander, J. - Cross by Mr. Biggs

REDIRECT EXAMINATION

BY MR. SHERIDAN:

Q Now, so Brenda Biscay told you something else that's new, huh?

A Yes, sir.

Q You never told us about this statement she allegedly had made about her kids, did you?

A Did you -- I don't ever remember being asked.

Q Well, let's take a look at -- did you -- during the discovery process, did you work on interrogatory responses with your legal team?

A What do you mean?

Q Let me show you. It's easier if I show. We gotta find Exhibit 227, if we can.

THE COURT: Did you say 227?

MR. SHERIDAN: Oh, it's probably up there.

THE COURT: Did you say 227?

MR. SHERIDAN: Yeah. 227. Do you have it, sir?

MR. BIGGS: Your Honor, I'm not seeing a 227.

MR. SHERIDAN: You're not?

THE COURT: Well, I have the binder, my copy.

MR. SHERIDAN: Yes.

MR. BIGGS: I mean, in our listed exhibits, I'm not seeing a 227.

Alexander, J. - Redirect by Mr. Sheridan

1 MR. SHERIDAN: Oh, I don't know, sorry.

2 Well, as far as I know, it's in the joint statement.

3 THE COURT: It is. It's on Page No. 35.

4 MR. SHERIDAN: Thanks.

5 Q (By Mr. Sheridan) Do you have that open, sir?

6 A Yes, sir.

7 Q All right. And let's take a look at that.

8 THE COURT: Did you find it, Mr. Biggs?

9 MR. BIGGS: I found a listing, yes.

10 Q (By Mr. Sheridan) Okay. Now, these are what we call  
11 interrogatories, and it's where we ask -- we ask the  
12 State questions and the State responds. And so here is  
13 an Interrogatory No. 1 and --

14 MR. SHERIDAN: Your Honor, how do we play  
15 this? We're not going to admit this as evidence. Can  
16 we put it up on the screen just to see the question or  
17 just read it?

18 THE COURT: No.

19 MR. SHERIDAN: Just read it?

20 THE COURT: Well, I don't know what you're  
21 asking.

22 MR. SHERIDAN: Okay.

23 MR. BIGGS: I'm going to object for lack of  
24 foundation. Unless this witness has personal knowledge  
25 and these were made by him --

Alexander, J. - Redirect by Mr. Sheridan

1 THE COURT: Right. I don't know what you're  
2 going to ask.

3 MR. SHERIDAN: Sure. Well, the State is  
4 bound by the answers.

5 MR. BIGGS: This witness isn't.

6 MR. SHERIDAN: It doesn't matter if the  
7 witness is. We can confront the witness with the  
8 State's responses.

9 THE COURT: I don't think so, Mr. Sheridan.  
10 Let me look at the interrogatory. Are you talking  
11 about No. 1?

12 MR. SHERIDAN: Yeah. So look at No. 1(f) and  
13 then look at No. 5 -- and I can give you a page  
14 number -- 5(g), and 5(g), Your Honor, is on Page 27.

15 THE COURT: Give me just one second.

16 MR. SHERIDAN: Okay. I think you need to  
17 look at the use of interrogatories filed in the civil  
18 rules. Do you want to do this on Thursday at 1:30? No  
19 need of going through it now and just -- I have other  
20 questions that I can ask.

21 THE COURT: That's fine.

22 MR. SHERIDAN: Why don't I do that.

23 THE COURT: Well... Okay. That's fine.

24 MR. SHERIDAN: Okay? All right.

25 Q (By Mr. Sheridan) Okay. So now let's see. Ms. Biscay  
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1           confided in you that she went along with it -- this is  
2           the breast rubbing, right -- to try to fit in with the  
3           boys?

4   **A     That's not true, sir.**

5   **Q     Isn't that what you said?**

6   **A     No. You're twisting it again.**

7   **Q     Well, what did you say, sir?**

8   **A     Brenda never said that she rubbed her breast up against**  
9           **Jim. What she told me is the inappropriate comments**  
10          **that Trooper Santhuff made about her teenage daughter.**

11   **Q     Now listen to you. You're not answering the question.**  
12          **Let's focus on the question.**

13                   MR. BIGGS: Objection, Your Honor.  
14                   Objection. He's badgering that witness.

15                   THE COURT: Mr. Sheridan, just ask the  
16                   question.

17                   MR. SHERIDAN: Yes, I -- I apologize to the  
18                   Court.

19   **Q     (By Mr. Sheridan) Okay. So I'm asking -- I'm not**  
20          **asking you about that piece.**

21   **A     Okay.**

22   **Q     We'll get to that later.**

23   **A     Okay.**

24   **Q     I'm asking you about, you said -- and I wrote this**

25          down. You said that Ms. Biscay told you that she went  
                Alexander, J. - Redirect by Mr. Sheridan

1 along with it to try to fit in with the boys, right?

