

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of:)
)
MARK ESTABROOK,)
)
 Complainant,) Case No. 2014-AIR-00022
)
v.)
)
FEDERAL EXPRESS CORPORATION,)
)
 Respondent.)

DAY ONE

Monday,
June 6, 2016

CLIFFORD DAVIS AND ODELL
HORTON FEDERAL BUILDING
167 North Main
9th Floor
Courtroom #3
Memphis, Tennessee

The above-entitled matter came on for hearing,
pursuant to notice, at 9:00 a.m.

BEFORE: HONORABLE SCOTT R. MORRIS
Administrative Law Judge

BAYLEY REPORTING, INC.
(727) 585-0600

APPEARANCES:On behalf of the Complainant:

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9:20 a.m.

JUDGE MORRIS: This is a hearing in the matter of Mark Estabrook versus Federal Express Corporation, Department of Labor Case Number 2014-AIR-00022, before the United States Department of Labor, Office of Administrative Law Judges, pursuant to a notice of hearing that was issued in this case back on -- if I can find it here -- I believe it was March 8th. Well, I don't have it before me, but the notice of hearing location is 19 May 2016. It should have been in the Judge's file and wasn't.

But, in any event, this matter involves a claim for compensation under the Wendell H. Ford Aviation Investment and Reform Act, also called AIR-21, which was signed into law on April 5th, 2000, and it's codified at 49 United States Code 42121. This Act includes whistleblower protection provisions with a Department of Labor complaint procedure implementing those regulations at 29 C.F.R. Part 1979.

My name is Scott R. Morris, and I am an Administrative Law Judge assigned to conduct this hearing and decide this case. Would counsel for the complainant please enter an appearance, including address and contact information?

MR. SEHAM: Yes. Appearing for the complainant,

1 Lee Seham, S-E-H-A-M, of the law firm of Seham, Seham, Meltz
2 and Petersen, 199 Main Street, Seventh Floor, White Plains,
3 New York, 10601, and I am being assisted by my paralegal,
4 Samuel Seham.

5 JUDGE MORRIS: All right. And for the respondent?

6 MR. RIEDERER: Daniel Riederer for respondent,
7 3620 Hacks Cross Road, Memphis, Tennessee, 38125, phone
8 number (901) 434-8556.

9 MR. TADLOCK: Phil Tadlock appearing for the
10 respondent, as well. Same address. My phone number is
11 (901) 434-8048. Also for the respondent are Captain Bill
12 McDonald and our paralegal, Maryanne Miller.

13 JUDGE MORRIS: Under AIR-21, a complainant must
14 show by a preponderance of evidence the following elements:
15 the employer is subject to the Act, and the employee is
16 covered under the Act; that he engaged in protected activity
17 under Section 42121(a); his employer was aware or had
18 knowledge of the protected activity; he suffered an
19 unfavorable or adverse personnel action at the behest of the
20 employer; and the protected activity was a contributing
21 factor in the unfavorable action.

22 If the complainant proves his case of retaliation
23 under AIR-21, then he is entitled to relief unless the
24 respondent demonstrates by clear and convincing evidence
25 that it would have taken the same unfavorable action absent

1 his protected activity. Are there any matters that the
2 parties wish for me to take official notice of?

3 MR. SEHAM: Not at this time for the complainant.

4 JUDGE MORRIS: Okay.

5 MR. RIEDERER: None from the respondent, Your
6 Honor.

7 JUDGE MORRIS: All right. I'll tell the parties
8 on the record that I am very familiar with the FAA
9 regulations. I will take, as necessary, notice of Parts 119
10 and 121. It's my recollection FedEx is a 121 carrier, is
11 that correct?

12 MR. RIEDERER: Yes.

13 JUDGE MORRIS: Yes. Is there any issue that the
14 parties are subject to the Act in this case? There is not a
15 jurisdictional issue?

16 MR. RIEDERER: No, Your Honor.

17 JUDGE MORRIS: Does complainant wish to make a
18 brief opening statement?

19 MR. SEHAM: Yes, Your Honor.

20 **OPENING STATEMENT OF COMPLAINANT**

21 MR. SEHAM: This tribunal has already determined
22 that the respondents placed Captain Estabrook on Not
23 Operationally Qualified status, or NOQ status, on August
24 5th, 2013, and then again on August 9th, 2013, constituted
25 adverse employment action. The tribunal has also already

1 determined that the respondent's referral of Captain
2 Estabrook to a mandatory 15D health examination constituted
3 an adverse employment action.

4 It's our position that Captain Estabrook's
5 protected activity contributed to the respondent's
6 determinations to implement these three adverse actions.
7 Now, this tribunal has determined that Captain Estabrook
8 engaged in protected activity when he refused to fly out of
9 Laredo on April 10th, 2013, due to the existence of
10 hazardous weather conditions. He was then directed to
11 appear at an investigatory hearing that the respondent
12 described as disciplinary in nature.

13 In response, Captain Estabrook filed an AIR-21
14 complaint on April 29th, 2013. When the company advised
15 that it would take no disciplinary action against Captain
16 Estabrook, he withdrew his AIR-21 complaint on May 1st,
17 2013.

18 We submit that temporal proximity, standing alone
19 as between the protected activity that extended until May 1
20 of 2013 and the subsequent adverse actions starting on
21 August 5th, is sufficient under AIR-21 precedent to draw an
22 adverse inference that there was causality.

23 Now, the Court has advised that it will be taking
24 a holistic approach with respect to the events occurring in
25 Laredo. We anticipate that the company in mitigation of its

1 actions at that time with respect to its disciplinary
2 investigation will say that it was not prompted by the
3 flight delay as such, but, rather, that Captain Estabrook's
4 determination to monitor the weather from his crew hotel
5 rather than from the ramp at the airport was the problem, in
6 their view.

7 But the Court will hear audio tapes that Captain
8 Estabrook disclosed his location at the crew hotel in three
9 separate recordings, recorded conversations. Neither duty
10 officer Crook nor dispatcher Hayslett ever told him to leave
11 the hotel. Rather, Crook's pointed question was, so what
12 time are you planning to take off?

13 Similarly, Crook's e-mail of April 10th that
14 prompted the entire disciplinary investigation faulted
15 Captain Estabrook for delaying the flight based on the
16 captain's presumption in making his own weather evaluation.
17 And his concluding sentence is, "Over to you guys, but this
18 guy is on his own program in a system that runs by time, not
19 much slop." What bears emphasis is the degree to which the
20 respondent resented Captain Estabrook's Laredo-related
21 protected activity.

22 And what we're going to emphasize perhaps to the
23 greatest degree is how, after Captain Fisher found that the
24 audio tapes confirmed Captain Estabrook's account, system
25 chief Bill McDonald expressed his disappointment that

1 Captain Estabrook had avoided discipline and how three
2 months later system chief pilot Bill McDonald determined
3 that Captain Estabrook should be questioned at a meeting on
4 August 9th, 2013, as to whether he had posted messages
5 related to the Laredo incident under the name of Mayday
6 Mark, postings which he considered to be potential
7 violations of FedEx policy, so that, irrespective of the
8 respondent's version of events in late April, it is
9 undisputed that in early August 2013 the Laredo incident and
10 the April 29th AIR-21 filings were still very much in the
11 respondent's thoughts.

12 Now, on August 5th, soon after he reviewed the
13 Laredo postings of Mayday Mark, system chief pilot Bill
14 McDonald ordered that Estabrook be placed on NOQ for an
15 indefinite period of time. So not only could Captain
16 Estabrook no longer fly, he could never -- he could no
17 longer even board a FedEx aircraft. They actually had to
18 buy him a ticket to get him to the meeting. Again, the
19 Court has found this August 5th NOQ designation was adverse
20 action.

21 When asked via interrogatories why the respondent
22 placed the complainant on NOQ status on August 5th, the
23 complainant's first answer was that it was because Captain
24 Estabrook had been referred for examination under 15D of the
25 collective bargaining agreement, which we all know was not

1 the case because that didn't happen until at least four days
2 if not 11 days later. Subsequently, the company rescinded
3 its response and answered instead that the indefinite NOQ
4 was simply to, quote, facilitate the scheduling of a meeting
5 he requested -- meaning Captain Estabrook had requested.

6 As respondent disingenuously explained, the effect
7 of the indefinite NOQ status was merely to clear his work
8 schedule and prevent the scheduling of conflicting
9 activities. We will present evidence that it was neither
10 legitimate nor necessary to ground a pilot and bar him from
11 company aircraft in order to arrange to have a meeting with
12 him.

13 Now, wholly apart from the illegitimacy of the NOQ
14 grounding, Captain Estabrook never asked for a meeting. By
15 e-mail dated August 4, 2013, he just asked for a call from
16 CEO Fred Smith to discuss issues he had previously raised in
17 his capacity as the chairman of the pilot union's security
18 committee and had brought to the attention of vice president
19 of FedEx corporate security, a man named Bill Henrikson, all
20 that identified right off the bat in the August 4th, 2013 e-
21 mail.

22 At the August 9th meeting, Captain Estabrook gave
23 a detailed presentation of how the respondent's
24 dissemination of both its package and the aircraft tracking
25 information provided valuable intelligence to Al Qaeda and

1 other terrorists who had specifically identified -- or, had
2 specifically targeted FedEx as a means of delivering future
3 terrorist attacks. Both the historical package information
4 and live aircraft tracking information allowed potential
5 terrorists to time detonation for the purposes of maximizing
6 damage.

7 And there is no dispute that Captain Estabrook
8 communicated at this meeting that respondent's practices not
9 only failed to deter but actually incentivized terrorists to
10 introduce unauthorized explosives into the respondent's
11 aircraft.

12 In order to properly deter such terrorist
13 activity, Captain Estabrook told the respondent's
14 representatives that the respondent needed to restrict its
15 tracking information to the initial pickup of the package
16 and its final delivery to the customer. And, pursuant to
17 AIR-21 precedent, we submit that Captain Estabrook's
18 presentation constituted protected activity.

19 Now, the tribunal's summary judgment decision in
20 this matter appears to misapprehend the objective of Captain
21 Estabrook's comments at that meeting in drawing distinctions
22 between live tracking of aircraft and historical
23 information.

24 The concern at that time in the context of the
25 October 2010 bombing attempts that targeted specifically UPS

1 and FedEx were that the terrorists were reported to be in
2 the throes or the process of trying to set timing devices.
3 In other words, this was not terrorists sitting in the
4 desert with a remote control waiting for a specific time to
5 hit the button, but it was a matter of setting time so that
6 the value of the data, whether it was live aircraft or
7 package, was only in terms of its historical value of
8 predicting when a plane typically would be landing, not when
9 it was actually landing but when it would be typically in
10 terms of history be landing.

11 Now, respondents made no response to Estabrook's
12 presentation, which Todd Ondra later -- the vice president
13 of corporate security -- later characterized as rational.
14 Instead, Captain Estabrook was peppered with questions about
15 Mayday Mark, the FedEx pilot who dared to discuss the Laredo
16 departure incident.

17 At the end of the August 9th meeting, Fisher and
18 Tice, who remained alone because Ondra had left early,
19 reinstated Captain Estabrook to flight status. They
20 determined he was fit to fly. However, Ondra and system
21 chief pilot McDonald conferred and determined that Estabrook
22 should be referred to a mandatory health evaluation pursuant
23 to 15D of the collective bargaining agreement. Fisher
24 called Estabrook the same day to tell Estabrook that he
25 would have to submit to a psychiatric exam evaluation

1 because he, quote, knew too much.

2 Fisher has testified that, after he determined
3 that Estabrook was fit to fly, he went back and made an
4 independent determination as to the rationale for submitting
5 him to a 15D evaluation -- and more specifically a
6 psychiatric evaluation -- without additional input from
7 Ondra or McDonald, that it was an independent decision that
8 he honed.

9 In violation of the safeguards of 15D and 15G of
10 the CBA, the respondent predetermined Estabrook was going to
11 go to a psychiatric evaluation, even in the absence of the
12 contractually mandated independent evaluation by an
13 aeromedical examiner. 15D also requires that a mandatory
14 health examination -- or, requires that the flight
15 management have a reasonable basis for the referral to the
16 aeromedical advisor.

17 Nonetheless, in a departure from their established
18 practice, the respondent disregarded repeated written
19 requests that the reasonable basis be provided. And this
20 review, standing alone under AIR-21 precedent, is indicative
21 of pretext, this withholding of the rationale for the
22 adverse action at the time that the adverse action is taken,
23 and in this case a denial of repeated requests for that
24 information.

25 And it was only pursuant to an OSHA demand that

1 the respondent provided finally, finally, finally on
2 December 4th, 2013, three reasons for its adverse action.
3 One -- and this is respondent's exhibit RX-31 -- one, his
4 request that CEO Fred Smith call him about issues related to
5 9/11 -- that is the August 4th e-mail; two, his supposed
6 assertion at the August 9th meeting that he had been, quote,
7 chased all over Russia in his youth, unquote; and, three,
8 his, quote, assertions, unquote, regarding Auburn Calloway's
9 conversion to Islam and, quote, wholly unfounded suspicions
10 that Calloway might be advising Al Qaeda, unquote. When I
11 say quotes, those are from the company's position statement
12 to OSHA. Calloway was a disgruntled FedEx pilot who
13 attempted to hijack an aircraft and nearly killed three
14 FedEx pilots in the process. Because these rationales were
15 withheld for so long, for months, none of them should be
16 credited from the get-go.

17 Nonetheless, the evidence will confirm that each
18 of the stated reasons is pretextual. Respondent's own
19 witnesses and interrogatory respondents [sic] belie the
20 first rationale relating to the August 4th e-mail. As to
21 the second rationale, none of the respondent's witnesses
22 have any clear recollection of Captain Estabrook claiming to
23 have been chased by Russians.

24 Finally, the allegation that Captain Estabrook,
25 quote, asserted, unquote, that Calloway had undergone a

1 religious conversion is a bald-faced lie, which will be
2 confirmed by the respondent's own witnesses. Captain
3 Estabrook merely reported a rumor that he had heard
4 regarding Calloway, a rumor which the company never cared to
5 investigate in terms of the origins.

6 Significantly, Todd Ondra has conceded that
7 Calloway might still have information that is valuable to
8 terrorists, and, of course, neither the Russian rationale
9 nor the Calloway rationales explain why four days earlier
10 Captain Estabrook had been placed on NOQ status on August
11 5th.

12 Against these pretextual rationales, we have the
13 undisputed evidence that the respondent was brooding over
14 the Laredo incident in early May 2013, on the eve of the
15 August 5th NOQ designation, and as its representatives
16 entered the August 9th meeting to pursue the Mayday Mark
17 connection.

18 These facts, combined with fleet Captain Fisher's
19 admission as to his own motivation -- namely, in his August
20 16th explanation to the Harvey Watt Company that served as
21 aeromedical advisor -- that he was motivated, in part, by
22 the comments related to Al Qaeda and security issues,
23 satisfy the complainant's evidentiary burden under AIR-21
24 precedent, in our view. Thank you.

25 JUDGE MORRIS: Respondent?

1 **OPENING STATEMENT OF RESPONDENT**

2 MR. RIEDERER: Captain Estabrook alleges FedEx
3 retaliated against him because he raised safety and security
4 concerns. To the contrary, the testimony would demonstrate
5 that FedEx's actions were done in the interests of safety
6 and security. FedEx encourages employees to report their
7 concerns and provides numerous methods through which to do
8 so.

9 In this case, you will hear testimony about two
10 main events. First is this flight from Laredo to Memphis.
11 Testimony will show that Captain Estabrook did not arrive at
12 the airport by his show time, which is a mandatory one hour
13 schedule time before his scheduled departure.

14 The testimony will show that his direct
15 supervisor, Rob Fisher, met with Captain Estabrook and
16 reinforced the requirement to show up by your show time. He
17 was not issued any discipline, and FedEx considered the
18 matter closed. And, indeed, Captain Estabrook withdrew his
19 AIR-21 complaint after that meeting.

20 The second event you will hear about is the
21 decision to send Captain Estabrook for a 15D medical exam
22 and the related NOQ status associated with that medical
23 exam. These decisions had nothing to do with Laredo, and
24 the testimony will show that.

25 Everything related to this particular incident was

1 set in motion by an e-mail that Captain Estabrook sent to
2 his boss's boss asking the CEO and chairman of the board
3 Fred Smith to call him, and noted that he was about to go to
4 sleep and he turns his phone off when he sleeps.

5 Despite the odd nature of this e-mail, Bill
6 McDonald set up an audience for Captain Estabrook to express
7 his concerns. During that meeting, two things happened.
8 The first is that he raised issues about live tracking data.
9 Now, his deposition testimony reflects that he was solely
10 concerned with the flight tracking data. This is the data
11 that the FAA collects and the FAA distributes. FedEx does
12 not distribute to any third parties flight data.

13 Now, we heard in his opening that he also has
14 concerns with package tracking data. That is separate and
15 distinct from flight data. The package tracking data does
16 show pickup scans. It does show delivery scans. It is
17 historical, so it's not occurring, it's not in real time,
18 and has no information of where the -- of what plane it's
19 on, what truck it's on, if it's even in a FedEx plane.

20 Some of the packages fly through commercial
21 carriers. The package data that's published to FedEx's
22 customers does not show any information about the flights
23 and the transportation mechanisms FedEx uses to move those
24 packages.

25 Captain Estabrook alleges that he believed that he

1 was reporting a violation of federal safety laws, but the
2 testimony will show that that was belief was not objectively
3 reasonable.

4 The second thing that happened in this meeting is
5 that Captain Estabrook made some very odd and peculiar
6 comments about a former pilot who had been in prison for 20
7 years. He also exhibited some strange behavior that, as you
8 heard, Todd Ondra found to be concerning.

9 Todd Ondra, who specializes in workplace safety
10 and aviation security, was concerned about the comments
11 about Auburn Calloway, about his comments about moving
12 through Russia, about comments about being jailed in a
13 prison when he was 18, and he was rightfully concerned.

14 He expressed those concerns to the system chief
15 pilot Bill McDonald and said, I believe we need to get this
16 guy checked out. Bill McDonald confirmed that there is a
17 mechanism in place under the collective bargaining agreement
18 that permits FedEx to conduct such evaluations, and the exam
19 was set into motion.

20 In this case, Captain Estabrook must prove
21 intentional retaliation. And the testimony will show that
22 FedEx's employment decisions were made in the interests of
23 safety. The Germanwings tragedy illustrates the need for
24 fitness for duty exams and the idea that if there are any
25 concerns those concerns must be addressed.

1 JUDGE MORRIS: All right, thank you. Prior to
2 these proceedings -- and I don't remember, I think we
3 discussed it during our final pre-hearing conference -- one
4 of the questions that was raised was addressing legal fees
5 post-hearing. Would you like to address that now?

6 MR. SEHAM: We submitted with all of our exhibits
7 our legal invoices to date. But there are additional
8 invoices from a predecessor attorney and our invoices going
9 forward since that time, and we would like to reserve the
10 opportunity to submit those invoices at a time deemed
11 appropriate by the Court.

12 JUDGE MORRIS: Let's talk about that. I'm
13 assuming that all fees would be resolved as of the time of
14 the submittal of the final brief, is that correct?

15 MR. SEHAM: Correct, sir.

16 JUDGE MORRIS: All right. So what I would like
17 you to do is, any additional documents relating to your fee
18 and only your fee --

19 MR. SEHAM: Uh-huh.

20 JUDGE MORRIS: -- may be submitted contemporaneous
21 with that, and we'll talk about your opportunity to reply to
22 those in your reply brief. Just remind me to do that at the
23 end of the hearing, because you have a fair -- or, you
24 should be given a fair opportunity in your reply brief to
25 address if you have any concerns about those, about the fee

1 itself.

2 Now, gentlemen, one of the things that I tend to
3 do is, I tend to do what I call "new school versus old
4 school" for these administrative proceedings, and that
5 being, instead of doing it one at a time and laying the
6 evidentiary foundations, unless there's some sort of genuine
7 authenticity issue, I would like to bulk admit the exhibits
8 now so we save laying foundation a hundred times. So the
9 first question I have, is there any objection to what I
10 understand to be joint exhibits JX-1 through JX-7?

11 [WHEREUPON, the documents
12 identified as JOINT EXHIBITS JX-1
13 through JX-7 were marked for
14 identification.]

15 JUDGE MORRIS: I assume there's no objection to
16 that?

17 MR. SEHAM: No, Your Honor.

18 MR. RIEDERER: No.

19 JUDGE MORRIS: All right. And, dealing with joint
20 exhibit JX-1, it's an audio -- what has been presented to me
21 is a CD for audio recording. Are we going to play this
22 actually at the hearing itself?

23 MR. SEHAM: I anticipated there might be a
24 possibility of it, yes, sir. We anticipate we might listen
25 to it.

1 JUDGE MORRIS: Okay.

2 [WHEREUPON, the documents
3 previously identified and marked as
4 JOINT EXHIBITS JX-1 through JX-7
5 were received into evidence.]

6 JUDGE MORRIS: Well, let's talk about
7 complainant's exhibits first. Is there any objection to
8 complainant's exhibit CX-1 through complainant's exhibit CX-
9 47?

10 [WHEREUPON, the documents
11 identified as COMPLAINANT'S
12 EXHIBITS CX-1 through CX-47 were
13 marked for identification.]

14 MR. RIEDERER: Your Honor, depending on how they
15 are introduced, there may be some hearsay objections. Do
16 you want me to address those now?

17 JUDGE MORRIS: Yes. Of course, hearsay is
18 admitted in these proceedings.

19 MR. RIEDERER: Okay.

20 JUDGE MORRIS: It's just what weight they get.

21 MR. RIEDERER: Then I will save the Court time and
22 not address hearsay.

23 JUDGE MORRIS: When it comes, when they are
24 addressed, if you want to re-raise specifically -- I mean,
25 if it's hearsay within hearsay within hearsay, it's going to

1 get the weight it deserves.

2 MR. RIEDERER: Okay.

3 JUDGE MORRIS: I can easily represent that.

4 MR. RIEDERER: Your Honor, other than some hearsay
5 issues and some potential concerns with having personal
6 knowledge of discussing certain exhibits that we can raise
7 in the course of the trial, we don't have any preliminary
8 objections.

9 JUDGE MORRIS: CX-1 through CX-47 are admitted in
10 evidence as CX-1 through CX-47.

11 [WHEREUPON, the documents
12 previously identified and marked as
13 COMPLAINANT'S EXHIBITS CX-1 through
14 CX-47 were received into evidence.]

15 JUDGE MORRIS: Turning to the respondent's
16 exhibits, are there any objections to respondent's exhibits
17 RX-1 through RX-33?

18 [WHEREUPON, the documents
19 identified as RESPONDENT'S EXHIBITS
20 RX-1 through RX-33 were marked for
21 identification.]

22 MR. SEHAM: We object to respondent's exhibit RX-
23 2. It's section two of the flight operations manual, and we
24 object on several grounds. It was -- this case has been
25 pending for over two and a half years. There was a

1 discovery request pending for two years, and this document
2 was never produced until the Court's order. That was number
3 one, the first of several objections.

4 Number two, it is a excerpted document. It's not
5 the entire document. Although there are certain areas where
6 we don't think that would be prejudicial, here there are
7 clearly omissions on the face of it that might be relevant
8 in terms of the purposes for which the complainant would put
9 this in terms of the sections on the adverse weather
10 conditions.

11 And, perhaps most importantly, this document was
12 not in effect at the time of the actions or incidents in
13 Laredo. And, if you turn to the second page of exhibit RX-
14 2, respondent's exhibit RX-2, it says flight operations
15 manual, revision 57, 7th of May 2015. So, for those
16 reasons, we object to respondent's exhibit RX-2.

17 JUDGE MORRIS: Counsel?

18 MR. RIEDERER: Your Honor, it was produced during
19 discovery. Two, as a pilot for FedEx for thirty-something
20 years, Captain Estabrook should be intimately familiar with
21 the flight operations manual. Insofar as complainant is
22 concerned about the excerpts, he has the right to introduce
23 other portions of the manual. And, with respect to the
24 revision date, that's not indicative of that the whole thing
25 was revised.

1 It's just an ongoing updated policy. But, if
2 there are concerns, we would be happy to be substitute a
3 historical one. But, through testimony, I'm sure that there
4 have been no changes with what we're talking about for many
5 years.

6 JUDGE MORRIS: For complainant's counsel, you do
7 have leave, should you so choose, to submit additional
8 sections. Frankly, the one that troubles me the most is the
9 effective date of the flight operations manual, given that
10 these incidents occurred two years prior to that. Having
11 said that, Mr. Seham, were you provided a copy of the flight
12 operations manual that was in effect in 2013?

13 MR. SEHAM: Not to my recollection, no.

14 JUDGE MORRIS: No? Counsel?

15 MR. RIEDERER: We produced what is in the exhibit.
16 But we are happy to replace it with a historical one and
17 give Mr. Seham time to review it, but I can assure you that
18 what we're talking about are policies that have been in
19 place and have not changed.

20 MR. SEHAM: If I understood the question, it
21 relates to the discovery that we made 18, 20 months ago, and
22 that it was not until the Court's order on the eve of trial
23 that it was suggested that this kind of document would be
24 relevant.

25 JUDGE MORRIS: Well, frankly, in a pilot's case, I

1 would be almost astonished if any flight operations manual,
2 or a portion of it, would not be relevant. What I'm going
3 to do is, I'm going to reserve issue on respondent's exhibit
4 RX-2 to give respondent's counsel the opportunity to either
5 produce the flight operations manual that was in effect at
6 the time or to elicit testimony that there have been no
7 changes to that. Any other exhibit besides RX-2?

8 MR. SEHAM: Yes. We object to -- I'll be
9 specific. In terms of respondent's exhibits RX-3, RX-4, RX-
10 5, RX-6, all for the same reasons, which is that it's our
11 position that the relevant issue in this case is, what were
12 the motivations for the respondent taking adverse action --
13 namely, why was Captain Estabrook placed on NOQ status on
14 August 5th and August 9th, why was he referred on August 9th
15 and then August 16th again to 15D?

16 And that is the relevant inquiry, and not how he
17 was later treated in the course of psychiatric evaluation,
18 in that, frankly, these reports which go into issues of his
19 libido, about his wife's sexual practices, about his
20 relationships with his family, about his union organizing
21 activity and how that was a reprehensible activity, that
22 those kinds of things, if they are admitted and made issues
23 in this case, it's just a continuation of the very activity
24 that AIR-21 seeks to prohibit, which is the denigration and
25 humiliation of an individual who was engaged in protected

1 activity. These documents are not relevant to the central
2 issue. They are very prejudicial, and they are humiliating,
3 at least -- or, I mean, first and foremost, is Dr. Glass's
4 document.

5 JUDGE MORRIS: Counsel?

6 MR. RIEDERER: Your Honor, this very issue was
7 addressed in complainant's motion *in limine*, and his attempt
8 to exclude these pretrial were denied. They are relevant
9 for a number of reasons that we can get into during this
10 case, but all of which were outlined in our response to
11 complainant's motion *in limine*.

12 JUDGE MORRIS: What I'm going to do is, again, I'm
13 going to hold off on RX-3 through -- is it RX-5?

14 MR. SEHAM: RX-3 through RX-6 are all the
15 psychiatric, and then there are a number of exhibits that go
16 into the plan of action, correspondence. And I think they
17 start -- well, there's one, RX-7 -- this is between Chris
18 Johnson, who is of Harvey Watt -- a plan of action to
19 support return to work.

20 JUDGE MORRIS: Well, I'm going to allow that. My
21 biggest concern is, based on your representation, there may
22 be some personal information that is not germane to this, so
23 I'm going to hold off on RX-3 through RX-6. I'm not denying
24 it, but what I want to see is if, from the testimony that we
25 garner, whether we can redact portions of it that are not

1 appropriate to be made out in the public forum.

2 For example, you know, you made some references to
3 his relationship with his wife and things of that nature.
4 I'm hard pressed, very hard pressed, to see the relevance of
5 that. But, again, the bar is very low for these
6 administrative proceedings. So I'm going to reserve
7 judgment on RX-3 through RX-6.

8 MR. RIEDERER: Your Honor, if I may, in
9 complainant's exhibits CX-40 and CX-41 we have already
10 admitted the report from Dr. Green and the report from Dr.
11 Leonard.

12 MR. SEHAM: That is the case, and those were
13 submitted in anticipation of the need to have rebuttal
14 exhibits. And our preference would be to have those
15 withdrawn, along with all the other psychiatric-related
16 exhibits.

17 JUDGE MORRIS: Well, I'm not going to deny the
18 psychiatric exhibits.

19 MR. SEHAM: Then I can anticipate the same result,
20 I imagine. But, for the record, we object to respondent's
21 exhibits RX-16 through RX-23.

22 JUDGE MORRIS: Well, wait. Wait a minute.

23 MR. SEHAM: Oh, I'm sorry.

24 JUDGE MORRIS: I'm looking at -- I had previously
25 admitted CX-40 and CX-41. I am going to withdraw that

1 admission and hold that in reserve to see if there are
2 things -- as I just did with RX-3 through RX-6. If I really
3 need all that detail in the public record, I just -- I have
4 some real concerns. I may direct the parties to redact
5 certain portions of that.

6 [WHEREUPON, the documents
7 previously identified, marked and
8 received into evidence as
9 COMPLAINANT'S EXHIBITS CX-40 and
10 CX-41 were rejected.]

11 JUDGE MORRIS: And additional respondent's
12 exhibits, what are they?

13 MR. SEHAM: Respondent's RX-16 through RX-23, and
14 all these letters again have to do with post-15D referral
15 activity. It's our view that this case, in terms of the
16 relevant transactions, the relevance ceases as of the
17 referral and any evidence relating to respondent's
18 motivations.

19 But, in terms of the administrative arrangements
20 for his evaluation, unless they bear on the motives of the
21 four principal actors in this case -- namely Messrs. Fisher,
22 Ondra, Tice, and McDonald, then this evidence is not
23 relevant.

24 JUDGE MORRIS: RX-1 and RX-7 through RX-33 are
25 admitted into evidence.

1 [WHEREUPON, the documents
2 previously identified and marked as
3 RESPONDENT'S EXHIBIT RX-1 and
4 RESPONDENT'S EXHIBITS RX-7 through
5 RX-33 were received into evidence.]

6 JUDGE MORRIS: RX-2 through RX-6 and CX-40 and CX-
7 41, I'm going to see later on.

8 [WHEREUPON, the documents
9 previously identified and marked as
10 RESPONDENT'S EXHIBITS RX-2 through
11 RX-6 were rejected.]

12 JUDGE MORRIS: Counsel, I ask that when we wrap
13 this up we make sure that those exhibits are addressed, as
14 necessary. Complainant, call your first witness.

15 MR. SEHAM: Captain Estabrook.

16 JUDGE MORRIS: Captain, come over here, turn and
17 face me and raise your right hand.

18 WHEREUPON,

19

MARK ESTABROOK

20 was called as a witness herein and, having been first duly
21 sworn, was examined and testified as follows:

22 JUDGE MORRIS: Please take a seat. Mr. Estabrook,
23 please give your name and point of contact information,
24 business or home.

25 THE WITNESS: Would you like my mailing address?

1 JUDGE MORRIS: Yes.

2 THE WITNESS: Okay. Mark Stephen Estabrook, P. O.
3 Box 1890, Manchaca -- that's spelled M-A-N-C-H-A-C-A --
4 Texas, 78652.

5 JUDGE MORRIS: Your witness.

6 **DIRECT EXAMINATION OF**

7 **MARK ESTABROOK**

8 BY MR. SEHAM:

9 Q Captain Estabrook, would you please tell the Court
10 a little about your early aviation background?

11 A My first flying lesson was at the age of 10. My
12 father gave it to me. Throughout high school, I washed
13 airplanes and fueled them to raise money to take flying
14 lessons. I then pursued my private pilot's license later in
15 college.

16 Q Tell us briefly about your college experience.

17 A I attended the University of Texas in Austin,
18 where I received a bachelor of science in radio, television
19 and film. I studied photography and film-making. I shot
20 for several newspapers while I was there, covering the music
21 scene in Austin and Texas.

22 I was friends with several musicians, including
23 Stevie Ray Vaughan. I had a roommate my senior year of
24 college that was a flight instructor, and he offered to help
25 me learn to fly. So, with his assistance, he taught me to

1 fly for free, and I paid for the rental on the airplane and
2 for the gas.

3 Q And, from getting these initial flight experience,
4 how did you move into military service?

5 A One day I walked into a Navy recruiter's office
6 and asked them if they hired film-makers to become pilots,
7 and he said yes, but he couldn't guarantee that I would end
8 up in fixed-wing aircraft. He insinuated that there was a
9 strong possibility that my entire class could end up in
10 helicopters. And I didn't want to fly helicopters, so I
11 walked next door to the Air Force and talked to them, and
12 they guaranteed me a fixed-wing assignment, should I pass
13 flight training.

14 Q Could you please explain to the tribunal those
15 aspects of your Air Force service that the tribunal might
16 find relevant to this case?

17 A The last four years of my Air Force experience, I
18 was an AWACS aircraft commander, and I flew missions that
19 were classified in the Persian Gulf and in the North
20 Atlantic. Part of my responsibilities were to track and
21 chase Russian Bear aircraft as they rounded the northern
22 border of Norway and flew west between Iceland and Greenland
23 and on to offshore of Washington, D.C., where they practiced
24 attacks on Washington, and then headed south to Cuba to
25 rotate with the Soviet pilots down there.

1 Q And what kind of awards did you receive and
2 education did you accomplish while you were in the Air
3 Force?

4 A I graduated from Squadron Officer School, Marine
5 Command and Staff. I received several air medals for my
6 service. I graduated from the University of Oklahoma with a
7 degree, a master's degree in public administration with an
8 emphasis on policy analysis.

9 MR. SEHAM: Now, since these -- we've gone through
10 a process with which I'm unfamiliar in terms of the bulk
11 admission of these exhibits. I think we can just briefly go
12 through some of the exhibits related to your military
13 service, if that's acceptable.

14 BY MR. SEHAM:

15 Q If you could turn to CX-1, which starts with the
16 pagination C-1? Do you not have -- have we not yet given
17 you -- okay, could you just briefly describe CX-1?

18 A This looks like my resume at the time that I
19 applied for employment at FedEx.

20 Q And, if you could turn to CX-2, can you describe
21 briefly for us these documents?

22 A This is what we refer to in the military as our
23 DD-214. It's a certificate of discharge from active duty.
24 It carries a great deal of my training and achievements in
25 the Air Force.

1 Q And if you can -- that picture, is that a picture
2 of you with the AWACS at page C-3?

3 A Yes, that's a picture of me in front of the E-3A
4 in Keflavik, Iceland.

5 Q And going back to the prior page, C-2, where it
6 says E-3 pilot operational training, is that referring to
7 your AWACS?

8 A Yes, it is.

9 Q And if you could move to CX-3 and briefly describe
10 what we're looking at there?

11 A This is a copy of several air medals. It's the
12 second oak leaf cluster for my service in the Air Force.

13 Q And do you have any knowledge as to whether
14 respondent FedEx would have this information, the
15 information contained in CX-1, CX-2 and CX-3?

16 A Yes. I submitted these when I applied for
17 employment.

18 Q If we could move forward to August 4th, 2013, I'm
19 going to ask you to turn to CX-11, the second page of which
20 is -- I'm going to start with C-52 and ask you to identify
21 what this e-mail was, if this is an e-mail sent by you and
22 to whom?

23 A Yes. I sent this to Bill McDonald on I believe
24 August 4th of 2013.

25 Q And can you explain your objective underlying this

1 e-mail?

2 JUDGE MORRIS: What exhibit is that?

3 MR. SEHAM: Excuse me, it's CX-11.

4 JUDGE MORRIS: I'm sorry, I was making a note.

5 MR. SEHAM: Second page of CX-11 at page C-52.

6 JUDGE MORRIS: Okay.

7 BY MR. SEHAM:

8 Q And I'm sorry, you might have been -- why don't we
9 just start from scratch? What was your objective with
10 respect to sending this e-mail?

11 A I had been reading some issues on the internet
12 about the printer bombs with respect to FedEx and UPS, and I
13 had had some previous experience in the security committee
14 with the union that put me in touch with Bill Henrikson, the
15 vice president of security at FedEx, and Bill Logue.

16 And I wanted to see if Bill McDonald could get me
17 a telephone conversation with Fred so that I could discuss
18 some of these important issues from the 9/11 time period,
19 because I had just come into some information off the
20 internet that I thought was very relevant to our situation.

21 Q And what was the security issue you wished to
22 raise?

23 A I wanted to talk about the package and aircraft
24 tracking data that we were disseminating, and I didn't want
25 to go into a lot of details with Bill McDonald because I had

1 already done that in 2001 and 2002 for a number of months,
2 working my way up the chain through Bill Henrikson all the
3 way up to Bill Logue, the COO of FedEx. I expected a phone
4 call from Bill McDonald.

5 But I didn't get a phone call from him. The next
6 day, I got an e-mail from him that he was grounding me and
7 placing me on NOQ. So basically I wanted to speak with Fred
8 briefly about the concern I had regarding package and
9 aircraft tracking.

10 Q I'm going to ask you to turn to CX-15. And this,
11 on its face, is a letter from Captain David Webb. It says,
12 president, and it's addressed to Captain Bruce Cheever.
13 It's on letterhead titled FedEx Pilots Association. Could
14 you tell me who Captain David Webb was and the position he
15 held --

16 A He was --

17 Q -- at this time?

18 A -- at that time the president of the FedEx Pilots
19 Association. And I had been asked to come onboard FPA's
20 Security Committee by Captain Webb, and he asked me to
21 author this letter under his signature, which I did, and we
22 discussed the package and aircraft bomb threat.

23 And we wanted to start elevating this up through
24 the chain of command. Captain Cheever was the vice president
25 of flight operations I believe at that time. And so we

1 wanted to write him and get a dialogue started about package
2 and aircraft tracking.

3 Q And your first sentence references that, "In the
4 last 24 hours it has been brought to our attention that
5 package tracking information (elipses) may be a source of
6 intelligence-gathering for terrorists." And can you
7 identify what your concern was at this time with respect to
8 package tracking information?

9 A FedEx has a history of publishing package tracking
10 information for its customers. And that information is very
11 useful to the enemy. They can take a 24-hour timeline, for
12 example, just a calendar day, and they can block out the
13 hours of the day that the package is in sort, in a sorting
14 hub.

