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September 10, 2020

RYAN SANTHUFF v. STATE OF WASHINGTON

19-2-04610-4

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STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT

RYAN SANTHUFF, an individual,)	
)	
Plaintiff,)	
)	
vs.)	No. 19-2-04610-4
)	
STATE OF WASHINGTON, and DAVID)	
JAMES NOBACH, an individual,)	
)	
Defendants.)	
)	

VERBATIM RECORD OF PROCEEDINGS

VOLUME IV

APPEARANCES:

FOR THE PLAINTIFF:	JACK SHERIDAN
	MARK ROSE
	Attorneys at Law

FOR THE DEFENDANTS:	ANDREW BIGGS
	SCOTT MARLOW
	Attorneys at Law

Before the Honorable Mafe Rajul

September 10, 2020
Seattle, Washington

(via audio) Court Reporter: Terilynn Simons, CRR, RMR #2047

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1 THURSDAY, SEPTEMBER 10, 2020; SEATTLE, WASHINGTON

2 <<<<< >>>>>

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

5 THE COURT: My understanding is that
6 we have some people appearing via Zoom, Mary?

7 COURT BAILIFF: Yes.

8 THE COURT: All right. For those of
9 you who are appearing via Zoom, I just need to tell you
10 that you are not allowed to record the proceedings.

11 The only record that we keep is the record that is
12 made in the court, so you are prohibited from recording
13 the proceedings.

14 You are also prohibited from taking screenshots of
15 the-- whatever you see, which would really just be the
16 witness.

17 Any violation of my court order could result in
18 sanctions and being held in contempt, so please do not do
19 that.

20 All right. I received this morning a motion on
21 behalf of the plaintiff, in light of the testimony by
22 Assistant Chief Alexander yesterday about a report that
23 Ms. Biscay had made to Assistant Chief Alexander with
24 respect to Detective Santhuff commenting on her teenage
25 daughters.

1 Did Defense receive that?

2 DEFENSE: We did, Your Honor.

3 THE COURT: I am not going to rule on
4 it right now because I do want the defense to respond.

5 Today is Thursday, so I-- we can-- I can rule on it
6 next week.

7 Do you think that you can give me a response by
8 Monday morning?

9 DEFENSE: Yes, we can, Your Honor.

10 THE COURT: Does that work,
11 Mr. Sheridan?

12 MR. SHERIDAN: Yes.

13 THE COURT: You don't need a ruling
14 right now?

15 MR. SHERIDAN: No, we don't. Thank
16 you.

17 THE COURT: Okay. My understanding is
18 there was an issue with respect to exhibits?

19 I don't know what the issue is.

20 MR. SHERIDAN: That was me.

21 Apparently there was two 263s. That's--

22 THE COURT: Did you receive--

23 MR. SHERIDAN: It's just a simple
24 matter to correct it.

25 THE COURT: So it wasn't what has been

1 admitted or anything?

2 MR. SHERIDAN: Greg?

3 MR. GLOVER: Your Honor, yesterday you
4 approved 206-- the first page of 206 to be Exhibit No.
5 263, and then in my list 263 is the redacted HRD
6 document, and the Court has that as 263 in the ShareFile.

7 THE COURT: So we admitted Page 1 of
8 Exhibit No. 206 as 263?

9 MR. GLOVER: Yes, and there was
10 already a 263 for the plaintiff.

11 THE COURT: Which one was 263? I
12 didn't have a 263.

13 COURT BAILIFF: The exhibit list says
14 263 was admitted as a WSP special op division
15 organizational chart.

16 THE COURT: Right, so which is what--

17 MR. SHERIDAN: I think perhaps we are
18 mistaken because we had marked something 263 that when
19 you corrected us and made it 262--

20 THE COURT: Correct.

21 MR. SHERIDAN: Maybe that's it.

22 In any case, we can figure this out between now
23 and-- there's no rush to figure it out.

24 THE COURT: All right. Mary, could
25 you please just send the parties, unless you already did,

1 the exhibits that Terra (phonetic) has?

2 ALL: She has.

3 THE COURT: Okay. Because what Terra
4 has matches what I have been writing down, so that's two
5 people that have the same information.

6 MR. SHERIDAN: Fair enough.

7 THE COURT: All right. Anything else
8 before we bring in the jury?

9 MR. SHERIDAN: The only thing we ask
10 is that this witness ought not to be questioned on the
11 daughters by either side.

12 That's about it.

13 THE COURT: Any objection? Any issue?

14 MR. MARLOW: Next witness is Captain
15 Saunders.

16 MR. SHERIDAN: Saunders, correct.

17 MR. MARLOW: I have no objection to
18 that, Your Honor.

19 THE COURT: All right.

20 MR. MARLOW: With regard to the
21 exhibits for Saunders, I have no objection to any of
22 them, other than Mr. Sheridan and I have discussed 222.
23 I don't see the relevancy to that.

24 Of the exhibits they have given us a heads-up to, I
25 don't have an objection to any of them.

1 THE COURT: 222?

2 MR. MARLOW: 222.

3 THE COURT: Thanks for the heads-up.

4 MR. MARLOW: That's the internal on
5 Lieutenant Sharp. I just don't understand the relevance.

6 (Pause in the proceedings.)

7 (Jury enters.)

8 COURT BAILIFF: All rise for the Jury.

9 THE COURT: Thank you. Please be
10 seated.

11 Good afternoon, Members of the Jury.

12 I hope that you had a pleasant morning and that it
13 wasn't too smoky for you.

14 Mr. Sheridan, are you ready to call your next
15 witness?

16 MR. SHERIDAN: Yes. Plaintiff calls--

17 THE COURT: Oh, hold on a second.

18 (Pause in the proceedings.)

19 THE COURT: All right. Can you please
20 call your next witness.

21 MR. SHERIDAN: Plaintiff calls Mike
22 Saunders.

23 Sir, please step up this way, and the witness seat
24 is actually over here.

25 /////

1 MICHAEL SAUNDERS, having been first duly sworn
2 by Judge Rajul, testified as
3 follows:

4 THE COURT: Please be seated.

5 I am going to ask you to please remove your face
6 covering so that the jury can see your face on testimony.

7 Mr. Sheridan?

8 DIRECT EXAMINATION

9 BY MR. SHERIDAN:

10 Q Please state your full name.

11 A **Michael Saunders.**

12 Q And Mr. Saunders, you are retired from the Washington
13 State Patrol; are you not?

14 A **Yes, I am.**

15 Q When did you retire?

16 A **July 2019.**

17 Q And before you retired, what position did you have?

18 A **I was a captain in OPS professional standards, internal**
19 **affairs.**

20 Q Okay. And that was for about the three years before you
21 retired, right?

22 A **Yes.**

23 Q And did you retire in 2019?

24 A **Yes.**

25 Q All right. So in 2016 you were the head of internal

affairs?

A Yes.

Q And as such, you were the head of investigations, internal investigations, right?

A I had lieutenants that oversaw the internal affairs.

I was the OPS commander, so I was in charge of the office of professional standards.

The lieutenants oversaw the investigations more directly than me.

Q Okay. It was your organization that conducted the investigations?

A Yes.

Q All right.

(Phone interruption.)

THE COURT: Everybody, please make sure your phones are turned off or muted. I just heard a beep. Sorry.

Q (By Mr. Sheridan) okay. So you oversaw all of the administrative investigations that took place in the state patrol, correct?

A Yes.

Q Okay. And then you were also what's called a standards officer, right?

A Yes.

Q And tell the jury, if you would, what a standards officer

1 is.

2 A A standards officer has concurrence authority on all of
3 the cases that occur that are investigated by the patrol,
4 so there's a captain usually who is in charge of an
5 employee. When that investigation is completed, the
6 captain and I would confer about the discipline that
7 would take place or no discipline, if it was appropriate,
8 but I had concurrence authority, so we had to be in
9 agreement on that.

10 Q And concurrence authority means that you sort of get a
11 vote in what to do with a particular employee when OPS
12 has done an investigation?

13 A Yes.

14 Q And so basically it's you and the appointing authority
15 making the decision, correct?

16 A Say it again.

17 Q It's typically you and the appointing authority-- the
18 person in the chain of command who is considered the
19 appointing authority for the person being investigated?

20 A That's true, but I was familiar-- as a standards officer,
21 I was familiar with all of the discipline that was issued
22 statewide to all of our employees, so I oversaw all the
23 discipline to make sure that somebody in Walla Walla
24 received the same discipline as somebody in Seattle for
25 the same type of defense, so I would apply that kind of

1 **standard to it.**

2 Q But concurrence authority only pertained to
3 discipline-related investigations conducted by your
4 office?

5 A **No. The majority of the investigations were actually**
6 **conducted in the field by the chain of command over the**
7 **employee.**

8 Q Well, it's true, is it not, that you would have
9 concurrence authority on all the discipline that was
10 issued as a result of those investigations, meaning your
11 investigations?

12 A **No, I had concurrence on all investigations that were**
13 **administrative through the office of professional**
14 **standards.**

15 Q Okay.

16 A **So OPS would initiate an investigation for a class-- a**
17 **district commander or division commander, a lot of times**
18 **those investigations would be completed in the field.**

19 They would come back to OPS where the commander and
20 **I would make a decision on discipline.**

21 Q Okay. All right. And so you-- but you wouldn't have the
22 same vote, you wouldn't have the same right to, say,
23 escalate up to the next level for things that were not
24 investigated by you?

25 For example, let's be specific, with regard to the

1 interactions between Lieutenant Nobach and Ms. Biscay,
2 the breast-rubbing incident, that never got investigated,
3 right?

4 **A Yes, it did.**

5 Q Not by you?

6 **A No.**

7 Q No, and when you say, "Yes, it did," you mean that there
8 was an investigation conducted by Chief Alexander?

9 **A Captain Alexander at the time, yes.**

10 Q Oh, Captain Alexander?

11 **A Yes.**

12 Q Right.

13 So you did not interview witnesses and your people
14 didn't, correct?

15 **A Not for the sexual harassment complaint that originally**
16 **came in.**

17 Q Right.

18 Because it was not-- it had not been elevated by
19 Alexander to either a preliminary investigation by you
20 folks or an administrative investigation by you folks?

21 **A Well, no, I wouldn't say it was his decision. It was our**
22 **decision.**

23 **We talked about it jointly.**

24 Q Well, you may have talked about it jointly, but this was
25 not exercising your concurrence authority, correct?

1 **A Yes, it was.**

2 **Q Okay. So let's take a look at-- you gave a deposition in**
3 **this case under oath; did you not?**

4 **A Yes.**

5 **Q All right. And let's take a look at that deposition.**

6 **MR. SHERIDAN: Your Honor, I seek to**
7 **publish the deposition of Mike Saunders.**

8 **THE COURT: Are you doing the video**
9 **like yesterday?**

10 **MR. SHERIDAN: Yes, assuming we are**
11 **ready to go. I am checking right now.**

12 **THE COURT: Okay. Members of the**
13 **Jury, you will now be given testimony from a deposition.**

14 **A deposition is testimony of a witness taken under**
15 **oath outside of the courtroom.**

16 **The oath is administered by an authorized person who**
17 **records the testimony word for word.**

18 **Depositions are taken in the presence of lawyers for**
19 **all parties.**

20 **The deposition will be presented by video.**

21 **Insofar as possible, you must consider this form of**
22 **testimony in the same way that you consider the testimony**
23 **of witnesses who are present in the courtroom.**

24 **You must decide how believable the testimony is and**
25 **what value to give to it.**

1 A copy of the deposition will not be admitted into
2 evidence and will not go to the jury room with you.

3 Q (By Mr. Sheridan) We are going to be looking at Page 7,
4 Line No. 17 to Page 8, Line No. 18.

5 Can you give us a layperson understanding of what it
6 means to have concurrence authority?

7 A So the appointing authority, as a decision-maker on an
8 administrative case-- usually that's the district
9 division commander that oversees the division the
10 employee is assigned to.

11 Concurrence authority, I would have to agree with
12 the level of discipline that was being issued to the
13 employee as a result of an investigation.

14 What that looked like, I would usually go back and
15 look at a standard, look at similar like cases and see
16 what type of discipline was issued in those cases, the
17 idea being that discipline is issued fairly across the
18 state for like violations.

19 Q All right. And does that mean that every form of
20 discipline comes across-- came across your desk at the
21 time that you held that position?

