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A P P E A R A N C E S

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19 JUSTIN ABBASI
20 The Sheridan Law Firm
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24 Realtime
25
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I N D E X

EXAMINATION BY: Page

Mr. Sheridan 5

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EXHIBITS FOR IDENTIFICATION:

Number Page

Exhibit 1 Document, Email, October 20, 2016,
to Bruce Mayer from Ryan Santhuff,
2 pages 43

Exhibit 2 Document, Washington State Patrol
Investigator's Case Log,
JPSSANT001265-JPSSANT001271,
7 pages 48

Exhibit 3 Document, Washington State Patrol
Regulation Manual, 8 pages 51

1 OLYMPIA, WASHINGTON; FRIDAY, OCTOBER 25, 2019

2 9:24 A.M.

3 --o0o--

4
5
6 THE VIDEOGRAPHER: We are on-record. Time
7 now is 9:24 a.m. Today's date is October 25, 2019.
8 This is Volume 1, Media Unit 1 of the video deposition
9 of Mike Saunders taken in the matter of Santhuff versus
10 the State of Washington, et al., filed in the Superior
11 Court, the State of Washington, in King County. Case
12 number is 19-2-04610-4 KNT.

13 This deposition is being held at 7141
14 Cleanwater Drive Southwest in Olympia, Washington. My
15 name is Dan Bassett. I am the videographer. Our court
16 reporter is Lori Haworth. We are both with SRS Premier
17 Realtime.

18 Counsel and all present, please identify
19 yourselves for the record, and the witness may be
20 sworn-in.

21 MR. SHERIDAN: This is Jack Sheridan
22 representing the plaintiff, Trooper Ryan Santhuff. In
23 the room with us is -- well, why don't you guys say your
24 name loudly.

25 MR. ABBASI: Justin Abbasi. I am with the

1 Sheridan Law Firm.

2 MR. SANTHUFF: Ryan Santhuff.

3 MR. BIGGS: This is Andrew Biggs. I
4 represent the State of Washington and Lieutenant Nobach.

5
6
7 MIKE SAUNDERS, deponent herein, being
8 first duly sworn on oath,
9 was examined and testified
10 as follows:

11
12 E X A M I N A T I O N

13 BY MR. SHERIDAN:

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

15 **A. Michael S. Saunders.**

16 Q. All right. And Mr. Saunders, can you tell us
17 whether you are currently employed.

18 **A. No, I am not.**

19 Q. All right. And are you retired?

20 **A. Yes.**

21 Q. And from what organization?

22 **A. The Washington State Patrol.**

23 Q. And how long were you with the patrol?

24 **A. Just short of 33 years. 32 years and 10**
25 **months, I believe.**

1 Q. All right. And tell us at what rank you
2 retired.

3 **A. Captain.**

4 Q. All right. And at the time of your retirement,
5 to whom did you report?

6 **A. To the Investigative Services Bureau chief, who
7 was Assistant Chief Jason Berry.**

8 Q. Okay. And do you know to whom he reported at
9 the time?

10 **A. Chief Batiste.**

11 Q. What's Chief Batiste's first name?

12 **A. John.**

13 Q. Okay. Were you ever a direct report to Chief
14 Batiste?

15 **A. No.**

16 Q. Were you ever the commander of Office of
17 Professional Standards?

18 **A. Yes.**

19 Q. And when was that?

20 **A. The last three-plus years of my career. I
21 believe I started there in 2015.**

22 Q. Okay. And that was through re- -- to
23 retirement?

24 **A. Yes.**

25 Q. And what was the -- what was the date of

1 retirement, if you recall?

2 **A. The end of June 2019.**

3 Q. Okay. And could you give us in layperson terms
4 a thumbnail understanding of what the Office of
5 Professional Standards does.

6 **A. Well, we do internal investigations. So I**
7 **oversaw all of the administrative investigations that**
8 **took place in the State Patrol. And then I was also**
9 **what they call the standards officer, so I would have**
10 **concurrence authority on all of the discipline that was**
11 **issued as a result of those investigations.**

12 Q. Anything else?

13 **A. Well, I mean, I had a lot of collateral duties**
14 **revising and writing policy, reviewing policy, bill**
15 **reviews, those types of administrative functions that I**
16 **would do.**

17 Q. Okay. And could you give us a layperson
18 understanding of what it means to have concurrence
19 authority.

20 **A. So the appointing authority is a decisionmaker**
21 **on an administrative case, and usually that's the**
22 **district or division commander that oversees the**
23 **division that the employee is assigned to.**

24 **Concurrence authority; I would have to agree**
25 **with the level of discipline that was being issued to**

1 the employee as a result of an investigation. And what
2 that looked like, I would usually go back and look at a
3 standard. I would look at similar like cases and see
4 what type of discipline was issued in those cases, and
5 the idea being that discipline is issued fairly across
6 the state for like violations.

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

10 A. Well, every form of discipline that was a
11 result of an administrative investigation. So a
12 district or division commander still had the latitude to
13 issue certain levels of discipline outside of the
14 administrative investigation process, but when things
15 rose to a certain level, they would come to my office.
16 So there was some discretion there by the district or
17 division commander on how they proceeded with violations
18 that they may have identified.

19 Q. Okay. Is it -- is an administrative
20 investigation required in every case?

21 A. Not necessarily. No.

22 Q. Okay. How about, can you explain now in
23 layperson terms what's the difference between a
24 preliminary investigation and an administrative
25 investigation.

1 A. Well, a preliminary investigation comes to our
2 office. And in a prelim, we are doing a little bit of
3 research, limited research, at the front end of an
4 investigation to determine if there actually was a
5 policy violation or if the violations that are alleged
6 occurred with one of our employees. We ask some
7 clarifying questions. We usually gave exculpatory
8 questions that were voluntary to the employee through
9 the union. And we would use all that information to
10 determine whether an administrative investigation was
11 warranted.

12 Q. Okay. When I think of "exculpatory," I think
13 of that having a meaning of to find somebody not guilty
14 of something. Would you agree with that understanding
15 or do you have a different understanding?

16 A. No. I have a different understanding.

17 Q. Please explain.

18 A. "Exculpatory," in my mind, for the purposes of
19 my office, was just an attempt to gather more
20 information to determine whether it was actually our
21 employee and whether the violations -- or, the alleged
22 violations rose to the level of investigation.

23 Q. All right. Now, if we -- let's begin at the
24 preliminary investigative phase. Who initiates that
25 process saying, "I want to have a preliminary

1 investigation versus an administrative investigation"?

2 A. Well, it would be initiated by the district or
3 division commander. They would call me, and they'd say,
4 "This is what I have, this is what the allegation is,
5 this is the employee that's accused." And there would
6 be a lot of different things that may factor in to that.
7 If the allegations seemed like they are totally
8 out-of-character for the employee. If it doesn't appear
9 that those allegations would have actually rose to the
10 level of a policy violation. Maybe the employee worked
11 in a totally different area at that time of day. Those
12 types of things that we would try to get a better
13 understanding through the prelim.

14 So the appointing authority would contact me.
15 We would discuss it and decide whether to just move
16 forward with an administrative investigation or whether
17 we could benefit from a prelim.

18 Q. I have seen in some of the notes the phrase
19 "roundtable." Does that have any relationship to the
20 decisionmaking for preliminary versus administrative?

21 A. Yes. We would assemble all the employees in my
22 office and sit down and do what we call a roundtable.
23 And in that, we would look at the violations that are
24 alleged and determine the best -- we would discuss the
25 best way to move forward, and that would help me make a

1 **better recommendation to the appointing authority**
2 **potentially.**

3 Q. Okay. And when you say a recommendation, you
4 mean a recommendation of, should we do a preliminary
5 versus should we do an administrative or should we do
6 nothing?

