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

MARK ESTABROOK,

Complainant,

Vs.

Case No. 2014-AIR-00022

FEDERAL EXPRESS CORPORATION,

Respondent.

THE DEPOSITION OF WILLIAM W. McDONALD

March 23, 2016

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

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

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

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

15 The signature of the witness is waived.

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- APPEARANCES -

For the Complainant:

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Also Present:

CAPTAIN MARK ESTABROOK

Reported by:

SHERYL G. WEATHERFORD
Registered Professional
Reporter
Alpha Reporting Corporation
236 Adams Avenue
Memphis, TN 38103
901-523-8974

1 WILLIAM W. McDONALD

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

4 EXAMINATION

5 BY MR. SEHAM:

6 Q. And, sir, would you prefer to be referred
7 to as Mr. or Captain McDonald?

8 A. Bill is fine.

9 Q. Bill is fine.

10 A. Bill is fine.

11 Q. I tend to be very formal so I may slip
12 away from Bill. In any case, my name is Lee
13 Seham. I'm with the law firm of Seham, Seham,
14 Meltz & Petersen. We represent Captain Mark
15 Estabrook in this litigation which concerns an
16 AIR-21 complaint. And today I'm going to be
17 asking you questions which you will be responding
18 to under oath concerning this matter. Do you
19 understand that?

20 A. Yes, sir.

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

25 A. Yes, sir.

1 Q. And do you understand that the deposition
2 today is going to be transcribed by the court
3 reporter and that everything you say here today
4 will be recorded?

5 A. Yes, sir.

6 Q. Please speak slowly and clearly so that
7 the court reporter can take down what you say. Do
8 you understand?

9 A. Yes, sir.

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

13 A. Yes, sir.

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

19 A. Yes, sir.

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

24 A. Yes, sir.

25 Q. Have you ever testified in court before?

1 A. No, sir.

2 Q. Okay. Have you testified in arbitrations?

3 A. Yes, sir.

4 Q. And that was under oath?

5 A. It was.

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

9 A. Yes, sir.

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

13 A. No, sir.

14 Q. And are you -- okay. Are you suffering
15 from any kind of illness that might affect your
16 ability to testify today?

17 A. No, sir.

18 Q. Do you understand everything I have said
19 up until now?

20 A. Yes, sir.

21 Q. Now, please state your full legal name.

22 A. William Wood McDonald.

23 Q. And have you ever been known by any other
24 names?

25 A. No, sir.

1 Q. Did you review any documents to prepare
2 for your deposition today?

3 A. Yes, sir.

4 Q. What documents did you review?

5 A. I don't know the documents specifically,
6 but I reviewed some documents that were provided
7 by the Company's attorneys, and we reviewed the
8 FOM and the CBA.

9 Q. When you say "CBA," you're referring to
10 the Collective Bargaining Agreement?

11 A. Yes, sir.

12 Q. So you say the FOM is that the -- what
13 does the "FOM" stand for?

14 A. Flight Operations Manual.

15 Q. Is that an FAA-approved document?

16 A. Yes, sir, it is.

17 Q. And you mentioned the CBA. Can you
18 identify any other documents that you reviewed?

19 A. Not specifically, no, sir.

20 Q. Were they emails?

21 A. Some emails, yes, sir.

22 Q. And can you remember what the matter
23 discussed in those emails was?

24 A. Related to this case I believe.

25 Q. You believe. Did you talk to anyone

1 besides FedEx counsel about your deposition?

2 A. No, sir.

3 Q. What position do you currently hold with
4 Federal Express?

5 A. Managing director of Flight Operations,
6 Contract Administration.

7 Q. And how long have you held that position?

8 A. Approximately a year.

9 Q. And what are your job responsibilities
10 as -- in your current position?

11 A. I am the Flight Ops representative to the
12 Labor Relations Department. I sit on the
13 Company's negotiating committee, and I interface
14 with the Association and administer the Collective
15 Bargaining Agreement.

16 Q. How long have you been with FedEx?

17 A. Thirty-two years.

18 Q. So could you give us then an overview from
19 your date of hire -- I'm not looking for half an
20 hour -- but your progression, your job titles, and
21 a brief description of what you did in those
22 various job titles?

23 A. I was hired as a 727 second officer.
24 About a year later I became --

25 Q. I'm sorry, what year was that?

1 A. 1984.

2 Q. Okay.

3 A. About a year later I went to the DC-10
4 second officer seat. I worked as a check airman
5 in the DC-10 for approximately four years.

6 Q. What years would those be?

7 A. '85 to '89 -- '88, '89. I went to the
8 right seat of the DC-10 for a year or two. I went
9 to the left seat of the 727 in the Bay area for
10 approximately three years. Then I went to the
11 right seat -- while I was in the Bay area, I
12 worked on PSIT, the Pilot Scheduling Improvement
13 Team. I went to the right seat of the Airbus for
14 about a month or two, then I went to the left seat
15 of the Airbus as a captain, became a check airman
16 in the Airbus.

17 Q. When was that?

18 A. 1994. And I stayed in the Airbus a total
19 of nine years. During that period of time, I
20 served as a check airman in the Airbus. I left my
21 check airman position to work for the Association,
22 for the Fedex Pilots Association. I served on the
23 scheduling committee, the negotiating committee,
24 negotiating committee chairman. I was the first
25 contract administrator for the Association, and --

1 I don't know. I had some other job there too. I
2 can't remember.

3 Q. You referred to the -- I think you
4 referred to the FPA or the Fedex Pilots
5 Association, and am I correct in stating that that
6 was the collective bargaining representative
7 certified by the National Mediation Board to
8 represent the flight deck crewmembers of FedEx?

9 A. Yes, sir. That's correct. Originally --
10 the pilots were originally represented by ALPA.
11 Then they were represented by the Fedex Pilots
12 Association, and then they went back to ALPA.

13 Q. Okay. So your positions within the FPA
14 labor organization were the scheduling committee,
15 the negotiating committee?

16 A. And I was the first contract
17 administrator.

18 Q. Contract administrator. Give me a time
19 frame for those Union positions?

20 A. And I was the first SIG chairman also.

21 Q. The first what?

22 A. Schedule Improvement Group chairman. That
23 was 1998, '99, 2000.

24 Q. Okay. All right. So we are up to 2000,
25 and after that?

1 A. I left the Association and went back to a
2 check airman job in the Airbus. Then I left that,
3 and I went to the MD-11 as a captain. I was
4 involved in special projects in the MD-11
5 community, in the flight training department
6 building an AQP, instructor evaluator curriculum.
7 I then became a flight manager, Flight Operations
8 duty officer.

9 Q. Now, is that your first management job?

10 A. Yes, sir, that was.

11 Q. Okay. And what year was that?

12 A. 2008 I think. I'm not sure, Mr. Seham. I
13 would have to go back and check.

14 Q. Okay.

15 A. I was there for a little over a year.
16 Then I became the senior manager of Flight
17 Operations. Then I became the managing director
18 of Contract Administration, and then I became the
19 managing director, System Chief Pilot, and then I
20 became the managing director of Contract
21 Administration again.

22 Q. Now, do your current job -- well, actually
23 let me back. You got your current position --
24 what month and year did you get your current
25 position?

1 A. I took over here in April of 2015 I
2 believe.

3 Q. Okay. And then in a year prior,
4 April 2014, what position would you have occupied
5 at that time?

6 A. I was the System Chief Pilot.

7 Q. System Chief Pilot. And do you know who
8 Rob Fisher is?

9 A. Yes, sir.

10 Q. What position did he -- did he hold in
11 April of 2014?

12 A. I'm not sure. He was the Airbus fleet
13 captain for a period of time, and then he became
14 my Assistant System Chief Pilot after that. I'm
15 not sure of the exact month when that transition
16 occurred.

17 Q. Okay. Do your current job
18 responsibilities require you to be knowledgeable
19 of Federal Aviation Regulations that govern the
20 operation of FedEx aircraft?

