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UNITED STATES DEPARTMENT OF LABOR
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
OFFICE OF ADMINISTRATIVE LAW JUDGES

MARK ESTABROOK,

Complainant,

Vs.

Case No. 2014-AIR-00022

FEDERAL EXPRESS CORPORATION,

Respondent.

THE DEPOSITION OF TODD A. ONDRA

March 23, 2016

ALPHA REPORTING CORPORATION
SHERYL G. WEATHERFORD, RPR
236 Adams
Memphis, Tennessee 38103
901.523.8974

1 The deposition of TODD A. ONDRA, taken on
2 this, the 23rd day of March, 2016, on behalf of
3 the Complainant, pursuant to notice and consent of
4 counsel, beginning at approximately 9:00 a.m. in
5 the offices of FedEx Express Corporation, 3620
6 Hacks Cross Road, Building B, 2nd Floor, Memphis,
7 Tennessee.

8 This deposition is taken in accordance
9 with the terms and provisions of the Federal Rules
10 of Civil Procedure.

11 All forms and formalities are waived.
12 Objections are [reserved/not reserved], except as
13 to form of the question, to be disposed of at or
14 before the hearing.

15 The signature of the witness is waived.

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- APPEARANCES -

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1	- <u>INDEX (CONTINUED)</u> -	
2	<u>EXHIBITS</u>	<u>DESCRIPTION</u>
3		<u>PAGE</u>
4	Exhibit A-7	Letter dated 2/24/1989 from John Poag to Jim Barksdale, ME 952
5	Exhibit A-8	Memo from John Poag dated 11/20/1988 to All Flight Crews, ME 953
6	Exhibit A-9	Memo dated 5/26/1989 from John Poag to All Crewmembers, ME 954 to 956
7	Exhibit A-10	Letter dated 5/16/1988 to David Sanders from Kenneth Masterson, ME 957
8	Exhibit A-11	Letter dated 2/24/1989 from John Poag to Jim Barksdale, ME 978
9	Exhibit B	Commercial Appeal article titled "FedEx chairman Fred Smith tells City Council public safety is top priority," ME 976 & 977
10	Exhibit C	Letter dated 2/26/2002 to Captain Estabrook from William Henrikson, ME 925
11	Exhibit D	Letter dated 4/10/2002 to Captain David Webb from William Logue, ME 927 through 929
12	Exhibit E	Letter dated 10/18/2001 to Captain Jack Lewis from Captain Mark Estabrook, ME 882 to 885
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1	<u>EXHIBITS</u>	<u>- INDEX (CONTINUED) -</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
2	Exhibit F		Respondent Federal Express Corporation's Responses to	33
3			Complainant's First	
4			Requests for Admissions	
5	Exhibit G		Email exchange regarding	36
6			Fred Smith dated August	
7			2013, FDX 4-21 and 22	
8	Exhibit H		Letter dated 8/20/2013	39
9			to Robert Tice and James	
10			Ferguson from Alan	
11			Armstrong, ME 40 to 45	
12	Exhibit I		Respondent Federal	41
13			Express Corporation's	
14			Supplemental Answers to	
15			Complainant's First Set	
16			of Interrogatories	
17	Exhibit J		Section 15 from the CBA	47
18			dated 2/28/2011, ME 215,	
19			394 to 401	
20	Exhibit K		Handwritten notes, FDX	90
21			4-60 through 62	
22	Exhibit L		Letter dated 8/16/2013	95
23			from Rob Fisher to	
24			Captain Mark Estabrook,	
25			FDX 4-71	
26	Exhibit M		Letter dated 8/13/2013	101
27			to Robb Tice and James	
28			Ferguson from Alan	
29			Armstrong, FDX 4-65	
30			through 68	
31	Exhibit N		Typed version of	101
32			handwritten notes marked	
33			Exhibit K, FDX 4-63 & 64	
34				
35				

1 TODD A. ONDRA

2 Having been first duly sworn, was examined and
3 testified as follows:

4 MR. SEHAM: And just a word to
5 counsel that we are proceeding pursuant to Federal
6 Rules meaning we're reserving all objections other
7 than objections relating to privilege, correct?

8 MR. RIEDERER: And to form. Correct.

9 MR. SEHAM: Form. Okay.

10 EXAMINATION

11 BY MR. SEHAM:

12 Q. So, Mr. Ondra, my name is Lee Seham. I am
13 with the firm of Seham, Seham, Meltz & Petersen.
14 We're representing Mr. Mark Estabrook in an AIR-21
15 action. Today I'm going to ask you questions,
16 which you will be responding to under oath. Do
17 you understand that?

18 A. Yes, sir.

19 Q. And if you do not understand any of the
20 questions, please let me know so that I can
21 rephrase or repeat the question for you. Do you
22 understand?

23 A. I do.

24 Q. And do you understand that the deposition
25 today is going to be transcribed by the court

1 reporter, and that everything you say here will be
2 recorded?

3 A. Yes, sir.

4 Q. And please speak clearly and slowly so
5 that the court reporter can take down what you
6 say. Do you understand?

7 A. I do.

8 Q. And do you understand that your testimony
9 today is given under oath as if you were in a
10 court of law?

11 A. Yes, sir.

12 Q. And all of your answers to my questions
13 must be given verbally. You cannot respond by
14 nodding your head or shrugging your shoulders
15 since the court reporter cannot take down
16 non-verbal answers. Do you understand?

17 A. Yes, sir.

18 Q. And if you don't know an answer to a
19 question, you should say that you do not know. I
20 do not expect you to guess or speculate. Do you
21 understand that?

22 A. I do.

23 Q. Have you ever testified in court before?

24 A. In a -- if a deposition is a court, yes.

25 Q. Well, no, it's not. But I guess you have

1 testified in a legal proceeding that proceeded to
2 court; is that correct?

3 A. Yes. Yes.

4 Q. And do you understand that you have been
5 sworn to tell the truth, and if you fail to do so,
6 there could be adverse consequences?

7 A. Yes.

8 Q. Are you taking any medication or other
9 drugs that might impair your ability to testify
10 today?

11 A. No.

12 Q. Are you suffering from any kind of illness
13 that might affect your ability to testify today?

14 A. No.

15 Q. Are you currently under the care -- well,
16 let me strike that.

17 Do you understand everything I have said
18 up until now?

19 A. Yes, sir.

20 Q. And please state your current legal name.

21 A. Todd Allan Ondra.

22 Q. Have you ever been known by any other
23 names?

24 A. No, sir.

25 Q. Did you review any documents to prepare

1 for your deposition today?

2 A. Yes, sir, I did.

3 Q. What documents did you review?

4 A. Just a few documents with my attorney.

5 Q. What documents were those?

6 A. Documents, notes from a meeting that took
7 place and a recap of those notes and, you know, a
8 few other documents.

9 Q. What were those other documents?

10 A. The -- an email that was sent regarding
11 the meeting that took place. That's it.

12 Q. That's it? Okay. And did you talk to
13 anyone besides your attorney about today's
14 deposition?

15 A. No.

16 Q. How long have you worked at Federal
17 Express?

18 A. September of 1981.

19 Q. September of 1981?

20 A. Yes, sir.

21 Q. And what is your current job title?

22 A. Managing director, Aviation and Regulatory
23 Security.

24 Q. Aviation and Regulatory Security?

25 A. Yes, sir.

1 Q. And to whom do you report?

2 A. Terry Harris, vice president,
3 International and Aviation Security.

4 Q. And to whom does Mr. Harris report?

5 A. Mark Allen.

6 Q. What is his title?

7 A. He is senior vice president, Legal
8 International.

9 Q. And to whom does Mr. Allen report?

10 A. Mr. Allen reports to Chris Richards.

11 Q. What is his title?

12 A. Her title is --

13 Q. Oh, her title, excuse me.

14 A. -- General Counsel for FedEx Corporation.

15 Q. Okay. How long have you held your current
16 position?

17 A. About four and a half years.

18 Q. And does this -- did this position require
19 any specialized training?

20 A. No.

21 Q. Does your position require you to be
22 knowledgeable of Federal Aviation Regulations
23 relating to security?

24 A. Yes.

25 Q. Now, could you give us an overview of your

1 career at FedEx starting in 1981 to the present,
2 the job titles you had, and a brief summary of the
3 responsibilities attendant with that -- those
4 positions.

5 A. Absolutely. So September 1981 I was hired
6 as a part-time security officer by FedEx. In
7 January of 1982 I was promoted to full-time
8 security officer. In 1983 I was promoted to
9 Security Specialist. In 1984 I became a manager
10 in the Memphis hub operation. In 1986 I came back
11 to Security as a manager. In 1990 I came back to
12 Security -- or I was in Security and was promoted
13 to senior manager. In 1996 I was promoted to
14 managing director here in Memphis. And then in
15 2011 I transitioned to the Aviation Regulatory
16 Security managing director position.

17 Q. Now, you participated in a decision-making
18 process that culminated in the referral of Captain
19 Estabrook to a 15.D examination; is that correct?

20 A. I participated in a meeting regarding
21 Mr. Estabrook.

22 Q. My question is more specific. Did you
23 participate in the Company decision that he would
24 be required to submit to a 15.D examination?

25 A. Yes.

1 Q. And had you ever previously participated
2 in a decision-making process to refer a pilot to a
3 15.D examination? I see you're hesitating. If
4 you recall.

5 A. I can't recall, no.

6 Q. Now, I'm going to be handing you across
7 the table a package of documents. I have a copy
8 for your counsel, and these, Dan, just for
9 facility of future reference, that's for you --
10 for facility of future reference, I'm going to
11 refer to these as collectively as Exhibit A and
12 then as we go through letter, it will be A-1, A-2,
13 A-3. Do you need them now? I have an extra set
14 if your co-counsel wants it, and if I could just
15 ask as a courtesy that we make sure the court
16 reporter gets your set by the end of the day.

17 Now, the first document which I will
18 refer to as A-1, it's designated ME 937 at the
19 bottom. It's a letter from David Sanders,
20 chairman of the Federal Express Pilot Merger
21 Committee and it opens "Dear Fred." Now, do you
22 know who David Sanders is?

23 (Whereupon, the above-mentioned
24 document was marked as Exhibit A-1.)

25 A. I don't know if I have met him.

1 Q. Do you know him by reputation as a Federal
2 Express pilot who is the chairman of the Pilot
3 Merger Committee during this period of time May 9,
4 1989?

5 A. Based on this document but, no, sir, I
6 didn't have any interactions with Mr. Sanders to
7 my knowledge.

8 Q. Now, moving that -- designate that A-1.
9 Moving to the next one which is a four-page
10 document paginated ME 938 to ME 941. It's a
11 letter from Donald Engebretsen, captain, to Fred
12 Smith, again commencing "Dear Fred." May 1, 1989.
13 Do you know the signatory to this letter, Donald
14 Engebretsen?

15 (Whereupon, the above-mentioned
16 document was marked as Exhibit A-2.)

17 A. No, sir, I don't.

18 Q. You don't know him by reputation?

19 A. No, sir.

20 Q. Moving on to the next letter, ME 942. We
21 will designate this as A-3. It's dated April 10,
22 1989. And you see again there's a -- the letter
23 opens "Dear Fred." Again signed by Donald
24 Engebretsen.

25 (Whereupon, the above-mentioned

1 document was marked as Exhibit A-3.)

2 A. Okay.

3 Q. And you're saying you don't know him even
4 by reputation?

5 A. No, sir, I don't.

6 Q. And the next letter is ME 943 to 944.
7 Again it opens "Dear Fred." At the end it is
8 indicated that the letter is from John Poag,
9 P-O-A-G, chairman, Flight Advisory Board and dated
10 November 17, 1988. In the body of this letter,
11 there are references to Fred Smith as Fred. I'm
12 just asking did you know John Poag?

13 (Whereupon, the above-mentioned
14 document was marked as Exhibit A-4.)

15 A. No, sir.

16 Q. And moving on to what we will designate as
17 A-4, ME 945 to 947, a letter dated March 29, 1987,
18 again opening up "Dear Fred." Again from John
19 Poag. And it's your testimony that you do not
20 know who John Poag is; is that correct?

21 (Whereupon, the above-mentioned
22 document was marked as Exhibit A-5.)

23 A. No, sir, I don't.

24 Q. Next letter again addressing Mr. Fred
25 Smith, CEO is "Dear Fred," again from John Poag,

1 and it would be your testimony you have never seen
2 this letter dated 9/3/1988 before signed by John
3 Poag?