22 A Well, every form of discipline that was a result of an
23 administrative investigation.

24 District division commanders still had the latitude
25 to issue certain levels of discipline outside of the

1 administrative investigation process, but when things
2 rose to a certain level, they would come to my office.

3 There was some discretion there by the district or
4 division commander on how they proceeded with violations
5 they may have identified.

6 Q Okay. So every form of discipline that was investigated,
7 you have concurrent authority for, correct?

8 A Yes.

9 Q And there's no policy or procedure that says you have
10 concurrent authority for things that don't reach OPS
11 investigations, correct, no document, no policy, no
12 procedure--

13 A I don't agree with you.

14 I think you are really taking it out of context,
15 what we're saying here.

16 Q Well, let's see--

17 A I mean, you asked me if there was an investigation. I
18 said there was.

19 Q Every form of discipline that was a result of an
20 administrative investigation-- that's a term of art,
21 isn't it, "administrative investigation"?

22 A Yes.

23 Q That's when you actually send your people out to
24 interview witnesses, and they do it-- they record the
25 interview, there's two people doing it. That's an

1 administrative investigation, right?

2 **A Sure.**

3 Q Okay. So now though you are telling us that pretty much
4 every investigation, like the investigation that you say
5 was done by Captain Alexander, would require concurrent
6 authority, right?

7 **A I'm not really sure where you're coming from on that.**

8 Administrative investigations-- I don't think that I
9 ever said it was exclusive to simply administrative

10 investigations, but Captain Alexander did an
11 investigation, and then he came and conferred with me.

12 Given the information that he provided to me, if I
13 didn't agree with the path that he was going down, we
14 would have elevated that to the assistant chief.

15 Q But that's inconsistent with what you just said, isn't
16 it?

17 Every form of discipline that was a result of an
18 administrative investigation is when you had concurrent
19 authority, correct?

20 **A That's what I said there, yes.**

21 Q Okay.

22 **A I didn't say that was exclusive to--**

23 Q So show us, if you would, sir-- show us, if you would, or
24 refer us to a policy-- we will look it up.

25 Find a policy or procedure that says you had

1 concurrent authority when the appointing authority kept
2 the case and didn't give it to OPS.

3 Point to any authority you know of.

4 We'll find it. We'll look it up.

5 **A Well, it's been a while since I've looked at a policy**
6 **manual, so you are going to have to forgive me for not**
7 **being able to quote a policy for you.**

8 **Q Fair enough.**

9 **A I will tell you that probably almost on a daily basis I**
10 **had commanders come to me and talk to me about different**
11 **issues that they were looking at and asking me if it's**
12 **something that should be elevated to an OPS**
13 **administrative investigation.**

14 **Q Now, the jury has seen some of the policies and**
15 **procedures for doing investigations.**

16 They've seen the flowchart that talks about what to
17 do.

18 If this was a real investigation, there would have
19 been a case log, right?

20 **A Not necessarily.**

21 **Q And there would have been an IIR (phonetic), right?**

22 **A Not necessarily.**

23 **Q And when you say he did an investigation, tell us**
24 **everything you think he did to investigate.**

25 **A He talked to other employees, he talked to the**

1 lieutenant, I believe.

2 He did his own local investigation within the
3 aviation section, asked questions and got things to the
4 point where he was satisfied.

5 Q Well, who did he talk to and when did he talk to them?

6 A I don't have that information right in front of me, so I
7 can't tell you that.

8 Q Okay--

9 THE COURT: Let me stop you for a
10 second, Mr. Sheridan.

11 We have two people that have joined the courtroom
12 via Zoom, and--

13 COURT BAILIFF: Just wait a second.

14 THE COURT: Sorry, Mr. Sheridan.

15 MR. SHERIDAN: Should I continue?

16 THE COURT: No. Wait.

17 We have a couple more people that have joined via
18 Zoom, and I just want to tell you that you are prohibited
19 from recording the proceeding through-- that you are
20 watching via Zoom, and you are not to take screenshots of
21 the screen either.

22 A violation of my court order is basis for
23 sanctions, and you could be held in contempt.

24 Thank you.

25 Please proceed.

1 Q (By Mr. Sheridan) Okay. So you didn't-- you say that
2 there was an investigation conducted.

3 Do you consider it to be a preliminary investigation
4 or an administrative investigation that you say that
5 Chief Alexander conducted?

6 A I would consider it to be a local investigation at his
7 level.

8 Q Local investigation?

9 That's not in the investigative manual.

10 A Yeah, you can't define every single situation in the
11 world, but this is common practice in any law enforcement
12 agency and any organization outside of law enforcement.

13 When allegations are made about somebody, somebody
14 collects some initial information to determine what they
15 need to do about that situation.

16 That's exactly what Captain Alexander did.

17 Q Sir, isn't it true that the whole purpose of the
18 investigative manual is to instill confidence in the
19 public that the Washington State Patrol is fairly and
20 openly investigating claims of wrongdoing and that
21 there's nothing being done in a sneaky way or an
22 inappropriate way, right?

23 A That's one of the purposes.

24 Q So that's why they have specific procedures-- would you
25 agree with me, sir--

1 **A No, that's not why they have specific procedures.**

2 **I said that's one of the reasons.**

3 Q You jumped in too fast. I am asking you a different
4 question.

5 Would you agree with me that if a policy or a
6 procedure says "shall," it must be done?

7 **A Yes.**

8 Q And if it says "may," then it may or may not be done,
9 right?

10 **A Correct.**

11 Q So all we have to do, as consumers, is we have to look at
12 your policies and procedures and see which says "shall"
13 and which doesn't, and we will know what the policies and
14 procedures are regarding investigations, correct?

15 **A Yes, and you are going to talk to me about how it says**
16 **that you shall do an investigation, but that**
17 **investigation-- the level of the investigation is not**
18 **defined.**

19 Q Let me understand this, sir.

20 You had-- you were the top fellow in charge of
21 investigations in 2016 and 2017, right?

22 **A Yes.**

23 Q And what you just told us, basically that is how
24 investigations were conducted during the time you were in
25 charge, that there could be ones that were sort of

1 neither preliminary nor administrative; "local" you
2 called them, right?

3 **A What is your question?**

4 **Q This is how you ran your department, correct?**

5 Let's face it, what you just said, you're speaking
6 for a position that you held at the time, right?

7 You were the head of OPS?

8 **A Yes, I was.**

9 **Q So your view is that people can investigate sort of--**
10 outside of the procedures. It's small. It's local.

11 That's how the office was run during the time you
12 were there?

13 **A The office wasn't run the way you're implying whatsoever.**

14 Any matter-- any allegation taken against a state
15 patrol employee was taken very seriously.

16 It was never made into something small and brushed
17 under the rug or anything like that, at least not that
18 I'm aware of.

19 **Q Well--**

20 **A Especially allegations of sexual abuse or sexual assault**
21 or sexual harassment.

22 I mean, that's ridiculous to think that we would
23 just not take a serious look at that.

24 **Q Okay. Well-- it's true, is it not, that because an 095**
25 was issued to Lieutenant Nobach, that pretty much ended

1 the opportunity to consider more serious discipline
2 because of his union status?

3 A Yeah, there's a lot of union rules that interact with
4 that, but it also ended the behavior too, I might point
5 out.

6 Q So you're agreeing with me? You agree, that's what it
7 did?

8 A Right.

9 Once the 095 is issued by union rules, we couldn't
10 take any other form of discipline, but if you're
11 suggesting that that was a way to avoid having to take a
12 firmer position on this, I would say you're definitely
13 wrong.

14 Q All right. You didn't do any investigation-- your office
15 didn't do any investigation of the breast-rubbing matter,
16 right?

17 A On the sexual harassment complaint?

18 Q Yes.

19 A No.

20 Q And the only place you got your facts as to what happened
21 was from Johnny Alexander talking to you and telling you?

22 A Yes.

23 Q You didn't talk to-- your people didn't talk to any
24 witnesses, right?

25 A Right.

1 Q You don't really know who he interviewed-- as you sit
2 here today, you don't know who he interviewed and who he
3 didn't interview, right?

4 A **Yes.**

5 Q You do?

6 A **I don't know specifically who he interviewed, but I know**
7 **he interviewed people and did his job.**

8 Q Okay. Got it.

9 Now, also, you understood from your conversation
10 with Captain Alexander that the facts were pretty much
11 uncontested, right?

12 A **What facts?**

13 Q Oh, meaning that Nobach admitted what he did, he admitted
14 that she came up behind him and moved her breasts behind
15 his head, touching the back of his head?

16 A **I'm not sure what he did--**

17 MR. MARLOW: I am going to object.
18 That mischaracterizes Alexander's testimony.

19 THE COURT: I am going to sustain the
20 objection.

21 Rephrase the question.

22 MR. SHERIDAN: Sure.

23 Q (By Mr. Sheridan) Okay. It's true, is it not, that you
24 were told that-- you were told by Alexander that Brenda
25 Biscay came up behind Jim Nobach, while he was seated at

1 his desk, with Trooper Santhuff in the room, and she
2 basically rubbed her breasts on the back of his head?

3 **A Yes.**

4 Q Okay. Fair enough.

5 And also on the back of his head or his shoulders,
6 right?

7 **A Yeah, the general area, yes.**

8 Q And it's true, is it not, that the way-- that in terms of
9 how you determined what happened-- you didn't determine
10 what happened.

11 Captain Alexander did and told you.

12 **A I'm sorry, could you repeat that one more time?**

13 Q Sure.

14 You made no decision as to whether the events
15 actually occurred, correct?

16 **A I believed that what occurred-- what he told me occurred**
17 **occurred because I believe that he's a very forthright,**
18 **honest individual.**

19 Q You mean Captain Alexander?

20 **A Yes.**

21 Q Got it.

22 Now, a preliminary investigation is basically
23 designed to see, first, does the claim involve a
24 Washington State Patrol employee, right?

25 **A Yes.**

1 Q And second, if everything is true, does it look like
2 there's a claim, right?

3 A **Sure.**

4 Q Okay. And so, for example, if somebody-- a civilian
5 raised a complaint saying that they were arrested and the
6 handcuffs were too tight, that would be an example of
7 something that there would be no claim because that's
8 sort of the nature of being handcuffed?

9 A **No, there's still a method of accountability for that,
10 still an investigation is done by the supervisor.**

11 Q Okay. All right. Let's take a break and look at Page
12 34, Line No. 12, Exhibit No. 221.

13 A **I would stay away from that one, but more-- how about the
14 example of "He put handcuffs on me and they hurt"?**

15 Q Fair enough.

16 A So that might be a complaint that we would receive that
17 we would look at initially and say, "Okay. That's
18 consistent with our expectations because you were under
19 arrest. Unfortunately they do hurt, but that's a result
20 of being arrested."

21 **That's what we expect our employees to do.**

22 Q So that would be an example where the preliminary
23 investigation sort of reveals there's no case?

24 A **No, your terms aren't correct, so I guess I am not going
25 to agree with you on that one because we are not doing a**

1 preliminary investigation on a use of force for
2 handcuffs. We are doing what's called a-- what we call a
3 FLUP (phonetic), which is what a fleet loss-- loss of
4 equipment, use of force pursuit file, basically, that we
5 create electronically.

6 That's reviewed by a district commander.

7 Eventually it's reviewed by me after the supervisor
8 takes a look at it.

9 Q Okay. It's true also, is it not, sir, that in cases
10 where 095s are going to be issued, you folks don't really
11 get involved?

12 A If an 095 is going to be issued?

13 Q Yeah.

14 A Well, a district commander or a supervisor has the
15 ability to issue an 095 if they feel it's appropriate,
16 but there would be 095s that would be issued occasionally
17 as a result of an OPS administration-- investigation.

18 Q Okay. Agreed.

19 If you do an investigation, then you would become
20 involved even in the fact that-- at the conclusion of the
21 investigation the person who alledgedly did the wrong--
22 if they got an 095, you folks would be looking at it,
23 right?

24 A Yes.

25 Q But if someone is issued an 095 and there has not been an

1 investigation, you would stay out of it?

2 **A Yes.**

3 Q Okay. And as a matter of fact, when an appointing
4 authority, like, in this case, Captain Alexander, issues
5 an 095, you are not going to overrule them because really
6 that's his territory and those are his people, right?

7 **A Not necessarily.**

8 Q Okay.

9 **A In a case like this where you have allegations of sexual**
10 **harassment, again, if I felt that it needed to be**
11 **elevated, I would take that up with the assistant chief,**
12 **if Captain Alexander and I couldn't agree.**

13 Q Okay. But it's true, is it not, and tell me if I'm
14 wrong, you and Captain Alexander decided there wasn't
15 sexual harassment?