15 They can basically black out the hours in the day
16 to which they do not want their detonator to go off. In
17 other words, it's a concept of maximum potential in the
18 media. If they want to blow up a package in a sorting
19 facility, it doesn't get as much news as blowing an airplane
20 out of the sky.

21 So that package tracking information tells them
22 the time of day they don't want it to go off. So, if it's
23 in a hub for three or four hours, they can just take a black
24 marker and run through those times of the day they don't
25 want to set the detonator.

1 Q I'm going to ask you to turn to CX-15. And my
2 apologies, I'm not sure if we identified who Captain Bruce
3 Cheever was, and looking at CX-14 --

4 A Well, I think his title at the time was vice
5 president of flight operations.

6 Q Now, if you could turn to CX-15, maybe turning to
7 C-83, the second page. Is this a letter that you wrote to
8 Captain Jack Lewis on October 18th, 2001?

9 A Yes, it is.

10 Q And under your signature it says, FPA Security
11 Committee. Were you the chairman of the FPA Security
12 Committee at this time?

13 A Yes, I was.

14 Q And who was Jack Lewis?

15 A Jack Lewis was the FedEx chief pilot at the time.
16 It was immediately after 9/11.

17 Q Now if you can turn to the fourth page, C-85, of
18 CX-15?

19 A Okay.

20 Q Was it your decision to include item number 15 at
21 the top in this letter?

22 A Yes. That, and David Webb, Bob Chimenti, and
23 members of the MEC.

24 Q Did you ever receive any response from Captain
25 Lewis in terms of your request that flight tracking data be

1 removed from public access?

2 A I never received a response to this letter.

3 Q If you could turn to exhibit CX-16?

4 A Okay.

5 Q We're looking at a letter on FedEx stationery
6 dated February 26th, 2002, and it's addressed to you,
7 Captain Estabrook, FPA Security Committee chairman. Now,
8 who is Bill Henrikson?

9 A He was the vice president of FedEx corporate
10 security.

11 Q Is this the same Bill Henrikson you were referring
12 to in your August 4th, 2013 e-mail?

13 A Yes, it is.

14 Q And there's a cc at the bottom, Todd Ondra.

15 A Yes.

16 Q And what was his position at the bottom?

17 A From what I understand, he was the direct
18 assistant to Bill Henrikson.

19 Q And I guess the letter will speak for itself. I'm
20 going to ask you to move on to CX-17.

21 JUDGE MORRIS: Wait a minute.

22 MR. SEHAM: Yes?

23 JUDGE MORRIS: What am I supposed to glean from
24 exhibit CX-16?

25 MR. SEHAM: What you're supposed to glean -- and

1 I'll be looking for your guidance, because I know you want
2 to move expeditiously or efficiently through this hearing.
3 Part of -- as we understand it, part of the company's
4 rationale for taking adverse action as early as August 5th,
5 2013 was that here was an individual leaping through the
6 chain of command and wanting to go to the very top of the
7 pyramid without having raised these issues at lower levels.

8 And what we're trying to demonstrate was that the company,
9 including the actors, including Todd Ondra, who played a
10 very lead role in this process, knew who this man was, knew
11 that he had a leading security position within the pilots
12 union, and that had every reason to treat as a legitimate
13 and not -- as a legitimate request, that he had some
14 interface at a high level.

15 JUDGE MORRIS: Okay.

16 BY MR. SEHAM:

17 Q If you could move to complainant's CX-17?

18 MR. SEHAM: And my apologies. I don't mean to be
19 cryptic. I just thought maybe some of the argument should
20 be left for the briefing. But, if I should take greater
21 care in getting that explained as we go, I'll do that.

22 JUDGE MORRIS: Well, I was just missing the
23 disconnects.

24 MR. SEHAM: No, no. We'll be more careful about
25 that.

1 BY MR. SEHAM:

2 Q Moving on to complainant's exhibit CX-17, on FedEx
3 letterhead, and if we could all turn to page C-89, the third
4 page? And we see your name on the cc list, fourth up from
5 the bottom. Did you receive this letter?

6 A Yes, I did.

7 Q And Todd Ondra, is that the same Todd Ondra that
8 was copied in CX-16?

9 A Yes, it was.

10 Q And Bill Henrikson, was that the same person who
11 was the author of the letter at CX-16?

12 A Yes, it is.

13 Q Now, could you tell us briefly what issues that
14 this letter was addressing?

15 A This involves a meeting that we had with Bill
16 Logue to discuss a variety of security issues. Of course,
17 at the time, the company was focusing on resuming jumpseat
18 privileges for the rest of the FedEx employees. At that
19 time, as the security committee chairman for the union, I
20 was tasked by the union and the leadership to oppose the
21 resumption of employee jumpseats. So part of this meeting
22 was to convince me that it was time to resume employee
23 jumpseating.

24 However, they also gave me an opportunity to
25 address the union's concerns about package and aircraft

1 tracking. At this meeting, I was given some time to speak
2 to everybody in the room. And one of the things I did was
3 that I asked everybody to raise their hand if they felt that
4 we were at war with Al Qaeda. And everybody in the room
5 raised their hand, including Bill Logue.

6 And so I asked them, I said, well, since we all
7 agree on that, then do you think that Winston Churchill
8 would have published tracking data of his aircraft in World
9 War II for Hitler's Luftwaffe? And nobody said a word.
10 However, Bill Logue broke the silence and said, package
11 tracking is a principal staple of our customer marketing and
12 security is not going to trump marketing.

13 Q I'm going to reference you up to -- I want to
14 refer you to the second page, and it looks like it starts
15 three lines from the top, Mr. Logue. And I apologize, did
16 you tell us who William Logue was?

17 A Well, under this title, he is the senior vice
18 president of air and ground freight services. However, I
19 think at another time he got promoted to COO, so I don't --
20 I think this is probably more accurate for that day.

21 Q Now, there's a line here starting three lines
22 down, "We understand from today's meeting that if we have
23 questions about the items the FAA proposed, we should direct
24 them to Captain Estabrook."

25 A Well, the FPA.

1 Q Yeah, excuse me if I misread that, the FPA
2 proposed we should direct them to Captain Estabrook. So,
3 aside from the correspondence we've just reviewed, did you
4 have face-to-face meetings with company representatives
5 concerning security issues, other than the meeting that you
6 just described? Was that --

7 A Yes, I did.

8 Q Now, going back to your August 4th e-mail -- and
9 that will take us back to CX-11, and the second page thereof
10 C-52 -- now, why did you reference Bill Henrikson in your
11 August 4th e-mail?

12 A I wanted to avoid trying to start from the very
13 beginning with Bill McDonald and flight operations. I
14 wanted to have Bill -- I expected a phone call from Bill in
15 which I could explain to him generally what was going on but
16 that I needed to speak with people that were higher up in
17 the organization than flight operations. I didn't want to
18 start over. I didn't want to reinvent the wheel. So Bill
19 Henrikson was somebody I worked with in security beforehand,
20 and I wanted to reconnect with the security department and
21 Fred Smith.

22 Q Did you ask for a meeting with Fred in this August
23 4th e-mail?

24 A No, I asked for a telephone call.

25 Q So did Bill McDonald arrange a telephone call

1 between you and Fred Smith?

2 A No, he didn't, nor did he call me.

3 Q So did you get any response from him?

4 A I got a response the next day that I was being
5 placed on NOQ, which in effect grounded me.

6 Q And that response, is that the first -- is that on
7 the first page of CX-11? I'm going to point you toward the
8 middle --

9 A Yes.

10 Q -- of that first page.

11 A Yes, it does. That includes his e-mail of August
12 5th.

13 Q And I'm going to now refer you to CX-18.

14 A Yes.

15 Q This is an e-mail from Rob Fisher with copies to
16 William McDonald and Rob Tice and Cindy Sartain, and it's to
17 the pilot administration center. My question is -- it
18 refers to NOQ, yourself being placed on NOQ UFN on August
19 5th. And what does UFN stand for?

20 A Until further notice.

21 Q And NOQ stands for?

22 A Not operationally qualified.

23 Q And what impact does that have on a FedEx pilot?

24 A Well, number one, it grounds him. He's not
25 operationally qualified to fly a FedEx aircraft, for

1 whatever reason, and mostly due to health or training, some
2 other issues that's directly related to his lack of
3 proficiency, something like that.

4 Q Uh-huh.

5 A It's a mechanism also to restrict me from riding
6 the jumpseats, not only on FedEx aircraft but any other
7 airline in the country.

8 Q Does it have any impact on your takeoff and
9 landing currency?

10 A It has -- it can. It depends on how long they
11 place you on NOQ.

12 Q Did it have for you? Did it have some impact?

13 A Yes, it did. I went past 90 days of landing
14 currency. And there's a training requirement associated
15 with getting your takeoff and landing currency back.

16 A Uh-huh.

17 Q But, in this case, it also took me past my annual
18 training requirements. And that falls into another category
19 of required training, simulator training.

20 Q Does it have an impact on the nature of your
21 simulator training?

22 A Yes, it did. When I did get off of NOQ, which was
23 approximately four months after being placed on it, I was
24 told to show up for three simulators followed by an
25 evaluation, a training simulator evaluation. However, on

1 the day that I actually started training, I was informed
2 that I was going to get one simulator, followed by an
3 evaluation.

4 Q Okay.

5 A So it's stressful. You have to be able to pass it
6 in order to get your qualification back.

7 Q Now, I think you alluded to it briefly, but I'm
8 going to ask you a specific question that, what caused you
9 on August 4th, 2013 to raise again the issues that you had
10 initially raised in 2001 and 2002?

11 A I had read these articles on the internet about Al
12 Qaeda and al-Asiri using data that they collected off of the
13 internet. According to American and British intelligence,
14 they wanted the package tracking data and the aircraft
15 tracking data to use in a historic fashion. They wanted to
16 program the timing of their detonators.

17 And this caught my attention, and I wanted to
18 bring it to Fred's attention because in the past I had made
19 this prediction in 2001 and 2002 that that's what Al Qaeda
20 intended to do and that they would ultimately do. Now, it
21 took them approximately eight years later from my latest
22 prediction of that model until they did it. But they did do
23 it.

24 And what they did was, they shipped a dummy
25 package -- two of them, as a matter of fact, one via UPS and

1 one via FedEx -- to Chicago. And they tracked the packages,
2 both with the realtime inflight tracking data and the ground
3 package tracking information posted on FedEx and UPS
4 websites. And they used that information as intelligence to
5 set the time for their detonator.

6 It's not a realtime detonation. They don't push a
7 button to detonate a bomb en route. They're looking at all
8 of this data, whether it's realtime aircraft tracking data
9 or whether it's historical ground tracking data. They
10 combined the two to create a timeline for optimum
11 detonation.

12 Q I'm going to ask you to move to complainant's
13 exhibit -- I do mostly arbitration, so whenever I see "C" I
14 think company -- but complainant's exhibit CX-12, *New York*
15 *Times* article titled, "Earlier Flight May Have Been Dry Run
16 for Plotters." Is this one of the articles that you were
17 reviewing --

18 A Yes, it is.

19 Q -- in this time period?

20 A Yes, it is.

21 Q And the sentence that begins at the bottom, "The
22 apparent test run might have permitted the plotters to
23 estimate when cargo planes carrying the doctored toner
24 cartridges would be over Chicago or another city. That
25 would conceivably enable them to set timers on the two

1 devices to set off explosions where they could cause the
2 greatest damages." Is that part of what prompted your
3 concern at the time about package as well as aircraft
4 tracking?

5 A Yes, it is.

6 MR. RIEDERER: Your Honor, if I may object to the
7 extent that hearsay has been raised through that article.

8 JUDGE MORRIS: This newspaper article?

9 MR. RIEDERER: Well, I think there's hearsay
10 within hearsay about what they're saying.

11 JUDGE MORRIS: Well, this is a newspaper article
12 that's even admissible in a regular hearing under 803, so
13 overruled.

14 MR. SEHAM: And I'm not sure if I -- excuse me,
15 was there an answer to that last question?

16 THE WITNESS: Well, yes. I read this article. I
17 saw that language. And, quite frankly, it was one of the
18 strongest pieces of journalism that I read that night.
19 Also, there were other security websites that published
20 articles or opinions about what happened with the printer
21 bombs. But this one was very striking to me, and it was
22 really the one that was the -- that ultimately said, I got
23 to contact Bill, you know, this morning.

24 MR. SEHAM: Uh-huh.

25 THE WITNESS: I had been up all night reading

1 these articles.

2 BY MR. SEHAM:

3 Q Did you have any other additional bases for
4 believing that FedEx, in particular, was a target of Al
5 Qaeda?

6 A Can you rephrase the question?

7 Q Did you have any other documentary basis why to
8 believe that FedEx, in particular, was a target? Well,
9 actually, you know what, let me do it this way. If you can
10 move to CX-13?

11 A Yes, I'm familiar with this article.

12 Q And you're familiar with -- okay. And does this
13 article address --

14 A This article is quoted in various journalistic
15 sources because -- number one, because of the audacity upon
16 which Al Qaeda targeted UPS and FedEx, and they -- although
17 they didn't succeed in blowing up the two aircraft, they
18 were quite proud of the finances behind this operation. And
19 they were advancing the cause through jihad to encourage
20 others to continue this target.

21 Just as they failed to blow up the World Trade
22 Center, they look at FedEx and UPS now as a continuing goal.
23 This is -- if you read this article, they are quite proud
24 of what they attempted to do, and they are advancing the
25 cause to continue the operation.

1 Q And, your understanding, this is a publication of
2 Al Qaeda?

3 A It is a publication of Al Qaeda, yes.

4 Q And if you could -- well, maybe just one more
5 question. If you could turn to C-64?

6 JUDGE MORRIS: CX-64?

7 MR. SEHAM: I'm sorry, pagination C-64.

8 JUDGE MORRIS: Oh, okay.

9 THE WITNESS: Of the same article?

10 MR. SEHAM: We have the exhibits as CX and the
11 paginations as C. So it's C-64 within CX-13.

12 JUDGE MORRIS: Okay.

13 MR. SEHAM: And I'm just referring you to the
14 second paragraph on the left.

15 THE WITNESS: Yes.

16 BY MR. SEHAM:

17 Q You were familiar with the identification of FedEx
18 as a target?

19 A Yes. As a matter of fact, back in 2002, I asked
20 Bill Logue and all the individuals in that room during the
21 briefing to imagine 30 or 40 bomb placements on FedEx
22 aircraft and how dramatic that would be to air commerce.

23 Q Did you ever receive any company training that was
24 relevant to your decision to send the August 4th e-mail?

25 A Well, all pilots are trained about the deterrence

1 and prevention of placement of bombs on aircraft. Even
2 FedEx as an air carrier is required to promote the
3 deterrence and training in the employee group.

4 Q Uh-huh.

5 A So, yes, I have received training to prevent and
6 deter bombs onboard aircraft. I am also designated by FedEx
7 as the inflight security coordinator, as is every FedEx
8 pilot that takes off. So they are also -- FedEx is also a
9 signer of Homeland Security's "If You See Something, Say
10 Something" program.

11 And they posted signs of it around the company,
12 and they posted articles about it on the website. So I
13 assumed that the See Something Say Something program would
14 encourage me to get in touch with Fred and security at
15 FedEx.

16 Q With reference to these articles that you had just
17 read at this time period relating to the October 2010 cargo
18 bomb plot, what were you hoping to accomplish by trying to
19 talk to Fred at this time?

20 A I wanted to revisit the issue of publishing
21 tracking data. The ground tracking data is something that
22 is totally up to FedEx. They have the option of withdrawing
23 the ground package tracking data, but they use it as a
24 marketing tool on their website.

25 And Bill Logue claimed that their marketing

1 studies have shown that that's an important part of their
2 product. However, I was encouraging everybody at that time
3 to withdraw that portion of tracking data from the time of
4 pickup until the time of delivery.

5 And, contrary to the company's counsel, there is a
6 lot of data in between those two time periods, including the
7 city that it's currently being sorted at, the time it's in a
8 sorting hub, the time it's loaded onto trucks. It's not
9 just pickup and delivery. There's valuable information on
10 the inside of those two points.

11 I wanted to revisit the issue with Fred about
12 aircraft tracking in that I'm aware that the company has an
13 ADS-B piece of equipment onboard. I'm aware that they have
14 a transponder onboard. And I know that that electronic data
15 is disseminated by our aircraft each time it takes off.

16 However, the publishing of that information --
17 from what I understood and what I think I understand today
18 is, there is an opt-out program for that information. And
19 that's what I wanted to ask Fred about is if he'd be willing
20 to stop publishing that data.

21 And, if the lawyers came back and said, no, we
22 have to disseminate that information, I wanted to open up
23 the possibility that they would help me stop that, that they
24 would go to the feds and say, we shouldn't be doing this
25 anymore.

1 Q Uh-huh.

2 A I felt like it was a direct violation under our
3 obligation to deter bomb placement on our aircraft. And I
4 thought it was a conflict with that obligation.

5 Q Okay.

6 A So one thing that they could have done voluntarily
7 from the get-go was quit publishing the ground package
8 tracking data on their own. And the second, I'm assuming
9 they could have opted out of. But I'm not a lawyer.

10 Q So who are the people -- I don't know if there are
11 any people other than those that have been identified in the
12 correspondence, but can you give us a quick list of
13 individuals with whom you had already spoken about package
14 and aircraft tracking issues in terms of intelligence for
15 terrorists --

16 A You mean on --

17 Q -- prior to August 4th?

18 A Prior to August 9th?

19 Q Yes, prior to August 9th and August 4th.

20 A Okay. Well, going back to 2001 and 2002 is what
21 I'm --

22 Q That's correct.

23 A -- understanding?

24 Q Yes.

25 A Okay. I spoke to Captain Jack Lewis.

1 Q And if you could give titles as you go through?

2 A He was the FedEx chief pilot at the time.

3 Q Uh-huh.

4 A I spoke to him in person on several occasions, and
5 I also documented correspondence with him, which I have
6 produced in this case. I wrote Captain Bruce Cheever, who
7 was the vice president of flight operations. I dealt with
8 Bill Henrikson, the vice president of FedEx security, and
9 Todd Ondra, his direct assistant. I spoke with Bill Logue,
10 the eventual COO of FedEx. And I think that's about it as
11 far as the management branch of FedEx.

12 Q I'm going to ask you to turn to CX-30.

13 JUDGE MORRIS: Exhibit or page number?

14 MR. SEHAM: Yes, CX -- whenever I say CX, it's my
15 intent to communicate exhibit. So CX-30 is -- well, I'll
16 say complainant's exhibit CX-30. And then within that --
17 just for the record, this is FedEx Corporation's responses
18 to the complainant's first requests for admissions.

19 BY MR. SEHAM:

20 Q And I'm going to ask if you could turn to page C-
21 161, which is request number 13?

22 A Okay.

23 Q This is a request that the complainant admit that
24 the complainant -- excuse me, that the respondent admit that
25 the complainant served as the security chairman of the FedEx

1 Pilots Association, which was the certified labor
2 representative of the FedEx pilots from 1996 to 2002, with
3 the response being, "Respondent is without knowledge or
4 information sufficient to form a belief about the truth of
5 the contention in request number 13 and therefore can
6 neither admit nor deny the same." In terms of putting the
7 company on notice prior to August 9th, what effort did you
8 make to bring to their attention prior to the August 9th
9 meeting that you had served as the FPA Security Committee
10 chairman or that you --

11 A Well, on August 4th, the first e-mail that I sent
12 to Bill McDonald, I told them --

13 Q Yeah.

14 A -- that I had experience on the FedEx security
15 committee, and I told them that I had a previous
16 relationship with the senior vice president of security at
17 FedEx, Bill Henrikson.

18 Q Okay.

19 A So in the very first e-mail I sent them I tried to
20 relate to them that I had some experience in this area and I
21 wasn't just, you know, creating some fictional relationship
22 with security.

23 JUDGE MORRIS: Counsel, if I may ask a question?

24 MR. SEHAM: Yes. Sure.

25 JUDGE MORRIS: Would your employment history

1 records with the company include such duties as that?

2 THE WITNESS: May I respond to the question, Your
3 Honor?

4 JUDGE MORRIS: Sure.

5 THE WITNESS: Are you talking about before I got
6 hired by FedEx, or after I got --

7 JUDGE MORRIS: No, after you got hired. The fact
8 that you were the security chairman for the FedEx Pilots
9 Association, would that be something that would be in your
10 employment records jacket?

11 THE WITNESS: We asked for my employment records
12 jacket, and I don't believe that information was located --
13 I can't answer your question, Your Honor.

14 JUDGE MORRIS: Okay.

15 BY MR. SEHAM:

16 Q Now I'm going to turn to -- we have these -- I'm
17 going to ask you to turn your attention to respondent's
18 exhibit RX-14.

19 A Okay.

20 Q Looking at the middle e-mail on this page from
21 Mark Estabrook to William McDonald, is that your -- I want
22 to make sure I haven't skipped a step here.

23 A Yes, this is --

24 Q The response that --

25 A This sounds familiar.

1 Q Well, if you could read up from the bottom,
2 there's an e-mail from William McDonald to you dated August
3 5th, 2013 at 2:11 p.m.

4 A Yes.

5 Q And you recall receiving that e-mail from William
6 McDonald at that time?

7 A Yes.

8 Q And you recall responding to Mr. McDonald via e-
9 mail of August 6th, 2013 at 6:58?

10 A Yes, I understand the sequence.

11 Q And could you -- you responded, "Thanks, Bill. I
12 have placed a call to Rob this afternoon and left a message.
13 I really wanted to fly that trip to Panama, so I wish we
14 could have talked before I got removed. But, having said
15 that, I understand why you did what you did. If you could
16 arrange a conference phone call with the head of security
17 and Fred, I think this could take less than 15 minutes."
18 Could you explain what you're trying to accomplish here?

19 A Initially, I was still thinking that this NOQ
20 business could be resolved with a simple phone call to Bill.
21 And I was scheduled to fly a really nice Panama trip that
22 had like a three- or four-day layover in Panama, and I hated
23 to lose that trip.

24 And I thought, well, whatever he's confused about,
25 I can get this taken care of with a phone call. However, I

1 had this funny feeling in the pit of my stomach that this
2 had something to do with Laredo and the comments that Rob
3 Fisher had made to me after my May 1st meeting with him.

4 Q Well, let's start from the beginning. Will you
5 please tell the Court about what happened to you in Laredo,
6 Texas, on April 10th, 2013, what your situation was, where
7 you were?

8 A I was in the hotel in Laredo, with my first
9 officer in the lobby of the hotel, and we became aware of a
10 severe thunderstorm line between Laredo and Memphis. And we
11 had already looked at the flight release that our dispatcher
12 had given us, had assigned us. And we had looked at the
13 FedEx weather, we had looked at the FedEx radar screen.
14 Then I looked at the FAA's NOAA radar source. And, finally,
15 I looked at Intellicast weather source.

16 So, after reviewing the three radar screens, I
17 called Sherrie Hayslett, the GOC dispatcher for that flight
18 release, and advised her that I was going to be late -- or,
19 that we were going to be late out of Laredo. And she
20 acknowledged the weather and brought it up to me, as a
21 matter of fact.

22 And so I agreed with her that it was a significant
23 thunderstorm line, and I said, I don't see any way for us to
24 fly through this thing and get to Memphis. She originally
25 had assigned a flight route that took me east of the storm

1 and came back to Memphis from the other side of the line of
2 thunderstorms, with an alternate airport I believe in
3 Atlanta.

4 And so, after discussion with my first officer, I
5 said, there's no way we can get to the other side of this
6 line of thunderstorms in order to come to Memphis from the
7 east, we're going to have to wait for the storm to pass
8 through Memphis, and then we'll arrive after station passage
9 of the storm. And he agreed with me. So I called Sherrie
10 at that point, and I said, we need to do something
11 different.

12 Q Well, in terms of the weather that was prevailing,
13 if you could turn to CX-4, complainant's exhibit CX-4, and
14 just explain for the tribunal the significance of these
15 pages?

16 THE WITNESS: Would you like to look at these,
17 Your Honor?

18 JUDGE MORRIS: I have the package.

19 THE WITNESS: Okay. This exhibit is a series of
20 sequential radar screen shots from NOAA, National
21 Oceanographic Administration.

22 BY MR. SEHAM:

23 Q Can you identify for the tribunal -- there's a
24 reference to NOAA?

25 A Yes, in the -- let me find it --

1 JUDGE MORRIS: It's on the bottom right-hand side
2 of ME1356.

3 THE WITNESS: Yes.

4 JUDGE MORRIS: I'm also aware of the NEXRAD
5 capabilities.

6 THE WITNESS: Okay.

7 BY MR. SEHAM:

8 Q And was this a source of weather information you
9 were looking at at the time?

10 A This was one of three sources.

11 Q And the time sequence here is relevant to your
12 situation?

13 A Yes, this was what was happening to us that night
14 on that date.

15 Q I'm going to ask you to turn to respondent's
16 exhibit RX-8.

17 A Respondent's RX-8?

18 Q And this is -- for the record, there is a header
19 of an e-mail from Rob Fisher to Cindy Sartain, but what I'm
20 directing your attention to is the e-mail underneath that,
21 Mark Crook to William McDonald, Rob Fisher, and Michael
22 Speer, subject Captain Mark Estabrook.

23 I'm going to direct your attention to the very
24 last paragraph, which says, "In my two years as a DO --
25 which we understand to be duty officer -- I have never had a

1 captain take it upon himself to delay a flight without
2 coordinating and coming to an agreement with the dispatcher.
3 Captain Estabrook was directive to Sherrie and told her how
4 it was going to be. And Captain Estabrook also never took
5 it upon himself to touch base with the weather department.
6 He became the sole source of weather by looking at the
7 weather plot on Intellicast and delayed the flight by that
8 sole source of information." Were you directive with
9 Sherrie? Were you bullying with Sherrie? What was the tone
10 of your initial conversation with Sherrie, let's put it that
11 way?

12 A I thought it was a cordial conversation. I mean,
13 we both seemed to be in agreement that I wasn't going to
14 arrive in Memphis on time.

15 Q Uh-huh.

16 A And she agreed with me that it looked like I was
17 going to be late.

18 Q Uh-huh.

19 A I didn't detect any sort of confrontation or
20 argument with her at all in that conversation.

21 Q And who was -- you may have alluded to it before,
22 but who was the first individual on that phone call between
23 you and Sherrie Hayslett, the dispatcher, to raise the issue
24 of weather?

25 A Sherrie raised the issue of weather to me first

1 and asked me if I was aware of the weather between Laredo
2 and --

3 Q Did you have any dispute with dispatcher Hayslett,
4 Sherrie Hayslett, concerning whether the thunderstorms
5 required a delay?

6 A Not at all.

7 Q Did you make any request to Sherrie Hayslett with
8 respect to the weather during your first phone call?

9 A I asked if we could remain at the hotel and stay
10 on top of the weather. I asked if we could stay in touch
11 with each other and she could relay information to me as she
12 became aware of it.

13 Q Uh-huh.

14 A And I said I would do the same for her, that I
15 would provide her with the latest weather information.

16 Q Yeah. Did you specifically say whether you could
17 stay -- did you ask for permission to stay at the hotel, or
18 did you --

19 A Well, I mentioned that we were at the hotel at
20 least two or three times --

21 Q Uh-huh.

22 A -- and saying that we were going to delay at the
23 hotel for weather.

24 Q How many radar sources did you research that night
25 in Laredo?

1 A Three. The FedEx weather, which, oh, by the way,
2 we have to -- before we sign a flight release, we have to
3 review the weather. This is not an optional thing for a
4 captain. His insinuation in this e-mail flagrantly attacks
5 my credibility as a captain. I have never met a captain
6 that didn't check the weather before he took off.

7 And, in FedEx's case, when we sign a flight
8 release, that testifies that we have checked the FedEx
9 weather. In fact, we print out a copy of the weather before
10 we even walk to the jet. So either his flying currency is
11 not what it should be or he was trying -- he was attempting
12 to attack my character.

13 Q Did you disclose to Mark Crook, duty officer Mark
14 Crook, that you were looking at Intellicast?

15 A He happened to call me at a time when we were
16 refreshing the screen, and he asked me what I was doing.
17 And I said, well, my first officer and I are sitting here
18 refreshing the Intellicast screen.

19 Q Did he voice any objection to your looking at
20 Intellicast to evaluate the weather?

21 A No.

22 Q During your first conversation with Mark Crook,
23 did you disclose to him that you were monitoring the weather
24 from the hotel?

25 A Yes.

1 Q Did he voice any objection to your monitoring the
2 weather from the hotel?

3 A No.

4 Q And you -- I think you might have alluded to it,
5 but did you receive a flight plan for your departure?

6 A I did receive a flight plan from Sherrie, but I
7 deemed it problematic.

8 Q Okay.

9 A For the reasons I mentioned earlier, I could not
10 sign that flight release. It had me attempting to come
11 around the back side of the line of thunderstorms to reach
12 Memphis at the time that the thunderstorm actually would be
13 above Memphis.

14 Q Uh-huh.

15 A So it wouldn't have done me any good to have an
16 alternate east of the line of thunderstorms and east of
17 Memphis if I couldn't get through that line of thunderstorms
18 from the west to begin with.

19 Q Uh-huh.

20 A So later on I got a second flight plan release
21 from her at my request.

22 Q And can you legally penetrate thunderstorms?

23 A No. It's a violation of the FOM, as well. The
24 FAA recommends at least a 20-mile separation between you and
25 the aircraft -- or, I mean, between you and the

1 thunderstorm. And it's a violation of the company FOM, the
2 flight operations manual. We're also not to penetrate
3 severe turbulence.

4 Q Uh-huh.

5 A And, if you survive doing something like that, you
6 would most likely damage the aircraft and probably lose your
7 job.

8 Q Was there any relevant communications from air
9 traffic control during this period?

10 A Yes. I was placed on what they call a gate hold.
11 I didn't even have the option to take off, as Mark Crook
12 was encouraging me to do, even if I wanted to. Memphis air
13 route traffic control placed a gate hold on my flight for
14 several hours.

15 And we communicated with the Laredo tower, and we
16 talked to them every 10 or 15 minutes on the radio and asked
17 them what our gate hold status was. And finally, as the
18 tower was closing that night, he said, I just got a release
19 from Memphis, you're cleared to take off. And that's when
20 we took off. If I had violated that gate hold, I would have
21 been in violation of Federal Aviation Regulations, and I
22 probably would have been seeing Bill McDonald for that
23 reason, as well.

24 Q I'd like you to turn to respondent's exhibit RX-
25 10, the transcripts of the audio recordings.

1 A Okay.

2 MR. SEHAM: Now I'm going to draw your attention
3 to the bold headings. There's one -- well, should I wait
4 for you?

5 JUDGE MORRIS: No, go ahead.

6 BY MR. SEHAM:

7 Q To the bold headings which appear to indicate
8 distinct conversations. There's one at 4/11/2013 at --

9 A Hang on a second.

10 Q Okay.

11 A What do you mean, 4/11?

12 Q Well, first of all, are you at respondent's
13 exhibit RX-10?

14 A I am.

15 JUDGE MORRIS: Respondent's exhibit, or
16 complainant's exhibit?

17 MR. SEHAM: Respondent's exhibit RX-10.

18 JUDGE MORRIS: Okay. Right.

19 BY MR. SEHAM:

20 Q So I'm going to move you to the first bold caption
21 and actually identify it by -- the first conversation by the
22 date and time on the right, 04/10/13, 8:25, do you see where
23 I am?

24 A Yeah, but that's not actually the date. I think
25 the date to the right is 04/10/13.

1 Q Yeah, that's what I'm drawing your attention to --

2 A Oh, okay.

3 Q -- 04/10/13, 8:25.

4 A Okay.

5 Q But, in any case, the captain-to-dispatcher, is
6 that a conversation between you and dispatcher Sherrie
7 Hayslett?

8 A Yes, it is.

9 Q And then, moving to the third page of this exhibit
10 where it says, ramp-to-duty officer, and it goes on to have
11 the date of 04/10/13, 9:14 p.m., that's not a -- is that a
12 conversation in which you participated, this ramp-to-duty
13 officer?

14 A No.

15 Q And, moving on to the next page, there's a duty
16 officer-to-captain, and it indicates 04/10/13, 9:16 p.m.
17 Would that be a conversation between Mark Crook and
18 yourself?

19 A Yes.

20 Q And then if you go three pages in from that,
21 Sherrie's second conversation with Estabrook, was this -- at
22 04/10/13, 9:39, was this a second conversation between you
23 and Sherrie Hayslett?

24 A Yes, it is.

25 Q And the last -- oh, no, I'm sorry, the penultimate

1 one at the bottom of the next page, duty officer voicemail
2 hangup -- and then after that, GOC manager-to-dispatcher,
3 were you involved in that conversation at 04/10/13, 9:42
4 p.m.?

5 A Yes, I was.

6 MR. RIEDERER: Did you say yes?

7 THE WITNESS: Yes. Oh, wait a minute.

8 MR. SEHAM: That's surprising me too.

9 THE WITNESS: This is a conversation that I had
10 with Sherrie?

11 BY MR. SEHAM:

12 Q Yeah, I'm asking, were you a participant in this
13 recorded conversation?

14 A Oh, I see, it's Sherrie and the GOC manager.

15 Q So you were not involved in this conversation?

16 A No.

17 Q And then there's a final, a third call listed here
18 between you and the dispatcher on the final page of this
19 exhibit?

20 A That's the one I was --

21 Q All right. So, in all these audio tapes, there is
22 only one listed conversation between you and Mark Crook,
23 correct?

24 A That's correct.

25 Q And would you agree that you only had a single

1 telephone conversation with Mark Crook that evening?

2 A No.

3 Q How many --

4 A I would not agree.

5 Q How many conversations do you recall having?

6 A I had at least three documented phone calls with
7 him, and possibly two more that are not documented, that I
8 cannot prove. I do have Verizon cell phone records that
9 indicate that --

10 Q Well, that's what I'm coming to. I'm going to ask
11 you to move -- and this will require some cross-referencing
12 here, but I'm going to ask you to move to complainant's
13 exhibit CX-5 and have that available, and have respondent's
14 exhibit RX-10 open to page 4, the transcripts between you
15 and Mark Crook. Do you have those two exhibits available
16 for yourself?

17 A I have one Verizon telephone bill.

18 Q Okay.

19 A Is that the one you're referring to?

20 Q Yes, yes.

21 A Okay.

22 Q It should be -- it should say ME1355 at the
23 bottom, and C-32 as a transcript page number.

24 A Mr. Seham, what was the original one in this?

25 Q That was respondent's exhibit RX-10.

1 A Okay, I have it. All right, what is your
2 question?

3 Q I just want to make sure you have both of those
4 documents in front of you. And if you can look at your
5 Verizon bill -- well, first of all, that's your Verizon bill
6 for this time period?

7 A Yes, sir.

8 Q And can you identify on this Verizon phone bill
9 what would have been the first call that you got from Mark
10 Crook?

11 A It would be the sixth phone call from the bottom.

12 Q The one with the number that ends in 8214?

13 A Correct, 397-8214.

14 Q Which lists a time a 9:18?

15 A Well, 9:16. I can't tell what that --

16 Q Okay, it might be 9:16 or 9:18, but it's your
17 opinion that this correlates to the call listed in the
18 transcript on the fourth page?

19 A Yes.

20 Q Now, if you move two calls down from the call you
21 identified just now, there's a call to 901, and the last
22 four numbers are 8025. Can you identify that call in terms
23 of the company's transcripts?

24 A Well, I see -- you mean, is that fourth from the
25 bottom?

- 1 Q Yes.
- 2 A At, what, 9:30?
- 3 Q 9:39, it appears to be.
- 4 Q Yes, I see that.
- 5 Q Okay.
- 6 A It's 9:39 here, it's 9:39 here --
- 7 Q Okay.
- 8 A -- in the respondent's transcript.
- 9 Q Okay, and would that call have been to Sherrie
10 Hayslett and reflected in this transcript at -- as the 9:39
11 call?
- 12 A Yes.
- 13 Q Now, if you look at those transcripts -- and this
14 is -- there's a reference here, one, two, three, four, five,
15 the sixth line of dialogue between you and Sherrie Hayslett
16 during this 9:39 call, there's a -- you're reportedly
17 saying, they're calling me again on the other line?
- 18 A Yes.
- 19 Q So during this call that's listed on your phone
20 bill four up from the bottom, can you recall whether there
21 was someone calling you on another line, on your other line
22 on your cell phone during your call with Sherrie?
- 23 A Yes.
- 24 Q And who was calling in on that line?
- 25 A That was -- apparently, that was Mark Crook.

1 Q And what happens to incoming calls that you don't
2 pick up on your cell phone?

3 A Well, you'll get a flash on a Verizon cell phone,
4 and it will tell you that there's another call coming in,
5 and it gives you the phone number.

6 Q Uh-huh.

7 A And, if I don't answer it, it just goes to
8 voicemail.

9 Q And do your Verizon bills reflect incoming calls
10 that go to voicemail?

11 A No.

12 Q Now, after you completed your call, this 9:39 call
13 with dispatcher Hayslett, did you call duty officer Crook
14 back?

15 A I did.

16 Q And is that call reflected on the CX-5 Verizon
17 phone bill?

18 A Yes, it is.

19 Q Can you draw the tribunal's attention to the call
20 that you made?

21 A That was at 9:43.

22 Q Is that --

23 A 9:43 p.m.

24 Q Is that three up from the bottom?

25 A Yes. And that was to his duty officer cell phone

1 at 8214.

2 Q It indicates a two-minute call, does that sound
3 about right in terms of time?

4 A Yes.

5 Q Has respondent FedEx provided a transcript of this
6 call?

7 A No.

8 Q Okay. Now could you please recount the nature of
9 the discussion that you had with Mark Crook at 9:43?

10 A It was pretty heated. He was directing me to take
11 off and fly to Memphis, and I told him I would decide when I
12 take off and fly to Memphis. And he began saying what I
13 considered to be pilot-pushing type things, like you're the
14 only one not taking off, everybody else is taking off,
15 you're the only one that's going to be late tonight. Of
16 course, I found out when I got to Memphis that there are a
17 dozen other airplanes in the traffic pattern coming in just
18 as late as I was, all from the west of Memphis.

19 Q Now, CX-5, there are two remaining calls in terms
20 of -- in going down the list here, there are two remaining
21 calls on this CX-5 Verizon phone document. Do either of
22 those remaining calls reflect any further discussion with
23 Mark Crook?