4 (Whereupon, the above-mentioned
5 document was marked as Exhibit A-6.)

6 A. No, sir. I have not seen it.

7 Q. And then moving on -- I guess we are
8 moving on to A-7, again a letter from John Poag
9 referring to a procedure agreed to in our
10 February 10th meeting with Fred and yourself for
11 further review of the proposed pension plan is
12 underway. You have never seen this letter before
13 that's addressing -- referring to Mr. Fred Smith
14 as Fred?

15 (Whereupon, the above-mentioned
16 document was marked as Exhibit A-7.)

17 MR. RIEDERER: What document number
18 are you talking about?

19 Q. ME 952.

20 A. Question is, have I seen this document?

21 Q. Yeah. Correct.

22 A. No, sir.

23 Q. Okay. ME 953, which I believe we are up
24 to A-8, again in the body of the letter referring
25 to "one comment Fred made that I think is

1 especially germane." Is it your testimony you
2 have never seen this letter ME 953 before?

3 (Whereupon, the above-mentioned
4 document was marked as Exhibit A-8.)

5 A. No, sir. I have never seen it.

6 Q. And ME 954 through ME 956, again from John
7 Poag, again referring in the third paragraph to
8 "Fred explained that it was necessary to act on
9 the part of Saul Steinberg, chairman of the
10 Reliant Corporation." It's dated May 26, 1989.
11 Would it be your testimony you have never seen
12 this document ME 954 to ME 956?

13 (Whereupon, the above-mentioned
14 document was marked as Exhibit A-9.)

15 A. Never seen this document.

16 Q. And the next document ME 957 dated May
17 16th, 1988 from David Sanders to Kenneth Masterson
18 opening with a reference to "Fred has referred to
19 me your letter of May 8, 1989." Have you ever
20 seen this letter before?

21 (Whereupon, the above-mentioned
22 document was marked as Exhibit A-10.)

23 A. No, sir.

24 Q. And finally another letter signed by
25 Mr. Poag, February 24th, 1989, ME 978. Again in

1 the second paragraph referring to "the procedure
2 agreed to in our February 10 meeting with Fred and
3 yourself." Have you ever seen this letter before?

4 (Whereupon, the above-mentioned
5 document was marked as Exhibit A-11.)

6 A. No, sir.

7 Q. Do you know, Mr. Ondra, whether any of the
8 signatories to this letter, Engebretsen, Mr. Poag,
9 Mr. Sanders, were they ever referred to a 15.D
10 examination based on suspected mental health
11 issues based on their reference to Mr. Fred Smith
12 as Fred?

13 A. No, sir. Again I said I am not very
14 familiar with the letters and haven't seen them.
15 So the answer is no.

16 Q. Okay.

17 MR. RIEDERER: That was a
18 non-responsive answer. He asked you if any of
19 these individuals who wrote the letter had been
20 referred to a 15.D evaluation?

21 THE WITNESS: I don't know.

22 BY MR. SEHAM:

23 Q. Do you have an opinion as to whether they
24 should have been referred to a mental health
25 examination based on their referral to Mr. Fred

1 Smith as Fred?

2 A. Have no opinion.

3 Q. No opinion. Okay.

4 A. Other --

5 Q. Other than what, sir?

6 A. Other than that that is his name, you
7 know. So no opinion other than that.

8 Q. What is his name?

9 A. Frederick, Fred.

10 Q. Have you ever heard of FedEx referred to
11 as FedEx?

12 A. I have heard that.

13 Q. Once or twice or numerous times?

14 A. Once or twice.

15 Q. I'm going to hand you a document which is
16 an article. It's ME 976, 977. It's titled:
17 "FedEx chairman Fred Smith tells City Council
18 public safety is top priority." Do you know -- at
19 the top it indicates that this is from *The*
20 *Commercial Appeal*. Would you agree that *The*
21 *Commercial Appeal* is the leading newspaper for the
22 City of Memphis, Tennessee?

23 A. Yes.

24 Q. Okay. And you see the opening line of the
25 article by Zack McMillin reads: The man at the

1 end of the Memphis City Council's conference
2 table, the city's -- the citizen of Memphis with
3 the mop of gray hair told everyone to just call
4 him Fred. Did I read that correctly, Mr. Ondra?

5 A. Yes.

6 Q. Okay. Are you familiar with this article?
7 Have you seen this article before?

8 A. Let me take a second to read it, if I
9 could.

10 Q. Sure.

11 A. (Witness reviews document.)

12 I don't recall having ever seen the
13 article.

14 Q. Are you familiar with Fred Smith's
15 practice of inviting the public to refer to him as
16 Fred?

17 A. I'm not aware of that, no.

18 Q. Okay. Does it come as a surprise to you
19 that he invited the public to refer to him as
20 Fred?

21 A. Doesn't come as a surprise, no.

22 Q. Okay. Do you frequently have transactions
23 or conversations with FedEx employed pilots?

24 A. Yes.

25 Q. Do you ever talk to them about Fred Smith?

1 A. No.

2 Q. How would you characterize your memory,
3 sir, good or bad?

4 A. Good.

5 Q. And you're familiar with the labor
6 organization known as the Air Line Pilots
7 Association?

8 A. Yes.

9 Q. Okay. And is that labor organization,
10 which I will refer to as ALPA, A-L-P-A, is that
11 organization active at Federal Express?

12 A. Yes.

13 Q. And what role does ALPA play at Federal
14 Express?

15 A. It's my understanding ALPA is the Union
16 for the crewmembers.

17 Q. And since what year has ALPA represented
18 the Federal Express pilots?

19 A. I don't know.

20 Q. Since its certification as the labor
21 organization representing FedEx pilots, would you
22 agree that ALPA has worked closely with FedEx to
23 address safety and security issues?

24 A. With FedEx I would say from my
25 involvement, no.

1 Q. Does ALPA have a safety committee?

2 A. I don't know.

3 Q. Does ALPA have a security committee?

4 A. ALPA has an individual that is designated
5 as their security person, I know that.

6 Q. And was there a predecessor to ALPA known
7 as the Fedex Pilots Association?

8 A. I believe so, yes.

9 Q. And they perform the same functions as
10 ALPA did in terms of representation?

11 A. I don't know specific functions, but I do
12 remember them.

13 Q. You had a security meeting in the
14 aftermath of -- well, let me get the background.

15 You recall that the World Trade Center
16 was attacked by terrorists and reduced to rubble
17 in 2001, correct?

18 A. Yes.

19 Q. In the aftermath of that terrorist attack,
20 you had security meetings with Union
21 representatives at -- on Federal Express property,
22 correct?

23 A. I don't remember that.

24 Q. You don't remember.

25 A. No.

1 Q. Okay. Let's see if we can refresh your
2 recollection. Do you know the name William
3 Henrikson?

4 A. Yes.

5 Q. What role did he play at Federal Express
6 in the 2001, 2002 time period?

7 A. I believe at that time period he would
8 have been vice president of FedEx Security.

9 Q. And did you work with him?

10 A. Yes.

11 MR. SEHAM: And I think I'm going to
12 designate that article as -- I think that we are
13 up to Exhibit B, right?

14 (Whereupon, the above-mentioned
15 document was marked as Exhibit B.)

16 MR. SEHAM: So we're going to call
17 this Exhibit C.

18 (Whereupon, a document was marked as
19 Exhibit C.)

20 Q. You see this letter is signed by William
21 Henrikson, and you see at the bottom there is a cc
22 to Todd Ondra?

23 A. Yes.

24 Q. And do you see that this letter dated
25 February 26, 2002, is addressed to Captain

1 Estabrook?

2 A. Yes.

3 Q. And Captain Estabrook is referred to in
4 the letter from Mr. Henrikson as the FPA Security
5 Committee Chairman. Do you see that in the
6 letter?

7 A. I'm looking.

8 Q. At the top under the date.

9 A. Yes.

10 Q. And it begins with: "Dear Captain
11 Estabrook: As I think Todd and I have indicated
12 to you, the jumpseat plan for the employees is not
13 complete at this time. However, we appreciate
14 your offer to help us plug any security breach we
15 may have overlooked."

16 Does this refresh your recollection that
17 you had dealings with Captain Mark Estabrook with
18 respect to security issues in the aftermath of the
19 9/11 attacks?

20 A. If I could just read the rest of the
21 letter, please.

22 Q. Sure, sir.

23 A. (Witness reviews document.)

24 Okay. And your question again?

25 Q. Does this refresh your recollection that

1 you, in fact, did have discussions with Captain
2 Mark Estabrook in his capacity as FPA Security
3 Committee Chairman with respect to security issues
4 at Federal Express?

5 A. It really does not.

6 (Whereupon, a document was marked as
7 Exhibit D.)

8 Q. I'm going to hand you what we are now
9 marking as Exhibit D, and you see it's marked --
10 if I can refer to C, that was ME 925. This is ME
11 927 through 929. This is a letter April 10, 2002.
12 Subject jumpseat security issues. The signatory
13 is William Logue on page 928. Now, who is William
14 Logue?

15 A. William Logue is not with FedEx currently.

16 Q. Okay. Who was he back in 2002?

17 A. I don't remember his specific job title in
18 2002. According to this -- according to the
19 document, senior vice president, Air, Ground and
20 Freight Services.

21 Q. Did you ever work with Mr. Logue?

22 A. Yes.

23 Q. And you see in the last page under the
24 cc's, you're the third name mentioned, Todd Ondra?

25 A. Yes.

1 Q. And you see the fourth up from the bottom
2 is Captain Mark Estabrook?

3 A. Yes.

4 Q. Does this letter refresh your
5 recollection?

6 A. I would have to read the letter.

7 Q. Okay.

8 A. (Witness reviews the document.)

9 As you mentioned, my name is on the cc
10 list, but I don't remember participating in this
11 meeting.

12 Q. Now, would you agree with me that these
13 letters, Exhibits C and D, are addressing jumpseat
14 security issues in the aftermath of the World
15 Trade Center attacks, correct, having read the
16 letters?

17 A. Yes.

18 Q. And would it have been your practice to
19 preserve these letters having received them in
20 your correspondence file?

21 A. Not for the time frame listed of 2002.

22 Q. So you would have -- it would have been
23 your practice to throw these documents out, to
24 discard them?

25 A. Possibly.

1 Q. Did you ever -- were you ever asked to
2 look through your correspondence for letters that
3 you exchanged with Captain Mark Estabrook?

4 A. Yes.

5 Q. And you didn't find these letters?

6 A. I don't remember them.

7 Q. You don't remember?

8 A. I don't remember all the documents that
9 I -- all the documents I had at the time I
10 produced.

11 Q. Well, did you find some letters that
12 involved issues with Captain Mark Estabrook?

13 A. I turned those documents over some time
14 ago and haven't looked again. I don't -- I
15 can't -- don't know.

16 Q. So you're saying today as we sit here you
17 may have had letters in your file relating to
18 Captain Estabrook?

19 A. What I'm saying today is all letters that
20 I could locate relating to Mr. Estabrook I turned
21 over when they were requested.

22 Q. And you have no recollection one way or
23 the other as to whether there were letters in your
24 file regarding Captain Estabrook?

25 A. Everything I had, I turned over. I don't

1 know.

2 Q. Okay. That's not answering my question,
3 which is, do you, as you sit here today, have a
4 recollection one way or the other as to whether
5 you found documents in the 2001, 2002 time period
6 relating to --

7 A. No, I do not.

8 Q. You don't. Okay. Thank you. I'm going
9 to hand you a document that has been marked as
10 Exhibit E.

11 (Whereupon, a document was marked as
12 Exhibit E.)

13 Q. And this is at the bottom paginated ME 882
14 to 885. Dated October 18, 2001. Do you know who
15 Captain Jack Lewis was and what role he played for
16 FedEx in October 2001?

17 A. Yes. I do know Jack Lewis. I can't
18 remember specifically the role he played in 2001.

19 Q. But he was -- he worked within management;
20 is that correct?

21 A. Yes.

22 Q. And you see at the second page on 883 --
23 ME 883 it's signed by Captain Mark Estabrook, FPA
24 Security Committee?

25 A. Yes.

1 Q. And do you see there's an attachment of
2 two pages with a 15th item being: When will
3 management review -- remove flight tracking data
4 from public access such as customer service,
5 telephone assistance, websites, and all other
6 sources. Have I read that correctly?