2 A Again, what she's saying that she went along with --  
3 she wasn't saying that she went along with rubbing her  
4 breast at the back of Jim Nobach's head. What she  
5 said -- insinuated is that she was -- went along with  
6 the -- the -- the loosey-goose or the playing around  
7 and the joking around in the work environment.

8 She did not say, sir, that she went along with and  
9 rubbing -- with rubbing her head (sic) up to the back  
10 of Jim Nobach's head.

11 Q I thought you said during your earlier testimony  
12 that -- that she didn't say that she did it and didn't  
13 say she didn't, and you took her silence as an  
14 admission; is that right?

15 A Brenda didn't deny it and she didn't -- did not admit  
16 that she did it.

17 Q So you believed she did it, correct?

18 A I believed she did it.

19 Q That's why you gave her the 095, right?

20 A Yes, sir.

21 Q Okay. So -- and you called her a willing participant,  
22 right?

23 A Yes.

24 Q Okay. But -- but if she did say -- did she utter words  
25 to you in any context where she said words along the  
Alexander, J. - Redirect by Mr. Sheridan

1 line of, she went along with it -- we don't have to  
2 define "it" at the moment -- to try to fit in with the  
3 boys? Did she say that to you?

4 **A Yes.**

5 Q Isn't that classic talk of a victim of a hostile work  
6 environment, given your expertise in the area?

7 **A I don't know that I'm qualified to -- to -- to respond**  
8 **to that.**

9 Q Well, I don't know, sir. Didn't you tell us that  
10 you -- when somebody raises issues of discrimination,  
11 you're right on it? Right?

12 **A Yes, exactly.**

13 Q So you weren't right on this, though. You didn't do  
14 anything after she told you that, did she (sic)?

15 **A Yes, I did.**

16 Q What did you do, sir?

17 **A What I did is, I sent the lieutenant there now and told**  
18 **him that this behavior will stop immediately and you**  
19 **need to address your crew and let them know that.**

20 Q She told you that she went along with it to try to fit  
21 in with the boys, and you did not take that as a  
22 complaint?

23 **A No.**

24 Q So you didn't -- you didn't tell anybody -- you also,  
25 notably, didn't write it down, right? This is another  
Alexander, J. - Redirect by Mr. Sheridan



1           thing you didn't write down, sir?

2     **A     Mm-hm.**

3     **Q     That's a "yes"?**

4     **A     That's correct, yes.**

5     **Q     Okay. So she says this, and you don't write it down**  
6           **and you don't take any action except you say to tell**  
7           **the lieutenant to tell people to make it stop, right?**

8     **A     I did have a conversation with the Office of**  
9           **Professional Standards as well as the Human Resource**  
10          **Division about that statement.**

11    **Q     Oh, so now you talked to OPS about Brenda's statement**  
12          **about fitting in with the boys? Is that right, sir?**

13    **A     I'm trying to remember. I'm not sure.**

14    **Q     Okay. All right. So we don't need to show -- I don't**  
15          **think we need to show 56 again about similar behavior,**  
16          **but I -- but, remember, we played part of your**  
17          **deposition where I asked you what happened. In the**  
18          **deposition that you gave, you never said that Brenda**  
19          **told you that she did it to get along with the boys,**  
20          **right?**

21    **A     I don't remember.**

22    **Q     Okay. But it would be in there, right? Your lawyer**  
23          **can pull it up in there. If it's in there, it's**  
24          **written down, right?**

25    **A     I would hope that it would be in there.**  
          **Alexander, J. - Redirect by Mr. Sheridan**

1 Q All right. And then this business now about Brenda  
2 told you that she was creeped out by a statement made  
3 by Trooper Santhuff about her daughters, right?

4 A Yeah. She said -- she said -- she said it was creepy.

5 Q You made it sound like he was a pedophile. Is that the  
6 impression you were trying to give, sir?

7 A Um, I wouldn't call him a pedophile, no.

8 Q As a matter of fact, her daughters are grown, aren't  
9 they?

10 A They weren't grown at the time.

11 Q Her daughters work for the government, don't they?

12 A She works for the State Patrol, yes. Yes, she does.

13 Q Okay.

14 A Mm-hm. Mm-hm.

15 Q But this is another thing that you never mentioned  
16 until right here, right now, not even on direct, when I  
17 was asking you questions, you didn't mention this, when  
18 it was after a little break that you came in with this  
19 new news, right?

