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

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MARK ESTABROOK,

Complainant,

Vs.

Case No. 2014-AIR-00022

FEDERAL EXPRESS CORPORATION,

Respondent.

---

THE DEPOSITION OF MARK ESTABROOK

March 25, 2016

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

1                   The deposition of MARK ESTABROOK, taken  
2                   on this, the 25th day of March, 2016, on behalf of  
3                   the Respondent, pursuant to notice and consent of  
4                   counsel, beginning at approximately 9:15 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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1                   MR. SEHAM: This is Lee Seham,  
2           counsel for Captain Mark Estabrook, the  
3           Complainant, and just as a housekeeping matter  
4           wanted to put on the record that yesterday we  
5           deposed -- well, as more of a preface, our  
6           position is that we are done with depositions  
7           today and that we are going to proceed with our  
8           preparation for summary judgment motions with one  
9           caveat, and the caveat arises from the fact that  
10          we got through a Freedom of Information Act  
11          request notes taken by OSHA investigator Jason  
12          Brush, which give every indication that they  
13          were -- constituted an interview of Rob Fisher.  
14          Notes are captioned at the top Rob Fisher, and  
15          they seem to be comments that are attributable  
16          specifically to his position. However, Captain  
17          Fisher did not recall being interviewed by the  
18          OSHA investigator. If he doesn't recall, he  
19          doesn't recall. We don't mean to recall him as a  
20          witness for further deposition.

21                   The only thing we are asking for from  
22          FedEx is that they stipulate that Rob Fisher was  
23          the person interviewed by OSHA in terms of a FedEx  
24          representative, and that they will -- I believe  
25          Mr. Riederer told us he will undertake to tell us

1 by Monday if it is Captain Fisher or any of the  
2 three other people we deposed. We will stand by  
3 our position to close off depositions. If it is a  
4 fifth person, another person, it is our position  
5 that we reserve the right to depose that  
6 additional person. Is that fair?

7 MR. RIEDERER: That is a fair  
8 statement.

9 MARK ESTABROOK  
10 Having been first duly sworn, was examined and  
11 testified as follows:

12 EXAMINATION

13 BY MR. RIEDERER:

14 Q. Good morning, Captain Estabrook. My name  
15 is Daniel Riederer. I'm an attorney for Federal  
16 Express Corporation. I know we have met in the  
17 prior few days, but I wanted to re-introduce  
18 myself today.

19 A. Good morning.

20 Q. You understand that you're under oath?

21 A. Yes.

22 Q. You understand that it's the same oath you  
23 would take in a court of law?

24 A. Yes.

25 Q. My purpose here today is to get the facts

1 of the case you have brought against Federal  
2 Express. Do you understand that?

3 A. Yes.

4 Q. Did you review any documents in  
5 preparation for today's deposition?

6 A. Yes.

7 Q. And what documents did you review?

8 A. I reviewed the exhibits that we have been  
9 exchanging the last couple of days.

10 Q. So you reviewed the exhibits that have  
11 been entered in the depositions that took place  
12 yesterday and the day before?

13 A. Yes.

14 Q. Did you review any other documents?

15 A. No.

16 Q. Did you make any notes in preparation for  
17 today's deposition?

18 A. No. I made notes during the depositions.

19 Q. Did you rely on those notes to prepare for  
20 this deposition?

21 A. No.

22 Q. Other than your attorney, did you discuss  
23 your deposition today?

24 A. No.

25 Q. You have sat through four depositions in

1 the last couple of days. But just so that we are  
2 both clear on how this will work today, I ask that  
3 you give verbal responses to my questions. Okay?

4 A. Yes.

5 Q. Shaking of the head is difficult for the  
6 court reporter to take that down. Do you  
7 understand?

8 A. I understand.

9 Q. I ask that you give me a complete answer  
10 to my question. Okay?

11 A. Okay.

12 Q. I ask that you let me know if you do not  
13 understand one of my questions.

14 A. Okay.

15 Q. I don't think this is going to be a very  
16 long deposition. But if you need a break, please  
17 let me know. Okay?

18 A. Okay.

19 Q. Is there anything that would prevent your  
20 ability to testify truthfully here today?

21 A. No.

22 Q. Have you ever given any testimony under  
23 oath before?

24 A. Yes.

25 Q. Okay. How many times?

1 A. Three.

2 Q. What was the first time?

3 A. The first time was during my divorce.

4 Q. Second time?

5 A. Let me take that back. The first time I  
6 was sworn in under oath was during the Auburn  
7 Calloway trial.

8 Q. Okay. Second time?

9 A. Was with the seniority lawsuit.

10 Q. Third time was your divorce?

11 A. Third was my divorce.

12 Q. When was your divorce?

13 A. I think that was finalized in 2010.

14 Q. Did you sit for a deposition?

15 A. I'm sorry?

16 Q. Did you sit for a deposition?

17 A. Yes.

18 Q. Or did you testify in court?

19 A. Deposition.

20 Q. Did you also testify in court?

21 A. For that?

22 Q. Yes.

23 A. No.

24 Q. You mentioned your seniority lawsuit, can  
25 you explain?

1       A.        Back when FedEx bought Flying Tigers, we  
2       had a Flight Crewmembers' Handbook that stipulated  
3       that any airline pilots acquired by FedEx would be  
4       placed on the bottom of the seniority list, and  
5       FedEx chose not to do that.

6       Q.        Were you a plaintiff in that lawsuit?

7       A.        Yes, I was.

8       Q.        Is it styled as a class action?

9       A.        Yes, it was.

10      Q.        Were you deposed in that case?

11      A.        Yes, I was.

12      Q.        Did that case go to trial?

13      A.        Yes, it did.

14      Q.        Did you testify at trial?

15      A.        No, I didn't.

16      Q.        And when was -- give me the time frame of  
17      this lawsuit.

18      A.        Whoo. I would only be guessing, but it  
19      started in the nineties and it lasted  
20      approximately 10 or 12 years.

21      Q.        Approximately when was your deposition  
22      taken?

23      A.        That's a good question. I'm going to  
24      say -- I'm guessing, maybe 1996, somewhere in that  
25      time frame.

1 Q. Were you represented by counsel?

2 A. Yes.

3 Q. Who was your attorney?

4 A. Scott Willhite.

5 Q. What firm?

6 A. It was The Hardison Law Firm.

7 Q. You mentioned the Calloway trial, correct?

8 A. Yes.

9 Q. You were subpoenaed to testify for that?

10 A. Yes.

11 Q. Do you recall approximately when that was?

12 A. I think that was in '95.

13 Q. Well, if you can recall, what was the  
14 substance of your testimony in that case?

15 A. They asked me what Auburn Calloway  
16 discussed with me on the telephone approximately I  
17 think one to two months prior to the incident, and  
18 that's all I testified to.

19 Q. Do you recall what you spoke to him on the  
20 telephone, do you recall that conversation?

21 A. Generally I can tell you that he called me  
22 and heard that I was having marital problems with  
23 my wife, and he wanted to relay his experience  
24 with divorce to me on the telephone.

25 Q. Anything else about that conversation that

1       you can recall?

2       A.       No, sir.

3       Q.       You mentioned that you were a plaintiff in  
4       the seniority lawsuit, correct?

5       A.       I was.

6       Q.       Have you been a party to a lawsuit -- and  
7       I suppose the divorce would count as some sort of  
8       a lawsuit, correct?

9       A.       I guess.

10      Q.       Besides those two things, have you been a  
11      party to a lawsuit before this case?

12      A.       Well, not that I recall. I have been a  
13      shareholder in various companies that will send me  
14      notices that they are litigating something, but I  
15      have never been, you know, a signed plaintiff.

16      Q.       Okay. What is your full name?

17      A.       Mark Steven Estabrook.

18      Q.       Have you gone by any other names?

19      A.       No, sir.

20      Q.       What is your --

21      A.       Well, I was adopted by my stepfather  
22      when -- so...

23      Q.       I'm not interested in going back that far.

24      A.       Okay.

25      Q.       What is your date of birth?

1 A. May 9th, 1956.

2 Q. Well, let me back up. You were adopted as  
3 a child?

4 A. Yes.

5 Q. Since that time, you have gone by your  
6 current name?

7 A. Correct.

8 Q. Where do you presently live?

9 A. I live in Austin, Texas.

10 Q. Do you own a property there?

11 A. Yes, I do.

12 Q. Do you own any other properties?

13 A. You mean real estate?

14 Q. Yes.

15 A. No, sir.

16 Q. Do you have a residence in Memphis, for  
17 example?

18 A. No, sir.

19 Q. What is your marital status?

20 A. I'm married.

21 Q. When did you get married?

22 A. February 27th of this year.

23 Q. And then prior to that, you were married  
24 up until your divorce in 2010?

25 A. Correct.

1 Q. Have you been married any other time?

2 A. I was married previously. This is my  
3 third marriage.

4 Q. When was your first divorce?

5 A. Oh, gosh, 1984.

6 Q. What is your wife's name?

7 A. My current wife?

8 Q. Yes.

9 A. Maryna Estabrook.

10 COURT REPORTER: Spell that, please.

11 THE WITNESS: M-A-R-Y-N-A.

12 BY MR. RIEDERER:

13 Q. Do you have any children?

14 A. I do.

15 Q. Are any of your children dependent on you?

16 A. No, sir. Well, I now have two  
17 stepchildren through this. So I have signed them  
18 up for FedEx health insurance.

19 Q. What are their ages?

20 A. Eighteen and twelve.

21 Q. Do both of them live at your home?

22 A. No. They live in Canada.

23 Q. Do you provide financial assistance to  
24 either of those children?

25 A. Indirectly.

1 Q. Through your wife?

2 A. Yes.

3 Q. Do you have like a monthly plan, or is it  
4 just on an as-needed basis?

5 A. What do you mean? Can you be more  
6 specific?

7 Q. Do you provide a recurrent child support  
8 or anything like that?

9 A. No. There's not child support. I share  
10 money with my wife.

11 Q. So when the children need money, then it  
12 is provided to them?

13 A. Correct.

14 Q. You currently work at FedEx?

15 A. Yes, sir.

16 Q. Do you have any other jobs?

17 A. No, sir. Sometimes I do photography.

18 Q. You're not employed anywhere else?

19 A. No, sir.

20 Q. Do you have a personal business or  
21 anything like that?

22 A. No, sir.

23 Q. How many days a week -- and you're a pilot  
24 for FedEx, correct?

25 A. Yes.

1 Q. How many days a week would you say that  
2 you fly?

3 A. It depends on the week. I have a strange  
4 schedule that sometimes I fly for a week and then  
5 I'm off for a week. Sometimes I fly three or four  
6 days and then I'm off for two days and then I come  
7 back and fly. There's no rhyme or reason to it.

8 Q. What do you do when you're not flying?

9 A. Try to rest, spend time with my wife.

10 Q. Do you have any hobbies or activities?

11 A. Photography.

12 Q. Other than photography?

13 A. No. That's my primary hobby.

14 Q. Do you have any social media accounts,  
15 such as Facebook?

16 A. No. I don't have Facebook.

17 Q. Twitter?

18 A. No. I don't have Twitter.

19 Q. Instagram?

20 A. No. I don't have Instagram.

21 Q. YouTube account?

22 A. Yeah. I do think I have a YouTube  
23 account.

24 Q. Is it under your name?

25 A. I think so.

1 Q. Do you have any other social media  
2 accounts?

3 A. Not that I can think of.

4 Q. On your YouTube account do you ever post  
5 anything work related?

6 A. I may have. I may have, but I can't  
7 recall right now.

8 Q. You can't think of anything specifically?

9 A. No. I mean, I'm a pilot. I may have  
10 some -- I may have some flying videos or  
11 something. I don't exactly recall.

12 Q. When is the last time you uploaded a video  
13 to your YouTube account?

14 A. Sometime in the last year.

15 Q. Do you have any -- do you have any videos  
16 on your YouTube account that relate to the facts  
17 of this case?

18 A. No, sir.

19 Q. Do you participate in any blogs?

20 A. Yes, I did have a -- I have a -- I have a  
21 website -- I guess you could consider it a blog.  
22 I don't know what the definition of a blog is.

23 Q. Well, describe your website.

24 A. But on that blog I have posted articles  
25 about the FedEx pilot group.

1 Q. What is the blog?

2 A. They're PDF's and some video and audio  
3 files. The name is Jetpilots.com.

4 Q. How long have you operated that website or  
5 blog?

6 A. Probably in the last couple of years.

7 Q. Other than Jetpilots.com, do you operate  
8 any kind of blog or website?

9 A. No.

10 Q. Do you ever post comments on the Airline  
11 Pilot Forum?

12 A. No.

13 Q. Are you familiar with an individual  
14 posting as Mayday Mark on that forum?

15 A. I know the name. I don't know who it is.

16 Q. You don't know who it is?

17 A. Don't have a clue.

18 Q. Have you ever tried to figure out who he  
19 is?

20 A. By asking FedEx we have.

21 Q. What, through this lawsuit?

22 A. Yes.

23 Q. Have you taken any independent steps to  
24 determine who that person is?

25 A. No.

1 Q. Do you have a criminal record?

2 A. No.

3 Q. Have you ever been -- have you ever filed  
4 for relief in bankruptcy?

5 A. No.

6 Q. I want to do this as quickly as possible,  
7 but I want to go through your job history very  
8 briefly before you joined FedEx.

9 A. Okay.

10 Q. Where did you work directly prior to  
11 FedEx?

12 A. US Air technically.

13 Q. What was your job there?

14 A. I was a first officer on a 737.

15 Q. How long did you work for US Air?

16 A. About three months.

17 Q. Did you leave US Air to go to FedEx?

18 A. Yes, I did.

19 Q. Prior to US Air?

20 A. The U.S. Air Force.

21 Q. How long were you in the U.S. Air Force?

22 A. Seven and a half years.

23 Q. What was your role in the U.S. Air Force?

24 A. I finished as an AWACS aircraft commander.

25 Q. And I have heard testimony about that, but

1 just for the record can you explain what that is?

2 A. Airborne Warning and Control System.

3 Q. What were your job duties as a commander?

4 A. Much of it is classified, but I can tell  
5 you --

6 Q. I'm thinking you were a pilot?

7 A. I was a pilot.

8 Q. Did you fly the plane?

9 A. Aircraft commander, and I -- as I told  
10 the -- Mr. Ondra in the August 9th meeting, I  
11 chased Russians across the North Atlantic.

12 Q. And what do you mean by that?

13 A. Well, the Soviet Union would routinely fly  
14 Russian Bears around the top of Norway and in  
15 between Iceland and Greenland and practice bombing  
16 runs on Washington, DC. Then they would turn  
17 south and go to Cuba, and they would rotate out  
18 with the other Soviet air crews that were in Cuba.  
19 Our job as an AWACS was to find them and intercept  
20 our F-15's to escort them their entire way. So  
21 they always knew that we were there, and we always  
22 knew they were there.

23 Q. So you were patrolling -- and I don't want  
24 to put words in your mouth -- patrolling between  
25 Russia and the United States and then south?

1       A.       In that region that is generally correct.

2       Q.       Okay.

3       A.       I also served in the Persian Gulf.

4       Q.       What dates?

5       A.       From 1984 to 1988.

6       Q.       When did you join the Air Force?

7       A.       1981.

8       Q.       Did you join as a pilot?

9       A.       Not technically. I mean, your -- first

10      you have to get your commission, and then you go

11      to pilot school, pilot training.

12      Q.       Did you perform any other duties for the

13      Air Force other than pilot-related duties?

14      A.       No, sir.

15      Q.       Why did you leave the Air Force?

16      A.       To pursue an airline career.

17      Q.       Were you honorably discharged?

18      A.       Yes, sir.

19      Q.       What rank did you hold at that time?

20      A.       Captain.

21      Q.       Do you receive any sort of government

22      pension for your service in the military?

23      A.       No, sir.

24      Q.       What drew your interest to apply to work

25      at FedEx?

1       A.       First and foremost I would probably say  
2       Fred Smith.

3       Q.       Any other reason?

4       A.       It was a growing airline. They were  
5       hiring pilots.

6       Q.       What about Fred Smith that drew your  
7       interest?

8       A.       I liked his attitude and his business  
9       acumen, and he was different from a lot of other  
10      airline CEO's that at that time were carving up  
11      airlines and selling assets, and Fred instead was  
12      building an organization. So that attracted me to  
13      FedEx.

14      Q.       Do you still hold that view?

15      A.       Yes.

16      Q.       And I assume you submitted an application  
17      for employment?

18      A.       Yes, sir.

19      Q.       Did you submit a résumé as well?

20      A.       I don't recall, but probably.

21      Q.       I'm going to hand you what we will mark as  
22      Exhibit 1, and I believe it appears to be your  
23      résumé and application.

24      A.       Okay.

25      Q.       Take a look at it and let me know if that

1 is correct.

2 A. Sure.

3 Q. I'm passing two copies. One for you and  
4 one for your attorney.

5 (Whereupon, the above-mentioned  
6 document was marked as Exhibit No. 1.)

7 A. (Witness reviews document.)

8 I haven't read every word, but it looks  
9 like my résumé.

10 Q. Is that your writing on the application?

11 A. I think it is. It looks very familiar to  
12 my printing.

13 Q. Is that your signature on the last page?

14 A. I think so.

15 Q. Okay.

16 A. It doesn't look like that now, but it did  
17 then.

18 Q. So is it fair to say that you applied for  
19 work in April of 1988 at FedEx?

20 A. That sounds about right. Is this when  
21 that was dated?

22 Q. If you check the last page, I think  
23 there's a date.

24 A. Okay. Sounds timely. Yes.

25 Q. I want to hand you an exhibit dated May 6,

1 1988, from Frank Fato to you, and ask if you --  
2 mark this as Exhibit 2 and then ask if you  
3 recognize this letter?

4 A. Sir, do you want me to hang on to these or  
5 hand these back to her, or how do you want to do  
6 that?

7 Q. You can keep those in front of you.

8 A. Okay.

9 Q. I don't have any other questions on that  
10 exhibit, but you can keep them all together in one  
11 stack.

12 (Whereupon, the above-mentioned  
13 document was marked as Exhibit No. 2.)

14 A. (Witness reviews document.)

15 Okay. I have read it.

16 Q. Do you recall receiving this letter?

17 A. Vaguely. I mean, I remember getting a  
18 congratulations letter. Yes.

19 Q. This letter is placing you in the hiring  
20 pool for FedEx crewmember applicants; is that  
21 right?

22 A. Yes, sir.

23 Q. And then explain to me what happened  
24 between this letter and the date you were  
25 officially hired?

1 A. Specifically what would you like for me to  
2 address?

3 Q. Well, this letter reflects that you were  
4 assigned a training date. Can you explain what  
5 that means or what occurred?

6 A. Well, following this letter, I had a phone  
7 conversation with I believe Sonny Thompson, who  
8 was a chief pilot at that time, or he held some  
9 management position. He was involved in hiring  
10 pilots, and he told me to put in my terminal  
11 leave. Now, in the Air Force you can accumulate  
12 your leave if you don't use it, and I had  
13 approximately 60 days of terminal leave saved up.  
14 And he wanted to get me into a class as soon as  
15 possible, and he told me to put my terminal leave  
16 in because he had a training date for me, and I  
17 believe it was in -- very close to this time  
18 frame.

19 Q. Okay.

20 A. I can't tell you exactly what that class  
21 date was. So I put in my terminal leave, and then  
22 when I got to Memphis to start that training date,  
23 they were surprised that I was in Memphis. And I  
24 said, why are you surprised? And they said, well,  
25 nobody called you? And I said, no, nobody called

1 me. They had assigned my training date to some  
2 other candidate.

3 Q. Did you --

4 A. Then I went back into the hiring pool and  
5 waited until January of '89 before I started  
6 training.

7 Q. Did you have any -- did you have any  
8 training during -- between May of 1988 and January  
9 of 1989?

10 A. I did at US Air.

11 Q. But not with respect to FedEx?

12 A. Not at FedEx. After I went back into the  
13 hiring pool, I -- it was months before I heard  
14 anything again from FedEx. So I thought that I  
15 better get a job.

16 Q. I'm going to hand you a letter that  
17 appears to be dated December 25, 1988 -- let me --  
18 well, let me finish that sentence -- from William  
19 Finnegan to you and ask if you -- mark this as  
20 Exhibit 4?

21 COURT REPORTER: 3.

22 (Whereupon, the above-mentioned  
23 document was marked as Exhibit No. 3.)

24 A. (Witness reviews document.)

25 Okay.

1 Q. So is this your offer letter to -- as a --  
2 for the position of crewmember at FedEx?

3 A. I believe it is. This was their -- this  
4 was their second attempt I think to hire me or --  
5 that's the way I interpret this is that they  
6 were -- they were making an official extension of  
7 employment versus this letter, which was we are  
8 putting you in the pool.

9 Q. So Exhibit 2 they're putting you in the  
10 pool, and Exhibit 3 they're making an offer  
11 letter?

12 A. Correct. That's the way I read it, and  
13 that's the way I read it at the time.

14 Q. Do you recall what your start date of  
15 employment was for FedEx?

16 A. January 9th, 1989.

17 Q. Okay. And have you worked consistently  
18 with FedEx from that time until today?

19 A. Have I been employed?

20 Q. Yes.

21 A. Yes. I have been employed with FedEx for  
22 almost 27 years approximately.

23 Q. Okay. What is your current position at  
24 FedEx?

25 A. A300 captain.

1 Q. Prior to that position, what position did  
2 you hold?

3 A. I was a 727 captain.

4 Q. When did you transition from the 727 to  
5 the A300?

6 A. I believe that was 1999.

7 Q. Prior to the 727 captain, what position  
8 did you hold?

9 A. I was a first officer on the DC-10 I  
10 believe.

11 Q. When did you transition from the DC-10 to  
12 the 727?

13 A. Honestly, I don't remember.

14 Q. Can you approximate it?

15 A. In the mid-nineties sometime.

16 Q. Prior to working on the DC-10 as a first  
17 officer, what position did you hold?

18 A. I was a second officer on the DC-10 I  
19 believe.

20 Q. When did you move to first officer?

21 A. I don't recall. In the 1990's.

22 Q. Do you recall approximately how long you  
23 served as a second officer for a DC-10?

24 A. I went back and forth between the DC-10  
25 second officer position and the 727 second officer

1 position because of the merger with Flying Tigers.  
2 My seniority was at issue, and I had to go back  
3 and forth to have a quality of life. So I don't  
4 recall, but I was back and forth between the 727  
5 second officer position and the DC-10 second  
6 officer position. So for that duration of time, I  
7 would say approximately five or six years.

8 Q. You said you needed to swap or switch back  
9 and forth between the DC-10 and the 727 for  
10 quality of life issues?

11 A. Yes.

12 Q. Can you explain that?

13 A. Well, we bid by seniority, and I had  
14 approximately a thousand Flying Tiger pilots  
15 placed in front of me which demoted me on the  
16 seniority list. And since we bid by seniority, I  
17 was getting trips that were impractical for a  
18 family life.

19 Q. Meaning what? What made those trips  
20 impractical? The destination, the time of flight?

21 A. Time zone transitions, night flying, back  
22 to day flying, back to night flying. You know,  
23 circadian rhythm issues. It's a basic quality of  
24 life issue.

25 Q. Prior to working as a second officer on

1 the DC-10 and 727's, what position did you hold?

2 A. That's where you start at the Company.

3 Q. Now, I want to make this an open-ended  
4 question because I'm not entirely sure how to do  
5 this specifically. But can you describe to me how  
6 your flight assignments work? I know you said you  
7 bid on seniority. Can you explain that process?

8 A. Well, every month the next month's flight  
9 schedule is published, and you have a certain  
10 number of days to review that -- those schedules.  
11 Then you put them in chronological order in the  
12 manner in which you want to fly. I mean, in the  
13 preference that you want to fly, the trips  
14 themselves.

15 Q. And when you're picking the trips, what --  
16 and for your perspective what do you look for as  
17 an ideal trip?

18 A. Well, it depends on what your criteria for  
19 judging a trip is. For me it could vary from  
20 looking at the highest paying line, right, to  
21 somewhere less than the highest paying line but  
22 more days off. You may have family commitments  
23 one month where you want to have a certain week  
24 off so then you're going to bid based on that week  
25 off. So you look at all the trips that have that

1 week off. There's probably two or three dozen  
2 variables for how you bid.

3 Q. And for you --

4 A. But you juggle --

5 Q. And for you that's true as you approach  
6 each month to bid, it could be a variety of  
7 different variables on what you want?

8 A. Yes, sir.

9 Q. And so you said flight schedules are  
10 published a month in advance?

11 A. Well --

12 Q. Or you make your bids a month in advance?

13 A. Well, they're published prior to the bid  
14 month. I can't give you the exact number of days  
15 how soon they come out in the prior bid month, but  
16 they are published in the month prior.