7 **A. Yes.**

8 Q. Okay.

9 **A. And --**

10 Q. So typically in your experience, in your
11 personal experience, who was sitting at the roundtable?

12 **A. Well, my investigators and my administrative**
13 **staff participated, as well. So whoever was in the**
14 **office that day would join in the roundtable.**

15 Q. Okay. And were roundtables basically set up on
16 a specific day, at a specific time, to go over whatever
17 had -- was -- had come in, or sort of an ad hoc as
18 claims came in, or --

19 **A. They were more ad hoc, spontaneous as claims**
20 **came in -- or, as complaints came in.**

21 Q. Was the -- was there any format to the
22 roundtable proceeding or was it just an informal
23 proceeding within your office?

24 **A. Well, I would say it's an informal proceeding,**
25 **but there was a process that we used.**

1 I mean, we would start off by looking at the
2 allegations. And considering the different types of
3 regulations that may or may not apply to that
4 allegation, we would work to craft a summary of
5 allegations that we would put on the internal incident
6 report form, which is a form that we use to initiate the
7 investigation, and we would talk about whether the
8 violation rose to the level of a minor, moderate, or a
9 major investigation; who would have investigative
10 responsibility. So those are the types of things that
11 we would discuss during a roundtable.

12 Q. All right. And is it fair to say that the
13 appointing authority was not a participant in the
14 roundtable?

15 A. Occasionally they would participate. It was
16 not something that we pressed for, but if they were in
17 the area and they wanted to come in. I had good people
18 in OPS. I had very good investigators, and they were a
19 great resource for me. So to sit down and to be able to
20 listen to their thought process benefited me, and
21 sometimes the appointing authority felt that it was
22 beneficial to them, as well. So they were certainly
23 welcome to join us.

24 Q. Is it true that in the preliminary
25 investigative realm, the appointing authority gets to

1 define the scope of the preliminary investigation?

2 **A. Well, I think it's a collaborative effort**
3 **between the appointing authority and the standards**
4 **officer. And there is a need to maintain a level of**
5 **consistency in the way we apply these things, so I don't**
6 **think it -- they relied a lot on the standards officer**
7 **to help them craft summaries of allegations in term of**
8 **what regulations were applicable or best used because**
9 **that's something the standards officer does all the**
10 **time. They are very familiar with it, and having the**
11 **knowledge, the historical knowledge of other cases that**
12 **have occurred in there. That's why the standards**
13 **officer exists.**

14 **So I'd have to go back to your original**
15 **question. Did I answer it for you.**

16 **Q. Let me ask a follow-up. Could you tell us in**
17 **layperson terms, what is a standards officer and how**
18 **many are there.**

19 **A. Well, there is only one standards officer, and**
20 **that person is a peer to the appointing authorities, so**
21 **there is not any pressure by the standards officer or**
22 **the appointing authorities as far as rank is concerned.**
23 **They are peers.**

24 **Q. So during the time that you were commander, who**
25 **filled the position of standards officer?**

1 **A. That was me.**

2 Q. Okay. All right, fair enough. What's an 095,
3 in layperson terms?

4 **A. An 095 is a counseling document that would be**
5 **issued to employees for positive or negative job**
6 **performance.**

7 Q. Is it fair to say that it was your practice to
8 get involved in whether or not to give an 095?

9 **A. Only when it was a result of an administrative**
10 **investigation. So district and division commanders**
11 **could issue an 095 anytime they felt it was appropriate.**
12 **They didn't have to consult me.**

13 **If we completed an investigation and it was**
14 **determined that the violation was minor and that an 095**
15 **was an appropriate level of counseling, then that would**
16 **be something that we would discuss. Outside of the**
17 **administrative format, no.**

18 Q. Can you overrule -- was it within your
19 authority to overrule an appointing authority on whether
20 or not to have a preliminary versus administrative
21 investigation?

22 **A. To overrule them, no, I don't believe that was**
23 **in my authority. If -- if the appointing authority and**
24 **myself disagreed on any of the points concerning an**
25 **investigation, the prelim, any of those things, then it**

1 rose to the level of an assistant chief. So the
2 assistant chief that oversaw the bureau that that
3 district or division resided in would be the ultimate
4 decisionmaker.

5 Q. So was there a process, or especially a written
6 process, to follow -- let's say the appointing authority
7 said, "I think it's preliminary," and you said, "I think
8 it's -- we need a full-blown administrative
9 investigation." Was there a written process to follow
10 upon such a disagreement?

11 A. Yes. It would be elevated to the assistant
12 chief.

13 Q. All right. And was that a written -- was there
14 a written policy or procedure that one could follow to
15 know what to do next?

16 A. It's in the administrative investigation
17 manual.

18 Q. All right. And in your career, has that ever
19 happened during the time that you were commander of OPS?

20 A. I think it may have happened once.

21 Q. Can you tell us about that one.

22 A. Well, it was on the back end of an
23 investigation where myself and the appointing authority
24 didn't agree on -- it was really more structured towards
25 the format of his report and the findings that he had.

1 So that was elevated to the assistant chief who made the
2 ultimate decision on how things would move forward.

3 Q. And was this while you were commander?

4 A. Yes.

5 Q. And who was the person who disagreed with you?

6 A. It was another captain. I don't --

7 Q. Which captain? What's his name?

8 A. I'd prefer not to -- to say.

9 Q. Yeah. Sorry. You have to.

10 A. I have to say?

11 Q. Yeah.

12 A. Well, it was a captain who is now a lieutenant.
13 His name is Captain Coley.

14 Q. How do you spell that, if you remember?

15 A. C-o-l-e-y.

16 Q. All right. And so you said "his" report. Does
17 that mean that the appointing authority actually gets to
18 draft a report?

19 A. Right. The Office of Professional Standards
20 completes the administrative investigation, and we do a
21 final report that's provided to the appointing
22 authority.

23 The appointing authority reviews that report
24 along with all the supporting documents, and they
25 would -- then they would write an administrative

1 conclusion where they -- they have their findings, and
2 they address the 11 elements. We had 11 elements of
3 just cause, and they would address all of those issues.

4 That report would include the discipline,
5 contemplated discipline that would come to me, and then
6 I would review it, and we would discuss the content of
7 that report, the decision on the discipline, and whether
8 that was appropriate or not.

9 Q. Now, what you have just described, are we
10 talking about a preliminary investigation or an
11 administrative investigation or both?

12 A. No. We are talking about a completed
13 administrative investigation.

14 Q. So even when there is a completed -- let me
15 break that down a little bit. If we say "administrative
16 investigation," that means that one of your subordinates
17 conducts the investigation, right?

18 A. Not always. Some of them, depending on the
19 severity, would go back out to the district or division
20 for a supervisor to investigate.

21 Q. Okay. And so who makes that decision as to who
22 gets appointed to do the investigation?

23 A. Usually the OPS commander. Me.

24 Q. Okay. And does that depend on if it's -- the
25 level of misconduct alleged?

1 **A.** It depends on the level of misconduct, but
2 also, we would consider any kind of geographical
3 challenges.

4 So if a case spanned several districts where
5 there were witnesses that were identified in a broader
6 area, we would often handle those because it was easier
7 for us to do it than a local supervisor.

8 Q. All right. And could we just also sort of
9 fill-in some blanks from -- again, for layperson
10 purposes. What's a -- what is a -- what did we just
11 say. Appointing authority.

12 **A.** The appointing authority is the person given
13 the responsibility of making decision for disciplinary
14 issues over the subordinate employee.

15 Q. So is it typically somebody that is at a
16 captain level?

17 **A.** Yes. The commissioned would be a captain
18 level. And then on the Civil Service side, because we
19 also did Civil Service investigations, it would be a
20 division commander.

21 Q. Okay. And rank-wise, where do you fit in that
22 pecking order as a commander?

23 **A.** I was also a captain, so I was a peer to all of
24 the appointing authorities.

25 Q. Is that an important rank to have to do the job

1 you were doing?