21 A. To some degree, yes, sir. Not as much as
22 in previous positions but, yes.

23 Q. Okay. Well, the position you held in
24 April 2014, does that require you to be -- did
25 that require you to be knowledgeable of Federal

1 Aviation Regulations that govern the operation of
2 FedEx aircraft?

3 A. Yes, sir.

4 Q. And do you have any current responsibility
5 for the operational safety of FedEx aircraft?

6 A. No, sir.

7 Q. Did you in April of 2014 in your position
8 as System Chief Pilot?

9 A. Yes, sir.

10 Q. And what did that responsibility include?

11 A. Oversight of the flight operation and the
12 pilots to ensure the safe, legal, and reliable
13 operation of the system.

14 Q. You know, I'm struck because I frankly
15 wasn't aware of your positions with the labor
16 union with the Fedex Pilots Association. And I
17 think I heard you say that you went back to being
18 a line pilot after?

19 A. Yes, sir.

20 Q. So am I to understand that --

21 A. I have been a line pilot the whole time.

22 Q. Right. But there were times when you were
23 actually flying -- well, like really the question
24 I'm coming to is when you were serving in these
25 various Union positions, were some of them -- did

1 they have you off the line and a fully paid Union
2 position?

3 A. No, sir. No, sir. I was never off the
4 line. I maintained currency and qualification the
5 entire time.

6 Q. Was your flight duty month reduced?

7 A. It was. Yes, sir.

8 Q. To what degree from --

9 A. It depends. Much like a management job
10 with the Company, I would fly when I had the
11 opportunity to. Enough to maintain my currency
12 and qualification.

13 Q. And I would assume when you were on the
14 negotiating committee and in active negotiations,
15 you wouldn't be doing much flying during that
16 period?

17 A. Not much. But I flew when I could to
18 maintain my currency and qualification.

19 Q. But during those periods there would be a
20 significant reduction in your flight schedule?

21 A. Yes, sir.

22 Q. When you were involved with Fedex Pilots
23 Association -- well, let me interrupt myself.
24 During that period from 1998 to 2000, it seems
25 like you were always involved with one committee

1 or another.

2 A. Yes, sir. Sometimes multiple.

3 Q. Sometimes multiple. And was during
4 that -- were you familiar with Captain Estabrook's
5 participation with the FPA?

6 A. Not that I remember.

7 Q. Did it ever come to your attention that he
8 was a chairman of the FPA Security Committee?

9 A. I don't recall.

10 Q. You don't recall ever hearing that?

11 A. No. I mean, I saw Mark around the spaces
12 occasionally. I was unaware when he took a
13 position with the FPA.

14 Q. I'm sorry, you weren't aware?

15 A. I'm not aware of when he took a position
16 with FPA.

17 Q. But you -- at some point it came to your
18 knowledge that he had occupied the position as
19 chairman of the Security Committee for FPA?

20 A. Not when I was there.

21 Q. But at some time subsequent to the time
22 you were?

23 A. Yes, sir.

24 Q. When did you learn that he had been
25 chairman of the FPA Security Committee?

1 A. During the preparation for this
2 deposition.

3 Q. Oh. And meaning in the last few weeks?

4 A. Yes, sir.

5 Q. So prior to the last few weeks, prior
6 to -- I don't even know what month this is. Prior
7 to March of 2016, you had no knowledge that he had
8 been security chairman of Fedex Pilots
9 Association?

10 A. No, sir. I did not.

11 Q. And prior to February and March of 2016,
12 did you have any knowledge that he was chairman of
13 the ALPA security committee?

14 A. No, sir, I did not.

15 Q. Now, back in April 2014, did your position
16 as a System Chief Pilot in that -- in that role,
17 did you have any responsibility for determining
18 pilot proficiency in operations?

19 A. I think I would say yes.

20 Q. And did you have any -- did your job
21 responsibilities include determining whether
22 pilots were fit to fly in terms of their health?

23 A. On some occasions, yes, sir.

24 Q. Have you made -- have you been involved,
25 putting Captain Estabrook to one side, have you

1 been involved in prior determinations or prior
2 cases where a determination was made that a
3 captain or first officer was unfit to fly?

4 A. Yes, sir.

5 Q. And how many cases have you been involved
6 with?

7 A. I couldn't say exactly, Mr. Seham, but a
8 number.

9 Q. A number. And of that number, how many
10 involve mental health issues?

11 A. I don't know. When I -- when I send a
12 pilot for an evaluation based on fitness for duty,
13 the only information we get back from the medical
14 advisor is whether the pilot is fit to fly or not
15 to fit to fly.

16 Q. But in terms of your determination, of
17 your participation, you must have a reason why you
18 think someone should be subject to an evaluation,
19 correct?

20 A. Yes, sir.

21 Q. So that you suspect that they are -- might
22 have an eyesight issue or that they might have a
23 fatigue issue or that you have a suspicion of
24 something along those lines, correct?

25 A. If I have a suspicion at the time -- if I

1 had a suspicion that the pilot had a physiological
2 or cognitive issue, then I would send that pilot
3 to our medical advisor Harvey Watt at the time and
4 still today, and they would conduct the interview
5 with the pilot and a subsequent evaluation, if
6 necessary. Once I sent the pilot to Harvey Watt,
7 my role is essentially complete. I just wait for
8 the determination from the aeromedical advisor
9 whether the pilot is fit to fly or not.

10 Q. Is that important -- I guess from your
11 testimony it sounds like that it is Harvey Watt --
12 and maybe back up so we make sure the record is
13 clear. What is Harvey Watt?

14 A. Harvey Watt is the Company's aeromedical
15 advisor.

16 Q. And it sounded as if that was an important
17 part of the process that Harvey Watt as
18 aeromedical advisor make the determination as to
19 whether someone should be subject to further
20 evaluation?

21 A. Yes, sir. That's correct.

22 Q. And why is that important?

23 A. It's contractual.

24 Q. Contractual meaning it's required by the
25 Collective Bargaining Agreement?

1 A. Yes, sir.

2 Q. So going back to your involvement in prior
3 instances where someone was referred to Harvey
4 Watt as the aeromedical advisor, did any of those
5 cases in which you were involved relate to someone
6 who you believed had a mental health issue?

7 A. Well, they had either a physiological or a
8 cognitive issue. I couldn't determine mental
9 health. That's strictly in the hands of the
10 aeromedical advisor.

11 Q. Well, in the case of Captain Estabrook,
12 you made a determination that he might have a
13 mental health issue; isn't that correct?

14 A. No, sir. I believe I sent Captain
15 Estabrook to Harvey Watt because I was concerned
16 about his judgment and his behavior, and with the
17 recommendation of the team of people, Captain
18 Fisher and Mr. Ondra who interviewed him, and
19 their subsequent recommendation to me.

20 Q. Could you read the answer back, please.

21 (The requested portion of the record
22 was read by the reporter.)

23 Q. You didn't have any suspicion that Captain
24 Estabrook had suffered any physical injury,
25 correct?

1 A. I didn't know.

2 Q. And you made a determination based on
3 judgment and behavior, correct?

4 A. Yes, sir. And the recommendation of the
5 other people that interviewed.

6 Q. With the idea that an examination would be
7 conducted in order to determine whether he needed
8 psychological or psychiatric care?

9 A. That's not up to me. When I send a pilot
10 to Harvey Watt, they conduct an interview with the
11 pilot, and after that interview, they determine
12 what types of examinations they should conduct on
13 the pilot to see if he's fit for duty.

14 Q. So you had -- when you referred Captain
15 Estabrook for a 15.D evaluation, that was not --
16 you had no anticipation that would be for a
17 psychological examination?

18 A. No, sir.

19 Q. You had no anticipation that Harvey Watt
20 as aeromedical advisor would be focusing on
21 psychological issues?

22 A. That would be based upon their interview
23 with Captain Estabrook.

24 Q. So is the answer to that no, that you
25 didn't have any anticipation that it would be --

1 that Harvey Watt would focus on psychological
2 issues?