16 **A No. We knew there was sexual harassment.**

17 Q "We" did?

18 **A Yeah.**

19 Q Tell us about it.

20 **You knew there was sexual harassment, you and the**
21 **chief, Chief Alexander, right?**

22 **A Yes.**

23 Q Tell us, what did you think was sexual harassment?

24 **A Captain Alexander looked into it.**

25 **Like I said, he did his investigation, he determined**

1 that it was systemic within the whole aviation section,
2 that there were many people participating in that type of
3 behavior.

4 Q Who?

5 A I don't know all his employees.

6 Q But I guess you're assuming that Captain Alexander
7 interviewed those folks to make that determination,
8 right?

9 I mean, there's only 11 there, right?

10 A I know that Captain Alexander did an investigation at the
11 level he felt was appropriate to come to that conclusion.

12 Q And the conclusion was sexual harassment?

13 A It did occur.

14 Q Okay.

15 A I would agree with him on that.

16 Q Okay. So your understanding of the facts is that there
17 was sexual harassment, and you say that you had the
18 authority to go higher if you can't get concurrence.

19 If there's an entire section, the aviation section
20 in this case, that apparently has pervasive sexual
21 harassment, why would you not want a thorough
22 investigation to be done through your office where the
23 rules apply?

24 A This was more a lack of leadership, and I don't mean to
25 offend Lieutenant Nobach, but there was a culture that

1 **had manifested within the aviation section where many**
2 **employees, including Trooper Santhuff, were participating**
3 **in inappropriate behavior.**

4 Q You got that Santhuff--

5 A **No-- well, yeah, when we talked, you know, however many**
6 **years ago it was--**

7 Q Yeah. So now you don't remember anyone's name except
8 Trooper Santhuff; is that right?

9 A **I dealt with complaints from Trooper Santhuff quite a**
10 **bit, so I do remember his name.**

11 Q So now it's part of your testimony that he was part of
12 the problem back in 2016, right, this sexual harassment
13 problem, right?

14 A **That he had participated in those types of activities,**
15 **yes.**

16 Q That's nowhere in your deposition or anything written
17 down; would you agree?

18 A **I have no idea.**

19 Q Well, you never wrote down anything about this being a
20 hostile work environment with sexual harassment that
21 apparently was pervasive and included Trooper Santhuff,
22 right?

23 A **I didn't write down much about this one at all because it**
24 **didn't come to me for an OPS investigation.**

25 Q Okay. But-- I'm right, am I not, that if it's sexual

1 harassment, this is a major offense, "major"?

2 **A Yes.**

3 Q So a major offense, you wouldn't let a captain just say,

4 "I'm going to keep this in-house," when it's pervasive.

5 You would do something about it, right?

6 **A I wouldn't, but Captain Alexander did.**

7 Q I thought you could overrule him or take it up to the
8 next level if it was an 095?

9 **A I could if I disagreed with his actions, but I agreed--**

10 Q So you thought it was a good idea that in this pervasive
11 environment of sexual harassment, involving, for all we
12 know, all 11 people that work there, you thought it was a
13 good idea to just let the captain handle it and not even
14 develop an official record, through interviews and
15 following the investigative procedures that you would
16 follow--

17 **A There was a record.**

18 He dealt with the leadership of Lieutenant Nobach,
19 the 095.

20 **It was clearly documented there.**

21 His expectations were stated and the unit was--
22 participated in sexual harassment training because it
23 was systemic within the unit.

24 Q And the way you knew it was systemic within the unit is
25 because that's what he told you?

1 **A Yes.**

2 Q Okay. You have no personal knowledge?

3 **A No.**

4 Q Okay. And you're okay with a major-- you agree that
5 sexual harassment is a major offense, right?

6 **A Yes.**

7 Q You have to say it so she can-- so it's audible.

8 **A Yes.**

9 Q Thank you.

10 But it's your position, as you sit here today, that
11 even though it's a major offense, it was okay to deal
12 with it simply through 095s?

13 **A The biggest violation out of this was the fact that there**
14 **was a lack of leadership in the unit preventing this from**
15 **happening.**

16 This type of behavior was accepted, and Lieutenant
17 Nobach was responsible for that.

18 Lieutenant Nobach was counseled.

19 Captain Alexander stated his expectations very
20 clearly in the 095 and said, "This will stop"-- don't
21 quote me. I don't know exactly what he said in the 095.
22 I haven't seen it for a while, but he put an immediate
23 stop to the behavior, and then he provided training to
24 the whole unit that addressed this problem.

25 When you have a whole unit that is participating in

1 this kind of behavior, and they're all accepting of this
2 behavior, how do you hold one person accountable for
3 those actions?

4 First of all, it was Lieutenant Nobach who was
5 sitting there when the other gal came up behind him and
6 actually committed what I would call the sexual
7 harassment. He was a recipient of it.

8 All that being said, it was under his leadership,
9 and he should have made it stop immediately.

10 It should have never gotten to the point where it
11 was.

12 Q You're parroting what you were told by Alexander, right,
13 because you have no personal knowledge of anything?

14 A I am giving you my personal opinion based on the
15 information that he provided to me when he investigated
16 it at his level.

17 Q So what do you think the worst event that happened in
18 that unit was, the worst event?

19 A I don't know.

20 Q You don't know, and you don't know if the worst event was
21 the breast-touching incident. There could have been
22 something worse, correct?

23 A There could have been.

24 Q And the only way to find that out would be to actually
25 interview people that worked there, right?

1 **A Yes.**

2 Q And that was not done, right?

3 **A Correct.**

4 Q And that was fully-- with your full agreement?

5 **A Yes.**

6 Q Okay.

7 **A Had we had a victim that stepped forward, we would have**
8 **done something probably more in-depth, I guess.**

9 Q That's an interesting point.

10 "If I had a victim come forward, I would have done
11 something more," right?

12 How do you go about finding if there are other
13 victims? What do you do?

14 You do an investigation, right?

15 And you interview the witnesses--

16 MR. MARLOW: I will object.

17 If he could ask one question and allow the witness
18 to answer, then maybe--

19 THE COURT: One question at a time.

20 MR. SHERIDAN: Sorry.

21 Q (By Mr. Sheridan) Isn't it true that the way you find
22 out if there are other victims, is you do an
23 investigation, you follow the rules, you send in two
24 people at a time, you record the statements, and then you
25 make a decision as to what needs to be done to Lieutenant

1 Nobach, not before--

2 **A If you're looking for additional victims, that would be**
3 **the way to go, yes, but in this case we didn't have**
4 **anybody who appeared to be victims.**

5 Q How do you know that?

6 **A Because everybody was actively participating in this kind**
7 **of behavior and laughing about it.**

8 Q How do you know that?

9 **A Because that's what Captain Alexander told me.**

10 Q Right.

11 **A Yeah.**

12 Q In 2016 you were a public official, correct, under the
13 whistleblower code?

14 **A "A public official under the whistleblower code"**

15 Q Yes.

16 **A I'm not sure.**

17 **I know that whistleblower complaints were handled**
18 **through our human resources division.**

19 Q Well, for whistleblower complaints pertaining to, what,
20 retaliation, were handled through them?

21 **A Would be handled through HR, yes, human resources.**

22 Q You held-- what was your job title gain, sir?

23 **A I was commander of the office of professional standards.**

24 Q Okay. And you were identified as a public official,
25 right?

1 **A I don't know.**

2 I guess I considered myself a public official the
3 minute I became a trooper, but I don't know what your
4 definition is, so I don't know.

5 Q Well, we talked about this during your deposition, didn't
6 we?

7 **A I don't remember.**

8 Q Okay.

9 **A I bet you do.**

10 Q Let's take a look at-- let's take a look at Exhibit
11 No. 113.

12 It might be over there to your right, sir.

13 It would be a full book, Exhibit No. 113.

14 I will look over here and see if I see it.

15 THE COURT: While you do that, there
16 have been additional people that have joined the Zoom
17 meeting.

18 I just want to instruct you that you are prohibited
19 from recording the proceedings in any way. We can only
20 have one official record.

21 You are also prohibited from taking screenshots of
22 the screen that show the witness.

23 Any violation of my order is basis for being held in
24 contempt and sanctions.

25 **THE WITNESS: It looks like 113 is**

1 **split between two books.**

2 **What page are you going to?**

3 Q (By Mr. Sheridan) I think you can stick with that one
4 and we'll be okay.

5 A **Okay.**

6 Q Sir, if you will go to Page 166.

7 A **I don't think my page numbers aren't matching yours.**

8 Q Okay. I'm going to take a look and see.

9 A **I am looking at a general order for the patrol.**

10 **Is that what you're looking at?**

11 Q Yeah, I need to get you to the chapter.

12 It is Chapter 8.

13 From there we will go to 166.

14 A **So I'm still in 113, right?**

15 Q Yeah, 113.

16 Go to Chapter 8.

17 A **I am still on general orders in 113.**

18 Q Flip about halfway through.

19 You will see it is divided up by chapters.

20 There was a time you were familiar with this book,
21 right?

22 A **Yeah, more familiar than I am now.**

23 Q Okay.

24 A **So I don't have a 166.**

25 Q Look for the chapters first, and you will see there's

Chapter 1, 2, 3, 4.

I can take it from you and help you, if need be.

A Okay. There's no 166, but I think I'm getting close to what you're looking at.

Are you looking at the rules of conduct?

THE COURT: Captain Saunders, I saw you looking over at the other screen.

There is a screen right behind you, if that's easier.

MR. SHERIDAN: Thank you. That is easier.

THE WITNESS: What I have here in 113 isn't matching what you have.

Q (By Mr. Sheridan) I don't think you're in Chapter 8.

If you'll look at the screen, sir, it will make it a lot easier.

This is Chapter 8 under "Rules of conduct," and it say, "Methods of submitting a whistleblower complaint," okay.

If you look at Item 1, one way is it could be reported to the state auditor's office, and you understood that, correct?

A Mm-hm.

Q That's a "yes"?

A Yes.

1 Q Thank you.

2 And then on No. 2, "The following are methods for
3 reporting or submitting a whistleblower complaint," and
4 it says, "A, directly to the agency designee."

5 Were you the agency designee, sir?

6 A No. That would have been Dr. Lastimado in human
7 resources.

8 Q Okay. So it says--

9 A "Lastimado."

10 Q It says the agency designee includes the deputy chief.

11 In 2016, who was the deputy chief?

12 A Randy Drake.

13 Q Randy Drake--

14 A I'm sorry, he was assistant chief. There wasn't a deputy
15 chief.

16 Q Okay. All right.

17 And who was the commander of the office of
18 professional standards?

19 A That was me.

20 Q Okay. So this policy is the policy that was in place --
21 it's already been admitted -- in 2016?

22 A Okay.

23 Q So would you agree sir, that assuming that's right, you
24 were an agency designee?

25 A It appears I was one of the designees, yes.

1 Q All right. And you did-- basically from March on, you
2 had received the information about the report from
3 Trooper Santhuff regarding the breast-rubbing incident,
4 right?

5 A Yes.

6 Q And you considered that to be or at the time you
7 considered him to be the whistleblower, correct?

8 A I didn't give it much thought, but yes, I would say he
9 was the whistleblower.

10 Q And he was a whistleblower, and you received the
11 complaint, and in your mind the behavior of Lieutenant
12 Nobach was gross mismanagement, right?

13 A Yes.

14 Q Okay. All right.

15 A But it was already being addressed through HRD.

16 Q Well, you don't know that either, do you, sir?

17 A Yes.

18 Q So it's fair to say that you did nothing with this
19 information, in terms of reporting it to the state
20 auditor, right?

21 A No.

22 HRD did that, I said.

23 Q How do you know that they reported it?

24 A Because I talked to Captain Travis Mathesen, who oversees
25 Dr. Lastimado in the human resources division, and

1 confirmed that they did that.

2 Q So you actually ensured that the whistleblower complaint
3 filed or stated by Trooper Santhuff, you ensured that it
4 got to where it was supposed to go?

5 A Yes.

6 Q And so you are sure that based on your conversation with
7 Mathesen, that his subordinate passed that complaint on
8 to the state auditor?

9 A I was told he did.

10 Q Perfect. Thank you. Okay. And I gather then because
11 you had done your bit, you had no further-- you took no
12 further action regarding investigating or anything like
13 that?