20 A I don't know if I mentioned it at the deposition.

21 Q Okay. Well, I guess we'll wait and see if anyone has  
22 anything to show you. But, um, I've been asking you  
23 questions for hours, and you never once raised that,  
24 did you? Not once.

25 A You didn't ask.

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1 Q Hmm. And you never wrote it down, right?

2 A No, sir.

3 Q Okay. And you never investigated or anything like  
4 that?

5 A No.

6 Q Okay. Now, it's true, is it not, that what Nobach did  
7 wrong, according to you, is he allowed inappropriate  
8 behavior to occur in the workplace, right?

9 A No, he's not allowed to allow inappropriate behavior to  
10 occur in the workplace.

11 Q Oh, I'm sorry, you misunderstood. Let me say it again.

12 It's your understanding that the thing he did  
13 wrong was to allow inappropriate behavior to occur in  
14 the workplace?

15 A Yes, sir.

16 Q And also that he's a leader and he should not -- he  
17 should not have -- he should not have engaged in that  
18 type of behavior, right?

19 A That's part of allowing the behavior to occur, so...

20 Q Okay. And it was also -- I mean, he also allowed that  
21 behavior to spread throughout the division, right, and  
22 he didn't take care of it?

23 A Yes, inappropriate behavior.

24 Q Okay. All right. And you said you didn't go to OPS  
25 because not everything goes to OPS, right?

Alexander, J. - Redirect by Mr. Sheridan

1     **A**     **I did go to OPS, but you are correct. I did say that**  
2             **not everything goes to OPS.**

3     **Q**     All right. And it's true, is it not --

4             MR. SHERIDAN: So, Your Honor, I have another  
5     question to ask of you, but I think I should do it  
6     outside the presence of the jury. Is it -- perhaps  
7     another thing to leave.

8             THE COURT: How much more do you have?

9             MR. SHERIDAN: I have --

10            THE COURT: Let me just ask, are we going to  
11   finish with Assistant Chief Alexander today?

12            MR. SHERIDAN: Oh, no. We're near done. I  
13   have just one more question to ask him before I'm done  
14   with him except for the things that I want to ask you.

15            THE COURT: Okay. All right. Go ahead.

16            MR. SHERIDAN: Okay.

17     **Q**     (By Mr. Sheridan) All right. So now you also say that  
18             Biscay told you, I guess -- I guess confidentially,  
19             that she heard Nobach -- she heard, was it, Sweeney and  
20             Santhuff talking about getting rid of Nobach and  
21             bringing in Korthuis-Smith; is that right?

22     **A**     **No. It was Santhuff and Chris Noll.**

23     **Q**     Oh, Chris Noll. I'm sorry. And they were talking --  
24             she overheard them saying -- were they whispering?

25     **A**     **I don't know. You'll have to ask her.**  
              **Alexander, J. - Redirect by Mr. Sheridan**

1 Q Okay. All right. And where were you when you talked  
2 to her about this?

3 A I don't know when that conversation came up.

4 Q Okay. Was it a year ago? Two years ago?

5 A It was more than two years ago.

6 Q Okay. Way back when. So was it before or after the  
7 sexual harassment incident involving the breast  
8 rubbing?

9 A I don't remember.

10 Q Okay. All right. But -- okay. Fair enough.

11 MR. SHERIDAN: That's all I have for now,  
12 Your Honor.

13 THE COURT: Do you have any questions? And  
14 then --

15 MR. BIGGS: Very brief, Your Honor.

16 THE COURT: Yeah. Go ahead. Understanding  
17 that I may allow Mr. Sheridan to exceed your scope.

18 MR. BIGGS: Right.

19 THE COURT: Go ahead.

20 MR. BIGGS: I thought we weren't going to do  
21 that on redirect and recross.

22 THE COURT: Right. But there are some issues  
23 that he wants to address outside the presence of the  
24 jury, so I want to make sure that I'm going to allow  
25 that, even if it goes beyond your questions.

Alexander, J. - Redirect by Mr. Sheridan

1 MR. BIGGS: Okay. Thank you.

2 RECROSS EXAMINATION

3 BY MR. BIGGS:

4 Q Assistant Chief, it was implied a couple times that you  
5 did not tell the truth in your deposition; is that  
6 correct?