7 A. Yes.

8 Q. You have no recollection of this letter
9 either?

10 A. Just give me a second if you would to look
11 through the letter just so I can comment.

12 Q. Sure.

13 A. (Witness reviews document.)

14 No, sir. I don't recall ever having seen
15 this document.

16 Q. Okay. When was the first time you
17 reviewed your -- let me back up. You have
18 reviewed your correspondence file for
19 correspondence that you had or you were copied on
20 relating to Captain Mark Estabrook, correct? I
21 think I heard you say that. At some point you did
22 review your correspondence file for any letters in
23 your files related to Captain Mark Estabrook?

24 A. I reviewed a few documents with, as I
25 mentioned earlier, with my attorney recently, yes.

1 Q. When you say "recently," could you give us
2 a time frame?

3 A. This week.

4 Q. At any time prior to this week, did you
5 review your files for documents related to
6 correspondence with Mark Estabrook?

7 A. No, sir.

8 Q. Now, you knew prior to your participation
9 in the 15.D determination related to Captain
10 Estabrook, you knew at that time that he had
11 served as the pilot union's Security Committee
12 Chairman, correct?

13 A. In what time frame was that? Could you --

14 Q. Let's say in -- as of -- you recall you
15 had a meeting on -- well, let's -- strike that.

16 Do you recall that there was a letter of
17 August 16th from Captain Fisher directing Captain
18 Estabrook to submit to a 15.D examination?

19 A. Make sure I understand your question. So
20 your question is am I aware of a letter from Bill
21 McDonald to Mr. Estabrook directing that --

22 Q. No -- essentially, yes, except the wrong
23 name. Are you aware that there is a letter dated
24 August 16th, 2013, signed by Captain Fisher --

25 A. Oh, okay.

1 Q. -- directing Captain Estabrook to submit
2 to a 15.D examination?

3 A. No.

4 Q. You're not aware of that?

5 A. No. So the question is am I aware of the
6 document?

7 Q. Yes.

8 A. No.

9 Q. Would you agree that -- well, let's --
10 let's try to get to where we need to get here.
11 There was an email dated August 4th, 2013, from
12 Captain Estabrook seeking a meeting with Fred
13 Smith. Do you recall that?

14 A. Yes.

15 Q. And as of that time, August 4th, you knew
16 that Captain Estabrook had previously served as
17 the Union's Security Committee Chairman; isn't
18 that correct?

19 A. Prior to that email?

20 Q. No. As of the date of that email.

21 A. I would have to see the email. If it was
22 referenced in the email, I would have been aware,
23 but if it wasn't, I wouldn't.

24 Q. You don't recall today whether it was
25 referenced in the email or not?

1 A. I would have to see the document just to
2 be sure.

3 Q. But in any case in the month of
4 August 2013, you did not engage in any review of
5 your correspondence to see if you had any
6 correspondence related to Mark Estabrook's role as
7 chairman of the Security Committee for the Union?

8 A. Can you repeat it as to -- I'm not sure I
9 understand your question.

10 Q. Well, it goes back to you said you were
11 asked recently to review your correspondence
12 files. Do you recall that testimony?

13 A. No. I didn't say I was asked recently to
14 review my correspondence files. I said I reviewed
15 some correspondence recently with my attorney.

16 Q. Okay. Well, the transcript will show what
17 your testimony was later, but the question I
18 have -- if you could look at me rather than your
19 attorney at this point, it would help expedite
20 this process. My question is -- we'll have to go
21 back now. Did there come a time when you were
22 asked by FedEx to review your correspondence files
23 to see if you had any correspondence related to
24 Mark Estabrook?

25 A. Okay. We are talking about two different

1 things. Yes, there was, there was a time, and
2 when it was asked, I did produce it.

3 Q. And can you give us a time frame as to
4 when that request was made?

5 A. I don't know, sir. I can't remember.

6 Q. Was it before or after the determination
7 to refer Captain Estabrook to a 15.D examination?

8 A. It was -- well, it was after, after that
9 took place.

10 Q. And you didn't engage in any
11 self-initiated review of your correspondence file
12 relating to Captain Estabrook prior to a request
13 from FedEx counsel, correct?

14 A. I did not.

15 Q. I'm going to hand you an exhibit I have
16 marked as Exhibit F, which is entitled Respondent
17 Federal Express Corporation's Responses to
18 Complainant's First Request For Admissions.

19 (Whereupon, the above-mentioned
20 document was marked as Exhibit F.)

21 Q. I will ask you to refer first to the last
22 page, if you would, and see that the certificate
23 of service from David Knox is October 29, 2014.
24 And David Knox -- would you agree David Knox is a
25 legal counsel for Federal Express Corporation?

1 A. I know he was. I'm not sure what his
2 current status is.

3 Q. Well, he was at that time, correct?

4 A. Correct.

5 Q. And if you could turn to page 4. You see
6 that the request number 13 reads that the
7 Complainant served as the Security Chairman of the
8 Fedex Pilots Association which was the certified
9 labor representative of FedEx pilots from 1996 to
10 2002. The answer is Respondent is without
11 knowledge or information sufficient to form a
12 belief about the truth of the contention in
13 Request Number 13, and therefore can neither admit
14 nor deny the same.

15 My question, Mr. Ondra, is as of
16 October 29, 2014, is it true that you still had no
17 knowledge of Captain Estabrook's role as Security
18 Chairman for the pilots' Union?

19 A. No. Mr. Estabrook I believe mentioned in
20 our meeting in 2013 that he had served in that
21 capacity.

22 Q. And did you confirm that that was -- that
23 Captain Estabrook's representation was correct?
24 Did you confirm that?

25 A. No.

1 Q. Did you doubt the accuracy of his
2 statement?

3 A. No.

4 Q. So did you accept -- at that time did you
5 accept it as face value as true?

6 A. Yes.

7 Q. Thank you. Now, do you know what OSHA is
8 O-S-C-H-A -- no, sorry, I added a letter there,
9 O-S-H-A?

10 A. Yes.

11 Q. And what is your understanding of what
12 OSHA is?

13 A. OSHA from a very high level, because I
14 don't know, is an organization that regulates and
15 oversees to help ensure that regulatory practices
16 and things are compliant.

17 Q. And do you know that Captain Estabrook
18 filed a complaint with OSHA that is proceeding to
19 a trial before an Administrative Law Judge?

20 A. No, sir.

21 Q. So you have no understanding that, as you
22 testify today, you're involved in an OSHA
23 proceeding?

24 A. No, sir.

25 Q. Do you have some familiarity with legal

1 proceedings?

2 A. Somewhat.

3 Q. Are you familiar with the term
4 interrogatories?

5 A. No, sir.

6 Q. Are you familiar with the term requests or
7 the -- yes, the term request for admissions?

8 A. Yes.

9 (Whereupon, a document was marked as
10 Exhibit G.)

11 Q. I'm handing you a document we have marked
12 as Exhibit G. This is paginated FDX 4-21, 22.
13 And did you -- if you could turn to the second
14 page -- well, referring to the top first, the head
15 of the thread is Rob Fisher, Monday, August 5th,
16 to Todd Ondra, and the last email in the thread,
17 skipping to the second page, is the email from
18 Mark Estabrook: "I need to talk to Fred. It has
19 nothing to do with Flight Ops or you. It deals
20 with something related to 9/11. I did my best to
21 protect the Company and reported as much as I
22 could through Bill Henrikson when I was the
23 security chairman at ALPA. Ask Fred to call me on
24 my cell but realize I turn it off when I sleep. I
25 am about to close my eyes and call it a day."

1 Now, did you receive this email on
2 August 5th?

3 A. Yes.

4 Q. So isn't it true that as of August 5th you
5 knew that Mark Estabrook was the Security
6 Chairman -- had served as the Security Chairman
7 for the pilots' Union?

8 A. He mentioned -- Mr. Estabrook mentions
9 that in his email, yes.

10 Q. Did you accept that as the truth?

11 A. Yes.

12 Q. Now, if you could refer back to Exhibit F,
13 the Admissions. And you see if I could refer you
14 to page 2, Request Number 4 it reads that prior to
15 2013 you -- and when I say you, you has been
16 defined for this document as FedEx and its agents.
17 You have not imposed any discipline on
18 Complainant, and it's admitted.

19 At the time you were participating in the
20 15.D determination as it related to Captain
21 Estabrook, did you have personal knowledge that
22 FedEx had never imposed discipline of any kind on
23 Captain Estabrook?

24 A. Did I have personal knowledge?

25 Q. Yes.

1 A. No.

2 Q. Did anyone ever tell you we have never --
3 prior to August 2013, we have never disciplined
4 Captain Estabrook?

5 A. No knowledge.

6 Q. And you conduct -- you initiated no
7 investigation into his disciplinary record; is
8 that correct?

9 A. None.

10 Q. Did you initiate any investigation into
11 his work record?

12 A. No.

13 Q. Did you engage in any effort to review his
14 personnel file?

15 A. No.

16 Q. Did you have any conversations with
17 anybody in management prior to the 15.D
18 determination in August of 2013 relating to
19 Captain Estabrook's past performance with the
20 Company?

21 A. No.

22 Q. Did you have any discussions regarding
23 Captain Estabrook's refusal to takeoff from
24 Laredo, Texas, in the presence of thunderstorms?

25 A. No.

1 Q. When did you first learn about Captain
2 Estabrook's refusal to takeoff from Laredo, Texas
3 in the presence of severe thunderstorms?

4 MR. RIEDERER: Object to the form of
5 the question. You can answer.

6 A. I don't know. I don't recall being made
7 aware of that specifically.

8 Q. I'm going to hand you an exhibit marked --
9 I have marked as Exhibit H.

10 (Whereupon, a document was marked as
11 Exhibit H.)

12 Q. It's dated August 20th, 2013, paginated ME
13 40 to ME 45. And you see that it is addressed to
14 Robert Tice and James Ferguson, and do you see on
15 the last page there is a copy and you're listed as
16 the second individual, Todd Ondra, director of
17 Corporate Security?

18 A. Yes.

19 Q. Did you receive this letter?

20 A. Let me take a look at it if I could.

21 Q. Sure.

22 A. (Witness reviews document.)

23 Okay. And your question is?

24 Q. Did you receive this letter?

25 A. Yes.

1 Q. And did you read it at the time that you
2 received it?

3 A. I'm -- I believe I did read it. Yes.

4 Q. And then we are going to -- I'm going to
5 hand you an exhibit -- all right. Back to Exhibit
6 H, the paragraph I would like to refer you to is
7 the full paragraph which reads: "In terms of
8 recent events, on April 10th" --

9 A. I'm not sure where we are.

10 Q. Second page, excuse me. Second page, ME
11 41, first full paragraph beginning: "In terms of
12 recent events, on April 10, 2013, Captain
13 Estabrook refused to depart on a FedEx flight
14 because of a severe and solid line of
15 thunderstorms between his departure airport,
16 Laredo (LRD), and scheduled arrival airport of
17 Memphis (MEM). In retaliation for his safety-
18 based determination as a Pilot-in-Command, as
19 defined by" pilots own -- excuse me, "by the
20 Company's own Flight Operations Manual and Federal
21 Aviation Regulations, FedEx commenced disciplinary
22 proceedings against Captain Estabrook. This
23 retaliation caused Captain Estabrook to file
24 AIR-21 Complaint No. 861872 with the United States
25 Department of Labor on April 29, 2013. When the

1 Company subsequently terminated its disciplinary
2 proceedings, Captain Estabrook, being
3 non-litigious in nature, withdrew his AIR-21
4 action."

5 Now, my question is, Mr. Ondra, did you
6 read this paragraph when you got this letter?

7 A. I don't remember reading the paragraph.

8 Q. So you read the letter, but you just don't
9 remember reading that paragraph?

10 A. I remember receiving the letter but not
11 everything that was contained.

12 Q. We are going to hand you Exhibit I.

13 (Whereupon, a document was marked as
14 Exhibit I.)

15 Q. Now, it says this is a document titled
16 Respondent Federal Express Corporation's
17 Supplemental Answers to Complainant's First Set of
18 Interrogatories. I'm going to ask you to turn to
19 the second page. Interrogatory Number 7 reads:
20 "State the reasons why the Complainant was placed
21 on NOQ status on or about August 5, 2013."