3 A. The answer would be no. Yes, sir.

4 Q. What weather conditions might dictate
5 either the rerouting or the termination of a
6 flight?

7 A. Well, there are a myriad of weather
8 conditions that might do that. Anything that
9 would be a threat to the safe operation of the
10 aircraft and a threat to the crew would probably
11 result in that.

12 Q. Would you agree that both Federal Aviation
13 Regulations and the FedEx FOM require a pilot in
14 command to avoid operating an aircraft in
15 hazardous conditions?

16 A. Yes, sir.

17 Q. And I think we covered it before. The FOM
18 has to be approved by the FAA, correct?

19 A. Yes, sir. That's correct.

20 Q. And as a pilot, would you depart from an
21 aircraft if -- from an airport if that would mean
22 flying into hazardous weather conditions?

23 A. I might depart the airport. I wouldn't
24 fly into the hazardous weather conditions.

25 Q. Well, would you agree that Federal

1 Aviation Regulations forbid a pilot to fly into
2 hazardous weather conditions?

3 A. Yes, sir.

4 Q. Now, on or about April 10, 2013, Captain
5 Estabrook declined to depart from Laredo based on
6 weather conditions; is that correct?

7 A. I'm not sure -- I'm not sure if that's the
8 case, Mr. Seham. I don't know if that's the case.

9 Q. You're familiar with the fact that there
10 was a matter that was subject to a disciplinary
11 investigation on the part of FedEx relating to
12 Captain Estabrook's assigned departure from Laredo
13 on or about April 10, 2013, correct?

14 A. I don't know of any disciplinary
15 investigation that was conducted. I know that
16 Captain Estabrook was brought in by Captain Fisher
17 for a 19.D meeting, but it was not a disciplinary
18 investigation that I'm aware of.

19 Q. Isn't it true that you directed, sir, that
20 that investigation take place?

21 A. I directed that Captain Fisher bring
22 Captain Estabrook in to determine why he wouldn't
23 leave the hotel to go to the airport.

24 Q. And weren't there recordings of his
25 discussions with -- first of all, let me back up.

1 Do you know what a "GOC" is?

2 A. Yes, sir.

3 Q. What is a "GOC"?

4 A. Global Operations Control.

5 Q. Is that sometimes also referred to as a
6 dispatcher?

7 A. The dispatchers work in GOC, yes, sir.

8 Q. Okay. And with respect to Captain
9 Estabrook's assignment on April 10th, there were
10 tapes of conversations between him and GOC,
11 correct?

12 A. If he called the dispatcher, I believe
13 those lines are recorded. Yes, sir.

14 Q. Now, you say you believe. Is it your
15 testimony that you never reviewed the audio tapes?

16 A. I may have. I don't recall reviewing the
17 tapes, but I have reviewed hundreds of tapes.

18 Q. So you have no specific recollection of
19 ever reviewing tapes related to the April 10th
20 Laredo matter?

21 A. No, sir. No specific recollection.

22 Q. Did anyone within flight management ever
23 ask you to review those tapes?

24 A. I do not recall.

25 Q. But you do recall that you directed Robert

1 Fisher to interrogate Captain Estabrook, correct?

2 A. Well, I asked him to bring him in and ask
3 him some questions and counsel him on the proper
4 way to report for duty.

5 Q. So you had made a determination -- at the
6 time you directed Captain Fisher to call in
7 Captain Estabrook, you had made a determination
8 that Captain Estabrook had acted improperly,
9 correct?

10 A. Well, I hadn't made a determination yet.
11 I wanted to gather the facts. I wanted Captain
12 Fisher to gather the facts. Captain Estabrook did
13 not report as required to the ramp one hour prior
14 to showtime. I wanted to understand why.

15 Q. When you say you directed, I want to make
16 sure I get this clear. Is it your testimony that
17 you directed Captain Fisher to call in Captain
18 Estabrook and counsel him about proper procedure?

19 A. Yes, sir.

20 Q. And would you agree with me that that was
21 based on your determination that proper procedure
22 had not been followed?

23 A. Yes. Proper procedure had not been
24 followed.

25 Q. And would you agree with me that a pilot's

1 failure to follow proper procedure could subject
2 him to discipline?

3 A. It certainly could.

4 Q. And, in fact, isn't it true that Captain
5 Estabrook was invited to obtain Union
6 representation for the purposes of that interview
7 by Captain Fisher, correct?

8 A. Yes, sir. Every pilot that is brought in
9 is asked if they want ALPA representation.

10 Q. And that's because those pilots have a
11 contractual right to be represented during an
12 investigation that could lead to discipline,
13 correct?

14 A. Yes, sir. A disciplinary investigation is
15 a 19.E hearing. Usually it has both the ALPA
16 attorney and a Company attorney present.

17 Q. Okay. Was this investigation by Captain
18 Fisher, was that a 19.E investigation?

19 A. No, sir.

20 Q. It wasn't. So how would you
21 characterize -- if it's not 19.E, how would you
22 characterize that investigation?

23 A. 19.D.

24 Q. 19.D.

25 A. Yes, sir.

1 Q. So what is the difference between a 19.D
2 and a 19.E?

3 A. A 19.D is when we bring a pilot in to ask
4 questions to understand some factor in the
5 performance of their duty with no anticipation
6 that it is going to lead to a disciplinary result.
7 If it looks like it may lead to discipline, then
8 we stop that part of the hearing, and we reconvene
9 a 19.E at a later date.

10 Q. So you would call this an investigative
11 hearing?

12 A. Yes, sir. I think that's fair.

13 Q. Okay. And I just want to be clear, it was
14 you who made the decision that Captain Estabrook
15 should be subject to that?

16 A. Yes, sir.

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

19 Q. Yeah, this is a single page document.
20 It's paginated at the bottom FDX 4-1, and it's an
21 email thread first from Rob Fisher to Cindy
22 Sartain with a number of carbon copies, including
23 to yourself. And then below it an email from Rob
24 Fisher to the same group, including yourself, both
25 dated April 17th. Is this an email that you

1 received -- are those both emails that you
2 received from Rob Fisher on April 17, 2013?

3 A. Yes, sir.

4 Q. And does that correctly report that you
5 directed Rob Fisher to conduct a 19.D hearing for
6 Mark Estabrook?

7 A. Yes, sir.

8 Q. Did you have any telephonic -- because I
9 don't -- we didn't -- I don't believe we had an
10 email by which you directed Rob Fisher to conduct
11 this investigation. Did you direct him by email
12 or telephone call?

13 A. I probably went down and talked to him.

14 Q. And what did you say to him?

15 A. I would be guessing. But it probably went
16 along the lines of, Rob, would you please call
17 Mark in and talk to him about his performance in
18 Laredo.

19 Q. But you have no specific recollection of
20 what you said or what he said?

21 A. No, sir.

22 Q. Do you know who the dispatcher was in this
23 matter related to the April 10th Laredo departure?

24 A. I don't recall specifically, no, sir.

25 Q. Would it refresh your recollection if I

1 suggested to you that it was Sherrie Hayslet?

2 A. I would have to -- I mean, it could be.
3 The name sounds familiar.

4 Q. But that doesn't help you. You just don't
5 know at this point as you sit here today?

6 A. No, sir.

7 Q. And ultimately -- so is it your testimony
8 then that this 19.D investigation was never
9 converted into a 19.E?

10 A. To the best of my knowledge, no
11 disciplinary action was taken as a result of the
12 events in Laredo.

13 Q. And why were no disciplinary actions
14 taken?

15 A. I would be speculating. But my guess
16 would be that Rob after interviewing Captain
17 Estabrook was satisfied with his explanation, and
18 that he had reviewed the pertinent sections of the
19 FOM with Captain Estabrook, and they were in
20 agreement that it wouldn't happen again.

21 Q. That's -- is that speculation?

22 A. Yes, sir. That's -- I mean, if I was in
23 Rob's position and I brought a pilot in and I
24 wanted him to be -- refamiliarize himself with the
25 FOM and that he agreed that he would perform in

1 that manner in the future, then I would close the
2 case.