17 Q. And when you submit your bid, you're  
18 submitting a bid for a month's work of -- worth of  
19 flights?

20 A. Yes. You're -- generally speaking. That  
21 even gets more complicated.

22 Q. Can you explain?

23 A. In lay person's terms a bid month might be  
24 four weeks or it might be six weeks. It depends  
25 on the Company's needs, and that's a variable in

1 the new contract too. They have certain latitude  
2 in how they construct their bid months. So it can  
3 vary from four weeks to six weeks.

4 Q. How are flights -- you said a second ago  
5 that different flights may pay differently?

6 A. That's correct.

7 Q. How does FedEx establish the rate of pay  
8 for flights?

9 A. Through collective bargaining.

10 Q. So is that predetermined in the contract?

11 A. Yes, sir. How they pay pilots is  
12 determined by the contract.

13 Q. Currently do you have any preferences on  
14 the flights you work, and there's certain flight  
15 plans you like?

16 A. Well, I prefer single-leg trips. The  
17 quality of the lines for pilots recently has been  
18 going down in my opinion. There's more  
19 multiple-leg flights, and when you're flying on  
20 the back side of the clock, a senior pilot like  
21 myself will choose to fly less legs per night.  
22 You know, some guys are flying two or three legs a  
23 night, and I may have done that when I was a young  
24 man, but I certainly don't want to do it now. So  
25 I look for trips that are what we refer to as a

1 pure one-leg trip.

2 Q. And I'm not a pilot so can you break that  
3 down? A one-leg trip would be from one  
4 destination to the other?

5 A. Correct. From Memphis, which is where I  
6 am based, to another city, go to the hotel.

7 Q. And that would be one leg and one day or  
8 one night?

9 A. That would be one -- like, let's say,  
10 one -- we call it an a.m. launch. Okay. So later  
11 on in the day after you got rest at the hotel, you  
12 would fly the leg back to Memphis, and that would  
13 be your night trip.

14 Q. Okay.

15 A. Then you would turn in the hub while  
16 they're sorting boxes, you would pick up another  
17 trip the next morning, maybe to the same city,  
18 maybe not.

19 Q. Do you -- can you explain a multi-leg? I  
20 forget how you phrased it. Some pilots have --  
21 take flights that have more than one leg, can you  
22 explain that process?

23 A. They may fly to Oakland and load and  
24 unload, you know, the cargo. Then they fly  
25 another flight to San Diego, load and unload, and

1       then they may end up in Salt Lake City. I mean,  
2       there's trips out there where you're flying two or  
3       three trips -- I mean, two or three flights.

4       Q.       I think I understand. Do you fly  
5       internationally?

6       A.       I will next month.

7       Q.       Would you say that you typically stick to  
8       your trips awarded in your bid award?

9       A.       Yes and no. I try to, but we have a  
10      system, a makeup system where you can fly makeup  
11      to -- these are trips that maybe you have dropped  
12      in years past, and so you get to keep those hours  
13      in your bank. And I will occasionally once or  
14      twice a month fly a makeup trip. I mean, I can't  
15      tell you statistically how often I fly a makeup  
16      trip.

17     Q.       And I'm not sure I understand what a  
18     makeup trip is or what that means.

19     A.       Well, if you drop a trip in the  
20     computer -- if crew scheduling approves your drop,  
21     that goes into your bank. They're not going to  
22     pay you for it, but you can make up that trip in  
23     the future, not necessarily from that same trip  
24     assignment, but you can go in the computer and  
25     find a trip that is in open time and you can put

1 in for it. You can ask crew scheduling can I have  
2 that trip and fly it as makeup? And then that's  
3 put in your next month's paycheck.

4 Q. So if you have a trip to Oakland and you  
5 don't fly that trip for whatever reason, you have  
6 that -- you have an opportunity to then make up  
7 that time?

8 A. Yes.

9 Q. I know you said there are a lot of factors  
10 that go into your bid strategy, but do you  
11 typically fly the same flights each month?

12 A. If I had more seniority, I could, but I  
13 don't have that kind of seniority.

14 Q. So you have to take what you can get based  
15 on your seniority?

16 A. Yeah. You put in a preference. In my  
17 case I probably put in 25 to 35 preferences in  
18 chronological order, and then the computer sorts  
19 out by seniority what you get. So I really don't  
20 have that much say in it. If I was in the top  
21 10 percent of the seniority list, then, yes, I  
22 would, but I'm not there yet. I'm not sure --

23 Q. Where would you rate yourself in seniority  
24 within the A300 planes?

25 A. I think I'm approximately 36 percent.

1 Q. And are your -- do you typically have the  
2 same list of preferences each month?

3 A. No.

4 Q. Do you try to manipulate your schedule  
5 frequently to -- for any reason?

6 A. Well, it depends on what you mean by  
7 manipulate. I mean, do we adjust our schedule?  
8 Do we have that flexibility? Yes, we do. But  
9 only if there is appropriate manning. I mean, for  
10 example, if crew scheduling is short of pilots,  
11 there's not much flexibility in your schedule.  
12 They're not going to let you drop a trip or trade  
13 one trip for a more advantageous trip. It just  
14 depends on manning. So I know a lot of pilots do  
15 that. They play with their schedule a lot, but I  
16 tend to just pretty much fly what I get.

17 Q. Okay. And you said your pay is based on  
18 the flight you take, correct?

19 A. The total credit hours that you get per  
20 month is based on the line that you receive  
21 through bidding. So one pilot might have a line  
22 with 100 hours. Another pilot might have a line  
23 with 80 hours. It's somewhere in between is a  
24 differing credit for each line to each --  
25 different cities, different flights.

1 Q. And then are you paid an hourly rate based  
2 on those credits?

3 A. Correct.

4 Q. What is your current hourly rate?

5 A. I think it's approaching \$280, 285,  
6 something like that.

7 Q. And how many hours do you typically work  
8 in a month?

9 A. It changes every month. That's based on  
10 the Company's needs.

11 Q. What is your target in terms of how many  
12 hours you work in a month?

13 A. Well, I don't have a target. Again it's  
14 all based on the computer. The computer tells us  
15 what we are going to get. It changes -- like it  
16 could be a four-week bid month. It could be a  
17 five-week bid month. It could be a six-week bid  
18 month. Some of those bid months are larger than  
19 the other ones so...

20 Q. Well, can you give me an idea then of what  
21 a typical month might look like just so I can  
22 establish a frame of reference?

23 A. There is no typical month.

24 Q. Well, how many hours did you work last bid  
25 month?

1       A.       Well, I can tell you this bid month is --  
2       I just looked at it the other day, it will be  
3       99 hours.

4       Q.       And what is that -- what is the bid month,  
5       how many weeks does that entail?

6       A.       This one is a large one. I think it goes  
7       five weeks or maybe even six. I would have to go  
8       back and look, but I think it's a big one. Yeah.

9       Q.       Do you know what you did in the -- how  
10      many hours you worked in the prior bid month?

11      A.       No, I don't.

12      Q.       Would you say that you're a good pilot?

13      A.       I like to think so.

14      Q.       Do you get evaluated by your supervisor?

15      A.       We have a flight training department that  
16      evaluates us, yes.

17      Q.       Do you receive good performance  
18      evaluations?

19      A.       I did until very recently.

20      Q.       Can you describe a poor performance  
21      evaluation you got recently?

22      A.       Well, they assigned me an additional  
23      training cycle for a simulator approximately I  
24      want to say 12 to 15 months ago.

25      Q.       You said they assigned you an additional

1 training cycle?

2 A. Yeah. I had to take another sim ride,  
3 yes.

4 Q. Who assigned that?

5 A. I don't know.

6 Q. Can you explain -- you said you had to  
7 take a sim ride. Explain for me what that means.

8 A. Well, we go to sim rides every six months.  
9 Now, they're in the process of changing that to  
10 every nine months, but every six months we do  
11 simulator training.

12 Q. And what happens in the simulator  
13 training?

14 A. You do emergency procedures. You fly  
15 certain types of approaches in the sim. It's  
16 based on training and evaluation.

17 Q. Is someone in that simulator with you  
18 observing your performance?

19 A. Yes, sir.

20 Q. In this last training cycle, do you recall  
21 who was supervising?

22 A. No. But in this last training cycle I did  
23 fine. So I mean...

24 Q. In the training cycle that you suggested  
25 that you received a poor evaluation --

1 A. That was about 12 to 15 months ago,  
2 something like that.

3 Q. And who was your supervisor?

4 A. Well, I don't remember the evaluator's  
5 name, but he's not a supervisor. He's a training  
6 pilot. Our -- my supervisor is our Chief Pilot.

7 Q. So that the person who is evaluating your  
8 performance, you don't recall his name or her  
9 name?

10 A. No, I do not. I'm sorry.

11 Q. Did they explain to you why you had that  
12 additional training cycle?

13 A. Yes. It was based on an LDA approach into  
14 San Francisco.

15 Q. Can you explain what that means?

16 A. It's a non-precision localizer approach.  
17 It's at an angle to the airport in San Francisco,  
18 and I hadn't flown one in 15 or 20 years so it  
19 caught me off guard, and my performance, it was  
20 safe, and I did the approach okay, but he didn't  
21 like it. He wanted me to do better.

22 Q. When you say "he," who are you referring  
23 to?

24 A. The training evaluator.

25 Q. Other than that incident, has your

1 performance otherwise been good?

2 A. Yes, sir.

3 Q. And have your evaluations in the simulator  
4 otherwise been good?

5 A. Yes, sir.

6 Q. Have you ever failed a -- any kind of  
7 simulator training?

8 A. Well, that was the incident I'm talking to  
9 you about. When they ask you to fly another sim,  
10 they're basically doing it to clean up the  
11 inequity or the -- the problem.

12 Q. So that LDA approach was in the simulator?

13 A. Yes, sir.

14 Q. And the evaluator didn't like how you --

15 A. Performed.

16 Q. Your performance at that time didn't meet  
17 his expectations?

18 A. Yes, sir.

19 Q. So he added another round of training?

20 A. Yes, sir.

21 Q. Do you believe that you are respected by  
22 your colleagues?

23 A. I can't speak for them.

24 Q. I mean, in your opinion would you say that  
25 you're respected as a pilot at FedEx?

1 A. I would imagine that some do and some  
2 don't. I couldn't tell you.

3 Q. Have you received any awards from FedEx?

4 A. No, sir.

5 Q. Have you had any failures while flying a  
6 FedEx plane?

7 A. You mean emergencies?

8 Q. Any type of performance failures.

9 A. Oh, no, sir.

10 Q. Have you ever been disciplined?

11 A. Can I speak with counsel?

12 Q. I don't think that's appropriate. I  
13 mean --

14 MR. SEHAM: If you want to ask him to  
15 clarify the question.

16 A. Yeah. Can you be more specific?

17 Q. Have you ever been disciplined -- well,  
18 I'm not sure how I can clarify whether you have  
19 been disciplined or not. Do you understand what  
20 it means to be disciplined?

21 A. That's the problem with answering your  
22 question.

23 Q. Have you received any written discipline?

24 A. I was called into the office by Rob  
25 Fisher.

1 Q. Did he issue you a disciplinary letter?

2 A. He issued me a letter to come into the  
3 office and talk about the Laredo issue.

4 Q. Following that meeting, did he issue you a  
5 disciplinary letter for any conduct?

6 A. You mean like a final resolution of that  
7 meeting?

8 Q. Well, any kind of -- well, sure.

9 A. What is your question?

10 Q. Did you receive a final resolution memo or  
11 letter?

12 A. I don't recall.

13 Q. Are you familiar with the Collective  
14 Bargaining Agreement at FedEx?

15 A. Vaguely.

16 Q. Are you familiar with Section 19?

17 A. No, sir.

18 Q. Have you ever received a letter of  
19 warning?

20 A. And can you be specific? Like are we  
21 talking about from Rob Fisher?

22 Q. I'm referring to any time in your  
23 employment have you received a letter of warning  
24 from FedEx?

25 A. I don't recall one. No, sir.

1 Q. Have you received a letter of suspension?

2 A. No, sir.

3 Q. Have you received a letter of termination?

4 A. No, sir.

5 Q. Now, you mentioned some simulator  
6 training. I want to talk more generally about  
7 what type of training you receive on an annual  
8 basis. Can you describe to me, other than  
9 simulator training, do you receive any other kind  
10 of training as a pilot on a recurrent basis?

11 A. We do electronic computer training that  
12 the Company assigns to us on a three- or  
13 four-month basis. We have to complete that  
14 electronic training, online training.

15 Q. What type of training does that consist  
16 of?

17 A. You log in and you listen to modules --  
18 what I refer to as modules, learning lessons.  
19 There's a narration. There's pictures. There's  
20 systems training. There's ethics. There's, you  
21 know, corporate training. It's a myriad of  
22 different things that they want you to see.

23 Q. And remind me again how often do you have  
24 to take training through simulator?

25 A. Every six months, but that's -- we are

1 right in the middle of transitioning to a  
2 nine-month training cycle. It's starting I  
3 believe in April. Is that right? I think so.  
4 You probably know it better than I do.

5 Q. I'm not sure I can say that I do, but my  
6 co-counsel probably does. I don't.

7 MR. TADLOCK: I'm not making any  
8 representations about what programs will be  
9 implemented.

10 Q. Do you have to take a certain simulator  
11 training in order to fly at FedEx?

12 A. Yes, sir.

13 Q. Is the training regulated by FedEx?

14 A. It's conducted by FedEx.

15 Q. Is there some other entity that dictates  
16 what type of training you have to take?

17 A. Yes, sir.

18 Q. What other entity does that?

19 A. The FAA.

20 Q. Any other entities --

21 A. Not that I'm aware of.

22 Q. Let me finish the sentence just for the  
23 record. Any other entities that weigh in on what  
24 training you have to take?

25 A. Not that I'm aware of.

1 Q. Is there someone at FedEx that monitors  
2 pilot training requirements?

3 A. I hope so.

4 Q. You don't know whether that is true or  
5 not?

6 A. I don't know.

7 Q. Is it your belief that there's someone at  
8 FedEx who ensures that all pilots comply with  
9 their training requirements?

10 A. Rephrase the question.

11 Q. Is it your understanding that there's  
12 someone at FedEx that ensures that pilots meet  
13 their training requirements?

14 A. Yes.

15 Q. You don't know who that is?

16 A. No. I don't know who the head of flight  
17 training is.

18 Q. Is there a department called "flight  
19 training"?

20 A. Yes, sir.

21 Q. Does flight training maintain training  
22 records?

23 A. You would have to ask them.

24 Q. Have you ever reviewed your training  
25 records?

1 A. No, sir.

2 Q. Are you required to obtain a medical  
3 certification to fly?

4 A. Yes, sir.

5 Q. Can you explain that process?

6 A. Well, you go to an aeromedical examiner  
7 who has been certified by the FAA to be an  
8 aviation physician, and he evaluates your health.  
9 In my case twice a year, every six months. Once a  
10 year you get a -- I guess they refer to it as EKG;  
11 is that right? Or is it -- I don't know exactly  
12 what you call it, but you get a heart evaluation.  
13 The other times it's based on checking your eyes,  
14 you know, your hearing, reflexes. He does a  
15 physical exam.

16 Q. Well, I don't want to belabor this point,  
17 but is it a comprehensive physical exam?

18 A. Yes, sir.

19 Q. Do they check for things other than  
20 physical issues? Such as your mental status?

21 A. Yes, sir. They do engage in conversation  
22 with you to test your cognitive ability.

23 Q. Does FAA dictate this certification  
24 program?

25 A. I know they administrate it through

1 Federal Aviation Regulations. I know that AME's,  
2 aeromedical examiners, have to go through training  
3 to become certified as an AME.

4 Q. Does FedEx maintain records of these  
5 bi-annual certifications?

6 A. To a limited extent. They ask you in the  
7 computer system when you received your last  
8 medical, and you give them the date and the name  
9 of the doctor I believe.

10 Q. If you were -- if a pilot were -- was to  
11 fail one of these exams, does the FAA notify the  
12 airline?

13 A. That's a good question.

14 Q. Do you have an obligation to notify the  
15 airline if you fail a medical certification?

16 A. I would certainly think so. The first  
17 person I would probably call is my supervisor, my  
18 A300 fleet captain, and tell him.

19 Q. What type of issues can result in a  
20 failure of a medical exam?

21 A. Oh, my gosh, I'm not a physician, but I  
22 would assume blood pressure, maybe a diabetic  
23 condition, vision issues, obviously a mental  
24 condition, but again I'm not a physician. So I  
25 couldn't attempt to give you a comprehensive list

1 of the reasons you could fail a physical. I'm  
2 sure there's many of them.

3 Q. If a pilot had trouble walking, would they  
4 fail a medical certification?

5 A. Possibly. I have seen pilots limp through  
6 the crew lounge.

7 Q. If a pilot had issues with concentration,  
8 would that result in a failed medical?

9 A. I'm not a doctor, but I would assume that  
10 it would raise concerns.

11 Q. If a pilot had something like insomnia or  
12 trouble sleeping, would that result in a failed  
13 medical?

14 A. I think it possibly could.

15 Q. If a pilot had migraines, is that  
16 something that could result in a failed medical?

17 A. I think so. I mean, when you fill out  
18 your six-month flight physical questionnaire, they  
19 ask you many of the conditions that you are  
20 mentioning. They ask you if -- have you ever had.  
21 So many of the topics that you are bringing up are  
22 on the medical application.

23 Q. If a pilot had anxiety issues, would that  
24 result in a failed medical?

25 A. I think it possibly could, yes.

1 Q. If a pilot had some sort of a severe  
2 stress disorder, would that result in a failed  
3 medical?

4 A. Well, I don't know how to diagnose a  
5 stress disorder. We fly in stressful conditions  
6 at FedEx by the nature of our job. When you show  
7 up for work at 1:30 in the morning, you're already  
8 stressed. Okay. So that's kind of a leading  
9 question I wouldn't know how to answer medically.

10 Q. Do you believe if a patient showed a  
11 heightened level of stress beyond what a normal  
12 pilot endures, would that result in a failed  
13 medical?

14 A. It possibly could.

15 Q. And you said these examinations are done  
16 by an aeromedical examiner?

17 A. Yes, sir.

18 Q. And that aeromedical examiner is that  
19 someone that is chosen by the FAA?

20 A. Well --

21 Q. Or is it a pool of examiners that is  
22 approved by the FAA?

23 A. You personally select a physician who has  
24 an aeromedical examiner license. That license  
25 comes from the FAA.

1 Q. Do you go to the examiner for each of your  
2 checks?

3 A. Yes, sir.

4 Q. Who is that?

5 A. Dr. Mark Nugent of Austin, Texas.

6 Q. And if you pass an exam, do you get some  
7 sort of a card or a certificate?

8 A. Yes, sir.

9 Q. And then you said that you log your -- the  
10 dates of your medical exams on a FedEx system,  
11 correct?

12 A. Yes, sir.

13 Q. And FedEx requires you to maintain your  
14 medical certification?

15 A. Yes, sir.

16 Q. Have you ever failed a medical  
17 certification?

18 A. No, sir.

19 Q. When was your last medical certification?

20 A. Do you mind if I look in my wallet?

21 Q. No.

22 A. January 27th, 2016.

23 Q. Is it fair to say then that you typically  
24 get your medical certification at the beginning  
25 and at the mid-point of each year approximately?

1       A.       Well, once you get on a cycle -- it could  
2       be any month of the year.  But once you get on a  
3       cycle, in my case it's January and July.  So  
4       that's been my cycle for several decades.  So it  
5       could be any month, but in my case it's January  
6       and July.

7       Q.       Are there or could there be intervening  
8       acts that would require you to get rechecked such  
9       as if you broke a leg or suffered a concussion?

10      A.       No, sir.  You report those incidents the  
11      next time you go in on a physical.

12      Q.       So if you -- let's say you get checked out  
13      in January of a particular year, and in February  
14      you're in a car accident.  You don't  
15      necessarily -- a bad car accident let's say,  
16      hypothetically, you don't necessarily need to go  
17      back in and get rechecked?

18      A.       No, sir, not until your next cycle.

19      Q.       Can FedEx require an employee to get a  
20      medical examination?

21      A.       Well, evidently they can.

22      Q.       So if FedEx learned you were in a  
23      traumatic car accident, they could send you for a  
24      medical examination?

25      A.       I'm not an expert on the Collective

1       Bargaining Agreement, but that sounds like if  
2       FedEx had some concerns about your physical  
3       condition, that that may be required. But I'm not  
4       a lawyer, and I'm not an expert on the CBA.

5       Q.       So if FedEx has some sort of a reasonable  
6       basis, they could send you for a medical  
7       examination?

8       A.       If they had a reasonable basis, that's my  
9       understanding.

10      Q.       How does such an examination work? Do you  
11      go to your same doctor that you mentioned before,  
12      Dr. Nugent?

13      A.       Are we talking about the 15.D procedure?

14      Q.       Yes.

15      A.       Okay. Yes. I went to my aeromedical  
16      examiner and informed him of the 15.D directive.

17      Q.       I'm asking just generally how does a 15.D  
18      process work for all pilots that go through that  
19      process?

20      A.       Well, I can't answer that question.

21      Q.       Okay. But you have gone through the  
22      process, correct?

23      A.       I have gone through a process.

24      Q.       So you work with -- you work with an  
25      aeromedical advisor, correct?

1 A. I did. I did.

2 Q. And who is that aeromedical advisor?

3 A. Well, my first doctor that I consulted was  
4 Mark Nugent, Dr. Mark Nugent.

5 Q. Have you heard of Harvey Watt?

6 A. Yes, sir.

7 Q. What is Harvey Watt?

8 A. I believe that they contract with FedEx to  
9 handle aeromedical issues.

10 Q. And so in the event of a 15.D medical  
11 examination, a pilot would be referred to Harvey  
12 Watt. Is that your understanding?

13 A. That's what happened to me.

14 Q. How about generally for the 15.D process,  
15 do you have an understanding of how it works?

16 A. Not unless I opened it up and read it line  
17 by line because it's very particular.

18 Q. So you would refer to the Collective  
19 Bargaining Agreement's language on 15.D medical  
20 evaluations?

21 A. I would have to any time I got a 15.D  
22 letter from FedEx, I would open up the contract  
23 and consult my attorney.

24 Q. Are you currently fit to fly?

25 A. Yes, sir.

1 Q. Have you ever not been fit to fly?

2 A. Sure.

3 Q. Can you describe the last time you were  
4 not fit to fly?

5 A. I would have to look at the last time I  
6 was on sick leave. But I'm sure it had something  
7 to do with colds, flu, something along those  
8 lines. So I --

9 Q. When you take sick leave, you're not fit  
10 to fly?

11 A. That's correct.

12 Q. Other than instances when you were sick,  
13 have you ever not been fit to fly?

14 A. No, sir.

15 Q. Now, going back to your -- the bi-annual  
16 medical certification, if you pass those  
17 certifications, other than the pilot, is there  
18 anything that would prohibit you from flying? I'm  
19 not sure if I -- did you understand that question?  
20 Because I didn't.

21 A. No, I didn't. Other than the pilot, I'm  
22 assuming I'm the pilot.

23 Q. Yeah. You said that if you're in a car  
24 accident, you don't have to go back and get  
25 rechecked, correct?

1       A.        You have to submit your -- you have to  
2       submit the incident in question, whether it's a  
3       car wreck or whatever, you have to submit those  
4       medical records to your AME.  He reviews those  
5       records.  Then he does a physical examination of  
6       you and sees whether or not that incident affects  
7       his ability to issue you a first class medical  
8       certificate.

9       Q.        Is it up to you to disclose to the AME or  
10      to FedEx that you have been involved in a car  
11      accident?

12     A.        Absolutely.

13     Q.        And that's an obligation?

14     A.        Absolutely.

15     Q.        Any type of intervening event that may  
16      affect your ability to fly, it's your obligation  
17      to report that to FedEx?

18     A.        Yes, sir.  And any time you visit a  
19      physician, any physician.

20     Q.        Okay.  Currently are FedEx pilots  
21      represented by a union?

22     A.        Yes, sir.

23     Q.        Which union?

24     A.        Air Line Pilots Association.

25     Q.        Also known as ALPA?

1 A. Yes, sir.

2 Q. How long has ALPA been in place at FedEx?

3 A. Since -- well, this current time, this  
4 current service I believe they resumed in 2002.  
5 They won an election, I think a certification  
6 election in 2001. I think that's right.

7 Q. Prior to ALPA, was there a union in place  
8 at FedEx?

9 A. Yes, sir.

10 Q. What union?

11 A. Fedex Pilots Association.

12 Q. Also known as FPA?

13 A. Yes, sir.

14 Q. And what were the years they were in place  
15 at FedEx?

16 A. I don't recall.

17 Q. Were they in place up to 2001?

18 A. They had -- there was -- ALPA was on the  
19 property, then FPA was on the property, and then  
20 ALPA was back on the property. So I couldn't tell  
21 you what exactly those years were.