22 First of all, are you familiar with that
23 acronym "NOQ"?

24 A. Yes.

25 Q. What does that stand for?

1 A. Non-operational status.

2 Q. What does the Q -- it doesn't seem to
3 spell out NOQ. Do you know what the Q stands for?

4 A. No, I don't.

5 Q. Captain Estabrook was placed on NOQ status
6 on or about August 5, 2013, correct?

7 A. I don't know.

8 Q. Mr. Ondra, you participated in the
9 decision to place Captain Estabrook on NOQ status,
10 correct?

11 A. Yes.

12 Q. Now --

13 A. Well, I participated in providing
14 information I guess that resulted.

15 Q. You provided information?

16 A. Well --

17 Q. You understand there was a decision to
18 place him on NOQ status -- well, let me back up.
19 Placing a pilot on NOQ status effectively grounds
20 them, correct?

21 A. Yes.

22 Q. And you see -- after the grounding on
23 August 15th [sic], there was a subsequent meeting
24 on or about August 9th, 2013, four days later,
25 correct?

1 A. Yes.

2 Q. And you sat in on an interview with
3 Captain Estabrook on August 9th?

4 A. Yes.

5 Q. Sometime after August 9th, a decision was
6 made to refer Captain Estabrook to a 15.D
7 examination, correct?

8 A. Yes.

9 Q. Now, you say that you provided information
10 in the context of the August 5th NOQ decision; is
11 that your testimony?

12 A. Well, I think your question was he was
13 placed -- do I know he was placed on NOQ status,
14 and I do know. But I don't know the specific date
15 he was placed on NOQ status.

16 Q. My question is, did you participate in the
17 deliberations that culminated in the decision to
18 ground him at -- on an NOQ basis on August 5th?

19 A. Yes.

20 Q. Now, if you refer to this interrogatory,
21 there's an initial response -- or it says response
22 to Interrogatory Number 7 where it reads:

23 "Complainant was placed on NOQ status on or about
24 August 5, 2013, because he had been referred for
25 examination under 15.D of the Collective

1 Bargaining Agreement between respondent and the
2 Air Line Pilots Association." Did I read that
3 correctly?

4 A. Yes. You read it correctly.

5 Q. And then the next three sentences follow a
6 caption reading Supplemental Response. It reads
7 this supplement -- "this supplement responses
8 supersedes Respondent's original response.
9 Complainant was placed on administrative NOQ
10 status on or about August 5, 2013, to facilitate
11 the scheduling of a meeting he requested. The
12 effect of the placement on administrative NOQ
13 status was to clear his work schedule and prevent
14 the scheduling of conflicting activities." Did I
15 read that correctly?

16 A. Yes.

17 Q. So the first answer that refers to 15.D.
18 in fact, as of August 5th, there had been no 15.D
19 decision made, correct, as of August 5th?

20 A. Could you repeat that one more time, make
21 sure I understand.

22 Q. Yes. As of August 5th, 2013, four days
23 prior to the August 9th meeting with Captain
24 Estabrook.

25 A. Okay.

1 Q. As of August 5th, 2013, had a 15.D
2 determination already been made?

3 A. I don't know.

4 Q. Now, in terms of why he was put on NOQ,
5 was the reason he was put on NOQ status to
6 facilitate the scheduling of a meeting that
7 Captain Estabrook had requested?

8 A. I don't know.

9 Q. Is it your testimony that you don't know
10 why he was put on NOQ status?

11 A. Well, I guess make sure I understand the
12 time frame. So the meeting that I had with
13 Mr. Estabrook, what was the date of that meeting?

14 Q. Well, it would be better if you knew. But
15 I would submit to you that it is August 9th.

16 A. Okay. I guess my point is anything before
17 August 9th, the date of the meeting with
18 Mr. Estabrook, I don't know. I didn't have any
19 involvement.

20 Q. So you had no -- I just want to make it
21 clear. There is a decision on or about August 5th
22 to put him on NOQ status, and it's your testimony
23 that you did not participate in that decision?

24 A. No.

25 MR. RIEDERER: Just for the record,

1 he said you did not have involvement in that,
2 correct?

3 THE WITNESS: Did not.

4 BY MR. SEHAM:

5 Q. So prior to -- what is your understanding,
6 if you have one, as to what a 15.D examination is?

7 A. I don't know exactly what a 15.D
8 examination is. I have never seen the
9 correspondence.

10 Q. You don't know what that term means:
11 "15.D examination"?

12 A. No.

13 Q. I'm puzzled because I think the
14 transcripts will refer to questions and answers
15 where you were providing answers under oath
16 concerning -- with a predicate that you did
17 understand what a 15.D examination is, but the
18 transcript will reflect that.

19 Do you understand that at some point
20 there was a decision made that Captain Estabrook
21 should be referred to a compulsory health
22 examination?

23 A. Yes. And I guess let me clarify the 15.D
24 a little bit as well. It's my understanding that
25 a 15.D is something what you just described, but

1 the details of that I have never seen as far as
2 how it relates to the contract or anything.

3 Q. All right. Well, so you know that a
4 15.D -- I really don't want to put words in your
5 mouth. I want to get your testimony and what you
6 knew at the time. Did you understand at the time
7 on August 9th that a 15.D examination was the
8 referral of a pilot by directive of the Company,
9 by order of the Company to submit to a medical
10 examination?

11 A. Yes. I know from that high level I do,
12 but the details of that I don't know. I guess
13 that's what I was trying to state earlier. I do
14 know that it's some kind of mental health
15 submission, but I don't know the details around it
16 relating to the contract.

17 (Whereupon, a document was marked as
18 Exhibit J.)

19 Q. I have handed you what has been marked as
20 Exhibit J with a title page reflecting Agreement
21 between Federal Express and the Air Line Pilots in
22 the service of Federal Express Corporation. It's
23 paginated 2 -- ME 215 and then it jumps to ME 394
24 through 401, and I'm referring you now to the
25 second page of this document. It's captioned

1 Section 15 Medical Standards. And then I'm taking
2 you down to ME 396, which is the fourth page, and
3 there's a highlighted portion under D with a
4 caption reading: "Company mandated medical
5 examinations." Under number 1, "the VP of Flight
6 Operations, the System Chief Pilot, a Regional
7 Chief Pilot, or a Chief Pilot may direct a pilot
8 to contact or see the Company's aeromedical
9 advisor if the Company has a reasonable basis to
10 question whether a pilot has developed or
11 recovered from an impairment to his ability to
12 perform his duties as a pilot." Did I read that
13 correctly?

14 A. Yes.

15 Q. Now, at that time in August of 2013, were
16 you the VP of Flight Operations?

17 A. No.

18 Q. Were you the System Chief Pilot?

19 A. No.

20 Q. Were you a Regional Chief Pilot?

21 A. No.

22 Q. Were you a Chief Pilot?

23 A. No.

24 Q. But you did -- Mr. Ondra, you did
25 participate in the decision to refer Captain

1 Estabrook to a 15.D examination; isn't that
2 correct?

3 A. Yes.

4 Q. And you participated in terms of
5 expressing an opinion that his conduct merited a
6 15.D examination, correct?

7 A. Yes.

8 Q. But just to make this clear, you did not
9 participate in the decision to -- the prior
10 decision on or about August 5th to ground him
11 pursuant to the NOQ classification?

12 A. No.

13 Q. No participation in that?

14 A. No.

15 Q. Do you know who did make the decision on
16 the NOQ status?

17 A. Prior to the 9th?

18 Q. Yeah.

19 A. No.

20 Q. Were you ever interviewed by an OSHA
21 investigator named Jason Brush?

22 A. No.

23 Q. Do you know whether -- do you know that an
24 OSHA investigator did interview persons -- a
25 person or persons at Federal Express?

1 A. No.

2 Q. No one ever told you that an investigator
3 from OSHA had come to interview the decisionmaker
4 with respect to the 15.D decision for Captain
5 Estabrook?

6 A. No.

7 Q. Were you the principal or primary
8 decisionmaker with respect to the 15.D decision?

9 A. Yes. Post the 9th meeting.

10 Q. Now, who attended the August 9th meeting
11 on behalf of Federal Express?

12 A. As best I can recall, Rob Fisher, Robb
13 Tice, Mr. Estabrook, and myself.

14 Q. And did you base your decision with
15 respect to the 15.D determination on the
16 discussion that you had with Captain Estabrook on
17 August 9th?

18 A. Yes.

19 Q. You say you didn't participate in the NOQ
20 decision on August 5th, correct?

21 A. No, sir.

22 Q. Was there anything in Captain Estabrook's
23 email of August 4th that contributed to your
24 determination with respect to the 15.D
25 determination, or did you base your decision on

1 the face-to-face interview?

2 A. It was based primarily on the face-to-face
3 interview.

4 Q. You say "primarily." So what other
5 considerations outside the face-to-face
6 interview -- you say -- let me back up. You never
7 reviewed his personnel file, correct?

8 A. No.

9 Q. So you never made any effort as of
10 August 9th to determine whether he was security
11 chairman at ALPA or not?

12 A. No, did not do that.

13 Q. And you made no effort to investigate his
14 primary transactions with management
15 representatives at the highest level, correct?

16 A. No.

17 Q. Now you -- I heard you testify just now
18 that your -- and again I don't want to put words
19 in your mouth. So if I characterize this
20 incorrectly, please correct me. That your
21 decision to refer him to a 15.D examination was
22 based primarily on his August 9th -- on your
23 August 9th face-to-face interview with him,
24 correct?

25 A. Yes.

1 Q. But you never looked at his personnel file
2 and you never looked at correspondence that he
3 might have been involved in. So I guess my
4 question is, what else did you consider other than
5 what he said at the August 9th meeting?

6 A. As I stated, primarily the information
7 that was shared during the August 9th meeting.
8 The only other thing that seemed out of sorts a
9 bit was the original email that was sent
10 requesting the meeting.

11 Q. Okay. So what was it about that -- so
12 that August 4th email contributed to your decision
13 that he should submit to a 15.D evaluation?

14 A. No. Let me take the email out of it.
15 Just -- of course, with the information that was
16 shared at that meeting alone was the primary
17 contributor.

18 Q. Well, you keep saying "primary." And so
19 what I -- primary means to me not exclusive. And
20 that's really what I'm getting to. Every time you
21 say primary, my understanding is that there were
22 other factors.

23 A. Uh-huh.

24 Q. So my question is, did you base your 15.D
25 decision exclusively on what you heard at the

1 August 9th meeting?

2 A. Yes.

3 Q. Now, after the August 9th meeting -- let
4 me back up. Who else participated in the decision
5 to refer Captain Estabrook to a 15.D examination?

6 A. Who did I speak with?

7 Q. What I'm asking is -- well, let's --
8 answer that question first. Who did you speak to
9 about the 15.D decision for Captain Estabrook?

10 A. Bill McDonald.

11 Q. Anybody else?

12 A. I don't recall anyone else.

13 Q. But I imagine you also spoke to Mr. Tice
14 and Mr. Fisher.

15 A. Possibly. I don't recall speaking with
16 them specifically. I do know I spoke with Bill
17 McDonald.

18 Q. So it was between you and Mr. McDonald
19 that the decision -- it was the two of you?

20 A. That's what I recall. Yes.

21 Q. And you don't recall any participation by
22 Mr. Fisher or Mr. Tice?

23 A. I do not.

24 Q. And was it just you -- did you and
25 Mr. McDonald meet face to face?

1 A. No.

2 Q. You discussed it by telephone?

3 A. Yes.

4 Q. Were there any other participants in the
5 telephone call?

6 A. No.

7 Q. So what did you say to Mr. McDonald?

8 A. I told Mr. McDonald during that phone
9 conversation that I had some concerns coming out
10 of that meeting based on some statements provided
11 by Mr. Estabrook.

12 Q. Did you describe what your concerns
13 were -- what the statements were that gave rise to
14 your concern?

15 A. Yes, I did.

16 Q. What did you say to Mr. McDonald?

17 A. I told Mr. McDonald that after the
18 introductions were made, that I thought it was
19 very strange that Mr. Estabrook started talking
20 about -- leading in talking about his knowledge of
21 security and then transitioned very quickly to
22 being in Europe with his father, being chased
23 around Hungary and Russia trying to free people
24 and was thrown in jail at the age of 18 trying to
25 do some of those things over in Europe. I'm not

1 sure why that was brought up, but that was
2 introduced at the beginning of the meeting.