2 **A. I think so. Yes.**

3 Q. Because if you didn't, you would be subordinate
4 to the people that you are, in some ways, overseeing?

5 **A. Correct.**

6 Q. Okay. Is it also true that OPS may be referred
7 to as "Internal Affairs"?

8 **A. Yes.**

9 Q. All right. And so when you say "administrative
10 investigations," does that mean that you are not
11 investigating allegations of crime or wrongdoing by
12 people who are not employed with the Washington State
13 Patrol?

14 **A. Correct.**

15 Q. So you are basically looking at policies and
16 procedures applicable to employees of the Washington
17 State Patrol to determine if somebody has breached some
18 policy or procedure?

19 **A. Yes. There were times when allegations broke
20 the criminal threshold, but we wouldn't investigate
21 those. We would refer them to another agency for the
22 right of first refusal or our Investigative unit outside
23 of OPS would handle it.**

24 Q. Okay. And just -- if you would just spend a
25 sentence on, when you say "Investigative unit," what do

1 you mean?

2 **A. Well, our Criminal Investigation division may**
3 **handle it. Our Investigative Assistance division. I**
4 **got to remember all these terms. They handled some of**
5 **them. It depended on the type of the allegation.**

6 **Generally, again, we would go to the local**
7 **authority, whether it's a sheriff's office or municipal**
8 **police department, and advise them of the criminal**
9 **allegations and give them the right of first refusal.**

10 Q. All right. And going back now to March of -- I
11 will pull it up. To March of 2016. It's true, is it
12 not, that it came to your attention that Jim --
13 Lieutenant Jim Nobach was receiving an 095?

14 **A. I don't recall the date that all that happened.**
15 **I'd have to see the documents for that.**

16 Q. Yeah. We have some of the -- some exhibits for
17 you. And it looks like -- I don't know why the -- oh, I
18 see. I understand what's happening. Okay. I am going
19 to hand you, from the Alexander deposition, Exhibits 3
20 and 4 and ask you to just take a look at those and use
21 them to refresh your recollection. I will be asking you
22 more about Nobach, but you will see that they are pretty
23 much the same content.

24 **A. Okay.**

25 Q. All right. And does this -- is it true, is it

1 not -- strike that. It's true, is it not, that --
2 that -- is -- was it Captain Jerry Alexander? Is he a
3 captain at the time in 2016?

4 MR. BIGGS: Johnny.

5 Q. Johnny Alexander.

6 **A. Right.**

7 Q. Captain? All right. Let me say it again. So
8 it's true, is it not, that the Captain Johnny Alexander
9 came to you to talk about what to do about an allegation
10 against Jim Nobach and Brenda Biscay; that they had
11 engaged in improper behavior?

12 **A. Yes.**

13 Q. Okay. And it's true, is it not, that this was
14 in the March time frame, probably before the 095 was
15 issued?

16 **A. Yes.**

17 Q. Okay. All right. And were you given -- did
18 you give any advice to Captain Alexander about whether
19 or not an 095 was a proper remedy in this particular
20 situation?

21 **A. Yes.**

22 Q. All right. And did you have an understanding
23 that the allegation was that Ms. Biscay basically came
24 up behind Lieutenant -- let me ask that again.

25 That it's true, is it not, that you understood

1 that the allegation was that Brenda Biscay came up
2 behind Jim Nobach while he was seated at his desk with
3 Trooper Santhuff in the room, and she basically rubbed
4 her breasts on the back of his head?

5 **A. On his back of his head or his shoulders. Yes.**
6 **Something like that.**

7 Q. Okay. All right. And how did you go about
8 determining if that actually happened?

9 **A. I didn't. Captain Alexander did.**

10 Q. All right. And is that within the process, as
11 you understand it, for what to do in -- if such an event
12 allegedly happens?

13 **A. Yes.**

14 Q. Okay. So it's not your organization's decision
15 as to whether or not to see if it happened and to
16 interview witnesses. It's -- it's his organization that
17 makes the decisions?

18 **A. Well, right. When a captain or division**
19 **commander becomes aware of allegations that are made,**
20 **it's their responsibility to do the initial questioning**
21 **to determine whether that actually occurred or not. And**
22 **they -- there -- there were times when they would make**
23 **decisions without coming to me at all. That was within**
24 **their job responsibility.**

25 Q. But this time, Captain Alexander came to you?

1 **A. Yes.**

2 Q. All right. And was he seeking advice, as
3 you -- if you recall?

4 **A. Yes.**

5 Q. All right. And can you tell us what advice he
6 was seeking.

7 **A. When he came to me, he made me aware of this**
8 **allegation that was made, and then he also made me aware**
9 **of the fact that this type of behavior was engrained in**
10 **the division where Nobach worked. That there were many**
11 **people that were routinely participating in this type of**
12 **behavior. Inappropriate comments, inappropriate**
13 **actions. It was something that was bigger than what was**
14 **just reported here.**

15 Q. You understood at the time, did you not, that
16 this was the Aviation organization, right?

17 **A. Yes.**

18 Q. And you also understood who was in charge of it
19 at the time, right?

20 **A. Yes.**

21 Q. And who was that?

22 **A. Well, Jim Nobach was in charge of Aviation.**

23 Q. Okay, and you also understood, did you not,
24 that Ms. Biscay was a civilian, right?

25 **A. Civil Service employee. Yes.**

1 Q. All right. And you also understood that she
2 was a direct report to Jim Nobach, right?

3 **A. I believe so. Yes.**

4 Q. All right. And so did you basically -- the
5 advice that you gave, was it on the assumption that what
6 was described to you by Captain Alexander was true,
7 meaning that she actually came up behind him; rubbed her
8 breasts on the back of his head?

9 **A. I don't remember there being a lot of**
10 **controversy about whether it was true or not. It**
11 **appeared that it happened.**

12 Q. Okay.

13 **A. Yeah.**

14 Q. All right. And so did you and he talk about --
15 strike that.

16 You have just given us an understanding that
17 the problems in Aviation apparently were bigger than
18 just this one incident, right? So the question then is,
19 is, given the fact that this behavior involved the guy
20 in charge, did you and Captain Alexander discuss whether
21 an 095 was an appropriate remedy?

22 MR. BIGGS: Objection; form of the
23 question. Go ahead and answer.

24 **A. Yes.**

25 Q. Tell us about that.

1 **A. Well, the 095 was the beginning of this. So**
2 **this was issued to these two people, Brenda Biscay and**
3 **Lieutenant Nobach, but he also made sure that there was**
4 **training that was provided to help them make -- become**
5 **aware of what was appropriate and not appropriate for**
6 **the workplace and to attempt to remedy this type of a**
7 **behavior that had become more of a culture within that**
8 **section.**

9 Q. All right. Okay. And did you ultimately agree
10 with Captain Alexander that the 095s were the
11 appropriate tool to use to remedy the situation?

12 **A. I felt it was appropriate. Yes.**

13 Q. All right. Can you tell us -- do you have an
14 understanding of whether or not -- strike that.

15 It's true, is it not, that Nobach was a union
16 member?

17 **A. Yes.**

18 Q. All right. Is it also true that having given
19 him an 095 would essentially prevent any more serious
20 discipline being targeted against him for the same
21 incident?

22 **A. Yes.**

23 Q. Okay. And did you and Captain Alexander
24 discuss that?

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

1 Q. Okay. So if you understood that this was a
2 bigger problem within Aviation and that the facts were
3 fairly uncontested, did you express any concerns that
4 such a -- that basically counseling without discipline
5 of the top person might send the wrong signals to the
6 rest of the people that were working there?

7 MR. BIGGS: Objection; form of the
8 question.

9 A. Yeah. First of all, you're misinterpreting
10 what I described as a bigger problem.

11 Q. Please.

12 A. I am not talking about "bigger" as far as
13 seriousness of the violations. I am talking about
14 "bigger" because there were many employees that were
15 participating in this kind of behavior, and it was
16 clearly inappropriate and needed to be corrected.