24 A Yes.

25 Q Could you explain that?

1 A The next phone call, I was trying to get in touch
2 with Sherrie --

3 Q Uh-huh.

4 A -- because I wanted to talk to her about that
5 flight plan that needed to be reissued. I needed a new
6 flight plan. There was no way I was going to be able to
7 execute that flight based on her recommendation, so I
8 attempted to call her back.

9 And he answered the telephone, the GOC telephone,
10 and he claimed to be sitting right next to her, and I was --
11 I didn't know that. I thought I had mis-dialed on my cell
12 phone and that I had called him back again as the duty
13 officer.

14 And then he says, no, I'm in GOC now and I'm
15 watching you very closely, which I thought was very
16 sarcastic and very intimidating. And I said, well, I didn't
17 want to talk to you, Mark, I wanted to talk to Sherrie.
18 Well, what do you want? Have you pushed yet? And I said,
19 no, Mark, I haven't pushed, I'll call back and ask for
20 Sherrie.

21 So I terminated that phone call, and I called a
22 couple minutes later and talked to Sherrie. And I asked her
23 for a new flight plan, and she was pleasant, and she
24 complied, and it now had a westerly direction from which I
25 approached Memphis --

1 Q Okay.

2 A -- after the storm passage.

3 Q That final call with Sherrie, would that be the
4 last page of CX-10 -- or, excuse me, RX-10?

5 A Yes. I said, can you send me a new flight plan
6 coming in from the west instead of going through it and
7 coming in from the east.

8 Q Okay.

9 A And she said yes.

10 Q And did you make this call at 9:52? Was that made
11 from your Verizon phone?

12 A No.

13 Q Okay.

14 A This last phone call was not recorded in my cell
15 phone bill, and the only thing I can conclude at that time
16 is I do remember using the first officer's phone at various
17 times that night, as my battery was getting low. So that's
18 the only -- I think that this phone call is the only one I
19 didn't make from my cell phone. And I could have also made
20 it in the Laredo ramp office flight planning area.

21 Q Okay.

22 A However, however, I am missing -- from these phone
23 calls, this transcript, this Verizon Wireless transcript, I
24 am missing the actual transcribed conversations from Mark
25 Crook, as reflected on my bill.

1 Q Uh-huh.

2 A They were never delivered by the company.

3 Q Did Mark Crook ever tell you that you should not
4 be at the hotel?

5 A No.

6 Q Now, if you could turn to JX-2, joint exhibit JX-
7 2?

8 A Is that a special color?

9 Q No, that should be -- it's right here. Not, it's
10 marked JX.

11 JUDGE MORRIS: It's also in red --

12 THE WITNESS: Okay.

13 JUDGE MORRIS: -- binders.

14 THE WITNESS: JX-2, okay.

15 BY MR. SEHAM:

16 Q And this is on FedEx letterhead dated April 23rd,
17 2013. Can you identify this letter as having been received
18 by you?

19 A Yes.

20 Q And how did you react to this letter, being asked
21 to attend an investigative interview concerning the events
22 at Laredo?

23 A I immediately hired Alan Armstrong out of Atlanta
24 as my aviation attorney.

25 Q Now, before we move on, you see it says at the

1 bottom, the last sentence before the signature block, it
2 says, "You may have an ALPA representative present if you
3 desire." And do you know what ALPA refers to?

4 A Yes.

5 Q Okay.

6 A Yes, I did have an ALPA representative who did
7 show up, and his name escapes me right now.

8 Q Okay.

9 A But Alan Armstrong asked if he could attend this
10 meeting.

11 Q Well, before you go on, I just want to make sure
12 the tribunal understands. ALPA is the --

13 JUDGE MORRIS: I know what ALPA is.

14 MR. SEHAM: Okay, very good. I just wanted to be
15 thorough.

16 JUDGE MORRIS: I know who Mr. Armstrong is.

17 MR. SEHAM: Okay, very good.

18 BY MR. SEHAM:

19 Q If you could turn to CX-7?

20 JUDGE MORRIS: And, so the parties here are aware,
21 I also know what the pilot's obligations are before taking
22 off under IFR conditions --

23 MR. SEHAM: Yeah.

24 JUDGE MORRIS: -- so you don't need to avail me of
25 that.

1 MR. SEHAM: Okay, very good.

2 THE WITNESS: CX-7?

3 MR. SEHAM: Yes, go to CX-7.

4 BY MR. SEHAM:

5 Q And I'm going to direct your attention to the --
6 not the header e-mail, but the second e-mail from Rob Fisher
7 dated April 17th.

8 A Okay.

9 Q And, more specifically the first sentence, it
10 says, "I just spoke to Bill McDonald, and he has directed us
11 to conduct an investigative hearing 19D for Mark Estabrook."
12 What was Bill McDonald's position at this time?

13 A I believe he was the acting chief pilot for the
14 FedEx pilots.

15 Q And you see there's a cc to Rob Tice. Do you know
16 who Rob Tice is identified in this April 17th e-mail?

17 A He's a labor attorney within the FedEx legal
18 department.

19 Q Now, if you go to the second page of this document
20 at C-35 --

21 A Yes, sir?

22 Q -- there's two sentences -- or, several sentences,
23 actually, let's call them two paragraphs in capital letters.
24 And the last sentence of the first paragraph says, they
25 spoke to Sherrie, GOC dispatcher, who just told them they

1 were going to have WX. What does WX refer to?

2 A It's an abbreviation for weather.

3 JUDGE MORRIS: Counsel, I will tell you if I don't
4 know aviation abbreviations, to make it easier for you.

5 MR. SEHAM: Okay, all right.

6 BY MR. SEHAM:

7 Q And then the very last line, "We had to get DO
8 involved since pilots said they were not leaving the hotel
9 until WX passed." Did you ever state to any FedEx
10 representative that you refused to leave the hotel?

11 A Never.

12 Q And did anyone ever tell you on April 10th that
13 your staying at the hotel would be a problem?

14 A No.

15 Q Have you ever had a duty officer call and ask you
16 where you are?

17 A No, not in my entire career.

18 Q Now I'm going to ask you to turn to --

19 JUDGE MORRIS: Wait a minute. In this case, I
20 want to make sure we have the right DO. So ask that the DO
21 is.

22 MR. SEHAM: Duty officer. What that stands for?

23 JUDGE MORRIS: Right.

24 MR. SEHAM: Duty officer.

25 THE WITNESS: It stands for duty officer.

1 JUDGE MORRIS: Okay, thank you. Now, before you
2 turn the page, counsel --

3 MR. SEHAM: Yes, sir.

4 JUDGE MORRIS: -- in the top, above that --

5 MR. SEHAM: Uh-huh.

6 JUDGE MORRIS: -- there's something next to the
7 captain's name, legalities. What does all that mean?

8 MR. SEHAM: I do not know. This is a company e-
9 mail, and I only understand it insofar as I understand it,
10 but that --

11 JUDGE MORRIS: Do you know what that means, Mr.
12 Estabrook?

13 THE WITNESS: No, I don't. I'm assuming -- I
14 would only be assuming to say that, at the time that this
15 report was generated, that there may have been -- I was
16 probably under subject of NOQ, not qualified, and I'm
17 assuming, since this is a joint exhibit, that this was
18 generated by FedEx legal, and at that time I wasn't legal to
19 fly. So that would be supposition on my part.

20 MR. SEHAM: This was produced by FedEx through
21 discovery.

22 JUDGE MORRIS: Okay.

23 MR. SEHAM: That's indicated by FedEx-4, so I
24 don't know if you want to ask FedEx counsel?

25 JUDGE MORRIS: Well, if the right witness comes, I

1 might.

2 MR. SEHAM: Okay, very good.

3 BY MR. SEHAM:

4 Q Now I'm going to ask you to turn to company [sic]
5 exhibit CX-8?

6 JUDGE MORRIS: Let's take -- we've been going on
7 an hour and 45 minutes or two hours. Let's take a 15-minute
8 break.

9 [WHEREUPON, there was a brief recess.]

10 JUDGE MORRIS: All parties present when the
11 hearing last recessed are again present. Complainant is
12 continuing with his direct.

13 MR. SEHAM: Okay.

14 BY MR. SEHAM:

15 Q Captain Estabrook, if you could turn to
16 complainant's exhibit CX-8?

17 A All right.

18 Q I'm directing your attention to an e-mail covering
19 a letter, and it's an e-mail from Rob Fisher to Katherine
20 Walker, with cc's to Alan Armstrong, Rob Tice, and others.
21 Can you identify who Katherine Walker is?

22 A She's the paralegal for Alan Armstrong.

23 Q And was Alan Armstrong your attorney at that time?

24 A Yes, Alan Armstrong represented me, yeah, on this
25 date in question.

1 Q Moving down to the second block, it reflects an e-
2 mail from Katherine Walker to Rob Fisher with a copy to Alan
3 Armstrong, "Please see attached letter." It reads -- if you
4 can turn to the second page, which we have paginated as C-37
5 within CX-8 -- was Alan Armstrong representing you at this
6 time?

7 A Yes, he was.

8 Q And if you turn to the last paragraph of the
9 letter on the page paginated as C-38, which reads, "At my
10 direction, an AIR-21 complaint has been filed pursuant to 49
11 U.S.C. 42121 with the U.S. Department of Labor/OSHA, and the
12 Federal Aviation Administration. See exhibits A and B
13 attached." If you turn the page to C-39, which has an A at
14 the bottom and goes on for several pages until C-43, is that
15 the AIR-21 complaint --

16 A Yes.

17 Q -- that you filed?

18 A Yes, it is.

19 Q And, going back to C-38, there's a reference to
20 Rob Tice. Was he one of the individuals who participated in
21 the August 9th meeting that we'll be coming to presently?

22 A Yes. He was one of the decision-makers in my
23 case.

24 Q Okay.

25 A He's also involved in -- he is a recipient of this

1 letter from Alan Armstrong.

2 Q Now if you can go back to the first page of this
3 exhibit, which is paginated C-36 -- we're still within the
4 exhibit CX-8 -- it reads, I acknowledge -- now, this is from
5 Rob Fisher saying, "I acknowledge receipt of your letter.
6 In accordance with established practice at FedEx, pilots
7 participating in disciplinary processes under section 19 of
8 the FedEx ALPA collective bargaining agreement are entitled
9 to representation by ALPA. No outside attorneys are
10 permitted to attend or otherwise participate in those
11 processes." Did you receive this e-mail on or about April
12 29th?

13 A Yes, I did.

14 Q Okay.

15 A Alan Armstrong sent this to me.

16 Q Now, did you have a investigative meeting on May
17 1, 2013?

18 A Yes, I did. I attended one with Rob Fisher.

19 Q And can you describe to us what happened at that
20 meeting?

21 A I asked before I ever showed up at the meeting if
22 Captain Fisher would review the tapes, the audio tapes from
23 Laredo, and he did. At least, he admitted that he did. And
24 so, when I was at the meeting, it was a very brief, short
25 meeting. Rob Fisher notified me that they were not going to

1 take any disciplinary action against me.

2 This was a meeting that he said to me upon the
3 conclusion of that meeting that Bill McDonald was upset with
4 not being able to punish me until Rob Fisher told him to
5 listen to the tapes. And he assured me that Bill McDonald
6 listened to the tapes.

7 Q Was there any discussion with respect to duty
8 officer Crook?

9 A I asked him if he was going to counsel Captain
10 Crook about pilot-pushing, and Rob Fisher said, yes, he
11 would counsel him.

12 Q Did Captain Fisher give you any reason, other than
13 the tapes, for his decision not to take any disciplinary
14 action against you?

15 A No.

16 Q And did he reference the tapes specifically in
17 terms of his decision-making?

18 A Yes.

19 Q Okay.

20 A He said that he listened to the tapes and he was
21 not going to take any further disciplinary action.

22 Q I'm going to refer you to respondent's exhibit RX-
23 8. And, again, this is the Mark Crook.

24 A Okay.

25 Q Are you there?

1 A I am.

2 Q Now, three paragraphs up from the bottom in this
3 e-mail from Mark Crook to William McDonald, Rob Fisher and
4 Michael Speer that's dated April 10th, 2013, it says, "I
5 have attached Sherrie's first conversation with Captain
6 Estabrook, my conversation, and then Sherrie's second
7 conversation.

8 "This accuses me of pilot-pushing and ordering
9 them to take off during Sherrie's second conversation. At
10 no time did that ever happen in my conversation with Captain
11 Estabrook." Did Fisher ever explain why you were brought in
12 for an interrogation when he had already received the tapes
13 three weeks in advance?

14 A He said that Bill McDonald directed him to.

15 Q If you can go to complainant's exhibit CX-9, and
16 explain to us what complainant's exhibit CX-9 is?

17 A This is a letter I received from OSHA
18 acknowledging that I had withdrawn my AIR-21 complaint the
19 day after Rob Fisher met with me on May 1st.

20 Q Did you discuss with Rob Fisher the withdrawal of
21 your AIR-21 complaint?

22 A Yes, I did. I notified him that, in lieu of the
23 fact that they weren't taking any disciplinary action
24 against me that I would, in kind, withdraw my AIR-21
25 complaint.

1 Q And how did you notify them? Was that face-to-
2 face, e-mail?

3 A I told Rob that at the meeting that we had on May
4 1st.

5 Q And if you could refer to complainant's exhibit
6 CX-10? This is a defendant's log of privileged documents.
7 I'm going to refer you to item 5 on this list. Tell me when
8 you get there. It's at a date of 04/29.

9 A I'm there.

10 Q All right. Date of 04/29, e-mails between
11 director W. McDonald and Attorney Rob Tice regarding Rob
12 Fisher letter to Attorney Armstrong. And my question for
13 you is, on April 29th, in that period, had Armstrong written
14 any letter to the company other than the letter that has
15 already been identified as part of complainant's exhibit CX-
16 8?

17 A Not that I'm aware of.

18 Q Okay.

19 A I believe that was -- you know, Armstrong's letter
20 to Fisher and these other individuals was written shortly
21 before the May 1st meeting.

22 Q Do you have any additional evidence that, in the
23 three months between your May 2nd, 2013 withdrawal of your
24 AIR-21 case, the Laredo-related case, and your August 5th,
25 2013 NOQ determination, that the Laredo incident was still a

1 matter of concern to FedEx?

2 A Say that question again?

3 Q Let me actually ask a preparatory question. Have
4 you heard a reference -- or, are you familiar with
5 references to an individual known as Mayday Mark?

6 A Well, I learned about Mayday Mark after the August
7 9th meeting. And I learned from Bill McDonald's deposition
8 testimony that he was concerned about some Laredo issues
9 being communicated by Mayday Mark to a pilot group bulletin
10 board, an internet bulletin board. And his suspicion was --
11 or, I believe that's what his testimony was in deposition --
12 that he suspected that I was the one that was Mayday Mark
13 and that I was allegedly the one that had posted some
14 comments --

15 Q Uh-huh.

16 A -- by Mayday Mark about Laredo.

17 Q And you learned of these postings just prior to
18 the August 5th NOQ designation?

19 A Yes.

20 Q Did Bill McDonald direct you to attend the meeting
21 with management on August 9th, 2013?

22 A Yes, he did.

23 Q And who was at that meeting?

24 A That was Rob Tice, Todd Ondra, Rob Fisher, and
25 myself.

1 Q And what did you hope to accomplish at this
2 meeting?

3 A I wanted to bring to their attention that we
4 weren't completing our obligation to deter Al Qaeda and
5 their bomb-makers, terrorists in general, from placing bombs
6 on our aircraft.

7 Q Uh-huh.

8 A I wanted to let them know that I felt like we
9 could revisit the issue of package tracking and live
10 aircraft tracking.

11 Q Okay.

12 A And I wanted them to be aware of the recent
13 publications that I had read on the internet. I wanted them
14 to know that I was a former FPA Security Committee chairman.
15 I wanted them to understand that I had experience in this
16 area.

17 And I gave them my background information about my
18 Air Force experience in the Middle East and Northern
19 Atlantic. I wanted to make sure that they were aware of the
20 similarities between Mohamed Atta and 9/11 and Aubrey
21 Calloway and his attack on Flight 705.

22 Q If you could turn to CX-20, complainant's exhibit
23 CX-20?

24 A Okay.

25 Q And I'm going to refer you to the first sentence.

1 Well, it's an e-mail from Rob Tice to Terry McTigue. Do
2 you know Terry McTigue is?

3 A He is an attorney with ALPA.

4 Q And it states that, "Terry and Latasha, to my
5 surprise, Rob Fisher advises that Estabrook told him he
6 doesn't want ALPA representation at the meeting. Let me
7 know if you wish to discuss with me." And it's dated August
8 7th, 2016. Did you have any discussions with ALPA during
9 this period regarding representation at the August 9th
10 meeting?

11 A I was scheduled to be at that August 9th meeting,
12 and on the 8th, the night I arrived at the airport on a
13 commercial flight, I received a phone call from McTigue --

14 Q Uh-huh.

15 A -- and he said he had received a phone call from
16 FedEx legal asking if -- asking me to -- asking me if I
17 wanted legal counsel. And that was kind of a shock to me,
18 because I thought I was coming to Memphis to talk about
19 security issues. I didn't think that I needed legal
20 representation to discuss security issues.

21 Q Now, going right to the August 9th meeting, can
22 you give us an overview of what you told Tice, Ondra and
23 Fisher at the August 9th meeting?

24 A Well, as I reported earlier, I wanted to talk to
25 them about package and aircraft tracking.

1 Q No, I'm asking you what you actually said. You
2 just testified before about what you wanted to say. And
3 then I just want to get an overview of what you did actually
4 say at that meeting. Were you the first to address the
5 group?

6 A Yes, I was. The first thing I talked about was
7 the consequences of not stopping the publishing of our
8 package and aircraft tracking data, that in the articles I
9 had been reading in the days leading up to my August 4th e-
10 mail that I had discovered that Al Qaeda was exploiting the
11 data, just as I predicted that they would do when I made
12 briefings to the company management in 2001 and 2002, and
13 that concerned me greatly. And I wanted it to stop. I
14 wanted the publishing of our data to stop. So that was the
15 first thing that I told them.

16 I believe the second thing I told them was that we
17 had a rumor in the pilot lounge that Aubrey Calloway had
18 converted to Islam, and I had heard it from two separate
19 pilots in the crew lounge. And then I think I recommended
20 to them that we start an operations research group to
21 address security issues --

22 Q Uh-huh.

23 A -- and bring a blend of different expertise in the
24 pilot group to join this effort.

25 Q Okay.

1 A I gave them a background of my military experience
2 at AWACS and told them that I had worked in the Persian
3 Gulf, I had worked in the North Atlantic, and that I had
4 chased Russian aircraft around in the North Atlantic.

5 Q And in the context of the discussion of the
6 aircraft and package tracking information issue did you
7 discuss your background as a pilot union security committee
8 chairman?

9 A Yes, I did tell them that I had been the chairman
10 of the FPA Security Committee and that I had made these
11 briefings prior to Bill Logue and Bill Henrikson, and that I
12 had appealed it as far as I could, and it just stopped at
13 Bill Logue.

14 Q And did you discuss the October cargo aircraft
15 attempts by Al Qaeda that were identified in complainant's
16 exhibits CX-12 and CX-13?

17 A Yes. The whole point of me re-initiating this was
18 because of the printer bomb incidents in 2010, and I was
19 asking Todd Ondra if he was aware of those incidents, and he
20 acknowledged and shook his head. I asked him if he was
21 aware of the comparisons between the attack on the 9/11
22 aircraft and the attack on Flight 705 here at FedEx, if he
23 was aware of those similarities.

24 Q Uh-huh.

25 A And he nodded his head. And I think, for

1 brevity's sake, that's what I said.

2 Q Was the name al-Asiri raised during your
3 discussion?

4 A Yes, it was. Al-Asiri was the bomb-maker credited
5 with making the two printer bombs in Yemen, and I briefly
6 talked about his intentions to revisit the issue, as he has
7 in the past. And I also talked about Al Qaeda's fascination
8 with always completing their objectives and returning to
9 their target. I predicted that we would see these guys
10 again.

11 Q And, again, if you could turn to joint exhibit JX-
12 4?

13 A Okay.

14 Q This is a joint exhibit that the parties recognize
15 as a typed-up version of notes that Todd Ondra took during
16 this meeting.

17 A Uh-huh.

18 Q And four lines up from the bottom it reads,
19 "Estabrook advised the only scans on shipments should be the
20 pickup and the deliver scan." Did you say words to that
21 effect during this meeting?

22 A Yes, I did. I was directing my attention at this
23 time to Todd Ondra and waiting for some sort of
24 acknowledgement from him. And I told him that we need to
25 make sure that we treat the disclosure of our tracking data,

1 both in packages and airplanes, we need to limit that
2 distribution of information. I didn't get any
3 acknowledgement from anybody in the room about any of these
4 issues.

5 Q I want to draw your attention to complainant's
6 exhibit CX-31, at the page paginated as C-165 at the bottom
7 where it begins, RFA-8-11, which is an admission by FedEx
8 which the relevant portion starts after -- with the second
9 sentence that, "FedEx admits complainant raised safety-
10 related issues associated with the industry's package
11 tracking systems. FedEx also admits complainant expressed
12 concern that terrorist groups could use tracking information
13 in carrying out terrorist attacks." Did you say things to
14 that effect during this August 9th meeting?

15 A Yes, I did. The tracking data -- the
16 dissemination of tracking data gives the enemy the ability
17 to set timing devices.

18 Q But what I'm asking you more specifically, though,
19 just to keep this moving, is, did you say things to that
20 effect, not to say whether it's -- yeah, I'm just asking to
21 confirm whether this admission is accurate insofar as I read
22 it.

23 A Yes.

24 Q Now, you said you got -- was there any response
25 from the company representatives with respect to these

1 security issues that you raised?

2 A Zero.

3 Q So did they then begin to ask you questions? And
4 how did the meeting proceed after you concluded your
5 remarks?

6 A Rob Tice asked me if I had any other security-
7 related items to bring up. I said, no, that's about it.
8 And he said, well, Bill McDonald thinks that you've had a
9 stroke. And I said, when did Bill McDonald graduate from
10 medical school?

11 And he said, well, he thinks you are a fellow
12 named Mayday Mark on a pilot bulletin board. And, as he
13 said this, he pushed this stack of papers across the table
14 to me with highlighted passages in yellow. And he said, are
15 you Mayday Mark?

16 I said, no, I'm not Mayday Mark. And he said,
17 have you visited this website and posted any comments on
18 this website? And I said, well, you know, what is the name
19 of the website. And he told me. And I said, I haven't been
20 on a pilot bulletin board in 12 years, I don't have time for
21 this nonsense.

22 And at that time Rob Fisher interrupted the
23 conversation, and he said, Mark, do you have your flight
24 physical certificate with you? I said, yes, I do. And he
25 says, may I see it? And I gave it to him. He opened it up,

1 and he said, this is not the guy.

2 And Rob says, how do you know that? Rob Tice
3 said, how do you know that? And Fisher said, his flight
4 physical was in January, Mayday Mark's is in November. And,
5 with that, Rob Tice just hung his head and looked down at
6 the floor. And Rob Fisher said, Mark, you'll be back on
7 flying status in 20 minutes just as soon as I get back to my
8 office.

9 Q Was Todd Ondra from security present during the
10 conversation about Mayday Mark?

11 A No, he wasn't present, and neither was Bill
12 McDonald. And I asked Rob Tice, I said, let me get this
13 straight, this chief pilot is questioning my ability to fly
14 airplanes, my fitness for duty, and he doesn't have the
15 balls to show up and make the accusation in person? And
16 Tice said, well, he's on vacation.

17 Q Now, you identified the attendees at this meeting
18 as -- or, the company representatives as Captain Fisher,
19 Todd Ondra, and Mr. Tice. Did any of these men takes notes
20 during the meeting?

21 A All three of them took notes. Only Todd Ondra's
22 notes were produced.

23 Q And you say your AWACS experience was discussed
24 during this meeting?

25 A Yes, it was.

1 Q Okay.

2 A And I relayed my experience to them, as I
3 indicated earlier.

4 Q Now, did you have any personal dealings with
5 Auburn Calloway during his employment with Federal Express?

6 A Yes, I did. I think I as a FedEx pilot probably
7 knew him better than any other FedEx pilot on the property.
8 We both got hired in the same class of four together, and I
9 was assigned to him as a 727 flight engineer partner in the
10 simulator.

11 So I got to know him for a period of about six to
12 eight weeks during that time frame, and he was my study
13 partner. So I spent hours and hours and days and days with
14 him. In fact, we repeated the same process several years
15 later during DC-10 flight engineer school, and again I was
16 assigned to him. He was a very introverted type guy. He
17 had trouble communicating with other pilots.

18 My wife and I, as a matter of courtesy, invited
19 him over for dinner during the first training period in the
20 727, and I actually made the mistake of playing chess with
21 him. He was a brilliant chess player. So I knew him
22 intimately. And later, after the Flight 705 incident, I was
23 called to testify in his trial.

24 Q Could you turn to complainant's exhibit CX-34?

25 A Okay.

1 Q And can you explain what this document is?

2 A This is a subpoena from FedEx served on me on
3 March 13th, 1995 by FedEx representative Maryanne Miller.

4 Q Is she here today?

5 A She is. She's the paralegal also assigned to this
6 case.

7 Q And this was for you to testify in the trial of
8 Auburn Calloway?

9 A Yes, it is.

10 Q Did you have any involvement in the immediate
11 aftermath of the Calloway hijacking, other than in the legal
12 process?

13 A On the day of the hijacking, I was called by the
14 ALPA MEC chairman, Joe DePete, who told me to turn on the
15 TV, and I did and immediately saw news coverage of the
16 pilots arriving at the hospital after the attack. And he
17 asked me to go to the hospital and assist the families,
18 which I did. And I was the first FedEx pilot to arrive at
19 the scene. And I did whatever I could to help the families.

20 Q Did Fred Smith come to the hospital?

21 A Fred showed up late that night, I think from an
22 overseas flight, and arrived at the hospital. He said hello
23 to Joe DePete and I and went back into post-op and spent
24 time with the families.

25 Q Was this the first time you met Fred?

1 A No. I met Fred back in 1989 in the crew lounge.
2 It was just he and I late one night, and I was filling out
3 some pay logs. And he walked up to me, and I extended my
4 hand and introduced myself, and I thanked Mr. Smith for
5 building a great company that provided me with a job.

6 Q Okay.

7 A And he told me -- or, he corrected me and told me
8 to call him Fred, which I later found out from other pilots
9 that he prefers to be called Fred.

10 Q After your return to flying -- well, let's make
11 sure this is in the record. At the end of the meeting, what
12 was your flying status, the end of the meeting on August
13 9th, 2013?

14 A Well, Robert Fisher, Rob Fisher told me that he
15 was going to return me to flying status. So he took me off
16 of NOQ, and I thanked him. And I went to the airport and
17 got on an airplane. I flew to Austin and turned my cell
18 phone on, and Rob Fisher called me almost immediately after
19 I turned my phone on. And, with your permission, Your
20 Honor, I'll tell you the exact language.

21 JUDGE MORRIS: Uh-huh.

22 THE WITNESS: He said, Mark, this is Rob Fisher,
23 I've got some bad news for you. And I said, what is that?
24 And he says, well, I have to place you back on NOQ. And my
25 exact words were, what the fuck for? And he said, Mark, be

1 careful, you're on a recorded line. And I said, I don't
2 give a fuck. Why? Who's making me go back on NOQ? And he
3 said, security. And I said, what for? And he said, they
4 want you to go see a psychiatrist.

5 BY MR. SEHAM:

6 Q What did you do next?

7 A Well, I gathered myself, and then I called Alan
8 Armstrong again in Atlanta. I said, I need to hire you
9 again.

10 Q And can you turn to JX-7

11 A Okay.

12 Q And is this the letter that was sent on your
13 behalf by Alan Armstrong to Rob Tice, Fisher, Ondra and
14 McDonald?

15 A Yes, it is.

16 Q And let's see, I'm going to turn your attention to
17 item 9 on page 2, which states that, "Captain Estabrook
18 attended the Friday, August 9th, 2013 meeting with Tice,
19 Ondra and Fisher, suggesting, A, the removal of all flight
20 package tracking data from the internet and a request to
21 Homeland Security that would order the remaining airlines to
22 do so as well. Does that -- did you say words to that
23 effect at the August 9th meeting?

24 A Yes, I did.

25 Q Did you request that all data be eliminated?

1 A Well, with the exception of the pickup and
2 delivery times on the packages --

3 Q Okay.

4 A -- that's an accurate statement. But I think it's
5 probably a little too inclusive.

6 Q And I want to draw your attention to 12-B on page
7 3 of the letter, which states that Federal Express -- or, is
8 demanding that, quote, "Federal Express withdraw any
9 requests made by and through chief pilot Rob Fisher that my
10 client undergo a psychiatric evaluation." And why did -- if
11 you know, why did Armstrong include this reference to a
12 psychiatric examination?

13 A Well, that's one of the first things I told Alan
14 about when I hired him. I said, they're ordering me to go
15 see a psychiatrist. And that's what Rob Fisher told me on
16 the evening of August 9th, the same day as the meeting.

17 Q And, as of this time, had you had any evaluation
18 by a company aeromedical advisor?

19 A No.

20 Q Did you or Armstrong ever receive a denial from
21 FedEx concerning this representation that you had been asked
22 to see a psychiatrist as of August 9th?

23 A No.

24 Q Did you take any measures to get FedEx to disclose
25 its alleged reasonable basis for your psychiatric

1 evaluation?

2 A Say that one more time?

3 Q Well, let me give the preface. Are you aware that
4 under the collective bargaining agreement there should be a
5 reasonable basis for the company to refer you for a 15D
6 health evaluation?

7 A Yes, I'm aware of that requirement.

8 Q And did you speak to your legal counselors about
9 getting the company to disclose what was their purported
10 reasonable basis?

11 A Yes. And I asked. On the night that Rob Fisher
12 called me, I said, why are they doing this? And he said,
13 the only thing they said to you -- or, the only thing they
14 said about you was that you know too much. So I told Alan,
15 I said, they told me over the telephone that I knew too
16 much. And that's the only basis that he ever gave me at
17 that point. And afterwards, every time Alan Armstrong asked
18 him for what their reasonable basis was, they refused and
19 declined to provide it.

20 Q All right. If you could turn to CX-28 -- or, I'm
21 sorry, CX-27, please?

22 A CX-27?

23 Q Yes, CX-27.

24 A CX-27. Okay.

25 Q And I'm going to ask you to turn to page C-153,

1 and it's also marked as ME44, so it's the fifth page of this
2 letter.

3 A C-153?

4 Q C-153 at the bottom.

5 A Okay, I'm there.

6 Q And, directing your attention to the last
7 paragraph, which states, quote, "If the company intends to
8 press forward with its demands for a psychiatric/medical
9 evaluation, we hereby request that it provide a written
10 explanation of its reasonable basis." And it goes on to --
11 did you ever receive a response to this demand through your
12 counsel that the reasonable basis be explained?

13 A Just a minute, let me look at this header for a
14 second. I am familiar with this letter. I remember him
15 asking for it, and we never received a response.

16 Q And CX-28, is that -- would you agree with me that
17 that's the response that's Robert Tice's response to the
18 Alan Armstrong letter of August 20th?

19 A Yes, it is.

20 Q And then if you could turn to CX-29? And I'm
21 going to direct your attention to the third -- is this a
22 letter that you had your legal counsel, Seham, Seham, Meltz
23 and Petersen, send to Rob Tice?

24 A Yes. I at this time transitioned from the
25 Armstrong law firm and hired your law firm, and I recall

1 this letter being sent, as well --

2 Q Uh-huh.

3 A -- with a demand for the reasonable basis.

4 Q Which is in paragraph three, correct?

5 A Yes.

6 Q Okay.

7 A And I don't recall that we ever got an answer.

8 Q Now if you could turn to complainant's exhibit CX-
9 32?

10 A I'm there.

11 Q Then did you receive a copy of this FedEx position
12 statement addressed to the Department of Labor/OSHA, dated
13 December 4th, 2013?

14 A Yes, I did.

15 Q And I want to turn your attention to page C-175,
16 okay?

17 A Okay.

18 Q And, more specifically, to the second paragraph
19 under the heading that Estabrook cannot establish causation.
20 And I'm going to ask you to go down one, two, three, four,
21 five, six, seven, eight, nine, ten lines, beginning with the
22 word, first.

23 Oh, maybe starting one sentence before there where
24 it reads, "Consistent with this provision, FedEx exercised
25 its contractual prerogative because of the bizarre nature of

1 Estabrook's e-mail and comments. First, he cryptically
2 requested that the chairman and CEO of FedEx give him a call
3 to discuss something related to 9/11."

4 It goes on to say, "He next explained to the
5 managing director of security that he had been chased all
6 over Russia in his youth. Against this strange background,
7 he made his assertions regarding the Calloway conversion --
8 excuse me, the Calloways conversion -- and relayed wholly
9 unfounded suspicions that Calloway might be advising Al
10 Qaeda." Now, with that as background, I'm going to first
11 before we go on with this refer you to complainant's exhibit
12 CX-31.

13 A I'm there.

14 Q Under the interrogatory response that begins Int.
15 7, about four-fifths down the page --

16 JUDGE MORRIS: Page 166?

17 MR. SEHAM: Yes, page 166.

18 THE WITNESS: Okay.

19 BY MR. SEHAM:

20 Q And where it states, "Complainant was placed on
21 NOQ status on or about August 5th, 2013, to facilitate
22 scheduling the meeting he had requested as soon as
23 practical, and complainant expressed his understanding of
24 this." Now, Captain Estabrook, did you ever request a
25 meeting?

1 A No, I did not.

2 Q Did anyone ever suggest to you -- at any time
3 during your meeting on August 9th or anytime thereafter in
4 your face-to-face dealings with the company, did anyone ever
5 suggest that requesting a call from the CEO as a former
6 security chairman who dealt with vice president of corporate
7 security Henrikson was inappropriate or a sign of mental
8 imbalance?

9 A No.

10 Q Going back to C-32, page 175, it says, "He next
11 explained to the managing director of security that he had
12 been chased all over Russia in his youth." Did you say
13 during the August 9th meeting that you were chased all over
14 Russia in your youth?

15 A No.

16 Q Okay.

17 A I said that --

18 Q Go ahead.

19 A -- I chased Soviet, their aircraft around the
20 North Atlantic and Eastern Seaboard.

21 Q And, going to the last sentence in terms of this
22 explanation, "Against this strange background, he made his
23 assertions regarding the Calloways conversion and relayed
24 wholly unfounded suspicions that Calloway might be advising
25 Al Qaeda." Did you ever assert that Calloway had converted?

1 A No, I did not. I simply relayed rumors that I had
2 heard in the crew lounge.

3 Q Were you ever asked about the source of your
4 rumors?

5 A No. Not until my deposition.

6 Q Did FedEx or any representative of FedEx ever
7 state a position as to whether Calloway could have
8 information of use to a terrorist organization?

9 A Yes. I believe in Todd Ondra's deposition he
10 acknowledged that.

11 Q Now, you subsequently received a directive dated
12 August 16th, 2013, ordering you to submit to a 15D
13 directive, correct?

14 A Yes.

15 Q And were you required to contact the aeromedical
16 advisor?

17 A Yes. I contacted Dr. Bettes in Dallas.

18 Q And his first name would be Thomas?

19 A Yes.

20 Q And could you describe the nature of your
21 telephone contacts with Dr. Thomas Bettes, the aeromedical
22 advisor for Federal Express?

23 A Well, I was complying with FedEx's directive to
24 contact him, and I knew that if I didn't contact him and
25 begin this process that I could face termination for

1 insubordination. So it wasn't really a voluntary act on my
2 part, but it was compliance.

3 Then, when I did speak with Dr. Bettles, we
4 discussed the basic outline of the issues, and I asked him
5 if he was aware of the collective bargaining agreement, and
6 he told me no. And I said, well, this is supposed to be an
7 independent process and you're supposed to give an
8 independent opinion about your medical opinion of me.

9 Q Uh-huh.

10 A And he said to me that he was not a gatekeeper.

11 MR. RIEDERER: Your Honor, his comments regarding
12 Dr. Bettles are hearsay.

13 JUDGE MORRIS: Where are you going with this,
14 counsel?

15 MR. SEHAM: Pardon?

16 JUDGE MORRIS: Where are you going?

17 MR. SEHAM: Oh, it's an admission against interest
18 by the company's aeromedical advisor that he was told what
19 to do and never made an independent evaluation and trampled
20 upon this individual's collective bargaining rights. I know
21 you're not an arbitrator resolving contractual disputes, but
22 one of the primary defenses of the company is that they
23 treated him as they would have treated any similarly
24 situated pilot and they complied at all times with the
25 collective bargaining agreement.

1 And they did not. They didn't have a reasonable
2 basis. They didn't allow for an independent evaluation by
3 the aeromedical advisor. And they commenced psychiatric
4 treatment directives without even consulting with his
5 aeromedical advisor.

6 So he had rights that were trampled upon, even
7 though the company at every step with OSHA has always said
8 why this shouldn't be viewed as adverse action is because we
9 were just doing what was appropriate under the collective
10 bargaining agreement.

11 JUDGE MORRIS: Counsel?

12 MR. RIEDERER: He's not an employee of FedEx. It
13 can't be a statement against interest.

14 MR. SEHAM: He is the company's aeromedical --

15 MR. RIEDERER: That's not how the hearsay
16 objection works, or hearsay exception. He's a third party.

17 MR. SEHAM: He is identified in the collective
18 bargaining agreement that he has a role, contractually
19 mandated role, as the company's aeromedical advisor.
20 Everyone is under contract. Whether it's an employee or a
21 contractor, his assigned obligation --

22 MR. RIEDERER: He's also the union's aeromedical
23 advisor.

24 MR. SEHAM: In any case, it also shows his state
25 of mind that --

1 JUDGE MORRIS: Whose state of mind?

2 MR. SEHAM: It also shows the state of mind of Dr.
3 Bettes to the effect that he was not going to engage in an
4 independent evaluation because his view was that he had no
5 obligation to pursue a medical evaluation.