3 Q. My question was a different one. My
4 question was, do you know why this -- is it 19.D?

5 A. Yes, sir.

6 Q. Do you know why this 19.D investigation
7 was concluded without progressing to a 19.E
8 investigation?

9 A. I think I said because I believe Rob was
10 satisfied that -- yeah.

11 Q. You believe. What do you base that on?

12 A. He closed it -- he closed the hearing and
13 that was the end of the process.

14 Q. Did you ever have a discussion with Rob
15 Fisher about the merits of this investigation and
16 what his conclusions were?

17 A. I don't recall specifically, but I'm sure
18 I must have.

19 Q. All right. So you have no -- is it fair
20 to say you have no specific recollection about why
21 this investigation was closed?

22 A. I can't recall any specific, no.

23 Q. Okay. But you do know that it was closed
24 without any disciplinary action taken against
25 Captain Estabrook, correct?

1 A. Yes, sir, I believe so.

2 Q. Did you ever -- and you can't recall
3 specifically any conversation with Rob Fisher?

4 A. Not a specific conversation, no.

5 Q. Do you believe you would have had a
6 conversation with him?

7 A. Certainly. Absolutely.

8 Q. Why would the Company initiate an
9 investigation of a pilot when he was conforming
10 with a dispatcher's instructions?

11 MR. RIEDERER: Object to the form of
12 the question. You can answer.

13 A. I don't believe that was the case in this
14 instance, Mr. Seham. I think the reason the 19.D
15 investigation was conducted was because Captain
16 Estabrook took it upon himself not to report to
17 the ramp at showtime.

18 Q. Is that a violation of procedure?

19 A. Yes, sir. It is.

20 Q. Do pilots get disciplined for that?

21 A. It would be depend on the circumstances.

22 Q. And in the absence of mitigating
23 circumstances, would a pilot get disciplined for
24 not reporting at showtime?

25 A. It depends on -- define what you mean by

1 mitigating circumstances?

2 Q. Any excuse.

3 A. If a pilot failed to report to the ramp as
4 required and the Company suffered a delay that
5 resulted in a significant -- in a loss of revenue
6 or failure of service, then I would imagine that
7 the pilot could be subject to some form of
8 discipline as a result of that.

9 Q. And you have no recollection as to why --
10 you have no specific recollection as to why
11 Captain Estabrook was not disciplined for the
12 Laredo matter ultimately?

13 A. No, sir. No specific recollection.

14 Q. Prior to your participating in the
15 determination or prior to your directing Rob
16 Fisher to conduct a 19.D investigation of Captain
17 Estabrook, did you take any steps to ascertain the
18 weather conditions that prevailed at that time in
19 the Laredo area?

20 A. No, sir.

21 Q. Did you participate in any manner in the
22 investigation of -- in the 19.D investigation of
23 Captain Estabrook?

24 A. No, sir.

25 Q. With respect to the -- excuse me. With

1 respect to the Laredo incident?

2 A. No, sir.

3 Q. And did you listen to any recorded
4 conversations relating to the Laredo incident?

5 A. I may have, but I do not recall
6 specifically doing so.

7 Q. And why would you have listened to the
8 tapes, supposing you had?

9 A. They may have been sent to me or it may
10 have been a subject of discussion regarding the
11 Laredo event with Captain Estabrook.

12 Q. Would you have listened to them before the
13 19.D examination or after?

14 A. I probably would have listened to them
15 before if they were available to me.

16 Q. Do you recall having any -- do you know of
17 a FedEx employee by the name of Mark Crook?

18 A. Yes, sir.

19 Q. What position does he hold with the
20 Company?

21 A. Currently he is the MD-11 fleet captain.

22 Q. Did you have any conversation -- do you
23 recall any conversations you had with him
24 concerning this Laredo incident on -- regarding
25 the April 10th departure?

1 A. I don't recall any specific conversations.
2 No. But I'm sure I must have had a conversation
3 with him.

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

6 Q. Handing you a document Exhibit P as in
7 Peter. It's marked -- paginated below as FDX 4,
8 page 5. It starts as an email thread under the
9 name of MaryAnne Miller, but the first email is
10 from Rob Fisher to Cindy Sartain but underneath
11 there's an email from Mark Crook to William
12 McDonald, Rob Fisher, FODO, and Michael Speer.
13 Did you receive this email on or about April 10,
14 2013?

15 A. Yes, sir.

16 Q. Now, as reported to you by Mark Crook,
17 Captain Estabrook felt that he was being pressured
18 to fly into a line of thunderstorms, correct?

19 A. Could you repeat that, please?

20 MR. SEHAM: Might ask you to do that.

21 (The requested portion of the record
22 was read by the reporter.)

23 A. If I look at paragraph 5 I think it says,
24 this captain accuses me of pilot pushing and
25 ordering him to takeoff during Sherrie's second

1 conversation. At no time did that ever happen in
2 my conversation with Captain Estabrook.

3 Apparently Captain Estabrook felt that. The duty
4 officer did not feel the same.

5 Q. And you -- notwithstanding this language,
6 you can't recall ever listening to tapes related
7 to the exchanges between Captain Estabrook and
8 Mark Crook, correct?

9 A. No, sir. I don't have any specific
10 recollection of listening to the -- to tapes
11 between -- conversations between Captain Crook and
12 Captain Estabrook.

13 Q. Could you tell me what a flight release
14 is?

15 A. Flight release, that's a flight
16 plan/release. It's the document that the captain
17 and the dispatcher sign together that releases the
18 flight for operation. It means that it is safe
19 and legal to operate.

20 Q. And who has the ultimate decision-making
21 authority as to whether a FedEx aircraft will fly
22 to its destination?

23 A. The flight release is jointly -- that
24 responsibility is shared jointly by the captain
25 and the dispatcher.

1 Q. So either one can veto the other; is that
2 correct?

3 A. That's correct.

4 Q. So can a FedEx flight dispatcher order a
5 captain to fly or operate a flight if that captain
6 believes that there are hazardous conditions in
7 the flight path?

8 A. No, sir.

9 Q. Can a FedEx duty officer order a captain
10 to fly or operate a flight if he believes that
11 would entail hazardous flight conditions?

12 A. No, sir.

13 Q. Would you agree that under Federal
14 Aviation Regulations, FedEx would have an
15 obligation to adhere to and obey an air traffic
16 control gate hold?

17 A. Yes, sir.

18 Q. And Federal Aviation Regulations would
19 require captains to comply with ATC gate holds,
20 correct?

21 A. Yes, sir.

22 Q. And isn't it true that Captain Estabrook's
23 flight on the night in question in Laredo was on a
24 Memphis ATC gate hold for over two hours?

25 A. I can't say that I know that for sure. I

1 would have to look at the records.

2 Q. Would you have known that at the time?
3 Would that have been part of your investigation?

4 A. I mean, that information would have come
5 up, but I don't see it as relevant to the
6 investigation.

7 Q. And it was Rob Fisher who made the
8 determination to terminate the 19.D investigation?

9 A. Yes, sir.

10 Q. Now, you know that there was a meeting
11 with Captain Estabrook and Captain Fisher, Todd
12 Ondra, and Mr. Tice on August 9, 2013, correct?

13 A. Yes, sir.

14 Q. And you did not attend that meeting?

15 A. No, sir. I did not.

16 Q. But nevertheless it was you who made the
17 determination that Captain Estabrook should
18 undergo a 15.D evaluation, correct?

19 A. Yes, sir.

20 Q. Now, you did have a conversation with Todd
21 Ondra about the meeting?

22 A. Yes, sir.

23 Q. And what did Todd Ondra tell you?

24 A. It was Todd's recommendation that Captain
25 Estabrook be sent for a medical evaluation.

1 Q. What else did he say?

2 A. It was a phone conversation, and I think
3 we talked about -- I believe, I can't recall
4 specifically each word that was said, but we
5 talked about his interview with Captain Estabrook
6 and his thoughts on that.

7 Q. Okay. What did he say about his
8 interview?

9 A. That he was concerned about Captain
10 Estabrook's ability to perform his duties, and
11 that he was in favor of having Captain Estabrook
12 sent for a medical evaluation.