17 So in Captain Alexander and my conversation, it
18 was, how do we change the culture that exists in the
19 Aviation section right now. Well, it does start with
20 the supervisor. And the first thing that we felt was
21 appropriate was to sit down with the supervisor and
22 Brenda and make them aware that this is going to stop,
23 it's totally inappropriate, and by the way, we are
24 providing training to the whole group so that they all
25 now become aware.

1 **Ultimately, it is a supervisor's**
2 **responsibility. Clearly he is responsible for the unit.**
3 **And the minute this started in his presence, he should**
4 **have shut it down. But we also have documentation in**
5 **our Admin manual and also in the -- I believe in the**
6 **contract with the lieutenants association that talks**
7 **about how we are supposed to start with the lowest level**
8 **of discipline that's appropriate.**

9 **Now, sometimes a counseling form isn't the**
10 **appropriate level of discipline. But in this case, we**
11 **felt it was.**

12 Q. Okay. Fair enough. Was this the type of
13 management you expected to see from Lieutenant Nobach?

14 **A. Absolutely not.**

15 MR. BIGGS: Objection; form of the
16 question. Go ahead.

17 **A. Absolutely not.**

18 Q. All right. And did you and he ever have a
19 meeting, and perhaps with others in the room, to talk
20 about that management style?

21 **A. Me and Lieutenant Nobach, or --**

22 Q. You or -- and anybody else and Lieutenant
23 Nobach. Any face-to-face with Nobach?

24 **A. No. I never -- I never had any face time with**
25 **Lieutenant Nobach over this issue.**

1 Q. And is that owing to the procedures that are
2 dictated by the union contract?

3 A. (No response.)

4 Q. My question is: It's hard to know whether he
5 is not interviewed because of -- because he is in a
6 union and they don't allow it, or is he not being
7 interviewed or talked to for some other reason? And if
8 you -- if you have any knowledge as to -- if you can
9 tell us why you didn't have a face-to-face with him,
10 please do.

11 A. Well, Lieutenant Nobach wasn't interviewed
12 because there wasn't an administrative investigation.
13 It was clear the allegations were true. We had -- I
14 don't think he ever denied that this occurred. I don't
15 know about Brenda Biscay. But when he was confronted, I
16 believe that he admitted that the violation occurred.
17 So there was nothing to investigate. It happened. It
18 was inappropriate.

19 What was the second part of your question?

20 Q. Well, I think -- I think you -- you have
21 answered the first part, and the second part is: Why
22 didn't you have a face-to-face with him?

23 A. So I didn't -- I oversaw the administrative
24 investigations, but it was up to the appointing
25 authority or the district or division commander to run

1 their district and their division. Part of that is
2 dealing with the disciplinary issues of the employees
3 within those areas.

4 It would be inappropriate for the OPS commander
5 to go basically subvert the appointing authority and
6 district commander and go talk to an employee, a
7 subordinate of theirs, and take corrective measures.

8 Q. Got it. So with regard to this particular
9 situation, once you heard that -- or, once you and
10 Captain Alexander discussed the appropriateness of the
11 095, were you pretty much out of it at that time? You
12 had exited the scene in terms of what to do next or
13 monitoring, training, et cetera?

14 A. We had several conversations about how to
15 proceed with this. Captain Alexander was very thorough,
16 very self-conscious about making the right decision, the
17 best informed decision. So I believe we talked about
18 this several times. But once this was done, I was -- I
19 was out of the loop.

20 Q. In your personal experience, have you ever been
21 in a situation where the manager of a particular -- do
22 you call them departments or divisions or --

23 A. District or division. Yes.

24 Q. All right. So -- all right. So let me start
25 that again.

1 Have you ever experienced personally a
2 situation where the manager of a district or a division
3 was seeking to protect from discipline a favored
4 employee?

5 **A. No.**

6 Q. All right. Never?

7 **A. Never saw that.**

8 Q. Got it. Okay.

9 **A. As a matter of fact, just the opposite. When**
10 **we had somebody that was in a position of supervision or**
11 **leadership, we tended to be harder on them than we would**
12 **have of a subordinate employee, and that's clearly**
13 **demonstrated in our -- when we go back and look at our**
14 **disciplinary records, we always held leaders to higher**
15 **standards.**

16 Q. Okay.

17 **A. And I would also like to say that once this**
18 **process was completed, I never became aware of any**
19 **additional violations that ever occurred in that unit.**
20 **So as far as I know, this type of behavior stopped, so,**
21 **which is evidence that it was a proper remedy.**

22 Q. Okay. But it's true, is it not, that you did
23 become aware that Trooper Santhuff had -- had made a
24 complaint that he was being retaliated for having been
25 the witness who essentially turned in Nobach?

1 **A. Yes.**

2 Q. Okay. All right. And so when -- do you recall
3 when you became aware of that allegation that -- from
4 Trooper Santhuff that he was a victim of retaliation as
5 a result of having stood up in this situation?

6 **A. I can't give you any dates. I know it occurred**
7 **after all this process was over with, but I'd have to**
8 **review documents to --**

9 Q. Fair enough.

10 **A. -- narrow down the time line on that.**

11 Q. Okay. Fair enough. Okay. Was -- so there was
12 no preliminary investigation into the incident between
13 Nobach and Biscay, right?

14 **A. No. Again, a preliminary investigation was**
15 **used when there were questions about whether the**
16 **violation occurred or whether our employee committed**
17 **those violations. It may have been another employee**
18 **from a different agency. We don't know that. So there**
19 **was no reason to do a prelim. We knew this occurred.**

20 Q. Okay. And so nobody contested the event, so
21 you don't need a preliminary investigation?

22 **A. Correct.**

23 Q. Got it. Okay. How did -- do you recall how it
24 came to your attention that Trooper Santhuff had
25 expressed concern that he was being retaliated against?

1 Do you remember who told you?

2 **A. I don't recall specifically. I know whether --**
3 **there were -- at some point, there was a letter, I**
4 **believe, that was written -- I can't remember who that**
5 **was addressed to -- that spelled out different things**
6 **that he believed were violations, retaliation against**
7 **him. Again, I -- I'd have to review documents to know**
8 **dates and the chronological order because there were**
9 **several complaints that occurred about retaliation that**
10 **we addressed.**

11 Q. All right. Fair enough. Is it true that the
12 roundtable meetings are not documented in any way, so
13 there is no paper record?

14 **A. That's true.**

15 Q. All right. Is it also true that when you do
16 administrative investigations, you -- your investigators
17 typically audio-record conversations with witnesses?

18 **A. Yes.**

19 Q. And does that include the alleged perpetrator
20 of the wrongdoing?

21 **A. Yes.**

22 Q. Okay. Is it also true that when you do
23 preliminary investigations, you don't?

24 **A. That's true.**

25 Q. Why is that?

1 **A.** Well, we don't conduct invest- -- we don't
2 conduct interviews for a preliminary investigation. The
3 only thing that we would do as far as any type of an
4 interview would be those, what we called exculpatory
5 questions that would be provided to the employee's union
6 rep who would then contact the employee and decide
7 whether they wanted to answer those questions or not,
8 because the formal investigation process hasn't actually
9 even begun.

10 **Q.** I see. So what you mean, that's the one with
11 the exculpatory that goes to the union, gets filled out
12 by the witness, and sent back to you?

13 **A.** Right.

14 **Q.** How do -- so you can't assess credibility,
15 then, right? I mean, your investigators or whoever
16 can't assess credibility in that particular style of
17 preliminary investigation.

18 **A.** Credibility of witnesses, I would agree you
19 can't assess that, but that's not really the goal of a
20 preliminary investigation.

21 **Q.** What is the goal?