7 A **That's correct.**

8 Q Is it correct that you didn't tell the truth?

9 MR. SHERIDAN: Objection, Your Honor. This  
10 is just bolstering.

11 THE COURT: Overruled.

12 **THE WITNESS: I told the truth.**

13 Q (By Mr. Biggs) Okay. Were you asked whether or not  
14 Brenda Biscay made statements of the type that you have  
15 just mentioned?

16 A **No, sir.**

17 Q Did you answer all the questions you were asked?

18 A **I did.**

19 Q Okay. And is it accurate that Ms. Biscay said to you  
20 what you testified about, that Plaintiff said something  
21 about her daughter -- her daughter's photograph?

22 A **Yes, sir.**

23 MR. BIGGS: That's all I have. Thank you,  
24 very much.

25 THE COURT: All right. Members of the jury,  
Alexander, J. - Recross by Mr. Biggs

1 let's take a quick five-minute break. If it's going to  
2 be more than five minutes, Mary will tell you that you  
3 can go home, and if I don't see you this afternoon,  
4 then we'll see you tomorrow at 1:30. Yes?

5 UNIDENTIFIED SPEAKER: Your Honor, in case  
6 the witness is going to be excused, I have a question  
7 that I wanted to --

8 THE COURT: The witness is not quite excused  
9 yet.

10 UNIDENTIFIED SPEAKER: Okay.

11 THE COURT: But I suppose you could give him  
12 the question now, so just give it to Mary. We'll talk  
13 about it and then, if appropriate, we'll ask that  
14 question. Anybody else have a question for Assistant  
15 Chief Alexander? No, all right.

16 All right. So if I don't see you later today,  
17 I'll see you tomorrow. 1:30.

18 THE CLERK: All rise.

19 (Jury exits.)

20 THE COURT: All right. So please be seated.  
21 So with the issue of the interrogatories, we can't just  
22 have -- statements are -- made by the opposing party,  
23 of course, are admissible at trials and admission by  
24 party opponent, but we can't just have the question  
25 being posted, and you need to lay the foundation as to  
Alexander, J. - Recross by Mr. Biggs

1 whether or not this witness knows --

2 MR. SHERIDAN: I'm just looking up --

3 THE COURT: -- whether or not --

4 MR. SHERIDAN: I'm just looking up use of  
5 interrogatories at trial. So I'm going to need just a  
6 little bit of...

7 THE COURT: Because I looked at Question No.  
8 1, and Question No. 1 was -- interrogatories are  
9 admissible subject to the other rules of evidence. So  
10 if this witness does not have the knowledge, he cannot  
11 be speculating.

12 MR. SHERIDAN: Right. It's -- it's -- it's  
13 been my experience that you just read out the  
14 interrogatory and the response, but I wanted -- I  
15 haven't had to face this in a little while, so I'm just  
16 trying to refresh my recollection with the use of  
17 interrogatories at trial.

18 THE COURT: What was your other issue,  
19 Mr. Sheridan?

20 MR. SHERIDAN: Oh, the other issue was, so  
21 the defense then is asked -- Defense is making a big  
22 deal of not everything goes to OPS, right, so not -- so  
23 he gets to make the decision what goes and what doesn't  
24 go, but remember when I was trying to bring in Exhibits  
25 239, 40 and I think it's 63? You had said -- it had to  
Alexander, J. - Recross by Mr. Biggs



1 do with a May 2016 traffic thing that Nobach did where  
2 he -- he said that -- he was accused of not doing his  
3 job, he didn't do a thorough investigation, and that  
4 thing that seems like a small thing in comparison did  
5 go to OPS and did get a full evaluation. So it's --  
6 they have opened the door. If it was -- if it was  
7 appropriate to keep it out before, they have opened the  
8 door now, and we should be allowed to put it in and  
9 question the witness on it.

10 THE COURT: Let me look at 239. The reason I  
11 did not -- I sustained the objection on 239 is because  
12 whatever writeup Lieutenant Nobach had because of not  
13 properly responding to a collision is completely  
14 irrelevant to the issues here.

15 MR. SHERIDAN: Right. We weren't dealing  
16 with it substantively, only procedurally, because --  
17 and it really, truly -- it didn't even have to be  
18 Nobach. It just happens to be him. It has to do with  
19 what -- what Chief Alexander does.

20 THE COURT: This one here? So 239. So 239,  
21 was that the one?

22 MR. SHERIDAN: Yeah. There's three of them.

23 THE COURT: Yes. It's an investigator's case  
24 log for an incident in May -- I'm sorry.

25 MR. SHERIDAN: May 26.  
Alexander, J. - Recross by Mr. Biggs

1 THE COURT: Collision November 19, 2015,  
2 where it is alleged that Lieutenant Nobach did not  
3 complete a Police Traffic Collision Report or request  
4 medical aid.