14 A I think we've already said that, yes.

15 Q Okay. And it's true, is it not, that if Trooper Santhuff
16 was in a hostile environment himself, that was not
17 something that your organization dealt with, right?

18 A No, it would be.

19 Q It would be?

20 A Yeah, if there was retaliation or a hostile work
21 environment, that's something that we could potentially
22 investigate.

23 Q Okay. Well, you became aware of such a complaint, right?

24 A Yes.

25 Q Okay. When was that?

1 **A** **I can't quote dates to you, but it was after the sexual**
2 **harassment complaint.**

3 Q Okay. And you learned that Trooper Santhuff had
4 basically told, I guess, Captain Alexander and ultimately
5 the information came to you, that he felt that Nobach was
6 retaliating against him for having reported the
7 breast-rubbing incident, right?

8 **A** **Yes.**

9 Q Okay. Now, I am going to ask you, do you have Exhibit
10 No. 98 handy?

11 I will take a look here.

12 I think you probably have it, sir.

13 **A** **These?**

14 Q No.

15 It would be one of these.

16 It would be a black one as well.

17 **A** **It's 164-- 113, 164, 227, 245, 260, 261, and 113.**

18 Q 113, yes-- well, I have-- I am going to take some of
19 these back from you, sir, if I may, and perhaps I can
20 find them.

21 **A** **There is one back here that is 43 to 112--**

22 Q There we go. Thank you.

23 Okay. Do you have it in front of you, sir?

24 **A** **Yes.**

25 Q This is a--

1 MR. SHERIDAN: This is admitted,
2 right?

3 THE COURT: No.

4 MR. SHERIDAN: Oh, it's not. Okay.

5 Q (By Mr. Sheridan) This is a document that Ryan Santhuff
6 wrote around October 20th and sent to your subordinate,
7 Bruce Maier; is it not?

8 A I don't know which page you're referring to yet.

9 Q 98. I'm sorry.

10 A 98?

11 Q Yes, please.

12 Okay. It's a couple pages.

13 Just take a moment to look at it.

14 A Okay.

15 Q And this document came into your possession on October
16 25th; did it not?

17 A October 25th?

18 Q Yeah.

19 Do you have a recollection-- you have a recollection
20 of having read this document; do you not?

21 A Yes.

22 Q Fair enough.

23 All right. Just so we can nail down when you got
24 it, I have a document here that I think may refresh your
25 recollection.

1 I'm going to have it marked and then show it to you
2 and just have you look at it, but don't say anything.

3 THE COURT: Is that a new exhibit?

4 MR. SHERIDAN: yeah.

5 THE COURT: Does Defense have a copy
6 of it?

7 MR. SHERIDAN: yes.

8 THE COURT: So this would be 264.

9 MR. SHERIDAN: 264. Thank you.

10 I am going to hand the witness what's been marked
11 for identification as Exhibit No. 264.

12 Q (By Mr. Sheridan) What I'm doing here is seeking to
13 refresh your recollection, so I want you to look at the
14 top header and then look at the document, and then I'm
15 going to ask you the question whether or not this
16 refreshes your recollection as to when you received the
17 document.

18 A So this came to me from Bruce Maier on the 21st of
19 October.

20 Q Okay.

21 A 2016.

22 Q Fair enough.

23 Thanks very much.

24 Let me take that back, and I will just put that over
25 here.

1 21st, got it.

2 All right. And when you got this document, I gather
3 you read it?

4 **A Yes.**

5 Q All right. And did you direct a certain action be taken
6 as a result of this document?

7 **A I believe we completed a preliminary investigation.**

8 Q And what was the subject matter of the investigation?

9 **A Retaliation.**

10 Q Okay.

11 **A Harassment.**

12 Q Is it fair to say that would have been in the October
13 timeframe?

14 **A Yes.**

15 Q Okay.

16 **A I would hope so.**

17 Q Okay. And let me check something real quick.

18 I would like, if you would, to take a look at-- let
19 me just see.

20 I am on the first page, and I'm at the top of-- I'm
21 at the top of the second paragraph.

22 **A Okay.**

23 Q And--

24 MR. SHERIDAN: Oh, I should offer
25 this.

1 Plaintiff offers Exhibit No. 98.

2 THE COURT: Any objection?

3 MR. MARLOW: This witness can't
4 authenticate this document, Your Honor, so yes.

5 Objection; authentication.

6 THE COURT: I got confused between 264
7 and 98, whether he recognized it or not. Sorry.

8 Q (By Mr. Sheridan) I will just clarify.

9 You recognize that memo from Trooper Santhuff, and
10 you read it, right?

11 A Yes, e-mail-- I don't know if this is exactly the one,
12 but I'm assuming it is, so yes.

13 THE COURT: All right. Exhibit No. 98
14 is admitted.

15 MR. SHERIDAN: Thank you.

16 (Exhibit No. 98 admitted
17 into evidence.)

18 Q (By Mr. Sheridan) Now, let's look at the top-- the first
19 sentence of the second paragraph.

20 MR. SHERIDAN: May it be published?

21 THE COURT: Yes.

22 MR. SHERIDAN: Thank you.

23 Q (By Mr. Sheridan) Look at the first sentence of the
24 second paragraph.

25 A Yes.

1 Q He writes, "At the beginning of our meeting on October
2 3rd"-- and he's writing to Sergeant Maier, your
3 investigator, right?

4 **A Right.**

5 Q He says, "At the beginning of our meeting on October 3rd,
6 you asked me if I knew why we were having a meeting. I
7 told you I believed it was regarding the deletion of
8 e-mails to avoid a pending public disclosure request.

9 "You advised I was incorrect and the meeting was
10 about two issues filed in an IIR by Captain Alexander."

11 It goes on from there.

12 You became aware in this document that there was
13 also a question of-- an allegation of deleting e-mails to
14 avoid a public records disclosure, correct?

15 **A I'm sorry, I was still reading.**

16 **Could you ask me one more time?**

17 Q Oh, sure.

18 It's true, is it not, that in reading this document,
19 you became aware that not only had Trooper Santhuff
20 complained that he was being retaliated against by
21 Nobach, but also he complained that there was a 2014
22 incident involving a King airplane that was not made
23 available to the governor.

24 You understood that from reading this, right?

25 **A No, I didn't see that as a complaint.**

1 He said he believed it was regarding the deletion of
2 the e-mails to avoid a public disclosure request.

3 That's not a complaint. To me that's something that
4 he believed they were meeting about, apparently.

5 Q Okay. So when you read this about the e-mails-- you
6 understood the other two things needed investigating,
7 right?

8 A Yes.

9 Q Okay. But it's your testimony that in reading this about
10 "I believed it was regarding the deletion of e-mails to
11 avoid a pending public disclosure request," you didn't
12 take that as a complaint?

13 A No.

14 Q Okay. And now, if you would, turn over to the next page.

15 The top paragraph-- the top full paragraph begins,
16 "Although not associated with the IIR, we also discussed
17 further unethical and potentially criminal behavior
18 regarding deletion of e-mail to avoid pending public
19 disclosure requests, possible mayday requests.

20 "I explained an incident where Lieutenant Nobach
21 advised the pilots of a public disclosure request that
22 was coming, and he said he needed us to delete our
23 e-mails to prevent disclosure.

24 "Lieutenant Nobach instructed all the pilots to log
25 into the e-mail accounts, delete our 'deleted' folder and

1 showed us how to access an e-mail recovery folder and
2 delete those also.

3 "Trooper Noll also remembers the incident and
4 believes the public disclosure request pertains to the
5 mayday protest"-- it goes on.

6 Sir, is it your testimony that after reading this,
7 you still didn't think it was a complaint?

8 **A Well, I don't know where in the timeline we investigated**
9 **this, but we did investigate this allegation.**

10 I don't know if it was before this letter, if it was
11 already in progress, or if it was initiated afterwards,
12 but--

13 Q It's true that it wasn't investigated until 2017, right?

14 **A I don't know.**

15 I would have to see the documents, to be honest with
16 you.

17 Q Can you think of any business reason for delaying the
18 investigation of this e-mail claim?

19 **A Any business reason to delay it?**

20 Q Yes, to not-- because-- I mean, there was an
21 investigation regarding King air, there was an
22 investigation regarding retaliation, but there was no
23 investigation of this destruction of e-mail issue at the
24 time.

25 I'm asking whether you know whether there was a

1 business reason for delay.

2 A Well, there's not enough information in the two
3 paragraphs that we have gone over for me to investigate
4 it.

5 Q Isn't it though the responsibility of you and your
6 subordinates, when you get something that is a complaint,
7 that you are supposed to start a case log and just give
8 it an IRR (sic.) and make decisions from there?

9 A An "IIR."

10 Not necessarily.

11 We provide the information to the district commander
12 or division commander, in this case, and he makes the
13 decision on whether he wants to move forward with the
14 complaint.

15 Q "Whether he wants"-- I'm sorry?

16 A To move forward with the complaint.

17 Q And who was that?

18 A That was Captain Alexander, I believe.

19 Q So this was given to Captain Alexander to make a decision
20 as to whether it moved forward?

21 A I'm sure that Captain Alexander was aware of this letter,
22 but I-- again, timelines-- I can't recall timelines back
23 that far to tell you the sequence of events.

24 Q Okay. When the investigation was done in 2017, did you
25 become aware of whether or not some of the witnesses

1 verified that these facts, as I've just summarized for
2 you, actually happened?

3 **A We weren't able to verify that it happened, I don't**
4 **believe.**

5 There were a lot of people we tried to get ahold of
6 that wouldn't respond back to us, so we--

7 **Q Isn't it true that four or five people actually said it**
8 **happened?**

9 **A I don't believe so.**

10 **Q** Okay. Would you agree with me that-- let's say four or
11 five people actually said it happened.

12 That would be significant evidence that would weigh
13 in favor of making a finding that something happened?

14 **A I can't tell you without going back and refreshing my**
15 **memory about the particulars.**

16 There would be times where it may not be a violation
17 and there are times when it definitely would be.

18 **Q** Okay. Can you tell us, do you remember reading all the
19 statements written-- that were taken by your people?

20 **A No, I don't, as I sit here now, no.**

21 **Q** Fair enough.

22 Okay. In this case, when the 2017 investigation
23 actually happened, and people were actually interviewed
24 and recorded and their statements were transcribed, was
25 it Johnny Alexander that made the decision that there

1 wasn't enough evidence?

2 Let me spare you the memory issue first and let me
3 ask you:

4 Was it his responsibility to make the decision?

5 **A Well, not necessarily.**

6 There were a lot of complaints that were made by
7 Santhuff that we investigated, and some of those rose to
8 the assistant chief, and I believe others were handled at
9 Captain Alexander's and my level, and I can't remember
10 which went where, to be honest with you.

11 **Q Okay.**

12 **A There were many.**

13 **Q Fair enough.**

14 **A I know that-- did I say "Chief Drake"?**

15 Cheer Drake was the assistant chief at the time.

16 He was aware of all of the complaints that we
17 investigated, and even the ones that myself and Captain
18 Alexander reached a decision on, he was informed of those
19 and agreed with our actions.

20 **Q Okay. And you know he agreed with your actions because**
21 he told you?

22 **A Because he was very well informed by myself and Captain**
23 Alexander of all of this.

24 **Q Okay. I just want to get something in the record from**
25 your deposition.

1 Let me just ask you this:

2 "You understood, did you not, that the behavior by a
3 supervisor to a direct-report female was gross
4 mismanagement," and you said, "Absolutely."

5 You agree with that?

6 **A Could you read it to me one more time?**

7 **Q** Yeah.

8 "You understood, did you not, that behavior by a
9 supervisor to a direct-report female was gross
10 mismanagement," and you said, "Absolutely."

11 You agree with that?

12 **A Sure.**

13 THE COURT: Is this a good time to
14 take our 15-minute break?

15 MR. SHERIDAN: yes.

16 THE COURT: All right. Members of the
17 Jury, we are going to take our 15-minute recess.

18 COURT BAILIFF: All rise.

19 THE COURT: We will resume at 3:05.

20 (Recess 2:49 to 3:03 p.m.)

21 THE COURT: Thank you. Please be
22 seated.

23 Anything we need to address before we bring in the
24 jury?

25 MR. SHERIDAN: No, Your Honor.

1 THE COURT: Okay. The one thing I
2 realized too late is that I started reading the
3 Washington Pattern Instructions on depositions, but it
4 was impeachment, so I should not have done that, but I
5 don't think there's anything that needs to be done.