22 **A.** Well, again, it's to determine whether it was
23 actually our employee who the violations are against.
24 Whether they had the opportunity to commit those
25 violations. Oftentimes it was totally out-of-character

1 for the employee and seemed to be highly unlikely that
2 they would have committed those types of offenses, so we
3 would ask the employee through the exculpatory questions
4 to provide us more details.

5 There was one other thing I was going to throw
6 in there, too. Whether the violations that were alleged
7 were actually even a policy violation.

8 Q. Oh. Meaning that somebody could complain that,
9 you know, the officer was going too fast with his siren
10 on and that's not an issue? It's okay for him to go
11 fast with his siren on? Or however you --

12 A. Well, I would stay away from that one. But
13 more -- more -- how about -- how about the example of,
14 "He put handcuffs on me and they hurt."

15 Q. Fair enough.

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

22 Q. All right. So -- so, you know, in this
23 particular case, there is a couple of other things that
24 were brought to your attention, one being the allegation
25 from Trooper Santhuff of Nobach destroying or ordering

1 the destruction of emails, right?

2 **A. Yes.**

3 Q. So that was addressed in a preliminary
4 investigation, was it not?

5 **A. I'd have to look at the documents to remember.**

6 Q. Fair enough. Could you tell us, just based on
7 your personal experience, what guidelines would
8 determine if that was a -- resulted in an investigation
9 versus a preliminary investigation.

10 **A. The destruction of documents for public
11 disclosure?**

12 Q. Yes.

13 **A. I am sorry, can you ask that question again for
14 me?**

15 Q. Yeah. So -- so in general terms, based on your
16 personal experience, what factors would determine
17 whether or not you would do a preliminary investigation
18 or a full-blown administrative investigation on an
19 allegation that -- that a Washington State Patrol
20 supervisor ordered the destruction of emails?

21 **A. Again, we look at the -- the initial complaint
22 that came in, and we look at time lines. If we -- if we
23 didn't feel like we had enough to move forward with a
24 full-blown administrative investigation, then we would
25 ask more questions, and we would likely do that through**

1 **the use of a preliminary investigation. That's the best**
2 **answer I can give you.**

3 Q. All right. So I assume you must have done
4 hundreds of investigations of criminal -- alleged
5 criminals, right?

6 **A. Sure.**

7 Q. Okay. So -- so I assume there is also a
8 protocol, and it's sort of a, how to do these
9 investigations, right?

10 **A. (Nodded.)**

11 Q. And so -- you have to -- you have to say "yes"
12 audibly so --

13 **A. Oh.**

14 Q. -- she can type it down.

15 **A. Yes.**

16 Q. All right. Thanks. So I assume that the
17 investigation is pretty robust in terms of trying to,
18 you know, find the truth, right?

19 MR. BIGGS: Objection; form of the
20 question.

21 **A. It depends on the -- the nature of the**
22 **violation.**

23 Q. Sure. Well, let's say -- I mean, let's say a
24 shooting in -- you know, where somebody has been shot.
25 There is a gun on the street. There is a partial video

1 of the alleged perpetrator. I mean, I assume that you
2 would -- you would want to do a bunch of things like
3 interview people, and you'd want to do forensics on the
4 materials, you'd want to look at the video, all those
5 things, right?

6 **A. There would be definitely a different standard**
7 **for that type of an investigation versus investigating**
8 **somebody for driving on a suspended license or a DUI**
9 **arrest. There is different standards, depending on the**
10 **type of the allegation.**

11 Q. That's what I was looking for. So -- so if a
12 supervisor is ordering the destruction of emails, what
13 level of seriousness would that be? And I think you
14 characterize these, don't you? You have categories?

15 **A. Yes. And if I remember correctly, we actually**
16 **had that reviewed by our Criminal Investigation division**
17 **to determine whether that was a criminal violation or**
18 **not.**

19 Q. Okay. And so -- and who would have -- who did
20 that investigation? The criminal investigation person.

21 **A. I don't remember who the investigator would**
22 **have been or who we -- we normally ran these past a**
23 **lieutenant that was in the Criminal Investigation**
24 **division. His name is Bruce Lance.**

25 Q. Okay.

1 A. And he would assign it to an investigator or he
2 would have those initial conversation with a prosecutor
3 to determine whether it rose to the level of a criminal
4 violation that they would prosecute.

5 Q. Okay. All right. So -- and I guess I will
6 show you this in a little while, but we -- so we have
7 received certain discovery documents -- or we have
8 obtained certain documents, and there appears to be sort
9 of a report from Captain Alexander that sort of goes
10 through his assessment of all of this.

11 If it had gone to a criminal investigator, is
12 it fair to say that Captain Alexander would not be
13 writing his own report?

14 MR. BIGGS: Objection; form of the
15 question.

16 A. Right. If it went to a criminal investigation,
17 the administrative investigation stops.

18 Q. Okay.

19 A. So there -- there wouldn't have been an
20 administrative investigation until the criminal was done
21 or until the prosecuting attorney that would be charging
22 that case gave us authorization to move forward with the
23 administrative investigation. So there wouldn't be a
24 conflict between the criminal and the administrative.

25 Q. And has it been your personal experience that

1 if a criminal investigation gets started and the
2 administrative stopped, that that investigation has its
3 own parameters for what they should be looking for and
4 how far they go and how many witnesses, based on the
5 alleged seriousness of the act?

6 **A. I believe that's accurate, based on what I**
7 **know. Yes.**

8 Q. Okay. So do you have any information about
9 whether there was a criminal investigation regarding the
10 alleged destruction of emails?

11 **A. Do I have any information? No. As I recall,**
12 **there was not a criminal administrative -- a criminal**
13 **investigation because the prosecutor determined that it**
14 **was more of an administrative law violation and it's not**
15 **something that they would criminally prosecute.**

16 Q. All right. And can you give us, based on your
17 personal experience -- first tell us, what are the
18 categories of seriousness for administrative misconduct,
19 and then which -- where did that one fall.

20 **A. So the categories that we would assign them**
21 **under, we had a matrix in our administrative**
22 **investigation manual that we used. So there would be**
23 **minor, moderate, and major investigations. And within**
24 **those, there would be a minor first-second-third,**
25 **moderate first-second-third, and major**

1 **first-second-third.**

2 Q. Okay. Can -- in your personal experience, can
3 major allegations of -- is this called "misconduct"? Do
4 you call it --

5 **A. (Nodded.)**

6 Q. Okay. So let me start again.

7 So in your personal experience, if there is an
8 allegation of major misconduct, can that be resolved by
9 a preliminary investigation?

10 **A. Again, the preliminary investigation is just**
11 **that, it's preliminary, to determine whether there is**
12 **enough information to move forward with a formal**
13 **investigation. So we are kind of talking about two**
14 **different things.**

15 Q. Right, right, because what you mean is, is
16 that -- that -- that if you are involved, it's because
17 it is an invest- -- it's an administrative
18 investigation, not a preliminary.

19 MR. BIGGS: Objection; form of the
20 question.

21 **A. The preliminary investigation helps us gather**
22 **additional information to determine whether there is --**
23 **whether it's appropriate to move forward with a formal**
24 **administrative investigation. So there are two**
25 **different processes.**

1 Most of the time, we move forward with an
2 administrative investigation without a prelim. They
3 only occurred when there were unanswered questions
4 that -- that we needed answered before we could even --
5 a lot of times, before we could even initiate an
6 internal incident report to begin an administrative
7 investigation.

8 Q. Would you expect that there would be witness
9 interviews in a preliminary investigation?

10 A. No. Again, we don't -- we don't generally
11 interview witnesses. I mean, we would potentially talk
12 to the complainant to get additional information if we
13 felt that was appropriate, but that very rarely
14 occurred.