22 Q. Are you a member of ALPA?

23 A. No, sir.

24 Q. Why not?

25 A. I resigned.

1 Q. For what reason?

2 MR. SEHAM: You know, I'm going to --  
3 go off the record.

4 COURT REPORTER: You want off the  
5 record?

6 MR. SEHAM: Yeah. If you don't mind,  
7 but I'm --

8 MR. RIEDERER: I'm interested to see  
9 the direction you're going. I don't mind an  
10 off-the-record conversation.

11 MR. SEHAM: I'm concerned about  
12 Section 2.Third and 2.Fourth of the Railway Labor  
13 Act and questions that are interfering with his  
14 right to belong to a union or not belong to a  
15 union. I'm concerned that your line of  
16 questioning is violating his statutory rights.

17 MR. RIEDERER: Yeah. I don't intend  
18 to get there, but if I may defer to my co-counsel  
19 who is the labor lawyer in the room.

20 MR. TADLOCK: Can you explain to me  
21 in what way asking someone why they don't intend  
22 to --

23 MR. SEHAM: Because it's none of the  
24 Company's business what his choice is.

25 MR. TADLOCK: So we're not allowed

1 to --

2 MR. SEHAM: Why he joined or why not?

3 MR. TADLOCK: You have asked our  
4 witnesses questions throughout this proceedings  
5 about whether he intended to bring a Union  
6 representative to various meetings and whether he  
7 didn't and why that may be --

8 MR. SEHAM: Are we on the record  
9 because I think we do have to go on the record.

10 MR. TADLOCK: If you have a relevance  
11 objection or if you -- that's perfectly fine.

12 MR. SEHAM: No. It's not relevance  
13 because I wouldn't raise that objection. My  
14 concern is when you're asking him why he's a  
15 member of a union or why he's not a member of a  
16 union, it's my view that you're in a process now  
17 and -- of violating his rights under Section  
18 2.Third and 2.Fourth of the Railway Labor Act, and  
19 that these questions are violations of AIR-21  
20 because you're engaging in retaliatory behavior  
21 his having -- in response to his filing.

22 Now, having said that, having said  
23 that, if you want to proceed, I'm not going to  
24 direct him not to answer. But I want you to be on  
25 notice that I consider this a violation of his

1 statutory rights.

2 MR. RIEDERER: For the record,  
3 frankly I didn't know -- I don't know anything  
4 about labor laws. I didn't know that was a  
5 violation. It's not my intent to intimidate or  
6 harass. I'm just curious, and if you want to stay  
7 high level of just basically why you didn't want  
8 to be involved with ALPA, that's fine. If you  
9 don't want to answer the question, I'm not really  
10 going to pursue it. It's a minor issue. I'm just  
11 curious in setting up a timeline.

12 MR. SEHAM: If you're willing to give  
13 him the option, then I would suggest that he not  
14 respond because I think that sets a very dangerous  
15 precedent of management interfering with an  
16 individual's rights under Section 2.Third or  
17 2.Fourth which prevent or prohibit as a matter  
18 of -- well, any interference with an individual's  
19 right to either be a member of a union or not to  
20 be a member of a union.

21 MR. RIEDERER: Yeah. I'm not looking  
22 to get into any kind of a labor dispute with you.  
23 I promise. I'm just -- it was a question I had.  
24 I'm not a labor lawyer. I was just curious. If  
25 you don't want to answer, I'm not going to pursue

1 it. Frankly I don't care that much.

2 A. I will defer to counsel.

3 BY MR. RIEDERER:

4 Q. We will just strike the question then.

5 Does ALPA have grievance procedures in  
6 place for pilots?

7 A. Yes.

8 Q. Can you avail yourself of those procedures  
9 as a non-member?

10 A. Yes.

11 Q. You were a member of the FPA, correct?

12 A. Yes, sir.

13 Q. And were you a member of the FPA during  
14 their time at FedEx?

15 A. Yes.

16 Q. And while on the FPA, were you a member of  
17 the Security Committee?

18 A. Yes, sir.

19 Q. What did that committee consist of?

20 A. Well, it consists of advocating for the  
21 security concerns of its membership.

22 Q. How did you get on that committee? Were  
23 you appointed or were you voted in or did you  
24 volunteer?

25 A. I was requested to form a security

1 committee at the bequest of the chairman, David  
2 Webb.

3 Q. How many members were on that committee?

4 A. There were two of us. And the MEC I  
5 believe approved the formation of the Security  
6 Committee. I couldn't give you the date. But I  
7 can tell you it was immediately after 9/11.

8 Q. Were you the head of this committee?

9 A. Yes, sir.

10 Q. Did you have a title?

11 A. Security Committee chairman.

12 Q. And I assume while you were the chairman  
13 of that committee, you continued to operate as a  
14 pilot, correct?

15 A. Somewhat. They bought a lot of my trips.

16 Q. So your flight time was reduced while you  
17 served in that capacity?

18 A. Yes, sir.

19 Q. You said you advocated -- your role was to  
20 advocate the security concerns of the pilots?

21 A. Yes, sir.

22 Q. And so did the pilots come to you with  
23 concerns?

24 A. Yes, sir.

25 Q. They come to you with requests for

1 changes?

2 A. Yes. Yes, sir.

3 Q. Do you recall any of the concerns that  
4 were brought to your attention at that -- during  
5 that time period?

6 A. Well, there was a myriad of those  
7 requests. They ranged from the -- the pilot  
8 group's concern for terrorism was their primary  
9 concern. This is immediately after 9/11. So they  
10 had concerns about jumpseaters. They had concerns  
11 about being able to arm themselves in the cockpit.  
12 They had concerns about bombs. It was actually  
13 quite a long list of things I had to respond to.

14 Q. And I appreciate you did do that somewhat  
15 at a high level. So you had terrorism issues.  
16 You had issues with jumpseaters. Pilots had  
17 requested to arm themselves, bombs. Any other  
18 very general -- I don't want to go into the  
19 details, but any other general issues that were  
20 brought to your attention during that time period?

21 A. I think there was a lot of confusion about  
22 what the Company's security plan was, and  
23 basically the Company was withholding their  
24 security plan from the Union. The pilots were  
25 very concerned about pilot-in-command authority

1 and what the liability was going to be had they  
2 engaged with another FedEx employee who was making  
3 an attack on the cockpit, those sorts of issues.  
4 Liability issues, authority issues, what is the  
5 scope of my captaincy, you know, in terms of law.  
6 They had a lot of questions.

7 Q. And once those concerns are brought to  
8 you, what did you do with them?

9 A. Well, we would discuss it with the  
10 chairman and the negotiating committee chairman  
11 and the in-house counsel, and then we would  
12 form --

13 Q. In-house counsel of the Company or of the  
14 Union?

15 A. FPA. And then we would formulate some  
16 sort of policy that we could get some sort of  
17 support from the MEC from. So then we would take  
18 it to the MEC and talk about these issues with  
19 them.

20 Q. When you say "MEC," what are you referring  
21 to?

22 A. Well, it's probably not called the MEC  
23 back then. It's an MEC now at ALPA, but back in  
24 the FPA we're talking about the officers of the  
25 Union basically, their elected block reps. You

1 know, for each segment of seniority, there was a  
2 designated block representative, and those people  
3 would come to the Union and represent their  
4 particular block interest. So --

5 Q. So -- go ahead.

6 A. So we would formulate policy. And once we  
7 got some sort of support from those group of  
8 individuals, then we would go about trying to  
9 either lobby Washington to change policies and  
10 regulations, we would participate in feedback to  
11 the Federal Aviation Administration. On one  
12 occasion I briefed the FAA Administrator on the  
13 issues including real-time tracking I might add,  
14 and we slowly began an interface with Bill  
15 Henrikson, the vice president of Security at  
16 FedEx.

17 Q. I'm sorry, I was writing. Say that last  
18 sentence.

19 A. I said, we slowly began building a  
20 relationship with Bill Henrikson, the vice  
21 president of FedEx Security. And so we were  
22 dealing with lots of different entities. The FAA,  
23 the pilot group, our own in-house leaders, Bill  
24 Henrikson and Todd Ondra, incidentally, and  
25 ultimately Bill Logue, who I don't know if his

1 current title at that time was COO, but I think he  
2 became COO of FedEx. And that's the highest level  
3 at FedEx that I dealt with. I mean, Maxwell from  
4 your legal department was in on one or two of  
5 those meetings.

6 Q. You said that you brought real-time  
7 tracking concerns to the FAA?

8 A. Yes, I did.

9 Q. Do you recall when?

10 A. November of 2001.

11 Q. What was their response?

12 A. A trapped deer in the headlights.

13 Q. They didn't know what to do with your  
14 information?

15 A. Correct.

16 Q. Following the November 2001 conversation  
17 with the FAA, did you have any follow-up  
18 conversations with them about real-time tracking?

19 A. With who?

20 Q. With the FAA.

21 A. Yes. Well, there was a process going on  
22 at that time right after 9/11 where the FAA was  
23 soliciting comments from people in aviation about  
24 proposed changes to airline security. And I  
25 believe that was a joint effort at that time from

1 newly formed Homeland Security, TSA, and the FAA,  
2 and so it was chaos legislatively and regulatory  
3 chaos. So I would write letters on behalf of the  
4 FPA to inform those entities what our positions  
5 were. So I had a -- I had a feedback mechanism  
6 that continued. I know that's a long convoluted  
7 answer. Technically, yes, we kept dealing with  
8 them but only to enter our position statements  
9 into the record.

10 Q. What was your position with respect to  
11 real-time tracking at that time?

12 A. I believed and -- then, as I do today,  
13 that we should stop publishing real-time aircraft  
14 tracking because it incentivizes the placement of  
15 bombs on our airplanes. It encourages Al-Qaeda or  
16 ISIS or any terrorist organization to exploit that  
17 data. It gives them aircraft position, heading,  
18 altitude in a real-time basis, airspeed, and they  
19 can use that data against us.

20 Q. Where is that data published?

21 A. It's published on the Internet.

22 Q. On like Fedex.com?

23 A. Well, what FedEx does now is they publish  
24 the history of where your package is online if you  
25 put in the airbill number. That's what FedEx does

1 right now. However, FedEx through an agreement  
2 with the FAA every time an airplane takes off at  
3 FedEx, the electronics, the electronic tracking  
4 system in the airplane sends that data to the FAA.  
5 The FAA in concert with FedEx distributes that  
6 data.

7 Q. To who?

8 A. To anybody.

9 Q. Anyone who wants it?

10 A. To the world.

11 Q. Where they distribute --

12 A. You can --

13 Q. -- on their -- hold on. Just for the  
14 record I'm not trying to cut you off, but the FAA  
15 publishes it where? On their website?

16 A. No. It's a feed. It's an electronic  
17 feed, and they give it to third parties.

18 Q. Such as?

19 A. So there's dozens of companies out there  
20 that you can pull up on the Internet where you can  
21 live track any flight in the world as long as you  
22 have the flight number and the name of the  
23 airline.

24 Q. And this is FedEx, as well as other  
25 airlines?

1 A. Every airline.

2 Q. And so give me an example of a company  
3 that would have that?

4 A. Flightaware.com. That's one that I'm  
5 aware of.

6 Q. So if I go to Flightaware.com, I can track  
7 a plane from start to --

8 A. You can track a FedEx airplane anywhere in  
9 the world as long as you have its call sign.

10 Q. I can track a Delta plane?

11 A. In real-time.

12 Q. And the FAA gives that information to like  
13 website -- companies like FlightAware?

14 A. Correct.

15 Q. And again I'm not a pilot, I'm relatively  
16 new to the airline industry, how long of a time  
17 period has the FAA been providing that information  
18 to third parties?

19 A. I can't tell you that.

20 Q. Were they doing it in 2001?

21 A. Yes, sir.

22 Q. And how long has FedEx been providing  
23 information to the FAA on their flights?

24 A. I can't tell you that.

25 Q. Do they provide that information at the

1 request of the FAA?

2 A. I would be making an assumption if I  
3 answered that, but I would assume it's part of the  
4 air traffic control system agreement that every  
5 air carrier agrees to when they enter into  
6 business in the United States.

7 Q. And so -- in 2001 was FedEx providing that  
8 information, live tracking information, to the  
9 FAA?

10 A. In 2000 what?

11 Q. In 2001.

12 A. In 2001, yes, sir.

13 Q. And you said what FedEx publishes on its  
14 own is a history of the movement of the package,  
15 correct? Like if I go to Fedex.com, what do I  
16 see?

17 A. You know, I'm not an expert on that  
18 particular package tracking reporting system.  
19 Obviously there's people within FedEx that can  
20 explain it to you, how it works, but generally  
21 speaking I believe it's a history. I don't -- I  
22 don't know. To answer your question, I can only  
23 tell you what I believe.

24 Q. Do you know when they started publishing  
25 the history of a package on their website?

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

2 Q. Do you know if FedEx at any time has made  
3 changes to what they publish on their website?

4 A. I can only speculate.

5 Q. What would you speculate?

6 A. I would speculate they had at one time  
7 more reporting, and they have done less reporting  
8 now.

9 Q. And when do you speculate they made the  
10 change to report less?

11 A. I don't know.

12 Q. Was it around the 2001, 9/11/2001 time  
13 frame?

14 A. I think, and I'm just speculating, I think  
15 it was after that.

16 Q. Does FedEx's website show specific plane  
17 information like a flight number?

18 A. Not that I'm aware.

19 Q. You said you work -- at the time back in  
20 2001 you started to develop a relationship with  
21 Bill Henrikson and Todd Ondra, Mr. Logue, I can't  
22 remember his -- Bill Logue, is that his first  
23 name?

24 A. Yes, sir. Yes, sir.

25 Q. And you did work at times with John

1 Maxwell?

2 A. No. I just said he was at one of the  
3 meetings.

4 Q. But as your role as the head of this  
5 Security Committee, would you work directly with  
6 those individuals from time to time?

7 A. Yes, sir.

8 Q. Or would that -- would the work -- would  
9 the information you collected from the pilots,  
10 would that go through someone higher than you in  
11 the Union to work with those individuals?

12 A. Well, I was appointed to work with those  
13 individuals.

14 Q. And you said at the time Bill Henrikson  
15 was the VP of Security?

16 A. Yes, sir.

17 Q. Well, as a VP of Security at that time, do  
18 you recall what his role was? Was he over all  
19 Security or do he have an emphasis on a particular  
20 area of Security?

21 A. I couldn't tell you that. He claimed to  
22 be the vice president of FedEx Security so I took  
23 him at his word. I couldn't tell you what his  
24 role was.

25 Q. How about Todd Ondra at that time, do you

1 remember what his role was?

2 A. You know, I don't know what his title was,  
3 but he appeared to be Bill Henrikson's assistant.  
4 I mean, he worked closely with Bill Henrikson, and  
5 he may have been his protege because I think Todd  
6 may have assumed -- when Henrikson retired, I  
7 think Todd took his position.

8 Q. Following 9/11, did FedEx have security  
9 personnel that focused on aviation security?

10 A. Not to my satisfaction.

11 Q. I'm not asking if they did a good job.  
12 I'm saying were there personnel that were  
13 responsible for that area of security?

14 A. I'm assuming Bill Henrikson was  
15 responsible because he was our point of contact.

16 Q. Okay. And I know you said Mr. Logue was  
17 at one point the COO. At the time you worked with  
18 him, do you recall what his job was?

19 A. We discussed that in the last couple of  
20 days, and I thought somebody said that he was  
21 ground and air freight services, something like  
22 that. I don't know.

23 Q. That's okay. If you don't remember,  
24 that's fine. I want to know what you recall.

25 A. I knew that there was nobody higher than

1 him except Fred.

2 Q. At the time in 2001 when you were working  
3 and communicating with him regarding security  
4 issues?

5 A. Correct.

6 Q. During that time period, did you ever  
7 raise your concern of real-time tracking?

8 A. During?

9 Q. During this 2001 time period when you were  
10 communicating your concerns to the FAA about  
11 real-time tracking, did you relay those concerns  
12 to FedEx?

13 A. Yes, sir.

14 Q. Who did you relay those concerns -- to  
15 whom?

16 A. I think the first person that we wrote was  
17 Bruce Cheever, and I think at that time he was the  
18 vice president of Flight Operations, and that was  
19 in the week after 9/11.

20 Q. Did you author that letter or did someone  
21 else?

22 A. I did.

23 Q. And what was his name?

24 A. Bruce Cheever.

25 Q. Can you spell that?

1 COURT REPORTER: I got it.

2 MR. RIEDERER: You got it?

3 COURT REPORTER: I know it.

4 MR. RIEDERER: I'm helping the court  
5 reporter. That's all.

6 COURT REPORTER: I got it.

7 A. I do need to follow up. The questioning  
8 came quickly. You asked me if I authored a  
9 letter. I did author the letter under Dave Webb's  
10 signature.

11 BY MR. RIEDERER:

12 Q. Okay. Did FedEx respond to that letter?

13 A. No, sir.

14 Q. Did you communicate your concerns to  
15 anyone else at FedEx at that time?

16 A. Yes. We communicated with the Chief Pilot  
17 at the time whose name escapes me right now.

18 Q. I think just identifying the Chief Pilot  
19 is sufficient.

20 A. Right.

21 Q. And how did you notify that person of your  
22 concerns?

23 A. We wrote a letter to them.

24 Q. Also through the chairman of the Union?

25 A. I think I may have signed that letter, but

1 I'm not a hundred percent sure. I started signing  
2 letterhead soon thereafter. We were in the  
3 process of putting the security committee  
4 together.

5 Q. Did you report your concerns to anyone  
6 else at FedEx?

7 A. I believe we wrote Henrikson. We wrote --  
8 I think I wrote a letter to Ondra. I wrote -- I  
9 think we wrote some letters to Bill Logue. We had  
10 discussions, verbal meetings, discussions with  
11 Henrikson and Ondra. I think that we submitted  
12 some exhibits of some of those communications and  
13 that might, you know, be another source to see who  
14 I wrote.

15 Q. In each of these communications, you  
16 expressed your concern with the real-time tracking  
17 information?

18 A. I would say that in over half of those  
19 communications we addressed real-time tracking,  
20 but we also addressed other issues like  
21 jumpseating and arming the pilots and other issues  
22 like that.

23 Q. During that time period, did FedEx ever  
24 respond to you with respect to your concerns over  
25 real-time tracking?

1       A.       We had a hard time getting FedEx to  
2       respond to anything we wrote.

3       Q.       So in terms of written communications, is  
4       it -- are you saying that they did not respond in  
5       writing to your written communications?

6       A.       No. I'm not saying that. I'm saying it  
7       was difficult to get any responses from them, and  
8       when we did, I believe Bill Henrikson wrote us or  
9       wrote me at one point. I think even Todd Ondra  
10      wrote me at one point.

11      Q.       And what was -- what was the response from  
12      FedEx to your concerns on real-time tracking?

13      A.       They ignored it.

14      Q.       So they did not respond to that issue?

15      A.       No. In fact, the only thing they wanted  
16      to concentrate on at that time was the resumption  
17      of employee jumpseating on the airplanes.

18      Q.       Prior to 9/11 all employees could  
19      jumpseat?

20      A.       I think that's correct.

21      Q.       And that changed after 9/11?

22      A.       Yes, sir.

23                   MR. SEHAM: Were you just asking  
24      about written responses to the live tracking  
25      issues?

1 MR. RIEDERER: Yes.

2 BY MR. RIEDERER:

3 Q. You said you had some meetings in person  
4 with these individuals?

5 A. Yes, sir.

6 Q. And during any of those meetings, did you  
7 raise the issue of real-time tracking?

8 A. Absolutely.

9 Q. And in those meetings what was their  
10 response to that?

11 A. Well, I can tell you what the final  
12 response was because Bill Henrikson and Todd Ondra  
13 would typically shake their head, nod their head  
14 at your comments but not give you any feedback.  
15 But Bill Logue gave us feedback, and I used the  
16 analogy with him -- in fact, there were 15 or 20  
17 people in the room, and I said, everybody raise  
18 your hand if you think we are at war with  
19 Al-Qaeda. Everybody raised their hand. I said,  
20 okay. Do you think Winston Churchill would have  
21 published his real-time aircraft tracking for  
22 Adolf Hitler to use? And everybody just looked  
23 dumbfounded, and that's what we are doing. We are  
24 publishing data for the enemy to use. Okay. So  
25 Bill Logue heard those comments from me just as I

1       paraphrased them to you, and he said, we get  
2       marketing value from the tracking service. We are  
3       not going to remove that service for security.

4               So at that point I was told by the Union  
5       leaders your real-time tracking concerns are not  
6       going any further than Bill Logue. That meant to  
7       me -- they told me basically -- I said, well, we  
8       need to go to Fred. And they didn't want to let  
9       me do that.

10      Q.       Back to your communications with the FAA.  
11      You said you had an ongoing dialog with them  
12      regarding the real-time tracking concerns?

13      A.       Yes, sir.

14      Q.       Did they ever give you a response as to  
15      their view of real-time tracking?

16      A.       Nothing.

17      Q.       But they received your concerns; is that  
18      correct?

19      A.       Yes, sir. I went with the UPS pilots, I  
20      believe they were called the IPA, their union  
21      president, I went with him to Washington, and we  
22      had a meeting.

23      Q.       Did you have a face-to-face meeting  
24      with --

25      A.       Yes.

1 Q. -- FAA representatives?

2 A. With the FAA Administrator.

3 Q. And in that meeting what did he say in  
4 response to your concerns?

5 A. She didn't say very much, and she was  
6 basically in shock. Obviously her plate was quite  
7 full in November of 2001. So, you know, we had --  
8 we spent approximately an hour with her, and she  
9 heard our concerns. And real-time tracking was  
10 not the only issue, but it was the number one  
11 issue for both the cargo pilots at UPS and for the  
12 FedEx pilots.

13 Q. Do you recall her name?

14 A. I want to say Garvey. Does that sound  
15 right? I would have to look it up on the  
16 Internet.

17 MR. RIEDERER: We have been going for  
18 a while, you want to take a break?

19 MR. SEHAM: Sure.

20 (Brief recess.)

21 BY MR. RIEDERER:

22 Q. Now, in this 2001 time frame you were --

23 A. Can I interrupt you? I'm sorry.

24 Q. Sure.

25 A. I think I need to correct something that I

1       said.  You asked me a question about videos, did I  
2       do anything related to this case, and I think I  
3       submitted an exhibit to you of a video that I  
4       produced from 2001, and maybe you have seen it,  
5       maybe you haven't.  But it's of Mr. John Otto, who  
6       is a former FBI Director, he came and addressed  
7       the pilot group, the pilot Union in November of  
8       2001.  So I produced a copy of that.

9       Q.       Okay.

10      A.       So that's the only other video I could  
11      think of that would be related to this case.

12      Q.       I appreciate your clarification.

13      A.       Right.

14      Q.       In 2001 you said you were speaking with  
15      the FAA and with FedEx about real-time tracking.  
16      And it was your concern -- and I don't want to put  
17      words in your mouth, but I just want to make sure  
18      I understand.  It was your concern that the  
19      publishing of our flight data in real-time was a  
20      security threat?

21      A.       Yes, sir.

22      Q.       And do you consider that still to be a  
23      problem?

24      A.       Yes, sir.

25      Q.       And is that -- is the publishing of our

1 flight data, those issues were raised in 2013 to  
2 Bill Ondra and Robb Tice and Rob Fisher?

3 A. Yes, sir.

4 Q. Were you on the Security Committee for the  
5 FPA for the duration of your time as a member  
6 there?

7 A. I don't think they overlap that way. I  
8 don't think my membership -- the footprint of that  
9 committee chairmanship started in September of  
10 2001 and then I think I resigned as chairman  
11 sometime in May or June. I -- of 2002. So it was  
12 about a -- maybe an eight-month chairmanship or  
13 something like that.

14 Q. Let me ask a better question. When you  
15 resigned as chairman of that committee and someone  
16 else took your place, do you recall who that was?

17 A. Gosh. I can get that information to you  
18 later. I just can't recall right now.

19 Q. Just curious. It was another FedEx pilot?

20 A. Yes, sir.

21 Q. Do you know if ALPA has a similar type of  
22 committee?

23 A. I couldn't tell you. I'm assuming they  
24 do. I hope so.

25 Q. Other than the Security Committee, were

1       you on any other committees for FPA?

2       A.       No, sir.

3       Q.       You said you worked with Bill Henrikson?

4       A.       Yes, sir.

5       Q.       And do you know if he's still employed  
6       with FedEx?

7       A.       No, sir. I believe he's retired.

8       Q.       Do you know when he retired?

9       A.       I think it was sometime around five or six  
10       years ago.

11       Q.       So around 2010 time frame?

12       A.       From the best of my recollection, but I am  
13       no authority on the retirement.

14       Q.       Is Bill Logue still employed?

15       A.       No. Unfortunately he got sick. I don't  
16       even know if he's still alive. He was fighting  
17       cancer the last I heard.