6 MR. BIGGS: No objection, Your Honor.
7 I do have one issue though.

8 There's a witness that's going to come on called
9 Paul Speckmaier after this witness, but so we don't have
10 to interrupt--

11 THE COURT: It is not going to happen
12 today probably, right?

13 MR. BIGGS: Well, I don't know how
14 long we have left here.

15 MR. SHERIDAN: Not much.

16 THE COURT: Okay.

17 MR. BIGGS: Okay. But here is the
18 issue with Speckmaier: He has a lot of things to say
19 about Lieutenant Nobach, most of which are excluded by
20 motions in limine.

21 I would like to make sure that the witness is
22 cautioned in advance that he can't talk about other
23 things that aren't part of this case, like what others
24 think about the lieutenant, history.

25 He left the department before this thing-- this case

1 ever happened.

2 THE COURT: I rely on attorneys to
3 instruct their witnesses what the motions in limine are.

4 MR. BIGGS: Okay.

5 COURT BAILIFF: All rise.

6 THE COURT: But let me know if I need
7 to do anything.

8 MR. BIGGS: Sure.

9 (Jury enters.)

10 THE COURT: Thank you. Please be
11 seated.

12 Members of the Jury, Mary told me that some of you
13 were wondering why I was giving the Zoom instructions.

14 We have a presumption in our state that our courts
15 are open to the public, and that is to make sure that we
16 are all accountable, and the public has a right to know
17 what's happening in the courts. That is just part of one
18 of the great things of our system.

19 Right now, given COVID-19 and the restrictions on
20 the amount of people that we can have in the courtroom--
21 typically all of you would be seated over there, and
22 anybody could come and watch the trial, but because we
23 need to make special arrangements due to COVID-19 and the
24 social distancing, we have spread you out the way that we
25 have, which means that we cannot have as many people come

1 into the courtroom, and we cannot have as many people in
2 the gallery.

3 In order to have a balance of safety and also our
4 open court, which is a constitutional right, we have
5 created a Zoom link similar to what we did during jury
6 selection, so that anybody that wants to watch the
7 witness testifying or hear the proceedings can do so, so
8 that's the reason why we have the Zoom link going.

9 All right. And I believe that there is a new person
10 that has been admitted into the Zoom meeting, and I just
11 want to instruct everybody that is watching the
12 proceeding via Zoom that you are prohibited from
13 recording the proceeding. We only have one official
14 record.

15 You are also prohibited from taking screenshots of
16 the witness or whatever you are able to see on the
17 screen.

18 **A violation of my order is basis for sanctions, and**
19 **you could be held in contempt.**

20 **Thank you.**

21 **Mr. Sheridan?**

22 MR. SHERIDAN: Yes. Thank you.

23 Q (By Mr. Sheridan) I just wanted to refresh your
24 recollection again on when I asked you about Exhibit
25 No. 98, which was the e-mail sent from Ryan Santhuff to

1 Detective Sergeant Maier on October 20th, 2016, and then
2 forwarded to you-- you told us it was forwarded to you on
3 the 21st, but I wonder, can you tell us what time you
4 received it, what time in the day?

5 **A It's marked, "7:02 a.m."**

6 Q Well, my apologies, that wasn't how I was supposed to go
7 about it, but we got it in. Thank you.

8 MR. SHERIDAN: I have no further
9 questions.

10 THE COURT: All right. Any
11 questioning from the defense?

12 MR. MARLOW: Yes, Your Honor. Thank
13 you.

14 CROSS-EXAMINATION

15 BY MR. MARLOW:

16 Q Good afternoon, Captain Saunders.
17 How are you doing today?

18 **A Good.**

19 Q You are retired from the state patrol, correct?

20 **A Yes.**

21 Q How long did you spend with the state patrol, sir?

22 **A Just short of 33 years.**

23 Q And I will apologize upfront for yelling at you, but I
24 have to make sure the jurors in the back can hear me as
25 well, and I tend to-- my voice goes down.

1 And you've retired as the commander of the office of
2 professional standards, correct?

3 **A Yes.**

4 Q Okay. What was your understanding of the role of the
5 office of professional standards within the state patrol?
6 What did it do?

7 **A What did I do specifically as a commander?**

8 Q What did the office of professional standards, the
9 section you oversaw, what was its purpose within the
10 state patrol?

11 **A So my role as the commander was to oversee the**
12 **administrative investigations and to ensure that there**
13 **was equity in the investigations and in discipline that**
14 **was issued or not issued, and then I-- I had two**
15 **lieutenants at the time that worked for me that had**
16 **direct oversight of the investigations with the**
17 **investigators.**

18 All we employed were sergeants to do the
19 investigations.

20 At the time, at least when this e-mail came to me in
21 October, we had two lieutenants.

22 I was later to reduced to one lieutenant.

23 Q Okay. And with regard to the role of OPS within
24 Washington State Patrol, what did OPS do within
25 Washington State Patrol? What was its function?

1 **A** **To investigate allegations made against state patrol**
2 **employees.**

3 **Q** Thank you.

4 And you were also what's been referred to as the
5 standards officer, correct?

6 **A** **Yes.**

7 **Q** Now, there's some confusion about where you had what was
8 referred to as concurrence authority and where you
9 didn't.

10 Can you tell us-- just explain what concurrence
11 authority is and then tell us where you had it and where
12 you didn't?

13 **A** **I had concurrence authority on any issue, really, that**
14 **was brought to my attention by a district or division**
15 **commander, whether it was investigated by us or not.**

16 As the standards officer, I was a subject matter
17 expert regarding discipline within the agency and
18 employee investigations, so when we talk about what I
19 did, there's a lot-- there's a lot bigger umbrella than
20 what we just talked about here today.

21 As a standards officer, commanders would come to me
22 and talk to me about the allegations made against their
23 employees and say, "What have we done in the past?
24 What's consistent with how we've handled these types of
25 situations?"

1 That was a pretty good measuring tool most of the
2 time.

3 There were times when it was said, "What we did in
4 the past wasn't good, we need to change our ways,"
5 because things have changed-- have evolved in society,
6 but we would always sit down and talk about the
7 allegations that were made and then determine which way
8 to go with that, whether it be to a formal OPS
9 investigation, whether it would be an OPS administrative
10 investigation that would be handled by the district or
11 the division, or whether they would handle it at the
12 local level within their district or division.

13 Understand, they're the ones that ran their area, so
14 a district commander of the Seattle area, he oversaw I
15 don't know how many employees, but he oversaw all the
16 activities that occurred within that-- well, it was
17 District 2 for us in the Seattle area.

18 I was an advisor to them in that regards, but a
19 concurrence officer when it came to how to proceed.

20 If they brought an allegation to me and we talked
21 about it, and they said, "I want to handle it at my
22 level," and I said, "No," that's when we would elevate it
23 to the assistant chief for decision.

24 Q And did that sort of elevation ever occur?

25 Did you ever experience that sort of disagreement--

1 would it be a fellow captain?

2 **A Yes.**

3 Q So did you ever experience that sort of disagreement with
4 a fellow captain?

5 **A Yes.**

6 Q What happened? Tell us about that story.

7 **A There was an allegation made against an employee.**

8 Do you want me to give not specifics about the
9 investigation--

10 Q You probably shouldn't give specifics about that
11 investigation.

12 Just tell us about the process of what happened when
13 you had a disagreement.

14 **A So at the end of an investigation, the appointing**
15 **authority, the captain, makes a decision whether he**
16 **believes that the allegations were found to be true, and**
17 **based on that, he does what's called an administrative**
18 **insight, and he lists everything that-- all the**
19 **allegations that occurred, details about the**
20 **investigation, and then a final finding on whether they**
21 **believe discipline should be issued or not.**

22 They bring that to me, we talk about it, and if
23 we're in agreement with where that's going, then we
24 proceed with that plan.

25 If we're not in agreement, then we take that to the

1 assistant chief who makes a decision, and overrides both
2 of our decisions, potentially.

3 Q Okay. So would then one of the appointed authorities or
4 one of the district captains, would they be able to
5 simply come to you and discuss this with you and disagree
6 with you and just say, "I will just do it my way"?

7 A No.

8 Q That could not happen?

9 A No.

10 There were peers to me, but the OPS commander had
11 some unique positional authority, I guess, because
12 ultimately if I went to an assistant chief and said,
13 "This isn't consistent with what we've done and the way
14 we should do things," that's when I would ask the AC to
15 step in, the assistant chief.

16 If they agreed with me, then they would intervene.

17 If not, they certainly had the option of going with
18 the district commander, but because I had maybe a broader
19 knowledge of the disciplinary standards in the agency,
20 usually they agreed with my position and things were
21 changed, and that happened on occasion for different
22 issues.

23 Q So it's that institutional knowledge you have throughout
24 the state patrol as the commander of OPS that grants you
25 that additional sort of gravitas or authority?

1 A Right, and we investigated or reviewed, I should say, all
2 uses of force, all pursuits statewide, any kind of damage
3 to equipment, loss of equipment.

4 That's what the FLUP I talked about earlier, fleet
5 loss or damage to equipment, use of force, pursuits--
6 have I got that right?

7 So those things were all reviewed by our office, by
8 either myself or lieutenants-- actually, both the
9 lieutenants and myself.

10 The lieutenants reviewed it first. If they
11 approved, then it would come to me, and I would review
12 all of them.

13 When we are talking "pursuits," the agency had, on
14 average, probably 1,200 to 1,700 pursuits a year, so I
15 would look at every single one of those.

16 Q I see.

17 Now, did you have, in your opinion, concurrence
18 authority over the Nobach-Biscay incident?

19 A Yes.

20 Q You did?

21 A If I didn't agree with what Captain Alexander was
22 proposing, then I would have taken that to the assistant
23 chief and we would have done things, more than likely,
24 differently.

25 Q Okay. That kind of leads into my next question.

1 Did you agree with the issuance of the 095 in
2 relation to the circumstances in that initial Nobach and
3 Biscay incident?

4 **A Yes.**

5 **Q** And why was that?

6 **A** There are different personalities in the patrol,
7 therefore different types of leadership.

8 Captain Alexander's leadership was one of the best
9 in the agency. We're talking about a guy who labored
10 over these types of issues.

11 He didn't talk to me about it once--

12 MR. SHERIDAN: Your Honor, objection,
13 404(a).

14 THE COURT: Overruled.

15 MR. MARLOW: Thank you, Your Honor.

16 You go ahead.

17 THE WITNESS: He would come back to me
18 many, many times and say, "But I got this. Are you sure
19 we're okay?"

20 He labored over these things, not just this issue,
21 but every issue he brought to OPS.

22 He was the most-- he's very compassionate, very
23 kind. He really cares about his employees--

24 MR. SHERIDAN: Same objection, Your
25 Honor.

1 THE COURT: Overruled.

2 THE WITNESS: The reason I say this is
3 because when he comes to me and we talk about these
4 things, I know that he has looked into them very
5 thoroughly.

6 I realize that this-- what we did was based on
7 conversations between he and I, but it's because of that
8 relationship we had, that trust that we had, and my
9 knowledge of how he handled things, that I was very
10 comfortable in the way he proceeded.

11 Now, there were other district commanders or
12 division commanders that I wouldn't have necessarily done
13 that with.

14 I might have asked more of them, but Captain
15 Alexander was one of the best, which is why he's an
16 assistant chief right now, to be honest with you.

17 Q (By Mr. Marlow) Could well be.

18 Now, you indicated that-- you used the term in
19 questioning by opposing counsel, "sexual harassment,"
20 that the Nobach and Biscay incident was sexual
21 harassment.

22 Do you recognize "sexual harassment" as a term of
23 art?

24 A Yes.

25 Q Okay. And do you know whether or not then Captain and

1 now Assistant Chief Alexander viewed it as sexual
2 harassment after speaking to the people involved?

3 A I'm sorry, did he view it as sexual--

4 Q Did he view it as an incident of sexual harassment after
5 speaking to the people involved, if you know?

6 A I wouldn't say he considered it harassment because,
7 again, no offense to Lieutenant Nobach, but there was a
8 mutual-- a relationship where there was banter back and
9 forth, so when we talked about victims, I don't want to
10 say that there weren't any victims, maybe there was
11 somebody, like Ryan, who absolutely didn't agree with it,
12 but there was nobody who came forward, nobody we
13 identified as a victim.