5 MR. SHERIDAN: Yeah. So the presentation I  
6 want to now make is that this -- this thing that seems  
7 kind of little was in fact --

8 THE COURT: So let me stop you right there,  
9 Mr. Sheridan. Assistant Chief Alexander testified that  
10 he did talk to OPS, and it did not -- the complaint did  
11 not go in that direction.

12 I'm looking at Exhibit 239, and Captain Alexander  
13 also wrote this, and it indicates that he consulted  
14 with the OPS commander regarding the tort claim and an  
15 IIR request to conduct a preliminary investigation was  
16 submitted, did not violate, and then he -- Captain  
17 Alexander -- Assistant Chief Alexander concluded that  
18 the lieutenant did not violate agency policy.

19 I don't think there's anything in here that says a  
20 formal complaint was actually filed with OPS, which is  
21 what you have been trying to establish, that he did not  
22 follow that road.

23 MR. SHERIDAN: No --

24 THE COURT: Or that path.

25 MR. SHERIDAN: The issue is -- I agree with  
Alexander, J. - Recross by Mr. Biggs

1 what the Court just said regarding the fact that they  
2 did not go -- complete any paperwork for the hostile  
3 work environment issue, but that this is a case where  
4 it seems to be less important and they did -- they  
5 actually have a case log that is Exhibit 239, and they  
6 have an investigator's case log which is 240, and I  
7 forgot what 63 is, but it's related, so this idea that  
8 not everything should be investigated, it seems like a  
9 fairly minor matter, but they made the decision to do  
10 it. And also the witness testified early on that the  
11 decisions whether to go forward or not are decisions --  
12 he didn't say until he was testifying in the last hour,  
13 he didn't say that it was OP -- OPS that makes the  
14 decisions. He said that these are decisions where each  
15 side gets to make an argument, and if -- if they can't  
16 agree, they take it up to the next level. So this idea  
17 that he now just does whatever OPS tells him to do is  
18 contradicted by his earlier testimony.

19 THE COURT: Mr. Biggs?

20 MR. BIGGS: Well, Your Honor, I think  
21 you're -- you're quite right on this. This has nothing  
22 to do with this case, and we have no idea what the  
23 conversation between Captain -- Captain Alexander and  
24 OPS and HR had to do with anything or why there's a  
25 case log or why there's not. We can't, on the basis of  
Alexander, J. - Recross by Mr. Biggs

1 this one document, make any judgment, and it's not  
2 relevant to the issues of this case. We would have to  
3 have a little mini trial on that issue to figure out  
4 why they proceeded the way they did.

5 THE COURT: Anything else?

6 MR. SHERIDAN: Well, they always -- that's  
7 always the argument, it's a mini trial, but it's the  
8 same witness on the stand, and it will take five  
9 minutes.

10 THE COURT: I don't see the relevance in  
11 this.

12 MR. SHERIDAN: All right. Fair enough.

13 THE COURT: And -- and in addition to that,  
14 it really is more prejudicial than probative because  
15 really -- and it's confusing because it goes to another  
16 bad act by Lieutenant Nobach.

17 MR. SHERIDAN: Right. And so, Your Honor --

18 THE COURT: Which has nothing to do with the  
19 issues before this jury.

20 MR. SHERIDAN: Okay. Another thing that I  
21 wanted to bring to the Court's attention is that I  
22 believe, again, they've opened the door by talking  
23 about how he jumps on discrimination if he sees it,  
24 meaning retaliation as well. And he talks about the  
25 fact that the workplace was improved after he, I guess,  
Alexander, J. - Recross by Mr. Biggs

1 issued the 095s. But, in fact, we have testimony that  
2 that's not the case, that the workplace was not  
3 improved. The retaliation against other members  
4 happened after the 095 was issued, and we ought to be  
5 allowed to present --

6 THE COURT: Are you talking about Canton  
7 (sic)? Is it Canton?

8 MR. SHERIDAN: Yeah. Jayson Caton is the one  
9 I was thinking of.

10 THE COURT: Or Caton. All right. And as I  
11 indicated in my original ruling, in that case, which is  
12 distinguishable from Brundridge --

13 MR. SHERIDAN: Brundridge, right.

14 THE COURT: Brundridge is that there was --  
15 Caton did not complain. It would be admissible if  
16 Caton would have complained about something and the  
17 same behavior had happened, and that's what happened in  
18 the other case. The employees were -- the fleet -- the  
19 fitters, the pipe fitters were complaining about safety  
20 issues, and when they were complaining about safety  
21 issues, they were retaliated against. They were fired.  
22 And then the Court found that the fact that the other  
23 witness had also been treated differently after they  
24 complained about the safety concern was admissible.