18       Q.       At some point did he go from FedEx Express  
19       to FedEx Freight?

20       A.       No. I think it was the opposite.

21       Q.       Do you know when he stopped working for  
22       FedEx?

23       A.       I think about a year ago. MaryAnne, do  
24       you know? Sorry.

25       Q.       I appreciate your interest to get the

1       answers correct, and I really do appreciate that.  
2       But keep in mind the only purpose of this  
3       deposition is to understand what you know.

4       A.        I'm sorry.

5       Q.        Do you know who succeeded Bill Henrikson  
6       in the position of VP of Security?

7       A.        Well, I assumed it was Todd Ondra.

8       Q.        Do you know --

9       A.        But they may have reorganized Security and  
10      with different titles now.

11      Q.        Do you know currently who the highest  
12      ranking members of the Security department are?

13      A.        No, sir.

14      Q.        Is that information you could ascertain  
15      through a FedEx computer system?

16      A.        I'm sure if I wanted to find out, I could.

17      Q.        Do you know who succeeded Bill Logue in  
18      his position?

19      A.        No, sir.

20      Q.        Again you could find that information out  
21      if you wanted?

22      A.        I'm assuming so.

23      Q.        I want to go over sort of an overview of  
24      how FedEx pilot management works. Like who is the  
25      highest level of manager in the -- over the FedEx

1 pilots, what is his job title?

2 A. I would think it would be the vice  
3 president of Flight Operations, but I'm not  
4 certain of that though.

5 Q. And then under a VP of Flight Operations,  
6 what would the position title be or position  
7 titles?

8 A. I'm not an expert on the hierarchy, but I  
9 would assume System Chief Pilot.

10 Q. And then under the System Chief Pilot,  
11 what -- and again I'm just trying to get sort of a  
12 basic foundation. I'm -- it's okay if you're not  
13 precise.

14 A. With respect to me, it would be, I'm  
15 guessing, the A300 fleet captain.

16 Q. Is there an Assistant System Chief Pilot?

17 A. Probably.

18 Q. And then under the System Chief Pilot or  
19 perhaps an Assistant Chief Pilot, then you have  
20 the chief pilots of each plane?

21 A. You have -- they call them fleet captains.  
22 They don't call them chief pilots, but they call  
23 them fleet captains.

24 Q. So each plane has a fleet captain?

25 A. Yes, sir.

1 Q. Is there a management position under the  
2 fleet captain?

3 A. I don't know.

4 Q. So your role as a captain of the A300, do  
5 you report to a fleet captain?

6 A. Yes, sir.

7 Q. Currently who is your fleet captain?

8 A. I can't pronounce her name.

9 Q. You can approximate it.

10 A. I'm embarrassed to tell you.

11 Q. You have a first name?

12 A. I can't remember. I don't want to deal  
13 with them.

14 Q. I'm sorry?

15 A. I said, I don't want to be -- I don't want  
16 to have a close relationship with my fleet  
17 captain. I want to do my job. I want to go to  
18 work, fly, and go home.

19 Q. Why don't you want to have a close  
20 relationship with the fleet captain?

21 A. Because normally it means you have  
22 meetings like this.

23 Q. Fair enough. Who is your -- currently who  
24 is your System Chief Pilot?

25 A. I think that's Rob Fisher.

1 Q. And who is the current VP of Flight  
2 Operations?

3 A. I don't know. Is it Jim Bowman? I don't  
4 know.

5 Q. It's okay if you don't know. Prior to  
6 Fisher, who was the System Chief Pilot?

7 A. Bill McDonald I believe.

8 Q. Do you know when McDonald stepped down as  
9 the System Chief Pilot?

10 A. I think he said one to two years ago.

11 My A300 supervisor might be Dolores. Is  
12 that -- does that ring a bell? But I can't  
13 pronounce her last name.

14 Q. And how long was McDonald, approximately,  
15 how long was he the System Chief Pilot?

16 A. I'm guessing at least three or four years.

17 Q. And you said you're not entirely sure if  
18 there's such a position as an assistant chief  
19 pilot?

20 A. I'm not -- there may be. I think they --  
21 at one time I think they created a position like  
22 that for Rob Fisher.

23 Q. You said your fleet captain is Dolores.  
24 How long -- or something.

25 A. It's Pav something.

1 Q. How long has she been your fleet captain?

2 A. I think ever since Rob Fisher went to work  
3 as either an assistant chief pilot or chief pilot.

4 Q. So, what, maybe a couple of years?

5 A. I think so.

6 Q. Prior to Dolores, who was your fleet  
7 captain?

8 A. Rob Fisher.

9 Q. How long was Fisher your fleet captain?

10 A. I would say at least two or three years,  
11 maybe longer.

12 Q. And prior to Fisher, do you recall who  
13 your fleet captain was?

14 A. No.

15 Q. So you say you try to avoid interaction  
16 with your current fleet captain; is that correct?  
17 Only to avoid situations like what we are in now;  
18 is that right?

19 A. I think that's true with most of our  
20 pilots. They just want to do their job and go  
21 home.

22 Q. Otherwise do you find that your fleet  
23 captain is approachable?

24 A. I had -- I don't have any reason to  
25 believe otherwise.

1 Q. Are you on friendly terms with your fleet  
2 captain?

3 A. I haven't spoken to her since she's become  
4 a fleet captain. I am assuming so. I have met  
5 her in the past, and she seems like a nice lady.

6 Q. Captain Fisher, was he approachable when  
7 he was your fleet captain?

8 A. I think so.

9 Q. Is your relationship with Captain Fisher  
10 overall good?

11 A. Was or is?

12 Q. Was at the time he was the fleet captain.

13 A. I assumed so.

14 Q. You didn't have any issues with him?

15 A. No, sir.

16 Q. Once Fisher was elevated to System Chief  
17 Pilot, did you continue to find him approachable?

18 A. When Fisher was promoted to System Chief  
19 Pilot?

20 Q. Yes.

21 A. Well, during that time frame, we had this  
22 AIR-21 action. So I probably would have  
23 approached him through my counsel.

24 Q. But if it was not related to this matter,  
25 would you find him approachable?

1 A. I would be cautious.

2 Q. Because of this litigation?

3 A. Yes, sir.

4 Q. Prior to this litigation, did you find  
5 Bill McDonald approachable?

6 MR. SEHAM: What do you mean by "this  
7 litigation"? Do you mean the filing of this  
8 particular AIR-21?

9 MR. RIEDERER: I think -- when I mean  
10 this litigation, from the first filing of an  
11 AIR-21 complaint with the Department of Labor  
12 forward.

13 MR. SEHAM: The Laredo related one or  
14 just --

15 MR. RIEDERER: Yes.

16 BY MR. RIEDERER:

17 Q. So prior to any AIR-21 complaints, did you  
18 find Bill McDonald approachable?

19 A. Prior to any AIR-21 complaint, I didn't  
20 have any interaction with him.

21 Q. But if you had the need to talk to him,  
22 did you feel that you could go and talk to him  
23 directly?

24 A. Well, I felt like I could send him an  
25 email.

1 Q. If you had concerns with something with  
2 respect to your employment, did you feel that you  
3 could go to him and raise those concerns?

4 A. I thought that it would be a courtesy for  
5 me to do that.

6 Q. We mentioned FedEx has a security  
7 department. I want to talk about it in the 2013  
8 time frame, during the events of this case. Did  
9 the Security department have someone who you  
10 considered to be the head of Security in 2013?

11 A. I'm sure they did.

12 Q. Do you recall who that was?

13 A. No. Because I wasn't interfacing with  
14 them at that time.

15 Q. Is it your understanding now that Security  
16 has an Aviation Security department or group?

17 A. As I learned from Todd Ondra.

18 Q. Do you know if they had such a group in  
19 2013?

20 A. No, sir.

21 Q. It's possible that they could have?

22 A. I could speculate and say that it is  
23 possible.

24 Q. Okay. So you said in 2013 you weren't  
25 necessarily interfacing with Security; is that

1 right?

2 A. No, I wasn't.

3 Q. So you raised concerns back in 2011, and  
4 we have talked about those at length. Following  
5 your role as --

6 A. You want to correct that year?

7 Q. 2001. You're right. Thank you.

8 A. Okay.

9 Q. Following your role as the security  
10 chairman of the FPA, and let's say from the time  
11 you stepped down as the security chairman of the  
12 FPA until 2013, did you raise security-related  
13 issues with anyone at FedEx?

14 A. No, sir.

15 Q. Did you raise security concerns with  
16 anyone at the FAA?

17 A. No, sir.

18 Q. Did you raise security concerns with  
19 anyone in any governmental organization such as  
20 Homeland Security or something to that effect?

21 A. Not that I recall.

22 Q. So leading up to the 2013 time period, you  
23 did not have any interaction with the Security  
24 department at FedEx?

25 A. That's correct.

1 Q. Do you believe aviation security is  
2 important to FedEx?

3 A. Do I believe it's important at FedEx or to  
4 FedEx?

5 Q. To FedEx.

6 A. It should be.

7 Q. Do you believe that they -- that FedEx  
8 takes aviation security seriously?

9 A. I have mixed feelings.

10 Q. And can you explain your answer?

11 A. I believe that the concerted effort  
12 between FedEx and the FAA to continue publishing  
13 real-time tracking data --

14 Q. Real-time tracking data of planes?

15 A. Of planes, of aircraft, incentivizes,  
16 promotes, encourages terrorist organizations to  
17 place bombs on our airplanes.

18 Q. Do you believe security for cargo --  
19 security for cargo airlines is important to the  
20 FAA?

21 A. I believe that they are tasked with that  
22 under the Federal Aviation Regulations through  
23 their own promulgation and publishing of those  
24 regulations.

25 Q. And do you believe they take that

1 obligation seriously?

2 A. I sometimes question it.

3 Q. In what way?

4 A. For the same reason I just mentioned about  
5 FedEx Security.

6 Q. Do you know if our -- the FedEx Security  
7 department works with the FAA to develop security  
8 protocols or procedures?

9 A. I don't have direct knowledge of that.

10 Q. Have you heard rumors or secondhand  
11 knowledge of that?

12 A. No, sir.

13 Q. So you don't know whether they do or do  
14 not?

15 A. No, sir.

16 Q. Do you know if FedEx has to obtain  
17 approval from the FAA for its security procedures  
18 and protocols?

19 A. In 2001 and 2002 I was led to believe that  
20 by Bill Henrikson.

21 Q. Do you think that that -- do you think  
22 that obligation has changed since that time  
23 period?

24 A. I have no knowledge of what those  
25 protocols are or what system of approval they go

1 through.

2 Q. Do you know if the FAA audits or evaluates  
3 our security procedures?

4 A. Yes, sir.

5 Q. How often do they do that?

6 A. I don't know.

7 Q. Is it recurrent?

8 A. I have knowledge of receiving FCIFs from  
9 flight management letting us know --

10 Q. Can you explain what that is for the  
11 record?

12 A. Flight crew information file.

13 Q. And explain that process.

14 A. Well, they issue letters for us to read  
15 before we go fly airplanes, and that's part of the  
16 system, the FCIF system, and they will  
17 occasionally tell us that we are under an FAA  
18 inspection or they will advise us the procedures  
19 on how you greet these FAA inspectors when they're  
20 on the ramp and how you interface with them.  
21 That's basically my limited knowledge of the  
22 inspections that you're referring to.

23 Q. Do you know if the FAA gives feedback to  
24 FedEx over its security procedures?

25 A. I have no knowledge of that.

1 Q. Are you familiar with what I will  
2 generically call the printer bomb attempt?

3 A. Generally speaking, yes. I have read  
4 about it.

5 Q. What do you know about that incident?

6 A. Well, that's a pretty broad question. Can  
7 you kind of narrow it down for me what you would  
8 like to know?

9 Q. Well, generally speaking what do you  
10 understand occurred in that incident?

11 A. Well, I understand that a terrorist by the  
12 name of al-Asiri built two bombs in Yemen, and  
13 that he placed one on a FedEx airplane and a UPS  
14 airplane. I know that a double agent in the Saudi  
15 intelligence committee fled the cell with the  
16 airbill tracking numbers for both packages, and  
17 that he turned them over to Saudi intelligence who  
18 contacted the United States, who contacted FedEx  
19 and UPS, and they searched for the bombs.

20 The bombs were found in two printers.  
21 They were addressed to a location in Chicago, and  
22 they were intercepted by security police, taken  
23 off of the airplanes, and they were found to be  
24 live bombs. I know that it was reported in  
25 numerous sources that Al-Qaeda had done a dry run

1 in the month leading up to the shipment of the  
2 printer bombs, and they used so-called dummy boxes  
3 full of nonsense, books, clothing, that sort of  
4 thing, and shipped them to Chicago to track the  
5 flights for the purposes of setting the timing of  
6 detonation.

7 I know that I briefed Bill Logue and 15  
8 to 20 other management individuals back in 2002  
9 with this same scenario. This was the model that  
10 I predicted that they would use. And I didn't --  
11 this -- although this happened in 2010, I didn't  
12 learn about the details of the dummy box shipment  
13 and the live tracking until 2013, and so that's  
14 when I sent the email to --

15 Q. I think we are getting ahead of ourselves.

16 A. Okay.

17 Q. We will get there.

18 A. Okay.

19 Q. What is the source of your information?  
20 You read it somewhere?

21 A. Yes, sir. I read it online. There is a  
22 variety of security websites you can go to and  
23 do -- if you just do a Google search.

24 Q. Specifically where did you read about the  
25 printer bomb out of Yemen?

1       A.       I believe we submitted those exhibits to  
2       you. I can't name all of those sources for you  
3       here today but...

4       Q.       And when did you read about those printer  
5       bombs, the printer bomb attempts? Contemporaneous  
6       with the event?

7       A.       I'm sorry?

8       Q.       Contemporaneous with the event?

9       A.       Well, when the event first happened, I saw  
10      it on the news. Is that what you're asking me?

11      Q.       Well, you said you read about it. That's  
12      how you formed your information.

13      A.       I read about it more in-depth in 2013, but  
14      I saw it on the news in 2010. I didn't think -- I  
15      didn't really know about the real-time tracking  
16      component of it until 2013.

17      Q.       But you knew about the bomb attempt in  
18      2010?

19      A.       Yes, sir.

20      Q.       Did you talk with it among your fellow  
21      pilots?

22      A.       Yes, sir.

23      Q.       And was that a concern that you and your  
24      fellow pilots had?

25      A.       That's a concern every time we take off.

1 I mean, it's the elephant in the room. You know,  
2 the two biggest threats that we face in security  
3 for FedEx pilots is a fire or a bomb. If our  
4 cargo catches on fire or if we have an explosion,  
5 those are the two biggest threats that we face.  
6 So, yeah, we talked about it, quite a bit.

7 Q. And you said you read about the dummy  
8 packages in 2013?

9 A. Yes, sir.

10 Q. And do you recall what month?

11 A. Yes. It was in the day prior to my email  
12 to Bill McDonald.

13 Q. And you read those on -- from online  
14 publications?

15 A. Yes, sir. And I think we submitted those  
16 to you.

17 Q. And did you print them out contemporaneous  
18 with the time you read them?

19 A. Did I physically print them?

20 Q. Uh-huh.

21 A. No. I bookmarked them.

22 Q. In terms of the articles you have produced  
23 to us through this process, are those the only  
24 articles you read about these issues?

25 A. No, sir.

1 Q. There are other articles you read too?

2 A. Yes, sir. I scanned the Internet going to  
3 security websites that -- to see what else I could  
4 add to what the general media was reporting about  
5 the incident.

6 Q. Both in 2010 and 2013?

7 A. No. Just in 2013. Just through Google  
8 search.

9 Q. Did you have any first-hand knowledge of  
10 the printer bomb attempt? Meaning have you -- you  
11 weren't involved in the investigation of that  
12 attempt, correct?

13 A. No, sir.

14 Q. Did you speak with anyone in flight  
15 management about that attempt?

16 A. You mean in 2010?

17 Q. In 2010.

18 A. No, sir.

19 Q. Did you speak with anyone in security in  
20 2010 regarding that incident?

21 A. No, sir.

22 Q. Did you speak with anyone in management --  
23 in a management position in FedEx operations about  
24 that incident?

25 A. No, sir.

1 Q. Is it fair to say that your knowledge of  
2 the dummy packages is limited to what you read on  
3 the Internet?

4 A. Yes, sir. There were some -- when you say  
5 read, there were also some video productions about  
6 the incident. So...

7 Q. Also on the Internet?

8 A. Yes, sir.

9 Q. In May of 2013, you met with Rob Fisher to  
10 discuss your conduct relating to a flight from  
11 Laredo to Memphis; is that correct?

12 A. May 1st, yes, sir.

13 Q. Can you tell me what happened in Laredo  
14 with respect to that flight?

15 A. Where would you like for me to begin?

16 Q. From the beginning.

17 A. At the hotel?

18 Q. Yeah.

19 A. Okay. The night of the flight in  
20 question, my first officer and I were in the hotel  
21 lobby with our bags ready to go to the airport.  
22 When we were watching on the TV monitor, the local  
23 newscaster, weatherman, was showing a radar  
24 picture of a line of thunderstorms going from the  
25 Gulf of Mexico all the way up to Canada. And I

1       said, let's get online. So we went online, we  
2       looked at the FedEx weather depiction, we looked  
3       at Intellicast. We looked at I think a third U.S.  
4       Government weather radar picture. And I said, we  
5       are not going anywhere tonight. I said, let's  
6       call GOC and see if we can stay at the hotel. So  
7       I called --

8       Q.       Hold on. I want to -- I'm going to  
9       interrupt you, but it will be brief. You said  
10      you're not going anywhere, you conveyed that to  
11      your first officer?

12     A.       Yes, sir. Yes, sir. I told him, I said,  
13      this -- there's no way we can get to Memphis.

14     Q.       Who was your first officer?

15     A.       I don't remember. We supplied I think  
16      that in discovery.

17     Q.       So then you called GOC?

18     A.       Yes.

19     Q.       And what does "GOC" stand for?

20     A.       Global Operations Center. That's where  
21      the flight dispatchers work.

22     Q.       Did you speak with someone there?

23     A.       Sherrie Hayslet I believe.

24     Q.       What time was your flight scheduled to  
25      depart Laredo?

1 A. Oh, that was three years ago. I am  
2 thinking somewhere around -- sometime around 7:00  
3 or 8:00 p.m. I couldn't tell you exactly.

4 Q. Let's assume that the flight was departing  
5 at 8:00 p.m. What time would your showtime be?

6 A. At 7:00.

7 Q. At your showtime at 7:00, what do you --  
8 what do you typically do from the time you arrive  
9 for your showtime and the time you actually  
10 depart?

11 A. You review the flight release, fuel, the  
12 weather, any other factors that will affect your  
13 flying.

14 Q. Do you conduct an inspection of the plane?

15 A. Well, we do a pre-flight when we are ready  
16 to go. When we are ready to dispatch, we will go  
17 out and pre-flight the jet and then we'll --

18 Q. What does a pre-flight consist of?

19 A. Well, the first officer does a walk around  
20 and inspects the exterior of the airplane while I  
21 prepare the cockpit for flight.

22 Q. And what does it take to prepare a cockpit  
23 to fly?

24 A. Well, a checklist.

25 Q. So you have a checklist and you run

1 through the checklist?

2 A. Yes, sir.

3 Q. How long does that typically take to do  
4 all your pre-flight duties?

5 A. I would say on average 15 or 20 minutes.

6 Q. Why is the showtime an hour ahead of the  
7 flight?

8 A. That's a good question. I don't know why  
9 they pick one hour.

10 Q. But it's consistently a one-hour showtime?

11 A. Yes, sir.

12 Q. One-hour advance showtime?

13 A. Yes, sir. It probably has something to do  
14 when you show for your duty versus your crew duty  
15 day. It's probably a crew scheduling issue. I  
16 mean, I'm just speculating.

17 Q. Did you make it to the ramp for your  
18 showtime on that particular occasion?

19 A. No, sir.

20 Q. When you spoke with Sherrie Hayslet, where  
21 were you?

22 A. We were in the hotel lobby.

23 Q. And how many times did you speak to  
24 Sherrie?

25 A. That night?

1 Q. That night.

2 A. I would estimate -- I could -- I think I  
3 produced my cell phone records to you, but as I  
4 sit here, I'm thinking three, maybe four times.

5 Q. You said that there is a weather pattern  
6 in between Laredo and Memphis?

7 A. Yes, sir.

8 Q. Can you describe what that weather  
9 pattern -- can you describe the weather pattern?

10 A. A solid line of severe weather with  
11 tornadic activity, both reported and documented.  
12 Obviously cloud-to-ground lightning,  
13 cloud-to-cloud lightning, highest level of severe  
14 turbulence.

15 Q. Can you describe where the line was in  
16 terms of the geography of the United States?

17 A. It went from southern Texas on the Gulf  
18 through I would say part of east Texas, part of  
19 west Louisiana, Arkansas, Missouri, Illinois,  
20 basically through the Midwest, all the way up to  
21 Canada.

22 Q. So it was a northeastern diagonal line  
23 from the eastern part of Texas towards what state  
24 do you think?

25 A. Correct. It was north, northeast in its

1 alignment.

2 Q. And it was moving west to east?

3 A. West to east, correct.

4 Q. Was there weather in Laredo?

5 A. No, sir.

6 Q. Was there weather north of Laredo?

7 A. I don't recall any.

8 Q. You said you spoke to Sherrie Hayslet  
9 multiple times, correct?

10 A. Yes, sir.

11 Q. Were those calls recorded?

12 A. I know at least one of them was. You  
13 provided it to us. Or I say you, I mean, FedEx.

14 Q. You are saying that FedEx provided you  
15 audio recordings of your phone call or phone calls  
16 with Ms. Hayslet?

17 A. Yes, sir.

18 Q. Did you review those phone calls?

19 A. Yes, sir.

20 Q. That FedEx produced in discovery?

21 A. Yes, sir.

22 Q. Did those recordings appear accurate?

23 A. With the exception of deleted  
24 conversations. Yes, sir.

25 Q. You believe there are some deleted

1       conversations?

2       A.       Without a doubt.

3       Q.       How many deleted conversations do you  
4       believe there were?

5       A.       With respect to Laredo, I would say there  
6       are at least four tapes that are missing.

7       Q.       And of those --

8       A.       Those are conversations with the duty  
9       officer.

10      Q.       And who was the duty officer?

11      A.       Mark Crook.

12      Q.       Were any of your conversations with  
13      Ms. Hayslet deleted?

14      A.       I don't believe so. That I -- you know,  
15      you're asking me to review something in my head  
16      that happened three years ago. I would have to go  
17      back and look at my cell phone itemization, and  
18      then I could tell you that.

19      Q.       What is the basis for your belief that  
20      there are deleted conversations?

21      A.       The content. FedEx's recollection of the  
22      events is 180 degrees out from mine.

23      Q.       So you believe that there are things that  
24      you said on a phone conversation that do not  
25      appear on audio recordings?

1 A. That's correct.

2 Q. Do you have any other reason to believe  
3 that there are deleted conversations?

4 A. My phone records.

5 Q. And other than your phone records and your  
6 recollection of what was said in conversations, do  
7 you have any other reason to believe there are  
8 deleted conversations?

9 A. The story that Mark Crook gave management  
10 is different from what happened.

11 Q. So you believe Mark Crook made false or  
12 misstatements to management about this incident?

13 A. Yes, sir.

14 Q. Any other reasons to believe that there  
15 are deleted conversations?

16 A. No, sir. Not that I can think of.

17 Q. I'm going to hand you a document marked ME  
18 1783. We will mark it as Exhibit 4.

19 (Whereupon, the above-mentioned  
20 document was marked as Exhibit No. 4.)

21 A. It's all about remembering to hand it to  
22 you. Okay. I have read this.

23 Q. What is this document?

24 A. This is what I referred to earlier as an  
25 FCIF. This was issued by Rob Fisher.

1 Q. How does this FCIF -- how did this  
2 particular one work? Did you receive it, first of  
3 all?

4 A. Well, yes. I mean, every pilot who logs  
5 on to the Company website reads the FCIF.

6 Q. How is it received? Is it --

7 A. Electronically.

8 Q. Is it an email or is it some sort of a  
9 posting that's on your computer? Explain how that  
10 works.

11 A. You get a notification that there are  
12 FCIFs to read. So it's not an email. You can  
13 email it to yourself as you can see at the bottom.

14 Q. Okay. But when you log on to the system,  
15 it appears somehow? We don't need to get into the  
16 technical details.

17 A. On the home screen when you first log on  
18 to the FedEx Flight Ops site, you are notified  
19 that there are FCIF's to read, and you click on  
20 the FCIF's.

21 Q. And as a pilot, you would check for these  
22 on every occasion, correct?

23 A. Yes, sir.

24 Q. And this one was issued on April 9th,  
25 2015?

1 A. 2015.

2 Q. At 2325 hours?

3 A. Yes, sir.

4 Q. Who is Joshua Kendrick?

5 A. Don't know.

6 Q. Is this the night you were flying from  
7 Laredo to Memphis?

8 A. No, sir.

9 Q. Mr. Fisher brought you in for a meeting,  
10 is that correct, after your Laredo flight?

11 A. I think that's accurate to say.

12 Q. I'm going to hand you a document which is  
13 a letter dated April 23, 2013, from Rob Fisher to  
14 you. We will mark it as Exhibit 5.