13 Q. Did he give the reasons why he wanted him
14 to have a medical evaluation, or did you just rely
15 on his judgment?

16 A. No. I rely on Todd's judgment all the
17 time. But I don't recall any specific reasons,
18 no.

19 Q. Well, do you recall that it had to do with
20 things that Captain Estabrook had said at that
21 meeting?

22 A. I think that was part of it, his -- yes,
23 sir. His emails, his behavior in the meeting and
24 some of the things he talked about in the meeting,
25 yes, sir.

1 Q. I want to break that down. You said Todd
2 Ondra said to you -- this was a telephone call you
3 had with him on August 9th?

4 A. I can't recall the specific date. I did
5 have a telephone conversation with Todd Ondra
6 after the interview with Captain Estabrook, and as
7 far as the specifics of what Todd said, I can just
8 speak in generalities.

9 Q. Okay. But you specifically remember that
10 he said something about an email as the basis --
11 as partial basis for his recommendation?

12 A. I don't specifically remember him saying
13 emails. We -- when we discussed Captain
14 Estabrook's situation, his original emails and
15 that subsequent email were one of the reasons for
16 concern.

17 Q. Were you involved in -- did Company
18 counsel ever come to you and discuss responses to
19 discovery? Does that mean any -- well, do you
20 understand the term "discovery"?

21 A. Yes, sir.

22 Q. You understand what interrogatories are
23 and requests for admissions are?

24 A. Generally.

25 Q. Okay. Did Company counsel ever come to

1 you to discuss how they were going to make a
2 response to certain interrogatories?

3 MR. RIEDERER: Objection. You can
4 talk about the fact that we met, but you cannot
5 talk about what we talked about.

6 Q. Were you ever consulted with respect to
7 responses to interrogatories?

8 A. I don't think I understand the question,
9 Mr. Seham.

10 Q. You know what interrogatories are,
11 correct?

12 A. Yes, sir.

13 Q. Were you -- do you know -- you know that
14 in this case Captain Estabrook submitted
15 interrogatories for the Company to respond to,
16 correct?

17 A. Yes, sir. I had no part in any of that.

18 Q. All right. So you think Todd Ondra
19 mentioned emails as part of his rationale?

20 A. I think. I don't recall specifically.
21 But I believe that when Todd and I spoke we
22 discussed the situation in its entirety starting
23 from the emails to the completion of the
24 interview.

25 Q. Can you recall anything else that

1 Mr. Ondra said specifically gave him concern in
2 terms of the content of Captain Estabrook's
3 statements?

4 A. I think that was -- when Todd Ondra called
5 me, that's when I first learned of Captain
6 Estabrook's concerns with Auburn Calloway and a
7 possible link with Al-Qaeda.

8 Q. So that was part of what factored into
9 your decision to compel him to submit to a 15.D
10 medical examination?

11 A. I think it was all part, yes. Everything
12 that took place I think was -- I believe was a
13 part of that consideration.

14 Q. Well, what else did Mr. Ondra tell you?
15 Did he also tell you that Captain Estabrook had
16 brought up issues relating to Russians? Do you
17 recall that being any part of the rationale?

18 A. I do not remember that specifically. No,
19 sir.

20 Q. Do you recall Mr. Ondra communicating to
21 you Captain Estabrook's concern that Al-Qaeda
22 might exploit the publication of live tracking
23 information?

24 A. No, sir. I don't recall that
25 specifically.

1 Q. Do you have any recollection of anything
2 else Mr. Ondra said in terms of specific
3 statements that Captain Estabrook had made on
4 August 9th prompting a concern about his mental
5 health?

6 A. No, sir.

7 Q. Did there come a time when you learned
8 that -- well, let me back up.

9 When did you make your decision that
10 Captain Estabrook should be required to undergo a
11 15.D examination? Was it that same day that you
12 got the call?

13 A. I would have -- I would have to say, yes,
14 I believe that was when -- after -- after
15 consulting with Todd Ondra and Captain Fisher and
16 Mr. Tice made the decision to send Captain
17 Estabrook for a medical evaluation.

18 Q. So you did consult with Mr. Tice and
19 Mr. Fisher?

20 A. Yes, sir.

21 Q. When did you consult with Mr. Tice?

22 A. Probably around the same time.

23 Q. On the same day, August 9th?

24 A. I don't know if it's specifically that day
25 but around that time frame. After the interview

1 with Captain Estabrook, yes.

2 Q. And did you speak with him telephonically
3 or face to face?

4 A. I don't recall specifically. He may have
5 stopped by my office, or I have may have spoken to
6 him on the phone. I'm not sure.

7 Q. Did Mr. Tice add anything substantively to
8 what Mr. Ondra had told you?

9 A. No, sir.

10 Q. And then you spoke to Mr. Tice alone
11 without Mr. Fisher?

12 A. I don't recall.

13 Q. But you also spoke to Mr. Fisher at some
14 point on or about August 9th?

15 A. Yes, sir. Around that same time.

16 Q. And can you recall anything substantively
17 that Mr. Fisher said that added or detracted from
18 what Mr. Ondra had reported to you?

19 A. No, sir.

20 MR. TADLOCK: Need a break? Can we
21 take a break?

22 MR. SEHAM: Oh, sure.

23 THE WITNESS: Can I get a glass of
24 water?

25 MR. RIEDERER: Can we take a break?

1 MR. SEHAM: Yeah. Sure.

2 (Brief recess.)

3 (Whereupon, a document was marked as
4 Exhibit Q.)

5 BY MR. SEHAM:

6 Q. I'm going to hand you a document that we
7 will identify as Exhibit Q, from the stationery of
8 Captain Rob Fisher, paginated FDX 4, page 71. A
9 letter signed by Rob Fisher, Re: Company Mandated
10 Medical Examination, and with a lengthy cc list
11 with you at the very top. Did you receive this
12 letter on or about August 16th, 2013?

13 A. Yes, sir.

14 Q. And would this be the document that
15 directed Captain Estabrook to submit to a 15.D
16 mental health examination?

17 A. Yes, sir.

18 Q. And would you agree with me that if he
19 failed to comply with this, he would be subject to
20 discipline?

21 A. He may have been subject to discipline.
22 Yes, sir.

23 Q. And you directed Rob Fisher to send out
24 this letter, correct?

25 A. Yes, sir.

1 Q. That was based on your determination on
2 August 9th?

3 A. On or about that time.

4 Q. Did you have any consultation with legal
5 counsel in the interim between August 9th and
6 August 16th concerning this matter?

7 A. I don't recall.

8 Q. If you could hand the witness Exhibit M.
9 So you now have in your possession Exhibit M, a
10 letter on -- or a stationery of Alan Armstrong
11 dated August 13, 2013. Do you know who Alan
12 Armstrong is?

13 A. No, sir.

14 Q. It shows you as a cc on the last page, 68.
15 Did you receive a copy of this letter?

16 A. I don't know if I have ever seen this
17 before. I must have received it, but I -- I don't
18 recall. I don't recall receiving it.

19 Q. Isn't it true that you had consultations
20 with FedEx legal counsel concerning this letter?

21 MR. RIEDERER: Objection.
22 Attorney-client privilege. You can talk about
23 times when you may have spoken to attorneys in the
24 legal department, but you can't talk about the
25 substance of those conversations.

1 MR. SEHAM: No, I'm not asking for
2 the substance. I'm asking --

3 MR. RIEDERER: Well, you asked him if
4 he had conversations about this letter. That
5 would go to the substance of the conversation.

6 BY MR. SEHAM:

7 Q. Just so you understand, Captain McDonald,
8 I'm not asking you to divulge the substance, but
9 whether, in fact, you had communications with
10 FedEx legal counsel concerning this letter?

11 MR. TADLOCK: Can I grab the
12 documents?

13 MR. SEHAM: Yeah.

14 MR. RIEDERER: Again, you can talk
15 about the fact that you had conversations with
16 attorneys but not about the substance of those
17 conversations.