25 MR. SHERIDAN: Right.  
Alexander, J. - Recross by Mr. Biggs

1           THE COURT: But we don't have that here. We  
2 just have this idea that because Caton was present when  
3 a meeting happened with Detective Santhuff and then he  
4 was asked to return the log book, but that has nothing  
5 to do with him complaining about sexual harassment or  
6 inappropriate behavior or sexual comments.

7           MR. SHERIDAN: But it makes him a  
8 whistleblower under 240; that if you are part of an  
9 investigation and you are retaliated against for doing  
10 that, then you're a whistleblower, and so he -- he fits  
11 in through that framework that when they identify him  
12 in 2018 because of the tort claim, they retaliate  
13 against him, and so that's one of the ways that you  
14 become a whistleblower under the statute is to  
15 participate in an investigation or whatever or to -- I  
16 think it's called providing information.

17           THE COURT: Why are we re-litigating this?

18           MR. SHERIDAN: Pardon me?

19           THE COURT: Why are you re-litigating this?

20           MR. SHERIDAN: Oh, because they just made a  
21 statement about how everything was fine after the 095  
22 was -- was -- was given. And, you know, we also know  
23 it wasn't fine because of the ongoing retaliation  
24 against Santhuff, right? So it wasn't fine, but he  
25 said it was, and we ought to be able to address it.

Alexander, J. - Recross by Mr. Biggs

1 THE COURT: Mr. Biggs?

2 MR. BIGGS: No, Your Honor, not on the basis  
3 that he's trying to attempt that this is totally  
4 separate issues, and calling in somebody, as you say,  
5 to talk about a log book issue that was later in time  
6 that had nothing to do with the issues here.  
7 Brundridge clearly says you've got to have certain  
8 markers that you meet before that stuff becomes  
9 admissible.

10 So I think your original ruling is correct, and we  
11 shouldn't be redoing it again, once again.

12 THE COURT: And, Mr. Sheridan, I think it's  
13 fair for you to argue at closing, yeah, Assistant Chief  
14 said everything was fine, but, no, it wasn't, like you  
15 just argued with me, but I don't think Caton --

16 MR. SHERIDAN: Caton's.

17 THE COURT: Caton's incident with the log  
18 book is admissible.

19 MR. SHERIDAN: Okay.

20 THE COURT: And I am not going to allow  
21 Exhibit 239 either.

22 MR. SHERIDAN: 239. Okay. Fair enough.

23 All that's left, then, is 227 and how to get  
24 interrogatories in front of the Court. And since we're  
25 not starting till 1:30, may we brief you on this and so  
Alexander, J. - Recross by Mr. Biggs

1 we make sure we get it right?

2 THE COURT: That's fine.

3 MR. BIGGS: Your Honor, we have to bring the  
4 witness back one more day for this?

5 THE COURT: Well -- oh, the jury has a  
6 question.

7 MR. SHERIDAN: Yeah. The juror's question.

8 THE COURT: And I thought that you were going  
9 to be here throughout the trial anyway.

10 MR. BIGGS: No, he'll be here here and there,  
11 potentially.

12 THE COURT: Okay. So the question is --  
13 well, I'll let you look at the question, counsel, both  
14 of you.

15 So, other than the interrogatories, were there any  
16 other questions that you had?

17 MR. SHERIDAN: No, Your Honor. That was it.  
18 Look at me, I'm putting on both...

19 (Pause.)

20 THE CLERK: Which one besides 239 was  
21 refused?

22 THE COURT: That's the only one that has been  
23 refused. Yeah. No, he mentioned another one, but  
24 that's --

25 MR. BIGGS: In. In.  
Alexander, J. - Recross by Mr. Biggs



1 MR. SHERIDAN: "Ongoing basis in  
2 inappropriate workplace behavior." That's not  
3 mitigating --

4 MR. BIGGS: Indicate.

5 MR. SHERIDAN: It's (inaudible).

6 MR. BIGGS: Indicate.

7 MR. SHERIDAN: Gross mismanagement -- I'm  
8 okay with that.

9 MR. BIGGS: I am not, Your Honor.  
10 Mismanagement is not in this case. This is a  
11 discrimination case.

12 THE COURT: I know, but there was testimony  
13 about gross mismanagement. I think that's why the  
14 juror is asking that.