3 I do also remember there were
4 questionable things. Mr. Estabrook also talked
5 about Auburn Calloway. Mr. Calloway is the
6 individual who tried to take a hostile act against
7 a FedEx crew and aircraft and is currently in
8 jail. Mr. Estabrook talked about how
9 Mr. Calloway, he's been told on a couple of
10 occasions, has converted to Islam religion and --

11 Q. I'm sorry, I want to -- again.

12 A. Had converted to Islam.

13 Q. Captain Estabrook asserted that he had
14 converted?

15 A. That's what he said in that meeting, yes,
16 sir.

17 Q. He said to you: Auburn Calloway has
18 converted to Islam?

19 A. Yeah. I will tell you the rest of that as
20 well. He did make that statement. And he also
21 made the statement that he has concerns that
22 Mr. Calloway is communicating with terrorists
23 outside of his jail cell and strongly encouraged
24 us to go to the Department of Justice to get his
25 jail cell wired for -- to pick up those

1 transmissions and discussions.

2 Q. Okay. And this is what -- you explained
3 all this to Captain McDonald?

4 A. Yes, sir, I did.

5 Q. So his reference to being chased around
6 Hungary and Russia and references to Calloway, his
7 conversion to Islam and his communication with
8 terrorists, that's what you -- that's what you
9 communicated to Captain McDonald?

10 A. Yes.

11 Q. Did you give him any other reasons why
12 Captain Estabrook's behavior merited a 15.D
13 response?

14 A. Yes. Just as he stated those things, he
15 was very emotional, seemed a bit out of touch just
16 from my perception. Gave concern for those
17 reasons.

18 Q. Well, that goes to his demeanor. I'm
19 saying was there anything else substantively in
20 terms of topics, subjects?

21 A. No. Those were the primary things that
22 Mr. Estabrook stated in that meeting.

23 MR. RIEDERER: You mind if we take a
24 break? We have been going an hour and 15 minutes.

25 MR. TADLOCK: I need a --

1 MR. SEHAM: Yeah. Yeah. I request
2 that you not discuss your testimony.

3 THE WITNESS: Understood.

4 (Brief recess.)

5 BY MR. SEHAM:

6 Q. You ready to resume, Mr. Ondra?

7 A. Yes, sir.

8 Q. So you gave those explanations to Captain
9 McDonald. Did he -- how did he respond?

10 A. He was -- responded that those -- agreed
11 that those were out-of-sorts comments and really
12 kind of -- as I mentioned earlier I think, just
13 really appeared to be disconnected and strange
14 comments.

15 Q. Did he -- you recommended a mental health
16 examination at that point, correct?

17 A. Mr. McDonald -- I was uncomfortable with
18 the information that Mr. Estabrook provided during
19 that meeting.

20 Q. My question is, did you recommend to
21 McDonald that there be a mental health examination
22 of Captain Estabrook?

23 A. I told Mr. McDonald that I thought some
24 kind of evaluation would be appropriate.

25 Q. And it -- how did Captain McDonald -- he

1 is a captain, correct, McDonald? How did Captain
2 McDonald respond to this recommendation?

3 A. He responded that there is a process for
4 that to take place.

5 Q. Okay. Did he say words to the effect that
6 I agree with you he should be subject to a mental
7 health evaluation? Or was it more along the lines
8 of, Mr. Ondra, you're head of corporate security,
9 whatever you say?

10 MR. RIEDERER: Object to the form.

11 Q. You can answer unless your counsel directs
12 you.

13 THE WITNESS: Just okay to answer?

14 MR. RIEDERER: Yeah.

15 A. Okay. Mr. McDonald seemed to take the
16 information that I provided him based on the
17 detail that I provided him as I explained and
18 stated there was a process for that, and that the
19 process would move forward based on the
20 information I provided.

21 BY MR. SEHAM:

22 Q. When he said, "the process would move
23 forward," did you understand that to mean the
24 mental health evaluation would go forward?

25 A. Some kind of evaluation, whatever that

1 evaluation as outlined in the contract, would move
2 forward, yes.

3 Q. Based on your recommendation and the
4 relation of the facts that you communicated to
5 him?

6 A. Yes.

7 Q. Did you have any discussion with either
8 Mr. Tice or Mr. Fisher prior to this conversation
9 with Captain McDonald?

10 A. I don't recall. I don't recall having had
11 a conversation with them.

12 Q. Did you have a discussion with either
13 Mr. Tice or Mr. Fisher at any time concerning
14 Captain Estabrook's mental health?

15 A. Again I don't recall. I remember talking
16 to Mr. McDonald, but that's all at this time.

17 Q. Isn't it true that Captain Fisher and
18 Mr. Tice had already made a decision -- well,
19 strike that.

20 Isn't it true that you overruled a
21 decision of Captain Fisher and Mr. Tice to restore
22 Captain Estabrook to flight duty?

23 MR. RIEDERER: Object to the form.

24 You can answer.

25 A. Can you explain the question? I'm not

1 sure I understand your question.

2 Q. I will give a little preface. Isn't it
3 true that you were not present for the entire
4 August 9th interview of Captain Estabrook?

5 A. I believe I left that meeting early, yes.

6 Q. And isn't it true that when the meeting
7 came to a close, Captain Fisher and Mr. Tice made
8 a decision to restore Captain Estabrook to flight
9 status?

10 A. Not aware of that decision.

11 Q. Now, during the meeting there was also
12 some discussion about an individual who posted
13 messages on the Internet by the name of Mayday
14 Mark, correct?

15 A. During the meeting I participated in?

16 Q. Yes, on August 9th.

17 A. I don't remember that. I don't remember
18 that discussion.

19 Q. Could it be that that discussion took
20 place when you were absent from the meeting?

21 A. Possible.

22 Q. Now, there was also discussion by Captain
23 Estabrook regarding the issue of live tracking of
24 packages in aircraft, correct?

25 A. Yes.

1 Q. And would you agree with me that Captain
2 Estabrook's comments with respect to live tracking
3 were rational?

4 A. Live tracking of packages?

5 Q. Live tracking of packages and how the
6 availability of information related to live
7 tracking could be detrimental to safety?

8 A. Yes.

9 Q. So his comments were rational?

10 A. Yes.

11 Q. And he related his concern about live
12 tracking information to the possible exploitation
13 of that information by Al-Qaeda and other
14 terrorist groups, correct?

15 A. Mr. Estabrook I recall did mention that.

16 Q. Would you agree with me that there was
17 nothing in those comments that contributed your --
18 to your decision with respect to the 15.D
19 determination?

20 A. Not those comments.

21 Q. Now, do your obligations in the position
22 you hold at the Company, does that include taking
23 appropriate measures to deter terrorists from
24 targeting FedEx operations? Is that within the
25 scope of your job duties?

1 A. I don't know if we can stop terrorists
2 from targeting us, but we do -- that is one of the
3 primary goals of my job, yes.

4 Q. And that would include -- well, going back
5 to your comment before you answered the question,
6 would you agree that proper screening of
7 individuals who enter the aircraft and packages
8 that enter the aircraft would have the effect of
9 deterring terrorists from introducing explosives
10 into a FedEx aircraft?

11 A. Yes.

12 Q. And have you ever corresponded with anyone
13 inside or outside the Company relating to
14 terrorist organizations targeting FedEx operations
15 or that of any other cargo aircraft carrier?

16 A. I'm not sure I understand your question.
17 Have I ever corresponded with?

18 Q. Yes. Have you ever had written electronic
19 communications with anyone inside or outside the
20 Company relating to terrorist organizations such
21 as Al-Qaeda and others targeting FedEx operations?

22 A. Yes.

23 Q. Were you ever asked to review your records
24 for such documents?

25 A. Well, let me clarify I guess to that.

1 Nothing relating to this matter. But that -- as
2 you stated earlier, that is a regular on-the-radar
3 thing for us obviously in my role, and that is --
4 that is -- nothing related to this matter, but
5 that is just the general work things that we do.

6 Q. But no one inquired with you as -- on that
7 topic in the context of the Estabrook litigation,
8 correct?

9 A. Not in relation to this matter.
10 Everything again relating to the Mr. Estabrook
11 matter was produced when requested.

12 Q. Are you familiar with a group known as
13 Al-Qaeda in the Arabian Peninsula?

14 A. Yes.

15 Q. Do you feel that Al-Qaeda in the Arabian
16 Peninsula currently poses a threat to FedEx
17 employees or FedEx operations?

18 A. I think all terrorist organizations
19 potentially provide a threat, yes.

20 Q. Do you have an opinion as to during what
21 time period Al-Qaeda in the Arabian Peninsula has
22 posed the greatest threat to FedEx employees?

23 A. I don't have -- I can't answer that.

24 Q. Are you familiar with a man named Anwar Al
25 Awlaki? A-N-W-A-R space A-L space A-W-L-A-K-I.

1 A. Question is am I familiar with him?

2 Q. Yes.

3 A. Yes.

4 Q. And are you familiar with the so-called
5 cargo plane bomb plot of October 2010?

6 A. Yes.

7 Q. Can you explain what knowledge you have of
8 the 2010 cargo plane bomb plot?

9 A. My knowledge is that it is reported that
10 Al-Qaeda placed two devices, one on a UPS aircraft
11 and one on a FedEx aircraft.

12 Q. And what was your job position at the time
13 of that bomb plot in October of 2010?

14 A. I was managing director of corporate
15 security for Memphis headquarters operations.

16 Q. And are you aware of the mass shooting
17 that took place in November 2009 at Fort Hood,
18 Texas?

19 A. Yes.

20 Q. Are you aware that American authorities
21 have linked this attack to Anwar Al Awlaki and
22 Al-Qaeda in the Arabian Peninsula?

23 A. Yes.

24 Q. Are you aware of the attempt to set off a
25 car bomb in Times Square in New York City in May

1 2010?

2 A. Yes.

3 Q. And are you aware that American
4 authorities have linked this May 2010 attack to
5 Anwar Al Awlaki and Al-Qaeda in the Arabian
6 Peninsula?

7 A. Yes.

8 Q. Are you aware of the underwear bombing in
9 which a man named Umar Abdul Mutallab -- that's
10 U-M-A-R, A-B-D-U-L, M-U-T-A-L-L-A-B -- attempted
11 to detonate an explosive device on board a
12 Northwest Airlines flight in December of 2009?

13 A. Yes.

14 Q. And are you aware that the American
15 authorities have linked this attack to Anwar Al
16 Awlaki and Al-Qaeda in the Arabian Peninsula?

17 A. Yes.

18 Q. Do you believe that Al-Qaeda in the
19 Arabian Peninsula has both the ability and the
20 desire to target American individuals and
21 corporations, and that it presents both a real and
22 present danger to Americans?

23 A. Yes.

24 Q. Do you believe that Anwar Al Awlaki and
25 Al-Qaeda in the Arabian Peninsula were responsible

1 for the cargo plane bomb plot in October 2010?

2 A. Very possibly.

3 Q. And are you aware that American
4 authorities have linked the October 2010 plot to
5 Anwar Al Awlaki and Al-Qaeda in the Arabian
6 Peninsula?

7 A. Yes.

8 Q. Are you aware that Al-Qaeda in the Arabian
9 Peninsula has taken credit for this attack?

10 A. Yes.

11 Q. Have you ever heard of something called
12 Inspire magazine?

13 A. Yes.

14 Q. And are you aware that Inspire magazine is
15 linked to Anwar Al Awlaki and Al-Qaeda in the
16 Arabian Peninsula?

17 A. Yes.

18 Q. Have you ever seen the third edition of
19 Inspire magazine released in November of 2010?

20 A. Yes.

21 Q. Okay. Are you aware that this magazine
22 references FedEx by name five times?

23 A. Yes.

24 Q. And are you aware that this magazine
25 provides a justification for launching terrorist

1 attacks against FedEx?

2 A. Yes.

3 Q. Are you aware that this magazine includes
4 photographs of UPS vehicles and aircraft?

5 A. Yes.

6 Q. Are you aware that this magazine includes
7 photographs of an explosive device used to target
8 a FedEx aircraft?

9 A. Yes.

10 Q. And are you aware that this magazine
11 encourages readers to target FedEx and UPS?

12 A. Yes.

13 Q. And would you agree that Al-Qaeda in the
14 Arabian Peninsula poses an ongoing threat to the
15 security of FedEx operations?