6 JUDGE MORRIS: I'll let you go a little further.

7 MR. SEHAM: Uh-huh.

8 JUDGE MORRIS: Go ahead.

9 MR. SEHAM: Okay.

10 BY MR. SEHAM:

11 Q I'm not sure where you were.

12 A Well, his understanding was that he was not a
13 gatekeeper. That's what he told --

14 MR. RIEDERER: Objection.

15 BY MR. SEHAM:

16 Q Well, did he tell you -- rather than saying what
17 his understanding is, did he use the term gatekeeper?

18 A Yes, he did.

19 Q Is that --

20 A He told me he was not a gatekeeper. He told me
21 that he had been directed by FedEx to send me to a
22 psychiatrist. I asked him what the reasonable basis was, as
23 we had never received one from the company. And he said,
24 I'm comfortable with FedEx's reasonable basis. And I said,
25 what is it? And he says, well, I don't know.

1 And my understanding is that at that time the
2 company wrote Harvey Watt, his I guess contractor, and began
3 a discussion with FedEx about what their reasonable basis
4 was. I directed him to contact my personal AME, my
5 aeromedical examiner, Dr. Mark Nugent, and said that he had
6 already written a letter as to my fitness for duty, as well
7 as Dr. Leonard, who Alan Armstrong had directed me to
8 undergo an examination with.

9 So I had to aeromedical examiners who are making
10 input into my fitness for duty. And Dr. Bettes did not
11 contact them until later, much later, after I had seen the
12 psychiatrist, Dr. Glass, at which time Dr. Bettes attempted
13 to send me for treatment.

14 And I reminded him that he had to have been
15 working with aeromedical examiner, Mark Nugent, and that
16 that was a contractual conflict, as I saw it. And I told
17 him I would not be undergoing treatment and that I would
18 refer this matter to my attorney.

19 MR. SEHAM: Would you permit me to go off the
20 record, maybe seek some guidance from the tribunal?

21 JUDGE MORRIS: All right.

22 MR. SEHAM: Yes?

23 JUDGE MORRIS: Oh, wait a minute. For guidance
24 from the tribunal --

25 MR. SEHAM: Well, yes.

1 JUDGE MORRIS: -- off the record?

2 MR. SEHAM: Not off the record.

3 JUDGE MORRIS: Not off the record.

4 MR. SEHAM: All right, sure, that's fine. Part of
5 what -- and we're actually getting maybe fairly close to the
6 end here, but one of the things that we intended to go into,
7 and it relates to my response to the objection of counsel
8 previously was the several contract violations that occurred
9 during this process under -- we call it a 15D. There are
10 references to 15G. There are a multitude of safeguards
11 implanted in this contract with respect to forcing a pilot
12 to submit to mental examinations or health examinations in
13 general.

14 It's my view that the facts underlying the alleged
15 violations from our perspective are now in the record. I
16 don't know if it's the tribunal's preference, this person
17 not being a contract expert, but for him to lead you through
18 those contractual provisions or, given that the contract
19 excerpt is in the --

20 JUDGE MORRIS: That's argument.

21 MR. SEHAM: Yeah.

22 JUDGE MORRIS: You can make it -- and, again, this
23 is why I go "old school versus new-school."

24 MR. SEHAM: Uh-huh.

25 JUDGE MORRIS: Once everything is in, I don't need

1 to hear that stuff. You can make the argument since the
2 evidence is in the record.

3 MR. SEHAM: Right, okay.

4 JUDGE MORRIS: He's not an expert, apparently
5 doesn't -- you probably can't even lay the foundation with
6 him.

7 MR. SEHAM: Uh-huh.

8 JUDGE MORRIS: But, anyhow --

9 MR. SEHAM: That's the guidance I -- there seemed
10 to be guidance before where I was going too fast through
11 items, and I just wanted to make sure --

12 JUDGE MORRIS: You can argue that.

13 MR. SEHAM: -- that I wasn't prejudicing my client
14 by not.

15 JUDGE MORRIS: So I'm clear, as long as the
16 documentary evidence supports it. If you need additional
17 evidence from your witness that you glean from them --

18 MR. SEHAM: Uh-huh.

19 JUDGE MORRIS: -- that's different.

20 MR. SEHAM: It would just be a matter of leading
21 him through the contract --

22 JUDGE MORRIS: I don't need --

23 MR. SEHAM: -- and those contract excerpts are in
24 the record.

25 JUDGE MORRIS: They are in the record.

1 MR. SEHAM: Okay, very good.

2 BY MR. SEHAM:

3 Q Well, just to get one isolated fact in the record,
4 does Todd Ondra work with inflight management?

5 A No, he does not.

6 Q How long were you grounded on NOQ?

7 A Approximately four months.

8 Q And what did you feel during these four months?

9 A It was terrible. It was the worst chapter of my
10 life. I didn't know if I had a job. I didn't know if I
11 could get another one. My legal expenses were going through
12 the roof. I was --

13 Q Do you need some water?

14 A I thought what they were doing was punitive. I
15 thought they were trying to shut me up. They told me that I
16 knew too much. I didn't think I was doing anything wrong.
17 But they were trying to destroy me.

18 Q What happened to you in training when you
19 returned?

20 A They told me that I was going to have some time to
21 get current again in the simulator, and they changed their
22 position on my first day of training. They promised me
23 three warmup sims and an evaluation, and then they just
24 disappeared.

25 I had one sim, and then they had notified me that

1 I was going to get an evaluation the next day. The
2 evaluator pilot was shocked. He said, why haven't you
3 gotten more sims? I said, I have no idea. He said, well,
4 you did fine on one sim, but normally guys get three sims
5 before we do this. So he was suspicious that something that
6 happened in scheduling.

7 MR. RIEDERER: Object to that comment as lack of
8 foundation, lack of personal knowledge of what this
9 individual was thinking.

10 JUDGE MORRIS: Is the --

11 MR. RIEDERER: I'm not even sure he can identify
12 the person.

13 JUDGE MORRIS: Is the tribunal going to be
14 provided with copies of the simulation time?

15 MR. RIEDERER: No.

16 JUDGE MORRIS: Okay.

17 BY MR. SEHAM:

18 Q What is your work environment like today?

19 A I think it's stressful. I feel like I'm under a
20 microscope. I think that the work environment is still
21 threatening. When I received my deposition, they asked very
22 private questions about my wife and kids, what my sources of
23 income were.

24 And they were establishing that I had a singular
25 source of income, which was FedEx. And they finished it up

1 by saying, have I ever experienced -- or, have I ever had a
2 bankruptcy. So, to me, that was a clear implication that
3 they were threatening me before I even gave my deposition
4 testimony.

5 MR. SEHAM: We have no further questions at this
6 time but would reserve the right for the witness to come
7 provide rebuttal testimony, particularly if the exhibits
8 relating to the psychiatric analyses are deemed admissible.

9 JUDGE MORRIS: All right. Counsel? And, so the
10 parties know, after you're done with questions, I will have
11 questions of the witness, as well.

12 **CROSS EXAMINATION OF**

13 **MARK ESTABROOK**

14 BY MR. RIEDERER:

15 Q Good afternoon, Captain Estabrook. First, I want
16 to ask you some questions about your management chain. You
17 are an A300 captain, correct?

18 A Yes.

19 Q You report to what position title?

20 A You mean I report as?

21 Q Who is your direct supervisor? What is that
22 person's title?

23 A I believe it's Captain Delores Pavletic.

24 Q And is she a fleet captain?

25 A Yes, she is, A300 fleet captain.

1 Q Are fleet captain is formally referred to as chief
2 pilots?

3 A I think for my aircraft type, yes, she could be
4 considered a chief pilot.

5 Q Does the fleet captain report to the system chief
6 pilot?

7 A That's my understanding.

8 Q So it goes fleet captain and system chief pilot,
9 correct?

10 A Yes.

11 Q And above a system chief pilot, is that the vice
12 president of flight operations?

13 A Yes.

14 Q Above the vice president of flight operations,
15 that is the senior vice president of flight operations?

16 A I don't know about that.

17 Q Do you know above the senior vice president of
18 flight operations, is there an executive vice president of
19 air operations?

20 A I don't know.

21 Q Do you know who Tim Leonard is?

22 A I believe he has been a recent addition to senior
23 management. That's all I can tell you.

24 Q You don't know whether or not he's the vice
25 president of flight operations?

- 1 A I don't know.
- 2 Q Do you know who Jim Bowman is?
- 3 A Yes.
- 4 Q Do you know what his title is?
- 5 A I don't know his current title, but I know who he
6 is.
- 7 Q Is he above Tim Leonard?
- 8 A I don't know.
- 9 Q Is it possible he's the senior vice president of
10 flight operations?
- 11 A It's possible.
- 12 Q Do you know who Jim Parker is?
- 13 A I've heard his name before.
- 14 Q Is he the executive vice president of air
15 operations?
- 16 A He could be.
- 17 Q Do you know who Dave Bronczek is?
- 18 A I know he's a senior official at FedEx.
- 19 Q You don't know him as the CEO of FedEx Express?
- 20 A Well, I know that he had other positions in the
21 company. He's been moving up.
- 22 Q Currently, do you know him as the CEO of FedEx
23 Express?
- 24 A I may have. I've just lost track who the current
25 CEO is.

1 Q Do you know how long he has been the CEO of FedEx
2 Express?

3 A Well, I know that FedEx Corporation has Fred Smith
4 as a CEO, and that's who I think is the CEO.

5 Q You worked for --

6 A But I'm not a business major, and I don't -- I'm
7 not a business lawyer.

8 Q You work for FedEx Express, correct?

9 A Yes.

10 Q And you have worked for FedEx Express since 1989?

11 A Yes.

12 Q I want to ask you some questions about the
13 security department. You're familiar with Todd Ondra?

14 A Yes.

15 Q Do you know his position as the managing director
16 of aviation security?

17 A Yes.

18 Q Do you know how big his team is?

19 A No.

20 Q Would it surprise you if it was about 50 people?

21 A I have no comment.

22 Q Do you know who Terry Harris is?

23 A No.

24 Q You don't know him as the vice president of
25 international security?

1 A No.

2 Q Do you know who Bruce Townsend is?

3 A No.

4 Q You don't know him as the vice president of
5 domestic security?

6 A No.

7 Q Do you know anything about the domestic security
8 department?

9 A No.

10 Q Do you know anything about the international
11 security department?

12 A Only from my experiences with Bill Henrikson in
13 2001 and 2002.

14 Q So 15 years ago you had experience with Bill
15 Henrikson?

16 A Yes.

17 Q You're a member of the FedEx Pilot Association,
18 correct?

19 A No.

20 Q You are not a part of that union?

21 MR. SEHAM: I'm going to object to questions about
22 his union membership. I think that's a Railway Labor Act
23 issue.

24 MR. RIEDERER: Well, he mentions --

25 JUDGE MORRIS: Overruled.

1 BY MR. RIEDERER:

2 Q In the 2001-2002 time frame, you were in charge of
3 the union security committee, is that correct?

4 A Yes.

5 Q You were an advocate for pilots?

6 A Yes.

7 Q You interfaced with government agencies, including
8 the FAA --

9 A Yes.

10 Q -- in that role?

11 A Yes.

12 Q And you interfaced with FedEx management in that
13 role?

14 A Yes.

15 Q During that time, did you become familiar with the
16 management reporting chains at flight management and
17 security management?

18 A Somewhat.

19 Q As the head of the security committee, did you
20 interact with any of the current flight managers?

21 A Yes.

22 Q Who did you interact with that's a current flight
23 manager?

24 A At that time?

25 Q Yes.

1 A Jack Lewis.

2 Q And what is his position now?

3 A I don't know.

4 Q Is he a system chief pilot?

5 A No.

6 Q Was he in 2013?

7 A No.

8 Q So you're not sure if he was in flight management,
9 either now or in 2013?

10 A I have no knowledge of what he was doing in 2013.

11 Q Who else did you interact with, current flight
12 managers, when you were head of the security committee?

13 A Well, I corresponded with Bruce Cheever, the vice
14 president of flight ops.

15 Q And in 2013 was he the vice president?

16 A No.

17 Q Did you correspond with -- when you were head of
18 the security committee, you didn't correspond with any of
19 the flight management team that was in place in 2013, did
20 you?

21 A I don't think so, other than -- if you are talking
22 about strictly flight management, I would say no.

23 Q When you were head of the security committee, did
24 you interact with any of the current security managers?

25 A In 2001 and 2002?

- 1 Q Yes.
- 2 A Yes.
- 3 Q Was that Todd Ondra?
- 4 A Yes, and Bill Henrikson.
- 5 Q I'm talking about --
- 6 A Okay.
- 7 Q Did you interact with any of the security managers
8 that were in place in 2013?
- 9 A Todd Ondra.
- 10 Q Bill Henrikson was not there, correct?
- 11 A Correct.
- 12 Q Todd Ondra, was he the director of aviation
13 security in 2001 and 2002?
- 14 A No. Not that I recall.
- 15 Q Could he --
- 16 A He identified himself to me as an assistant to
17 Bill Henrikson.
- 18 Q Is it possible he was a manager in the Memphis
19 hub?
- 20 A I don't know.
- 21 Q In 2013, was ALPA in place?
- 22 A Yes.
- 23 Q And they have a security chairman?
- 24 A I assume so.
- 25 Q And you had the opportunity to bring your concerns

1 to that individual, is that correct?

2 A I chose not to.

3 Q Between 2002 and 2013, you didn't raise any
4 concerns about flight security or package security, is that
5 correct?

6 A That is correct.

7 Q And in 2010, when the printer bombs were
8 discovered, you didn't raise those concerns to anyone at
9 FedEx, is that correct?

10 A That is correct.

11 Q You were aware about them at the time, is that
12 correct?

13 A I was aware of the printer bomb attempts. I was
14 not aware of Al Qaeda exploiting the model that I had
15 predicted and briefed the senior management in 2001 and
16 2002.

17 Q You knew that they were attempting to get printer
18 bombs on FedEx planes, correct?

19 A From the news reports, that is correct.

20 Q But you didn't report your concerns at that time
21 to anyone in Fedex management, correct?

22 A I had no knowledge that Al Qaeda had shipped prior
23 boxes within the month prior to the shipment of the printer
24 bombs. Therefore, I did not realize that they had utilized
25 the model that I predicted.

1 Q And that's by timing the devices?

2 A That's correct, collecting ground and flight
3 tracking data to set the timers on the bombs.

4 Q In 2010, you knew that FedEx -- or, that the FAA
5 had live flight tracking data, is that right, of FedEx
6 planes?

7 A I know that on FedEx airplanes there are
8 electronic pieces of equipment onboard the airplane that
9 transmit data.

10 Q And you knew that in 2010?

11 A Well, yes.

12 JUDGE MORRIS: Are you talking about Mode-S?

13 THE WITNESS: Yes. I'm talking about the
14 transponders, ADS-B.

15 JUDGE MORRIS: Okay.

16 BY MR. RIEDERER:

17 Q You are required to get an FAA medical
18 certification twice a year, is that correct?

19 A Yes.

20 Q And a certified aeromedical advisor is required to
21 conduct this review?

22 A Yes.

23 Q And the aeromedical advisor conducts a
24 comprehensive medical exam, is that correct?

25 A Yes.

1 Q If a pilot is suffering from anxiety, that may
2 result in a failed medical exam, is that correct?

3 A I'm not a medical expert.

4 Q But it is possible if someone is suffering from a
5 high level of anxiety then they may fail an FAA medical
6 certification?

7 MR. SEHAM: Objection, no foundation.

8 JUDGE MORRIS: Well, do you want me to take
9 official notice of Part 65?

10 MR. RIEDERER: Yes.

11 JUDGE MORRIS: I think it's Part 65.

12 MR. RIEDERER: I actually don't know that, Your
13 Honor.

14 JUDGE MORRIS: Let me look it up real quick. I
15 think it's -- you're talking about the medical requirements
16 for a first class airman's medical?

17 MR. RIEDERER: I'm getting to the fact that he
18 admitted that it was possible in his deposition.

19 JUDGE MORRIS: No, that's dispatcher. Maybe it's
20 Part 63. It's Part 67.

21 BY MR. RIEDERER:

22 Q Is it true that a pilot suffering from a
23 heightened level of stress may have -- that may result in a
24 failed medical exam?

25 MR. SEHAM: I'm going to object. Again, there's

1 no foundation and no relevance to his answers to these
2 questions. This is just really to no end.

3 JUDGE MORRIS: Well, it's not to no end, but do
4 you know?

5 THE WITNESS: No, I don't know. I'd have to rely
6 on my aeromedical examiner, Dr. Mark Nugent, to answer your
7 questions.

8 BY MR. RIEDERER:

9 Q I'm going to hand you a copy of the deposition
10 that you took in this case. Is that -- can you please turn
11 to page 51 of your deposition?

12 A Okay.

13 Q Can you look at line 10? The question is, "Do you
14 believe, if a patient showed a heightened level of stress
15 beyond what a normal pilot endures, would that result in a
16 failed medical?" Answer, "It possibly could." Is that how
17 you testified?

18 A It says it right here.

19 Q Now I want to ask you some questions about the
20 global operations control center. Did I describe that
21 correctly?

22 A The GOC?

23 Q Yes.

24 A Yes.

25 Q Is that what it's called?

1 A Yes.

2 Q Is that located in Memphis?

3 A Yes.

4 Q You toured that facility?

5 A No.

6 Q It staffs licensed meteorologists, is that
7 correct?

8 A Say that one more time?

9 Q It staffs licensed meteorologists, is that
10 correct?

11 A Yes.

12 Q And it staffs dispatchers?

13 A Yes.

14 Q Do you know how many dispatchers work there?

15 A No.

16 Q Have you ever worked as a dispatcher at FedEx?

17 A No.

18 Q Is it true that dispatchers work with the pilots
19 to create a flight plan release?

20 A Yes.

21 Q What goes on a flight plan release?

22 A Can you be more specific?

23 Q Well, my question is -- well, let me ask, do you
24 know what goes on a flight plan release?

25 A Yes.

1 Q What goes on a flight plan release?

2 A Your destination, your departure, your aircraft
3 tail number, the crew onboard. What all would you like to
4 know?

5 Q I asked you --

6 A Do you want everything? We could be here for
7 three days, if you'd like.

8 Q Maybe if you give it a high level, that would be
9 helpful.

10 A Okay, it has your departure, your destination,
11 your altitude, your tail number. It has how much fuel you
12 have onboard. It has your route of flight. It has
13 maintenance issues listed on the airplane. It has the name
14 of the dispatcher, has the name of the captain and the first
15 officer. It has such things as ground speed, airspeed.
16 What would you like to know?

17 Q That is what I'd like to know, thank you.

18 A Okay.

19 Q So it will give you an idea of how much gas is on
20 the plane, or fuel?

21 A Yes.

22 Q And it will give you a route?

23 A Yes.

24 Q In situations where there may be weather, does it
25 give you an alternate airport?

1 A Yes.

2 Q How are these flight plan releases sent to the
3 flight crew?

4 A They are published on the company computer.

5 Q You can access that remotely on a laptop?

6 A Yes.

7 Q Are dispatchers pilots?

8 A Some are, some aren't.

9 Q Within GOC, there are duty officers, is that
10 correct?

11 A I don't know where -- as far as the hierarchy is
12 concerned, I don't know where the duty officer, if he is a
13 subordinate of flight operations or whether he's a
14 subordinate of GOC, I can't answer that.

15 Q Have you ever worked as a duty officer?

16 A No.

17 Q Do you know how many duty officers are on each
18 shift?

19 A No.

20 Q Duty officers are pilots, as well, is that
21 correct?

22 A Yes.

23 Q As pilots, they are familiar with the rights and
24 the obligations of the flight crew, is that correct?

25 MR. SEHAM: Objection.

1 JUDGE MORRIS: Overruled.

2 THE WITNESS: I would hope so.

3 BY MR. RIEDERER:

4 Q Captain has the final decision as to whether it's
5 safe to fly, is that correct?

6 A Yes.

7 Q Within global operations control, certain
8 telephone lines are recorded, is that correct?

9 A Yes.

10 Q Are you familiar with the TelStrat system?

11 A No.

12 Q Let me ask you some questions about your Laredo
13 flight. That was in April of 2013, right?

14 A Yes.

15 Q It's true that you did not arrive at the airport
16 by your shift time, is that correct?

17 A Yes.

18 Q And you're required to show -- the required show
19 time is one hour prior to the originally scheduled departure
20 time, is that correct?

21 A Yes.

22 Q You spoke with a dispatcher on this occasion?

23 A Yes.

24 Q Sherrie Hayslett?

25 A Yes.

1 Q During your first call to Ms. Hayslett, did you
2 tell her that you were going to be late into Memphis?

3 A Yes.

4 Q During your first call with Ms. Hayslett, did you
5 tell her that you were in your hotel room getting your bags?

6 A Yes.

7 Q During your first call with Ms. Hayslett, did you
8 tell her that you were going to get a taxi as you watched
9 the weather at the hotel lobby?

10 A Yes.

11 Q Are you familiar with ACARS, A-C-A-R-S?

12 A Yes.

13 Q What does that stand for?

14 A You know, it escapes me right now, but it's our
15 communication device with the company.

16 Q Does that communication device work -- let me
17 rephrase that. Are messages sent and received by the flight
18 crew through ACARS?

19 A Yes. It's a messaging system.

20 Q That messaging system is located in the plane, is
21 that correct?

22 A Yes.

23 Q It's not located on your laptop?

24 A No.

25 Q You spoke with the duty officer on this occasion,

1 correct?

2 A Yes.

3 Q And that was Scott Crook?

4 A No.

5 Q Mark Crook?

6 A Yes.

7 Q Sorry, Scott Crook was an opposing attorney in one
8 of my cases. I have made that mistake frequently in this
9 case. When you first spoke to him, he had to call you to
10 figure out where you were, is that correct?

11 A He did call me while we were in the hotel.

12 Q And he was looking for you. He was trying to
13 determine your whereabouts, is that correct?

14 A You would have to ask him.

15 MR. SEHAM: Objection. The transcripts reflect
16 the opposite. You are you asking the opponent for
17 speculation about what the duty officer thought, the fact
18 the duty officer already knew according to -- that's in the
19 transcript.

20 JUDGE MORRIS: Sustained.

21 MR. RIEDERER: Your Honor, if I may, we'd like to
22 play an audio recording.

23 JUDGE MORRIS: All right. It's JX-1?

24 MR. RIEDERER: Yes. Your Honor, can we go off the
25 record while she gets set up?

1 JUDGE MORRIS: Yes. Before we actually go off the
2 record, counsel, specifically within Part 67 and 67.107, and
3 I also note under 67.107 the word anxiety is not in 67.107.
4 We're off the record.

5 [WHEREUPON, there was a brief recess.]

6 JUDGE MORRIS: All parties present when the
7 hearing last recessed are again present. Go ahead.

8 VOICE 2: Hello?

9 VOICE 1: Mark, hey, Mark Crook, the duty officer,
10 how are you?

11 VOICE 2: Okay.

12 VOICE 1: Hey, are you guys at the ramp yet?

13 VOICE 2: No, we're sitting in the lobby at the
14 hotel watching Intellicast.

15 VOICE 1: Watching the what?

16 VOICE 2: Intellicast. Are you familiar with
17 Intellicast?

18 VOICE 1: Yes. I thought you said the broadcast.

19 VOICE 2: Oh, no, no, no. We're -- Sherrie. who
20 is working the flight, she's working 1317?

21 VOICE 1: Yes.

22 MR. RIEDERER: If it's okay, we'll restart it,
23 Your Honor.

24 JUDGE MORRIS: Okay.

25 VOICE 2: Hello?

1 VOICE 1: Mark, hey, Mark Crook, the duty officer,
2 how are you?

3 VOICE 2: Okay.

4 VOICE 1: Hey, are you guys at the ramp yet?

5 VOICE 2: No, we're sitting in the lobby at the
6 hotel watching Intellicast.

7 VOICE 1: Watching the what?

8 VOICE 2: Intellicast. Are you familiar with
9 Intellicast?

10 VOICE 1: Yes. I thought you said the broadcast.

11 VOICE 2: Oh, no, no, no. We're -- Sherrie. who
12 is working the flight, she's working 1317?

13 VOICE 1: Yes.

14 VOICE 2: She's our dispatcher, and she's aware of
15 it. I called her an hour ago, and she and I are on the same
16 page.

17 VOICE 1: Okay, what was the decision? What's
18 going on?

19 VOICE 2: We're on a weather hold. We're not
20 going to fly through a line of thunderstorms.

21 VOICE 1: Okay, they put you on a weather hold?

22 VOICE 2: No, I put myself on a weather hold. I
23 am not going to fly through a line of thunderstorms.

24 VOICE 1: Okay.

25 VOICE 2: Have you looked at the radar?

1 VOICE 1: Mark, I'm very familiar with it, but,
2 you know, typically -- we just found out that you guys are
3 supposed to push in 10 minutes, and you're not at the ramp.
4 So this is the first I've heard of it.

5 VOICE 2: Okay, somebody in GOC is not talking to
6 the woman that's working the flight. Somebody got involved,
7 and they don't know what's going on, and I made sure over an
8 hour ago that they knew what was going on. And she agreed
9 with me. She said there's no way.

10 VOICE 1: Okay.

11 VOICE 2: So we're waiting for the weather to pass
12 through, and then we'll -- if we can time it right, we'll
13 arrive right at -- ending up on the east side of Memphis.

14 VOICE 1: Okay, so what time are you planning to
15 take off?

16 VOICE 2: I don't have a time. We're watching the
17 weather.

18 VOICE 1: Okay, the weather has sped up. They're
19 expecting it to move through here about 30 minutes earlier
20 than they expected before.

21 VOICE 2: Well, I'll make that determination at
22 the ramp, but we're not -- I don't see us taking off in 30
23 minutes.

24 VOICE 1: I didn't say to take off in 30 minutes.
25 I just told you the weather had sped up 30 minutes.

1 VOICE 2: *Okay, but I want you to know that I'm on*
2 *top of it and Sherrie's on top of it.*

3 VOICE 1: *All right.*

4 VOICE 2: *All right, thank you, sir.*

5 BY MR. RIEDERER:

6 Q So it is true that he didn't know where you were,
7 is that right?

8 MR. SEHAM: *Objection. Objection, speculation.*
9 *He can only testify what was said to him.*

10 JUDGE MORRIS: *Overruled.*

11 THE WITNESS: *No, I don't agree with that. I*
12 *think he knew where I was from the first moment he called*
13 *me.*

14 BY MR. RIEDERER:

15 Q Following this occasion, did you meet with your
16 fleet captain?

17 A I met with my fleet captain on May 1st sometime
18 after that.

19 Q Did your story of what happened and Mark Crook's
20 story of what happened differ?

21 A Yes, it did.

22 Q And your fleet captain was Rob Fisher?

23 A Yes.

24 Q And he wanted to meet with you pursuant to 19D of
25 the collective bargaining agreement?

1 A Yes.

2 Q And the letter he sent you that has been discussed
3 already is joint exhibit JX-2, if you want to take a look at
4 that exhibit?

5 A I have lost track. Joint exhibit? Okay, now,
6 where do I go?

7 Q The tab market 2 on the top.

8 A All right. Yes.

9 Q This letter specifically references 19D, is that
10 correct?

11 A No.

12 Q I'm sorry, does it specifically reference 19D-1?

13 A Yes.

14 Q You did not receive any written discipline for
15 your conduct following this meeting, is that correct?

16 A Yes.

17 Q During this meeting, Captain Fisher emphasizes
18 that you need to show up for work on time, is that correct?

19 A He mentioned it towards the end of the meeting.

20 Q You filed an AIR-21 complaint directly prior to
21 your meeting with Captain Fisher, correct?

22 A Say that one more time?

23 Q You filed an AIR-21 complaint prior to your
24 meeting with Captain Fisher, is that correct?

25 A Yes.

1 Q Did you provide a copy of your AIR-21 complaint to
2 Captain Fisher prior to that meeting?

3 A Yes.

4 Q Did you, or through your counsel?

5 A Through my counsel.

6 Q During your meeting, you mentioned to Captain
7 Fisher that you were withdrawing your complaint, is that
8 correct?

9 A Yes.

10 Q He acted surprised by that?

11 A I think you'd have to ask him.

12 Q Okay. Turn to your deposition on page 114.

13 A Where, now?

14 Q Your deposition, page 114. No, it's underneath.

15 A This one?

16 Q It's the one I handed you earlier with the thumb
17 drive on it.

18 A And what page?

19 Q Page 114.

20 A Page 114. Okay, I'm there. And you said he acted
21 surprised and said?

22 Q Yes.

23 A Okay.

24 Q So is that -- your testimony from your deposition
25 is that he was surprised, is that correct?

1 A Apparently so.

2 Q Todd Ondra was not involved in the events
3 surrounding your Laredo flight, is that correct?

4 A I believe that's correct.

5 Q I want to talk to you about your concerns with the
6 tracking data. In your deposition, you said that your
7 concern was with the flight tracking data, is that correct?

8 A And what page?

9 Q I'm asking you an open-ended question first.

10 A Well, I --

11 Q During your deposition, your concerns were with
12 the flight tracking data, is that correct?

13 A That's one of my concerns.

14 Q Turn to page 68.

15 A Okay.

16 Q Line 10. "What was your position with respect to
17 realtime tracking at that time?" "I believe and then, as I
18 do today, that we should stop publishing realtime aircraft
19 tracking because it incentivizes the placement of bombs on
20 our airplanes." Is that how you testified?

21 A Yes, but your question was specific to realtime
22 tracking. That's what aircraft tracking is.

23 Q Turn to page 82.

24 A Okay.

25 Q "It was your concern that the publishing of our

1 flight data in realtime was a security threat?" "Yes, sir."

2 "And do you still consider that to be a problem?" "Yes,
3 sir."

4 A Again --

5 Q Hold on. "And is that -- does the publishing of
6 our flight data, those issues were raised in 2013 to Bill
7 [sic] Ondra and Rob Tice and Rob Fisher?" "Yes, sir."

8 A Well, first off let's -- can we deal with the
9 first quote?

10 Q Is that how you testified?

11 A Can we identify the quote first?

12 JUDGE MORRIS: Wait a minute. Counsel gets to ask
13 the questions, not the witness.

14 THE WITNESS: Are you talking about on the bottom
15 of page 82?

16 MR. RIEDERER: Line 18 on page 82 through line 3
17 on page 83.

18 BY MR. RIEDERER:

19 Q You identified your concerns were with the flight
20 tracking data?

21 A The question is about realtime tracking as a
22 security threat. By the nature of your question, you're
23 talking about aircraft tracking.

24 Q Okay.

25 A Package tracking is not published in realtime.

1 Both package tracking and aircraft tracking are all
2 historical in nature to a terrorist. But your question in
3 this deposition was related specifically to realtime
4 tracking.

5 Q Can you turn to page 94?

6 A I'm there.

7 Q Line 7, the question is, "Do you believe today
8 that FedEx takes aviation security seriously?" Your answer
9 is, "I have mixed feelings." "Can you explain your answer?"
10 "I believe that the concerted effort between FedEx and the
11 FAA to continue publishing realtime tracking data." And I
12 asked, "Realtime tracking data of planes?" Answer, "Of
13 planes, of aircraft, incentivizes, promotes, encourages
14 terrorist organizations to place bombs on our airplanes."
15 Is that correct?

16 A In the context of realtime tracking, yes. But I
17 also believe -- which wasn't addressed in this deposition --
18 that the company has the ability to opt out of publishing
19 realtime tracking. So far, they haven't opted out.

20 Q Page 202?

21 A And, again, you didn't ask me about package
22 tracking. You're targeting realtime tracking data of
23 airplanes.

24 Q Can you turn to page 202, please?

25 A I'm there.

1 Q The question is, "And their effort to interfere
2 with the 15D evaluation, what was --

3 A What line? What line?

4 Q Line 6.

5 A Okay, I'm there.

6 Q "And their effort to interfere with the 15D
7 evaluation, what was it in retaliation for?" "As I have
8 stated before, it's in retaliation for my refusal to take
9 off into thunderstorms at Laredo. It's also in retaliation
10 for me trying to raise safety and security concerns to FedEx
11 Corporation."

12 "We have talked about the Laredo process, right?"

13 Answer, "Yes." "And the safety concerns are the safety
14 concerns we talked about earlier about the live tracking of
15 planes, is that correct?" "Yes, sir." Is that how you
16 testified?

17 A Yes.

18 Q Of course, the live tracking data, the realtime
19 data, is required by the FAA, is that correct?

20 A I don't know if I can draw a legal conclusion or
21 not, but I have an assumption that the FAA requires carriers
22 to have electronic equipment to monitor their position.

23 Q And that's from all flights operating in the
24 United States, correct?

25 A What's my understanding. With the exception of

1 crop dusters and air show pilots and some other limited
2 aircraft.

3 Q If we did not allow the FAA to track FedEx flights
4 through transponders, they would not know where our planes
5 are, is that right?

6 A Correct.

7 Q Air traffic control wouldn't know where the planes
8 are, is that right?

9 A Correct.

10 Q Is it true that FedEx doesn't share its flight
11 tracking with customers?

12 A Incorrect.

13 Q How is it incorrect?

14 A Read the question one more time, please.

15 Q FedEx does not share its flight tracking data with
16 its customers.

17 A The data is available through third parties.

18 Q But my question is --

19 A By virtue of participating in the FAA's airspace
20 system and complying with the mechanical rules for equipment
21 that's required onboard aircraft, they do disseminate
22 information through third-party companies.

23 Q Are they the ones disseminating it to third
24 parties?

25 A No, it's --

1 Q Or is it the FAA?

2 A I'm talking about third parties exploiting the
3 signals of aircraft and republishing it for commercial
4 reasons.

5 Q I'm asking you, does FedEx actually publish its
6 flight tracking data to its customers --

7 A By virtue of --

8 Q -- through fedex.com?

9 A Well, they did at the time of 9/11.

10 Q That's not my question, though. Do they do it
11 now, or did they do it in 2013?

12 A I do not believe that FedEx publishes realtime
13 flight tracking information on its website.

14 Q Okay.

15 A But I do believe that they publish it in the
16 airspace and radio waves in the United States.

17 Q Through the transponder that the FAA requires?

18 A Correct, and through ADS-B.

19 Q Now, you previously raised your concerns with
20 flight tracking data to the FAA administrator, is that
21 correct?

22 A Yes, I did.

23 Q But the FAA did not make any changes as a result
24 of your concerns, is that correct?

25 A I don't know.

1 Q Well, you raised the concern that the live
2 tracking shouldn't be published, is that right?

3 A Correct.

4 Q And it's still published today, is that correct?

5 A Correct. But the carrier has the option to opt
6 out, and I'm not aware of any communications between FedEx
7 and the FAA about whether or not they chose to opt out. So
8 I don't know what kind of correspondence is going on between
9 the FAA and FedEx about that subject.

10 Q You previously raised your concerns about flight
11 tracking data to members of the security department,
12 including Todd Ondra, is that correct?

13 A I raised both package and flight tracking issues
14 with Todd Ondra and Bill Henrikson.

15 Q And, when you first did that in 2001-2002 time
16 frame, did Todd Ondra refer you to a 15D medical exam?

17 A No, he did not.

18 Q Now, you admit that you're not an expert on
19 FedEx's package tracking system, is that right?

20 A That's correct.

21 Q So you can't testify with accuracy what's on that
22 system and what's not, is that correct?

23 A I can only testify as to my direct experience with
24 FedEx's package tracking system on their website.

25 Q The data that FedEx publishes on its website is

1 historical, correct?

2 A It is all historical.

3 Q It's not in realtime?

4 A Neither is the live aircraft tracking. It's
5 labeled as live tracking, but, in reality, there is a slight
6 delay.

7 Q If a customer is shipping a package, could that
8 customer determine, based on what FedEx publishes to its
9 customers, what plane the package was on?

10 A No. It could -- the customer could determine
11 whether it was in a sorting facility, on a vehicle, what
12 city it's in, the time frame.

13 Q Your concern, of course, is when it gets into the
14 plane, is that right?

15 A No. I'm interested in all of the tracking data.

16 Q You testified earlier that the terrorists could
17 block out time when it was in a sorting facility because it
18 wouldn't be as public if the bomb exploded?

19 A That's correct. And add the transit times and the
20 loading times. Even if it's on an aircraft in a sorting
21 facility and it detonates inside the cargo hold of an
22 aircraft, it's still not as big news as if they detonated a
23 airplane in the sky over Chicago, for example.

24 Q You wanted to talk to Fred Smith to discuss your
25 concerns with the FAA's use of flight tracking data, is that

1 correct?

2 A Yes.

3 Q To facilitate --

4 A And package tracking.

5 Q To facilitate that meeting, you asked the system
6 chief pilot to have Mr. Smith call you, is that right?

7 A The assistant chief pilot?

8 Q The system chief pilot.

9 A System chief pilot. Yes, I asked Bill McDonald to
10 arrange a phone call with Fred Smith.

11 Q Well, specifically, you asked Bill McDonald to
12 have Fred Smith call you?

13 A Yes.

14 Q And you told Captain McDonald that you were about
15 to go to sleep and that you were going to turn your phone
16 off?

17 A Yes.

18 Q Can you look at respondent's exhibit RX-13?

19 A This one?

20 Q Yes.

21 A Yes, I'm there.

22 Q Is that the e-mail you sent to Captain McDonald
23 requesting to have Mr. Smith call you?

24 A Yes.

25 Q It says you're the security chairman at ALPA. Is

1 that a misstatement?

2 A Well, FPA was on its way out, and ALPA had been --
3 had just won the election. So they were in between
4 representative bodies.

5 Q And you were the security chairman with the FPA?

6 A Correct.

7 Q Not with ALPA?

8 A Yes, but ALPA officials were already assuming
9 control of the union at that time.

10 Q So this statement that you're the security
11 chairman at ALPA is not correct?

12 JUDGE MORRIS: Hold on one second. We have a
13 technical issue here. Go ahead.

14 BY MR. RIEDERER:

15 Q That statement is incorrect?

16 A Do you want me to continue?

17 JUDGE MORRIS: Yes.

18 THE WITNESS: Technically speaking, I was not the
19 security chairman of ALPA, although I was attending all ALPA
20 meetings, national ALPA meetings. We were de facto ALPA,
21 but we were -- we had already transitioned from the FPA to
22 ALPA. The official date of assumption with ALPA was not in
23 place yet.

24 BY MR. RIEDERER:

25 Q Did you hold the title of security chairman with

1 ALPA?

2 A No.

3 Q So you weren't even a member of ALPA, is that
4 right?

5 A Yes, I was.

6 Q Did you opt out of ALPA?

7 A Yes.

8 Q In the e-mail, you don't explain that you're
9 reporting some violation of FAA law or regulation, is that
10 correct?