15 Q. Okay.

16 A. Usually we -- we only checked things like CAD
17 logs to determine an employee's location. Whether they
18 were in service. Whether they had the ability to commit
19 the violation they are being accused of. Whatever
20 documents we had. Video. Any kind of reports that may
21 have been written in relation to that arrest or incident
22 or complaint. The things that were immediately
23 available to us were the things that we generally looked
24 at. We didn't do interviews outside of the exculpatory
25 questions for the accused for a preliminary

1 **investigation.**

2 Q. All right. And then for a full-blown -- do you
3 have any recollection as to whether the email issue that
4 was raised resulted in an administrative investigation?

5 **A. The deletion of email --**

6 Q. Yes.

7 **A. Yes. That was done through an investigation,**
8 **administrative investigation, I believe.**

9 Q. And who did that? If you recall. Which one of
10 your subordinates did that?

11 **A. Well, I want to say it was Bruce Maier, but I'd**
12 **have to probably look at some documents to confirm that.**

13 Q. All right. And so if Bruce Maier did the
14 investigation, then would Bruce Maier write the report?

15 **A. Yes.**

16 Q. Okay. And in this particular situation, this
17 specific situation, would Captain Alexander have the
18 authority to change the report?

19 **A. To change my investigator's report?**

20 Q. Yes.

21 **A. He would have the ability to talk with us, to**
22 **ask us to investigate things a little bit further if he**
23 **felt that there were things that were unanswered, but I**
24 **don't ever recall an appointing authority asking or**
25 **telling any of my investigators to change the content of**

1 the report unless it was seeking additional information
2 based on something they felt an investigator missed.

3 Q. Okay. All right. And how about the King Air
4 situation? Did that result in an investigation?

5 A. I'd have to look at the documents. I believe
6 that was included in one of the investigations. Yes.

7 Q. Okay. Did your people investigate the
8 allegations of retaliation by Trooper Santhuff?

9 A. Yes.

10 Q. And was that done in a separate investigation,
11 to your knowledge?

12 A. Again, I believe there were two different
13 investigations that we did in regards to the
14 retaliation, but I'd have to look at the documents.

15 Q. Okay. Which two are you thinking of?

16 A. There -- there were several complaints that
17 were made by Santhuff about retaliation. Where each one
18 was placed within the different administrative
19 investigations, I couldn't tell you without looking at
20 the documents.

21 Q. Okay. Fair enough. Let me show you this one.
22 Let's have this marked as the first exhibit.

23 (Exhibit 1 marked for
24 identification.)

25 A. I am just browsing this, but --

1 Q. Take your time.

2 **A. -- go ahead and ask questions if you have any**
3 **for me.**

4 Q. Well, first of all, you did receive this email
5 from -- and I guess let me just state for the record
6 this is Exhibit 5 to the -- did you say "Maier"?

7 **A. Bruce Maier. Yeah.**

8 Q. Maier. To the Maier deposition. You recognize
9 this document, do you not?

10 **A. Yes.**

11 Q. All right. And Mr. Maier actually gave you a
12 copy of this, did he not?

13 **A. I am sure he did. Yes.**

14 Q. All right. And could you tell us, after you
15 received this, I gather you would have read it, right?

16 **A. Yes.**

17 Q. And did you take any further action as a result
18 of having received this email?

19 **A. I'd have to look at the internal incident**
20 **reports to find out when all of that occurred.**

21 Q. Okay. And when you say "internal incident
22 reports," could you give us a little explanation of what
23 you mean.

24 **A. That's a form that we use to craft -- or to**
25 **document the allegations that are made against an**

1 **employee and the policies that would have been violated,**
2 **and then that form is provided to the employee to make**
3 **them aware of the investigation.**

4 Q. All right. And let's just take a moment to
5 look at this document. It's dated October 20, 2016,
6 correct?

7 **A. Yes.**

8 Q. All right. And let's look at the second
9 paragraph. Trooper Santhuff writes that:

10 "At the beginning of our meeting on October 3rd
11 you asked me if I knew why we were having the meeting.
12 I told you I believed it was regarding the deletion of
13 emails to avoid a pending public disclosure request.
14 You advised I was incorrect and the meeting was about
15 two issues filed in an IRR by Captain Alexander. The
16 first complaint was indicating Lieutenant Nobach
17 retaliated against me, and the second about Lieutenant
18 Nobach intentionally refusing to provide the Governor
19 with a transport flight upon request. I was unaware an
20 IRR had been filed; however I made a retaliation
21 complaint to Captain Alexander in May, which was
22 dismissed without further follow-up. Both of these
23 issues recently discussed -- I recently discussed with
24 my union rep."

25 As we talk about this, do you have a

1 recollection of what was going on at that time with
2 regard to Trooper Santhuff?

3 **A. Generally. Yes.**

4 Q. All right. So is it -- was it your
5 understanding that Mr. Maier was investigating
6 retaliation as well as the King Air incident?

7 **A. Yes.**

8 Q. Okay. And then the next paragraph is -- oh.
9 Strike that.

10 Is it -- do you know the name, is it "Kenyon
11 Wiley"?

12 **A. Yes. He was a union rep I believe out of the
13 Seattle area.**

14 Q. Did there come a time that he came and talked
15 to you about Trooper Santhuff's allegations and the
16 retaliation? If you recall.

17 **A. I don't recall.**

18 Q. Okay. Fair enough. All right. Let's look at
19 the next paragraph that begins, "During our meeting."
20 So in this email, Trooper Santhuff writes:

21 "During our meeting you asked me why I felt I
22 was being retaliated against. I described an incident
23 involving physical contact, sexual in nature, between
24 Lieutenant Nobach and a female subordinate assigned to
25 Aviation. This incident occurred in front of me and I

1 was the only witness. I described the situation in
2 detail and I explained how the sexual harassment
3 situation was handled well outside WSP policy."

4 And was it your understanding by this time that
5 the complaint of Trooper Santhuff in terms of it being
6 retaliation was that it began with this incident?

7 **A. Yes.**

8 Q. All right. And -- and do you have any
9 recollection of your having done anything to -- to
10 resolve whether he was in fact being retaliated against?

11 **A. Resolving any issues of retaliation wasn't**
12 **within my scope of responsibilities. That would have**
13 **been the responsibility of, at the time, Captain**
14 **Alexander and our Human Resources division.**

15 So when there was allegations of harassment or
16 retaliation or anything like that, we made both of those
17 entities aware of the allegations, and they would go to
18 the employee if it was appropriate and address the
19 issues.

20 Q. Okay. All right. Did you also learn at some
21 point around this time frame that Trooper Noll had also
22 alleged retaliation?

23 **A. No. I am not aware of that.**

24 Q. Do you know whether he was a witness in any of
25 the investigations?

1 **A. I know the name, but I don't even know if he**
2 **was a current employee or if he was a retired employee.**
3 **I don't.**

4 Q. Okay.

5 **A. It seemed like he was a current employee, but I**
6 **don't remember ever receiving any allegations of**
7 **retaliation by him.**

8 Q. Fair enough. And he was also in Aviation,
9 right?

10 **A. Yes. At some point.**

11 Q. So he would have still been in the chain of
12 command of Captain Alexander, right?

13 **A. Well, I don't know when he was in there.**

14 Q. Fair enough.

15 **A. But if he was in there at that time, sure.**

16 Q. Got it. All right. I am going to have the
17 next exhibit marked.

18 (Exhibit 2 marked for
19 identification.)

20 Q. Take a moment and look at this, if you would,
21 and tell me if you can tell us in layperson terms what
22 this is.

23 **A. This is a case log for apparently a preliminary**
24 **investigation that was completed by Sergeant Maier.**

25 Q. Could you just help us find what the subject of

1 the investigation was. I realize it might take you a
2 couple minutes, but please do so if you can.

3 **A. Well, I believe this is in regards to the**
4 **retaliation that Trooper Santhuff felt was occurring.**

5 Q. Okay. Would you turn to page 4, please, and
6 look at the bottom entry. The time is 1630. Take a
7 moment to look at that.