16 A. Yes.

17 Q. Now, are you familiar with a man named
18 Ibrahim al-Asiri?

19 A. Yes.

20 Q. And the last name is and A-L hyphen
21 A-S-I-R-I. Yes, Mr. Riederer.

22 MR. RIEDERER: I believe we are
23 getting outside the bounds of what is relevant to
24 this particular case.

25 MR. SEHAM: Well, and we disagree.

1 MR. RIEDERER: Well --

2 MR. SEHAM: So I would like to
3 proceed.

4 MR. RIEDERER: I know, but I mean, at
5 a certain point you don't have full-blown
6 authority to just ask questions about terrorist
7 organizations for the next, you know, hour or so.

8 MR. SEHAM: It's not going to be for
9 the hour or so.

10 MR. RIEDERER: I ask that you get to
11 your point.

12 MR. SEHAM: I'm going to ask that you
13 not interfere with my examination.

14 MR. RIEDERER: I have the right to
15 make objections. I'm making a relevance
16 objection.

17 MR. SEHAM: So noted. If you want to
18 direct him not to answer questions, that's --

19 MR. RIEDERER: I will give you some
20 leniency here, but I do encourage you that I'm
21 losing patience.

22 BY MR. SEHAM:

23 Q. And are you aware that the United States
24 designated Mr. Asiri as a terrorist under
25 Executive Order 13224 on March of 2011?

1 A. Not familiar with that executive order
2 but...

3 Q. You are aware that he's been designated as
4 a terrorist?

5 A. Yes.

6 Q. And are you aware of media reports which
7 claim that Mr. Asiri designed the explosives used
8 in the cargo plane bomb attack?

9 A. Yes.

10 Q. Do you believe that explosive devices
11 produced by Mr. Asiri pose a potential threat to
12 FedEx pilots or aircraft?

13 A. Yes.

14 Q. Now, in getting to the August 9th meeting,
15 did Captain Estabrook suggest that Mr. Asiri may
16 be training replacements who might be capable of
17 building explosive devices which would target
18 FedEx aircraft?

19 A. I believe Mr. Estabrook did bring that up
20 in the meeting, yes.

21 Q. Do you have any concern about the
22 possibility of Mr. Asiri training replacements who
23 may pose a threat to FedEx operations?

24 A. Concerned about all terrorist
25 organizations that potentially pose a threat to

1 all American interests.

2 Q. And based on your discussions with Captain
3 Estabrook on August 9th, would you agree that
4 Captain Estabrook was knowledgeable in security
5 and intelligence matters relating to Al-Qaeda?

6 A. For the brief interaction we had, I can't
7 answer that question.

8 Q. Would you agree with me that federal
9 aviation standards impose a legal requirement on
10 FedEx to provide for the safety of persons and
11 property against acts of criminal violence and the
12 introduction of explosives aboard an aircraft?

13 A. Yes.

14 Q. And would you agree with me that federal
15 aviation standards impose a legal requirement on
16 FedEx to prevent the carriage of any unauthorized
17 explosive incendiary and other destructive
18 substance or item in cargo on board an aircraft?

19 A. Yes. I would say both in the interest --
20 that interest and in our interest as well.

21 Q. Would you agree with me that Federal
22 Aviation Regulations impose a legal requirement on
23 FedEx to prevent or deter the carriage of any
24 unauthorized explosives and incendiaries and other
25 destructive substances or items in cargo on board

1 an aircraft?

2 A. Yes.

3 Q. Did you take any calls during your meeting
4 with Captain Estabrook on August 9th, 2013?

5 A. None that I recall.

6 Q. Okay. You testified that you had no
7 discussion with Rob Fisher and Robb Tice about the
8 15.D determination?

9 A. I think my answer was that none that I can
10 recall, no.

11 Q. And you said that Captain Estabrook during
12 the August 9th meeting did bring up the issue of
13 live tracking of packages -- the public
14 dissemination of live tracking information of
15 packages in aircraft, correct?

16 A. Yes, he did.

17 Q. And would you agree with me that the
18 availability of live tracking allows the customer
19 to know approximately when the plane with his
20 package takes off and when the plane with his
21 package will be landing?

22 A. That would possibly be factual.

23 Q. And Captain Estabrook brought up the issue
24 of the Al-Qaeda cargo aircraft attempts in October
25 of 2010, correct, during this?

1 A. Yes.

2 Q. And Captain Estabrook told you that
3 terrorists desire FedEx's live tracking
4 information for the purpose of enhancing their
5 bombing attempts, correct?

6 A. That was his statement, yes.

7 Q. And isn't it true that Captain Estabrook
8 stated that it was critical to deprive terrorists
9 of live tracking information because previous
10 shipments had been sent related to the October
11 bombings to test the FedEx system and its
12 timelines?

13 A. He did make that statement, yes.

14 Q. And Captain Estabrook's statements were
15 consistent with published reports from credible
16 sources that, in fact, Al-Qaeda was trying to
17 develop information on FedEx delivery timelines,
18 correct?

19 A. Correct. The information Mr. Estabrook
20 shared has been published previously.

21 Q. And Captain Estabrook told you during the
22 August 9th meeting that in order to deter
23 terrorists introduction of explosives into FedEx
24 aircraft, the only scans on shipments should be
25 the pickup and delivery scan, correct?

1 A. He did make that statement.

2 Q. And would you agree with me that under
3 Federal Aviation Regulations FedEx has an
4 obligation to deter terrorists from introducing
5 explosives into FedEx aircraft?

6 A. I just don't think it's good for federal
7 to mandate that, but as I stated earlier, it's in
8 our own best interest for the protection of our
9 employees and assets and customer property.

10 Q. But my question is that -- that wasn't
11 responsive to my question. My question is your
12 understanding -- your job title suggests to me
13 that part of your job responsibilities is to
14 ensure that FedEx is complying with applicable
15 Federal Aviation Regulations, correct?

16 A. Yes. Yes.

17 Q. And is it your understanding of Federal
18 Aviation Regulations that FedEx has an obligation
19 to deter terrorists from introducing explosives
20 into their aircraft?

21 A. Yes.

22 Q. And is it your -- would you agree that
23 Captain Estabrook was trying to communicate to the
24 Company on August 9th that FedEx's dissemination
25 of live tracking was actually a failure to deter?

1 A. It was part of his point in the
2 discussions we had.

3 Q. And my apologies if this overlaps with
4 prior questions, but Captain Estabrook expressed
5 during the August 9th meeting, 2013, he expressed
6 that terrorist groups could use FedEx disseminated
7 tracking information in carrying out their
8 terrorist attacks?

9 A. Yes.

10 Q. And you considered that a rational
11 concern, correct?

12 A. Yes.

13 Q. And would you agree with me that Captain
14 Estabrook -- strike that.

15 Captain Estabrook never cited an actual
16 Federal Aviation Regulation, correct?

17 A. I don't recall. No.

18 Q. But would you agree with me that Captain
19 Estabrook was expressing a view that FedEx was not
20 fully complying with its obligation to deter
21 terrorist introduction of explosives into an
22 aircraft?

23 A. He didn't make that statement.

24 MR. RIEDERER: Did you say he did or
25 did not?

1 THE WITNESS: Did not make that
2 statement.

3 BY MR. SEHAM:

4 Q. Captain Estabrook recommended that FedEx
5 ask the federal department of Homeland Security --
6 well, let me back up actually.

7 Whether he said that statement or not,
8 did you understand him to be saying that FedEx
9 needed to take some actions?

10 A. Mr. Estabrook expressed that during the
11 meeting, yes.

12 Q. And that the action -- that the actions
13 they needed to take were for the purpose of
14 deterring terrorists more effectively from
15 introducing explosives into FedEx aircraft?

16 A. He did -- he did get that -- make that
17 point.

18 Q. And he actually recommended that FedEx ask
19 the Federal Department of Homeland Security to
20 order airlines to cease making tracking
21 information available online because the
22 publication of such information would facilitate
23 the objectives of terrorists, correct?

24 A. He did mention that in the meeting as well
25 as I recall, yes.

1 Q. Did you conduct any research into the
2 issues raised by Captain Estabrook at the
3 August 9th, 2013, meeting?

4 A. Specifically to what?

5 Q. With respect to the live tracking issue?

6 A. No. Again that -- as I mentioned I think
7 earlier, everything Mr. Estabrook brought up
8 previous to that meeting has been discussed prior
9 to. So, no, I did not.

10 Q. And did you ever get back to Captain
11 Estabrook about the concerns he expressed at the
12 meeting?

13 A. I did not. No.

14 Q. Do you know if anybody else did?

15 A. I do not.

16 Q. Now, I believe you testified before that
17 you never reviewed Captain Estabrook's personnel
18 file, correct?

19 A. I have not.

20 Q. And did you make any -- more specifically
21 did you make any effort to research and review his
22 past service in the United States Air Force?

23 A. No, I did not.

24 Q. And you were describing before that the
25 Calloway -- is it properly referred to as

1 hijacking, the action that Auburn Calloway
2 participated in?

3 A. I don't know if it's referred to. It's
4 been referred to several things. I know it was a
5 dangerous overt act that he took for sure.

6 Q. But he entered into the cockpit with
7 weaponry and tried to take control of the flight?

8 A. That's what was reported, yes.

9 Q. Has it ever been part of your job duties
10 to familiarize yourselves with what took place
11 during that event?

12 A. Absolutely.

13 Q. So you've become fairly familiar with
14 that?

15 A. As far as what transpired?

16 Q. Yes.

17 A. Yes.

18 Q. And you were employed -- were you employed
19 by the Company at that time?

20 A. Yes.

21 Q. When did that transpire, that action?

22 A. I don't know the exact year. It was late
23 nineties time frame I believe.

24 Q. And there were three crewmembers at that
25 time, correct?

1 A. Yes, there were.

2 Q. And they were so physically injured that
3 they never were able to fly commercially again,
4 correct?

5 A. That's my understanding.

6 Q. And is it your -- would you agree that as
7 determined by subsequent federal investigation
8 that Mr. Calloway's intent was to use the plane as
9 a missile to destroy the Company's Memphis sorting
10 facility?

11 A. I don't know if that's ever been verified.
12 I have heard that.

13 Q. Mr. Calloway had been terminated by FedEx
14 prior to that flight, correct?

15 A. I don't know.

16 Q. Would you agree that one of the issues
17 that came up in the aftermath of the Calloway
18 incident was the issue of access to jumpseats on
19 FedEx aircraft?

20 A. Yes. The access to jumpseats was
21 discussed following that incident.

22 Q. And he brought -- do you recall what
23 weapons Mr. Calloway was able to bring on to --
24 into the cockpit?

25 A. Yes.

1 Q. Could you describe what those weapons
2 were?

3 A. A spear gun and a claw hammer.

4 Q. After the Calloway incident were pilots or
5 were -- strike that.

6 After the Calloway incident, were persons
7 allowed to enter with that kind of weaponry on to
8 a FedEx aircraft, spear guns and claw hammers?

9 A. No.

10 Q. So there was corrective action taken after
11 the Calloway incident to enhance FedEx Security?

12 A. Yes.

13 Q. And would you agree with me that the
14 Calloway matter was one of the worst security
15 lapses in FedEx's history? You don't have an
16 opinion on that?

17 A. I wouldn't say it was one of the worst
18 security lapses in FedEx's history. No.

19 Q. There have been worse ones?

20 A. No. I would say it was one of the worst
21 incidents that have taken place from that
22 standpoint.

23 Q. Would you agree with me that it was one of
24 the most traumatizing incidents for the Company as
25 a whole?

1 A. Yes.

2 Q. And what remedial measures did FedEx take
3 in the aftermath of the Calloway matter?

4 A. All jumpseaters, including crewmembers
5 that are jumpseating, are screened.

6 Q. Anything else?

7 A. That was the biggest one.

8 Q. And now isn't it true that incoming pilots
9 are shown a video recreating the Calloway
10 incident?

11 A. I don't know.

12 Q. Were you involved directly in any
13 investigatory process after the hijacking?

14 A. No.

15 Q. Were you involved in the criminal
16 prosecution of Auburn Calloway in any way?

17 A. No.

18 Q. Tell me what you know about the
19 relationship between Captain Estabrook and Auburn
20 Calloway.

21 A. I know of no relationship.

22 Q. Did you engage in any effort to research
23 what their past relationship had been?

24 A. No.

25 Q. Were you aware that -- did you have any

1 knowledge that Captain Estabrook and Auburn
2 Calloway were in the same new hire training class?

3 A. No.

4 Q. Did you know that the FBI interviewed
5 Captain Estabrook concerning Auburn Calloway?

6 A. No. I did not.

7 Q. Did you know that Captain Estabrook was
8 subpoenaed to testify in the proceeding?

9 A. No. I did not.

10 Q. Have you ever read anything about or do
11 you have any knowledge of the conversion rate of
12 incarcerated African-Americans to Islam?