18 A. I would say I -- absolutely if this letter
19 came -- I just don't remember, you know. I don't
20 remember this letter specifically, but if it --
21 when I received it, I'm sure I had a -- I would
22 have had a conversation with Mr. Tice about it.

23 BY MR. SEHAM:

24 Q. Do you have any recollection whether this
25 letter prompted you to re-evaluate your decision

1 of August 9th that Captain Estabrook be subject to
2 a mandatory health examination?

3 A. No, sir.

4 Q. Are you familiar with the fact that within
5 the federal government there exists an entity
6 known as the Department of Labor?

7 A. Yes, sir.

8 Q. And are you familiar with the functions of
9 the Department of Labor?

10 A. Some of them I think.

11 Q. Are you familiar with a subdivision of the
12 United States Department of Labor known as the
13 Occupational Health and Safety Administration
14 [sic] otherwise known as OSHA?

15 A. Yes, sir.

16 Q. And what is your understanding as to the
17 function of OSHA?

18 A. It protects workers in the workplace.

19 Q. And are you familiar with a law referred
20 to as AIR-21?

21 A. No, sir.

22 Q. Are you familiar with the fact that there
23 is a law enforced by OSHA that prohibits an
24 employer from retaliating against employees who
25 bring information of violations of Federal

1 Aviation Regulations to the attention of the
2 employee's employer?

3 A. I would say generally but not
4 specifically.

5 Q. I'm going to hand you a document that I
6 would like marked as Exhibit R as in rooster.

7 (Whereupon, a document was marked as
8 Exhibit R.)

9 Q. And I'm going to be handing you a document
10 that we will mark as Exhibit S.

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

13 Q. With reference to Exhibit S, I want to
14 draw your attention to the block number 5 with a
15 date to the right of 4/29/13, and a document
16 description of "emails between director W.
17 McDonald and attorney R. Tice regarding manager R.
18 Fisher letter to attorney A. Armstrong." Okay?

19 A. Yes, sir.

20 Q. Now, does this refresh your recollection
21 that Mr. Armstrong is an attorney representing
22 Mark Estabrook?

23 A. No, sir. It does not.

24 Q. And this letter that we have identified as
25 Exhibit R, is that a letter -- isn't it true that

1 this is a letter that was forwarded to you by
2 Captain Rob Fisher?

3 A. I don't -- I do not recall whether it was
4 or not. But if Rob received it, he probably sent
5 it to me.

6 Q. And if Rob Fisher forwarded you a legal
7 letter, you probably would have read it, correct?

8 A. Yes, sir.

9 Q. Isn't it true that you said to Captain
10 Fisher with respect to the Laredo matter that you
11 were disappointed that you had to drop the
12 disciplinary action against Captain Estabrook?

13 A. No, sir. We never instituted any
14 disciplinary action against Captain Estabrook.

15 Q. Isn't it true that you expressed your
16 disappointment that the investigation of Captain
17 Estabrook had to be discontinued?

18 A. No, sir.

19 Q. Are you familiar with a co-worker by the
20 name of Mary Murphy?

21 A. Yes, sir.

22 Q. And what position does she hold within the
23 Company?

24 A. She is a fleet captain of the 757/767.

25 Q. So you know her from work?

1 A. I do.

2 Q. Have you had a social relationship beyond
3 work?

4 A. We work together at the Union, and we
5 have -- we worked together at the Company and we
6 have -- I have seen her occasionally.

7 Q. You have been involved in a workplace
8 incident involving the throwing a bottle of tea at
9 a 767 captain on Company property?

10 A. No, sir.

11 Q. Were you ever involved in any workplace
12 incident involving the throwing of something at a
13 co-worker?

14 A. No, sir.

15 Q. Have you ever been referred for a mental
16 health examination?

17 A. No, sir.

18 Q. Would you agree with me that for a pilot
19 being referred for a mental health examination
20 would be the source of considerable stress?

21 A. I would imagine, yes. But we don't refer
22 pilots for mental evaluations.

23 Q. A pilot who is determined to have a mental
24 health issue is subject to being grounded,
25 correct?

1 A. Yes, sir.

2 Q. And if an individual is grounded for
3 several months, he might have to go through
4 recurrent training that he otherwise would not
5 have to go through, correct?

6 A. Depending on how long a pilot is out, he
7 has to go through requalification training.

8 Q. How long would you have to be out before
9 you would have to submit to requalification
10 training?

11 A. I think it's -- it would be in the AQB
12 source documents. I believe it's two cycles.

13 Q. Two cycles meaning two months?

14 A. No, sir. It's about two years.

15 Q. If a pilot is required to go through an
16 additional recurrent training -- well, let's back
17 that up. Every time you go through recurrent
18 training there is a possibility that you could be
19 permanently grounded if you don't satisfy the
20 training, correct?

21 A. There is that possibility.

22 Q. Did you ever have any conversations with
23 anyone in the Company about postings by Mayday
24 Mark -- by an individual identified as Mayday
25 Mark?

1 A. Yes, sir.

2 Q. And how did you first become aware that
3 there were postings by an individual by the name
4 of Mayday Mark?

5 A. Somebody showed me, and I don't recall
6 who, a posting by Mayday Mark which very closely
7 recounted the incident with Captain Estabrook in
8 Laredo.

9 Q. And why did you have an interest in these
10 postings?

11 A. Because that information was tightly held,
12 and it surprised me that somebody would be
13 relaying information like that on a public forum.

14 Q. Was a part of the reason -- well, let me
15 come back to that.

16 If the witness could be provided with
17 Exhibit I as in icicle. Captain McDonald, you
18 have been provided with a document Respondent
19 Federal Express Corporation's Supplemental Answers
20 to Complainant's First Set of Interrogatories, and
21 I want to turn your attention to Interrogatory
22 Number 7 on page 2, which reads: "State the
23 reasons why the Complainant was placed on NOQ
24 status on or about August 5, 2013." The response
25 which proved to be an initial response was

1 "Complainant was placed on NOQ status on or about
2 August 5, 2013, because he had been referred for
3 examination under 15.D of the Collective
4 Bargaining Agreement between Respondent and the
5 Air Line Pilots Association."

6 After that there is a supplemental
7 response. This supplement response -- and I'm
8 reading the answer: This supplement responses
9 [sic] supersedes Respondent's original response.
10 Complainant was placed on administrative NOQ
11 status on or about August 5, 2013, to facilitate
12 the scheduling of a meeting he requested. The
13 effect of the placement on administrative NOQ
14 status was to clear his work schedule and prevent
15 the scheduling of conflicting activities.

16 Now, first of all, what is "NOQ status"?

17 A. It's a not operationally qualified. It is
18 a pay status.

19 Q. And under what circumstances is an NOQ
20 invoked by FedEx?

21 A. There's a number of circumstances.

22 Q. Well, what would they be?

23 A. If he failed a checkride, if he was sick
24 for more than 30 days, if he had lost his medical,
25 if the pilot was under investigation, if the pilot

1 was on long term disability. I don't know,
2 there's a number of different circumstances,
3 Mr. Seham. I can't list them all. But just a
4 general idea.

5 Q. An NOQ UFN, what does "UFN" mean?

6 A. I would have to guess that that means
7 until further notice.

8 Q. Would that narrow the field of situations
9 to which the NOQ would be applied if it was an
10 indefinite NOQ?

11 A. I don't know if I understand the question.
12 You mean NOQ UFN?

13 Q. Yes. Would your answer be the same that
14 you gave me before that it would involve the
15 failed checkride, sick over 30 days, under
16 investigation, LTD, or is UFN does that apply a
17 higher level of concern?

18 A. Well, UFN is not a Company designation.
19 We usually call -- we call it an open-ended NOQ,
20 and you place a pilot on NOQ -- an open-ended NOQ
21 until the operational consequence has been
22 resolved.

23 Q. And on August 5th you directed that
24 Captain Estabrook be placed on NOQ, correct?

25 A. Yes, sir. That's correct.

1 Q. And was the purpose of his being placed on
2 NOQ on or about August 5th to facilitate the
3 scheduling of a meeting he requested?