15 (Whereupon, the above-mentioned  
16 document was marked as Exhibit No. 5.)

17 A. (Witness reviews document.)

18 Okay. I have read it.

19 Q. Did you receive this letter from Captain  
20 Fisher?

21 A. I believe so.

22 Q. Did you receive it on or around  
23 April 23rd?

24 A. I don't know because I go to my P.O. Box  
25 irregularly, but I -- at some point after that,

1       yes.

2       Q.       Are you familiar with Section 19.D.1 of  
3       the Collective Bargaining Agreement?

4       A.       No, sir.  But I knew that I had a meeting  
5       to go to.

6       Q.       Did you understand that this was -- he had  
7       requested a meeting with you to discuss your  
8       flight from Laredo to Memphis?

9       A.       Yes, sir.

10      Q.       Do you remember this May 1st meeting?

11      A.       I recall the meeting.

12      Q.       Do you recall where it took place?

13      A.       It was in the simulator building in  
14      Memphis.

15      Q.       Was anyone present other than you and  
16      Captain Fisher?

17      A.       There was an ALPA representative whose  
18      name escapes me, and there was another manager  
19      with Rob, and I'm testing my memory, but I think  
20      it was a gentleman by the name of Matheny or  
21      Matheny (pronouncing).

22      Q.       Mitch Matheny?

23      A.       Mitch Matheny.

24      Q.       Do you know who he is?

25      A.       I have met him, but I don't know the who

1 part.

2 Q. Do you know what his position is at FedEx?

3 A. No, sir.

4 Q. How long did the meeting take place -- how  
5 long did the meeting occur?

6 A. I'm sorry?

7 Q. I think I'm getting hungry. How long was  
8 the meeting?

9 A. It was very short. I would say less than  
10 10 or 15 minutes.

11 Q. And do you recall what Fisher said during  
12 that meeting?

13 A. I do.

14 Q. What did he tell you?

15 A. Well, he had already reviewed the  
16 telephone tapes concerning my flight to Laredo,  
17 and he had corresponded that to me in some emails  
18 as I recall. And he was going to let me know what  
19 he thought of those recordings at this meeting.  
20 And so I asked him, did you listen to the tapes?  
21 And he said, yes, I did. I said, what is your  
22 opinion? He says, I think that I'm not going to  
23 take any further action. And I said, what about  
24 the duty officer, Mark Crook? I said, are you  
25 going to counsel him? And he said, yes, I am.

1       And I said, well, if you're not going to take any  
2       further action, then I will drop the AIR-21  
3       filing. And he said -- he acted surprised and  
4       said, I don't know anything about the AIR-21  
5       filing. And I said, well, just suffice it to say  
6       that I'm going to drop it.

7               And shortly after that he said, promise  
8       me that you will show up to work on time. And I  
9       said, fine. I will show up to work on time. I  
10      said, but you are aware that Sherrie and I  
11      discussed me staying at the hotel. He said, yes,  
12      I heard the tapes. He said, and that's why I'm  
13      not taking any further action.

14             That was the end of the meeting, and  
15      everybody stood up and walked out, and I -- it was  
16      just Rob and I in the hallway, and Rob says to me,  
17      Bill McDonald is upset. He's pissed. I said,  
18      why? And he said, because he wanted me to go  
19      forward with the disciplinary action against you  
20      for a no show at work. But I told him to go  
21      listen to the tapes. And I said, did he? And Rob  
22      says, I don't know. And that was it. That was  
23      the end of the conversation, and I got on a  
24      jumpseat and went to Austin.

25      Q.       Did Mitch Matheny say anything during this

1 meeting?

2 A. No, sir.

3 Q. Did your Union representative say anything  
4 during the meeting?

5 A. No, sir.

6 Q. You said Captain Fisher was concerned  
7 about the fact that you didn't make your showtime?

8 A. He mentioned that towards the end of the  
9 meeting. He said, just promise me you will be to  
10 work on time.

11 Q. And by that he meant you need to show up  
12 for your showtime?

13 A. Yes, sir. That's the way I interpreted  
14 it. I knew what his point was.

15 Q. He said that -- Captain Fisher said that  
16 Bill McDonald wanted to discipline you for a no  
17 show at the airport?

18 A. Yes, sir.

19 Q. And by that did you take that to mean that  
20 he was upset that you didn't make your showtime?

21 A. I took it different than that.

22 Q. What did you take it to mean?

23 A. I took it to mean that the duty officer  
24 had engaged in three or four conversations telling  
25 me -- directing me to take off into that

1       thunderstorm, and I think Bill McDonald was upset  
2       that in his mind and in the duty officer's mind  
3       somehow I had disrespected the duty officer and  
4       FedEx by refusing to take off and fly into  
5       thunderstorms.

6       Q.       That's not what you -- you said he said  
7       discipline for a no show.

8       A.       That's what -- you asked me what I  
9       believed and I'm telling you what I believe Bill  
10      McDonald's motivation was.

11     Q.       And that's your personal belief?

12     A.       Yes, sir.

13     Q.       Could you have taken off from Laredo and  
14      flown north and held on the western side of the  
15      storm?

16     A.       I could do a myriad of things. I could go  
17      up to Dallas and land. I could burn hundreds of  
18      thousands of dollars in FedEx gas.

19     Q.       You could go to Little Rock and land?

20     A.       No.

21     Q.       That was part of the storm?

22     A.       Yes, sir.

23     Q.       Do you know when the storm passed through  
24      Little Rock?

25     A.       No, I don't. But I know that when I

1 arrived in Memphis later that night, that the  
2 storm was just leaving Memphis.

3 Q. Okay. You mentioned that you exchanged  
4 some emails with Captain Fisher?

5 A. Prior to this May 1st meeting?

6 Q. Yes.

7 A. I believe so. I think we turned those  
8 over.

9 Q. Going to hand you an email string that we  
10 will mark as Exhibit 6.

11 (Whereupon, the above-mentioned  
12 document was marked as Exhibit No. 6.)

13 A. (Witness reviews document.)

14 How much of this do you want me to read?

15 Q. I just want you to identify that these are  
16 emails that went from you --

17 A. Back and forth?

18 Q. From you to Mark -- from you to Rob Fisher  
19 and from Rob Fisher to you.

20 A. Okay. Give me just a second. They appear  
21 to be so.

22 Q. Those are the emails you were referring to  
23 earlier?

24 A. I think so.

25 Q. And you said Rob Fisher listened to some

1        audiotapes?

2        A.        That's what he reported to me.

3        Q.        Do you know if he listened to the  
4        audiotapes that we produced during discovery in  
5        this case?

6        A.        I have no knowledge of that.

7        Q.        Do you know if he had the opportunity to  
8        review conversations that you say have been  
9        deleted?

10      A.        I believe he listened to all the tapes.

11      Q.        Why do you have that belief?

12      A.        He wouldn't have dropped the disciplinary  
13      action against me if he hadn't heard the  
14      conversations between me and Crook.

15      Q.        That's your personnel belief?

16      A.        Yes, sir.

17      Q.        As a result of the meeting, were you given  
18      any kind of a warning letter or disciplinary  
19      letter?

20      A.        No, sir.

21      Q.        Did you lose any pay over this meeting?

22      A.        No, sir. I flew -- I operated a trip in  
23      and went to the meeting, as I recall.

24      Q.        And then after the meeting, you left and  
25      jumpseated home?

1 A. Jumpseated -- yes, sir.

2 Q. Exhibit 5 [sic] at the top email refers to  
3 an ASAP report?

4 A. Okay. You mean Exhibit 6?

5 Q. I suppose -- the email chain, is that  
6 Exhibit 6?

7 A. This most recent one, yes, sir.

8 Q. What is an ASAP report?

9 A. It's a safety report.

10 Q. And is it filled out online?

11 A. It can be done both ways, but online I  
12 think is the easiest.

13 Q. I want to hand you one more set of emails  
14 that we will mark as Exhibit 7.

15 (Whereupon, the above-mentioned  
16 document was marked as Exhibit No. 7.)

17 A. (Witness reviews document.)

18 And your question is?

19 Q. Are these also emails that you had with  
20 Rob Fisher?

21 A. I believe so.

22 Q. Now, on the first page of Exhibit 7,  
23 there's an email from you to Rob Fisher on  
24 April 26th at 11:29 a.m.?

25 A. Yes, sir.

1 Q. It says that you say that you think you're  
2 coming alone. Did that occur or did you have  
3 representation there?

4 A. At one point in time whether it was on the  
5 telephone or if it was in an email, Rob told me  
6 that my attorney was not allowed to come to the  
7 meeting. So at that -- somewhere in that same  
8 time frame I asked for an ALPA representative to  
9 be there.

10 Q. So --

11 A. Actually to correct the record, ALPA  
12 called me and said we want to send a  
13 representative. As I recall that.

14 Q. So when you say in that email that you  
15 think that you're coming alone, that was with  
16 respect to your attorney?

17 A. Yes, sir. I called Alan Armstrong and  
18 reported to him what Mr. Fisher had said about he  
19 couldn't come, and I told Alan and -- I don't  
20 think Alan was going to force his way on to the  
21 property.

22 Q. I guess I just want to clarify in that  
23 email when you say you're coming alone, that does  
24 not exclude the ALPA representative, correct?

25 A. When I said I think I'm coming alone, I

1       meant without a lawyer.

2       Q.       Okay.  You said you filed an AIR-21  
3       complaint with the Occupational Safety and Health  
4       Administration related to this incident?

5       A.       Yes, sir.

6       Q.       And then you withdrew it?

7       A.       Yes, sir.  On May 2nd, a day after the  
8       meeting.

9       Q.       All right.  Why did you decide to withdraw  
10      it?

11      A.       Because Rob had listened to the tapes and  
12      he decided to not take any disciplinary action  
13      against me, and I thought that that would be a  
14      good quid pro quo gesture on my part.

15      Q.       Other than telling Rob Fisher that you  
16      were withdrawing the AIR-21 complaint, did you  
17      talk to anyone else at FedEx about the filing of  
18      that complaint?

19      A.       I'm sure it came up as a conversation in  
20      cockpits.  But I couldn't tell you who or when.

21      Q.       Did you talk to anyone in flight  
22      management about that complaint other than Rob  
23      Fisher?

24      A.       I saw Bill McDonald in Indianapolis in the  
25      months after that, maybe one or two months after

1 the May 1st meeting, and I briefly said hello to  
2 him.

3 Q. So July -- approximately July of 2013?

4 A. I -- May, June, July, I couldn't tell you  
5 exactly. But I asked him if he listened to the  
6 tapes.

7 Q. Did you talk to him about your AIR-21  
8 complaint?

9 A. I didn't mention the complaint. I just  
10 asked him about did you listen to the Laredo  
11 tapes.

12 Q. Did -- what was his response?

13 A. He wouldn't answer me.

14 Q. Well, when you asked him if he reviewed  
15 the tapes, what did he say in response?

16 A. He looked at me and he said, show up for  
17 work.

18 Q. Okay. During this Laredo incident, did  
19 any other pilots refuse to take off?

20 A. I have no knowledge of that. I do know  
21 that at the time of my arrival in Memphis there  
22 were at least six to ten airplanes arriving at the  
23 same time. So I know they had delayed their  
24 departure time from their respective airports  
25 so...

1 Q. Where they held west of the storm,  
2 correct?

3 A. Could be. But again that's a captain's  
4 decision whether or not he's going to take on  
5 extra fuel, extra cost to the Company. Is it  
6 going to be safe? I mean, there's extenuating  
7 circumstances whether you make a holding decision  
8 or not. Right? So I'm assuming that those pilots  
9 made their respective decisions about the arrival  
10 of their aircraft in Memphis after storm passes.

11 Q. Do you know the identity of any of the  
12 captains on those planes?

13 A. No, sir. But I would imagine those  
14 records are available in flight management.

15 Q. Do you know where those planes were  
16 originating from?

17 A. No, sir. They had to be west of the  
18 storm.

19 Q. Did you speak to any of your colleagues  
20 about their reluctance or unwillingness to take  
21 off into that storm?

22 A. Yes, sir.

23 Q. Who did you speak with?

24 A. My first officer at the time.

25 Q. Other than your first officer, did you

1 speak with any other FedEx pilots about their  
2 reluctance to take off during that storm?

3 A. I didn't talk about their reluctance to  
4 take off into that storm, but I did talk to a  
5 check airman in the lobby of the Laredo hotel, and  
6 he saw the weather and he knew I was going to  
7 Memphis. And he said something to the effect,  
8 better you than me.

9 Q. Okay. Who was that person?

10 A. His first name is Mark. I would have to  
11 research that and get back to you, but he was  
12 flying to Dallas. So he wasn't in the storm path.

13 Q. How would you go about researching who the  
14 identity of that individual is?

15 A. I know he's an A300 check airman right  
16 now. So I would probably look at the list of A300  
17 check airmen and ascertain his name from that  
18 list.

19 Q. Did you speak to anyone else about any  
20 other pilots about a reluctance to depart during  
21 that storm?

22 A. I am sure that I discussed my reluctance  
23 to take off into that storm at the suggestion of  
24 Mark Crook or the directive of Mark Crook. I  
25 couldn't tell you who those individuals were that

1 I spoke to. But I'm sure in the crew lounge that  
2 I discussed it with other pilots.

3 Q. The crew lounge at what location?

4 A. Memphis.

5 Q. Following your flight?

6 A. The AOC -- I'm sorry?

7 Q. The night of your flight?

8 A. The night of the flight and in the weeks  
9 and several months after that.

10 Q. Do you remember specifically anyone you  
11 spoke to in the crew lounge about that flight?

12 A. Bruce Yarbrough.

13 Q. Anyone else?

14 A. Not that I can recall right now. But  
15 just...

16 Q. Do you recall when you spoke with Bruce  
17 Yarbrough?

18 A. In the days and weeks after that happened.

19 Q. You don't recall specifically when?

20 A. I spoke to -- I spoke to Curtis Wilson.

21 Q. Anyone else?

22 A. I can't remember right now.

23 Q. Do you remember -- you said you spoke with  
24 Bruce Yarbrough in the days or weeks after the  
25 event?

1 A. Yes, sir.

2 Q. But you can't tell me exactly when?

3 A. No, sir.

4 Q. Do you recall the substance of your  
5 conversation?

6 A. Just that I had had this difference of  
7 opinion with the duty officer and that I had been  
8 investigated.

9 Q. Do you recall his response?

10 A. No, sir.

11 Q. Do you recall when you spoke with Curtis  
12 Wilson about this incident?

13 A. No, sir. In the days and weeks after.

14 Q. Do you recall what you told him?

15 A. I just -- just what I said about Bruce  
16 Yarbrough. I just relayed my experience with what  
17 happened in Laredo.

18 Q. Do you recall his response?

19 A. No, sir.

20 MR. RIEDERER: Do we want to take a  
21 lunch break?

22 MR. SEHAM: Yes.

23 (Lunch recess.)

24 BY MR. RIEDERER:

25 Q. Captain Estabrook, prior to the lunch

1 break, we were talking about the -- what I called  
2 the Laredo incident, and I asked you if you spoke  
3 with any other pilots about your refusal or their  
4 refusal to take off in that storm. Outside of  
5 that particular incident, have you -- are you  
6 aware of any pilots who have refused to take off  
7 into bad weather?

8 A. During my career at FedEx?

9 Q. Let's just say the last ten years.

10 A. Sure.

11 Q. How many would you say?

12 A. Oh, I would -- I would -- it would be hard  
13 to determine. I mean, many times the Company  
14 directs us not to take off into bad weather.

15 Q. Are you aware of any pilots who have  
16 elected not to take off when GOC or the duty  
17 officer were directing them to take off?

18 A. I can't give you names, but during the  
19 course of my career, I would say there have been  
20 several dozen that I have spoken to.

21 Q. Of any of those people, have any of them  
22 been subject to a medical evaluation as a result  
23 of that decision?

24 A. I wouldn't know.

25 Q. I want to move forward to August of 2013.

1 Did you send an email to Bill McDonald that  
2 referenced Fred Smith?

3 A. Yes.

4 Q. I want to hand you an email string between  
5 you and Bill McDonald. We'll mark it as  
6 Exhibit 8.

7 (Whereupon, the above-mentioned  
8 document was marked as Exhibit No. 8.)

9 A. Okay. So the first one begins on 127.

10 Q. Yes. You have to read back to front.

11 A. Okay. Back to front. Okay.

12 Q. Are these copies of emails that -- between  
13 you and Bill McDonald?

14 A. They look familiar.

15 Q. And is your email cargopilot@gmail.com?

16 A. Yes, sir.

17 Q. Who is Fred Smith?

18 A. The CEO of FedEx Express or -- I can't  
19 tell you the -- he's the CEO of a big FedEx  
20 company.

21 Q. Is he CEO of FedEx Corporation?

22 A. That sounds familiar.

23 Q. Which is the parent company?

24 A. Parent company of FedEx Express.

25 Q. Have you met him before?

1 A. Yes, sir.

2 Q. When was the first time you met him?

3 A. I met him in 1989.

4 Q. Under what circumstance?

5 A. I was in the crew lounge. I was the only  
6 pilot in the crew lounge at that -- during that  
7 evening, and it was right after I finished  
8 training initially for the 727. And he walked in  
9 through the door, and he walked right up to me and  
10 I introduced myself and I called him Mr. Smith,  
11 and he said, call me Fred. And I said, I want to  
12 thank you for building such a great company that  
13 employs me. And he asked me -- he asked me when I  
14 was going to upgrade from the second officer  
15 position, and I said, there's only one person in  
16 this Company that knows the answer to that, and  
17 I'm talking to him.

18 Q. Could have been the fastest promoted pilot  
19 in FedEx history potentially.

20 All right. So how long did that  
21 conversation last approximately?

22 A. Two or three minutes.

23 Q. Have you had any other conversations with  
24 him?

25 A. Directly and indirectly.

1 Q. Have you had other direct conversations  
2 with him?

3 A. On the night of Flight 705, I was the  
4 first FedEx pilot to arrive at the hospital. The  
5 Union called me and asked me to go help the  
6 families deal with the press. And so that night  
7 that I was there, Fred flew into town and went  
8 straight to the hospital. So Joe DePete and I  
9 spoke with Fred briefly before he went in to talk  
10 to the pilots in the hospital rooms.

11 Q. This is the Auburn Calloway incident?

12 A. Yes. Flight 705.

13 Q. What was the substance of your  
14 conversation in the hospital with Fred Smith?

15 A. It was very short, very brief. He thanked  
16 us for being there, and we briefly told him that  
17 we had kept the press out of the hospital rooms.  
18 It was just a brief report. This is a status of  
19 what is going on.

20 Q. These are the hospital rooms of the pilots  
21 that were injured in that flight?

22 A. I'm sorry?

23 Q. You're referring to the hospital rooms of  
24 the pilots who were injured on that flight?

25 A. Yes -- well, it was in -- they had just

1       come out of -- one of them had just come out of  
2       surgery, and another one was scheduled for  
3       surgery. So I don't know whether it was their  
4       personal hospital rooms or the initial post-op.

5       Q.       But the patients are the pilots who were  
6       injured in that flight?

7       A.       Correct.

8       Q.       So he greeted you, you gave him an update  
9       about the -- what was going on?

10      A.       The status at the hospital.

11      Q.       The status.

12      A.       And then he went right into the rooms and  
13      talked to the families.

14      Q.       How long do you think that conversation  
15      took?

16      A.       Two or three minutes.

17      Q.       Any other direct conversations with Fred  
18      Smith?

19      A.       Let me think. No. Just indirect  
20      conversations with him.

21      Q.       What do you mean by "indirect  
22      conversations"?

23      A.       Well, he challenged me to a public debate.

24      Q.       How did he do that?

25      A.       On the front page of the *Commercial*

1       *Appeal.*

2       Q.       Why did he want to debate you?

3       A.       Because there was a union election, and I  
4       was one of the leaders of the union attempts.

5       Q.       So he wanted to debate a leader of the  
6       Union with respect to the pros and cons of a union  
7       representation?

8       A.       Exactly.

9       Q.       Did you have that debate?

10      A.       No, sir.

11      Q.       When was that -- when did that take place?

12      A.       I want to say somewhere between '93 to  
13      '95. I can't remember the exact year.

14      Q.       Did he want to debate -- was anyone else  
15      challenged to a debate in addition to you?

16      A.       There was an ALPA representative who -- I  
17      think he challenged the president of ALPA or  
18      whatever his title is. Chairman or president of  
19      ALPA, Randy Babbitt I believe was the other guy.

20      Q.       So he was interested in debating  
21      leadership of the Union; is that correct?

22      A.       Correct.

23      Q.       Any other communication, indirect  
24      communications with Mr. Smith?

25      A.       Man, not that I can recall. I mean, my

1 lawyers communicated with him during the seniority  
2 litigation.

3 Q. Okay. Anything other than that?

4 A. Not that I can recall.

5 Q. If he was in the room here today, how  
6 would you refer to him as, Fred or Mr. Smith?

7 A. If I was speaking to him?

8 Q. Uh-huh.

9 A. I would shake his hand and call him Fred.

10 Q. Let's turn back to this email that's been  
11 marked as Exhibit 8. You sent the email -- the  
12 originating email to Bill McDonald at 8:00 a.m. on  
13 Sunday, August 4, 2013?

14 A. They're on the -- you mean on ME 127?

15 Q. Yeah.

16 A. Okay.

17 Q. You sent that email to Bill McDonald on  
18 Sunday morning at 8:00 a.m. on August 4, 2013?

19 A. Yes.

20 Q. What were you doing prior to sending this  
21 email?

22 A. I was I believe researching articles on  
23 the printer bomb incident.

24 Q. Had you been up all night?

25 A. Yes.

1 Q. Is it normal for you to stay up through  
2 the night?

3 A. If you're a FedEx pilot, yes.

4 Q. So had you -- had you been -- had you had  
5 a flight that prior day or that night?

6 A. I don't recall. But once you get on a  
7 night cycle of flying, it's hard to go back and  
8 forth. A lot of pilots will bid their schedules  
9 according to day flying or night flying depending  
10 on what their seniority can do for them, and in my  
11 case I had been night flying for quite a while.

12 Q. And you were night flying during this  
13 August 2013 time period?

14 A. I couldn't tell you, but I have never held  
15 day flying seniority-wise. So that's a pretty  
16 good guess.

17 Q. Let's take August 4th, for example. It  
18 indicates in this email that you're about to close  
19 your eyes and call it a day.

20 A. Yes, sir.

21 Q. What time period would you typically sleep  
22 if you were going to sleep at 8:00 a.m.?

23 A. Well, typically I wouldn't wait to go to  
24 sleep at 8:00 a.m. Typically I would go to sleep  
25 somewhere around 6:00 to -- sometime around

1 sunrise.

2 Q. And how long would you sleep?

3 A. Well, I -- if I'm a lucky man, I would say  
4 anywhere between six and eight hours.

5 Q. And if you're unlucky?

6 A. That would be at a hotel with maids  
7 banging on the door two or three times a day.

8 Q. Were you at -- go ahead.

9 A. So it just depends on where I'm at.

10 Q. Were you at home when you sent this email?

11 A. Yes, I was.

12 Q. So if you're at home, would you expect to  
13 sleep six to eight hours?

14 A. Yes.

15 Q. And you said you had been researching the  
16 printer bomb prior to sending this email?

17 A. That's my best recollection. Yes.

18 Q. Is that what motivated you to send this  
19 email?

20 A. Yes, sir.

21 Q. Had you been drinking alcohol prior to  
22 sending this email?

23 A. I don't recall.

24 Q. Is it possible?

25 A. Anything is possible.

1 Q. Is it more likely than not that you did  
2 before this?

3 A. I don't recall drinking alcohol when I  
4 sent this email.

5 Q. Were you under the influence of any kind  
6 of medication or drug?

7 A. No, sir.

8 Q. Now, Bill McDonald responded to this -- to  
9 your email and said that he wanted you to meet  
10 with Rob Fisher and Todd Ondra; is that correct?

11 A. Yes. I -- if you're referring to the  
12 August 7th email right above that one?

13 Q. Right.

14 A. Okay.

15 Q. Is that what -- is that your recollection  
16 of how he communicated to you?

17 A. Yes.

18 Q. And it says here that he placed you on NOQ  
19 status; is that correct?

20 A. Yes.

21 Q. Then in the next email of this exhibit  
22 from you to Bill McDonald, it indicates that you  
23 had called Rob, I'm assuming that's Rob Fisher; is  
24 that correct?

25 A. Yes. I believe that's correct.

1 Q. And do you recall when you called Captain  
2 Fisher that particular day?

3 A. No, I don't.

4 Q. It was sometime in the afternoon?

5 A. Exactly.

6 Q. And --

7 A. According to this email, yeah, that's what  
8 it says.

9 Q. In your normal course of the use of the  
10 word afternoon, do you refer to that as after  
11 lunch and before dinner?