13 A. No. I don't.

14 Q. You never heard anything to that effect?

15 A. No.

16 Q. Quantitate for me how much time was spent
17 discussing Auburn Calloway during the August 9,
18 2013, meeting?

19 A. I can't quantify the time. I think
20 everything I stated is what I recall Mr. Estabrook
21 sharing.

22 Q. What was the total duration of the meeting
23 at least to the extent you were present?

24 A. Less than an hour.

25 Q. Could it have been less than 30 minutes?

1 A. It was less than an hour. I can't
2 pinpoint it any further than that.

3 Q. Okay. And you left the meeting early,
4 correct?

5 A. I left -- I left at some point while the
6 attendees were still there.

7 Q. Did you leave just that one time or had
8 you left -- did you leave prior to that once --
9 one or more times?

10 A. I only recall leaving that one time.

11 Q. Now, getting back to Calloway. What is
12 your recollection of what Captain Estabrook said?

13 A. As I stated I think earlier, Mr. Estabrook
14 brought up the fact that Mr. Calloway, he had
15 concerns about, because he had been told on a
16 couple of occasions I think in the last 6 or 12
17 months that he has been told that Mr. Calloway has
18 converted to the Islam religion. That he was
19 incarcerated. He has received information that
20 Mr. Calloway may be talking to Al-Qaeda and
21 sharing information about FedEx with them and
22 strongly encouraged that FedEx go to the
23 Department of Justice and place listening devices
24 in Mr. Calloway's cell so they could -- so FedEx
25 could be aware of the plots that Mr. Calloway was

1 undertaking.

2 Q. That sounded a little different from what
3 you said before. Is it your testimony that
4 Captain Estabrook asserted that he had knowledge
5 that Auburn Calloway had converted to Islam?

6 A. I believe he told us he had been told on a
7 couple of occasions that that had taken place,
8 yes.

9 Q. In other words -- in other words, Captain
10 Estabrook said that he had heard rumors?

11 A. He had -- that's what he had said, yes.
12 Best of my --

13 Q. So in point of fact, he never did say --

14 A. No. He --

15 Q. -- that Auburn Calloway had converted to
16 Islam?

17 A. His statement was, as I recall, that he
18 had been told on a couple of occasions in the past
19 6 months or 12 months that Mr. Calloway had
20 converted to the Islam religion and that -- and he
21 was in his jail cell corresponding with Al-Qaeda,
22 and that someone that he encouraged --

23 Q. That was part of what he was told or
24 Captain Estabrook was asserting that he knew that
25 he was corresponding?

1 A. He was asserting as if he knew that
2 information. That's why he was sharing it is how
3 I understood it.

4 Q. All right. So he said he had been told
5 twice in six months that Mr. Calloway had
6 converted to Islam?

7 A. Correct.

8 Q. So he was reporting something that he had
9 heard from another person?

10 A. I guess. Just like when we all become
11 knowledgeable of anything, someone tells us
12 something. We become knowledgeable of it. So I
13 am assuming someone may have told him that, and he
14 was sharing the information that he believed is --

15 Q. I'm asking what Captain Estabrook said.
16 Did Captain Estabrook assert he has converted to
17 Islam, or did he report to you that he had been
18 told a couple of times that Auburn Calloway had
19 converted to Islam?

20 A. He had -- Mr. Estabrook told us that
21 someone had told him in the last six months that
22 Mr. Calloway had converted to the Islam religion.
23 He also went on to state that Mr. Calloway -- he
24 had strong belief that Mr. Calloway was in his
25 jail cell talking to Al-Qaeda, talking about

1 FedEx, and strongly encouraged FedEx to approach
2 the Department of Justice so listening devices
3 could be placed in Mr. Calloway's cell so FedEx
4 could be aware of the plots that Mr. Calloway was
5 plotting from his jail cell.

6 Q. And you concluded based on that that
7 Captain Estabrook was mentally infirm?

8 A. I thought that was a strange story.

9 Q. That's not my question.

10 A. Your question --

11 Q. My question is you concluded based on what
12 you just recounted that Captain Estabrook was
13 mentally infirm?

14 A. I think based on everything else that I
15 had mentioned earlier, not just that one incident,
16 but also the Hungary, Russia situation, also the
17 email that -- previously that led to that meeting
18 was also strange as well. And just all those
19 things.

20 Q. Mr. Ondra, do you not recall your
21 testimony that you said that the August 4th email
22 did not contribute to your determination?

23 A. It didn't. It didn't. Really didn't.
24 That meeting contributed to it. I just thought
25 stand-alone that that email was strange outside of

1 everything else. I thought that the information
2 that Mr. Estabrook shared in that meeting is
3 definitely the information that --

4 Q. You acted on?

5 A. -- I acted on. I thought the email just
6 getting introduced to the meeting was just also a
7 little bit awkward. Strange.

8 Q. What investigation did you conduct to
9 determine whether Captain Estabrook what he
10 recounted with respect to Hungary and Russia was
11 true or not?

12 A. As I stated earlier, from the jail cell
13 Calloway incident, I didn't do any research, and I
14 didn't do any research on the Hungary, Russia
15 either. I just thought it was a very, very
16 strange story that -- unlike anything I've
17 heard -- you know, if I had heard that from
18 anywhere else, I would have thought that was a
19 very, very strange story, which I did.

20 Q. Did you ask him to identify his source --
21 going back to the report, he said he had heard
22 from somebody that Mr. Calloway had converted to
23 Islam. Did you ever ask him what his source was
24 for that rumor?

25 A. No, I did not ask him. No.

1 Q. Did you ever conduct any investigation
2 into that rumor?

3 A. No. Nor did I conduct an investigation
4 about Mr. Calloway was actually talking to
5 Al-Qaeda.

6 Q. Is it possible that Auburn Calloway might
7 have some information regarding FedEx Flight
8 Operations or flight personnel that might be of
9 use to a terrorist organization?

10 A. It's possible.

11 Q. You determined that there was something --
12 well, skip that.

13 Okay. You didn't do anything then -- you
14 took no action to follow up on any concerns that
15 Captain Estabrook expressed concerning Auburn
16 Calloway, correct?

17 A. Did not.

18 Q. What did you do to prepare for the
19 August 9th meeting, August 9, 2013, with Captain
20 Estabrook?

21 A. I really didn't do anything to prepare
22 than put it on my calendar and go to the meeting.

23 Q. Did someone ask you to attend the meeting?

24 A. Yes.

25 Q. Who was that?

1 A. I believe I would have to see the email
2 for sure, but I believe I received the email from
3 Rob Fisher.

4 Q. Now, did you all enter the meeting -- when
5 I say y'all, I mean the management
6 representatives, Mr. Tice, Mr. Fisher, yourself,
7 did y'all enter the meeting together?

8 A. No, we didn't. I came from my office, and
9 so I arrived when I arrived.

10 Q. Was everyone else already in the room?

11 A. I don't recall.

12 Q. Did you bring anything with you to the
13 meeting?

14 A. I think I brought a note pad.

15 Q. A note pad and a pen?

16 A. Yes.

17 Q. And you took notes, correct?

18 A. Yes.

19 MR. SEHAM: Actually if it's okay
20 with you, would you mind a five-minute break?

21 MR. RIEDERER: Sure.

22 (Brief recess.)

23 BY MR. SEHAM:

24 Q. Mr. Ondra, so you took notes at the
25 meeting, correct?

1 A. Yes.

2 Q. And did anyone else take notes?

3 A. I don't know.

4 Q. And were you present for any of the
5 discussion of Mayday Mark?

6 A. I don't recall any -- having been present
7 for any of that discussion.

8 Q. Do you have any recollection of Mayday
9 Mark concerning a pilot who had had a stroke?
10 Does that ring a --

11 A. No. No.

12 Q. Very good. That means I can skip over a
13 lot of questions. Now, Captain Estabrook at that
14 August 9th meeting stated that he was well versed
15 with respect to matters of military intelligence,
16 correct?

17 A. Mr. Estabrook stated something to the
18 effect that he had experience in that area.

19 Q. And are you familiar with the acronym
20 AWACS as it is used in the United States Air
21 Force?

22 A. No.

23 Q. Captain Estabrook stated at that meeting
24 that he had been assigned to U.S. Air Force
25 surveillance aircraft, correct?

1 A. I don't remember that specifically. I do
2 remember Mr. Estabrook mentioning he had a
3 military background.

4 Q. Isn't it true that during the August 9th
5 meeting, Captain Estabrook stated that in the
6 military he had been assigned to surveil Russian
7 bombers?

8 A. I don't recall that.

9 (Whereupon, a document was marked as
10 Exhibit K.)

11 Q. Now, I have handed you a document we have
12 marked as Exhibit K, and it's paginated FDX 4-60
13 through 62. Now, would these be the handwritten
14 notes that you took on the day of the August 9th,
15 2013, meeting with Captain Estabrook?

16 A. Yes.

17 Q. Now, about a third down the page could you
18 read the one sentence there starting with the word
19 "arrested."

20 A. On the first page?

21 Q. Yes.

22 A. Oh, third of the page. Okay. Arrested by
23 secret police in Hungary when I was 18. I was --
24 I have chased -- I have chased around Russia, etc.

25 Q. Okay. So the first sentence is arrested

1 by is it secret or Soviet?

2 A. Secret.

3 Q. Police in Hungary when I was 18. Did he
4 say anything else about his experience in Hungary
5 other than what you record in that sentence?

6 A. Well, as I stated earlier, I mean, this
7 was a note to remind me of what was stated at the
8 time. But Mr. Estabrook stated he and his father
9 were chased all around Hungary and Russia for
10 their -- whatever it was they were doing over
11 there. I don't recall specifically, but then he
12 said he was arrested and thrown in jail by the
13 secret police in Hungary when he was 18.

14 Q. And then the next line it reads: "I have
15 chased around Russians, etc."; is that correct?
16 Is that -- in terms of what is written there.

17 A. That's what it says right there, yes. It
18 appears to me.

19 Q. Mr. Ondra, isn't it possible that the
20 August 9 meeting, 2013, that Captain Estabrook
21 referenced the fact that he had chased Russians?

22 A. I don't recall specifically.

23 Q. Okay. Now, if you can go up to the upper
24 right, I'm having problems reading what is in that
25 sort of balloon. It says per B -- is it "per B.

1 McDonald"?

2 A. Yes.

3 Q. So that would reference per Bill McDonald?

4 A. Uh-huh.

5 Q. The next line is -- it says "off line"?

6 A. Uh-huh.

7 Q. If you could answer yes or no.

8 A. Yes. Yes. I'm sorry.

9 Q. Is that referencing a decision by
10 Mr. McDonald that he should be removed from flight
11 status?

12 A. Let me read this a minute if I could.

13 Q. Sure.

14 A. (Witness reviews document.)

15 I believe this is a note made -- not
16 captured during the meeting but during discussions
17 that I had with Mr. McDonald that I referenced
18 earlier.

19 Q. Okay. And in terms of what it says, would
20 you agree with me it says, "per B. McDonald off
21 line"?

22 A. That's what it says, yes. Appears to say.
23 Uh-huh.

24 Q. So is it -- did Mr. or Captain McDonald
25 make the decision -- well, let me back up. These

1 notes would you have -- you have entered them on a
2 document dated August 9, 2013. Correct?

3 A. Correct.

4 Q. And you believe that the notes in this
5 little bubble off in the right corner that those
6 reference a post-meeting telephonic discussion
7 with Captain McDonald, correct?

8 A. Yes.

9 Q. So after your -- the meeting attended by
10 Captain Estabrook, Captain Fisher, Mr. Tice, you
11 had a telephone discussion, and Mr. McDonald told
12 you to take Captain Estabrook off line; is that
13 correct?

14 A. No.

15 Q. Well, could you explain for us the
16 significance of this scrawl here, these words "per
17 B. McDonald off line"?

18 A. I don't remember specifically, but I think
19 as I stated earlier as well, I had a discussion
20 with Mr. McDonald following the meeting with
21 Mr. Estabrook, and I relayed the concerns that I
22 had. And Mr. McDonald advised there was a -- you
23 know, based on the information that I shared my
24 concerns that there was a process that would be --
25 that would follow based on the information that I

1 shared. And that has to be what this is referring
2 to, but I can't tell you specifically what else it
3 is.