14 Many people were participating in this activity, and
15 they were all consensually doing so, and nobody was
16 complaining about it.

17 That's a systemic problem within a division that
18 needs to be corrected, and you don't do that by taking
19 one guy and investigating him for sexual harassment.
20 It's a leadership issue.

21 You correct the leadership and you restate your
22 expectations of the work unit.

23 You say what's acceptable and what's not.

24 You set the standards, and you hold them accountable
25 to it.

1 **After this was accomplished, there were no more**
2 **issues, at least that came to my attention within that**
3 **unit. It stopped.**

4 Q Okay. And would that reason you just gave us be part of
5 the reasons why then that the 095 issued to Lieutenant
6 Nobach focused on a lack of leadership?

7 A **Yes.**

8 Q Now, there was some discussion as to whether you were a
9 public official under the whistleblower law, and I think
10 you on the stand learned you actually were?

11 A **Apparently I was.**

12 Q Congratulations.

13 That was a while ago, so you can't do it anymore.

14 A **Yeah.**

15 Q Okay. Are you familiar with the statutory definitions of
16 "whistleblower"?

17 A You know, I've become more familiar with it now because
18 of the job that I'm working at now, but at the time, I
19 didn't pay much attention to the whistleblower statute
20 because everything that I had that was whistleblower went
21 right to HRD.

22 Dr. Lastimado was our expert on that, and he was the
23 one that handled those.

24 I knew that when they went to him, they were being
25 taken care of, and I didn't deal with the whistleblower

1 **issues beyond that.**

2 Q And Dr. Lastimado--

3 A **Yes.**

4 Q Dr. Lastimado reported to Captain Mathesen, correct?

5 A **Yes.**

6 Q Okay. And so Captain Mathesen would probably be more
7 familiar with the statutory definition of "whistleblower"
8 than you would?

9 A **Yeah.**

10 **He's not in HRD anymore, but I'm sure he would be.**

11 Q Okay. So when you referred to Mr. Santhuff as a
12 whistleblower, were you using that as a term of art?

13 On your direct testimony, you indicated that he was
14 a whistleblower.

15 A **Would I use that term-- what?**

16 Q Were you using it as a term of art?

17 Were you saying he statutorily met the definition of
18 whistleblower?

19 Is that what you were trying to say about
20 Mr. Santhuff or were you using it as a shorthand--

21 A **I'm not sure I understand the question, but he would have**
22 **been considered a whistleblower by me.**

23 Q Okay.

24 A **Based on what little I knew at the time of it.**

25 Q Okay. Would it surprise you that Captain--

1 MR. SHERIDAN: Objection to whatever--
2 it's hearsay, whatever is about to be said.

3 THE COURT: Well, let's wait to see
4 what the question is.

5 MR. SHERIDAN: Okay. I know when they
6 start that way, that's where they're going.

7 THE COURT: Don't answer the question
8 until I have ruled.

9 **THE WITNESS: Okay.**

10 Q (By Mr. Marlow) Okay. Would it surprise you to know
11 that Captain Mathesen would disagree with your
12 assessment?

13 MR. SHERIDAN: Objection; hearsay.

14 THE COURT: That's not hearsay.

15 MR. SHERIDAN: Well, he's saying that
16 Mathesen said this. That's hearsay.

17 MR. MARLOW: I am actually not saying
18 that, number one. Number two, it's testimony--

19 THE COURT: Overruled.

20 Q (By Mr. Marlow) Would it surprise you to know that
21 Captain Mathesen disagreed with your assessment?

22 **A No, and especially not at the time because I had not a**
23 **lot of knowledge about the whistleblower program to begin**
24 **with.**

25 Q Okay. When an issue would come to the office of

1 professional standards for a determination whether you
2 were going to keep it within the office of professional
3 standards or whether you were going to let it go out to
4 the district or be handled in some other way, did you
5 have discussions with other people about whether-- how
6 you handed those matters?

7 A Yes.

8 Just a real quick, how we handled things:

9 I had 12, 13 people in my office, administrative
10 staff and investigators, lieutenants, and myself.

11 Any time we had a complaint-- most of the times we
12 had a complaint, we would do what we called a roundtable.

13 Everybody would come back to one table, we would
14 talk about the allegations, we would look at the
15 information that was provided to us by the district or
16 division, and we would make a decision on how to advise
17 that commander on what to do with it next, so whether to
18 move forward with a formal investigation, whether to do
19 an investigation at their level, so we would have those
20 types of conversations.

21 The way we categorized an investigation was based on
22 a matrix that exists within the contract, the union
23 contract.

24 We had a level one, two, and three-- let me get this
25 right.

1 We had three different levels, and depending on the
2 severity, how many times they had had those types of
3 complaints, would dictate how it would be elevated.

4 We would categorize that complaint, and how it was
5 categorized would also contribute to whether we
6 investigated it or whether it went back into the field.

7 The minor investigations went to the field most of
8 the time.

9 We had minor, major, and moderate.

10 Most of the minor and moderate went back out to the
11 field. That was the majority of what we investigated.

12 We would investigate some moderates and all the
13 majors.

14 Q Okay. And those minor, major, middle--

15 A Moderate.

16 Q Moderate, was the matrix you mentioned?

17 A Yes.

18 Q Okay. Now, we've heard some testimony regarding
19 something called a preliminary investigation.

20 What is that?

21 A A preliminary investigation was conducted when you didn't
22 have enough information to make a decision one way or
23 another on whether an investigation should actually take
24 place.

25 There were oftentimes when we couldn't maybe-- an

1 allegation came in and we didn't even know if the trooper
2 was working that shift.

3 There could have been different things that we
4 weren't able to confirm on the initial look at that, and
5 we would have to go back and dig up a little more
6 information to determine whether we had enough to move
7 forward with a formal investigation or not investigate it
8 at all.

9 Q I see.

10 A We would do a prelim, and that was all with the union's
11 consent.

12 We were very locked in with the union.

13 Most of what we did, we-- I talked back and forth
14 with the union vice president, in most cases, and
15 sometimes union reps, and we were bound by the contract
16 to do things a certain way.

17 Q I understand.

18 Would it be possible then for a preliminary
19 investigation to become a-- what's the next-- what's-- a
20 formal investigation?

21 A So once a preliminary investigation was completed, and
22 that was done through the union rep, with the accused,
23 when that information came back to us, we would make a
24 decision with the appointing authority on whether to move
25 forward with a formal investigation or not.

1 Q I see.

2 And the formal investigation would be what
3 Mr. Sheridan was speaking about where the two people do
4 the interviews, and the interview is recorded and
5 transcribed, that's the formal investigation?

6 **A Right, whether it was done by OPS or by the district or**
7 **division that was responsible for that employee, but that**
8 **would be a formal investigation.**

9 Q I see. Thank you.

10 Let's talk about some of the investigations that
11 were related or touched upon in this case, and let me
12 know whether you're familiar with them.

13 The initial incident we've spoken about is what I
14 refer to as the Nobach-Biscay incident. Opposing Counsel
15 refers to it as the breast-rubbing incident.

16 Did you do an investigation of that?

17 **A No.**

18 Q Were you-- as the concurrence authority, were you
19 comfortable with the way that matter was investigated?

20 **A Absolutely.**

21 Q Were you comfortable with the way that matter was dealt
22 with, the 095 to each individual?

23 **A Yes.**

24 Q Are you aware of something referred to as the King air
25 incident, the depriving the governor of a flight?

1 **A Yes.**

2 Q How did you become aware of that?

3 **A It was a complaint made by Trooper Santhuff.**

4 Q Was that complaint by Trooper Santhuff investigated?

5 **A Yes.**

6 Q Can you tell us about how that was investigated?

7 **A No.**

8 I can't remember if we did a prelim or if we did a
9 formal investigation, to be honest with you, but I know
10 that we investigated it.

11 Q And was that investigation-- how did that investigation
12 turn out?

13 **A There was-- we couldn't show that it happened or didn't**
14 **happen.**

15 There was no merit to the complaint.

16 Q No merit to the complaint?

17 There has been some discussion about e-mail
18 destruction, destruction of e-mail.

19 Are you familiar with that--

20 **A Yes.**

21 Q And how did that complaint come to OPS?

22 **A Through Trooper Santhuff.**

23 Q Trooper Santhuff?

24 Was that investigated?

25 **A Yes.**

1 Q And can you tell me how that investigation turned out?

2 A It was unfounded.

3 Q That was unfounded?

4 Now, was the Washington State Patrol the only agency
5 involved in that particular incident?

6 A Oh, boy, no.

7 Because it dealt with an allegation regarding the
8 destruction of public records, we had somebody else
9 involved.

10 I can't-- which agency was it? We weren't the only
11 ones involved.

12 I am not going to be able to remember what agency it
13 was that we referred it to.

14 Q Okay. But, again, as the concurrence authority, were you
15 happy with the way that incident was dealt with?

16 A Yes.

17 Q And you said it was unfounded?

18 A It was unfounded, but I have to add that there were
19 people that we tried to get ahold of, some that Trooper
20 Santhuff recommended we talk to, and we couldn't get
21 ahold of them.

22 They wouldn't talk to us or they wouldn't return our
23 phone calls, so that was a bit frustrating as well
24 because we have allegations and we are doing the best we
25 can to investigate it, and people aren't cooperating with

1 **us, so that was a bit challenging.**

2 Q Okay. Did you become aware of Trooper Santhuff's
3 allegations regarding retaliation?

4 A **Yes.**

5 Q And was that investigated by your office?

6 A **Yes. And I can't remember the specifics, other than I**
7 **know there was an allegation that he wasn't provided**
8 **logbooks, flight logbooks, or something like that.**

9 That was the one thing that stuck out in my mind.

10 I can't remember what the other details of the
11 retaliation were.

12 Q As a result of the investigation, do you know what the
13 results of that investigation were?

14 A **It was unfounded.**

15 Q Unfounded?

16 And as the concurrence authority, were you satisfied
17 with the manner of that investigation and the closing as
18 unfounded?

19 A **Yes.**

20 Q You also mentioned that Trooper Santhuff made many
21 complaints.

22 Were there complaints beyond what I've outlined
23 here?

24 A **Not that I can recall.**

25 I mean, those three were investigated by us.

1 The sexual harassment was dealt with.

2 I don't remember if there were others or not.

3 These all happened in a relatively short time and
4 probably in a two-year timespan, if I remember right, so
5 it felt like we were hearing these types of allegations a
6 lot, so that may be why I refer to "many times."

7 Q Do you recall whether Trooper Santhuff made a complaint
8 against then Captain Alexander, for the manner of
9 investigation he conducted?

10 A Yes, I do remember something about that, and it was
11 investigated.

12 The assistant chief made a decision on that, and it
13 was unfounded.

14 Q It was unfounded as well?

15 A When we have an allegation made against a district or
16 division commander, it's investigated by a lieutenant,
17 not by one of our sergeants, and it's elevated to one of
18 my leads in my agency.

19 Q I see.

20 A Or in my division.

21 Q Do you know whether or not complaints of various types
22 can be made anonymously?

23 A Yes, they can.

24 Q They can?

25 A Yes.

1 Q In your experience what might be the benefit of making an
2 anonymous complaint versus putting your name on
3 something?

4 A There are people that fear retaliation from law
5 enforcement.

6 Maybe they just don't want to get involved.

7 Maybe it's a time issue.

8 Maybe-- I can think of a lot of different reasons, I
9 guess, why somebody would want to be anonymous in a
10 complaint, but we investigated those as well, whenever we
11 could.

12 Q And the complaints that Trooper Santhuff brought forward,
13 those were not anonymous?

14 A No.

15 MR. MARLOW: No further questions,
16 Your Honor.

17 THE COURT: Mr. Sheridan?

18 MR. SHERIDAN: Yes.

19 REDIRECT EXAMINATION

20 BY MR. SHERIDAN:

21 Q Okay. So you said that you would investigate all major--

22 A OPS investigated most of the major.

23 I think in my three years there, there may have been
24 one or two that we didn't investigate.

25 Q Okay. And you said, when we talked, that you understood

1 the breast-rubbing thing to be sexual harassment, and you
2 haven't changed your testimony in that regard, correct?

3 **A No. I think that's the most general term you could use**
4 **to describe that.**

5 Q Okay. And it's true, is it not, that a district or
6 division commander still had the latitude to issue
7 certain levels of discipline outside the administrative
8 investigative process?