11 A In the e-mail?

12 Q Yes.

13 A No, I did not.

14 Q Following that e-mail, Captain McDonald placed you
15 on NOQ on August 5th, is that right?

16 A Yes.

17 Q And you believe the decision to place you on NOQ
18 was retaliation for refusing to fly through thunderstorms in
19 April of 2013?

20 A Yes.

21 Q You were paid while you were on NOQ?

22 A Yes.

23 Q In response to your e-mail requesting to have Fred
24 Smith call you, Captain McDonald set up a meeting with you,
25 Rob Fisher, Todd Ondra, and Rob Tice, is that correct?

1 A Repeat that one more time?

2 Q In response to your e-mail to Captain McDonald
3 requesting that Fred Smith call you, Captain McDonald set up
4 a meeting with you, Rob Fisher, Todd Ondra, and Rob Tice, is
5 that correct?

6 A I disagree with that.

7 Q Did Captain McDonald set up a meeting with you,
8 Rob Fisher, Todd Ondra, and Rob Tice?

9 A Yes, he did.

10 Q And it was following the e-mail that you sent to
11 him regarding -- or, requesting him to have Fred Smith call
12 you?

13 A Yes.

14 Q Rob Fisher was your direct manager?

15 A With respect to your previous question --

16 JUDGE MORRIS: Wait a minute. Answer his
17 question.

18 THE WITNESS: Okay. Repeat the question?

19 BY MR. RIEDERER:

20 Q Rob Fisher was your direct manager?

21 A Yes.

22 Q Todd Ondra was the managing director of aviation
23 security?

24 A Yes.

25 Q Rob Tice was a lawyer with labor relations?

1 A Yes.

2 Q FedEx arranged for your travel to Memphis for the
3 meeting, is that correct?

4 A Yes.

5 Q They put you in a hotel?

6 A Yes.

7 Q Paid for it?

8 A I believe I was reimbursed for it. I don't
9 recall. Perhaps they did.

10 Q During the meeting you had with those individuals,
11 did you point out any flaws with FedEx package screening
12 procedures?

13 A Yes.

14 Q What did you point out that was a flaw?

15 A Well, I wanted basically to disengage the tracking
16 of these packages.

17 Q I'm talking about the screening of packages before
18 they enter the plane --

19 A No, I didn't.

20 Q -- did you point out any flaws with that process?

21 A No.

22 Q Okay.

23 A I didn't separate the two, no.

24 Q During the meeting, you also informed the group
25 that you had heard Auburn Calloway had converted to Islam,

1 is that correct?

2 A I reported the rumor.

3 Q Auburn Calloway was the pilot who attempted to
4 take down a FedEx plane in 1994?

5 A Yes.

6 Q Did FedEx make any adjustments to its security
7 procedures after the Calloway incident?

8 A You would have to ask security.

9 Q You don't have any personal knowledge of Auburn
10 Calloway's religious status, is that correct?

11 A No.

12 Q So you were just relying on rumors, is that
13 correct?

14 A I reported rumors.

15 Q You know Mr. Calloway, don't you?

16 A I knew him.

17 Q Were you friends with him at one time?

18 A No.

19 Q When was the last time you talked to him?

20 A In 1994.

21 Q And he has been in prison for more than 20 years,
22 is that correct?

23 A I assume so.

24 Q Well, the flight that he took down occurred in
25 1994, is that correct?

1 A Yes.

2 Q And was he arrested and sent to prison at that
3 point?

4 A Yes, but I'm looking at -- I'm doing the math, and
5 I'm thinking it's -- I assume it's 22 years. I don't even
6 know if he ever faces parole or if he's -- if that's even a
7 possibility. I haven't kept track of what his incarceration
8 terms are.

9 Q Okay.

10 A I assume he's in for life and he's not going to
11 get out.

12 Q Based on the rumors of his religious conversion,
13 you thought he might share information with terrorists, is
14 that correct?

15 A Based on the similarities between what he did on
16 Flight 705 in 1994 and what Al Qaeda and Mohamed Atta did in
17 2001, I thought there were similarities between the two
18 acts.

19 Q And it was because he converted to Islam that you
20 thought he may pose a threat, is that correct?

21 A I think that his alleged conversion could raise a
22 security threshold that required further surveillance.

23 Q Do you believe that all Muslims are engaged in
24 terrorism all over the world?

25 A No.

1 Q Could you turn to page 163 of your deposition?

2 A Page 163?

3 Q Yes.

4 A Okay.

5 Q Page 163, line 2, question, "Why was his
6 conversion -- or, his alleged conversion to Islam a concern
7 to you?" "Because of his connection to violent takeovers of
8 aircraft." Question, "The connection of people who have the
9 Islam faith and their connection to the takeover of
10 aircraft?" Answer, "I'm not going to be politically correct
11 with you. I believe that Muslims are engaged in terrorism
12 all over the world."

13 A Okay.

14 Q Is that how you testified?

15 A Yes, but I didn't say that all Muslims are engaged
16 in terrorism all over the world.

17 Q During your meeting with Captain Fisher, Mr. Ondra
18 and Mr. Tice, you recommended that FedEx approach federal
19 authorities to set up listening devices in Auburn Calloway's
20 jail cell, is that correct?

21 A I suggested monitoring, yes.

22 Q I want to talk about the 15D process. You were
23 sent to the aeromedical advisor following this meeting, is
24 that correct?

25 A Yes.

1 Q The aeromedical advisor at the time was Thomas
2 Bettes, Dr. Thomas Bettes of Harvey Watt and Company, is
3 that correct?

4 A I would say that he was FedEx's representative.
5 My representative was Dr. Mark Nugent in Austin, Texas.

6 Q Did you communicate with Dr. Bettes after your
7 referral?

8 A Yes.

9 Q Can you turn to exhibit RX-7, respondent's exhibit
10 RX-7?

11 A Which?

12 Q It would be in one of the red folders.

13 A Okay.

14 Q The bottom e-mail of exhibit RX-7 is from
15 Christopher Johnson to you, is that correct?

16 A I'm sorry, I must have lost track of where you
17 are.

18 Q Respondent's exhibit RX-7.

19 A This is not an exhibit?

20 JUDGE MORRIS: You may be looking at joint exhibit
21 JX-7. That's what you're looking at.

22 THE WITNESS: We're looking at joint?

23 JUDGE MORRIS: No, no, no.

24 MR. RIEDERER: Oh, okay.

25 JUDGE MORRIS: He was inadvertently looking at the

1 joint exhibits.

2 THE WITNESS: Okay.

3 BY MR. RIEDERER:

4 Q And the bottom -- this is an e-mail chain, is that
5 correct?

6 A Yes.

7 Q The bottom e-mail is from Christopher Johnson to
8 you, is that correct?

9 A Yes.

10 Q You are a cargopilot@gmail.com?

11 A Yes.

12 Q And this e-mail discusses a plan of action, is
13 that correct?

14 A Yes.

15 Q And it references that Dr. Bettles has recommended
16 an evaluation at Talbott Recovery Campus.

17 MR. SEHAM: Objection. It says FedEx management
18 and Harvey Watts senior AME Dr. Bettles had recommended an
19 evaluation at Talbott Recovery Campus.

20 JUDGE MORRIS: Sustained.

21 BY MR. RIEDERER:

22 Q The question is, then, that FedEx management and
23 Harvey Watt, Dr. Bettles, have recommended an evaluation at
24 Talbott Recovery Campus, is that correct?

25 A According to this document, it's a recommendation.

1 Q Do you know what happens at --

2 A It didn't happen in reality.

3 Q Do you know what Talbott Recovery Campus is?

4 A No. I just know that the initial psychiatrist
5 that was assigned to my case quit because he didn't want to
6 have anything to do with it.

7 Q And then turn to exhibit RX-21, respondent's
8 exhibit RX-21. Actually, I'm sorry, if you don't mind
9 staying at respondent's exhibit RX-7?

10 A Okay, go back to RX-7.

11 Q That e-mail is dated August 22nd, correct?

12 A Okay.

13 Q Now can you turn to exhibit RX-21? The bottom e-
14 mail is again from Christopher Johnson to you, is that
15 correct?

16 A Yes.

17 Q And I'm not sure if we got on the record,
18 Christopher Johnson is an aeromedical consultant with Harvey
19 Watt, is that right?

20 A Yes.

21 Q As of August 30th, he submitted a new plan of
22 action that has you going to an evaluation with Dr. George
23 Glass, is that correct?

24 A Yes.

25 Q And Dr. Glass is a board certified psychiatrist,

1 is that correct?

2 A I don't know.

3 MR. SEHAM: I'm going to object to the --

4 JUDGE MORRIS: It's already answered. It's
5 overruled.

6 MR. SEHAM: I'd like to object to any further
7 questions concerning the psychiatric --

8 JUDGE MORRIS: Overruled.

9 BY MR. RIEDERER:

10 Q Dr. Glass performed a medical mental status
11 examination in September 2013, is that correct?

12 A No. I don't -- are you talking about with me
13 personally?

14 Q Yes.

15 A No, that's incorrect.

16 Q Did he perform a mental status examination at any
17 point?

18 A Yes.

19 Q Did he prepare a report after he concluded his
20 examination?

21 A Yes, he did.

22 Q Have you read his report?

23 A Yes, I did. I think I got confused on your dates.
24 Did you say September 13th?

25 Q The date, frankly, was less important than the

1 fact that he did it.

2 A Okay. I did an exam with him on September 11th,
3 2013.

4 Q Can you turn to respondent's exhibit RX-3?

5 A This book?

6 JUDGE MORRIS: No.

7 MR. RIEDERER: It should be Volume Two.

8 THE WITNESS: Okay.

9 BY MR. RIEDERER:

10 Q Is this Dr. Glass's report?

11 A Yes.

12 Q Can you turn to page 3 of the report, which
13 appears to be RX-004?

14 A Where is the R? Is it stamped on top of the other
15 one?

16 Q Yes.

17 MR. SEHAM: Can you tell us how many pages,
18 because the original binder is --

19 MR. RIEDERER: It's page 3 of the report.

20 MR. SEHAM: Thank you.

21 THE WITNESS: I'm on page 3 of the report.

22 BY MR. RIEDERER:

23 Q And this identifies the mental status examination?

24 A Yes.

25 Q Will you turn to page 4? At the bottom of that

1 page, it says medical opinion and recommendation?

2 A Yes.

3 Q And in this section he just says, opinion and
4 recommendation, that you should undergo more treatment?

5 A Can you guide me to where that says that?

6 MR. RIEDERER: Well, how about -- well, let me
7 strike that.

8 JUDGE MORRIS: Well, wait a minute. Do you want
9 me to -- do the parties want me to take official notice of
10 the DSM-IVR or the DSM-V, which explains the meaning of what
11 these five axes are?

12 MR. RIEDERER: Yes.

13 JUDGE MORRIS: Okay.

14 MR. SEHAM: For the record, these are -- this is
15 all a hearsay document. It all occurred after the company's
16 action took place. It's not only irrelevant, but it's a
17 hearsay document, and it's part of the continuing adverse
18 action against this individual. I guess I'm asking for
19 clarification. If this is being admitted, for what purpose
20 is it being admitted in the eyes of the tribunal?

21 JUDGE MORRIS: Well, I haven't heard a purpose yet
22 because it hasn't been admitted.

23 MR. SEHAM: Okay.

24 JUDGE MORRIS: I'm just asking about the DSM-IV
25 and the DSM-V.

1 MR. SEHAM: Okay.

2 JUDGE MORRIS: But I'm particularly -- just so the
3 parties know, what particularly caught my attention -- I
4 seem to recall, under axis one, rule-out as a specific
5 meaning under the DSM-IVR, and I need to know what rule-out
6 means, okay?

7 MR. RIEDERER: Your Honor, that might be above my
8 area of expertise. But I actually don't intend to get that
9 detailed into this report.

10 JUDGE MORRIS: All right. And GAF stands for
11 global assessment of function, if I recall correctly.

12 BY MR. RIEDERER:

13 Q If you look at page 5 of this report, on the third
14 line it says, "I think he may be depressed, somewhat
15 hypomanic." Do you see where it says that?

16 A Yes.

17 Q Do you agree with that?

18 A No.

19 Q The next paragraph down, "In addition, I believe
20 he might benefit from some relatively brief group or
21 individual therapy to help him realize how his behavior is
22 seen by others."

23 A I see it written there.

24 Q Is that his recommendation?

25 A Apparently so.

1 Q And you disagree with those findings?

2 A Yes.

3 Q And at the time of this report did you believe
4 that there was nothing wrong with your mental state?

5 A I believe there was nothing wrong with my mental
6 state, with the exception of being under a great deal of
7 stress by FedEx.

8 Q And at the time did you believe you were fit to
9 fly?

10 A Yes.

11 Q And you testified earlier that a heightened level
12 of stress would potentially make you unfit to fly, is that
13 correct?

14 A I'm not an aeromedical examiner, but I believe
15 that I was under stress at the time that this psychiatric
16 examination was being ordered.

17 Q So on one hand you believe you were fit to fly, on
18 the other hand you believe that you had a heightened level
19 of stress, is that right?

20 A Before or after you ordered me to see a
21 psychiatrist? Before or after you grounded me? Any pilot
22 who is going under a grounding or being ordered to see a
23 psychiatrist is going to be under stress if he's about to
24 lose his job.

25 Q Can you turn to page 183 of your deposition? No,

1 182 -- or, no, I'm sorry, 183.

2 A Page 182?

3 Q Page 183.

4 A Page 183. What would you like for me to
5 reference?

6 Q Page 183, line 25, "At the time of this report,
7 did you believe -- do you believe that you had any issues
8 with your mental or emotional state?" Bottom of 183.
9 That's the question, "At the time of this report, do you
10 believe -- and it goes on to page 184 -- you had any issues
11 with your mental or emotional state?" And your answer is,
12 "No." Is that correct?

13 A I'm reading that, yes.

14 Q Can you turn to respondent's exhibit RX-18?

15 A I'm there.

16 Q Is this an e-mail chain between you and Dr.
17 Bettes?

18 A Yes.

19 Q And I'm going to paraphrase this, but in essence
20 you're telling Dr. Bettes that you want to rely on your
21 aeromedical advisor, Dr. Mark Nugent, is that correct?

22 A Let me read it. And I have finished reading the
23 e-mail to Dr. Bettes.

24 Q And I'm paraphrasing, but this essentially is
25 requesting Dr. Bettes to accept Dr. Nugent's opinion, is

1 that right?

2 A Yes.

3 Q And then Dr. Bettles responded to you and said that
4 Dr. Nugent can serve as a second physician reviewer in your
5 fitness for duty examination, is that right?

6 A Yes. This is a very late response in this
7 process, in this 15D and 15G process.

8 Q And then he also identified that Dr. Green would
9 be appropriate for the third evaluation, is that right?

10 A That's correct.

11 MR. RIEDERER: I'd move for -- has this been
12 admitted, Your Honor?

13 JUDGE MORRIS: Yes, everything has -- all of the
14 RX exhibits have been admitted with the exceptions of -- I
15 believe it's RX-2 through RX-6.

16 MR. RIEDERER: Okay.

17 JUDGE MORRIS: It might be RX-3 through RX-6.

18 BY MR. RIEDERER:

19 Q Can you look at exhibit RX-6?

20 A In the same book? Okay.

21 Q And this is from Dr. Nugent.

22 A Yes.

23 Q And this is his opinion letter that he submitted
24 during this 15D process, is that right?

25 A On August 23rd, 2013.

1 Q And you agreed with this evaluation?

2 A Yes.

3 Q And he is certified in family medicine, is that
4 right?

5 A He's certified as an FAA aeromedical examiner.

6 Q Is he a family medicine doctor?

7 A Yes.

8 Q And, at the time of this exam -- or, this report
9 in August of 2013, do you agree that you had no issues with
10 your mental or emotional state?

11 A On August 23rd, 2013, that's correct.

12 Q We need to back up. I want to discuss one other
13 thing before we continue. If you could look at exhibit RX-
14 16?

15 A I'm there.

16 Q It's a letter from Dr. Bettles to you, is that
17 correct?

18 A Yes.

19 Q It's dated September 24th, 2013?

20 A Yes.

21 Q And this is his conclusion that you are unfit for
22 flying duties, is that right?

23 A That's his assessment on that date, yes. But I
24 take issue with it.

25 Q So that was September 24th. And then, if you turn

1 to exhibit RX-18, it was on October 9th through 12th that
2 you had this communication with Dr. Bettes on accepting Dr.
3 Nugent as the second exam, is that right?

4 A Yes, and that's the difference. I mean, that
5 October 9th correspondence is after the September 24th
6 exhibit RX-16 letter in which Bettes says that he refers to
7 Captain Estabrook's treating physicians, which is a
8 falsehood, because he didn't consult with my physician, Dr.
9 Mark Nugent in Austin, as required in 15D and 15G.

10 Q The timing, though, at least in terms of Dr.
11 Bettes, is that he accepted Dr. Glass's opinion, correct,
12 and he ruled you unfit for duty, is that correct?

13 A I think he based his decision partly on Dr. Glass
14 but also on the direction from FedEx.

15 Q And, following his review of Dr. Glass's opinion,
16 he accepted Dr. Nugent's letter as the second opinion
17 through the 15D process, right?

18 A Dr. Bettes ignored Dr. Mark Nugent's letter from
19 August 23rd, and who formally told Dr. Bettes through this
20 letter that he was my attending physician. But Dr. Bettes
21 marched through this process on the direction of FedEx,
22 accelerating it and ignoring Dr. Nugent throughout the
23 entire process, until such time as Dr. Bettes told me that I
24 was going to have to see -- or, I was going to have to
25 endure treatment, which could include -- and I asked him

1 specifically -- drugs.

2 And I said, well, I'm not going to adhere to this
3 and I'm not going to go further in this process without the
4 advice of counsel and I want you to start communicating with
5 Dr. Mark Nugent. And that was in October. So finally, from
6 August to September to October, he agreed to listen to Mark
7 Nugent. So he went through much of this process without
8 ever consulting my personal AME.

9 Q And in the communications between you and he via
10 e-mail on October 9th and October 12th is when he accepted
11 the second opinion of Dr. Nugent, is that correct?

12 A The continuing opinion of Dr. Nugent.

13 Q And then he identified that Dr. Green would be the
14 tie-breaker, as he called it, is that right?

15 A Correct.

16 Q Can you turn to exhibit RX-6? No, I'm sorry,
17 that's wrong, exhibit RX-5.

18 A Are we in this one, or this one?

19 Q Same one.

20 A I'm there.

21 Q This is an opinion letter submitted by Dr.
22 Leonard, is that correct?

23 A Yes.

24 Q And he's certified as an aviation aeromedical
25 advisor?

1 A Yes.

2 Q He submitted a letter saying that you were, quote,
3 entirely appropriate, is that correct?

4 A I'd have to read it.

5 Q Okay.

6 A Can you point out that line to me?

7 Q If you look at the third paragraph, second line at
8 the right.

9 A Okay, I see that, yes.

10 Q His affect is entirely appropriate?

11 A Yes.

12 Q And he determined that you had no psychological
13 issues relating to your qualifications as a pilot?

14 A I believe so.

15 Q Do you agree with him?

16 A Yes.

17 Q Do you agree at that time, as of August 24th, you
18 had no issues with your mental or emotional state?

19 A No. I was under a great deal of stress.

20 Q Can you turn to page 181 of your deposition? This
21 one.

22 A Okay.

23 Q Actually, turn to page 180, just so we can
24 identify that we're speaking about Dr. Leonard.

25 A Okay, I'm there.

1 Q At 180, it references that we're talking about Dr.
2 Leonard, is that correct?

3 A Yes.

4 Q Okay, on 181, line 3, question, "Did you select
5 him? Did you contact him?" Answer, "I did. I went through
6 a physical with him." And then on line 15, "And his
7 conclusions of his evaluation with you, that you had no
8 issues with your mental or emotional state?" Answer,
9 "That's the way I read it."

10 A Okay.

11 Q Question, "Is it your belief that on August 24th,
12 2013, the day of this letter, you had no issues with your
13 mental or emotional state?" Answer, "That is correct."

14 A And your question is?

15 Q That's what you testified to, is that right?

16 A Yes.

17 Q All right, you're evaluated by Dr. Green in
18 October of 2013, is that right?

19 A I believe that's correct.

20 Q Dr. Green is board certified in psychology, is
21 that right?

22 A Yes.

23 Q Did he perform a mental status evaluation on you?

24 A I assume that's what you call it.

25 Q Through the evaluation, he found no evidence of

1 mood symptoms, and he found you to be psychologically
2 stable, is that correct?

3 A I believe so. I don't have it in front of me.

4 Q Did he determine that you were absolutely normal?

5 A Again, I'd have to read it in front of me.

6 Q Can you turn to page 188 of your deposition?

7 A I'm there.

8 Q Look at line 23.

9 A Okay.

10 Q I note that we are talking about Dr. Glass at this
11 point, is that right?

12 A No.

13 Q I'm sorry, not Dr. Glass, Dr. Green?

14 A Yes.

15 Q "And what were his conclusions with respect to
16 your mental state?" Answer, "That I was absolutely normal
17 and he saw nothing out of the ordinary."

18 A Yes.

19 Q Is that what your testimony was in your
20 deposition?

21 A I'm interpreting what his final report said.

22 Q Okay.

23 A But I don't have his report in front of me. And,
24 if I went line by line, I could more specifically answer
25 your question. But that was my general impression, and that

1 he was recommending to Harvey Watt and to FedEx that I
2 should return to flight.

3 Q And his conclusions were -- well, in the next
4 line, I'm sorry, on page 189, line 2, "What were his
5 conclusions of your fitness for duty?" Answer your answer
6 was, "That I was fit."

7 A Correct.

8 Q And you agreed with his determination?

9 A Yes.

10 Q If you could look at exhibit RX-4?

11 A Okay.

12 Q Is that Dr. Green's report?

13 A Yes.

14 Q After evaluating Dr. Green's report, Dr. Bettes
15 concluded that you were fit to fly and recommended that
16 FedEx return you to flight duties, is that correct?

17 A Yes.

18 Q Could you turn to exhibit RX-23?

19 A I'm there.

20 Q And this is Dr. Bettes's letter indicating that he
21 has determined that you are fit to fly?

22 A Well, he didn't sign it, but I assume that this
23 was sufficient for FedEx and Harvey Watt.

24 Q And that's dated October 30th, is that right?

25 A Yes.

1 Q And turn to exhibit RX-24.

2 A Okay.

3 Q And this is an e-mail from Pat, pilot
4 administration center, through Jennifer Crisp to you, is
5 that right?

6 A Yes.

7 Q And that's dated October 30th?

8 A Yes.

9 Q That's the same day that Dr. Bettles dated his
10 letter determining that you were fit for duty?

11 A Yes.

12 Q And this e-mail from Jennifer Crisp indicates that
13 you are being returned to duty?

14 A Yes.

15 Q Is it your belief that you were fit to fly
16 throughout the 15D process?

17 A I think that I was under a great deal of stress,
18 and at various times that was significant.

19 Q Were you fit to fly?

20 A At the time of the examination, yes.

21 MR. RIEDERER: At this point, Your Honor, I want
22 to move for admission of the three -- of Dr. Glass's report,
23 Dr. Leonard's report, Dr. Nugent's report, and Dr. Green's
24 report.

25 MR. SEHAM: And may I respond?

1 JUDGE MORRIS: Of course.

2 MR. SEHAM: Aside from this bearing no --

3 JUDGE MORRIS: Relevance?

4 MR. SEHAM: -- relevance, thank you -- I guess I'm
5 a little jet-lagged -- relevance to the decision-making
6 process, which even counsel for FedEx in the prior
7 evidentiary stage identified as the core issue in this
8 process, aside from the fact that these are all hearsay
9 documents that should not be admitted for the truth that
10 they assert, and aside from misrepresentation because, in
11 fact, this Glass report never finds that he's unfit for
12 duty, and, in fact, concludes, "While I suspect that he
13 could technically continue flying, his personality issues
14 and behaviors are such that I suspect that others will not
15 want to fly with him," concludes that he might benefit from
16 some relatively brief group or individual therapy, and that
17 the objectionable behavior substantially relates to union
18 activities, that he admitted he was essentially a union --
19 he created a union-organizing letter, that the company did
20 not like that he was publishing reports in support of a
21 union.

22 MR. RIEDERER: Your Honor, he's testifying here.

23 MR. SEHAM: Well, I'm objecting --

24 MR. RIEDERER: I mean, he has an objection to the
25 admission of this statement.

1 MR. SEHAM: No, I'm trying to -- and I'd like to
2 continue, unless you want to stop me, but what I'm saying
3 is, this is the company's continuation of the retaliatory
4 action. It is this humiliation and Glass's participation in
5 it, frankly --

6 JUDGE MORRIS: Well, wait a minute.

7 MR. SEHAM: -- as someone who was trying to
8 suppress --

9 JUDGE MORRIS: Let's assume that I accept that
10 proposition. Wouldn't you want it into evidence --

11 MR. SEHAM: No, because --

12 JUDGE MORRIS: -- as evidence therefor of the
13 continuing violation?

14 MR. SEHAM: No, I don't want it in there, because
15 actually it's not something in order to accrue some monetary
16 benefit I would want this person subjected to, my client
17 subjected to. It's wrong. We're talking about, again,
18 issue after issue, the union, the union, that he wanted to
19 hassle the company, that he wanted to be a union organizer
20 like his father and that other people would not like him
21 because he doesn't get along with others, but apparently
22 he's fit to fly.

23 And then we get Dr. Bettes saying, well, you may
24 have to be drugged up because some people might not like
25 you. Do I want this all in the record, including references

1 to his libido, his relationships with his wife? He should
2 never have been subjected to any of this.

3 That's the issue, he should not have been
4 subjected to this humiliation and threats of drug treatment.
5 The question is before this tribunal, should he have ever
6 gotten to this point, not whether somehow this reprehensible
7 man somehow after-the-fact might have vindicated what they
8 did.

9 He should never have gotten to the point. That's
10 what's before this tribunal. And for the tribunal to admit
11 all this scurrilous reporting and this anti-union reporting,
12 again, is just a furtherance of the adverse action that
13 we're trying to stop and enjoin. It's not relevant to this
14 proceeding.

15 MR. RIEDERER: Captain Estabrook is seeking
16 emotional distress damages. There's a report -- three, four
17 doctor reports that are opining on his mental and emotional
18 state, some of which he agrees with, some of which he
19 doesn't. And their opinions and his agreement and
20 disagreement and relevant to his claim for emotional
21 distress damages.

22 MR. SEHAM: Well, there is now testimony in the
23 record relating to that at every stage. I think that more
24 than suffices to address the evidentiary needs on that scale
25 without admitting all this very intimate cross examination

1 from psychiatrists who were clearly hostile to him and were
2 violating his contractual rights.

3 JUDGE MORRIS: All right, what I want is, between
4 now and the close of the hearing -- I'm going to admit RX-3
5 through RX-6, with some limitation. Well, I have no problem
6 with RX-6. I don't see anything in here that troubles me.

7 [WHEREUPON, the document previously
8 identified and marked as
9 RESPONDENT'S EXHIBIT RX-6 was
10 received into evidence.]

11 JUDGE MORRIS: It's RX-3, RX-4 and RX-5, I want
12 the parties to see if they can come to agreement as to how
13 we can get this in the record with redactions. I don't find
14 it all relevant, any issues dealing with his marriage, his
15 children, his background that way.

16 MR. SEHAM: Your Honor --

17 JUDGE MORRIS: It seems to me we can accomplish
18 this by getting the diagnosis into the record.

19 MR. RIEDERER: Yeah, I'm prepared to redact
20 everything but the conclusions.

21 JUDGE MORRIS: Counsel?

22 MR. SEHAM: Well, I guess I'm looking for some
23 guidance. I've heard -- I think I've heard two arguments,
24 maybe not one heard -- I haven't heard -- I have only heard
25 one today about that this should be admissible with respect

1 to the calculation of damages arising from mental distress.

2 My question to the tribunal is, is this going to be
3 considered as admissible in terms of vindication of the
4 company's initial decision?

5 JUDGE MORRIS: It very well could be. I'm not in
6 a position to -- they could brief that, if that's what they
7 want to argue, saying that this demonstrates the
8 reasonableness of their actions in suspending him. That
9 could be one of their proposals, and I'm -- if that's what
10 they want to do, they can do that.

11 My concern here is more of a privacy issue than
12 anything else, to let the parties be able to advocate
13 whatever position they want, but culling out what I'll call
14 the unnecessary personal information. I'll just throw out
15 for an example here.

16 If you look at RX-3, page 1, we've already got
17 into evidence, on line 4, the current problems, went to the
18 website. I think it's airlinepilot.com. I think we've
19 already got an exhibit there, so I don't see any harm in
20 something like that.

21 Under the same token, there are other references
22 in here that are very personal and very private that I don't
23 even want to mention on the record. If we -- I want the
24 parties to get together, and I want that stuff redacted to
25 get to the things that are relevant.

1 I will tell you, I do find relevant the diagnosis
2 that included the five axes, okay? That's a relevant item
3 in these proceedings. Whether it helps one side or the
4 other, that's a formal diagnosis from what appears to be a
5 qualified physician. So I think that that's fair game. But
6 there are things in here I absolutely agree with respondent
7 that have to be redacted, okay?

8 MR. RIEDERER: Complainant, Your Honor.

9 JUDGE MORRIS: Or, complainant, right.

10 MR. SEHAM: It appears that -- our main objective
11 in terms of our objection is, it has been lost, and I just
12 want to record -- make it a matter of record that the nature
13 of our objection is that none of this should be admissible
14 because all of those post-dates the company's decisional
15 process.

16 And that, if it were in a position now with this
17 doctor to admit hearsay documents and examinations without
18 any ability to cross examine the individual, then none of
19 this should be admitted, A, because it post-dates any
20 decisional process, and, B, because it's all hearsay.

21 JUDGE MORRIS: Well, I have two comments to that.
22 One is, they could have been called. I mean, there was no
23 limitation on them being called at this hearing, should the
24 parties have done it. But, more importantly, this is an
25 AIR-21 case.

1 One of the things that I am focused in on is the
2 highest level of safety in air commerce. This is one of
3 those situations where, if there is a legitimate safety
4 issue, the company does not have to marshal all over its
5 evidence to sustain its action up-front before it actually
6 takes some preventive action.

7 If the company marches with due diligence and
8 reasonableness and can justify itself, it should be given
9 some latitude post-action to solidify an issue. And, again,
10 the evidence was made with the German incident where the
11 pilot drove the plane into the Alps. You know, I'm sure
12 that Lufthansa would have liked to have had a bunch of
13 psychologists lined up and pulled his ticket beforehand, but
14 that's not the case.

15 So the highest level of safety, safety in air
16 commerce comes first. If a psychiatrist can assess future
17 and past, in my understanding of that profession, therefore,
18 I think it's within the purview of the company for the
19 limited purposes of establishing what they did, if it's in
20 the spirit -- and I'm not saying it is -- but, if it's in
21 the spirit of safety, I'm going to allow it. What else do
22 you have, counsel?

23 BY MR. RIEDERER:

24 Q You testified that you had to go into the
25 simulator after Jennifer Crisp sent you the e-mail returning

1 you to duty, is that right?

2 A Yes.

3 Q Do you know who your -- and I'm not sure if I know
4 the names or the titles, but do you know who the training
5 instructor is, or the person in the simulator, do you know
6 who that is?

7 A I don't recall.

8 Q Do you know who the head of the training -- there
9 is a training department, flight pilot training department,
10 is that right?

11 A Yes.

12 Q Do you know at that time who the head of that
13 department was?

14 A No.

15 Q You have no knowledge that the training department
16 corresponded with anyone in flight management, is that
17 right?

18 A I don't know.

19 Q Can you turn to complainant's exhibit CX-8?

20 A Okay.

21 Q And, if you turn to exhibit A of that, which is I
22 believe your AIR-21 complaint?

23 JUDGE MORRIS: Where are you directing him to?

24 MR. RIEDERER: Exhibit A of that attachment. It's
25 page C-39.

1 JUDGE MORRIS: C-39, thank you.

2 THE WITNESS: Okay.

3 BY MR. RIEDERER:

4 Q And about midway down, in the line under the CFR
5 section citation, starting, he then told me?

6 A Could you give me a little bit more direction?

7 Q It's about the seventh -- or, the sixth line down,
8 he then told me.

9 A Okay, I'm there.

10 Q He then told me -- and this is your writing, is
11 that correct?

12 A Well, it's -- I mean, it's not my writing.

13 Q I mean --

14 A It's my typing.

15 Q Okay. He then told me he had consulted with our
16 FedEx weather department. You're referring to Mark Crook,
17 is that right?

18 A Yes.

19 Q He consulted with the weather department and said
20 they told him the thunderstorm would pass through Memphis in
21 about 30 minutes.

22 A That's what it says.

23 Q And then you allege that he directed you to take
24 off and fly to Memphis, is that right? That's what that
25 says?

1 A That's what that says, but that timing and the
2 chronology is not correct.

3 Q And you were departing from Laredo to Memphis,
4 right?

5 A Was departing Laredo to Memphis, that was the
6 original flight plan, yes.

7 Q How long is that flight?

8 A About an hour and a half. He was incorrect in
9 that 30-minute assessment, by the way. It was hours before
10 we got into Memphis.

11 Q That's what he told you?

12 A That was --

13 Q It was his belief?

14 A That was his misinformation to me.

15 Q Just so I'm clear, according to you, he believed
16 the weather would clear Memphis in 30 minutes?

17 A No, I don't think he believed it. You'd have to
18 ask him what he believed.

19 Q Well, that's --

20 A What I believed he was doing was giving me false
21 information, encouraging me to take off before the weather
22 was going to clear Memphis. I didn't believe anything he
23 said about the 30 minutes. And, even if I did believe it,
24 that it was going to pass through in about 30 minutes, I was
25 still on an FAA weather hold.

1 Q Now, you testified earlier that you spoke with
2 Sherrie Hayslett in dispatch, correct?

3 A Just to add to this, it says it would be four to
4 six hours later before the storm would pass through Memphis.

5 Q That is your allegation, right?

6 A It's a reality based on times, radar returns, the
7 time I was released from the FAA to fly en route. I have
8 different corroborating evidence to show that that 30
9 minutes was totally false. I'm sorry, and what was your
10 next question?

11 Q You testified that you spoke with the dispatcher,
12 Sherrie Hayslett?

13 A Yes.

14 Q And I believe you testified that you asked her if
15 you could remain in the hotel?

16 A I think, generally speaking, that was the
17 assumption that I had.

18 Q Well, did you ask her if you could stay at the
19 hotel, I guess is my question?

20 A I don't remember if I asked, but at least three
21 times I had an acknowledgement from her that that's where I
22 was at.

23 MR. RIEDERER: I'd like to play some audio
24 recordings from joint exhibit JX-1.

25 JUDGE MORRIS: All right. How much more time do

1 we have, counsel?

2 MR. RIEDERER: This is it.

3 JUDGE MORRIS: All right.

4 MR. RIEDERER: Can you play the first tape,
5 Maryanne?

6 VOICE 1: GOC, This is Sherrie.

7 VOICE 2: Hey, Sherrie, this is Mark Estabrook on,
8 what are we, 1317?

9 VOICE 1: Laredo-Memphis?

10 VOICE 2: Laredo to Memphis, that's correct. I'm
11 just giving you a heads-up, it looks like we're going to be
12 late tonight.

13 VOICE 1: Oh, yeah. I think many will be late,
14 but you're speaking in reference to the weather?

15 VOICE 2: Yeah.

16 VOICE 1: Yes.

17 VOICE 2: I just -- you know, I hate to assume
18 anything, so I just wanted to give you a heads-up. But
19 we're on top of it. Right now, we're still at the hotel.

20 VOICE 1: Okay.

21 VOICE 2: We're going to get a taxi here as we
22 watch the weather in the lobby on Intellicast.

23 VOICE 1: Uh-huh.

24 VOICE 2: But I wanted to let you know where we
25 were and not to panic.

1 VOICE 1: Okay. Well, let's see, have you had a
2 chance to look at your release?

3 VOICE 2: My FO is doing that downstairs. Right
4 now, I'm just getting my bags.

5 VOICE 1: Okay.

6 VOICE 2: So we'll keep an eye on it. And then
7 you've got my cell phone number if you have any reason to
8 contact me.

9 VOICE 1: Let me write that down, 230-4933?

10 VOICE 2: Correct, and it's Mark.

11 VOICE 1: All right, Mark, I'll be happy to call
12 you with any updates. But, you know, with the weather
13 moving in, sometimes with adjacency to their metering the
14 other towers actually hear things before the dispatchers do
15 because center is constantly changing stuff.

16 VOICE 2: Right.

17 VOICE 1: So, if you hear something and you
18 haven't heard from me, if you'd just drop me an ACARS real
19 quick with an update?

20 VOICE 2: I mean, it might be, you know, hell in
21 Memphis --

22 VOICE 1: Uh-huh.

23 VOICE 2: -- when we take off from Laredo, because
24 we're going to try to time it so that, you know, we get
25 there just at the right time.

1 VOICE 1: That would be perfect.

2 VOICE 2: Yeah. So it may not look good outside,
3 but you don't have a window anyway, do you?

4 VOICE 1: Yes.

5 VOICE 2: I thought they took the windows away
6 until morale improved.

7 VOICE 1: No, they were kind enough to leave us
8 with windows, but in the hopes that it would improve morale.

9 VOICE 2: Oh, okay. All right, thanks, Sherrie.

10 VOICE 1: You're welcome. I'll give you a call if
11 I hear anything.

12 VOICE 2: All right, bye bye.

13 VOICE 1: All right, bye.

14 BY MR. RIEDERER:

15 Q Does that accurately reflect your conversation
16 with Sherrie Hayslett, the first one?

17 A I believe so.

18 Q And she said she asked you to drop her an ACARS if
19 you heard anything, is that right?

20 A Do you want to -- if you say so. I don't remember
21 that on the recording.

22 JUDGE MORRIS: Well, I heard it.

23 THE WITNESS: Okay.

24 BY MR. RIEDERER:

25 Q And ACARS is the -- we talked about it, that's the

1 communication within the plane?

2 A Correct.

3 MR. RIEDERER: Can we play the second conversation
4 with Sherrie Hayslett?

5 VOICE 1: GOC, This is Sherrie.

6 VOICE 2: Hey, Sherrie, this is Mark Estabrook.

7 VOICE 1: Yes?

8 VOICE 2: There's a lot of people that are calling
9 me tonight wanting to -- doing pilot-pushing and all that
10 crap. Do you know what started that?