4 A. Yes, sir. It was to facilitate the
5 scheduling of the meeting between Captain
6 Estabrook, Captain Fisher, and Todd Ondra.

7 Q. At the time of the NOQ, had you already
8 determined that there was cause to question his
9 mental health?

10 A. No, sir. I don't think I ever had cause
11 to question his mental health.

12 Q. When you say that, you ultimately did, I
13 imagine, because you directed him -- you made a
14 determination on August 9th that he submit to an
15 evaluation, correct?

16 A. No, sir. I made a determination to send
17 him to Harvey Watt, the aeromedical advisor,
18 subject to a 15.D. It would -- the type of
19 evaluation he would undergo would be dependent
20 upon his interview with the Harvey Watt physician.

21 Q. I think we are splitting hairs, but
22 then -- so let me ask you in the jargon that you
23 use -- in the language that you use here. As of
24 August 5th, 2013, did you have any information
25 that inclined you to send Captain Estabrook for a

1 15.D evaluation?

2 A. As of August 5th.

3 Q. 2013. As of the day that you put him on
4 NOQ to facilitate this meeting, did you have any
5 information that inclined you to send him to a
6 15.D evaluation?

7 A. Well, I had my initial concerns based upon
8 his original email to me and his subsequent email.
9 But I hadn't made any determination, and I was
10 waiting for the interview between Captain
11 Estabrook and Captain Fisher and Captain Ondra and
12 Mr. Tice before -- to see what the results of that
13 interview would lead to.

14 Q. So part of your decision on August 9th was
15 based on your conclusion that Captain Estabrook's
16 August 4th reference to Fred Smith as Fred
17 justified a referral of him to a 15.D evaluation,
18 correct?

19 A. No, sir.

20 Q. What was it in the August 4th email from
21 Captain Estabrook that contributed to your
22 determination to refer him to a 15.D evaluation?

23 A. Well, upon receipt of Mark's -- excuse me,
24 Captain Estabrook's email, I wasn't sure whether
25 he was being serious or whether he was joking with

1 me or not. And, I mean, there are a number of
2 protocols, a number of avenues available for
3 Captain Estabrook to raise security concerns if he
4 has them. Certainly an email to me would suffice
5 to raise those concerns if he wished to share that
6 information with me. His original email which
7 asked us to -- asked me to give Fred his cell
8 phone number but tell him not to call until after
9 I -- because I may be going back to -- going to
10 sleep, I considered it odd and unusual.

11 Q. So the answer is that that reference in
12 his August 4th email contributed to your decision
13 to refer him to a 15.D evaluation on August 9th,
14 correct?

15 MR. RIEDERER: Object to the form of
16 the question.

17 A. Which reference? Oh, I'm sorry. Which
18 reference?

19 Q. What you just described in your testimony?

20 A. The reference --

21 Q. Your concern, your concern about the
22 inappropriateness of his request for a meeting
23 with CEO Fred Smith, that contributed to your
24 decision on August 9th to refer him to a 15.D
25 evaluation?

1 MR. RIEDERER: Object to the form of
2 the question.

3 Q. Correct?

4 A. I would say it -- yes. It contributed
5 because I was concerned that Captain Estabrook was
6 not -- he should have known that there are a
7 number of avenues there, and to request a meeting
8 with the CEO or a phone call for the CEO instead
9 of following the normal channels of communication
10 for security issues, I considered that to be
11 unusual.

12 Q. Unusual enough to suspect his fitness to
13 fly, correct?

14 A. Not initially, but unusual -- unusual
15 enough to warrant further investigation.

16 Q. So part of the reason for the NOQ -- it
17 wasn't just to facilitate a meeting, correct?
18 That part of the reason for the NOQ was because
19 you already suspected that Captain Estabrook had a
20 fitness for duty issue?

21 A. No, sir.

22 Q. So as of August 5th, you did not believe
23 that Captain Estabrook had a fitness for duty
24 issue?

25 A. I didn't know.

1 Q. On August 5th you knew that he had served
2 as the pilot Union's chairman of security,
3 correct?

4 A. No, sir. I didn't learn that -- I don't
5 recall that fact until we prepped for this -- for
6 this deposition.

7 Q. If he had been, the chairman of the
8 Security Committee for the Union, he would have
9 interfaced with high levels of management on
10 security issues; isn't that correct?

11 A. At the Union? No. He probably would have
12 interfaced with people in Flight Operations maybe
13 at the chief pilot level and maybe at Todd Ondra's
14 level, but anything higher than that, probably
15 not.

16 Q. Do you know who Mr. Henrikson?

17 A. I remember the name, but I can't recall
18 what his position was.

19 Q. Do you know who Bill Logue was?

20 A. Bill Logue?

21 Q. Logue.

22 A. Yes, I do.

23 Q. What position did he hold?

24 A. He was -- he was the -- I think the chief
25 operating officer of FedEx Express and then he

1 went on to become the CEO of FedEx Freight before
2 he retired.

3 Q. Why didn't you engage in any
4 investigation -- well, let me -- and I'm presuming
5 facts you didn't testify -- well, let me eliminate
6 any doubt.

7 Between August 5th and August 16th you
8 didn't investigate Captain Estabrook's prior
9 involvement in security-related and safety-related
10 issues with the Company, correct?

11 A. No, sir.

12 Q. And why didn't you do that?

13 A. I didn't think it was relevant. Mark --
14 Captain Estabrook said he had some security
15 concerns. I set up a meeting with Captain Fisher,
16 his fleet captain, and Todd Ondra, the director of
17 airline security, and I thought that that would be
18 sufficient to help him air his concerns.

19 Q. And that was the purpose of the NOQ,
20 correct?

21 A. To facilitate that meeting, yes, sir.

22 Q. Do you know what "RMG" stands for?

23 A. Yes, sir. Remove -- management removable.

24 Q. Under what circumstances is an RMG
25 utilized?

1 A. If management wants to remove a pilot from
2 a trip, they can use the RMG code. The pilot is
3 removed from that activity and paid for it.

4 Q. So what is the difference between RMG and
5 NOQ?

6 A. RMG is usually used on a one-time basis
7 for a specific activity or a specific set of
8 activities. And NOQ is usually open ended, and it
9 is more of an administrative process than an
10 operational process.

11 Q. Now, a NOQ standing means for the duration
12 of the NOQ status that pilot is grounded, correct?

13 A. Grounded --

14 Q. He's not permitted to fly?

15 A. That's correct.

16 Q. And he's not permitted to jumpseat either,
17 is he?

18 A. No. Sometimes he is permitted to
19 jumpseat.

20 Q. Sometimes?

21 A. Yes, sir.

22 Q. But it's a diminished status in terms of
23 jumpseating privileges, correct?

24 A. I'm not sure.

25 Q. Why did you apply the NOQ status instead

1 of RMG --

2 A. Because it --

3 Q. -- to Captain Estabrook?

4 A. Because it was an administrative process,
5 and I didn't know how long it would take to
6 complete the -- to complete the interview.

7 Q. You thought it would take more than one
8 day?

9 A. I don't know. It would take however long
10 it would take to get Captain Estabrook, Captain
11 Fisher, Todd Ondra, and Robb Tice together in a
12 room so that they could conduct the interview.

13 Q. Did anyone other than yourself participate
14 in the NOQ decision vis-a-vis as it related to
15 Captain Estabrook on August 5th, 2013?

16 A. I don't think so. I don't believe so.

17 Q. And back to Mayday Mark. When did you
18 first learn about these postings?

19 A. I don't recall.

20 Q. Did the issue -- did you suspect at some
21 point that Mayday -- the person who was posting
22 under the name of Mayday Mark was Mark Estabrook?

23 A. I thought that was a possibility.

24 Q. And the post -- the person posting --
25 isn't it true that the person posting under the

1 name of Mayday Mark alluded to the fact that he,
2 that pilot, had suffered a stroke?

3 A. I don't recall that.

4 Q. Was part of your rationale for placing
5 Captain Estabrook on NOQ status in response to a
6 concern that Captain Estabrook was Mayday Mark?