8 **A. Okay.**

9 Q. Okay. So the author I suppose must be Maier,
10 right, of this?

11 **A. Yes.**

12 Q. Okay. So he writes:

13 "Briefed Captain Alexander on the status of the
14 investigation and went over the detailed summary of the
15 Santhuff and Sergeant Hatteberg interviews. At this
16 time Captain Alexander requested the preliminary
17 investigation be completed with the addition of Sergeant
18 Sweeney as a witness."

19 Do you know whether or not these three
20 individuals were actually interviewed?

21 **A. I am only assuming it was because it says so in**
22 **the log, but I don't have any independent recollection**
23 **of that.**

24 Q. For a preliminary investigation, would that be
25 out-of-character?

1 **A. It depends. It would be out-of-character, yes.**
2 **I'd say generally again we don't interview witnesses.**

3 Q. Okay. And you -- there is no way you would
4 know who did the interviews or under whose direction the
5 interviews were done, right?

6 **A. Well, I am assuming it was done by Sergeant**
7 **Maier. And I probably would have been aware of it,**
8 **although I don't remember right now, to be honest with**
9 **you.**

10 Q. All right. Now, will you go all the way to
11 page 6, please, and look at the last entry, dated
12 October 12, 2016, at 8:30 in the morning. It says, "Put
13 together Prelim case file in Cite and -- and on share
14 point for Captain Alexander."

15 Can you sort of translate that, if you
16 understand what that means?

17 **A. Yeah. So Sergeant Maier had completed the**
18 **preliminary investigation, and he provided it to the**
19 **captain for him to review. Captain Alexander would have**
20 **reviewed it and then come and discussed it with me on**
21 **whether to move forward with a formal investigation or**
22 **not.**

23 Q. All right. It's true, is it not, that during
24 the time that you were commander of OPS, you were also a
25 designee public official under the Whistleblower

1 statute?

2 **A. Are you asking me if that's true?**

3 Q. Yes.

4 **A. I don't know. I'd have to review the**
5 **Whistleblower statute. I probably bore some**
6 **responsibility there, I suppose.**

7 Q. Let's take a look at this exhibit.

8 (Exhibit 3 marked for
9 identification.)

10 Q. And this is the regulation manual from 2010.
11 And it has some excerpts in it, but -- and let me -- you
12 will see, in the upper left-hand corner, there is -- it
13 looks like page numbers. And so on page 176 begins the
14 section 8.00.30, "Whistleblower - Improper Governmental
15 Action." And if we jump ahead to the next page, 177.
16 Take a look at that.

17 **A. (Witness complies.)**

18 Q. And take a look at 178, if you would. And I am
19 just going to read that. I am going to start at the
20 bottom there under "Procedures." On 177, it says,
21 "Refer to Washington State Auditor's Office."

22 Did you have an understanding as to whether or
23 not a person who believed that they were reporting
24 improper governmental action could report it to the
25 State Auditor's Office?

1 **A. You're asking me if I am aware of that?**

2 Q. Yes.

3 **A. Yes.**

4 Q. All right. And they could also report it to
5 persons within the Washington State Patrol, correct?

6 **A. Yes.**

7 Q. Okay. And was it your understanding that you
8 were one of the designees to receive that information?

9 **A. Yes.**

10 Q. Okay. And I am going to look at the -- just
11 the last page of our exhibit. It's on page 178. At the
12 top, "a," it says, "Directly to the agency designee,"
13 and it says, "The agency designee includes the Deputy
14 Chief, Commander of the Office of Professional
15 Standards, and the Commander of the Human Resource
16 Division," right?

17 **A. Yes.**

18 Q. Okay. And you, at the time, were the commander
19 of the Office of Professional Standards, right?

20 **A. No. Not in 2010.**

21 Q. Oh. In what years?

22 **A. Like I said, I think I started in 2014.**

23 Q. So '14, '15, and Six...

24 **A. No. That's -- let me revise that.**

25 Q. Try again.

1 **A. '15, '16, Seven...no. Thought I was assigned**
2 **there in 2015.**

3 Q. I was just going back to my notes and seeing
4 that. All right. So is it fair to say that from 2015
5 until you retired in 2019, you were one of the agency
6 designees to receive --

7 **A. Yes.**

8 Q. -- reports of improper governmental actions?

9 **A. Yes.**

10 Q. Thank you. All right. And let's take a look,
11 if we can, at the policy, itself, okay? And so if you
12 will turn back to page 176 and look under "Policy."
13 Under A4, it has sort of a laundry list of events. And
14 you see sub D, "Is gross mismanagement"?

15 **A. Yes.**

16 Q. All right. You would agree, would you not,
17 that the incident that happened in March where
18 Ms. Biscay is rubbing her breasts against -- against
19 Lieutenant Nobach would, in your view, be a credible
20 case for gross mismanagement?

21 **A. Yes.**

22 MR. BIGGS: Objection; form of the
23 question.

24 Q. You can answer.

25 **A. Sorry. Yes.**

1 Q. Okay. So, and it's also true that you received
2 that information in March of 2016, right?

3 **A. Yes.**

4 Q. Okay. So did you make any effort to report
5 that on to the State Auditor's Office as an example --
6 as a -- basically, improper governmental action?

7 **A. I didn't, no.**

8 Q. Okay. And did you receive any training in your
9 duties in that regard?

10 **A. In regards to reporting things as far as a
11 whistleblower is concerned to the State --**

12 Q. Yes.

13 **A. -- Auditor? No. I don't believe -- I don't
14 believe it would have been my responsibility to report
15 to the State Auditor. I think the policy says that the
16 whistleblower can report it to the State Auditor if they
17 want to.**

18 Q. Okay.

19 **A. I am not aware of any requirement for me to
20 report it to the State Auditor, but I would have been
21 happy to.**

22 Q. Okay. And is it fair to say that Captain
23 Batiste never -- or, Chief Batiste never discussed the
24 need to make such a report to you, right?

25 **A. Chief Batiste. No.**

1 Q. And is it also fair to say that you -- that one
2 of your jobs was to keep Chief Batiste informed of the
3 things that you were working on in your office?

4 A. No. Generally, I kept my bureau commander, the
5 assistant chief, informed of the things that occurred in
6 my office. So then he relayed that information to Chief
7 Batiste.

8 Q. Okay.

9 A. Occasionally, Chief Batiste would consult me on
10 some of these, but very rarely.

11 Q. Fair enough. Would you tell me the name of the
12 assistant again.

13 A. Well, I had several during my time there.

14 Q. 2016.

15 A. During -- when all of this occurred, it was
16 Assistant Chief Randy Drake.

17 Q. Oh, okay. It's fair to say, is it not, that
18 you spoke to Assistant Chief Drake about the incident
19 involving Nobach and Biscay?

20 A. Yes.

21 Q. Okay. And it would be your -- your
22 understanding of the policies and procedures would be
23 that he would have informed the chief?

24 MR. BIGGS: Objection; form of the
25 question.

1 **A.** I don't know if he did or not. I assume he
2 **did.**

3 Q. Okay.

4 **A.** I hope he did.

5 Q. Okay. All right.

6 **A.** Can I -- can I --

7 Q. Go ahead.

8 **A.** Can I make a statement, or can I -- maybe even
9 in the form of a question, I guess. I don't really
10 understand where you're going with this because the
11 allegation -- Santhuff reported inappropriate sexual
12 behavior that occurred in the workplace, and that was
13 addressed. And in that transaction, he was the
14 whistleblower. That was dealt with.

15 Q. You understood he was a whistleblower?

16 **A.** Yes.

17 Q. But you also understood, did you not, that that
18 behavior by a supervisor to a direct report female was
19 gross mismanagement?

20 **A.** Absolutely.

21 Q. Okay.

22 **A.** Totally inappropriate.