11 VOICE 1: No, I'm not sure. I know that the ramp
12 was looking for you, and they were wondering why you were
13 late. And I told them that you called and said you'd be
14 running late but --

15 VOICE 2: They're calling me, you know, on the
16 other line.

17 VOICE 1: Uh-huh.

18 VOICE 2: No, first I had crew scheduling call me.
19 I said, no, we're waiting for weather in Memphis. And then
20 two minutes later the duty officer called me and chewed me
21 out, saying I needed to take off. And I go, no, I'm not
22 taking off. And he goes, well, GOC wants to know why you're
23 not taking off. And I said, well, I talked to Sherrie over
24 an hour ago and let her know that we're on a weather delay.

25 VOICE 1: No. Actually, when you said that you

1 were running late, I was under the impression that you meant
2 that you thought that you'd be late into Memphis. I didn't
3 realize that you meant you were staying at the hotel.

4 VOICE 2: Oh, well, that's what we were doing.

5 VOICE 1: Yeah.

6 VOICE 2: We were just waiting for the weather,
7 watching the radar screen.

8 VOICE 1: Right, and I thought that you were going
9 to be waiting at the airport. I didn't realize that you
10 meant you were going to --

11 VOICE 2: Yeah. But, then, see, when the duty
12 officer continued this conversation and I told him we're on
13 weather hold, and he said, well, you're a no-show at the
14 ramp. And I go, well, I let Sherrie know we're going to be
15 late.

16 VOICE 1: Right, but that didn't --

17 VOICE 2: Well, let me finish what I was saying.
18 So then he transitions to, well, you need to take off. And
19 I go, no, I'm not going to take off. And he goes, well,
20 everybody else is taking off. And, you know, that's trying
21 to, you know, the crowd theory, you're the only one that's
22 not taking off.

23 I go, look, I'm not going to -- this stuff is
24 going to 50,000 feet. I'm not going to climb over it. And,
25 even if I did, when I got there it would be like threading

1 needles. So I'm waiting. And, you know, he wasn't too
2 pleased with that. So that's the part of the conversation.
3 I can understand the breakdown in communication about, you
4 know, show time at the ramp and all that. That's not a
5 problem, I get it.

6 But, you know, trying to push the pilot to take
7 off when he says he's not going to do it, that's just not
8 satisfactory. And I know you were not like that at all. In
9 my conversation with you, you were completely
10 understandable. But the duty officer pissed me off.

11 VOICE 1: I'm sorry to hear that. But,
12 unfortunately, I've got another call.

13 VOICE 2: All right, Sherrie. I just wanted to
14 make sure we're on the same page.

15 VOICE 1: Right. Actually, I guess we kind of
16 weren't because I didn't realize you were staying at the
17 hotel.

18 VOICE 2: Well, that's just a breakdown in
19 communication. I don't have a problem with that.

20 VOICE 1: All right. Well, I'll probably talk to
21 you later.

22 VOICE 2: All right. Bye, Sherrie.

23 VOICE 1: Bye.

24 BY MR. RIEDERER:

25 Q Does that accurately reflect your second phone

1 call with Sherrie Hayslett?

2 A I believe so.

3 Q And in between that call and the first call was
4 when you spoke with Mark Crook --

5 A Well, I believe --

6 Q -- is that right?

7 A -- there were several phone calls with Mark Crook.
8 Some of them are noted in your transcript, some of them are
9 noted in my cell phone records, and some of them are not on
10 either one of them.

11 Q We went through your phone records and the
12 exhibits that has the transcript of the audio recording.
13 That's maybe respondent's RX-16, is that right?

14 A Respondent's? You sure it wasn't complainant's
15 CX-16?

16 A Well, the phone records plus the transcript of the
17 audio recording that is respondent's exhibit RX-10. You
18 recall we went through your phone records and the transcript
19 when you were on your direct exam, do you remember that?

20 A I believe that we provided a copy of my Verizon
21 phone records, is that what you're referring to?

22 Q Yes. A comparison between the phone records and
23 this transcript that is RX-10 will accurately show the order
24 in which these phone calls came in, is that right?

25 A No.

1 Q Do you recall your scheduled arrival time on this
2 flight to Laredo [*sic*]?

3 A No, I do not.

4 Q Do you recall what time you actually arrived?

5 A It was well after midnight.

6 Q Would it surprise you if you were scheduled to
7 arrive at 4:21 and then you arrived at 7:03?

8 A No, it wouldn't surprise me. The storm front was
9 significant.

10 Q So that's less than a three-hour delay, is that
11 right?

12 A Well, that's a significant delay at FedEx.

13 MR. RIEDERER: I'll pass the witness. Well, hold
14 on one second. I'll pass the witness.

15 JUDGE MORRIS: Counsel?

16 MR. RIEDERER: No questions on redirect.

17 JUDGE MORRIS: All right. Can we go five more
18 before our break?

19 THE WITNESS: Can I please step out?

20 JUDGE MORRIS: All right, we'll take five minutes
21 so I can ask my questions. Off the record.

22 [WHEREUPON, there was a brief recess.]

23 JUDGE MORRIS: All parties present when the
24 hearing last recessed are again present. Just a couple of
25 administrative things, so the parties know. I have heard a

1 lot of testimony so far about 15D and 15G. Is that actually
2 in the record at this point?

3 MR. RIEDERER: Yes, it's a joint exhibit.

4 MR. SEHAM: I think that's a joint exhibit.

5 JUDGE MORRIS: The other thing is, I want to give
6 the parties a couple of heads-up. The way -- and I'll
7 formalize, give you hard dates at the end of the hearing as
8 far as briefings, but the way this is going to work is,
9 complainant is going to get an initial, respondent gets one
10 bit at the apple, and you're going to get the ability to
11 submit a reply brief. Briefs are going to be no more than
12 50 pages for each side, except for the reply brief of
13 complainant, his second bite at the apple, and that's going
14 to be no more than 20 pages.

15 MR. RIEDERER: It's joint JX-6, by the way, the
16 contract.

17 JUDGE MORRIS: Thank you. Mr. Estabrook, the
18 first thing is, I did get a little bit of background, but I
19 didn't hear about your certificates and type ratings and
20 total time. So, if you could tell that to me, I'd
21 appreciate it.

22 THE WITNESS: Okay. I have a flight engineer
23 certificate for the 727, on the DC-10. I have my single-
24 engine, multi-engine, land certificates. I have my ATP. Of
25 course, that includes my commercial and instrument ratings.

1 I have a type on the Boeing 707. I have a type on the 727.
2 I have a type on the Airbus. Total time, I would estimate
3 around somewhere over 12,000 or 13,000 hours.

4 JUDGE MORRIS: Are you a CFI or CFII?

5 THE WITNESS: I was at one time. I was a CFI,
6 CFII and MEI before I joined the Air Force, but I let those
7 certificates lapse.

8 JUDGE MORRIS: And for the Airbus, it's just the
9 320?

10 THE WITNESS: A300.

11 JUDGE MORRIS: A300?

12 THE WITNESS: And 310. Technically we are typed
13 in the 300, I believe.

14 JUDGE MORRIS: One thing I didn't understand from
15 your military records, CX-2, your DD-214 indicates one oak
16 leaf cluster -- and it's really not that big a deal, but the
17 certificate for your air medal indicates second oak leaf
18 cluster. Now, I am intimately familiar with the
19 inaccuracies of the DD-214, but I would ask that you explain
20 that.

21 THE WITNESS: They mailed me the decoration before
22 I was even aware that I earned it. And I had already
23 separated when they actually mailed it to me. So I could go
24 through the DD-214 correction process if I wanted to, but I
25 never bothered to.

1 JUDGE MORRIS: Your DD-214 indicates foreign
2 service of six months and 27 days. Where was that?

3 THE WITNESS: Well, most of that was in Saudi
4 Arabia, but it also included -- what they do is, they do
5 that for purposes of overseas duty commitment. And, once
6 you meet that threshold, then I don't know how accurately
7 they track it after that.

8 But it has to do with overseas pay and also your
9 overseas service -- remote service commitment. So, if you
10 have a remote tour, then you get credit for it. And so
11 that's what they did, because in AWACS we were gone pretty
12 much 11 months out of the year.

13 JUDGE MORRIS: In CX-15 and CX-17, you've made
14 reference to these contacts that you had in 2001-2002.

15 THE WITNESS: CX-6?

16 JUDGE MORRIS: No, CX-15, CX-17. There was
17 testimony about -- essentially, as I understood it, it was
18 being offered to show that you had had contacts with senior
19 management back in 2001-2002.

20 THE WITNESS: Yes, sir.

21 JUDGE MORRIS: And that, as I understood your
22 testimony, that you didn't want to reinvent the wheel?

23 THE WITNESS: Yes. That is in reference to my e-
24 mail to Bill McDonald.

25 JUDGE MORRIS: Well, can you reconcile this to me?

1 I mean, you're talking more than a decade between
2 corresponding with senior management. Why did you think
3 that the senior management a decade later would, A, know who
4 you are, and, B, understand the context of the questions
5 that you would be posing to them dealing with this issue?

6 THE WITNESS: I didn't presume anything except
7 that I didn't want to have to jump through the hoops for
8 another year and a half to get what I considered to be an
9 urgent issue threat.

10 JUDGE MORRIS: At Federal Express, do you get --
11 which I'm sure that you did in the military, you got what
12 are called performance appraisals, annual performance
13 appraisals. Do you get this similar type of thing in FedEx?

14 THE WITNESS: No, I believe they had that sort of
15 system for new hires for the first year. But after that,
16 no.

17 JUDGE MORRIS: Okay. In the Laredo incident, if
18 you recall, or if you know, does FedEx participate in the
19 ASAP program?

20 THE WITNESS: Yes.

21 JUDGE MORRIS: Did you file an ASAP in this
22 matter?

23 THE WITNESS: I don't recall.

24 JUDGE MORRIS: In your youth, did you live outside
25 the United States?

1 THE WITNESS: No.

2 JUDGE MORRIS: During this process, did you ever
3 lose your first class medical certificate?

4 THE WITNESS: No, sir.

5 JUDGE MORRIS: When you're referring to third-
6 party vendors, I'm aware of FlightAware or Flight Tracker,
7 is that we're talking about?

8 THE WITNESS: Yes, sir.

9 JUDGE MORRIS: You mention opting out of providing
10 that data to the FAA. Where do you get this authority, or
11 where do you believe the authority exists for FedEx to opt
12 out of providing this information?

13 THE WITNESS: Well, there is a opt-out provision,
14 ongoing provision within the FAA. It's in the -- I can't
15 site you the exact req, but it's in the Federal Register.

16 MR. RIEDERER: Your Honor, if Mr. Seham is going
17 to testify for his witness, can I go ahead and object?

18 MR. SEHAM: Well, the question is whether you want
19 the testimony or the actual law.

20 JUDGE MORRIS: Well, we'll get to that after he's
21 done.

22 MR. RIEDERER: Okay.

23 JUDGE MORRIS: Questions based on mine?

24 MR. RIEDERER: What?

25 JUDGE MORRIS: Questions based on my questions of

1 the witness?

2

REDIRECT EXAMINATION OF

3

MARK ESTABROOK

4 BY MR. SEHAM:

5 Q You're familiar with ASAP process?

6 A Yes.

7 Q Is it your understanding that ASAP concerns an
8 individual who he himself may have committed an FAR
9 violation?

10 MR. RIEDERER: Can I object to leading?

11 JUDGE MORRIS: Overruled.

12 MR. RIEDERER: Okay.

13 THE WITNESS: I am familiar with that. And at the
14 time that I hired Alan Armstrong he advised me to file an
15 AIR-21 and not the ASAP.

16 MR. SEHAM: Okay.

17 THE WITNESS: And I just can't recall whether I
18 did before he advised me. I don't think I did. I just
19 can't remember.

20 BY MR. SEHAM:

21 Q I'm going to turn your attention to complainant's
22 exhibits CX-43, CX-44 and CX-45 -- CX-43 being this data
23 management FAA BARR program update; CX-44 being Federal
24 Register Volume 78, Number 162, beginning at page 51804; and
25 CX-4 being NBAA Convention News?

1 A Yes. What is your question?

2 Q The question is, who found these documents?

3 A I did.

4 MR. SEHAM: No further questions.

5 **RECROSS EXAMINATION OF**

6 **MARK ESTABROOK**

7 BY MR. RIEDERER:

8 Q Can you report pilot-pushing in an ASAP report?

9 A I don't know.

10 Q Can you report safety issues through an ASAP?

11 A Yes.

12 JUDGE MORRIS: So the parties will know, I will
13 take official notice of AC 120-66.

14 MR. RIEDERER: No more questions.

15 JUDGE MORRIS: All right. Thank you, sir. You
16 can return over here with counsel.

17 THE WITNESS: And what should I do with these
18 books?

19 JUDGE MORRIS: Leave them right there.

20 [WHEREUPON, witness Mark Estabrook was
21 excused.]

22 JUDGE MORRIS: Next witness? Mr. Seham?

23 MR. SEHAM: Oh, yeah, we're resting, subject to
24 the agreement we had to start cross when we see the direct.

25 JUDGE MORRIS: All right. Call your witness.

1 MR. RIEDERER: We would call Sherrie Hayslett.

2 JUDGE MORRIS: We'll go off the record while she's
3 gathering her things.

4 [WHEREUPON, there was a brief recess.]

5 JUDGE MORRIS: All parties present when the
6 hearing last recessed are again present. Ma'am, please
7 raise your right hand.

8 WHEREUPON,

9 **SHERRIE HAYSLETT**

10 was called as a witness herein and, having been first duly
11 sworn, was examined and testified as follows:

12 JUDGE MORRIS: Please give your full name and
13 business address or otherwise contact information.

14 THE WITNESS: Sherrie Raychelle Hayslett, and it
15 was through our Global Operations Center, Memphis,
16 Tennessee.

17 JUDGE MORRIS: Counsel?

18 MR. RIEDERER: Okay.

19 **DIRECT EXAMINATION OF**

20 **SHERRIE HAYSLETT**

21 BY MR. RIEDERER:

22 Q Good afternoon, Ms. Hayslett.

23 A Good afternoon.

24 Q Are you currently employed by FedEx?

25 A I am.

- 1 Q How long have you worked for FedEx?
- 2 A I've worked for FedEx 21 years.
- 3 Q What's your current position?
- 4 A Senior dispatcher, senior flight dispatcher.
- 5 Q How long have you been in that position?
- 6 A Seven years.
- 7 Q Are you a member of management?
- 8 A No.
- 9 Q Where is your office?
- 10 A Airways Boulevard, Global Operations Center.
- 11 Q Also known as GOC?
- 12 A Yes.
- 13 Q Do you work a particular schedule?
- 14 A Primarily second shift.
- 15 Q What is the second shift?
- 16 A It's 3:00 to 11:00 p.m.
- 17 Q And how many dispatchers are on a particular
18 shift?
- 19 A Usually 10 dispatchers, 10 flight recovery
20 specialists.
- 21 Q What's a flight recovery specialist?
- 22 A It's a person who focuses on capturing as much
23 freight as possible for the regions that they are
24 designated.
- 25 Q What are your job duties as a dispatcher?

1 A My job duties include preparing the flight plan
2 release, which is the flight plan, planning the payload and
3 fuel required, includes weather information and any
4 maintenance information on the aircraft.

5 Q In the course of your job, do you communicate with
6 pilots?

7 A Frequently, yes.

8 Q What do you typically speak to them about?

9 A Most of the communication occurs prior to the
10 flight. We may discuss any important information, but we
11 also discuss any significant changes to the flight plan
12 release.

13 Q As a dispatcher, can you force a pilot to take off
14 into bad weather?

15 A No.

16 Q And who holds the final authority on whether to
17 fly?

18 A The captain of the flight.

19 Q Can anyone in GOC force a pilot to depart in bad
20 weather?

21 A No.

22 Q In your seven years that you worked as a
23 dispatcher, have you ever encountered a situation where
24 someone in GOC attempted to force a pilot to fly through
25 unsafe weather conditions?

1 A No.

2 Q I'd like to ask you a few questions about Captain
3 Mark Estabrook.

4 A Okay.

5 Q Do you know who he is?

6 A Professionally, yes.

7 Q You recall a communication you had with Captain
8 Estabrook related to a flight he was operating from Laredo
9 to Memphis in April of 2013?

10 A Yes. Yes, I do.

11 Q Tell me what you can recall about your
12 conversation with Captain Estabrook.

13 A We basically had three conversations, the first
14 concerning the delay into Memphis; the second concerning
15 communications that he had had with crew scheduling and the
16 duty officer; and the final one concerning his flight plan.

17 MR. RIEDERER: Maryanne, can you play the first
18 audio recording? And, as she's getting that set up, Ms.
19 Hayslett, can you take a look at exhibit -- I believe it's
20 RX-10? I'm going to ask that you read along as this audio
21 is played.

22 THE WITNESS: All right.

23 VOICE 1: GOC, This is Sherrie.

24 VOICE 2: Hey, Sherrie, this is Mark Estabrook on,
25 what are we, 1317?

1 VOICE 1: Laredo-Memphis?

2 VOICE 2: Laredo to Memphis, that's correct. I'm
3 just giving you a heads-up, it looks like we're going to be
4 late tonight.

5 VOICE 1: Oh, yeah. I think many will be late,
6 but you're speaking in reference to the weather?

7 VOICE 2: Yeah.

8 VOICE 1: Yes.

9 VOICE 2: I just -- you know, I hate to assume
10 anything, so I just wanted to give you a heads-up. But
11 we're on top of it. Right now, we're still at the hotel.

12 VOICE 1: Okay.

13 VOICE 2: We're going to get a taxi here as we
14 watch the weather in the lobby on Intellicast.

15 VOICE 1: Uh-huh.

16 VOICE 2: But I wanted to let you know where we
17 were.

18 MR. RIEDERER: Not yet.

19 MS. MARYANNE MILLER: I'm afraid we have to start
20 all over.

21 MR. RIEDERER: Okay.

22 MS. MARYANNE MILLER: I don't have the ability to
23 stop in the middle.

24 MR. RIEDERER: You don't?

25 MS. MARYANNE MILLER: No.

1 MR. RIEDERER: All right. Your Honor, the purpose
2 for -- I just want to fill in some blanks on this transcript
3 that I was going to ask her to hear.

4 JUDGE MORRIS: Go ahead.

5 MR. RIEDERER: If you'd like, I'd like to take a
6 shot at trying to get that done without playing the audio,
7 since we have all heard it already.

8 JUDGE MORRIS: Agreed.

9 BY MR. RIEDERER:

10 Q If you look at the second page of the transcript?

11 A Yes.

12 Q On the top line, it says, have you had a chance to
13 look at your -- and then it says unintelligible.

14 A Release.

15 Q Okay.

16 A The flight plan release.

17 Q And then you scroll down to the next time it says
18 unintelligible -- it's about halfway down -- it says, so if
19 you hear something and you haven't heard from me, if you'd
20 drop me a blank?

21 A ACARS.

22 Q ACARS?

23 JUDGE MORRIS: The record should note, I heard
24 that when we heard the record the first time, the ACARS.

25 \\

1 BY MR. RIEDERER:

2 Q And this quote on this transcript is you speaking,
3 right?

4 A Yes.

5 Q So it doesn't identify you as the speaker for
6 that, but that was you, right?

7 A Definitely.

8 Q And we've heard testimony about this before you,
9 but can you describe to me what an ACARS message is?

10 A An ACARS, which is an Aircraft Communications And
11 Reporting System, is a means for the dispatcher or
12 maintenance to speak directly to the crew in the cockpit.
13 It's sort of like a text message.

14 Q And, by asking him to send you an ACARS, what was
15 your impression on where he would be located?

16 A Well, I assumed that he would be in the aircraft,
17 able to communicate with ATC, who would, you know, give him
18 minute-by-minute update information that --

19 Q Based on your -- go ahead, I'm sorry.

20 A That I may not know about.

21 Q Based on your first conversation with him, what
22 was your impression of where he was and where he was going?

23 A He made it clear he was in the hotel and, from
24 collecting his things, getting his bags and a taxi, I
25 assumed he was on his way to the airport.

1 Q Did you ever tell Captain Estabrook that he should
2 stay at his hotel?

3 A No.

4 Q Do you have the authority to tell a captain or a
5 flight crew to stay at their hotel?

6 A No, I don't.

7 Q What is pilot-pushing?

8 A Pilot-pushing -- from the context, I hadn't heard
9 of it before, before this conversation -- but I assume it's
10 attempting to force a pilot to do something they don't want
11 to, to push them.

12 Q Did you pressure Captain Estabrook to take off?

13 A No.

14 Q You aware of anyone else pressuring Captain
15 Estabrook to take off?

16 A No.

17 Q What's a weather hold?

18 A A weather hold is an ATC program designed to hold
19 traffic on the ground and control the amount of traffic in
20 the airspace due to weather.

21 Q Was there a weather hold on this particular
22 occasion?

23 A I don't recall that there was a published weather
24 hold, but, of course, in all likelihood with the severe
25 weather moving into the Memphis area, there was.

1 Q Okay.

2 A Or would be.

3 Q Was there bad weather in Laredo?

4 A Not that I recall.

5 Q What's a show time?

6 A A designated time for the crew to show at the
7 airport, usually an hour before the flight, at least.

8 Q If there's a weather hold, can a pilot decide to
9 stay at his or her hotel?

10 A Typically, no.

11 Q Did Captain Estabrook ever tell you he was going
12 to miss his show time?

13 A No, he didn't say he would miss his show time.

14 Q When he indicated in the audio that he would be
15 late, what was your understanding of that comment?

16 A Well, I thought the fleet would be late into
17 Memphis because of the weather approaching Memphis. So late
18 into Memphis wouldn't necessarily mean late to the airport.

19 Q Did you speak to the GOC manager about Captain
20 Estabrook?

21 A We spoke briefly after my conversation with the
22 captain.

23 Q Who was the GOC manager at that time?

24 A Bubba Allen.

25 Q What did you communicate to him?

1 A I discussed my phone conversation with him
2 concerning running late into Memphis, possibly delayed due
3 to weather, and that was pretty much it.

4 Q Okay.

5 A Of course, he asked if I had told him to stay at
6 the hotel, and I told him no.

7 Q Do you know if the GOC manager ever spoke with
8 Captain Estabrook?

9 A No, I don't think that he did.

10 Q Okay.

11 A But I'm not aware of him speaking to him.

12 Q Was the GOC manager -- did he express any
13 frustration to you?

14 A He was concerned because the crew was not at the
15 airport.

16 MR. RIEDERER: That's all the questions I have.

17 JUDGE MORRIS: Counsel?

18 **CROSS EXAMINATION OF**

19 **SHERRIE HAYSLETT**

20 BY MR. SEHAM:

21 Q Hello, my name is Lee Seham, and I'm representing
22 Captain Estabrook in this matter. Back during this time
23 period, say in April 2013, were you ever contacted by Rob
24 Fisher concerning the Laredo departure?

25 A Not that I recall.

1 Q And were you ever contacted by Captain McDonald?

2 A No.

3 Q No? Did you have any e-mail correspondence with
4 anybody concerning this matter?

5 A No.

6 Q Now if you could turn -- you have all these
7 binders in front of you, and one of them is complainant's
8 exhibits. And I'm going to ask you to turn to complainant's
9 exhibit CX-7.

10 JUDGE MORRIS: It will be a white binder, ma'am.

11 THE WITNESS: Pardon?

12 JUDGE MORRIS: It's going to be a white binder.

13 MR. RIEDERER: Is that the joint?

14 MR. SEHAM: No, it will be in that one.

15 THE WITNESS: This one? This one?

16 MR. SEHAM: The first one.

17 BY MR. SEHAM:

18 Q Well, actually, you know, before I go to that, if
19 you could just shove that to one side you were looking at --
20 if we could turn to respondent's exhibit RX-10? Those are
21 the audio transcripts.

22 A Which tab?

23 Q RX-10.

24 A Got it.

25 Q Now, ma'am, in your conversation with Captain

1 Estabrook, you were the first one to raise the problem of
2 the weather situation, correct?

3 A Yes. I mentioned that there would be flights late
4 into Memphis.

5 Q And, when you said there were many, there were
6 many who were affected --

7 A Yes?

8 Q -- what were you referring to?

9 A That they would possibly be delayed in their
10 departure to Memphis.

11 Q Uh-huh. But you were talking about many other
12 flights?

13 A Yes.

14 Q And why did you laugh? Do you recall laughing at
15 this time during the audio tape?

16 A Because the weather moving into the area was
17 severe.

18 Q Uh-huh.

19 A Of course, it wasn't completely blocking the route
20 to Memphis, but it was obviously going to be a problem.

21 Q And if you can turn now to the respondent's
22 exhibit CX-7? That was the first binder, the white binder.

23 MR. RIEDERER: Complainant's?

24 MR. SEHAM: Gee whiz, yeah, complainant's. Thank
25 you.

1 THE WITNESS: This one?

2 MR. SEHAM: Yes.

3 BY MR. SEHAM:

4 Q Now, it says -- if you could turn to the second
5 page, which is paginated C-35, you see it says shift note
6 from GOC?

7 A Yes.

8 Q And the last line or the last sentence in the
9 first paragraph, it says, they spoke to Sherrie, GOC
10 dispatcher, who just told them they were going to have WX.

11 A Yes.

12 Q What does that mean?

13 A Weather. WX stands for weather.

14 Q So is that accurate that you told them that they
15 were going to have weather?

16 A Yes.

17 Q And it said, after that we had to get DO involved
18 since pilots said they were not leaving the hotel until the
19 weather had passed. Did Captain Estabrook ever tell you
20 that he was not going to leave the hotel until the weather
21 passed?

22 A No, he didn't tell me that during that
23 conversation.

24 Q Did he ever tell you that?

25 A Not that I'm aware of.

1 Q But didn't he tell you subsequently that was his
2 plan, to wait at the hotel until the weather had passed?

3 A Possibly in the second conversation.

4 Q And did you ever tell him -- after he told you
5 that that was his plan, did you ever tell him that was
6 inappropriate?

7 A No, I did not tell him that.

8 Q Did you ever contact somebody else and say someone
9 has got to contact Captain Estabrook now because he's
10 waiting out the weather at the hotel?

11 A No.

12 Q And your conversation with Captain Estabrook,
13 would you agree with me, was actually a very cordial
14 conversation?

15 A Yes.

16 Q And you were both laughing?

17 A We did.

18 Q And was he -- at any point did he direct
19 unpleasantness to you?

20 A No.

21 Q And, in fact, he asked you for updates in terms of
22 the weather --

23 A May have.

24 Q -- isn't that correct?

25 A He may have.

1 Q He may have? Did you ever get the sense he was
2 trying to push you around?

3 A At one point, yes.

4 Q What point was that?

5 A In the second conversation.

6 Q All right. Could you point out to us -- there's
7 an audio -- or, there's a transcript here. Are you talking
8 about the conversation in which he was complaining that he
9 felt he was being pushed around by the duty officer,
10 correct?

11 A The point in the conversation where I was
12 interrupted, and he said, well, let me finish.

13 Q And you had interrupted him at that point, isn't
14 that right?

15 A No. He had come to a complete stop in the
16 conversation, and I was about to add a comment, and he cut
17 me off.

18 Q And was he ever directive to you about the
19 weather? He asked for updates on the weather from you,
20 correct?

21 A He may have.

22 Q And isn't it true he never dictated to you that
23 there was going to be a delay based on weather?

24 A Not that I recall.

25 Q So if you can turn to exhibit RX-8, respondent's

1 exhibit RX-8?

2 A Is that this, again?

3 MR. RIEDERER: Are you talking about respondent's
4 exhibit RX-8?

5 MR. SEHAM: It's in the red. It should be in the
6 red.

7 MR. RIEDERER: You're looking for the tab that's
8 marked number 8.

9 THE WITNESS: All right.

10 BY MR. SEHAM:

11 Q In the last paragraph, last full paragraph, it
12 says, "In my two-plus years as DO, I have never had a
13 captain take it upon himself to delay a flight without
14 coordinating and coming to an agreement with the
15 dispatcher." Did Captain Estabrook resist coming to an
16 agreement with you with respect to the delay?

17 A I believe there was some miscommunication or
18 misunderstanding exactly where the delay would occur.

19 Q But, in terms of the fact of a delay, was there
20 any disagreement between you? Did you ever tell him, no,
21 the weather is fine, you should take off now?

22 A No.

23 Q So there wasn't any disagreement about the delay
24 itself between you and Captain Estabrook, isn't that
25 correct?

1 A There was no disagreement that we would be delayed
2 by weather.

3 Q And then it goes on to say, "Captain Estabrook was
4 directive to Sherrie and told her how it was going to be."
5 Now, with respect to the weather-related delay, that simply
6 isn't true, correct?

7 A Well, he did mention that he was staying at the
8 hotel in the second conversation --

9 Q Okay.

10 A -- I believe.

11 Q All right. But, in terms of whether there was
12 going to be a delay or not, he wasn't being directive to you
13 in terms of the sense of bossing you around, in terms of
14 whether there was going to be a delay or not?

15 A Well, the point was where the delay would occur,
16 either at the hotel or at the airport.

17 Q You never had a discussion with him on that in the
18 first conversation, correct?

19 A No.

20 Q It was just a discussion about whether there was
21 going to be a delay or not related to weather?

22 A Yes.

23 Q Correct?

24 A Yes.

25 Q And you raised weather before he raised weather,

1 correct?

2 A Yes.

3 Q So he wasn't directive to you in that sense, was
4 he?

5 A No, we were not -- he was not directive.

6 Q And forgive me if you've already answered this,
7 but, when he told you in the second conversation that he
8 would be remaining at the hotel, you neither told him that
9 was wrong nor did you report it to anybody else that you had
10 a concern about that, isn't that correct?

11 A I didn't tell him that was wrong.

12 Q Yeah.

13 A That's correct.

14 Q Did you ever suggest to Captain Estabrook that he
15 should be looking for other sources of weather other than
16 updates from you and Intellicast?

17 A No.

18 MR. SEHAM: No further questions.

19 **REDIRECT EXAMINATION OF**

20 **SHERRIE HAYSLETT**

21 BY MR. RIEDERER:

22 Q Did you communicate with the duty officer about
23 your side of the story?

24 A Yes.

25 MR. RIEDERER: I don't have any further questions.

1 JUDGE MORRIS: All right. I have a couple
2 questions, ma'am. If you would turn to CX-4? That's the
3 white binder.

4 THE WITNESS: What is that?

5 JUDGE MORRIS: This is the one with all the
6 weather maps, and it's a series of half-hour increment shots
7 over a period of -- it looks like about three hours or four
8 hours.

9 THE WITNESS: Okay.

10 JUDGE MORRIS: Does this fairly and accurately
11 reflect your recollection of the seriousness of the weather
12 along that squall line during that time period?

13 THE WITNESS: I believe so.

14 JUDGE MORRIS: Now, as a dispatcher, when you see
15 something like this -- do you see the weather in preparation
16 for the flight's arrival and departure?

17 THE WITNESS: Yes.

18 JUDGE MORRIS: When you see a weather line like
19 this, is this where you're like, okay, we're going to have
20 some delays?

21 THE WITNESS: Right.

22 JUDGE MORRIS: Now, there's aircraft to get in
23 from the east maybe to get into Memphis, and there's
24 aircraft from the west that can get into Memphis once the
25 weather has passed, right?

1 THE WITNESS: Yes.

2 JUDGE MORRIS: So why does it make a difference
3 where the pilot is if the weather's going to be down like
4 this for four hours?

5 THE WITNESS: Well, it makes a difference because
6 the weather changes obviously very dramatically, and it can
7 change, including dissipate quickly. So, if ATC allows --
8 or, anticipates or sees weather dissipating rapidly, a delay
9 can change from an hour to just a few minutes in a matter of
10 minutes.

11 JUDGE MORRIS: And what if the pilot is actually
12 observing the weather at the time, so he has an
13 understanding of what's going on, whether it be the Weather
14 Channel or DUATS or anything else? They have relatively
15 realtime access to the weather, don't they?

16 THE WITNESS: Yes.

17 JUDGE MORRIS: And how long have you been a
18 dispatcher?

19 THE WITNESS: Seven years.

20 JUDGE MORRIS: Okay.

21 THE WITNESS: And, to answer your question, the
22 difference would be, at the airport, if you've already
23 checked out the aircraft and made it ready to depart, then,
24 if you are released immediately, or you have a minimum
25 delay, then you would be ready to depart, as opposed to

1 leaving the hotel and getting to the airport and prepping
2 the aircraft.

3 JUDGE MORRIS: You made a comment, and I want to
4 see if -- you said typically they do not stay at the hotel.
5 I take from that that you are aware of other situations
6 where other pilots have been at the hotel and called in and
7 say, hey, we're going to be late because of weather?

8 THE WITNESS: No. I said typically because there
9 are always extenuating circumstances. But I have never had
10 a crew member call and say that they're going to stay at the
11 hotel. What will occur is, in the most dire weather -- that
12 is, even from the departure airport -- they will still
13 prepare to make their way to the airport to meet their show
14 time. They may wait inside if the weather is bad at the
15 departure point. They may go out to the aircraft and sit in
16 the aircraft and wait. But I have personally never had
17 anyone stay at the airport -- or, I mean, stay at the hotel.

18 JUDGE MORRIS: Questions based on mine?

19 **RECROSS EXAMINATION OF**

20 **SHERRIE HAYSLETT**

21 BY MR. SEHAM:

22 Q Isn't it true that sometimes pilots have to
23 withdraw from a flight, resulting in flight cancellations,
24 based on fatigue?

25 A Yes.

1 Q And isn't it possible that a way to ward off or
2 prevent fatigue is for the pilot to remain at a hotel when
3 there is a multi-hour weather delay?

4 A That has happened, yes.

5 Q And, once a pilot reports for duty at the airport,
6 his duty time starts ticking, correct?

7 A Yes.

8 Q And isn't it true that in your experience that
9 sometimes flights have to be canceled or delayed because
10 flight crews exceed their duty time?

11 A Yes.

12 Q And, if that's true that it never had been your
13 experience that any pilot had remained at a hotel to monitor
14 a multi-hour weather delay, why didn't you report this to
15 anybody?

16 A Well, I may have discussed it with my recovery
17 specialist. But at that point I didn't realize that he
18 meant to stay at the hotel.

19 Q No, but in the second conversation he explicitly
20 told you that they were going to monitor the weather at the
21 hotel, correct?

22 A At that point, everyone -- I was under the
23 impression everyone was aware of it, or the people that I
24 would have notified were aware of it.

25 Q It was your impression that everyone knew they

1 were waiting out the weather delay at the hotel?

2 A That was the impression I got by the time I spoke
3 with him.

4 Q And you got that impression from whom, from Mark
5 Crook?

6 A From the duty officer.

7 Q From the duty officer, that he was satisfied to
8 let them continue to monitor the weather from the hotel?

9 A No.

10 Q Did he tell you --

11 A No.

12 Q -- that he was dissatisfied with that?

13 A He didn't --

14 Q He didn't say one way or the other?

15 A He had let me know --

16 Q Uh-huh.

17 A -- after he came over and asked about our initial
18 conversation, he let me know that that was his intent to
19 stay at the hotel.

20 Q That it was Captain Estabrook's intent?

21 A Right.

22 Q And did he say that's Captain Estabrook's intent
23 and then say, and I'm going to have him disciplined for
24 that?

25 A No.

1 Q No? You had a conversation -- did he come to
2 speak to you directly, Mark Crook?

3 A Yes.

4 Q And did you at some point call Captain Estabrook,
5 or were you on the phone with Captain Estabrook, the two of
6 you at the same time?

7 A No.

8 Q You and Captain Crook -- or, excuse me, you and
9 Mark Crook?

10 A I spoke with the captain after -- I believe after
11 he spoke with the duty officer, a second time. That was our
12 second conversation.

13 Q And then you had a third conversation?

14 A Yes.

15 MR. SEHAM: I have no further questions.

16 JUDGE MORRIS: Counsel? Because I have an alibi
17 question I forgot to ask her, so keep that in mind.

18 **FURTHER REDIRECT EXAMINATION OF**

19 **SHERRIE HAYSLETT**

20 BY MR. RIEDERER:

21 Q If a pilot is going to -- or, desires to stay at
22 the hotel, do they need to coordinate with someone in GOC?

23 A No. I mean, they may mention it to the
24 dispatcher, but my impression they would communicate with
25 crew scheduling.

1 JUDGE MORRIS: Ma'am, would you turn to CX-7?
2 That's the right book, just tab 7. On the bottom of this,
3 where you see trip recap --

4 THE WITNESS: Yes?

5 JUDGE MORRIS: -- is this information that you
6 deal with in the normal course of your activities?

7 THE WITNESS: Not directly. This is information
8 that the recovery specialist actually deals with. But I'm
9 aware of it.

10 JUDGE MORRIS: If you would turn the page, are you
11 aware of what the phrase "legalities" means?

12 THE WITNESS: No.

13 JUDGE MORRIS: All right, thank you. Questions
14 based on mine?

15 MR. SEHAM: No, Your Honor.

16 MR. RIEDERER: No, Your Honor.

17 JUDGE MORRIS: Thank you, ma'am.

18 THE WITNESS: You're welcome.

19 JUDGE MORRIS: I appreciate your coming and
20 testifying.

21 [WHEREUPON, witness Sherrie Hayslett was
22 excused.]

23 JUDGE MORRIS: Call your next witness?

24 MR. RIEDERER: I would call Bobby Dunavant.

25 JUDGE MORRIS: Sir, please turn and face me and

1 raise your right hand.

2 [WHEREUPON, there was a brief recess.]

3 JUDGE MORRIS: All parties present when the
4 hearing last recessed are again present.

5 WHEREUPON,

6 **BOBBY DUNAVANT**

7 was called as a witness herein and, having been first duly
8 sworn, was examined and testified as follows:

9 JUDGE MORRIS: Please grab your seat.

10 THE WITNESS: Yes, sir.

11 JUDGE MORRIS: Give me your full name and business
12 address contact information.

13 THE WITNESS: Bobby Joe Dunavant, D-U-N-A-V-A-N-T.
14 My business contact is Federal Express Corporation, Global
15 Operations Control, address is 3865 Airways, Module F, Third
16 Floor.