12 A. Well, I don't know about my meals because  
13 we -- our days and nights are mixed up and  
14 confused. I may be eating breakfast when you're  
15 eating lunch. Okay. So...

16 Q. Noon to six?

17 A. Yes. I would say so. Well, it says I  
18 sent the email at 6:58 p.m.

19 Q. But you say in the email that you called  
20 Rob "this afternoon."

21 A. Yeah. But I couldn't tell you exactly  
22 when I called on this is what I'm trying to tell  
23 you.

24 Q. This email indicates that you want to fly  
25 a trip to Panama. Can you explain what -- the

1 details of that trip?

2 A. I had been assigned a trip to Panama as  
3 part of my line.

4 Q. So it was a FedEx flight and not a  
5 vacation?

6 A. When they build your calendar and you're a  
7 pilot and you log on to the Company computer, you  
8 can see your trips. Well, Bill had placed me on  
9 NOQ, and there's this line that goes all the way  
10 through every week of your calendar. But your  
11 trips are still there. Right. And you're  
12 going -- and in my mind I'm thinking, can we get  
13 this thing resolved pretty quickly because I want  
14 that trip to Panama. I wanted to go to Panama.

15 Q. So the Panama flight was a FedEx flight,  
16 not a vacation?

17 A. Correct.

18 Q. The last sentence of this email says, "but  
19 having said that, I understand why you did what  
20 you did."

21 A. Yes. I said that.

22 Q. What did you mean by that?

23 A. I recalled what Rob Fisher had told me in  
24 the hallway about Bill being pissed that he  
25 couldn't discipline me about Laredo. And this was

1 my way of conveying to him, I know what you're  
2 doing here.

3 Q. Okay.

4 A. It wasn't that I agreed with what he did.  
5 I was just letting him know I think I know what  
6 this is all about.

7 Q. Okay. And that's based on your personal  
8 belief, correct?

9 A. Yes, sir.

10 Q. He didn't say that he was taking you off  
11 that flight because of anything related to the  
12 Laredo incident, did he?

13 A. Well, the way it works is if you're NOQ,  
14 crew scheduling looks at that and within so many  
15 hours of a trip, I believe it's 24 hours prior to  
16 the trip, they will remove you from that trip. So  
17 as long as you're in NOQ status, that trip is  
18 coming off your line like the day before so that  
19 they have time to assign it to another pilot. So  
20 Bill didn't have anything to do with crew  
21 scheduling's removal of me from that trip, but he  
22 did place me on NOQ status. At least that's what  
23 I understand the testimony to have been so far. I  
24 don't know whether it technically was Rob Fisher  
25 or whether it was Bill McDonald, but I thought I

1 heard that Bill put me on NOQ.

2 Q. But at the time that this happened, what  
3 was your understanding?

4 A. I thought Bill did it.

5 Q. How long -- was the trip basically a down  
6 and back?

7 A. For Panama?

8 Q. Yes.

9 A. No. It was -- it had an extended layover.  
10 It had like a two- or three-day layover in Panama,  
11 which was one of the reasons why I wanted to fly  
12 the trip. It would have been a nice trip to pick  
13 up.

14 Q. I don't blame you. All right. Did you  
15 have any other flights for that week?

16 A. I don't remember.

17 Q. You're paid for that trip?

18 A. I believe so.

19 Q. Again --

20 A. I think it came out of my sick bank.

21 Q. Are you sure about that or do you know or  
22 are you speculating? You're pointing to our  
23 paralegal.

24 A. Yes. Eventually my sick bank was refilled  
25 for this four-month duration of NOQ. But that's

1 my best recollection.

2 Q. And then you again express interest in  
3 arranging a phone call with the head of Corporate  
4 Security and Fred; is that right?

5 A. Yeah. I still thought that what my  
6 security concerns were were valid. I realized  
7 what Bill McDonald was trying to do to me, and I  
8 wanted to, you know, put him on notice that I  
9 still want to talk to Fred and I still want to  
10 talk to the Security department. So, you know,  
11 his perception it was unusual for me to want to  
12 talk to Fred, he didn't --

13 Q. Let's stick with your -- what you know.  
14 You don't have to talk about what Bill McDonald  
15 was doing in his deposition.

16 A. What he testified to?

17 Q. Yeah.

18 A. Well, at any rate my perception was is  
19 that he was interfering in this process by putting  
20 me on NOQ.

21 Q. Okay. Are you familiar with any other  
22 pilots that have been placed on an administrative  
23 NOQ status?

24 A. Well, I have -- I have spoken with and  
25 heard about other pilots have been placed on NOQ,

1       yes.

2       Q.       Who do you know that has been placed on  
3       NOQ?

4       A.       I would say Barney Barnhart was one.  I  
5       have known several pilots that had cancer and went  
6       beyond their training cycle and got placed on NOQ.

7       Q.       Such as?

8       A.       Well, I can't think of their names right  
9       now, but I have been placed on NOQ before and  
10      so --

11      Q.       Okay.  Let me narrow the question then.  
12      Are you aware of any pilots who have been placed  
13      on NOQ in order -- no -- contemporaneous with a  
14      scheduled meeting in Memphis?

15      A.       Not once.

16      Q.       Are you aware of any pilots who have --  
17      who are not resident in Memphis who have had  
18      scheduled meetings with flight management in  
19      Memphis?

20      A.       I am not privy to that information.  I  
21      wouldn't know how I would know that.

22      Q.       Why did you reach out to Bill McDonald to  
23      set up this call with Mr. Smith?

24      A.       I thought that it would be the fastest way  
25      to get a meeting with Mr. Smith, and I felt like

1       that my previous experience of going through the  
2       chain of command and the executive branch of this  
3       Company, I had gone all the way to the COO, the  
4       only other logical person above him would be Fred.

5       Q.       Well, I'm asking in terms of setting up  
6       the meeting with Fred, why did you ask Bill  
7       McDonald to do it?

8       A.       Because he was my chief pilot.

9       Q.       Why didn't you ask your fleet captain?

10      A.       I could have, but --

11      Q.       Why didn't you contact someone in Security  
12      to set up this meeting?

13                   MR. SEHAM:  I'm sorry, I think the  
14      testimony was being trampled on, I could have  
15      but --

16      A.       Well, this was -- I considered it.  I  
17      wanted it to be as expeditious as possible.  I  
18      wanted to pay some courtesy to the department that  
19      I worked in.  So I contacted the chief pilot.  I  
20      assume that Bill McDonald had known my previous  
21      Security Committee experience in the Union.

22      Q.       Why did you make that assumption?

23      A.       Because he had worked in the Union.  I  
24      just assumed that he knew of my communications to  
25      the pilot group.  I was under the assumption that

1 he was aware of my previous experience.

2 Q. Why didn't you take your security concerns  
3 directly to Bill McDonald?

4 A. Because it would take too long to try to  
5 convince him. I wanted a conversation with Fred.

6 Q. Why didn't you take your concerns to  
7 someone in the Security department?

8 A. I already had.

9 Q. In 2001, correct?

10 A. And '02. 2001 and 2002.

11 Q. At no time between 2002 and 2013, correct?

12 A. That's correct.

13 Q. But you thought that it was not  
14 appropriate to bring those concerns back to  
15 Security?

16 A. I thought it would have been a waste of  
17 time.

18 Q. Why didn't you bring your security  
19 concerns to some other executive other than Fred  
20 Smith? And did you consider --

21 A. Again for the same reason. I had already  
22 exercised the highest authority in the management  
23 branch that I could go in 2001, 2002. Why would I  
24 go back up through the same channels and spend  
25 months and months and months trying to develop a

1 relationship with all these people? It didn't  
2 make sense to me.

3 Q. It's only a 15-minute conversation, right?  
4 It's not like you had to build a relationship.  
5 You just wanted to convey some concerns, correct?

6 A. Correct. But I feel like I had already  
7 exhausted those in 2001 and 2002. And I don't  
8 know if you know Fred or not, but he's a pretty  
9 direct individual.

10 Q. Why didn't you just call Fred directly?

11 A. In retrospect maybe I should have, but at  
12 the time I wanted to pay a courtesy to my boss.

13 Q. Could you have sent Mr. Smith an email?

14 A. I don't know his email address. I  
15 wouldn't even know how to get it.

16 Q. You don't have access to that email on  
17 Company --

18 A. No. I don't think it's available.

19 Q. On the Company system?

20 A. I don't know if it's available.

21 Q. Have you looked?

22 A. No. But if you go to the FedEx website, I  
23 don't think it's there.

24 Q. You're speculating on that, right?

25 A. Well, I mean, I may have done a cursory

1 inspection of the FedEx website at the time, but  
2 that's not the reason why I wrote Bill McDonald.  
3 I wrote Bill McDonald because I didn't want to  
4 ambush him. I wanted -- if he got a call from  
5 Fred saying, why is Estabrook contacting me about  
6 security and Bill McDonald didn't know anything  
7 about it, that's just a courtesy to Bill McDonald,  
8 hey, I'm going to our CEO.

9 Q. Okay. But you asked Bill McDonald to have  
10 Fred call you; is that correct?

11 A. That's correct.

12 Q. Could you have just told Bill McDonald,  
13 hey, Bill, I'm going to call Fred Smith and talk  
14 to him about some security issues?

15 A. I could have done that too. There's  
16 probably two or three more ways I could have done  
17 it.

18 Q. In retrospect do you think that would have  
19 been a better approach?

20 A. I don't know. I think that in the final  
21 analysis Bill was still upset about Laredo, and I  
22 think he saw this as an opportunity to try to  
23 paint me as an unsettled character of some sort.  
24 Some sort of mentally challenged pilot who needed  
25 to be evaluated.

1 Q. Did he say anything like that to you?

2 A. No. In fact, he didn't say much at all.

3 Q. So it's your personal belief that that is  
4 what he was doing?

5 A. That's my belief based on the actions that  
6 were taken against me, yes.

7 Q. Could you have discussed your security  
8 concerns with the Union?

9 A. I could have.

10 Q. Why didn't you?

11 A. They weren't there when I had did these  
12 original briefings in 2001 and '02 with senior  
13 management.

14 Q. So you didn't go to the Union because they  
15 weren't around when you were there in 2001 and  
16 2002?

17 A. For the same reasons I discussed about  
18 management.

19 Q. That you had spoken with Union officials  
20 before and it was not successful?

21 A. I don't know that it wasn't successful.  
22 They certainly facilitated my comments to  
23 management, but I would have been reinventing the  
24 wheel again. To me I was trying to get a phone  
25 conversation with Fred Smith. I did a courtesy

1 phone call to Bill McDonald hoping that that would  
2 be received in good fashion. I told him I was the  
3 previous Security Committee chairman.

4 I didn't want to go into a lot of details  
5 in an email about what I was concerned about. If  
6 Bill had called me, if he had picked up the  
7 telephone and called me and said, Mark, what is  
8 this about? I would have discussed it with him on  
9 the telephone.

10 Q. And could you have called him and  
11 discussed it?

12 A. I could have. But had --

13 Q. Go ahead.

14 A. But it's not always easy to get your Chief  
15 Pilot on the telephone.

16 Q. But you didn't even try, right?

17 A. I wanted an email.

18 Q. In 2013 ALPA was in place, correct?

19 A. Correct.

20 Q. So there is different Union management in  
21 2013 than there was in 2001 and 2002?

22 A. Sure.

23 Q. You didn't think it was worth an effort to  
24 communicate your concerns with them?

25 A. I didn't want to take the time.

1 Q. You ultimately had a meeting with -- you  
2 ultimately had a meeting with Todd Ondra and Rob  
3 Fisher and Robb Tice, correct?

4 A. Yes, sir.

5 Q. What was the date of that meeting, if you  
6 can recall?

7 A. August 9th.

8 Q. And where did the meeting take place?

9 A. In AOC, Memphis, Tennessee.

10 Q. Do you know why those individuals were  
11 involved in this particular meeting?

12 A. Management chose them.

13 Q. At the time of the meeting, were you aware  
14 of what Mr. Ondra's position was at FedEx?

15 A. I didn't know what his current position  
16 was.

17 Q. I mean, at the time of that meeting, did  
18 you understand Mr. Ondra was a --

19 A. Is in security.

20 Q. Was a member of the Security department?

21 A. Yes, sir.

22 Q. At the time did you understand that he had  
23 an emphasize on aviation security?

24 A. I don't remember him telling me what his  
25 title was.

1 Q. But in your own personal knowledge as you  
2 approached that meeting, did you know what his  
3 role was with the Company?

4 A. I knew he was a Security manager for  
5 FedEx.

6 Q. At this meeting -- well, how long did the  
7 meeting take?

8 A. I would give you a guesstimate. I would  
9 say probably no longer than 40 minutes at most.

10 Q. Who led the meeting with respect to the  
11 management group?

12 A. Who led the meeting?

13 Q. Yes.

14 A. I really don't understand the question.

15 Q. Did it seem like someone from that side  
16 was the one that was asking questions and  
17 responding to your comments?

18 A. No.

19 Q. What concerns did you raise in that  
20 meeting?

21 A. The first concern that I expressed to them  
22 was my concern about real-time tracking, what I  
23 learned about the printer bombs, the dummy  
24 shipment, and the exploitation of our aircraft as  
25 vehicles for bombs. I had a concern that we

1 weren't doing enough to improve our security for  
2 the airplanes. And I --

3 Q. Let me get this written down, I'm sorry.  
4 You're getting ahead of me.

5 A. All right.

6 Q. So I have real-time tracking, the printer  
7 bomb, and the dummy shipments.

8 A. Yes, sir.

9 Q. And the concerns over our efforts to do  
10 what?

11 A. To deter and prevent bombs on our  
12 airplanes.

13 Q. Anything else?

14 A. I spoke about what I had learned about  
15 al-Asiri and Al-Qaeda, and that I had presented  
16 this material as a model to Bill Logue in 2002,  
17 and that my predictive model came true.

18 Q. Anything else?

19 A. I gave them my military background. I  
20 told them that I was an AWACS aircraft commander  
21 who worked in --

22 Q. Hold on. I think my question is what  
23 other concerns did you raise in the meeting?

24 A. Well, I'm getting to that. Do you want to  
25 know what I told them, or do you just want to

1 stick to security?

2 Q. I want to stick to the concerns that you  
3 raised in the meeting.

4 A. Okay.

5 MR. SEHAM: I think he's giving you  
6 the background to what the next concern was.

7 Q. Well, I feel like you're about to tell me  
8 that you told them about your military background?

9 A. Yes.

10 Q. And then what happened?

11 A. I'm just giving you the sequence of what I  
12 discussed.

13 Q. Okay.

14 A. If you want it by the subject matter, I  
15 will do it any way you want.

16 Q. What happened after you told them about  
17 your military background?

18 A. I told them about my father who flew  
19 rescue missions at the end of the Batista regime  
20 in Cuba, and he flew families out of Cuba. I told  
21 him that my grandfather worked in intelligence in  
22 World War II, and basically that I had a  
23 background myself in intelligence and I don't come  
24 to the table without any credentials. And they  
25 asked me is there anything else? And I said,

1 well, as a matter of fact, there is. I have  
2 concerns about rumors I have heard in the crew  
3 lounge about Auburn Calloway. I heard that he had  
4 converted to Islam. And based on my personal  
5 knowledge of Auburn Calloway, I felt this was  
6 something that we should investigate.

7 Q. Anything else that was discussed in that  
8 meeting?

9 A. We talked about my military experience,  
10 tracking and following the Russians around the  
11 North Atlantic. I -- let's see, we talked  
12 about -- oh, we talked about appealing to the  
13 other -- I'm sorry, not to the -- not to the  
14 other -- strike that.

15 We talked about me trying to convince  
16 FedEx to go to Homeland Security to lobby for the  
17 termination of the transmission of real-time  
18 tracking data. I thought it would be in our best  
19 interest if we stop publishing that data. I said  
20 at the -- also with regards to Calloway, I said,  
21 if it is indeed true that he is communicating with  
22 Al-Qaeda, it may bear fruit to mike his cell and  
23 maybe FedEx Security could talk to the Department  
24 of Justice about that.

25 Q. Anything else?

1       A.       I mentioned the parallels between 9/11,  
2       the attacks on 9/11, and Auburn Calloway's attack  
3       on Flight 705.

4       Q.       Anything else?

5       A.       As I sit here trying to rack my brain, I  
6       think that's the bulk of what I said. But if I am  
7       missing something, please remind me, something  
8       that you have a question about.

9       Q.       Well, let me go over what you have said,  
10      and I'm not going to try to even paraphrase or  
11      repeat what you said. I'm just going to do it  
12      sort of as a heading if that's fair. You  
13      mentioned real-time tracking, what you learned  
14      about the printer bomb, what you learned about the  
15      dummy shipments, efforts to deter and prevent  
16      bombs on airplanes, al-Asiri and Al-Qaeda, right?

17     A.       Yes, sir.

18     Q.       As they relate to the printer bomb?

19     A.       Yes, sir.

20     Q.       You discussed your military background.  
21     You discussed your father's background and your  
22     grandfather's background. You discussed Auburn  
23     Calloway rumors that he had converted to Islam and  
24     that he was communicating with Al-Qaeda?

25     A.       No.

1 Q. No?

2 A. I said that it was reported to me in the  
3 crew lounge via rumors that he had converted to  
4 Islam. I didn't say he converted to Islam. I  
5 also didn't say that he has been communicating  
6 with Al-Qaeda. I said, perhaps if he is, it would  
7 bear fruit if we miked his cell and gathered  
8 intelligence.

9 Q. And then you talked about going to  
10 Homeland Security to terminate the transmission of  
11 flight data, real-time flight data?

12 A. Yes. To go to the Federal authorities and  
13 bring this real-time tracking system to a close  
14 for public dissemination.

15 Q. And you talked about the parallels between  
16 9/11 and Auburn Calloway?

17 A. Yes, sir.

18 Q. Is that a fair summary of what was  
19 discussed at this meeting?

20 A. I think so. I mean, I'm doing my best to  
21 recall everything that was discussed. That's the  
22 security portion. Now, there were other things  
23 that were discussed.

24 Q. Okay. What else was discussed?

25 A. Not in the security vein, but at the time

1       that I concluded my comments, they asked me, do  
2       you have any other concerns? I said, well not  
3       right now, but at that time Robb Tice stood up and  
4       he had a big stack of Mayday Mark postings  
5       highlighted. And he pushed them across the table  
6       and gave them to me, and he said, are you Mayday  
7       Mark? I said, who is Mayday Mark? He said,  
8       aren't you Mayday Mark on Airline Pilots Central?  
9       Or whatever the name of the bulletin board is. I  
10      said, I don't have a clue what you're talking  
11      about. And he says, Bill McDonald thinks you have  
12      had a stroke. And I -- as I recall, I laughed. I  
13      said, where is Bill McDonald? And Robb Tice said,  
14      he's on vacation. And I said, well, if he's going  
15      to make that kind of allegation against me, he  
16      ought to have the cojones to show up at this  
17      meeting. And Robb sat back down, and he says, are  
18      you telling me right now that you didn't make  
19      these postings about an ischemic attack, having an  
20      ischemic attack? And I said, that's exactly what  
21      I'm telling you.

22                   And Rob Fisher at that point said, Mark,  
23      do you have your medical certificate? I said,  
24      yes, I do. May I see it? So I took it out of my  
25      wallet. I handed it to Robb Tice. Rob says, this

1 is not Mayday Mark. And Robb Tice said to Fisher,  
2 how do you know? And Rob Fisher said, his medical  
3 is in January. And Mayday Mark's medical was in  
4 November. And I didn't know what was going on at  
5 the time. I didn't understand the logistics of  
6 what they were trying to do by assigning Mayday  
7 Mark to me. But I knew something was very  
8 strange.

9 And at that point Rob Fisher said to me,  
10 Mark, I'm putting you back on flying status in  
11 20 minutes. And I said, okay, but what about my  
12 security concerns? You got to remember my  
13 original intent was security in the very  
14 beginning. I still wanted somebody to talk to me  
15 about security, and none of the three individuals  
16 from management at that meeting ever answered my  
17 security concerns, not a single one of them,  
18 anything I have said. So...

19 Q. What did Rob Fisher say in response to  
20 your question about your security concerns?

21 A. Nothing. He didn't say anything. He  
22 said, Mark, I'm putting you back on flying status.

23 Q. Well, I think your testimony is he said he  
24 was putting you back on flying status, and then  
25 you asked, what about your security concerns.

1       A.       I said, what about my security concerns?  
2       And at that point they were saying, well, that's  
3       Ondra's department. Ondra didn't leave the  
4       meeting once. He left the meeting four or five  
5       times. He took various cell phone calls during  
6       the meeting. He was in and out of the room four  
7       or five times. And during that particular  
8       conversation about Mayday Mark, he was not in the  
9       room. And I think part of the misunderstanding of  
10      this Mayday Mark incident is they had this belief  
11      going into the meeting that I had had a stroke. I  
12      didn't know that. I thought we were -- in fact,  
13      the ALPA attorney called me and said, do you want  
14      representation? I said, for what? Why do I need  
15      an attorney? I'm going there to talk about  
16      security. Well, I guess the Company contacted the  
17      Union and said, he should bring counsel.

18     Q.       You don't know that to be a fact though,  
19     right?

20     A.       I think it's in emails that you guys  
21     supplied to us.

22     Q.       But you don't have personal knowledge of  
23     that, do you?

24     A.       I don't have personal knowledge, that is  
25     correct.

1 Q. All right. Anything else that was raised  
2 or spoken about at the meeting?

3 A. At the end of the meeting, Robb Tice and I  
4 spoke in the hallway.

5 Q. What was discussed at that point?

6 A. I said, why didn't you go to the operator  
7 of the bulletin board and ask them who Mayday Mark  
8 was? Whoever posts on those bulletin boards, they  
9 have to sign up. Why didn't you just contact the  
10 pilot who ran the bulletin board and ask him who  
11 is Mayday Mark, instead of dragging me into this  
12 mess?

13 Q. What did Robb say in response?

14 A. He said something about the First  
15 Amendment. He says, no, no, no, we can't  
16 interfere with the First Amendment rights of the  
17 pilots.

18 Q. Did he say anything else?

19 A. That was it. Rob Fisher and I walked  
20 through -- out the AOC meeting room, down the  
21 hallway, and as I was leaving to go catch a  
22 commercial flight back to Austin, he said, Mark,  
23 I'm putting you back on NOQ right now just as soon  
24 as I get over to my office. I said, thanks, Rob,  
25 appreciate it. I thought it was the end of it.

1 Q. You said he's putting you back on NOQ or  
2 he's taking you off?

3 A. I'm sorry, he is putting me back on flight  
4 status, taking me off of NOQ.

5 Q. And that concludes the meeting?

6 A. I think so, yes.

7 Q. With respect to real-time tracking, I  
8 think we covered that. You're referring to the  
9 tracking of planes, the data of -- the real-time  
10 data of the flight, correct?

11 A. Yes, sir.

12 Q. That information that is then conveyed to  
13 the FAA?

14 A. Yes, sir.

15 Q. And then the FAA publishes it on a  
16 website, and you named one of them.

17 A. Multiple websites and also on apps on your  
18 iPhone. Okay. So --

19 Q. Go ahead.

20 A. So one website to give you an example was  
21 Flightaware.com.

22 Q. And that's what your concern was about  
23 when you mentioned real-time tracking?

24 A. What?

25 Q. This live tracking of the flight that is

1 placed on websites like Flightaware.com?

2 A. Yes, sir.

3 Q. And then you communicated what you learned  
4 about the printer bomb, and that's a summary of  
5 what you read online, correct?

6 A. Yes, sir.

7 Q. And you've discussed your concerns about  
8 the dummy shipments. Again that's what you read  
9 online, correct?

10 A. Yes, sir.

11 Q. And what specifically did you say about  
12 the dummy shipments?

13 A. I said that in 2001 and 2002, I predicted  
14 that they would ship dummy packages ahead of an  
15 actual bomb placement. They would collect the  
16 data, the flight track, time, altitudes, location,  
17 they would take that data and use it to set the  
18 timers of their detonators.

19 Q. That's why you wanted the real-time  
20 tracking of the flight information eliminated?

21 A. Yes, sir. I thought that you're aiding  
22 and abetting these terrorists. We are not  
23 deterring them. It's one level of deterrence that  
24 we can do that won't cost us a dime. We should be  
25 doing it right now as we speak, but we are not.

1 Q. And to do that it would require FedEx to  
2 go to the FAA, correct?

3 A. They act in concert. The Company  
4 publishes; the FAA receives and disseminates.

5 Q. You had a -- you know Auburn Calloway,  
6 correct?

7 A. I knew him.

8 Q. Prior to the incident in the mid-nineties,  
9 how would you describe your relationship with him?

10 A. I was his training partner in two aircraft  
11 training programs, the 727 and the DC-10. So I  
12 spent weeks and weeks and weeks with him.