9 **A Yes. They could do up to a written reprimand.**

10 Q Okay. And an 095 is lower than that, right?

11 **A Yes.**

12 MR. SHERIDAN: Nothing further.

13 THE COURT: Any follow-up?

14 MR. MARLOW: Nothing further, Your
15 Honor. Thank you.

16 THE COURT: Members of the Jury, do
17 you have any questions?

18 All right. If you could please just give the--
19 anybody else?

20 (Pause in the proceedings.)

21 THE COURT: All right. Captain
22 Saunders, did Captain Alexander tell you he did not
23 believe there was any sexual harassment because the
24 behavior was consensual and/or no one was offended?

25 Let me know if you need me to repeat that.

1 THE WITNESS: Could you read it one
2 more time? I apologize.

3 THE COURT: Did Captain Alexander tell
4 you he did not believe there was sexual harassment
5 because the behavior was consensual and/or no one was
6 offended?

7 THE WITNESS: No. I think we always
8 called it sexual harassment when we were talking about
9 it.

10 I mean, when you look at the definition of "sexual
11 harassment," it probably doesn't fit because it was
12 consensual, so ingrained, I guess, in the culture out
13 there, but we called it sexual harassment when we talked
14 about it.

15 THE COURT: Did you tell Captain
16 Alexander you believed, as you have testified, that
17 sexual harassment was systemic in the aviation unit?

18 THE WITNESS: Yes.

19 It was obvious, when he conducted his investigation,
20 that there were many people that were participating, that
21 it was consensual, that nobody was complaining, that
22 there weren't any specific victims.

23 It was just a behavior that was allowed to exist out
24 there, and it needed to be stopped.

25 For that, Ryan should be thanked.

1 I mean, it needed to be stopped.

2 A district and division commander wants to hear
3 those types of things. They want to know about that
4 because they're responsible, and if that kind of behavior
5 is occurring and something terrible happens, they're held
6 accountable for that.

7 THE COURT: Counsel, I am going to
8 re-write the third question, and then I'll tell it to
9 you.

10 ALL: Thank you.

11 THE COURT: Actually, I will just ask
12 it.

13 Do you believe that the breast-rubbing incident
14 reflects gross mismanagement?

15 THE WITNESS: I don't know how I can't
16 agree with that.

17 Yes.

18 When things have gotten to the point where somebody
19 is comfortable behaving that way in front of other people
20 and-- yes.

21 THE COURT: All right. Any follow-up
22 questions based on those questions alone?

23 MR. SHERIDAN: No, Your Honor.

24 THE COURT: Defense?

25 MR. MARLOW: No, Your Honor.

1 THE COURT: May this witness be
2 excused?

3 MR. SHERIDAN: Yes, Your Honor.

4 MR. MARLOW: No objection, Your Honor.

5 THE COURT: You are excused, Captain
6 Saunders. Thank you for being here today.

7 Do you have your next witness?

8 MR. SHERIDAN: Yes, sir.

9 Plaintiff calls Paul Speckmaier.

10 THE COURT: All right.

11 /////

12 PAUL SPECKMAIER, having been first duly sworn
13 by Judge Rajul, testified as
14 follows:

15 THE COURT: Please be seated.

16 If you could please remove your face covering so
17 that the jury can watch your face as you testify.

18 Mr. Sheridan?

19 MR. SHERIDAN: Thanks, Your Honor.

20 DIRECT EXAMINATION

21 BY MR. SHERIDAN:

22 Q Good afternoon.

23 A Good afternoon.

24 Q Please state your full name for the record?

25 A Paul Speckmaier.

1 Q All right. Mr. Speckmaier, are you employed currently?

2 A No. I'm retired.

3 Q Tell us, with whom were you employed?

4 A I was employed with the United States Army for 20 years
5 and with the Washington State Patrol for 25 years.

6 Q All right. And what did you do at the state patrol?

7 A I was a trooper and on the road for a few years, and then
8 I was a trooper pilot for about 20 years.

9 Q All right. And when you were a trooper pilot, could you
10 tell us, were you ever under the supervision of
11 Lieutenant Nobach?

12 A Yes, I was.

13 Q And when was that?

14 A I don't know the dates, but I know I was in the section
15 prior to him arriving, and I watched him move up through
16 the ranks as a trooper, a sergeant, and then lieutenant.

17 Q All right. Back in about May 18th, 2017, were you
18 interviewed by Washington State Patrol investigators?

19 A I believe it was that time.

20 I do remember an interview with them though.

21 I was retired at the time.

22 Q All right. I am going to show you Exhibit No. 185, and
23 we have to search a bit for it.

24 If you look at the front of your books, they will
25 have the range for you.

1 It's 185.

2 There is also two books-- one book behind you.

3 **A Okay. This one I see it numbers up to 112.**

4 I'm assuming we are looking for a different book
5 **then?**

6 **Q Yes.**

7 **A Okay. I see a book right back here, and--**

8 **Q Okay. If you'll turn to 185.**

9 Just tell me if you recognize this as the statement
10 that you gave to the investigators on or about May 18th,
11 2017.

12 **A Yes, this is the interview I recall.**

13 **Q All right. And I'm going to ask you whether you were--**
14 **did you understand what you were being interviewed about?**

15 **A Yes.**

16 **Q Can you tell us?**

17 **A It was-- they were investigating e-mail deletions by**
18 **Lieutenant Nobach, aviation section.**

19 **Q All right. And did you provide evidence?**

20 **A Yes, I did.**

21 **Q All right. And--**

22 **A Verbal evidence.**

23 **Q And is this document a product of that investigation?**

24 **A Yes, it is.**

25 **Q Okay. Now, we're not going to offer it into evidence,**

1 but we are going to talk about what you said, okay?

2 **A Okay.**

3 Q And then if you need to have me refresh your
4 recollection, we will do that.

5 MR. SHERIDAN: Unless Counsel would
6 like it admitted.

7 MR. BIGGS: Your Honor, there is a
8 motion in limine on that exact act that Counsel just
9 engaged in.

10 No, this is not an admissible document, and he
11 should not be inviting me to do so in front of the jury.

12 THE COURT: I expect Counsel to comply
13 with my pretrial orders.

14 MR. SHERIDAN: Of course, Your Honor.

15 THE COURT: I haven't had a chance to
16 look at the entire document, so I'm not really sure, but
17 you know what my orders are.

18 MR. SHERIDAN: Sure.

19 Q (By Mr. Sheridan) We will be using it to refresh your
20 recollection.

21 **A Okay.**

22 Q First of all, do you recall who interviewed you?

23 **A No. I would have to look at the names on the--**

24 Q Why don't you look at the first paragraph and just, when
25 you're done looking, tell me if it refreshed your

1 recollection.

2 **A Yes, it does.**

3 **Q** All right. Can you tell us, who was the person that
4 interviewed you?

5 **A There was a Lieutenant Tyler Drake, and then there was**
6 **Detective Sergeant Ethan Wincoop (phonetic) and Sergeant**
7 **Metfeller (phonetic).**

8 **Q** All right. Okay. And did you talk to-- did you tell
9 them about your relationship with Lieutenant Nobach?

10 **A Yes, I did.**

11 **Q** All right. And can you tell us, what did you tell them
12 about your knowledge about the e-mail deletion issue?

13 **A Well, I told them that I was upstairs in the pilot's**
14 **ready room at the computer, and I believe I was the only**
15 **one in the office there at the time.**

16 I don't recall what I was doing on the computer, but
17 I remember Lieutenant Nobach entering the room and
18 standing behind me and telling me that I needed to delete
19 e-mails out of my-- the State account.

20 **Q** And did he tell you why?

21 **A I don't recall, no.**

22 I don't believe he did tell me.

23 **Q** Did he tell you what e-mails he wanted deleted?

24 **A I believe it was all of them.**

25 **Q** Okay. And did he tell you how to go about it?

1 **A Yes, he did.**

2 **He showed me how to do it.**

3 Q And do you have any recollection of what it was you were
4 deleting?

5 **A Well, I don't-- you mean in terms of specific e-mails?**

6 Q No, like accounts.

7 **A Oh, just all e-mails that were the State-related e-mails**
8 **that were in my account.**

9 Q Okay. And did he tell you how to-- did he talk to you
10 about deleting any other files?

11 **A I don't recall, no.**

12 **Just e-mails is what I remember.**

13 Q All right. Did he tell you whether or not it was
14 important to do it soon?

15 **A He didn't need to tell me. It was pretty obvious that**
16 **this was going to be done now and there was urgency--**

17 MR. BIGGS: Objection, Your Honor.

18 This witness is testifying about somebody else's state of
19 mind.

20 THE COURT: Overruled.

21 Q (By Mr. Sheridan) So did he come to you at all about any
22 Public Records Act disclosures?

23 **A No.**

24 Q Okay. And how long did you stand together, in terms of
25 doing-- accomplishing the e-mail deletion?

1 A I don't remember how long it took.

2 It took a few minutes at least.

3 Q Did he look-- did he watch you do it?

4 A He was watching, yes.

5 He was standing over my left shoulder watching me
6 delete them and then explaining to me how to delete them
7 not only from the "deleted" account or whatever you want
8 to-- tab or whatever, but he also explained how to go
9 into what was called "recovery mode" and how to delete
10 them out of there.

11 Q Okay. And why did you listen to him? Why did you do it?

12 A He's my boss, and I know not to question him or go
13 against what he's telling me to do.

14 Q Okay. Can you tell us, did you tell the investigators
15 anything about what Lieutenant Nobach had said he would
16 do when he became a lieutenant?

17 MR. BIGGS: Objection, please. This
18 is wholly irrelevant, and it's obviously hearsay.

19 THE COURT: Well, it's an admission by
20 party opponent.

21 MR. BIGGS: If it's the right kind of
22 statement.

23 THE COURT: But I am just wondering if
24 we-- based on the motion in limine, if it goes to that or
25 not.

1 MR. SHERIDAN: I am limiting it to
2 what was said to the investigator.

3 THE COURT: Members of the Jury, let's
4 take a couple of minutes, and we'll be back.

5 COURT BAILIFF: Please rise for the
6 jury.

7 (Jury exits.)

8 THE COURT: Thank you. Please be
9 seated.

10 So I don't know if-- what he said he wanted to do
11 afterwards, but I just want to make sure that you are
12 aware that I have precluded any kind of other bad
13 incidents or any other bad traits or character of
14 Lieutenant Nobach.

15 You are restricted to only testify about the-- and I
16 don't know how much of this you know, but the e-mails,
17 which apparently you do know about, the breast-rubbing
18 incident that has been referred to, and the King air
19 instance, but nothing else.

20 MR. SHERIDAN: Your Honor, I can make
21 an offer of proof.

22 THE COURT: Go ahead.

23 MR. SHERIDAN: Do you have it in front
24 of you, the exhibit?

25 THE COURT: Yes.

1 MR. SHERIDAN: If you look at page--
2 let me find it--

3 THE COURT: Is that clear?

4 MR. BIGGS: Yes, Your Honor.

5 THE COURT: No personal opinions about
6 of what you think of him, of Lieutenant Nobach.

7 MR. SHERIDAN: So this is simply what
8 he told the investigators.

9 THE COURT: Which page?

10 MR. SHERIDAN: And it's Page 3, and
11 it's Line No. 9.

12 THE COURT: Line 9?

13 MR. SHERIDAN: Yeah.

14 He said-- he told-- Lieutenant Nobach said, "I can't
15 wait until I'm running this place because I'm going to
16 crush people," which is consistent with other testimony
17 that we've already received about how he can make people
18 fail their flight by speeding things up, so it's a
19 statement he made to an investigator, so that means that
20 the State was on notice that this was another thing that
21 he had done in evaluating--

22 THE COURT: That's not the issue
23 though.

24 MR. BIGGS: No, Your Honor, this
25 happened years, years earlier, before he was a sergeant,

1 before he was a lieutenant.

2 It's clearly to go to his character.

3 That's the only reason for putting this in, and it's
4 not admissible--

5 UNIDENTIFIED SPEAKER: I disagree,
6 Your Honor.

7 THE COURT: I appreciate that you
8 disagree, but I just want to hear from the lawyers.

9 Tell me why this is not a violation of the motion in
10 limine-- not a violation, but why is this not character
11 evidence?

12 MR. SHERIDAN: Because we've already--
13 remember that the issue really, for the jury, is who are
14 you going to believe, that he is the type of person who
15 would actually retaliate against a person for getting
16 him-- for talking about the sexual harassment, is he
17 inclined to do that behavior?