17 JUDGE MORRIS: Counsel?

18 **DIRECT EXAMINATION OF**

19 **BOBBY DUNAVANT**

20 BY MR. RIEDERER:

21 Q Are you currently employed by FedEx?

22 A Yes, sir, I am.

23 Q How long have you worked for FedEx?

24 A It will be 28 years this September.

25 Q What's your current position?

1 A Senior manager, global operations control.

2 Q How long have you been in that position?

3 A Been in that position since February of 2014, and
4 GOC since 2009.

5 Q What did you do prior to working as the senior
6 manager?

7 A I was a GOC duty manager.

8 Q You work a particular schedule?

9 A Typically now it's -- I'm responsible for the
10 swing, which is basically 2:00 in the afternoon to about
11 7:00 the following morning. So sometime between that time
12 there.

13 Q What are your general job duties as a senior
14 manager?

15 A I have a staff of six managers. I ensure that
16 they maintain the safe legality of the operation of the
17 airline, along with the dispatchers that report under them.

18 Q So dispatchers report to you?

19 A They don't report to me. They report to my
20 managers. I'm a senior manager, and I have six managers
21 that report to me, and the dispatchers report to the
22 managers.

23 Q If you could describe to me all the different job
24 titles that fall under your management?

25 A Yes, sir. I have, of course, duty managers, GOC

1 duty managers. I have domestic flight dispatchers and
2 domestic recovery specialists all report to me.

3 Q What is the job function of a dispatcher?

4 A Dispatcher initiates a flight release from point A
5 to point B, with a captain, and they concur together that
6 they have a safe and legal operation of the airplane.
7 Basically, the release includes the fuel load, the route
8 it's going to fly, the speed it's going to fly, any
9 jumpseaters aboard, and the crew members.

10 Q What's the job function of a duty officer?

11 A Basically act as a liaison between the flight crew
12 and the dispatcher and crew scheduling, kind of help --
13 since they are crew members -- I mean, they fly airplanes --
14 they help communicate any issues between dispatchers and
15 crew scheduling.

16 Q What does crew scheduling do?

17 A Crew scheduling gives the crews their pairings or
18 duties for the week, the month, however they bid it. And
19 they maintain their contract legality, their duty hours for
20 the day, to make sure they're not over their operational
21 limits.

22 Q Do the duty officers communicate with the flight
23 crew?

24 A Yes, sir.

25 Q In what way?

1 A Typically, if there's an issue, if there's a
2 question about an MEL or a question about their duty limits
3 for that day, if they're over their limits that particular
4 day.

5 JUDGE MORRIS: MEL is minimum equipment list?

6 THE WITNESS: I'm sorry. Yes, sir, minimum
7 equipment list. But, if they're going to be over their
8 hours of max duty for that day, they'll communicate and
9 talk, because there are some times we can extend. There's
10 corporate limits, and then there's FAR. The FAR limits
11 can't be broke, but the corporate limits can be extended
12 from time to time. So they will have those discussions with
13 them.

14 BY MR. RIEDERER:

15 Q I have some questions about the telephone lines in
16 the GOC.

17 A Yes?

18 Q Are those phone lines recorded?

19 A Yes, sir, they are.

20 Q Does that include dispatcher lines?

21 A Yes, sir.

22 Q Does it include duty officer lines?

23 A Yes, sir.

24 Q Do you know how the calls are recorded?

25 A Through a server, TelStrat server. They are

1 maintained on the hard drive of the server.

2 Q Who has access to the TelStrat server?

3 A Access, is in listening to the calls?

4 Q Yes.

5 A That's GOC management and the two engineers that
6 maintain the system for us.

7 Q When you say GOC management, who are you referring
8 to?

9 A It would be the managing director, who would be
10 the VP now. It would be the senior managers. It would be
11 the managers on the floor and then the two engineers who
12 support the technical side of it.

13 Q Do dispatchers have access?

14 A No, they do not.

15 Q Do duty officers have access?

16 A No, they do not.

17 Q If a duty officer wanted to review a call, how
18 would they go about doing that?

19 A Typically, what happens is they -- the duty
20 officers are sitting right next to the duty manager or right
21 in front of them. They'll turn around and ask the duty
22 manager, if they need a call, hey, can you find X call on X
23 date in this general time frame? And the duty manager will
24 find that recording.

25 Q Can audio recordings be deleted from the TelStrat

1 system?

2 A No, sir, they cannot.

3 Q I'd like to ask you some questions about weather
4 delays.

5 A Yes, sir?

6 Q What happens to flights headed to Memphis if
7 there's bad weather in Memphis?

8 A Typically, if there's bad weather in Memphis, the
9 dispatcher has worked up a release with joint approval with
10 the captain, and there's typically additional amount of
11 holding fuel on that release, and an alternate in case the
12 weather is bad and they can't get into their primary
13 location that has good weather. So typically they will take
14 off from their origin, head toward their destination, end up
15 in hold.

16 There are times, you know, if the FAA or air
17 traffic control has a ground stop, they may sit there saying
18 that we're not going to let those planes take off from that
19 location until X time, but typically they will take off.
20 That's why we carry the extra fuel during bad weather.
21 Again, it's all about safety and legality.

22 Q Why would you have some flights depart Memphis
23 even if there's bad weather in Memphis?

24 A There may not be -- as long as it's legal, the
25 weather minimums are legal and the captain agrees, they will

1 depart Memphis heading toward their destination, because
2 their destination weather may be clear. Their destination
3 weather may not be bad.

4 As long as it's safe and legal to depart, we ask
5 them to depart. They may have to fly through weather,
6 divert around weather. You know, that's what ATC's function
7 is. They'll divert them around the weather, through the
8 weather. That's why they have the extra gas.

9 Q Who has the final authority on whether to depart?

10 A Pilot in command has the final say.

11 Q What are the expectation of pilots when there are
12 weather delays?

13 A Well, as far as from GOC standpoint, we expect
14 them to show up at the airport, pretrip their airplane, be
15 ready to go at their scheduled departure time. They have an
16 hour before their departure, and they have to do their
17 pretrip, make sure the airplane is safe, do all the
18 walkarounds, there's no damage to it. And then we expect
19 them to have their release signed, and once they sign it
20 they're agreeing with the dispatcher -- because a lot of
21 times they never will talk to the dispatcher -- they're
22 agreeing with the dispatcher that they accept the release,
23 and then to be in the cockpit, ready to depart at their
24 scheduled time of departure.

25 Q If they don't agree with the release, do they

1 discuss their disagreement with the dispatcher?

2 A Yes. I wouldn't say it's really disagreeing, but,
3 if they have something they don't like or they want changed,
4 they'll call the dispatcher. And the dispatcher's phone
5 number is on the release. So they'll call them at their
6 desk, and they'll have a discussion saying, you know, I
7 don't feel like X fuel is enough fuel, I want more fuel, or
8 I don't like this alternate, I want this alternate, stuff
9 like that.

10 Q When you say alternate, you're talking about
11 alternate airport?

12 A Alternate airport, I'm sorry. Like the diversion,
13 if the weather is bad at a destination.

14 Q Are there any circumstances that would justify a
15 pilot to stay at his hotel?

16 A Not to my knowledge, sir.

17 Q Have you ever heard of a captain making the
18 decision to stay at his hotel rather than going to the
19 airport in cases of bad weather?

20 A No, sir.

21 Q What would a captain do if they were running short
22 on their legal limits?

23 A Their duty time?

24 Q Duty time.

25 A Typically, they would call crew scheduling first.

1 You know, that's the protocol, they should call crew
2 scheduling, talk to them, see what it is. And then the duty
3 officer may get involved, because there could be some
4 corporate extensions we can do.

5 But typically they call crew scheduling first, see
6 what their next route is, see what their block time was, and
7 make sure they're right on their numbers. Sometimes they
8 could be figuring by five or ten minutes off, because it
9 goes from block to block. So crew scheduling manages all of
10 that.

11 Q What if it was unsafe to travel from the hotel to
12 the destination airport?

13 A We have delayed airplanes because of unsafe --
14 typically, one of the examples, during a snowstorm. If the
15 roads are impassable and we know the planes aren't going to
16 depart, we've kept the -- we've told crew scheduling to keep
17 the crew in the hotel, it's not safe to get out to the
18 airport.

19 Q Who makes that decision?

20 A To not come to the airport?

21 Q Yes.

22 A Typically, that downline station or downline ramp
23 is closed. So we get -- and GOC gets word that that ramp is
24 closed and they can't get there. So then we tell crew
25 scheduling, hey, we're not going to be operating out of X

1 city tonight. And then they'll call the crews wherever
2 they're at and tell them not to show up, or keep them in
3 extended rest could be the phrase.

4 Q That decision is made by crew scheduling?

5 A Yes, sir. The decision to not operate is made by
6 GOC.

7 MR. RIEDERER: I have no more questions.

8 JUDGE MORRIS: Counsel?

9 **CROSS EXAMINATION OF**

10 **BOBBY DUNAVANT**

11 BY MR. SEHAM:

12 Q Does a -- who would have authority -- you may have
13 said it, but I'll need to hear it again -- who has authority
14 to accept a pilot or to tell a pilot he can remain at a
15 hotel during bad weather?

16 A Who has authority?

17 Q Yes.

18 A Basically the only time we do that, if the airport
19 is closed they're departing from.

20 Q But my question is, who has the authority to do
21 that, to make that decision to tell the pilot it's okay for
22 you to remain at the hotel?

23 A Typically, GOC would make that decision. If the
24 airport is closed or the roads are closed, they would tell
25 crew scheduling. Crew scheduling would then contact the

1 pilot.

2 Q And is GOC -- you're knowledgeable or you're
3 familiar with Mark Crook?

4 A He was a former duty officer.

5 A Okay. And he is no longer working for the
6 company?

7 A He's still a pilot. I believe he's a fleet
8 captain right now, but he's no longer a duty officer.

9 Q Why is he no longer a duty officer?

10 A I believe a fleet captain -- I don't know how
11 their promotions work.

12 Q Uh-huh.

13 A But I believe a fleet captain is a promotion above
14 a duty officer. I'm not sure. I don't know exactly.

15 Q Oh, he's a fleet captain?

16 A Yes, sir, fleet captain.

17 Q Okay.

18 A Fleet captain, I'm sorry.

19 Q And, as duty officer, would he have any authority
20 to allow a pilot to stay at a hotel?

21 A He would talk it over with crew scheduling and
22 GOC. Typically, that decision is made because the weather
23 or the roads are unsafe to get there. As long as the roads
24 are open and the airport is open --

25 Q But my question again is, would Mark Crook, as a

1 duty officer, as a DO, does he have the authority to allow a
2 pilot to remain at his hotel?

3 A Not to my knowledge, sir.

4 Q And are you familiar with this situation that
5 occurred on April 10th in Laredo involving Captain
6 Estabrook?

7 A Yes, sir.

8 Q All right. And you're aware that Captain
9 Estabrook told Mark Crook that he was going to wait out the
10 storm at the hotel?

11 A No, sir, I'm not aware of that.

12 Q You're not aware of that?

13 A No, sir.

14 Q Was Mark Crook ever disciplined for exceeding his
15 authority with respect to this matter?

16 A I don't know anything about --

17 Q Okay.

18 A -- crew discipline.

19 Q Okay.

20 A That's not my department. Global operations
21 control is a totally different department from flight
22 operations.

23 Q Oh, okay.

24 A We have a different chain of command we report up
25 to.

1 Q Okay.

2 A So it's not even the same chain of command.

3 Q Now, do you have some position -- your position
4 involves monitoring TelStrat records?

5 A I don't -- my position does not involve monitoring
6 TelStrat.

7 Q Uh-huh.

8 A The GOC management staff has access to go look at
9 the recording. The recordings are there for safety --

10 Q Uh-huh.

11 A -- and liability of the airline. If there is an
12 accident or an incident, we'll go back and pull the
13 recording and find out what happened.

14 Q I guess they are also used for disciplinary
15 purposes, as well, correct?

16 A No, sir, not to my knowledge.

17 Q Would that be a violation of FedEx policy to use
18 these recorded lines for the purposes of discipline?

19 A I can only speak for global operations control.
20 We do not use them for discipline. They are not for
21 disciplinary purposes.

22 Q Uh-huh.

23 A That's not what they were set up for.

24 Q Uh-huh.

25 A They are set up to ensure safety and follow back

1 on procedures.

2 Q Okay. Would it surprise you if they were being
3 utilized for disciplinary purposes? I guess it would,
4 wouldn't it?

5 A Yeah. I mean, I have never heard of them used for
6 disciplinary purposes in my seven years at global operations
7 control.

8 Q Okay, very interesting. So how long are these
9 records retained for? Indefinitely?

10 A Indefinite, they're on there. After they leave
11 the server, they go to a hard drive.

12 Q And you said who has to authorize the retrieval of
13 these records?

14 A The only people who can access it are GOC
15 management.

16 Q Okay.

17 A Up to the vice president of global operations
18 control.

19 Q And does that include you? Are you able to
20 retrieve these records?

21 A Yes, sir.

22 Q Did Mark Crook ever come to you and ask for the
23 retrieval of phone records?

24 A I don't remember off the top of my head, no, sir.
25 We do get records from time to time. I believe I was the

1 duty manager that night. I'm not a hundred percent sure,
2 but I believe I was a duty manager that night.

3 Q And you have no recollection of Mark Crook coming
4 to you and asking for --

5 A I have no recollection --

6 Q -- certain recordings?

7 A -- of him coming and asking me for the records,
8 no.

9 Q And it's your testimony that he could not have
10 done that on his own initiative?

11 A He could not go get them on his own. He would
12 have to ask a member of GOC management to find the
13 recordings for him.

14 Q And you were the GOC manager that night?

15 A I'm not a hundred percent sure. I believe so.
16 That was four years ago, three years ago.

17 Q And do these records include the duty officer
18 phone line?

19 A Yes, sir.

20 Q Do they include the chief pilot's phone line?

21 A If they are -- any phone number that is called
22 into or called from the operational control center, GOC,
23 would be recorded.

24 Q Okay.

25 A So if you -- the chief pilot, I don't know where

1 his office is, but if it's not in GOC --

2 Q Uh-huh.

3 A -- that particular phone -- all I know is, the
4 phone lines in GOC are recorded. Now, if you've called from
5 GOC to another phone line, that would be recorded, but I
6 don't know where the chief pilot's office is.

7 Q Now, at some point, someone did ask you to
8 retrieve the phone calls related to this?

9 A I don't remember who retrieved them exactly, no,
10 sir.

11 Q Okay.

12 A I don't have any recollection of that.

13 MR. SEHAM: No further questions.

14 JUDGE MORRIS: You are a manager for both dispatch
15 and recovery?

16 THE WITNESS: Yes, sir.

17 JUDGE MORRIS: Okay. Well, then if you would turn
18 to CX-7, I want you to decipher something for me. I think I
19 know what it says, but I want someone to tell me what it
20 says.

21 THE WITNESS: Yes, sir.

22 JUDGE MORRIS: Are you at CX-7?

23 THE WITNESS: Am I there? Yes, sir.

24 JUDGE MORRIS: At the bottom of the document, you
25 see where it says trip recap?

1 THE WITNESS: Yes, sir.

2 JUDGE MORRIS: As I'm reading this -- and correct
3 me if I'm wrong -- so you know, I'm not trying to play
4 hideosy here, if you turn the page, there's more information
5 I may be asking you about. But, as I understand this, this,
6 for lack of a better term, involved a turn flight where the
7 crew went from Memphis to Laredo and then from Laredo back
8 to Memphis?

9 THE WITNESS: Yes, sir. To be honest with you,
10 I'm not -- this is a trip recap that crew scheduling uses.
11 I mean, I can read it, but it does -- from my knowledge, it
12 appears it's a Memphis-Laredo and Laredo back to Memphis.
13 It's called a -- the term would be an out-and-back.

14 JUDGE MORRIS: Yeah. My term is a turn.

15 THE WITNESS: Yes, sir, I'm sorry.

16 JUDGE MORRIS: An out-and-back. I understand
17 different companies --

18 THE WITNESS: Yes, sir.

19 JUDGE MORRIS: -- have different terms.

20 THE WITNESS: I'm sorry.

21 JUDGE MORRIS: And, as I understand this document,
22 this is the same crew, right?

23 THE WITNESS: I don't know exactly, because I'm
24 not in crew scheduling. GOC does not read trip pairings, so
25 I would not know if this is the same crew or not. But it

1 does show the trip. So I don't know if trip number 214 is
2 the same crew. Again, this is a crew scheduling reading
3 function.

4 JUDGE MORRIS: If you would turn the page, do you
5 have any idea what the words "legalities" means on this
6 document?

7 THE WITNESS: No, sir, I do not.

8 JUDGE MORRIS: Okay. Questions based on mine?

9 MR. SEHAM: No. I'm sorry, no, Your Honor.

10 MR. RIEDERER: No, Your Honor.

11 JUDGE MORRIS: All right. Thank you, sir.

12 MR. RIEDERER: You're done.

13 THE WITNESS: Thank you.

14 MR. SEHAM: Thank you.

15 THE WITNESS: Yes, sir.

16 [WHEREUPON, witness Bobby Dunavant was
17 excused.]

18 MR. TADLOCK: Is it all right if I ask questions
19 from right here?

20 JUDGE MORRIS: That's fine. Just get near the
21 mic.

22 MR. TADLOCK: This will be Mark Crook.

23 JUDGE MORRIS: Do you have anyone else after Mark?

24 MR. RIEDERER: I need to check with Maryanne.

25 JUDGE MORRIS: Okay.

1 A I just turned over as fleet captain of the MD11,
2 so I'm going back to the line.

3 Q Are you a seniority list pilot?

4 A Yes.

5 Q And what was your date of hire at FedEx?

6 A April 3rd, 1996.

7 Q And can you tell the Court what crew positions
8 you've held while at FedEx Express?

9 A Crew positions, I was a 727 second officer for two
10 and a half years. I was a 727 first officer for three and a
11 half years. I was a MD-11 first officer for four years, and
12 I have been an MD-11 captain for 10 years.

13 Q And have you also held management positions at
14 FedEx?

15 A Yes.

16 Q Can you tell the Court what those are?

17 A I was a flight operations duty officer for about
18 four years, and I was an MD-11 fleet captain for two years.

19 Q Would you please describe the duties of a duty
20 officer?

21 A The duty officer, I don't -- the position has been
22 around for quite a long time, but we sit in GOC. They call
23 it the C-3 pod, the Command/Control/Communications pod. So
24 there's probably eight to ten people in that pod, and,
25 between managers -- we call them seniors that kind of run

1 the flight schedule.

2 There's a maintenance person, there's a couple
3 crew scheduling people, and the duty officer. So, between
4 all of us, that pod is there to solve last-minute problems
5 quickly. So, when captains call if they're having any type
6 of issues, hopefully between the 10 people there we can give
7 him all the information that he needs to help him out so he
8 can make a better decision.

9 JUDGE MORRIS: Anyone from maintenance there?

10 THE WITNESS: One.

11 BY MR. TADLOCK:

12 Q And is that -- where does flight management sit?
13 Is that in a different pod? Or is that in the same
14 location?

15 A Flight management is in a total different building
16 on the other side of the airport.

17 Q It's maybe a mile away, is that right?

18 A As the crow flies, it's a mile. Probably driving,
19 it's probably a couple.

20 Q And, as the duty officer, how do pilots contact
21 you?

22 A Most of the time, they call you.

23 Q Is safety an important issue in your role as a
24 duty officer?

25 A Yes. Obviously it is the top priority.

1 Q And what do you do as a duty officer if a pilot
2 expresses a safety of flight concern?

3 A Again, any safety of flight concern between the
4 people in that pod, or if it's just something that we could
5 talk it out, but all we're there to do is to support the
6 captain so he can make the best decision he can make.

7 Q And what do you do if a pilot expresses the
8 concern that he's unable to take off because of a safety
9 issue?

10 A If I can help him out in any ways, I will. But,
11 you know, most of the time if he's got a concern and he's
12 the captain of that airplane, I'm going to support him.

13 Q And the Court may know this, but who has the final
14 say about whether a flight takes off?

15 A The captain.

16 Q Were you the acting duty officer on April 10th,
17 2013?

18 A Yes.

19 Q Do you recall having a conversation with Mark
20 Estabrook that evening?

21 A Yes.

22 MR. TADLOCK: And I'm going to ask Maryanne to
23 play a tape, which might refresh your recollection, and it's
24 something we've already heard before.

25 VOICE 2: Hello?

1 VOICE 1: Mark, hey, Mark Crook, the duty officer,
2 how are you?

3 VOICE 2: Okay.

4 VOICE 1: Hey, are you guys at the ramp yet?

5 VOICE 2: No, we're sitting in the lobby at the
6 hotel watching Intellicast.

7 VOICE 1: Watching the what?

8 VOICE 2: Intellicast. Are you familiar with
9 Intellicast?

10 VOICE 1: Yes. I thought you said the broadcast.

11 VOICE 2: Oh, no, no, no. We're -- Sherrie. who
12 is working the flight, she's working 1317?

13 VOICE 1: Yes.

14 VOICE 2: She's our dispatcher, and she's aware of
15 it. I called her an hour ago, and she and I are on the same
16 page.

17 VOICE 1: Okay, what was the decision? What's
18 going on?

19 VOICE 2: We're on a weather hold. We're not
20 going to fly through a line of thunderstorms.

21 VOICE 1: Okay, they put you on a weather hold?

22 VOICE 2: No, I put myself on a weather hold. I
23 am not going to fly through a line of thunderstorms.

24 VOICE 1: Okay.

25 VOICE 2: Have you looked at the radar?

1 VOICE 1: Mark, I'm very familiar with it, but,
2 you know, typically -- we just found out that you guys are
3 supposed to push in 10 minutes, and you're not at the ramp.
4 So this is the first I've heard of it.

5 VOICE 2: Okay, somebody in GOC is not talking to
6 the woman that's working the flight. Somebody got involved,
7 and they don't know what's going on, and I made sure over an
8 hour ago that they knew what was going on. And she agreed
9 with me. She said there's no way.

10 VOICE 1: Okay.

11 VOICE 2: So we're waiting for the weather to pass
12 through, and then we'll -- if we can time it right, we'll
13 arrive right at -- ending up on the east side of Memphis.

14 VOICE 1: Okay, so what time are you planning to
15 take off?

16 VOICE 2: I don't have a time. We're watching the
17 weather.

18 VOICE 1: Okay, the weather has sped up. They're
19 expecting it to move through here about 30 minutes earlier
20 than they expected before.

21 VOICE 2: Well, I'll make that determination at
22 the ramp, but we're not -- I don't see us taking off in 30
23 minutes.

24 VOICE 1: I didn't say to take off in 30 minutes.
25 I just told you the weather had sped up 30 minutes.

1 *VOICE 2: Okay, but I want you to know that I'm on*
2 *top of it and Sherrie's on top of it.*

3 *VOICE 1: All right.*

4 *VOICE 2: All right, thank you, sir.*

5 BY MR. TADLOCK:

6 Q You understand that calls to a duty officer are
7 recorded through what I understand to be called the TelStrat
8 system?

9 A I don't know what the system is called, but, yes,
10 they are recorded.

11 Q As a duty officer, do you have access to the
12 TelStrat system?

13 A Do I have access to it?

14 Q Uh-huh.

15 A No.

16 Q Do you have the ability to edit or delete a call
17 that is recorded by that system?

18 A No.

19 Q Would you even know how to do this?

20 A The TelStrat system? No.

21 Q Can you tell me what prompted you to call Captain
22 Estabrook that evening?

23 A I was called by the ramp agent at Laredo, and all
24 he said to me was, hey, we've got a flight here, 1317, it's
25 got 10 minutes until it's supposed to push and the crew is

1 not here. So, you know, I talked to him, I got -- I
2 probably asked him a few times for the flight and all
3 because -- and then I went and I looked up who was the
4 captain, and it said Mark Estabrook. And I called Mark. So
5 when I called him, I had absolutely no details other than
6 the crew wasn't at the ramp.

7 Q Okay. Is staying in the crew's hotel in Laredo
8 when there is a thunderstorm over Memphis consistent with
9 how you would expect a pilot to act in this sort of
10 situation?

11 A No.

12 Q Why not?

13 A Everybody, as far as -- you know, we have weather
14 all the time. We do flight ops both daytime and nighttime,
15 and, in four years of being a duty officer, I have never had
16 a single crew other than Mark and his FO not show up at the
17 ramp to at least preflight the jet, look over the flight
18 release, and get the jet ready to go.

19 Q And how long does that generally take?

20 A Takes an hour.

21 Q And is there -- what's the benefit of having a
22 crew at the ramp, as opposed to at the hotel in that sort of
23 situation?

24 A Again, because it takes -- between the flight
25 release, looking at the weather, going out, preflighting the

1 jet, getting the FMS ready to go, get the inside of the
2 cockpit ready to go, to fly, it takes about an hour. Plus
3 however far you were -- I have no idea. I have never been
4 to Laredo.

5 It has been an Airbus city for a long, long time,
6 so I don't know if it's a 15-minute taxi ride or an hour
7 taxi ride. But, whatever it is, by the time you get to the
8 ramp, it pretty much takes most people about an hour is the
9 average it takes somebody to get the plane ready.

10 Q And did you understand there to be any safety
11 issue with Captain Estabrook making it to the ramp that
12 evening?

13 A No.

14 Q Are there some situations when a pilot may be
15 asked to not report for work and stay in a hotel?

16 A Yes. Many times, if the jet is not up, if the jet
17 is -- maintenance-wise it has some problems and they know
18 it's going to be, you know, three, four, five hours before
19 the jet is up and ready to go fly, they will try to contact
20 the crew and keep them in the hotel so that they are better
21 rested, because all they'll be doing at that point in time
22 is wasting their time at the ramp.

23 Q Is weather the same as a mechanical delay?

24 A No.

25 Q And was this a situation where you would expect

1 the flight crew to stay at the hotel and not report at the
2 ramp?

3 A No.

4 Q And who makes the decision to stay at a hotel, in
5 a mechanical situation like you described?

6 A Well, typically, you know, sometimes the captain
7 will call and say, hey, we're being told the jet is down.
8 Or sometimes maintenance will contact the GOC managers there
9 and tell them that there's problems with the jet, it's not
10 ready to go.

11 And typically in that C-3 pod, between the manager
12 and the senior manager and the duty officer and crew
13 scheduling, probably at least four people will get together
14 and talk and say, let's get the best game plan going. And,
15 if maintenance says this is the earliest this jet will ever
16 come up, then typically crew scheduling will change the
17 pairing to extend them into the hotel.

18 Q Are you aware of any prior incidents where a pilot
19 had made the decision at his hotel by himself because of
20 weather at his destination?

21 A No.

22 Q What was your intent in calling Captain Estabrook
23 that evening, initially?

24 A Well, my initial call was just to find out what
25 was going on.

1 Q Was it your intent to push Captain Estabrook to
2 fly into bad weather?

3 A No.

4 Q I'd like you to turn to -- there should be red
5 notebook in front of you -- what's marked as respondent's
6 RX-10.

7 A Tab 10?

8 Q Yeah.

9 A Okay.

10 Q Could you turn to page 140?

11 A Yes.

12 Q And take your time, but please look through page
13 140 through 141.

14 A Is that the call that I -- which call is that?

15 Q Yeah, I'll represent that to be the -- I'm sorry,
16 that's the initial phone call between the duty officer --

17 A The ramp agents?

18 Q I'm sorry, between you and Captain Estabrook. It
19 starts with, hello.

20 A Uh-huh.

21 Q And then it goes, Mark, hey, Mark Crook, the duty
22 officer.

23 A Okay.

24 Q If you turn to page 141, you asked Captain
25 Estabrook, so what time are you planning to take off? What

1 was your intent in asking that question?

2 A What was his game plan? I mean, he was telling me
3 he's sitting at the hotel watching Intellicast. I haven't
4 talked to Sherrie, so I don't know what they have
5 communicated, but obviously Mark has told me that him and
6 Sherrie have talked and they have, you know, decided to stay
7 at the hotel. So I was really asking him, what is his game
8 plan.

9 MR. TADLOCK: Now what I'd like you to do is turn
10 to complainant's exhibit CX-8, which will be --

11 MR. RIEDERER: The white notebook.

12 BY MR. TADLOCK:

13 Q And I'd like you to look at tab 8 and what's
14 marked on the bottom right-hand corner of the page as --

15 A Okay, this one?

16 Q -- page C-39.

17 A C-39?

18 MR. SEHAM: I'm sorry, you're saying complainant's
19 exhibit?

20 MR. TADLOCK: Tab 8. And then if you look at the
21 bottom of the page, page C-39.

22 JUDGE MORRIS: C-39.

23 THE WITNESS: Okay.

24 BY MR. TADLOCK:

25 Q This is going to take some --

1 A It's a good thing I have my glasses on.

2 Q Yeah. Good eyesight. But, if you look at the
3 narrative portion of that document, and if you --

4 A Towards the bottom?

5 Q Yeah, about a two-thirds of the way down the page,
6 and one, two, three, four, five, six lines down, there's a
7 sentence that begins, he then told me. And I'll represent
8 this to you to be a copy of a charge filed by Captain
9 Estabrook. Can you read --

10 A This is on C-39?

11 Q Yes. It says, he then told me.

12 A I'm not coming up with it.

13 MR. SEHAM: Me either.

14 THE WITNESS: Oh, you're not starting at the
15 beginning of the line, sorry. Okay.

16 BY MR. TADLOCK:

17 Q And then he said to him -- I'm reading to the next
18 line down -- "They told him the thunderstorm would pass
19 through Memphis in about 30 minutes. He directed me to take
20 off and fly to Memphis."

21 A No, that's not true. We just listened to the
22 tape.

23 Q You did not direct him to take off and fly to
24 Memphis?

25 A No.

1 Q What did you do next after having this
2 conversation?

3 A I went over and talked to Sherrie to find out if
4 what Mark had told me was what she understood. And she had
5 no idea that he was at the hotel still. So I probably left
6 it -- you know, I mean, as soon as I hung up the phone with
7 Mark I went over and talked to Sherrie.

8 Sherrie said she had no idea that he was at the
9 hotel. I walked away from the desk, and I can't recall if I
10 called him or if he called me. In fact, I think as I walked
11 away -- you know, I can't quite remember, it has been a long
12 time, but I think him and Sherrie were having a
13 conversation.

14 And so I can't recall if I called him or if he
15 called me, but we talked, and I basically told Mark, I said,
16 Mark, I said, you need to go to the ramp, you need to look
17 at the release, you need to get the jet ready to go fly, and
18 then if you have safety concerns with the weather or
19 anything else call me back and we'll discuss it.

20 Q And is there a possibility that that conversation
21 may not have been recorded by the TelStrat system?

22 A Yeah. You know, anytime I walked away from the
23 duty desk, I always forwarded to my cell phone. But, if the
24 call comes through, whether -- you know, if I got it on my
25 cell phone, it's going to be just me to him. If he calls

1 me, it will go through the duty desk to my cell phone, but
2 it will not be recorded.

3 Q And do you recall telling him that he should
4 report to the ramp?

5 A Yes.

6 Q Did you pressure him to take off?

7 A No.

8 Q What's the next thing you did with respect to
9 Captain Estabrook in this situation?

10 A I think I went back and talked to Sherrie at one
11 point, and Sherrie said that he was at the ramp, and she
12 said, do we need to call him? And I said, no, I have
13 already talked to him about that. I said, if he has safety
14 concerns, he will call me, and I'm sure he will. So, no, I
15 did not initiate another phone call to him.

16 Q Did you later write an e-mail describing this
17 situation?

18 A Yes.

19 Q Would you turn to respondent's exhibit RX-8?

20 A RX-8?

21 Q Yes.

22 A Oh, in here? Okay.

23 Q Is that a copy of that e-mail?

24 A Yes.

25 Q If you turn to the second-to-last paragraph, it

1 says, "In my two-plus years as DO, I have never had a
2 captain take it upon himself to delay a flight without
3 coordinating and coming to an agreement with the
4 dispatcher." What did you mean by delay there, and what did
5 you mean by that sentence?

6 A Well, I mean, not being at the ramp, he has
7 obviously taken the airplane and put it in at least an hour,
8 plus whatever the taxi ride is, into that type of delay.

9 Q Are you aware -- go on.

10 A That's what I meant by that.

11 Q Are you aware of pilots who have refused to take
12 off in light of bad weather in the past?

13 A Oh, they do it all the time.

14 Q It happens regularly.

15 A Yes.

16 Q Are you aware of any situation where the company
17 has disciplined a pilot for determining bad weather did not
18 permit flying?

19 A No.

20 Q Was the company's concern here Captain Estabrook's
21 alleged refusal to fly into bad weather?

22 MR. SEHAM: Objection. He can only speak to his
23 concern, not the company's.

24 BY MR. TADLOCK:

25 Q Was your concern here Captain Estabrook's alleged

1 refusal to fly into bad weather?

2 A Was that my concern? No.

3 Q What was your concern?

4 A Not being at the ramp when he was supposed to be.

5 MR. TADLOCK: No further questions.

6 JUDGE MORRIS: Counsel?

7 MR. SEHAM: Yes.

8 **CROSS EXAMINATION OF**

9 **MARK CROOK**

10 BY MR. SEHAM:

11 Q You were very angry when you sent this e-mail,
12 respondent's exhibit RX-8?

13 A I don't think so.

14 Q You weren't angry?

15 A No. I don't think I sent this until the morning.

16 So whatever -- in fact, the duty officer is on from --
17 again, we swap the times around a little bit, but typically
18 it was 8:00 to 8:00.

19 Q Uh-huh.

20 A At one point, we went from 6:30 to 6:30. So
21 you're on 12 hours.

22 Q Uh-huh.

23 A So this whole event happened between, I'm
24 guessing, 9:30-ish and probably midnight.

25 Q Uh-huh.

1 A I didn't write this until the morning.

2 Q So you slept on it?

3 A No, no, I didn't sleep, no. No, this was in the
4 morning.

5 Q What I meant was that you took time to cogitate,
6 to think about the situation before you sent the e-mail?

7 A Yes.

8 Q And you sent it, when, the next day, April 11th?

9 A No, I sent it before I went off duty. So I would
10 say sometime between 5:00 and 7:00 in the morning I wrote
11 this. In fact, it should have a time on it.

12 Q Yeah, it does.

13 A 11:46.

14 Q It says 11:46.

15 A Uh-huh, I didn't send it until then. So maybe I
16 did go back and sleep and then wake up and write it.

17 Q And you sent this e-mail to William McDonald and
18 Rob Fisher, correct?

19 A And FODO and Mike Speer. FODO is all the duty
20 officers.

21 Q And you never got any e-mail response from Bill
22 McDonald about this, correct?

23 A No. Duty officers aren't responsible for pay or
24 for discipline, so they never, ever told me as a duty
25 officer if pay was involved or if disciplined in anything

1 that happened.

2 Q But they didn't even acknowledge that they got the
3 e-mail?

4 A I can't recall.

5 Q You didn't have any discussions with them
6 concerning this matter via telephone, correct?

7 A No.

8 Q And when did you get -- when did you first access
9 these audio tapes?

10 A I can't recall if the -- you know, obviously, him
11 not being at the ramp was a big deal. So, again, as a DO,
12 you know, besides trying to do the right thing with the
13 captain, I also try to sometimes just keep them out of
14 trouble.

15 But I could tell from behind me with the managers
16 and the senior managers that this thing was taking on -- you
17 know, they were writing e-mails behind them, and I knew this
18 was going to hit the screen a little bit. So I'm not sure
19 if I asked somebody to pull the tape or if they just
20 basically sent me that tape. But I was sent -- when I woke
21 up in the morning, I had an e-mail from somebody in GOC just
22 sending me the copy of the tape, and then I summarized what
23 had happened. I included the tape I think on this, and I
24 sent it.

25 Q Well, didn't you get -- you got the tape the same

1 day, didn't you?

2 A I don't think I actually -- they said they would
3 pull the tape. I don't recall when I received the tape.

4 Q You don't know from whom you asked the tape?

5 A No, typically behind you are two managers and two
6 seniors.

7 Q Uh-huh.

8 A So there's four people back there at night. One
9 of those four pulled those tapes.

10 Q And, I'm sorry, you can't identify who?

11 A No. I mean, I can't recall who does it.

12 Q Uh-huh.

13 A Or who did it that night.

14 Q And what did you ask for?

15 A I asked for any tapes between Captain Estabrook
16 and myself.

17 Q But you, in fact, got more than those tapes,
18 right?

19 A No, I got -- I think we got the one tape that we
20 just played. That's the only tape -- I think that's the
21 only recorded conversation between him and myself.

22 Q You didn't get any other tape than the tape
23 between you and Captain Estabrook?

24 A No.

25 Q Didn't you get a couple conversations -- or,

1 weren't there two conversations with Sherrie Hayslett?

2 A If I got something -- I can't recall if I got
3 anything with Sherrie.

4 Q You walked over and spoke to her?

5 A Yes, I did.

6 Q After her first conversation with him?

7 A No, she had spoken to him. Obviously, they had a
8 conversation that Mark took it that he could stay at the
9 hotel.

10 Q Uh-huh.

11 A And, when I walked over and talked to her, I think
12 as soon as I walked away I think he called her and they were
13 having another conversation.

14 Q Okay.

15 A So I probably -- again, I don't know how many
16 conversations he had with her. She was a dispatcher. He
17 could have called her numerous times.

18 Q How many conversations did you have with Sherrie
19 Hayslett that night?

20 A I walked over and had the one --

21 Q Uh-huh.

22 A -- that did she coordinate him staying at the
23 hotel, and she said she had no idea. And then I walked over
24 again, and she told me that he was at the ramp. That was
25 the 10-second -- as soon as she told me he was there, that's

1 all I cared about.

2 Q You concluded that Mark Estabrook was very rude to
3 her, correct?

4 A No.

5 Q You concluded that Captain Estabrook was bossing
6 her around?

7 A I thought Captain Estabrook was rude to me. But,
8 no, I did not think -- I had no idea what their
9 conversations were.

10 Q Then why -- can you explain why in this last
11 paragraph of exhibit RX-8, why did you write that Captain
12 Estabrook was directive to Sherrie and told her how it was
13 going to be?

14 A She probably told me that. But, obviously, she
15 had no idea that he was at the hotel, you know. And just
16 listening to that conversation -- or, I guess I have heard
17 Sherrie's tape. I can't recall when. I don't know, I think
18 that was recent. Maybe getting ready for this they played
19 me Sherrie's tape.