13 Q. Were you ever roommates?

14 A. No.

15 Q. Did he ever confide in you as why he did  
16 what he did in that attack?

17 A. We haven't spoke since he did what he did.

18 Q. And you heard rumors that he had converted  
19 to Islam?

20 A. Yes, sir.

21 Q. Was that concerning to you?

22 A. It was worth mentioning as another item  
23 when they said, do you have any other issues, and  
24 I said, yes. So as a matter of fact, it was more  
25 of an afterthought than it was a central concern

1       when I wrote to Bill McDonald.

2       Q.       Why was his conversion, his alleged  
3       conversion to Islam a concern to you?

4       A.       Because of his connection to violent  
5       takeovers of aircraft.

6       Q.       The connection of people who have the  
7       Islam faith and their connection to the takeover  
8       of aircraft, correct?

9       A.       I'm not going to be politically correct  
10      with you. I believe that Muslims are engaged in  
11      terrorism all over the world.

12     Q.       Okay.

13     A.       And any time you have a terrorist, which  
14     is what Auburn Calloway was, if the rumor is true  
15     that he has aligned himself with Islam, we should  
16     be doing our due diligence in collecting whatever  
17     intelligence we can get out of him.

18     Q.       Okay. Now, you mentioned that you  
19     consider Mr. Calloway a terrorist?

20     A.       Yes, I do.

21     Q.       And how do you -- what is your formation  
22     of that belief?

23     A.       His violent attempt to kill three pilots  
24     on Flight 705.

25     Q.       Okay. Any other -- anything else that

1 would contribute to your belief that he's a  
2 terrorist?

3 A. That's enough for me.

4 Q. Now, did you hear rumors that he was  
5 communicating with Al-Qaeda, or you just had a  
6 fear that he may communicate with Al-Qaeda?

7 A. No. The rumors I heard were -- on two  
8 occasions in the crew lounge I heard several  
9 pilots talking -- now pilots I didn't know. But  
10 when we congregate in the crew lounge, we're  
11 filling out and signing flight releases and  
12 checking weather. We're all packed together. I  
13 mean, there's several hundred of us in there every  
14 night, and you hear conversations going on around  
15 you, by you, right in front of you. You hear a  
16 myriad of different...

17 Q. Had you heard he was communicating with  
18 Al-Qaeda, or were you concerned that he may  
19 communicate with Al-Qaeda?

20 A. Well, the issue about -- that was my  
21 personal concern is if a guy has aligned himself  
22 with terror in a cockpit and he's joined Islam, I  
23 think it would be -- he would be a good source for  
24 intelligence gathering. That's my personal  
25 opinion.

1 Q. So there weren't -- just so I'm clear,  
2 there were not rumors in -- among pilots that he  
3 was actively communicating with Al-Qaeda?

4 A. There were -- I did not hear that specific  
5 rumor in the crew lounge. However, the inference  
6 was in these conversations is that he's converted  
7 to Islam, and I think most pilots would expect the  
8 Company and the Department of Justice to be  
9 monitoring his cell if they take security  
10 seriously. You are aware that the government does  
11 monitor cells, right, inside prisons?

12 Q. I appreciate your question, but it's --  
13 I'm not the one being deposed. I hate to be, you  
14 know, abrupt about it, but this is my opportunity  
15 to ask you questions. Okay?

16 A. I'm sorry.

17 Q. What is your knowledge of the government  
18 monitoring cells?

19 A. They get court orders to do it.

20 Q. How do you know that?

21 A. I read.

22 Q. Where is your source of information?

23 A. You can pull it up on the Internet.

24 Q. So it's online newspaper articles?

25 A. You can -- yes. You can go to any Google,

1       Yahoo, whatever search engine you want and just  
2       Google the search terms.

3       Q.        You haven't been involved in an effort by  
4       the government to bug a prisoner's cell, have you?

5       A.        No.  I have not.

6       Q.        Have you seen any court orders that are  
7       permitting the bugging of a particular inmate's  
8       cell?

9       A.        I have not read a particular court order,  
10      but I do know that the court order is the legal  
11      vehicle for the Department of Justice.  They get a  
12      federal judge to sign a court order permitting the  
13      eavesdropping on prisoners' cells.  They do it for  
14      intelligence gathering all the time.

15     Q.        And you're saying that based on your  
16     knowledge of what you've read on the Internet,  
17     correct?

18     A.        Yes.

19     Q.        And you have -- just to be clear, you have  
20     not actually seen a court order requiring or  
21     allowing that, correct?

22     A.        That is correct.

23     Q.        I think I know what the answer is going to  
24     be, but I'm going to ask it anyway.  Do you know  
25     who you heard the rumor that he had converted to

1 Islam? What pilot told you that or where you  
2 heard that from?

3 A. The where is in the crew lounge. The who  
4 I can't tell you.

5 Q. As we sit here today, are you aware of  
6 anyone who has first-hand knowledge of Auburn  
7 Calloway's conversion to Islam?

8 A. No, sir.

9 Q. During this meeting, did Todd Ondra  
10 respond to any of your concerns?

11 A. No, sir.

12 Q. Did he say anything in the meeting?

13 A. He just nodded his head.

14 Q. During the meeting, did Rob Fisher respond  
15 to any of your concerns?

16 A. No, sir.

17 Q. During the meeting, did Robb Tice respond  
18 to any of your concerns?

19 A. No, sir.

20 Q. At some point later that day were you  
21 placed back on NOQ status?

22 A. No. I think you made the same mistake I  
23 did previously. They took me off of NOQ. So I  
24 was back on flying status.

25 Q. And at some point did they place you back

1 on NOQ status?

2 A. I just wanted to qualify that.

3 Q. At some point did they place you back on  
4 NOQ status?

5 A. That's what Rob Fisher told me.

6 Q. When did he tell you that?

7 A. In a phone call the night that I arrived  
8 back in Austin, the evening.

9 Q. The same day as the meeting?

10 A. Yes, sir.

11 Q. What was his explanation at that point?

12 A. He called me and said, Mark, I have got  
13 some unfortunate news for you. I said, what is  
14 that? He says, I'm going to have to place you  
15 back on NOQ. I said, why? And he said, Security  
16 wants you to get a psychiatric exam. And I said,  
17 what the F for?

18 Q. Did you use the real profane word?

19 A. Yes, I did.

20 Q. I appreciate your candor with this  
21 proceeding. I just wanted to make sure I got the  
22 clear record of what happened.

23 A. And he said, Mark, watch your language.

24 We are on a recorded line. And I said, I don't  
25 give an F. I said, why does Security want me to

1 get a psychiatric exam? And Rob said, all they  
2 said was is you know too much.

3 Q. Did he explain that?

4 A. No, he didn't.

5 Q. How long did the conversation last?

6 A. Less than five minutes. My phone cell  
7 records should indicate that, which we have  
8 provided to you.

9 Q. What time was this phone call?

10 A. I want to say it was sometime around -- it  
11 was late in the evening, close to sunset. Late in  
12 the day I should say, not in the evening, but late  
13 in the day.

14 Q. So this was summertime so somewhere around  
15 7:00 or 8:00?

16 A. Could be. Again it's reflected on the  
17 telephone log I provided you.

18 Q. Was anything else said during this  
19 meeting?

20 A. Not that I can recall. He apologized. I  
21 said, why didn't you -- why are they -- the only  
22 other thing we talked about was the timing of it.  
23 I said, why are you waiting until now to tell me  
24 this? He said, I just -- I just found out about  
25 it. I think what happened was I was on the

1 airplane flying from Memphis to Austin when they  
2 were meeting or having telephone calls or emails  
3 or whatever it was they did. And then when I  
4 turned my cell phone back on in Austin, I received  
5 a phone call from him. He may have tried to call  
6 me earlier in the day, but I don't know.

7 Q. Okay. Anything else that was discussed  
8 during this phone call?

9 A. Not that I can recall.

10 Q. Were you emotional during the call?

11 A. Absolutely.

12 Q. Did you cry at all during the call?

13 A. No. I used some profanity.

14 Q. Do you know what he met by the comment  
15 that "you know too much"?

16 A. I assumed it was because of my  
17 conversations earlier in the day about security  
18 issues.

19 Q. You don't know that as a fact?

20 A. I assumed it.

21 Q. All right. At some point --

22 MR. TADLOCK: You want to take a  
23 break?

24 MR. SEHAM: I'm good.

25 MR. TADLOCK: I will step out quick.

1 BY MR. RIEDERER:

2 Q. So at some point you went through the 15.D  
3 evaluation process, correct?

4 A. I believe so. A 15.D. I think the  
5 Company attempted to conduct a 15.D examination.

6 Q. I'm going to hand you a letter from Alan  
7 Armstrong to Robb Tice and James Ferguson dated  
8 August 13, 2013, and we will mark it as Exhibit 9.

9 (Whereupon, the above-mentioned  
10 document was marked as Exhibit No. 9.)

11 A. (Witness reviews document.)

12 Okay.

13 Q. Have you seen this letter before?

14 A. I believe so. Yes.

15 Q. Did you see this letter before  
16 Mr. Armstrong sent it?

17 A. I don't recall.

18 Q. Did you contribute to providing  
19 information that is -- the information that is  
20 contained in this letter?

21 A. He questioned me on the telephone about  
22 what happened, and I'm assuming that is where he  
23 got the narrative for his letter.

24 Q. And have you --

25 MR. SEHAM: Be careful about

1 attorney/client communications here.

2 Q. Yeah. And I also will be careful. If I  
3 cross the line, just let me know. I don't intend  
4 to cross the line.

5 Does this letter accurately explain the  
6 events as you saw them?

7 A. Well, I mean, it's a four-page letter. Do  
8 you want me to take the time to read it?

9 Q. Yes.

10 A. (Witness reviews document.)

11 Well, if I see any inaccuracies in this  
12 letter, do you want me to point them out one  
13 paragraph at a time or do it at the very end?

14 Q. Why don't you read through it, and then  
15 you can list them off.

16 MR. SEHAM: Do you need a pen to mark  
17 them as you go?

18 A. I got one. Can I mark on this?

19 MR. SEHAM: Is that the stickered  
20 one?

21 MR. RIEDERER: Yeah.

22 MR. SEHAM: Why don't you mark what  
23 the page and paragraph is.

24 A. Okay. (Witness continues to review  
25 document.)

1 I have read the letter.

2 Q. Okay.

3 A. And did you want me to tell you what I --  
4 just things that leap out at me about it.

5 Q. Yeah. Just -- I'm not sure if we  
6 established this on the record yet or not. This  
7 is a letter from your attorney to FedEx, correct?

8 A. Yes.

9 Q. And it is a several page letter that  
10 summarizes concerns with FedEx's treatment towards  
11 you, correct?

12 A. I believe that's what it does.

13 Q. And you have now had a chance to read this  
14 letter and you have found some inaccuracies in  
15 your attorney's letter; is that correct?

16 A. Yes.

17 Q. You can identify them?

18 A. In his paragraph numbered 1 he says that I  
19 was the FedEx ALPA Security Committee chairman  
20 during the months that followed September 11,  
21 2001. Technically it was the FPA.

22 Q. Okay.

23 A. They were in a transition to ALPA. Okay.

24 Q. Okay.

25 A. That's one correction. In paragraph 9,

1 9(b), that is a topic that we briefly discussed at  
2 the August 9th meeting that I didn't mention to  
3 you earlier in my testimony. I wanted to start an  
4 operations research group within Flight Ops. My  
5 master's degree is in policy analysis, and I  
6 thought it would be a good idea to invoke the  
7 participation of the pilots in a joint security  
8 committee with the Company. I wanted to see more  
9 direct involvement from the pilots involved in  
10 that security process.

11 Q. So 9(b) is not inaccurate. It's just  
12 something that you wish to add to what was  
13 discussed in your meeting?

14 A. Correct.

15 Q. And is 9(b) an accurate summary of what  
16 was -- what you raised in the meeting?

17 A. Yes. I think it's -- I mean, it's written  
18 by an attorney, but I told the attorney. This is  
19 what he turned it into. So I think that's  
20 accurate.

21 Q. What was the response to -- from the group  
22 to that -- that point that you raised?

23 A. 9(b)?

24 Q. Yes.

25 A. Zero. Got no reaction whatsoever.

1 Q. Okay. Anything else in the letter?

2 A. Nothing leaps out at me as being  
3 inaccurate.

4 Q. Okay. I'm going to hand you a letter from  
5 Rob Fisher dated August 16, 2013. We'll mark it  
6 as Exhibit 10, and ask if you can identify this  
7 letter?

8 (Whereupon, the above-mentioned  
9 document was marked as Exhibit No. 10.)

10 A. (Witness reviews document.)

11 Okay. I have read it.

12 Q. Did you receive this letter?

13 A. Yes, sir.

14 Q. And this letter references 15.D of the  
15 Collective Bargaining Agreement?

16 A. Yes, sir.

17 Q. And it's asking you to contact Dr. Bettes'  
18 office; is that correct?

19 A. Yes, sir.

20 Q. And Dr. Bettes is with Harvey Watt?

21 A. I believe he was under contract to Harvey  
22 Watt.

23 Q. He's the Company's aeromedical advisor?

24 A. I believe you said that to me earlier that  
25 Harvey Watt was the Company's aeromedical advisor.

1 Q. I'm going to hand you an email from  
2 Christopher Johnson to you on August 26, 2013.  
3 We'll mark it as Exhibit 11. I'm going to ask if  
4 you received this email?

5 (Whereupon, the above-mentioned  
6 document was marked as Exhibit No. 11.)

7 Q. Just to be precise, I'm only referring to  
8 the email from Chris Johnson to  
9 cargopilot@gmail.com. There are other emails on  
10 this page that I'm not --

11 A. Okay. Starting at the bottom of 080?

12 Q. Correct.

13 A. Okay. (Witness reviews document.)

14 Okay. I have read it.

15 Q. Do you understand that Christopher Johnson  
16 was employed by Harvey Watt?

17 A. Yes.

18 Q. Prior to this email, had you spoken with  
19 Mr. Bettles?

20 A. I spoke to him on the telephone several  
21 times. I don't know the exact date, but --

22 Q. Did you speak to him before you got this  
23 email?

24 A. I don't know. But I did speak to him as  
25 early as I could.

1 Q. And this email reflects that you were  
2 being sent for an evaluation at Talbot Recovery  
3 Campus?

4 A. That's what the email says.

5 Q. Did you have an evaluation at that  
6 location?

7 A. No, I did not.

8 Q. Do you have a location -- did you have an  
9 evaluation following this email?

10 A. I did.

11 Q. Do you recall who conducted the first  
12 evaluation?

13 A. The first evaluation was done by my  
14 aeromedical examiner Mark Nugent.

15 Q. When did that occur?

16 A. Immediately after I was informed of this  
17 Rob Fisher letter, the -- receipt of the  
18 August 16th letter, I called my aeromedical  
19 examiner immediately.

20 Q. Did he perform an evaluation on you after  
21 the August 16th letter?

22 A. Yes.

23 Q. Did you do it in person or over the phone?

24 A. Both.

25 Q. Do you recall the date that you -- he

1 conducted the evaluation over the phone?

2 A. No, I do not. I believe he did send a  
3 letter to either Harvey Watt or to FedEx. I don't  
4 recall. Or he may have sent it to Dr. Bettes, I  
5 can't recall.

6 Q. I'm going to hand you a letter -- I'm  
7 going to hand you a letter from Mark Nugent to  
8 a -- and it's addressed To Whom It May Concern.  
9 It's dated August 23, 2013.

10 A. What is the date again?

11 Q. August 23, 2013. I'm going to hand this  
12 to you so you can look at it. We'll mark this as  
13 Exhibit 12. I'm going to ask if this is the  
14 letter you were just referring to?

15 (Whereupon, the above-mentioned  
16 document was marked as Exhibit No. 12.)

17 A. (Witness reviews document.)

18 I believe this to be the letter, yes.

19 Q. So between August 16th and August 23rd,  
20 you had a telephone conversation with Dr. Nugent?

21 A. Yes. Or home phone. I don't know which.

22 Q. And do you recall the date that you had  
23 that conversation?

24 A. No, I do not.

25 Q. And then did you have an in-person meeting

1 with him?

2 A. I had an in-person meeting with him during  
3 my flight physical.

4 Q. And that was in July of 2013?

5 A. July 19, 2013.

6 Q. Did you have an in-person evaluation with  
7 him between August 16th and August 23rd?

8 A. I don't believe so. But I -- I would have  
9 to check his records.

10 Q. What was his determination of your  
11 physical state?

12 A. As he -- and I quote his letter, entirely  
13 unremarkable, similar to prior examinations.

14 Q. And what his -- what was his determination  
15 of your mental state?

16 A. I did not notice anything unusual or  
17 abnormal. Captain Estabrook was well groomed,  
18 pleasant, conversant, oriented, logical and  
19 appeared cognitively intact.

20 Q. In your conversation with him over the  
21 phone, did he also share his conclusions with you  
22 of his opinion, medical opinions of your mental  
23 status?

24 A. I think I asked him. I said, do I -- do I  
25 sound crazy to you? He said, of course not.

1 Q. Did he express any concerns with any  
2 aspect of your mental state?

3 A. Absolutely not.

4 Q. Did he express any concerns with any  
5 aspect of your emotional state?

6 A. Absolutely not.

7 Q. And at that time do you believe that you  
8 had any issues with your mental or emotional  
9 state?

10 A. Say that one more time.

11 Q. At that time did you have any issues with  
12 your mental or emotional state?

13 A. No.

14 Q. I have another letter that is dated  
15 August 24th, 2013, from Dr. Leonard to you. We  
16 will mark this as Exhibit 13, and ask if you can  
17 identify this letter?

18 (Whereupon, the above-mentioned  
19 document was marked as Exhibit No. 13.)

20 MR. SEHAM: Do you have a copy?

21 THE WITNESS: I'm sorry.

22 A. (Witness reviews document.)

23 I remember this letter, yes, sir.

24 BY MR. RIEDERER:

25 Q. Who is Dr. Leonard?

1 A. He is an aeromedical examiner specializes  
2 in aviation medicine in Atlanta.

3 Q. Did you select him? Did you contact him?

4 A. I did. I went through a physical with  
5 him.

6 Q. Did you do that in person?

7 A. Yes, sir.

8 Q. What was the date of that physical?

9 A. 24th.

10 Q. So the date of this letter?

11 A. August 24th -- well, that's -- that's a  
12 good question. It may have been a day or two  
13 before. I don't know exactly when he typed this.  
14 It could have been several days after the exam.

15 Q. And were his conclusions of his evaluation  
16 with you that you had no issues with your mental  
17 or emotional state?

18 A. That's the way I read it.

19 Q. Is it your belief that on August 24th,  
20 2013, the date of this letter, you had no issues  
21 with your mental or emotional state?

22 A. That is correct.

23 Q. Do you know who George Glass is?

24 A. Yes.

25 Q. Who is George Glass?

1 A. He was a psychiatrist as I understand it.

2 Q. Did he evaluate you?

3 A. Yes, he did.

4 Q. Do you recall when he evaluated you?

5 A. Yes.

6 Q. What was the date of his evaluation?

7 A. It was 9/11.

8 Q. Was that evaluation done in person?

9 A. Yes, it was.

10 Q. Where was that evaluation?

11 A. Houston, Texas.

12 Q. I'm going to hand you what appears to be a  
13 report from Dr. Glass dated September 16, 2013.  
14 We will mark it as Exhibit 14. I'm going to ask  
15 if you have seen this report before?

16 (Whereupon, the above-mentioned  
17 document was marked as Exhibit No. 14.)

18 A. (Witness reviews document.)

19 Yes.

20 Q. You have seen this report?

21 A. Yes.

22 Q. And without replacing what is said in this  
23 report, is it fair to say that Dr. Glass  
24 determined that you were not fit to fly?

25 A. I believe his letter reads: While I

1       suspect that he could technically continue flying,  
2       his personality issues and behavior are such that  
3       I suspect that others will not want to fly with  
4       him, and he is so inappropriate that he may create  
5       problems for himself and the company while he  
6       feels he is helping others.

7       Q.       Okay. He says on page 4 of the report  
8       that you appeared to be lonely and isolated. Do  
9       you believe that to be true?

10      A.       No.

11      Q.       On page 2 midway through the page it says,  
12      Mr. Estabrook denies symptoms of depression and  
13      said that he has no problems sleeping; is that  
14      true?

15      A.       Yes.

16      Q.       On page 3 of the report it says that -- at  
17      the bottom it says that Mr. Estabrook presented  
18      himself in a somewhat rambling manner, as if he  
19      was almost hypo manic. Do you believe that to be  
20      true?

21      A.       No.

22      Q.       It says that he seemed -- you seemed to be  
23      somewhat paranoid.

24      A.       No.

25      Q.       At the time of this report, do you believe

1       you had any issues with your mental or emotional  
2       state?

3       A.       No.

4       Q.       I'm going to hand you a letter from Harvey  
5       Watt addressed to you dated September 24, 2013,  
6       and I'm going to have this marked as Exhibit 15,  
7       and ask if you received this letter?

8                       (Whereupon, the above-mentioned  
9       document was marked as Exhibit No. 15.)

10      A.       (Witness reviews document.)

11                    I have read it.

12      Q.       Is this a letter from Thomas Bettes to  
13      you?

14      A.       Yes.

15      Q.       Did you receive this letter?

16      A.       I don't recall it, but it is sent to  
17      Federal Express.

18      Q.       Did Thomas Bettes ever inform you that you  
19      were unfit for flying duties?

20      A.       I think this letter was produced in  
21      discovery, and that was the first time I saw it.  
22      But I could be wrong about that.

23      Q.       Did Thomas Bettes ever inform you that you  
24      were unfit for flying duties?

25      A.       He never told me that.

1 Q. Did someone ever inform you that you were  
2 unfit for flying duties?

3 A. As a matter of fact, no.

4 Q. I'm going to hand you an email exchange  
5 between you and Mr. Bettes. Looks like your email  
6 is dated October 9, 2013, and Mr. Bettes' response  
7 is dated October 12th, 2013, and we will have this  
8 marked as Exhibit 16.

9 A. My response is dated when?

10 Q. You can look at the email.

11 A. Oh, okay.

12 (Whereupon, the above-mentioned  
13 document was marked as Exhibit No. 16.)

14 A. (Witness reviews document.)

15 Okay. I have read it.

16 Q. Okay. Is this an accurate copy of an  
17 email exchange you had with Thomas Bettes?

18 A. I think so.

19 Q. Can you summarize your message to  
20 Dr. Bettes in this email?

21 A. I can read it into the record.

22 Q. Well, it's already in the record. I mean,  
23 is it fair to say that you were seeking a second  
24 opinion under 15.D of the contract?

25 A. I had already done that.

1 Q. Okay.

2 A. I was reminding Dr. Bettes that he ignored  
3 my aeromedical examiner, and according to the  
4 contractor, he should have been consulting with  
5 him. He ignored him and never answered him until  
6 I raised this issue with him, and I said to  
7 Dr. Bettes, you're directing me to go get  
8 treatment, but you've never talked to my  
9 aeromedical examiner.

10 Q. Okay. And --

11 A. And even though we provided you with a  
12 copy of the letter. And I also asked him, I said,  
13 you're recommending me for treatment, but you've  
14 never told me what the diagnosis is.

15 Q. Well, at the time of this email, you had  
16 already been evaluated by Dr. Glass, right?

17 A. Yes.

18 Q. And now Dr. Bettes was recommending  
19 treatment to you?

20 A. He either did that on the telephone or he  
21 sent me a letter. Or maybe it was in this -- I  
22 don't -- I think it was on the telephone. He  
23 called me. That's right. He did. He called me  
24 on the telephone and said, I'm going to recommend  
25 you for treatment. Do you know somebody in

1 Austin? And I said, treatment for what? He said,  
2 well, Dr. Glass says you would benefit from  
3 treatment. I said, what is the diagnosis? He  
4 said, well, I don't know. That's what he told me.  
5 I said, I think you better discuss this with my  
6 aeromedical examiner as per the contract. So  
7 that's when he began discussions with Dr. Nugent,  
8 and Dr. Nugent and him agreed this was -- this  
9 procedure was not being followed, and that I was  
10 going to elect a third-party examination.

11 Q. Were you involved in any communication  
12 with Dr. Bettes and Dr. Nugent?

13 A. Was I involved in any what?

14 Q. Any communication, in a phone call?

15 A. With Dr. Bettes?

16 Q. And Dr. Nugent.

17 A. You mean --

18 Q. You said that they spoke to each other.

19 A. They did.

20 Q. Did you participate in those discussions?

21 A. No. Those were private telephone  
22 conversations between the two of them.

23 Q. How do you know what occurred in those  
24 conversations?

25 A. Dr. Nugent relayed them to me.

1 Q. And it indicates here that -- you say, it  
2 is my understanding that there is now needed a tie  
3 breaker evaluation by a third doctor?