18 We already got the testimony in that he is the type
19 of person who believes that he can-- he can bury another
20 pilot by speeding up, because that's what he's alleged to
21 have done.

22 This is a statement that he made to investigators in
23 2017, so this is something that-- that means the State
24 had on their plate, as far as evaluating this case when
25 it went forward, about-- and so it is relevant.

1 It is relevant to how he is inclined to act in
2 this-- it's a statement he made, so it is an admission of
3 a party opponent--

4 THE COURT: Right. That's not the
5 issue though.

6 I mean, just because it's an admission by a party
7 opponent doesn't mean that it's admissible.

8 I mean, there are--

9 MR. SHERIDAN: So long as it's
10 relevant, right, and we think it is.

11 MR. BIGGS: Your Honor--

12 THE COURT: Mr. Biggs?

13 MR. BIGGS: We just heard the exact
14 words out of Counsel's mouth that are not allowed.

15 "This shows he's the type of person to do this,"
16 that is what the evidence rules do not allow, and that is
17 why they have these rules.

18 Most of what's in this document is not admissible,
19 it's hearsay.

20 It's somebody telling their version of certain
21 things.

22 This is not a party, the man who is sitting here.

23 THE COURT: No, but your client's
24 statement is an admission by party opponent.

25 MR. BIGGS: If it's the right kind of

1 statement. It has to be otherwise admissible, and it's
2 not.

3 Your Honor, this is exactly why we have motions in
4 limine.

5 If you recall, before we did voir dire, they said,
6 "Oh, I don't want you calling my client-- I don't want
7 you characterizing him."

8 This is exactly what Counsel is trying to do here.

9 MR. SHERIDAN: That actually is
10 exactly the difference.

11 If I were to say, "Wasn't he the kind of person that
12 would try to crush people," then that would be 404(a),
13 but if it comes out of his mouth, then it's-- 404(a) is
14 not-- it has nothing to do with it, and it shows his
15 mental state, and that's all appropriate.

16 THE COURT: So character evidence is
17 admissible when it goes to an essential element of the
18 claim or defense.

19 Please explain to me how "I can't wait until I'm
20 running this place because I'm going to crush people,"
21 how that goes to an element or a defense of this
22 particular case?

23 MR. SHERIDAN: It's an intent.

24 See, in these kind of cases, it is--

25 THE COURT: Don't tell me about these

1 kind of cases.

2 In this case.

3 MR. SHERIDAN: It almost never happens
4 that people say what they think.

5 People don't use the "N" word now. They think it.
6 They don't use it.

7 This fellow talked about how he was going to manage,
8 and then he managed that way, so the words aren't 404(a)
9 because these are his words.

10 It's not-- it's not character if I say something,
11 right?

12 It's character if I try to-- if I try to put in
13 testimony from somebody else about how he behaves, right?

14 THE COURT: So why do you want this
15 statement, "I'm going to crush people," if it's not for
16 character?

17 MR. SHERIDAN: Because this is an
18 intent element.

19 This shows his intent.

20 It's how he views leadership.

21 Remember, he got written up for poor leadership?

22 This is like right on point about what kind of
23 leader he intended to be and became, so that's why, Your
24 Honor.

25 It's not 404(a) at all because it's not an opinion.

1 It's a statement, and it's a statement of a party
2 opponent, so it totally should come in.

3 MR. BIGGS: Your Honor, you also have
4 to do the balancing test, probative value versus
5 prejudice, which they lose badly on that level as well.
6 He's trying to show character.

7 This is before he was even a leader, so this has
8 nothing to do with the case, Your Honor.

9 THE COURT: When was this statement
10 made?

11 MR. BIGGS: When they were troopers
12 together, before he became a sergeant, before he became a
13 lieutenant.

14 THE COURT: Just because a party makes
15 a statement doesn't make it automatically admissible.

16 I am not going to allow this questioning, so I am
17 going to sustain the objection.

18 MR. SHERIDAN: All right. Then I have
19 no further questions of this witness.

20 THE COURT: Have we lost my bailiff?
21 Mary, could you please bring in the jury?

22 (Pause in the proceedings.)

23 COURT BAILIFF: All rise.

24 (Jury enters.)

25 THE COURT: Thank you. Please be

1 seated.

2 Mr. Sheridan?

3 MR. SHERIDAN: Yes. Thank you.

4 No further questions.

5 THE COURT: Mr. Biggs?

6 MR. BIGGS: Thank you, Your Honor. I
7 have precious little time. I will see if I can't get
8 through this with your assistance.

9 CROSS-EXAMINATION

10 BY MR. BIGGS:

11 Q You would agree with me, wouldn't you, Lieutenant Nobach
12 is an excellent pilot?

13 A Yes.

14 Q And you would agree with me he's a smart man, an
15 intelligent man?

16 A Yes.

17 Q And you're friends with him, aren't you, with the
18 plaintiff?

19 A I am friends with whom?

20 Q The plaintiff, Mr. Santhuff.

21 A Yes.

22 Q And you've talked to him as recently as a couple weeks
23 ago when he asked you to talk to his counsel about this
24 case?

25 A Yes.

1 Q And you did that?

2 A **Yes, I did.**

3 Q And let's go-- you retired from the patrol as a trooper,
4 right?

5 A **Yes.**

6 Q You never were promoted to sergeant, to lieutenant--

7 A **Correct.**

8 Q Okay. And this deleting e-mails business, your testimony
9 today is you don't recall when it happened, right?

10 A **Correct.**

11 Q You don't know what year it was?

12 A **Correct.**

13 Q You don't know if it was long before you retired or
14 sometime before that?

15 A **Well, it was before I retired.**

16 Q But you don't know if it was a little bit before or a lot
17 before you retired?

18 A **Well, I guess it would depend on how you would define "a
19 little bit" or "a lot."**

20 Q When Lieutenant Nobach talked to you about deleting
21 e-mails, you would agree with me that he did not tell you
22 why?

23 He didn't tell you, "We have to do this for X
24 reason"?

25 A **Correct.**

1 Q Okay. And you don't know what e-mails were deleted?

2 I mean, you don't know what was in them, right?

3 A I don't recall what was in them.

4 It was just all the e-mails.

5 Q So you can't tell us today that there was any topic, any
6 problem that was trying to be hidden?

7 A I don't recall what was in the e-mails, correct.

8 Q Okay. Let me ask you this:

9 Did you fly mayday flights in 2013?

10 A I don't recall.

11 I flew a mayday flight, I recall, but when it was, I
12 don't remember.

13 Q Okay. So you can't tell us if you flew 2013, 2014, 2015?

14 A Not without looking at my logbook.

15 Q Okay. And you can't tell us, can you, whether there are
16 any public records requests in 2013 or 2014 or 2015?

17 A I wouldn't be able to tell you that either, correct.

18 Q So you can't tell me whether any mayday flights coincide
19 with any records requests?

20 A Correct.

21 Q But you can recall, can't you, that before May, in 2014,
22 there was a huge event that happened to the state, right?

23 A Before 2014?

24 Q Right.

25 Did you find yourself working the Oso mudslide

1 situation?

2 **A No.**

3 Q Okay. When was that?

4 **A I don't recall.**

5 Q Okay. You didn't fly then?

6 **A No.**

7 Q Okay. Were you involved with e-mail clearing during that
8 process?

9 **A I don't remember when the e-mails were deleted.**

10 **That's what I'm trying to--**

11 Q Okay. Do you recall that because of the Oso volume of
12 data, there's a lot of e-mail being relied on,
13 communications, rapport, photos, videos-- the e-mails
14 were getting backed up and clogged.

15 Do you remember that?

16 MR. SHERIDAN: Objection to the
17 testimony; not foundation.

18 **THE WITNESS: I wasn't involved in-- I**
19 **don't know. I have no idea--**

20 THE COURT: One moment, please. Let
21 me issue--

22 **THE WITNESS: Sorry.**

23 THE COURT: What was your objection?

24 MR. SHERIDAN: Objection; no
25 foundation for that.

1 THE COURT: Overruled.

2 Please ask the question again.

3 THE WITNESS: I have no ideas how many
4 e-mails were sent or where they were being sent to,
5 whether it was clogging up the IT system or not.

6 I wasn't involved in IT.

7 Q (By Mr. Biggs) Okay. So you would agree with me that at
8 least potentially the e-mail cleanup effort had to do
9 with the Oso mudslide and all the problems that created
10 for e-mails, right?

11 A I did--

12 MR. SHERIDAN: Objection; speculation,
13 foundation.

14 THE COURT: Do you agree he can say he
15 can agree or he doesn't agree?

16 Overruled.

17 THE WITNESS: No, I would not agree
18 with that.

19 Q (By Mr. Biggs) You don't think that was what was going
20 on at the time?

21 A No, because I didn't think that at the time.

22 Q I'm sorry, you didn't think--

23 A That it was involved with Oso at the time.

24 Q But you can't tell me when this happened, right?

25 A Correct.

1 Q Okay. And can you tell me when Oso happened?

2 A No.

3 MR. BIGGS: Okay. That's all I have.
4 Thank you very much.

5 MR. SHERIDAN: Nothing further, Your
6 Honor.

7 THE COURT: Members of the Jury, do
8 you have any questions for this witness?

9 (No response.)

10 THE COURT: May this witness be
11 excused?

12 MR. SHERIDAN: Yes.

13 THE COURT: Defense?

14 MR. BIGGS: Yes, Your Honor.

15 THE COURT: All right. You are
16 excused. Thank you for being here today.

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

18 THE COURT: All right. Right at 4:00.
19 Look at that.

20 You are excused for the day and for the weekend.
21 Have a great weekend.

22 I hope the smoke goes away, and my only reminder is
23 please don't do any research or talk about what has
24 happened in the courtroom. Forget about it. Just enjoy
25 the weekend, and we'll see you on Monday at 9:00.

1 COURT BAILIFF: All right. All rise.

2 (Jury exits.)

3 THE COURT: All right. Please be
4 seated.

5 You are excused.

6 I just wanted to put on the record two explanations
7 for my rulings when the jury was present.

8 One was an objection that was made when Mr. Marlow
9 was questioning Captain Saunders and asked him, "Would it
10 surprise you that Captain Mathesen would disagree with
11 you that this investigation was not a whistleblower
12 investigation," or something along those lines, and it
13 was objected to as hearsay.

14 I overruled that objection for two reasons:

15 One is whether he agreed or not, it's not hearsay.

16 Second, and more importantly, Captain Mathesen did
17 testify in court that the investigation of the incident
18 would be a personal investigation not a whistleblower
19 investigation, so for a statement to be hearsay, it has
20 to be an out-of-court statement. He did make that
21 statement in court, so it's not hearsay.

22 The other objection that was made, that I overruled
23 from Mr. Sheridan on behalf of the plaintiff, had to do
24 with Captain Saunders' testimony about Assistant Chief
25 Alexander, how he handles-- his belief on how to handle

1 sexual harassment, discrimination, those kind of things,
2 and was objected to as 404(a).

3 Captain Alexander testified about that-- not
4 captain, but Assistant Chief Alexander testified about
5 those things yesterday, but, more importantly, one of the
6 parties in this case is the Washington State Patrol, not
7 just Lieutenant Nobach, and so far the allegation and
8 what-- what Plaintiffs are trying to point out is that
9 the Washington State Patrol allowed this kind of
10 behavior, and this was just-- nothing was done about it,
11 so discrimination was okay and sexual harassment was
12 okay, and that-- so that goes to an essential element of
13 the defense that it's not-- I mean, that's not what
14 happened, so that's the reason why I overruled the
15 objection.

16 I just wanted to give an explanation.

17 I always kind of hate it when judges would just not
18 give a reason, so you may disagree, but those are my
19 reasons.

20 All right. Anything else?

21 MR. MARLOW: Just, Your Honor, I
22 wanted to say with your first ruling, you got me.

23 I forgot he testified in court. Of course it's not
24 hearsay.

25 The second one, I still disagree with you,

1 respectfully, but the first one, you got me.

2 THE COURT: That's fine.

3 MR. MARLOW: And with regard to the
4 defense objection to the Juror No. 3's third question,
5 Your Honor's great wording of it vitiated that.

6 THE COURT: All right. Good.

7 (Court recessed at 4:03 p.m.)
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STATE OF WASHINGTON)
)
) ss.
COUNTY OF KING)

Tim Sun

Terilynn Simons, CCR, RMR, CRR, CLR
Certified Court Reporter No. 2047

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