20 Q But, in any case, after April 10th when you sent
21 this e-mail, correct?

22 A Yes.

23 Q But here you're saying Captain Estabrook was
24 directive to Sherrie and telling her how it was going to be,
25 right? You wrote that sentence, correct?

1 A Yes.

2 Q And what did you base that on?

3 A Had to be from Sherrie's conversation, because I
4 wrote that the very next day.

5 Q And this was the conversation you had with her
6 after she told you that she had no idea he was still at the
7 hotel?

8 A Yes.

9 MR. SEHAM: Could we play the first Sherrie
10 Hayslett conversation with Captain Mark Estabrook?

11 MS. MARYANNE MILLER: That would be the very first
12 recording within that chronology?

13 MR. TADLOCK: Correct.

14 VOICE 1: *GOC, This is Sherrie.*

15 VOICE 2: *Hey, Sherrie, this is Mark Estabrook on,*
16 *what are we, 1317?*

17 VOICE 1: *Laredo-Memphis?*

18 VOICE 2: *Laredo to Memphis, that's correct. I'm*
19 *just giving you a heads-up, it looks like we're going to be*
20 *late tonight.*

21 VOICE 1: *Oh, yeah. I think many will be late,*
22 *but you're speaking in reference to the weather?*

23 VOICE 2: *Yeah.*

24 VOICE 1: *Yes.*

25 VOICE 2: *I just -- you know, I hate to assume*

1 anything, so I just wanted to give you a heads-up. But
2 we're on top of it. Right now, we're still at the hotel.

3 VOICE 1: Okay.

4 VOICE 2: We're going to get a taxi here as we
5 watch the weather in the lobby on Intellicast.

6 VOICE 1: Uh-huh.

7 VOICE 2: But I wanted to let you know where we
8 were and not to panic.

9 VOICE 1: Okay. Well, let's see, have you had a
10 chance to look at your release?

11 VOICE 2: My FO is doing that downstairs. Right
12 now, I'm just getting my bags.

13 VOICE 1: Okay.

14 VOICE 2: So we'll keep an eye on it. And then
15 you've got my cell phone number if you have any reason to
16 contact me.

17 VOICE 1: Let me write that down, 230-4933?

18 VOICE 2: Correct, and it's Mark.

19 VOICE 1: All right, Mark, I'll be happy to call
20 you with any updates. But, you know, with the weather
21 moving in, sometimes with adjacency to their metering the
22 other towers actually hear things before the dispatchers do
23 because center is constantly changing stuff.

24 VOICE 2: Right.

25 VOICE 1: So, if you hear something and you

1 haven't heard from me, if you'd just drop me an ACARS real
2 quick with an update?

3 VOICE 2: I mean, it might be, you know, hell in
4 Memphis --

5 VOICE 1: Uh-huh.

6 VOICE 2: -- when we take off from Laredo, because
7 we're going to try to time it so that, you know, we get
8 there just at the right time.

9 VOICE 1: That would be perfect.

10 VOICE 2: Yeah. So it may not look good outside,
11 but you don't have a window anyway, do you?

12 VOICE 1: Yes.

13 VOICE 2: I thought they took the windows away
14 until morale improved.

15 VOICE 1: No, they were kind enough to leave us
16 with windows, but in the hopes that it would improve morale.

17 VOICE 2: Oh, okay. All right, thanks, Sherrie.

18 VOICE 1: You're welcome. I'll give you a call if
19 I hear anything.

20 VOICE 2: All right, bye bye.

21 VOICE 1: All right, bye.

22 MR. SEHAM: I want to ask you a few questions
23 about your perspective on this telephone conversation.

24 BY MR. SEHAM:

25 Q Did you -- to your perception, was Captain

1 Estabrook being belligerent in tone with Ms. Hayslett?

2 A No.

3 Q Was he being directive in telling her how it was
4 going to be?

5 A I don't think -- listening to that conversation, I
6 don't take from that that he's staying at the hotel at all.

7 Q No, that's not what I'm asking you. Please listen
8 to my question. Do you take from this recording that he was
9 being directive to Sherrie and telling her how it was going
10 to be?

11 A No.

12 Q Weren't you in possession of this audio tape
13 before you wrote this e-mail?

14 A No. Absolutely not.

15 Q Didn't you send this audio tape to McDonald --

16 A No.

17 Q -- and Fisher?

18 A Absolutely not.

19 Q Absolutely not? You're absolutely positive of
20 that?

21 A I am positive that I did not listen to Sherrie's
22 tape, so I don't know why I would have sent it. When I
23 asked them -- if I asked them for a tape, which I'm probably
24 sure I did, they sent me my conversation between me and
25 Captain Estabrook.

1 Q And nothing else?

2 A Nothing else.

3 Q All right. If you look three paragraphs up on
4 company exhibit CX-8

5 JUDGE MORRIS: Complainant's exhibit CX-8.

6 MR. SEHAM: Complainant's exhibit CX-8.

7 THE WITNESS: Exhibit CX-8?

8 MR. SEHAM: That's it.

9 MR. TADLOCK: I think you're very fond of exhibit
10 CX-8.

11 MR. SEHAM: Yeah, that's my problem as a labor
12 arbitrator guy.

13 THE WITNESS: This same page?

14 MR. SEHAM: Yes.

15 THE WITNESS: Okay.

16 BY MR. SEHAM:

17 Q Three paragraphs down, do you see where I'm
18 reading, "I have attached Sherrie's first conversation with
19 Captain Estabrook, my conversation, and then Sherrie's
20 second conversation," you see that sentence?

21 A So I guess I did.

22 Q Okay.

23 A So obviously I did listen to it.

24 Q And, notwithstanding having listened to them, and
25 notwithstanding having heard the cordial nature of this,

1 that you responded -- or, you characterized this as Captain
2 Estabrook being directive to Sherrie and told her how it was
3 going to be.

4 A [No audible response.]

5 Q Well, actually, that's not a question. Let's move
6 on.

7 A And then it says the second Sherrie conversation.

8 Q Wasn't it your testimony that you didn't discuss
9 this --

10 A Well, obviously, I am wrong. It says I have
11 attached Sherrie's first conversation with Captain
12 Estabrook, my conversation, and then Sherrie's second
13 conversation.

14 Q When you said he was --

15 A So, obviously, they did send me all three.

16 Q Now, when you said he was being directive to
17 Sherrie and telling her how it was going to be, was that
18 with respect to the weather?

19 A I don't know. In fact, can we listen to the
20 second conversation with Sherrie again?

21 Q And I'm asking you.

22 A And I don't know.

23 Q Uh-huh.

24 A I just told you that the first conversation with
25 Sherrie he did not sound directive.

1 Q And, in fact, isn't it true that Sherrie told him
2 there was a weather problem?

3 A Well, everybody knew there was a weather problem
4 that night.

5 Q If you go to complainant's exhibit CX-7?

6 A First page?

7 Q The second page. You see where it says, shift
8 note from the GOC?

9 A Well --

10 Q Who would that be, do you know?

11 A I don't know.

12 Q You say they spoke to Sherrie, GOC dispatcher, who
13 just told them they were not -- they were going to have WX.
14 What do you understand from that?

15 A I mean, she agreed. He said obviously we're going
16 to be late. She took that to mean he's going to be -- his
17 flight is going to be delayed because of the weather in
18 Memphis.

19 Q So they actually agreed that there was a weather
20 problem that was going to occasion delay, correct?

21 A Yes.

22 Q And it said, at the last sentence, "We had to get
23 DO involved since pilots say they were not leaving the hotel
24 until WX passed." Who is the DO?

25 A Duty officer. Me.

1 Q That's you? Isn't it true that there is no
2 recorded conversation in which the pilots refuse to leave
3 the hotel until the weather passed, correct?

4 A I think his first conversation with me told me
5 that he wasn't leaving the hotel.

6 Q So, in fact, you --

7 A Again, I don't write these shift notes.

8 Q Uh-huh.

9 A So I have no idea who wrote this shift note.

10 Q So you had no -- other than this one e-mail, this
11 respondent's exhibit RX-8, you had no correspondence?

12 A No. That would be my only --

13 Q That was it?

14 A Yes.

15 Q And the purpose of your writing this e-mail was to
16 have Captain Estabrook subject to some kind of disciplinary
17 action, correct?

18 A No.

19 Q When you wrote this final sentence -- and you say
20 you weren't angry at this time when you wrote this?

21 A [No audible response.]

22 Q You wrote the final sentence here, "Over to you
23 guys, but this captain is on his own program in a system
24 that runs by time, not much slop." Is slop -- is that pig
25 feed? Is that what you're --

- 1 A No.
- 2 Q Is that how you understand that term, pig feed?
- 3 A Not much slop in time.
- 4 Q Not much slop?
- 5 A In time.
- 6 Q Is that an acronym?
- 7 A Yes.
- 8 Q Slop?
- 9 A Slop.
- 10 Q What does that stand for?
- 11 A You know, plus or minus. There's not -- you know,
- 12 FedEx runs by minutes, so there's not a lot of slop as far
- 13 as, you know, being late.
- 14 Q I'm sorry, did you say that was an acronym, that
- 15 that stood for something?
- 16 A It's just probably a term that I use.
- 17 Q FedEx runs by minutes, correct?
- 18 A Yes.
- 19 Q Uh-huh. So it's very important not to have even
- 20 brief delays?
- 21 A You know, weather is weather. And you can't --
- 22 FedEx does not put captains or crews in jeopardy because,
- 23 obviously, the crew and that aircraft are worth way more
- 24 than anything else. So obviously we try to move freight on
- 25 time. That's what we get paid to do. But at no time would

1 myself or any person at FedEx tell somebody to fly -- to do
2 something dangerous.

3 Q But you had at least one conversation with Captain
4 Estabrook that wasn't recorded?

5 A Again, I can't recall. I know that when -- I'm
6 pretty sure that we talked. Whether I called him or he
7 called me, I can't recall, but I just told him he needed to
8 go to the ramp and get the jet ready to go.

9 Q There might have been more than one call with him
10 that wasn't recorded?

11 A [No audible response.]

12 Q You don't recall?

13 A I wouldn't bet my house on it.

14 Q You don't know one way or the other?

15 A Yes, I don't know one way or the other.

16 Q Okay.

17 A I know that was the second conversation I had with
18 him, telling him to get to the ramp. If we had a third one,
19 if he had called me and talked about the weather, I don't
20 recall that.

21 Q I want to take you to respondent's exhibit RX-10.

22 A The red book?

23 Q Yes. And I'm turning you to the fourth page, you
24 conversation with Captain Estabrook.

25 A RX-140?

1 Q Yes. You see where it says you call him and he
2 says hello. You respond, Mark, hey, Mark Crook, duty
3 officer, sir, how are you? He says, good. Hey, are you
4 guys at the ramp yet? Would you agree with me that this was
5 a disingenuous question, by which I mean you already knew he
6 wasn't at the ramp?

7 A Yes. I basically wanted to hear from where -- you
8 know, what was going on, where he was.

9 Q Were you trying to entrap him by asking him this
10 question?

11 A No.

12 Q In fact, because you had had a conversation with
13 the ramp two --

14 A Yes.

15 Q -- two minutes before this in which they told you
16 he was not there?

17 A I have been told wrong things by ramps many times.

18 Q Uh-huh. Now, during this conversation -- now, you
19 said you went over to talk to Sherrie Hayslett?

20 A Yes.

21 Q And how far away is she from you?

22 A Oh, she's probably a good 30 yards.

23 Q And you just spoke to her once that evening?

24 A No, I think I spoke to her again. I talked to her
25 about did she coordinate with Mark, and then I talked to her

1 again if he was at the ramp.

2 Q And you didn't ever overhear any conversation that
3 she had with Captain Estabrook, correct?

4 A I don't believe so, no.

5 Q So you made no effort to contact Captain Estabrook
6 with that dispatcher Hayslett on the line to try to clarify
7 the situation?

8 A No.

9 Q Now, isn't it true that in his second conversation
10 with dispatcher Sherrie Hayslett he advised her that the
11 crew was waiting out the storm at the hotel?

12 A What, my conversation with Sherrie?

13 Q No, no, in Captain Estabrook's second conversation
14 with Sherrie Hayslett.

15 A Can we hear it?

16 Q Do you have any recollection of that one way or
17 the other?

18 A No.

19 Q She never told you that he had informed her that
20 they were waiting out the weather at the hotel?

21 A No, she never -- she had stated that she never
22 knew that they were at the hotel.

23 Q When did she say that? After her first
24 conversation, after the second conversation?

25 A My first conversation with her. After I talked to

1 Mark, I went right over and talked to her.

2 Q Right.

3 A And she told me she had no idea that they were at
4 the hotel.

5 Q And he never -- you never spoke to her again about
6 that issue?

7 A No, because the second time I walked over and
8 asked her was he at the ramp, and she said, yes, he is.

9 Q Okay.

10 A And so that's all I cared about.

11 Q I can't recall your answer. Did you -- when you
12 sent these three taped conversations, had you listened to
13 them before you sent them to Fisher and McDonald?

14 A Obviously I must have.

15 Q You must have?

16 A That's what my e-mail says.

17 Q So didn't you know when you sent this e-mail to
18 them, didn't you know that Hayslett had been told by Captain
19 Estabrook --

20 A Well, again --

21 Q -- that they were waiting out the weather at the
22 hotel?

23 A -- I cannot recall.

24 Q Okay.

25 A It says that I listened to a second conversation

1 between him and her, and I still haven't heard that since --
2 in three years.

3 Q Dispatcher Hayslett never told Captain Estabrook
4 that it was inappropriate or a violation of company policy
5 to wait out the storm at the hotel, correct?

6 A No, that was my job.

7 Q And there's no recorded conversation of you
8 telling him that it was inappropriate to be at the hotel?

9 A Certainly I didn't use the word inappropriate, but
10 I just told Mark that, hey, I said, you need to be at the
11 ramp, you need to get the jet ready to go flying, then if
12 you have any safety concerns after that, whether it's
13 weather or the jet, you give me a call and we'll talk about
14 it.

15 Q What you just said there in your last response,
16 that's not in any recorded conversation, is it?

17 A No.

18 Q Okay.

19 A Obviously either I called him or he called me and
20 I was on my cell phone.

21 Q Okay.

22 A But that is not a recorded conversation.

23 Q Would he know your cell phone number?

24 A No, he would call the duty officer and it was
25 forwarded to my cell phone.

1 JUDGE MORRIS: So I understand your testimony, if
2 the duty officer has the line forwarded to his cell phone,
3 it's not recorded by the system?

4 THE WITNESS: Yes, sir. The phones actually -- if
5 you picked up that phone and just picked it up and started
6 talking without dialing anybody, it's recorded, so that it's
7 all part of the phone system.

8 BY MR. SEHAM:

9 Q Now, with respect to the first -- well, rather
10 than calling it the first -- the only recorded conversation
11 that you had with Captain Estabrook, you never requested
12 that Captain Estabrook report to the ramp, correct?

13 A No, I did not.

14 Q And you never asked him what time he was going to
15 report to the ramp, correct?

16 A No, I did not.

17 Q Rather, you asked him, what time are you planning
18 to take off?

19 A Correct. What I was asking was, what was his game
20 plan.

21 Q No, but I'm asking what you said literally. You
22 said --

23 A I know what I literally said, but that's what I
24 meant.

25 Q Okay.

1 A But I didn't want to get in an argument with
2 Captain Estabrook until I went over to Sherrie --

3 Q Uh-huh.

4 A -- and asked her if what he said was true.

5 Q Uh-huh.

6 A And she did not understand the conversation to be
7 that way.

8 Q Now, why would you have said game plan? Was it
9 your intent to say game plan instead of what you actually
10 said, what time are you planning to take off? Was it
11 because you wanted to convey to Captain Estabrook that he
12 actually had some discretion in the matter?

13 A Repeat again what you said?

14 Q I'll withdraw the question. Captain Estabrook
15 expressed safety concerns relating to the weather, correct?

16 A Yes, he did.

17 Q And your April 10th e-mail asserts that Estabrook
18 became the sole source of weather by looking at the weather
19 plot on Intellicast and delayed the flight by that sole
20 source of information.

21 A Well, he decided --

22 Q I'm asking --

23 A We're using two different terms.

24 Q You said you wrote that, correct?

25 A I did.

1 Q And, when Captain Estabrook told you he was
2 monitoring Intellicast, you never criticized him for his
3 reliance on that source, did you?

4 A Again, I did not want to get into an argument with
5 Mark until I knew what Sherrie's side of the story was.

6 Q And Sherrie told you, yes, he was --

7 A Because, if Sherrie had told me --

8 Q Uh-huh.

9 A -- that he had coordinated that whole thing, and,
10 yes, she gave him permission to stay at the ramp [sic], I
11 would not have wanted to call Mark back and say, hey, it's
12 time to go to the ramp.

13 Q But you spoke to Sherrie, and Sherrie presumably
14 told you that she raised the weather issue first, correct?

15 A She told me that she had -- we didn't have that
16 conversation.

17 Q Okay.

18 A The conversation was, did she give him permission
19 to stay at the hotel.

20 Q Okay. But you then later listened to the tape and
21 found out that she had raised the weather issue first,
22 correct?

23 A First? I don't know if it was her or him who
24 raised it first. It doesn't matter. They're both talking
25 about the same things.

1 Q So why did you say that he became the sole source
2 of weather when he had actually consulted with her about the
3 weather?

4 A Well, all they talked about -- you can hear it in
5 the first conversation -- all they talked about was that the
6 weather was bad.

7 Q And that many were delayed because of the weather,
8 correct?

9 A No.

10 Q No?

11 A I didn't hear that from that conversation.

12 Q Very good.

13 A In fact, I was the duty officer that night. Not a
14 single aircraft diverted that night.

15 Q I'm going to refer you to RX-10, respondent's
16 exhibit RX-10.

17 A Red or white?

18 MR. RIEDERER: Red.

19 BY MR. SEHAM:

20 Q Can you look at the fourth person reference down
21 that begins, Estabrook, Laredo to Memphis, that's correct.
22 I'm just giving you the heads-up, it looks like we're going
23 to be late tonight. And Sherrie says, oh, yeah, I think
24 many will be late, but you're speaking in reference to the
25 weather.

1 A All right, that was her guess at the time.

2 Q I'm just -- why did you write to Fisher and
3 McDonald that he became the sole source of weather
4 information --

5 A I don't --

6 Q -- when you knew that Ms. Hayslett had said this
7 to him?

8 A I don't take that as a conversation about weather.
9 I would take him calling the weather department and getting
10 details of the weather. I would not take a picture of
11 Intellicast to be what the story of the weather is.

12 Q And he asked her for updates, to give her [sic]
13 updates about the weather, correct?

14 A He said if there's any changes, and she said the
15 same thing to him, if you have any changes because you might
16 get notified first, then let me know.

17 Q Okay.

18 A So Sherrie -- you have to understand too, Sherrie
19 is probably dispatching about 15 aircraft that night. So
20 she's juggling a lot of things. That flight is not her one
21 sole source flight, so she's dealing with a lot of flights.
22 She's probably giving each flight probably minimal time
23 because she's trying to do the releases.

24 Q Okay.

25 A So, really, she prints all these things out and

1 does the releases. Weather is really -- you know, I'm
2 telling you, it's important to her, but it's not -- you
3 know, when she's getting 15 flights and the weather is
4 terrible, she's just trying to, you know, get the gasoline
5 correct and things like that to make this a legal flight.

6 Q Do pilots ever call dispatchers to get input on
7 the weather situation?

8 A Yes, they do.

9 Q And you knew that Captain Estabrook obviously
10 wanted --

11 A From these conversations --

12 Q Excuse me, let me finish.

13 A I'm sorry.

14 Q He wanted her further input on the weather, right?

15 A If she had any updates, yes.

16 Q But you still felt comfortable saying that Captain
17 Estabrook set himself up as the sole source of weather?

18 A I do.

19 Q And you never offered Captain Estabrook any
20 assistance in monitoring the weather, correct?

21 A I told Mark that once he got the jet ready, if he
22 had any concerns at all, to call me.

23 Q That's not in a recorded conversation?

24 A That's not recorded.

25 Q This is one of the conversations you had that

1 wasn't recorded?

2 A Yes.

3 Q Did Ms. Hayslett ever complain to you about --
4 well, withdraw that. Did you ever reach any conclusion that
5 Captain Estabrook was intentionally delaying the Laredo
6 departure?

7 A Intentionally?

8 Q For reasons -- let me add, for reasons other than
9 safety?

10 A No, I think Mark was -- there's no doubt about it,
11 Mark was concerned about the weather.

12 Q And he was the pilot in command, correct?

13 A Yes, he was.

14 Q And you knew that at the time you spoke to him?

15 A Yes.

16 Q So you didn't have a problem with the delay as
17 such, you just had a problem with his not reporting to the
18 ramp --

19 A Yes.

20 Q -- is that your testimony?

21 A Yes.

22 Q Did you fault him -- you were angry -- I'm going
23 to pursue this issue. You were angry about the delay, isn't
24 that true?

25 A Again, I was not angry.

1 Q Okay.

2 A So my -- again, my position with Mark -- because,
3 again, as a duty officer I'm trying to do the right thing by
4 him, but I'm also trying to make sure he's not digging a
5 hole for himself. Not being at the ramp is just
6 indefensible to all the managers sitting behind me.

7 Q Uh-huh.

8 A All I was really concerned about at the time,
9 Mark, get to the ramp, get the jet ready to go, and then if
10 you have concerns give me a call. Now they have nothing to
11 say about him. Now there's no problem with the pilot and
12 what's he supposed to do -- he's at work, he's ready to go,
13 and there's a weather concern. And I would back him to the
14 hilt with that.

15 But I had no defense of the GOC managers behind me
16 with him not being at the ramp, especially since he didn't
17 coordinate it through us. If he had coordinated through us
18 and we had given him that permission, he was good to go.

19 Q So you didn't have a problem with the delay, you
20 had a problem with not reporting to the ramp?

21 A Absolutely.

22 Q Isn't it true you felt that he had to come to an
23 agreement with Sherrie Hayslett about a delay? Isn't that
24 true?

25 A Come to an agreement?

1 Q Yes.

2 A I'm not understanding the question.

3 Q Did you ever take the position that Captain
4 Estabrook had an obligation to reach an agreement with
5 Sherrie Hayslett as to whether --

6 A To stay at the hotel or not?

7 Q No.

8 A Yes, he should.

9 Q Oh, no, no, that's not my question.

10 A I'm just not understanding your question.

11 Q No, no, no. Was it your position that Captain
12 Estabrook had an obligation to reach an agreement with
13 FedEx, to reach an agreement with FedEx about a delay?

14 A I'm still not quite understanding it, but I would
15 say no. An agreement about a delay?

16 Q Well, let me be more specific. Isn't it true that
17 you faulted Captain Estabrook for taking it upon himself to
18 delay a flight without coordinating an agreement with --

19 A I faulted --

20 Q -- Sherrie Hayslett?

21 A Yes, I faulted Captain Estabrook for not being at
22 the ramp.

23 Q And that had nothing to do with delay one way or
24 the other?

25 A No. But obviously not being at the ramp, he's

1 delaying -- if the weather had just parted and the seas were
2 great, at least from that point it's the taxi ride plus an
3 hour to get that jet ready to go.

4 Q Okay.

5 A So he is delaying that. That is on Mark
6 Estabrook, Captain Estabrook. That is a delay that's
7 completely on his shoulders. So I just want to get that --
8 I want to get Mark to the ramp, and so now we're --
9 everybody's on the same page. And now, if he's got any
10 concerns and doesn't want that jet to go, then he has every
11 right as the pilot in command of that aircraft to keep it on
12 the ground.

13 Q Without any agreement with the dispatcher,
14 correct?

15 A Oh, he's the pilot in command.

16 Q Okay.

17 A He is -- that is his decision.

18 Q So, now --

19 A He can talk to her about it, but ultimately that's
20 his decision.

21 Q So can you explain why -- in the last full
22 paragraph in respondent's exhibit RX-8 why you wrote, "In my
23 two and a half years as a DO, I have never had a captain
24 take it upon himself to delay a flight without coordinating
25 and coming to an agreement with the dispatcher."

1 A Okay, so --

2 Q And mark the document that he has been.

3 A What is that, number RX-8?

4 Q Yes.

5 MR. TADLOCK: It's respondent's exhibits, the red
6 notebook.

7 THE WITNESS: Okay.

8 MR. TADLOCK: And it would probably help him if
9 you reread --

10 MR. SEHAM: Yes.

11 MR. TADLOCK: -- the sentence you were reading
12 from.

13 MR. SEHAM: Well, tell me when you're at the
14 exhibit.

15 THE WITNESS: I am.

16 BY MR. SEHAM:

17 Q So you wrote this, right, "In my two and a half
18 years as a DO, I have never had a captain take it upon
19 himself to delay a flight without coordinating and coming to
20 an agreement with the dispatcher."

21 A Yes.

22 Q You wrote that, correct?

23 A Yes.

24 MR. SEHAM: No further questions.

25 JUDGE MORRIS: Counsel?

REDIRECT EXAMINATION OF**MARK CROOK**1
2
3 BY MR. TADLOCK:

4 Q What did you mean by delay in that sentence?

5 A Not leaving the hotel.

6 Q This incident was over three years ago, is that
7 correct?

8 A Yes.

9 Q Does rereading this e-mail refresh your
10 recollection --

11 A Yes.

12 Q -- of whether you listened to Sherrie's
13 conversations with Captain Estabrook?

14 A Yes.

15 Q Prior to sending that e-mail?

16 A Yes.

17 MR. TADLOCK: Can we play the second conversation
18 with Sherrie?

19 MS. MARYANNE MILLER: Would that be number two?

20 MR. TADLOCK: Yeah. I think we owe it to
21 ourselves, or owe it to Captain Crook.22 MS. MARYANNE MILLER: No, that's not number two,
23 then.24 MR. TADLOCK: It would be -- I'm sorry, it would
25 be three, I believe.

1 MR. RIEDERER: No, four.

2 MR. TADLOCK: Four. Sorry about that.

3 MS. MARYANNE MILLER: Sherrie with Captain
4 Estabrook?

5 MR. TADLOCK: Yeah.

6 VOICE 1: GOC, This is Sherrie.

7 VOICE 2: Hey, Sherrie, this is Mark Estabrook.

8 VOICE 1: Yes?

9 VOICE 2: There's a lot of people that are calling
10 me tonight wanting to -- doing pilot-pushing and all that
11 crap. Do you know what started that?

12 VOICE 1: No, I'm not sure. I know that the ramp
13 was looking for you, and they were wondering why you were
14 late. And I told them that you called and said you'd be
15 running late but --

16 VOICE 2: They're calling me, you know, on the
17 other line.

18 VOICE 1: Uh-huh.

19 VOICE 2: No, first I had crew scheduling call me.
20 I said, no, we're waiting for weather in Memphis. And then
21 two minutes later the duty officer called me and chewed me
22 out, saying I needed to take off. And I go, no, I'm not
23 taking off. And he goes, well, GOC wants to know why you're
24 not taking off. And I said, well, I talked to Sherrie over
25 an hour ago and let her know that we're on a weather delay.

1 VOICE 1: No. Actually, when you said that you
2 were running late, I was under the impression that you meant
3 that you thought that you'd be late into Memphis. I didn't
4 realize that you meant you were staying at the hotel.

5 VOICE 2: Oh, well, that's what we were doing.

6 VOICE 1: Yeah.

7 VOICE 2: We were just waiting for the weather,
8 watching the radar screen.

9 VOICE 1: Right, and I thought that meant that you
10 were going to be waiting at the airport. I didn't realize
11 that you meant you were going to --

12 VOICE 2: Yeah. But, then, see, when the duty
13 officer continued this conversation and I told him we're on
14 weather hold, and he said, well, you're a no-show at the
15 ramp. And I go, well, I let Sherrie know we're going to be
16 late.

17 VOICE 1: Right, but that didn't --

18 VOICE 2: Well, let me finish what I was saying.
19 So then he transitions to, well, you need to take off. And
20 I go, no, I'm not going to take off. And he goes, well,
21 everybody else is taking off. And, you know, that's trying
22 to, you know, the crowd theory, you're the only one that's
23 not taking off.

24 I go, look, I'm not going to -- this stuff is
25 going to 50,000 feet. I'm not going to climb over it. And,

1 even if I did, when I got there it would be like threading
2 needles. So I'm waiting. And, you know, he wasn't too
3 pleased with that. So that's the part of the conversation.
4 I can understand the breakdown in communication about, you
5 know, show time at the ramp and all that. That's not a
6 problem, I get it.

7 But, you know, trying to push the pilot to take
8 off when he says he's not going to do it, that's just not
9 satisfactory. And I know you were not like that at all. In
10 my conversation with you, you were completely
11 understandable. But the duty officer pissed me off.

12 VOICE 1: I'm sorry to hear that. But,
13 unfortunately, I've got another call.

14 VOICE 2: All right, Sherrie. I just wanted to
15 make sure we're on the same page.

16 VOICE 1: Right. Actually, I guess we kind of
17 weren't because I didn't realize you were staying at the
18 hotel.

19 VOICE 2: Well, that's just a breakdown in
20 communication. I don't have a problem with that.

21 VOICE 1: All right. Well, I'll probably talk to
22 you later.

23 VOICE 2: All right. Bye, Sherrie.

24 VOICE 1: Bye.

25 \\

1 BY MR. TADLOCK:

2 Q Captain Crook, does that refresh your recollection
3 on why you wrote in the second-to-last paragraph of your e-
4 mail, "Captain Estabrook was directive to Sherrie and told
5 her how it was going to be?"

6 A Yes.

7 Q Your audience was Captain McDonald -- who is he --
8 in this e-mail?

9 A Yeah, Bill McDonald was the chief pilot. I think
10 Rob was the Airbus fleet captain, and Mike Speer was Bill's
11 assistant.

12 Q You testified that pilots regularly delay flights
13 because of weather issues, correct?

14 A Yes.

15 Q Would it be your understanding that those
16 gentlemen would also understand that that's within a pilot's
17 sphere of authority?

18 A Yes.

19 Q Would you understand them to have very much
20 familiarity with a pilot not reporting to a ramp because of
21 weather delay at a destination?

22 A No, because Mark was the only one that I have ever
23 seen do that.

24 Q And, just to reiterate, is that what you were
25 referring to by delay in that first sentence --

1 A Yes.

2 Q -- of the second-to-last paragraph?

3 A Yes.

4 MR. SEHAM: Objection to leading.

5 JUDGE MORRIS: Sustained.

6 MR. TADLOCK: Okay. No further questions.

7 JUDGE MORRIS: Counsel?

8 **RECROSS EXAMINATION OF**

9 **MARK CROOK**

10 BY MR. SEHAM:

11 Q So your testimony is that you had two
12 conversations with Sherrie Hayslett that day?

13 MR. TADLOCK: I think that's outside the scope of
14 my redirect.

15 JUDGE MORRIS: It's outside the scope, counsel.

16 MR. SEHAM: No further questions.

17 JUDGE MORRIS: All right. So I have a lay hat,
18 and I have some familiarity with aircraft. In my lay hat, I
19 have this vision of Tom Hanks in *Cast Away* at the beginning
20 of the movie when he's in Moscow with assembling the
21 distribution of the packages. As a culture of things where
22 he says in this movie, you know, seconds count, and he puts
23 out a clock, the time exact. Is that a fair representation
24 of how the timeliness of a package is as far as the urgency
25 of the need to get the package through as a customer

1 relations matter?

2 THE WITNESS: I would say it was exaggerated in
3 the movie.

4 JUDGE MORRIS: And I use movies many times as
5 examples because lay people may not understand --

6 THE WITNESS: Sure.

7 JUDGE MORRIS: -- but they would say, ah, I
8 remember Wilson. Now, the follow-on question is, if you
9 could turn to -- and I keep trying this until I'm going to
10 hit it -- CX-7?

11 MR. SEHAM: In the white book.

12 THE WITNESS: White notebook?

13 JUDGE MORRIS: White binder. The bottom of this
14 document, do you recognize what this is?

15 THE WITNESS: The first page?

16 JUDGE MORRIS: First page.

17 THE WITNESS: That's the trip recount.

18 JUDGE MORRIS: It's my understanding -- and I want
19 you to look at the bottom of the first page, top of the
20 second page. As I understand this, this flight crew took
21 the flight out from Memphis to Laredo and then did -- I'll
22 use the phrase, they use a turn -- and went from Laredo back
23 to Memphis.

24 THE WITNESS: I would say no, because it shows a
25 1:01 turn, and then it shows a 13:33 turn.

1 JUDGE MORRIS: Where do you see a 1:01 turn?

2 THE WITNESS: You're saying Memphis to Laredo? It
3 has block, and then it has a turn. Turn means what you're
4 going to get before you take back off.

5 JUDGE MORRIS: Okay.

6 THE WITNESS: So, obviously, that's a quick turn.
7 I didn't even know, was this an out-and-back?

8 MR. MARK ESTABROOK: No, this was a hotel layover.

9 THE WITNESS: So I'm kind of confused with this
10 standby duty. Somebody said they landed, they spent an
11 hour, and then they went into a standby duty. So this says
12 revision 1, so obviously this is not the way their trip was
13 originally written.

14 JUDGE MORRIS: All right. On page 2, have you
15 ever seen this form specifically when it refers to the
16 flight crew and legalities?

17 THE WITNESS: As far as the ship note?

18 JUDGE MORRIS: No, above. Have you ever seen
19 anything --

20 THE WITNESS: Crew is proceeding from Laredo
21 pending aircraft A-12 maintenance. Oh, legalities? That's
22 used by crew scheduling.

23 JUDGE MORRIS: What does that mean?

24 THE WITNESS: If they -- that's just to help crew
25 scheduling. If they pop that, that will tell them if

1 they're coming up on any legalities, 8 in 24, over duty
2 time.

3 JUDGE MORRIS: Crew rest time?

4 THE WITNESS: Yes, yes.

5 JUDGE MORRIS: Okay.

6 THE WITNESS: And I don't know if that appears --
7 I'm not sure if that appears on everybody's things, but that
8 is a tool for crew scheduling.

9 JUDGE MORRIS: And the other thing is, I want to
10 understand correctly that it takes two pilots an hour to
11 prep one of your aircraft for departure?

12 THE WITNESS: Yeah. They actually split duties so
13 that --

14 JUDGE MORRIS: Well, I know they split duties.

15 THE WITNESS: Yeah.

16 JUDGE MORRIS: I'm trying to understand. Can you
17 explain to me why a flight crew at FedEx takes an hour --
18 and, again, I'm going to --

19 THE WITNESS: Right.

20 JUDGE MORRIS: I just flew into here from
21 Philadelphia, change of crew, they do it in 15, 20 minutes.
22 Why does it take a cargo crew an hour to prep an aircraft,
23 as opposed to an aircraft that's flying passengers?

24 THE WITNESS: When we -- typically if -- again,
25 I'll just use an example that I'm at a hotel that's 15

1 minutes from the ramp.

2 JUDGE MORRIS: No, you said it would take an hour
3 once they got to the ramp.

4 THE WITNESS: No, I understand that. So it goes
5 to the ramp, and they will show up at the ramp an hour
6 prior.

7 JUDGE MORRIS: Okay.

8 THE WITNESS: So they'll walk in the doors at an
9 hour prior. They've got to -- typically, they've got to go
10 through security real quick, just to make sure that -- you
11 know, they'll go through the metal detectors or something
12 for security.

13 Then they'll walk into the ramp office. They'll
14 pull up -- they'll log onto the computers, they'll pull up
15 their flight release, they'll pull up their weather, they'll
16 talk about is the gas good enough, what's going on tonight
17 with the weather, are there any MEL's on the aircraft, which
18 are maintenance issues --

19 JUDGE MORRIS: I know what they are.

20 THE WITNESS: -- that can mean a delay, okay. So
21 they'll do all that. Usually you walk to the jet about 45
22 minutes prior.

23 JUDGE MORRIS: And doesn't the FO -- he's the one
24 who does the walkaround while the captain is in the cockpit
25 doing in the FMS and stuff like that?

RECROSS EXAMINATION OF**MARK CROOK****(resumed)**

1 BY MR. SEHAM:

2 Q That one hour of work that you're describing, did
3 Captain Estabrook and his first officer ultimately come to
4 the ramp and perform --

5 A Yes.

6 Q -- that work?

7 A Yes.

8 Q And, as soon as they completed that work, were
9 they able to take off immediately?

10 A I don't recall.

11 Q Do you have any basis for asserting that the extra
12 time he spent at the hotel resulted in a delayed departure
13 of that aircraft?

14 A No.

15 MR. SEHAM: No further questions.

16 JUDGE MORRIS: Counsel?

FURTHER REDIRECT EXAMINATION OF**MARK CROOK**

17 BY MR. TADLOCK:

18 Q Does FedEx want to make it a practice of having
19 pilots stay at the hotel and show up I guess whenever they
20 believe that they're ready?

1 A No.

2 MR. TADLOCK: No further questions.

3 JUDGE MORRIS: All right, thank you, sir.

4 THE WITNESS: Thank you, Judge.

5 [WHEREUPON, witness Mark Crook was
6 excused.]

7 JUDGE MORRIS: Given the hour, we're not going to
8 call another witness today. We'll start tomorrow at 8:30.
9 I understand you have four more witnesses left.

10 MR. RIEDERER: Is that right, four? Maybe there's
11 an outside chance of finishing tomorrow.

12 JUDGE MORRIS: Well, I'm not optimistic because of
13 Murphy's law.

14 MR. RIEDERER: Yeah, yeah, yeah.

15 JUDGE MORRIS: Let me put it this way, I'm not
16 changing my plane ticket. I have played that game.

17 MR. RIEDERER: Yeah, yeah, yeah. I shouldn't have
18 said it.

19 JUDGE MORRIS: Anything you want to --

20 MR. RIEDERER: That was bad luck.

21 JUDGE MORRIS: Anything that you want to leave
22 here, you feel free to do so. I'm going to lock up the room
23 myself. I'm going to leave my books. I'm taking my laptop,
24 though.

25 COURT REPORTER: We are off the record?

1 JUDGE MORRIS: We are off the record.
2 [WHEREUPON, the proceedings were
3 concluded at 4:45 p.m..]
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TITLE: Mark Estabrook v. Federal Express Corporation
CASE NO.: 2014-AIR-00022
DATE: June 6, 2016
LOCATION: Memphis, Tennessee

This is to certify that the attached proceedings before the United States Department of Labor, Office of Administrative Law Judges, were held according to the record, and that this is the original, complete, true and accurate recording accomplished at this hearing.

June 6, 2016

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