4 A. That was my understanding of how the  
5 procedure worked.

6 Q. And you agreed to go see Dr. Green for the  
7 tie-breaker process; is that correct?

8 A. Yes. Yes.

9 Q. Did Dr. Green evaluate you?

10 A. Yes.

11 Q. And did he do it in person?

12 A. Yes.

13 Q. Where did that evaluation take place?

14 A. Columbia, South Carolina I believe. If  
15 I'm wrong about the city, it may have been  
16 Charleston. I can't remember.

17 Q. Do you recall his conclusions following  
18 that evaluation?

19 A. Yes, I do.

20 Q. What were his conclusions?

21 A. He said that what Dr. Glass did to me was  
22 abhorrent.

23 Q. What were his conclusions with respect to  
24 your mental state?

25 A. That I was absolutely normal, and he saw

1 nothing out of the ordinary.

2 Q. What were his conclusions of your fitness  
3 for duty?

4 A. That I was fit.

5 Q. I'm going to hand you what appears to be a  
6 report from Dr. Green dated October 23rd, 2013.  
7 We will mark this as Exhibit 17, and I will ask if  
8 you have seen this report?

9 (Whereupon, the above-mentioned  
10 document was marked as Exhibit No. 17.)

11 MR. SEHAM: I'm sorry, this is 16  
12 or --

13 MR. RIEDERER: 17.

14 MR. SEHAM: 17.

15 A. It looks familiar.

16 BY MR. RIEDERER:

17 Q. Is this a report that is indicating that  
18 you are fit to fly?

19 A. I believe so.

20 Q. This is a report that is indicating that  
21 you do not have any emotional or mental  
22 impairments?

23 A. He says in the discussion and  
24 recommendations on ME 1481: During my evaluation  
25 today, I did not see any evidence of any abnormal

1 thinking or mood symptoms and also feel as if he  
2 is psychiatrically stable and displays no evidence  
3 of any co-existing psychiatric disorder which  
4 would interfere with his ability to safely operate  
5 aircraft. I also strongly disagree with some of  
6 the medical opinions of Dr. Glass, and that I do  
7 not see any evidence of depression or hypo mania  
8 and that he was truly trying to raise these issues  
9 more as safety and security issues and not in an  
10 effort to raise trouble or cause problems at work.

11 Q. So at the time of this evaluation report,  
12 would you agree that you were not suffering from  
13 any emotional or mental issues?

14 A. Well, are you asking me in general or as  
15 per this report?

16 Q. As per this report.

17 A. He doesn't report any. You would have to  
18 ask him that question.

19 Q. And it's your belief at this point you  
20 were fit to fly?

21 A. I believe I was fit to fly.

22 Q. Okay. I'm going to hand you a letter from  
23 Harvey Watt to you dated October 30, 2013. We  
24 will mark it as Exhibit 18, and ask if you  
25 received this letter?

1 (Whereupon, the above-mentioned  
2 document was marked as Exhibit No. 18.)

3 A. (Witness reviews document.)

4 I may have seen it in discovery, but I  
5 don't remember it at the time.

6 Q. Does this letter reflect that you were  
7 receiving a fitness for duty approval from Harvey  
8 Watt?

9 A. That's what the letter says.

10 Q. On or about October 30th, 2013?

11 A. Yes, sir.

12 Q. Were you returned to work at some point?

13 A. After I -- I believe I went back to work  
14 in November after simulator training.

15 Q. You have filed an AIR-21 complaint against  
16 FedEx; is that correct?

17 A. Yes, sir.

18 Q. And are you alleging that FedEx retaliated  
19 against you?

20 A. Yes, sir.

21 Q. And you allege FedEx retaliated against  
22 you in violation of AIR-21?

23 A. Yes, sir.

24 Q. What retaliatory actions do you believe  
25 FedEx took against you?

1 A. With respect to this incident?

2 Q. I mean, it's your --

3 A. There were two AIR-21 reports filed.

4 Q. So let's start with the first one.

5 A. In Laredo? I believe that they initiated  
6 disciplinary action against me for refusing to fly  
7 through thunderstorms, and once I retained  
8 counsel, they re-thought it and turned it into a  
9 meeting. Once they -- once Rob Fisher withdrew  
10 his disciplinary action, I withdrew the complaint.

11 Q. Okay.

12 A. That's the first AIR-21. So they  
13 attempted to discipline me for refusing to fly  
14 into thunderstorms. That's my position.

15 Q. All right. And your position -- why --  
16 what leads you to form the belief that they were  
17 trying to discipline you for refusing to fly into  
18 thunderstorms?

19 A. By sending me a letter and by the duty  
20 officer filing a complaint with me with the  
21 Company.

22 Q. And ultimately they did not discipline  
23 you; is that correct?

24 A. That is correct.

25 Q. All right. And then you said there was a

1 second AIR-21 complaint?

2 A. Yes, sir.

3 Q. Does that indicate another reason why you  
4 believe FedEx retaliated against you?

5 A. Yes, sir.

6 Q. And what did they -- what action did they  
7 take in retaliation against you?

8 A. The first thing they did was place me on  
9 NOQ.

10 Q. When did that occur?

11 A. I believe on August 5th, 2013.

12 Q. And that was in retaliation for what?

13 A. I believe that Bill McDonald saw an  
14 opportunity to discipline me for my security  
15 concerns and for Laredo.

16 Q. Why do you believe that?

17 A. Everything that transpired.

18 Q. Well, specifically what led you to believe  
19 that Bill McDonald wanted you on NOQ because of  
20 your security concerns?

21 A. I believe that he exploited the situation.  
22 He saw an opportunity to label me as a pilot who  
23 had experienced an ischemic attack, otherwise  
24 known as a stroke -- I'm sorry, I am not a doctor,  
25 but my basic understanding is that is what it is.

1 Q. And your security concerns, what  
2 concerns -- are those the concerns you raised in  
3 the August 9th meeting?

4 A. Those were the concerns I raised in the  
5 August 9th meeting, but he placed me on NOQ first  
6 before he had any facts from my security concerns.  
7 Now, I believe he did that for several reasons.

8 Q. Placing -- hold on. Just so we are clear.  
9 You believe he did that, meaning placed you on  
10 NOQ, on August 5th?

11 A. Correct.

12 Q. What are the reasons why you believe he  
13 placed you on NOQ?

14 A. Because he was frustrated that he could  
15 not discipline me for the Laredo incident.  
16 Secondly, he saw my expression of security  
17 concerns and my desire to speak with Fred about  
18 those concerns as an opportunity to label me with  
19 this Mayday Mark character.

20 Q. In your --

21 A. In other words, he had an opportunity. He  
22 was in a position of authority to take action  
23 against me, and he thought -- he was certain that  
24 I was Mayday Mark.

25 Q. Okay. And when you say your expression of

1 security concerns, is those -- is that a reference  
2 to what was mentioned in your email to him about  
3 setting up a meeting with Fred Smith?

4 A. I believe so. Yes.

5 Q. Any other reasons why you believe he  
6 placed you on NOQ status on August 5th?

7 A. I can't think of any right now.

8 Q. Okay. Why do you believe he was  
9 frustrated that he couldn't discipline you for the  
10 Laredo incident?

11 A. Because Rob Fisher told me.

12 Q. And did he want to discipline you for the  
13 Laredo incident because you didn't show up for  
14 work?

15 A. Rob didn't tell me that.

16 Q. But didn't you say earlier in this  
17 deposition that when you encountered Bill McDonald  
18 in Indianapolis, he said, you need to show up for  
19 work?

20 A. That was a month or two later.

21 Q. Why do you believe that he placed you on  
22 NOQ status because he wanted to label you as  
23 Mayday Mark?

24 A. I think he was trying to fire me.

25 Q. Is that your personal belief?

1 A. Well, when you order a pilot for a  
2 psychiatric exam, it's not a good thing, not for  
3 his reputation, not for his employment.

4 Q. Did he ever tell you that he was trying to  
5 fire you?

6 A. No, sir.

7 Q. So you're speculating that his intent was  
8 to try to fire you?

9 A. Yes, sir.

10 Q. All right. So what other retaliatory  
11 actions did FedEx take against you?

12 A. They ordered me to undergo a psychiatric  
13 exam.

14 Q. Any other actions in which FedEx took  
15 retaliatory action against you?

16 A. They interfered with the 15.D process.

17 Q. Any other ways?

18 A. They shortened my training in the  
19 simulator.

20 Q. Any other retaliatory actions?

21 A. As I sit here right now, I would have to  
22 give it more thought, and I don't think we have  
23 time for that, but I can't recall anything other  
24 than those --

25 Q. Well, with all due respect --

1 A. Those are pretty big.

2 Q. With all due respect, this is my chance to  
3 ask you questions.

4 A. I understand. I'm trying to be  
5 cooperative. But it's been a long day.

6 Q. As we sit here today, can you think of any  
7 other ways in which FedEx retaliated against you  
8 in violation of AIR-21?

9 A. I can't think of any at this time.

10 Q. So you mentioned the calling you in for a  
11 meeting following the Laredo incident, the placing  
12 you on NOQ status on August 5th, the psychiatric  
13 exam, that FedEx interfered with your 15.D  
14 examination, and shortened training in the  
15 simulator. I want to talk about the psychiatric  
16 exam. Do you -- what do you believe -- you  
17 believe that was a retaliatory action. What was  
18 it in retaliation for?

19 A. I believe they were trying to shut me up  
20 because I knew too much.

21 Q. You knew too much about what?

22 A. The security.

23 Q. So you believe it was in retaliation to  
24 raising concerns about the live tracking of  
25 planes?

1 A. Yes, sir.

2 Q. And you said they sent you on a  
3 psychiatric exam because they thought you knew too  
4 much?

5 A. I believe that was punitive in nature, and  
6 I think they wanted the psychiatrist to give them  
7 a report that they could use to permanently ground  
8 me.

9 Q. So they're sending you for a psychiatric  
10 exam because you had too much information about  
11 security?

12 A. I was relying on Rob Fisher's statement to  
13 me on the telephone on August 9th in which he said  
14 all they said was is you know too much.

15 Q. Okay. And it's your interpretation of  
16 that comment that they were sending you to a  
17 psychiatric exam because you knew too much --

18 A. Yes.

19 Q. -- about security?

20 A. Yes, sir. I looked at -- I looked at that  
21 as a threat. I looked at that as intimidation. I  
22 looked at that as punitive in nature. I looked at  
23 it as a potential opportunity for firing me. I  
24 looked at it as a way for Bill McDonald to get  
25 back at me for Laredo. There's lots of ways I

1 looked at that.

2 Q. The comment "you knew too much" or the  
3 psychiatric exam?

4 A. The psychiatric exam.

5 Q. So you think the -- you were referred to a  
6 psychiatric exam because of the Laredo incident?

7 A. I believe that was a contributing factor.

8 Q. And why do you believe the Laredo incident  
9 had anything to do with your referral for a  
10 psychiatric exam?

11 A. Well, several reasons. After listening to  
12 Bill McDonald's deposition, that's one reason.  
13 Another reason is Rob Fisher told me that Bill  
14 McDonald was upset that he couldn't get me over  
15 the Laredo incident.

16 Q. Any other reason?

17 A. I think that's enough.

18 Q. You say that they interfered with the 15.D  
19 evaluation process?

20 A. Yes, sir.

21 Q. Who particularly interfered with the  
22 evaluation process?

23 A. I believe Rob Fisher did, and I believe  
24 that Robb Tice assisted him in that.

25 Q. What did Rob Fisher do to interfere?

1       A.       He directly communicated with Harvey Watt  
2       expressing his opinions as to why I needed a  
3       psychiatric exam.

4       Q.       How did Robb Tice interfere?

5       A.       He assisted him in his -- in Rob Fisher's  
6       communications.

7       Q.       Is there any other way they interfered  
8       with the 15.D evaluation?

9       A.       They tried to bypass the mechanisms in the  
10      Collective Bargaining Agreement.

11      Q.       What did they try to bypass?

12      A.       Well, they failed to include the opinion  
13      of my aeromedical examiner.

14      Q.       Is it --

15      A.       It's supposed to be an independent  
16      process.

17      Q.       Was it Rob Fisher's requirement to submit  
18      your independent medical examiner's report to  
19      Harvey Watt?

20      A.       I don't believe so.

21      Q.       So what did Rob Fisher or Robb Tice do  
22      with respect to your evaluation by Dr. Nugent?

23      A.       Their communications with Bettles were of a  
24      nature that made Bettles believe that they wanted a  
25      psychiatric exam for me. That pushed him in the

1 direction of hiring Glass. Okay. He was acting  
2 basically on the instructions of FedEx to hire a  
3 psychiatrist.

4 Q. What other actions did Rob Fisher take or  
5 Robb Tice take to interfere with the 15.D process?

6 A. They reported my security recommendations  
7 to Harvey Watt.

8 Q. Any other things -- and that's in the  
9 communication that Rob Fisher submitted to Harvey  
10 Watt?

11 A. Yes, sir.

12 Q. Is there anything else that Rob Fisher or  
13 Robb Tice did to interfere with your 15.D  
14 evaluation?

15 A. We asked in discovery for the  
16 communications between Robb Tice and Dr. Glass.  
17 We never received those. I suspect, my personal  
18 opinion, that Tice communicated with Dr. Glass.

19 Q. What do you base that opinion on?

20 A. There is a -- actually some notes or a  
21 final report from Dr. Glass in which he mentions  
22 communications with FedEx.

23 Q. Does he mention communications with Robb  
24 Tice?

25 A. I don't know.

1 Q. Any other ways in which Robb Tice or Rob  
2 Fisher communicated with -- or interfered with the  
3 15.D process?

4 A. I'm not a lawyer, but as a lay person  
5 sitting here, I can say that's all I can remember.

6 Q. And their effort to interfere with the  
7 15.D evaluation, what was it in retaliation for?

8 A. As I have stated before, it's in  
9 retaliation for my refusal to take off into  
10 thunderstorms at Laredo. It's also in retaliation  
11 for me trying to raise safety and security  
12 concerns to FedEx Corporation.

13 Q. And we have talked about the Laredo  
14 process, right?

15 A. Yes.

16 Q. And the safety concerns are the safety  
17 concerns we talked about earlier about the live  
18 tracking of planes, correct?

19 A. Yes, sir.

20 Q. Is there any other actions for which they  
21 were -- well, let me start over.

22 Are there any other events that they  
23 are -- that caused them to retaliate against you  
24 by interfering with the 15.D process?

25 MR. SEHAM: I'm sorry, can I hear

1       that question again?

2       Q.       Other than the Laredo incident and the  
3       security concerns that were raised in the  
4       August 9th meeting, are there any other events  
5       that caused them to allegedly retaliate against  
6       you by interfering with the 15.D process?

7       A.       I hope you're not asking me for a legal  
8       conclusion because I can't give you one.

9       Q.       No. I'm just trying to understand your  
10      viewpoint of why you believe that the referral to  
11      the 15.D was retaliatory. So you have explained  
12      that you believe it's retaliatory. I have asked  
13      you it was retaliation for what. You've mentioned  
14      Laredo and the raising of security concerns on  
15      August 9th. Are there any other events?

16     A.       Well, the statement of Bill McDonald in  
17     his deposition.

18     Q.       Which is what?

19     A.       He's assigning a series of statements to  
20     Mayday Mark about Laredo, and we have reviewed the  
21     exhibits that you provided to us from Mayday Mark.  
22     There's no such discussion of Laredo in those  
23     postings.

24     Q.       So what is the --

25     A.       So Bill -- I'm sorry.

1 Q. Go ahead.

2 A. So in my opinion Bill McDonald is obsessed  
3 with what happened in Laredo. I've always felt  
4 that. I heard it from Rob in the hallway after  
5 the meeting of May 1st and then -- now, I have  
6 heard it in his testimony. He's trying to  
7 directly tie me to the Laredo incident when  
8 there's no such exhibit that exists.

9 Q. Okay. You also listed that they shortened  
10 training in the simulator. Can you explain that?

11 A. When I -- I learned from FedEx that I was  
12 to appear in the training simulator, I was told  
13 that I was going to get three sims and then an  
14 evaluation. When I showed up on the first day of  
15 training, they changed it to one sim and then an  
16 evaluation. They shortened it.

17 Q. And remind me, what was the date of this  
18 incident?

19 A. This was in November of 2013.

20 Q. Okay. Who shortened it from three sims to  
21 one sim?

22 A. I was told the -- whoever the acting  
23 director of flight training was.

24 Q. Who is that?

25 A. I don't know. But when I got my

1 evaluation the next day and I passed, the  
2 instructor -- the evaluation pilot said, I see on  
3 the schedule you only had one sim, one warmup for  
4 this. How long did you say you were out? I said,  
5 four months. He said, you should have gotten  
6 three rides. I said, did you have -- do you know  
7 who did this? He says, it came from the director  
8 of flight training.

9 Q. And who is this that you're referring to  
10 that had this conversation with you?

11 A. You would have to look at my training  
12 evaluation.

13 Q. You don't know his name?

14 A. I don't remember his name. But whoever  
15 gave that ride to me in the simulator is --

16 Q. Why do you -- and you passed the  
17 evaluation, correct?

18 A. I did.

19 Q. So why do you -- what is the reduction in  
20 your simulators -- simulation -- sims have  
21 anything to do with any of the events that we have  
22 talked about today?

23 A. Well, for a pilot who hasn't flown in four  
24 months to get one simulator ride and then go  
25 directly into an evaluation is a high risk

1 proposition. You have to get your currency back.  
2 I mean, four months of no flying is a long time.  
3 It's stressful. And so to have my training  
4 syllabus shortened before the evaluation I felt  
5 like was retaliatory.

6 Q. Okay.

7 A. I think they were looking for another  
8 opportunity to fire me.

9 Q. Retaliatory for what?

10 A. For filing the AIR-21.

11 Q. And did anyone in the flight training  
12 department know that you had filed an AIR-21?

13 A. Of course.

14 Q. Who?

15 A. Bill McDonald.

16 Q. Was he in the training department?

17 A. Rob Fisher.

18 Q. I'm asking in the training department.

19 A. Only in the training department, I'm  
20 sorry. I would like to have those communications.  
21 If there were any emails, I sure would like to see  
22 them.

23 Q. You don't know as we sit here today if  
24 anyone in the training department knew that you  
25 had filed an AIR-21 complaint?

1       A.       No.  But I believe that somebody in flight  
2       management told them to shorten my training  
3       program.

4       Q.       Do you have any -- is that speculative or  
5       do you have some knowledge about that?

6       A.       I'm speculating.

7       Q.       What are you seeking in this case?

8                   COURT REPORTER:  Before you go to the  
9       next subject, can we take a quick break?

10                   MR. RIEDERER:  Sure.  Sorry.  I'm  
11       pushing to get everyone out of here.

12                   (Brief recess.)

13       BY MR. RIEDERER:

14       Q.       I don't think we are going to go too much  
15       longer, but I do want to keep this moving along.  
16       The question before the break was what are you  
17       seeking in this case?

18       A.       Can you be more specific?

19       Q.       In terms of damages.

20       A.       I'm seeking remuneration for all my legal  
21       fees, and I'm seeking damages for pain and  
22       suffering, and I would like to have a meeting with  
23       Fred Smith.

24       Q.       Are you seeking anything else?

25       A.       Not that I recall.

1 Q. Can you describe your pain and suffering?

2 A. Well, it was four months of hell not  
3 knowing whether you're going to have a job or not.  
4 Being told that you're under suspicion for  
5 being -- suffering from a psychiatric condition.  
6 Which that label if it had stuck, I would have  
7 been unemployable at any other airline. So it's  
8 like one day waking up and finding that you have  
9 got a subpoena from the bar association telling  
10 you that you have to report to a psychiatric exam  
11 and you may not get to practice law ever again.  
12 That's the only analogy I can give you what it was  
13 like.

14 Q. Of course, that didn't stick, correct?

15 A. The subpoena for you?

16 Q. It definitely didn't stick with me. But  
17 did it stick with you?

18 A. No. I fought it, and I hired a very good  
19 attorney, and I give credit to Mr. Seham for  
20 fighting on my behalf to make sure the contract  
21 was followed and the elements of 15.D went to a  
22 logical conclusion, and I don't think I would have  
23 been able to keep my job if I hadn't hired Lee.

24 Q. Did you suffer any physical injury as a  
25 result of the alleged unlawful actions by FedEx?

1 A. No, sir.

2 Q. Do you suffer any mental or emotional  
3 injury as a result of the actions by FedEx?

4 A. It depends on how you describe an injury.  
5 If you want to talk about stress, I was under a  
6 great deal of stress during those four months.  
7 And, yes, I reported it to my AME. And he said,  
8 under the circumstances it was completely normal.

9 Q. Was the stress generated from the fact  
10 that you were involved in this litigation?

11 A. No.

12 Q. Did the litigation contribute in any way  
13 to the stress of this case?

14 A. The litigation was a stress reliever.  
15 Like I said, if I hadn't hired Mr. Seham, I  
16 probably wouldn't have had a job.

17 Q. When did the stress first begin?

18 A. I think from the first email from Bill  
19 McDonald saying you're NOQ.

20 Q. That's the August 5th email?

21 A. Yes, sir.

22 Q. Other than stress, did you suffer any  
23 other mental or emotional injury?

24 A. I'm not a psychiatrist, but I think stress  
25 was my primary concern. I mean, that's the

1 symptom that I felt.

2 Q. Did you have any trouble sleeping?

3 A. I didn't keep a log. I'm sure I missed  
4 some periods of sleep, but not to the point where  
5 I couldn't function.

6 Q. Did you have any trouble with your  
7 concentration?

8 A. I think that my concentration shifted  
9 quite a bit during that time because I went over  
10 the facts from all these different letters, what  
11 FedEx was doing, what my attorney was  
12 recommending, what my family's input was. Yeah, I  
13 had -- I had some difficulty concentrating on what  
14 to do next.

15 Q. Did you have trouble concentrating at  
16 work?

17 A. I wasn't at work. I was grounded.

18 Q. Did you have trouble concentrating in  
19 day-to-day conversations?

20 A. I would have to ask other people I spoke  
21 to. I don't know. I think I was -- I think I  
22 made cogent comments to people.

23 Q. Nothing that stands out to you?

24 A. No, sir.

25 Q. When did your concentration issues begin?

1 A. When I was grounded.

2 Q. So that -- at the -- starting at the  
3 August 5th email, you began having some  
4 concentration issues?

5 A. Well, Counselor, my concentration issues  
6 were directly related to the stressful environment  
7 that I was placed in by FedEx.

8 Q. Did --

9 A. I don't know how to answer your question.

10 Q. Did your concentration issues abate once  
11 you were returned to duty?

12 A. They improved dramatically.

13 Q. Did your stress improve once you returned  
14 to duty?

15 A. Absolutely.

16 Q. Did you see any kind of medical  
17 professional to treat your stress?

18 A. No. I just discussed the matter with my  
19 AME, Mark Nugent.

20 Q. Did Dr. Nugent prescribe any medication to  
21 you to cope with your stress?

22 A. No, sir.

23 Q. Did you have any anxiety issues?

24 A. No, sir.

25 Q. Did you have any headaches?

1 A. No, sir.

2 Q. Has anything else from August 5th on  
3 contributed to any kind of emotional issues that  
4 you had, for example, family issues or anything  
5 like that?

6 A. You mean in terms of influence on me or  
7 vice versa?

8 Q. For example -- no, influence on you. Did  
9 anything in your family -- any incidents in your  
10 personal life contribute to the stress that you  
11 suffered following that August 5th email?

12 A. I don't believe so. But my family  
13 certainly expressed their concern about me and  
14 what was going to happen to me legally.

15 Q. You said that you were seeking attorney  
16 fees?

17 A. Yes, sir.

18 Q. Are you paying your attorney as you go, or  
19 is it based on a contingency fee?

20 A. I'm paying him as I go.

21 Q. Do you know his rate?

22 A. We have an agreement.

23 Q. What is that rate?

24 MR. SEHAM: If you --

25 A. I get a statement from him every month,

1       and I pay down on that statement. I am -- he is  
2       currently carrying a balance for me.

3       Q.       What is his hourly rate?

4       A.       I think it's somewhere between 300 and 350  
5       an hour. That's just a guesstimate.

6       Q.       What have the total fees been up to this  
7       point?

8       A.       In excess of a hundred thousand dollars.

9                   MR. RIEDERER: Do you mind if we take  
10       just a quick break so I can wrap up?

11                   MR. SEHAM: No.

12                   (Brief recess.)

13                   MR. RIEDERER: I don't have any other  
14       questions.

15                   MR. SEHAM: No questions for us  
16       either.

17                   (Deposition concluded at 3:22 p.m.)

18                   AND FURTHER DEPONENT SAITH NOT

19                   (Signature waived)

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## 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  
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27 Registered Professional Reporter,  
28 Tennessee Licensed Court Reporter  
29 #027, Arkansas Certified Court  
30 Reporter #500, Notary Public  
31 for the State of Tennessee at  
32 Large \*\*\*33 My commission expires:  
34 June 5, 2016

35