15 MR. SHERIDAN: And tomorrow -- I mean, is it  
16 tomorrow Saunders will say that he thought it was gross  
17 mismanagement.

18 THE COURT: So one step at a time. What do  
19 we do with this question?

20 MR. SHERIDAN: I think it's fine.

21 MR. BIGGS: I think we should reject it, Your  
22 Honor, particularly if it's going to come up in a  
23 different witness' testimony.

24 MR. SHERIDAN: Well, that's -- just the  
25 words.

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1 THE COURT: Um, the problem that I have with  
2 this question -- I think the first question -- the  
3 first part is fine. The question -- the problem that I  
4 have with this question is that, was it Captain  
5 Alexander? Now I'm now confused if maybe it was  
6 Sweeney who said he did not know what gross  
7 mismanagement was.

8 MR. SHERIDAN: Him?

9 THE COURT: I'm trying to remember which  
10 witness you asked about the gross mismanagement. Was  
11 it Assistant Chief Alexander? It may have been Sweeney  
12 when he said, I don't know what gross mismanagement is.

13 MR. BIGGS: Captain Matheson, yes.

14 THE COURT: Or Matheson, sorry.

15 MR. SHERIDAN: Oh, yeah. It was Matheson.  
16 That's right.

17 THE COURT: So I think maybe -- yeah.  
18 Because we haven't -- I don't remember this kind of  
19 questioning with Assistant Chief Alexander. I remember  
20 it with Captain Matheson. So, yeah, that's my concern  
21 about this question for this witness.

22 MR. SHERIDAN: Okay. I guess if the witness  
23 doesn't know, he can say "I don't know."

24 THE COURT: I do think the first -- I think  
25 the first one is valid, based on the testimony that  
Alexander, J. - Recross by Mr. Biggs

1 what the expectations are, the ethics of the agency,  
2 why things were done. I think that the first question  
3 is -- it's -- it's legitimate. I don't know about the  
4 second one.

5 MR. SHERIDAN: Okay.

6 THE COURT: But that's my thought.

7 MR. SHERIDAN: Should we do it on --

8 THE COURT: Well, so here is the other  
9 question: I guess I was under the assumption that  
10 Assistant Chief Alexander was going to be here most of  
11 the trial, and I don't want him to have to come for one  
12 question. But if you think -- I mean, he was not the  
13 one that answered this interrogatory, so -- and you're  
14 going to have other people from WSP testifying.

15 MR. SHERIDAN: It could be, but I don't  
16 believe the test is if -- if he is the one who signed  
17 off on it, but I feel like I need to brief you on it,  
18 and he is their designee, so he's going to be here.

19 MR. BIGGS: No. He's not going to be here.

20 THE COURT: He's not going to be here.  
21 That's what I was asking, and he's not going to be  
22 here. I only allowed one designee, which is him. If  
23 he doesn't want to be here, then they -- they don't  
24 have anybody else, but you're going to have other  
25 people from WSP --

Alexander, J. - Recross by Mr. Biggs

1 MR. SHERIDAN: Right. Can I also say that I  
2 don't -- I felt like the jurors didn't really get a  
3 chance to write questions because this fella had sort  
4 of done it in anticipation, all excited, but I don't  
5 feel like we got to ask the jury. I mean, you asked  
6 them --

7 THE COURT: I did ask if they had any other  
8 questions.

9 MR. SHERIDAN: -- but it was, like, on the  
10 way -- you know, like, I just didn't feel like -- I  
11 felt like if there was more time, perhaps some of them  
12 would have asked, but I don't know. Just saying.

13 THE COURT: Is it a big hassle for you to  
14 come tomorrow afternoon?

15 THE WITNESS: Yes, I can be here, Your Honor.  
16 Well, tomorrow is Wednesday?

17 THE COURT: No. Tomorrow is Thursday.

18 MR. SHERIDAN: Tomorrow is Thursday.

19 MR. BIGGS: Thursday, right.

20 THE WITNESS: I have some very important  
21 meetings. Can I come another day?

22 THE COURT: No, let's do this: Mary, have  
23 you told the jury to go?

24 THE CLERK: No.

25 THE COURT: So let's bring the jury back and  
Alexander, J. - Recross by Mr. Biggs

1 ask Question No. 1.