23 Q. Fair enough.

24 **A.** So all that is addressed. Now, come later, we
25 get to the retaliation. So we are talking about two

1 separate things. In the retaliation, he is not a
2 whistleblower. He is the victim who is making a
3 complaint against the lieutenant. So --

4 Q. Right.

5 A. -- I just want to make sure there is a clear
6 distinction between him being the whistleblower in the
7 sexual harassment behavior and then him being the victim
8 of retaliation.

9 Q. I understand what you are saying.

10 A. Okay. In my mind, I had to get there, I guess.

11 Q. All right. Fair enough.

12 A. To make sure that we were talking about the
13 same thing.

14 Q. Did you have any understanding, whether or not
15 having received the information that amounts to gross
16 mismanagement, that you had an obligation within 15 days
17 to report it to the auditor?

18 A. I wasn't aware of that.

19 Q. All right. And nobody gave you any advice on
20 that?

21 A. (Shakes head.)

22 Q. All right.

23 A. I certainly don't recall. I probably should
24 have known more about the Whistleblower program.

25 Q. So if we take this -- if we look at this

1 incident through the lens of improper -- reporting
2 improper governmental action, would you concede that
3 when -- when Trooper Santhuff reported that and it
4 reached you, that was a report of improper governmental
5 action?

6 **A. I agree, but now as I think about it, I don't**
7 **believe that I was the one that respon- -- was**
8 **responsible for reporting that to the State Auditor. I**
9 **believe that was a function that the Human Resources**
10 **division completed.**

11 Q. And that was -- was that Matheson, Captain
12 Matheson?

13 **A. Yes.**

14 Q. Okay. Yeah. Actually, I think, as you become
15 more familiar with this and refresh your recollection
16 from retirement, you may find that there is more than
17 one person that can receive it.

18 **A. Sure.**

19 Q. Okay. So. All right. Fair enough. And
20 then -- so is it also fair to say that you never -- that
21 when you became aware that there were allegations of
22 retaliation by -- by Trooper Santhuff that pertained to
23 his having reported this incident regarding Biscay and
24 Nobach, that you never connected the dots for this being
25 an issue, retaliation owing to his actions of reporting

1 improper governmental action?

2 MR. BIGGS: Objection; form of the
3 question.

4 A. No, I don't agree with that. I think from the
5 very beginning, I was aware of -- he made us aware that
6 he felt it was retaliation for him reporting the sexual
7 harassment, so I think I --

8 Q. You understood that to be the incident we have
9 been describing with the rubbing the breasts on the head
10 thing?

11 A. Yes.

12 MR. SHERIDAN: All right. Let's take a
13 break.

14 THE VIDEOGRAPHER: Going off-record. The
15 time now is 10:35 a.m.

16 (Short recess.)

17 THE VIDEOGRAPHER: Back on-record. Time
18 now is 10:47 a.m.

19 Q. Do you recognize the name "Jason Caton,"
20 C-a-t-o-n?

21 A. Yes.

22 Q. And it's true, is it not, that Mr. Caton -- I
23 guess he is a trooper in Aviation -- reported
24 retaliation in 2017, and your office looked at it?

25 A. Boy, I don't remember there being a retaliation

1 element to that.

2 Q. Just tell us what you do recall.

3 A. What I do recall, he was a pilot I believe out
4 of the Moses Lake area. Somewhere in Eastern
5 Washington. I think he flew out of Moses Lake.

6 He had called Lieutenant Nobach, I believe, or
7 maybe it was his supervisor. He had been requested for
8 a flight. And I don't know how all that works, but he
9 had been requested to do some sort of a flight. Called
10 the supervisor concerned that he was sick. Apparently,
11 there is some sort of a checklist that they have to run
12 through when -- to determine whether they are able to
13 fly. And he didn't pass the criteria that -- so he
14 couldn't do the flight. So I think he called his
15 supervisor and explained that to him, and then they
16 redid the criteria. And that time, he did qualify. So
17 he went out and did the flight.

18 I think when he came back, he was in the hangar
19 or he was around the hangar. At some point, he passed
20 out, fell, and there was -- there was some issues about
21 how that all occurred. There was some damage to the
22 plane. I can't remember if the plane was inside or
23 outside. He was trying to move it into the hangar,
24 something like that, but --

25 Q. Do you recall him being a witness in the

1 investigation pertaining to Trooper Santhuff?

2 **A. No. I think that that whole situation occurred**
3 **well after the Santhuff investigation had been**
4 **completed.**

5 Q. Okay.

6 **A. I don't think he was, but maybe I am wrong.**

7 MR. SHERIDAN: Fair enough. Okay, fair
8 enough. Okay. That's all I have. Thanks very much.

9 MR. BIGGS: No questions. Thanks. You
10 have the right to reserve signature, which I would
11 recommend that you do.

12 **THE WITNESS: Okay.**

13 MR. BIGGS: And then the court reporter
14 will get you a transcript. You can take a look at it.

15 MR. SHERIDAN: Oh. Did we get your home
16 address -- did we get your home address? I don't
17 remember.

18 **THE WITNESS: You did not.**

19 MR. SHERIDAN: So could we go back on the
20 record --

21 THE VIDEOGRAPHER: I haven't taken us
22 off-record.

23 MR. SHERIDAN: -- for a second? I just
24 want to have you say it on the record because we got a
25 issue with the trial subpoenas. Trial is next year, and

1 I want to ask you if you are going to be here. Okay?
2 So let's go back on just for that.

3 THE VIDEOGRAPHER: I am still on.

4 Q. All right. Could you tell us your current
5 residence address.

8 Q. All right. And how long have you lived there?

9 **A. Four years.**

10 Q. Any plans of relocating?

11 **A. No.**

12 Q. Fair enough. Okay. And we are going to have a
13 trial. I think it's next June.

14 MR. ABBASI: May.

15 Q. May. Next May. Do you have any plans to be
16 out of the state or out of the country in May?

17 **A. Not at this time.**

18 Q. All right. And is it okay if we seek to
19 contact you through counsel for the defense?

20 **A. Absolutely.**

21 MR. SHERIDAN: All right, thanks. All
22 right. Thank you.

23 MR. BIGGS: Thank you. No questions.

24 THE VIDEOGRAPHER: This is the end of
25 Media 2 and concludes the deposition of Mike Saunders.

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Time now is 10:51 a.m. Going off-record.
(The deposition was concluded,
adjourning at 10:51 a.m.)
(Signature was reserved.)

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I, _____, hereby declare
under penalty of perjury that I have read the foregoing
deposition and that the testimony contained therein is a
true and correct transcript of my testimony, noting the
corrections attached.

Signature: _____ Date: _____

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October 31, 2019

To: Andrew Biggs
OFFICE OF THE ATTORNEY GENERAL
800 Fifth Avenue, Suite 2000
Seattle, Washington 98104
Andrew.Biggs@atg.wa.gov

Case Name: Santhuff v. State of Washington, Nobach
Video Deposition of: Mike Saunders
Date Taken: October 25, 2019
Court Reporter: Lori K. Haworth, CCR, RPR

This letter is to advise you of the following:

X Signature was reserved. The Affidavit and
correction sheet are being forwarded to you
in electronic form. Please have the deponent
review the transcript, note any corrections
on the corrections page, and return the
signed affidavit and correction page to us
within 30 days of this notice. According to
Court Rule 30(e), the deposition affidavit
should be signed within thirty (30) days or
signature is considered waived.

Signature was reserved. The transcript is
ready for review and signature. Your office
did not order a copy of the deposition
transcript. Please contact our office to
make an appointment for review. Signature
must be completed within 30 days of this
notice.

(Sent without signature to avoid delay)
Lori K. Haworth, CCR, RPR

CC: JOHN P. SHERIDAN

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C O R R E C T I O N S H E E T

PLEASE NOTE ALL CHANGES OR CORRECTIONS ON THIS SHEET BY
PAGE AND LINE NUMBER, AND THE REASON THEREFOR.

PAGE	LINE	CORRECTION AND REASON
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