4 Q. What is the next word? It says, "off
5 line," and then it looks like O-U-T, but I can't
6 make that out.

7 A. Yeah. It looks like off line out.

8 Q. And then to the right of that there's
9 something crossed out.

10 A. Yeah. I have no idea what that is.

11 Q. Okay. And to the right of that it looks
12 like CASS but --

13 A. Yeah, it looks like CASS.

14 Q. What significance does that have?

15 A. I don't recall. I don't recall what
16 significance that has.

17 Q. Okay. Then under that it says "JS"?

18 A. Yes.

19 Q. What does that mean?

20 A. I believe that would be jumpseat.

21 Q. So is that referring to the fact that he
22 would not be permitted to jumpseat?

23 A. I don't know. I don't recall
24 specifically.

25 Q. Okay. These are your notes though,

1 correct?

2 A. Yes, sir. Yeah.

3 Q. Okay. And then going back to the center
4 of the document it says, "Airlines Pilot Central
5 Mayday Mark." Now is that --

6 A. Where are we?

7 Q. At the top of the page, it's right after
8 the three individuals are listed Mark Estabrook,
9 Rob Fisher, Robb Tice. It says "Airlines Pilot
10 Central Mayday Mark."

11 A. Correct.

12 Q. Did you enter those?

13 A. Did I write this?

14 Q. Yeah.

15 A. It sure -- yeah. It sure looks like it.

16 Q. And did you write that after the meeting
17 or during the meeting?

18 A. I don't recall when it was written.

19 (Whereupon, a document was marked as
20 Exhibit L.)

21 Q. I have handed you a letter dated
22 August 16, 2013. Exhibit -- which we marked as
23 Exhibit L, and it's signed by Rob Fisher. Were
24 you ever provided with a copy of this letter?

25 A. Let me read it. One second.

1 (Witness reviews document.)

2 I don't recall having received a copy.

3 Q. Okay. Between the meeting on August 9th
4 and August 16th, did you have any further
5 involvement in the 15.D decision-making process?

6 A. No, not that I recall.

7 Q. So you made your recommendation to Captain
8 McDonald and --

9 A. The day of the -- following the meeting,
10 yes.

11 Q. The day following the meeting or the day
12 of the meeting?

13 A. Well, the day following the -- the same
14 day the meeting took place but following the
15 meeting.

16 Q. And thereafter you left it with Captain
17 McDonald to make the determination or to
18 implement?

19 A. It's my understanding Mr. McDonald was
20 going to implement whatever that process was.

21 Q. Okay. And he made that decision?

22 A. I think he made that decision based on the
23 information I provided him.

24 Q. And did you direct him to make that
25 determination?

1 A. I didn't direct or mandate. It was my
2 understanding after I communicated the concerns
3 that I had, he was going to move forward with that
4 process.

5 Q. But did you recommend that Captain --

6 A. I supported that -- whatever that process
7 was, I supported it for Mr. Estabrook to follow
8 that process.

9 Q. Well, I want to know how that was
10 articulated. Did you state that I -- based on
11 what Captain Estabrook said at the August 9th
12 meeting, I am recommending to you, Captain
13 McDonald, that he be subject to a mental health
14 evaluation?

15 A. Yes. Yes.

16 Q. And Captain McDonald agreed with you?

17 A. He did.

18 Q. Do you have any knowledge of -- there's a
19 reference in these notes to recall procedures at
20 ACARS with Billy Wilson, took my suggestion and
21 ran with it. Do you see where I'm reading?

22 A. No, I don't have the document.

23 Q. Oh, okay. We're back to Exhibit K.

24 A. Where in the document?

25 Q. About two thirds down.

1 A. Okay. I see it.

2 Q. What I'm reading, and please correct me if
3 I'm reading it incorrectly.

4 A. Okay.

5 Q. It seems to say, recall procedures at
6 ACARS, Billy Wilson took my suggestion and ran, I
7 assume, with it.

8 A. Uh-huh.

9 Q. Did I read that correctly?

10 A. Yes, sir.

11 Q. Did you do -- do you understand today what
12 that references?

13 A. Well, I understand when Mr. Estabrook
14 communicated in the meeting that he helped develop
15 some procedures related to ACARS and Billy Wilson
16 was the -- their contact in Air Ops from kind of
17 their security standpoint, and whatever those
18 recommendations were that Mr. Estabrook suggested,
19 Billy Wilson at the time accepted that.

20 Q. And who is Billy Wilson? That is a
21 management representative?

22 A. Yeah. Billy Wilson worked in Air
23 Operations. I never worked directly with him at
24 all. So I am not sure exactly what his role was
25 at the time in Air Operations other than someone

1 that Air Operations worked with prior to my
2 receiving this position.

3 Q. Did you ever follow up -- discuss ACARS
4 with Billy Wilson after this meeting?

5 A. I didn't because it wasn't brought up to
6 my memory as a concern. It was more of
7 Mr. Estabrook was proud that he had come up with
8 this suggestion, and Mr. Wilson moved forward with
9 it. I didn't see a need for follow-up.

10 Q. And forgive me, JS the reference in your
11 handwriting in the upper right-hand corner to JS,
12 you don't know what that refers to?

13 A. The only thing I can think it would mean
14 was jumpseat. That's the only thing I can think
15 of.

16 Q. Oh, okay. Yes. Thank you. And it seems
17 under -- sort of writing on top of things, but it
18 say -- you see it says privileged under where it
19 says CASS, it appears to say privileged with a
20 question mark. Do you see where I'm pointing to
21 in the upper right?

22 A. No, I really don't. Well, you talking
23 about what the item that's scratched out there?

24 Q. Yeah. It says -- where it reads "per B.
25 McDonald off line out CASS," and then CASS seems

1 to be over written -- over written over the word
2 privileged.

3 A. I see that.

4 Q. And it has a question mark?

5 A. Uh-huh.

6 Q. Do you know why you put a question mark
7 there?

8 A. No idea.

9 Q. And can CASS, the reference to CASS, could
10 that be election -- elect screening system for
11 pilots?

12 A. Electric.

13 CAPTAIN ESTABROOK: Electronic.

14 Q. Electronic screening system for pilots.
15 Could that be a reference to that system?

16 A. I can only think it would be a reference
17 to what -- to our CASS system inside FedEx is the
18 only thing I can think of what it is.

19 Q. Now, it says two thirds down the page
20 there's a reference to Barbara Boxer?

21 A. Uh-huh.

22 Q. How did that come up?

23 A. Other than Mr. Estabrook brought Barbara
24 Boxer up for some reason is the only reason I can
25 think that it's on there.

1 Q. So you have no specific recollection of
2 what was --

3 A. I really don't. No.

4 (Whereupon, a document was marked as
5 Exhibit M.)

6 Q. I'm going to hand you a letter we have
7 marked as Exhibit M dated August 13, 2013, with
8 paginated FDX 4-65 through 68. Did you -- it
9 shows you as a cc on the last page of 68. It's a
10 letter from Alan Armstrong dated August 13, 2013.
11 And did you receive this letter?

12 A. Let's take a look. I believe I did
13 receive this letter.

14 Q. And did you read it?

15 A. I would have read it at the time received.
16 Since I was copied, I would at least glance
17 through it.

18 Q. Okay.

19 (Whereupon, a document was marked as
20 Exhibit N.)

21 Q. I would like to hand you a document that I
22 would like to mark as Exhibit N. Is this a typed
23 version of your notes that we have identified as
24 Exhibit K that you prepared some time after the
25 meeting?

1 A. Yes.

2 Q. And how soon -- did you type these up
3 yourself?

4 A. I did type these myself.

5 Q. And what day did you do that?

6 A. I don't recall the specific date.

7 Q. Do you remember --

8 A. I don't recall.

9 Q. Was it a matter of days or weeks?

10 A. It would have been soon after the actual
11 meeting took place on the 9th. I don't know if it
12 was the day of, but it was soon after.

13 Q. Might have been a day or two after?

14 A. Very soon after.

15 Q. But it might not have been the same day?

16 A. Might not have been the same day.

17 Q. Okay. Mr. Ondra, just want to make sure I
18 understand your testimony. Is it your testimony
19 that after August 9th you had no further
20 involvement in the discussions relating to Captain
21 Estabrook's 15.D process?

22 A. None that I can recall, no.

23 MR. SEHAM: I may -- if we can go off
24 the record for a second, if you don't mind.

25 (Brief recess.)

1 MR. SEHAM: No further questions.

2 MR. RIEDERER: I just have a couple
3 of questions.

4 EXAMINATION

5 BY MR. RIEDERER:

6 Q. First, did you recommend to Bill McDonald
7 that Captain Estabrook needed to have a mental
8 health examination?

9 A. Yes.

10 Q. And were you specific with the fact that
11 it was a -- he needed a mental health examination
12 or just an examination of some sort?

13 A. Just whatever the appropriate examination
14 was as outlined by the process.

15 Q. Following the initiation of this legal
16 matter, did my department ask you for documents
17 relating to terrorist organizations targeting
18 FedEx?

19 A. Yes.

20 Q. Did you search for such documents?

21 A. Yes.

22 Q. Did you produce anything that you may have
23 had with respect to that search?

24 A. No, I did not.

25 Q. Do you have documents relating to

1 terrorist organizations targeting Federal Express?

2 A. No, I do not.

3 Q. There's some testimony regarding the 2010
4 bomb plot. Was it ever verified that the
5 terrorist organization was attempting to detonate
6 a bomb on a FedEx plane?

7 A. There was no correspondence -- repeat the
8 question one more time. Make sure I understand.

9 MR. RIEDERER: Can you read it back?
10 If not, I will rephrase.

11 (The requested portion of the record
12 was read by the reporter.)

13 A. I think the facts as I understand them are
14 there are facts to substantiate that there was a
15 device on FedEx aircraft. I'm not aware of
16 anything that substantiates that the device was to
17 explode on board the FedEx aircraft.

18 MR. RIEDERER: I don't have any other
19 questions.

20 MR. SEHAM: Just one question based
21 on the -- not the redirect but the direct.

22 EXAMINATION

23 BY MR. SEHAM:

24 Q. Mr. Ondra, isn't it true that in your
25 discussion with Mr. McDonald or Captain McDonald

1 on August 9, 2013, that you discussed a process to
2 determine whether Captain Estabrook should be
3 subject to a psychological examination?

4 A. Isn't it -- make sure I understand the
5 question. Isn't it true that I discussed with
6 Mr. McDonald -- can you repeat the rest of it?

7 MR. SEHAM: Would you read that back.

8 (The requested portion of the record
9 was read by the reporter.)

10 A. Yes.

11 MR. SEHAM: No further questions.

12 A. Well, let me clarify again. I didn't
13 specifically say psychological examination. I
14 asked Mr. McDonald -- expressed concerns based on
15 what was shared with me and us in that meeting,
16 and asked that whatever process it was for a
17 crewmember to be checked for -- checked out, that
18 that process be followed.

19 Q. Did Captain McDonald use the term
20 psychological examination?

21 A. I don't recall. I don't recall if he did
22 or not.

23 MR. SEHAM: Thank you.

24 (Deposition concluded at 11:50 a.m.)

25 AND FURTHER DEPONENT SAITH NOT
(Signature waived)

1 COURT REPORTER'S CERTIFICATE
2 STATE OF TENNESSEE:

3 COUNTY OF SHELBY:

4 I, SHERYL G. WEATHERFORD, LCR #027, CSR, RPR,
5 and Notary Public, Shelby County, Tennessee,
6 CERTIFY:

7 1. The foregoing deposition was taken before
8 me at the time and place stated in the foregoing
9 styled cause with the appearances as noted;

10 2. Being a Court Reporter, I then reported
11 the deposition in Stenotype to the best of my
12 skill and ability, and the foregoing pages contain
13 a full, true and correct transcript of my said
14 Stenotype notes then and there taken;

15 3. I am not in the employ of and am not
16 related to any of the parties or their counsel,
17 and I have no interest in the matter involved.

18 4. I FURTHER CERTIFY that this transcript is
19 the work product of this court reporting agency
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23 WITNESS MY SIGNATURE, this, the 12th day of
24 April, 2016.

25 _____
 SHERYL G. WEATHERFORD
 Registered Professional Reporter,
 Tennessee Licensed Court Reporter
 #027, Arkansas Certified Court
 Reporter #500, Notary Public
 for the State of Tennessee at
 Large ***

 My commission expires:
 June 5, 2016