2 MR. BIGGS: Okay.

3 THE COURT: And then, based on that limited  
4 question only, if you have any follow-up, you can ask.

5 MR. BIGGS: Okay. Thank you.

6 THE WITNESS: Andrew? Never mind.

7 THE COURT: So did -- Mr. Biggs, is the  
8 defense objecting to the Court asking the question?

9 MR. BIGGS: Yes, Your Honor. Thank you.

10 THE COURT: And I will ask the jurors if they  
11 have any other questions, although I -- I don't think  
12 they will.

13 THE CLERK: All rise.

14 (Jury present.)

15 THE COURT: All right. Please be seated.  
16 And Assistant Chief Alexander, I do have one question  
17 for you from one of the jurors.

18 THE WITNESS: Yes, ma'am, Your Honor.

19 THE COURT: Does anybody else have a  
20 question? No. So just Juror No. 1.

21 If all or most all members of a supervisor's  
22 Washington State Patrol unit, including the supervisor,  
23 engage in an ongoing basis of inappropriate workplace  
24 behavior, does this indicate mismanagement on the part  
25 of the supervisor?

Alexander, J. - Recross by Mr. Biggs

1 THE WITNESS: Your Honor, I'm sorry. Could  
2 you read that again, please?

3 THE COURT: Sure. If all or almost all  
4 members of a supervisor's WSP unit, including the  
5 supervisor, engage in an ongoing basis of inappropriate  
6 workplace behavior, does this indicate mismanagement on  
7 the part of the supervisor?

8 THE WITNESS: I probably wouldn't categorize  
9 it as mismanagement. I -- I -- I would categorize it  
10 as a failure -- failing to lead properly. So I'm not  
11 sure how to answer that, Your Honor.

12 THE COURT: All right. Mr. Sheridan, do you  
13 have any follow-up questions on that issue alone?

14 MR. SHERIDAN: Very briefly.

15 FURTHER REDIRECT EXAMINATION

16 BY MR. SHERIDAN:

17 Q Could you tell me again what you said was the  
18 confusion?

19 A Said mismanagement.

20 Q Versus...?

21 A Versus in this particular situation what Your Honor  
22 read. I would categorize it as -- as a failure to lead  
23 properly. I guess when I kind of think of  
24 mismanagement, I don't know if I would categor -- I  
25 look at that as a totality of everything, just  
Alexander, J. - Further Redirect by Mr. Sheridan

1           totally -- I don't know how to answer that one.

2   Q       Okay.

3   A       I still don't know how to answer.

4   Q       Well, would you agree, sir, that those two items you've  
5           identified are pretty much one in the same?

6   A       Yeah. And that's --

7   Q       Whenever somebody --

8   A       -- that's why I was thinking.

9   Q       -- when a leader lacks leadership and doesn't lead,  
10          that's mismanagement, right?

11   A       That's where I was kind of thinking along the same  
12          line, so... I don't know. I guess I would qualify it  
13          as -- thinking along the lines of programs. So I may  
14          be thinking too much into it, so, yes, I would probably  
15          categorize that as mismanagement.

16               THE COURT: Any follow-up from Defense?

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

18               THE COURT: All right.

19               MR. SHERIDAN: Thanks, Chief.

20               THE COURT: Is this witness excused?

21               MR. BIGGS: Yes, Your Honor.

22               MR. SHERIDAN: No.

23               THE COURT: All right. Assistant Chief

24          Alexander, you are not excused, although you have been

25          allowed -- the reason why we excuse witnesses is so  
        Alexander, J. - Further Redirect by Mr. Sheridan

1 that they can participate -- or come in to court and  
2 listen to the testimony, but you have been designated  
3 to be here anyway as a representative of WSP, so it  
4 doesn't really affect you. You can come if you want;  
5 you don't have to come if you don't want, but you are  
6 still under subpoena. So if either Mr. Sheridan or  
7 Mr. Biggs or Mr. Marlow need to call you, you need to  
8 be available.

9 THE WITNESS: Yes, Your Honor.

10 THE COURT: All right.

11 THE WITNESS: Yes, Your Honor.

12 THE COURT: All right. Members of the jury,  
13 we just wanted to see you one more time today, but you  
14 can leave now, and we'll see you tomorrow at 1:30.

15 THE CLERK: All rise.

16 (Jury exits.)

17 THE COURT: Thank you. Anything else?

18 MR. SHERIDAN: Nothing from Plaintiff.

19 MR. BIGGS: Nothing, Your Honor.

20 THE COURT: All right. So maybe we'll see  
21 you, maybe we won't. I hope you feel better.

22 THE WITNESS: Thank you, Your Honor.

23 (Court at recess for the day.)  
24  
25



CERTIFICATE

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