7 A. No, sir.

8 Q. Would you agree that part of the Company's
9 objective for the August 9th meeting was to
10 ascertain whether Captain Estabrook was Mayday
11 Mark?

12 A. No, sir.

13 Q. Does it come as a surprise to you that
14 Mr. Tice asked a number of questions to Captain
15 Estabrook as to whether he was Mayday Mark?

16 MR. RIEDERER: Object to the form of
17 the question.

18 A. No, sir.

19 Q. And if you had been at that meeting -- let
20 me ask you, did you have any interest in finding
21 out whether Captain Estabrook was Mayday Mark?

22 A. No. I don't think I cared one way or the
23 other. What my concern with the Mayday Mark
24 posting was that information that I felt was very
25 close to the situation that we experienced in

1 Laredo with Captain Estabrook was being placed on
2 a public forum, and the only people that should
3 know about that would be Captain Estabrook, Mark
4 Crook, the duty officer, Rob Fisher and myself
5 probably.

6 Q. And you saw this information --

7 A. Somebody showed me a posting.

8 Q. And that would have been prior to the NOQ
9 designation?

10 A. Probably.

11 Q. Okay. So you're concerned about the
12 disclosure of operational information to a wider
13 public audience, correct?

14 A. Not on operational information, but it was
15 information that is between the pilot and flight
16 management, and that's not the place for it to be
17 aired.

18 Q. So would that be a violation of FedEx
19 policy?

20 A. I would say probably so.

21 Q. Now, you're the individual charged with a
22 high level of responsibility for administering the
23 pilot/Company Collective Bargaining Agreement,
24 correct?

25 A. Yes, sir.

1 Q. If Captain Estabrook had posted that
2 information, would a disciplinary warning have
3 been merited?

4 A. No. I think that was -- if Captain
5 Estabrook wants to blog about his personal
6 experiences and his experiences with the Company,
7 I don't have a problem with it.

8 Q. But you did have a problem with it, isn't
9 that -- wasn't that your testimony?

10 A. Because I didn't know who that person was.

11 Q. I may have misunderstood your testimony,
12 but I thought your testimony was that it might
13 have been a violation of Company policy to post
14 that information?

15 A. Well, if that information is out and
16 someone is making those -- talking about the
17 incident and it's not Mark and it's not myself or
18 one of my managers, then, yeah, I'm concerned
19 about that.

20 Q. So would it have been --

21 A. Excuse me, Captain Estabrook.

22 Q. So it would have been fine if Captain
23 Estabrook posted the information, but not fine if
24 someone other than Captain Estabrook posted that
25 information?

1 A. No. I just -- I don't know if it's fine.
2 If he wants to post it and he wants to go out and
3 talk to people about it, that's okay with me.

4 Q. Okay. And that would not be a violation
5 of any Company policy, correct?

6 A. I don't think so.

7 Q. But you're not certain? You're not
8 certain?

9 A. No, sir.

10 Q. And you don't know why Mr. Tice would have
11 asked Captain Estabrook questions about whether he
12 was Mayday Mark?

13 MR. RIEDERER: Object to the form of
14 the question.

15 A. I don't know why Mr. Tice asked.

16 Q. Did Mr. Tice ever report back to you about
17 the questions he had asked Captain Estabrook about
18 Mayday Mark?

19 A. I believe he told me that he had asked and
20 that Mark said that he was -- that he wasn't that
21 person, that poster.

22 Q. Okay. So Mr. Tice said that much to you
23 that he had asked and the response was he was not
24 that poster?

25 A. Yes, sir.

1 Q. And you were satisfied with that?

2 A. Yes, sir.

3 Q. Did you ever engage in any further effort
4 to determine who Mayday Mark was?

5 A. No, sir.

6 Q. I want to make sure I understand your
7 testimony. Is it your testimony that the 15.D
8 determination that you made on August 9th, 2013,
9 was made in consultation with Mr. Ondra, Mr. Tice,
10 and Captain Fisher?

11 A. Yes, sir.

12 Q. Do you know why Captain Estabrook received
13 a shortened requalification course after he was
14 cleared of any mental health issue?

15 A. No, sir.

16 Q. Isn't it true that his training was
17 shortened to one warmup simulator immediately
18 followed by an evaluation simulator from
19 standards?

20 A. I have no idea.

21 Q. And prior to making your 15.D decision,
22 did you review Captain Estabrook's personnel file?

23 A. No, sir.

24 Q. And referring to Exhibit R -- oh, no,
25 wrong exhibit.

1 Prior to making your 15.D determination,
2 did you consider any of the arguments made in
3 Mr. Armstrong's letter of August 13, 2013,
4 identified as Exhibit M as in Mary?

5 A. Could you read that question again,
6 please.

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

9 Q. Well, I thought that was an easy one since
10 you testified that you made the decision on
11 August 9th. But have you reconsidered based on
12 the August 13th and --

13 A. Oh --

14 MR. RIEDERER: You were asking him
15 whether he considered the letter or the arguments
16 contained in the letter?

17 Q. Both.

18 A. If the letter came on the 13th and the
19 decision was made on the 9th, how could that
20 happen?

21 Q. Okay. So the answer is no, you didn't
22 consider any of these arguments in terms of your
23 15.D determination?

24 A. No, sir.

25 Q. Thank you. Can you tell me how A300 fleet

1 captain telephone line conversations are recorded?

2 A. I don't believe they are.

3 Q. Do you recall writing an article about
4 Fred Smith's recent visit to the Flight Operations
5 crew lounge?

6 A. I don't recall, but I'm sure I did.

7 Q. Do you recall an article addressing the
8 issues of breaking down barriers in
9 communications?

10 A. I don't recall specifically, but I'm sure
11 I did.

12 Q. Is that an objective of the flight
13 department to enhance communications between Fred
14 Smith and the Company's pilots?

15 A. No. It was to break down the barriers
16 between the pilots and flight management.

17 Q. Have you heard FedEx pilots refer to Fred
18 Smith as Fred?

19 A. Absolutely.

20 Q. I'm sorry, absolutely?

21 A. Absolutely.

22 Q. And that's fairly common, correct?

23 A. Yes, sir.

24 Q. Are you aware that Fred Smith challenged
25 Captain Estabrook to a public debate on the front

1 of the -- front page of the *Memphis Commercial*
2 *Appeal* during a Union election in the 1990's?

3 A. I'm -- no, sir. I mean, I may have at the
4 time, but I don't recall it right now.

5 Q. And are you aware that *The Commercial*
6 *Appeal* published an article quoting Fred Smith as
7 asking the public to call him Fred?

8 A. No, sir.

9 Q. Did Mr. Ondra -- part of what he told you
10 on August 9th include references to Captain
11 Estabrook's statement that he had been told by
12 other pilots that Auburn Calloway had converted to
13 Islam?

14 A. I don't recall that.

15 MR. SEHAM: All right. Off for a
16 second.

17 (Brief recess.)

18 BY MR. SEHAM:

19 Q. So, Captain McDonald, did you ever --
20 referring back to the Mayday Mark postings. Did
21 you ever read a Mayday Mark posting in which this
22 person, Mayday Mark, referenced having suffered an
23 ischemic attack, I-S-C-H-E-M-I-C, attack?

24 A. I can't say for certain. I don't recall.

25 Q. Are you familiar with that term "ischemic

1 attack"?

2 A. Familiar, no. I'm not familiar with that
3 term.

4 Q. Do you share my understanding that that is
5 a reference to a stroke?

6 A. I think I would, yes.

7 Q. And you said you got these postings from
8 another person?

9 A. I only recall one posting, and someone
10 showed me because it was reflective of the Laredo
11 incident.

12 Q. When you say "one posting," you mean one
13 page?

14 A. Well, a -- yeah, a string. I don't know.
15 It was -- I don't know if you're familiar with it.
16 It's a blog posting thing, and there are topics
17 and everybody chimes in, you know.

18 Q. How many pages would this have been?

19 A. Oh, well, the -- each person puts their
20 thing, and it runs on to the next person's blog
21 and the next person's blog and the next person's
22 blog.

23 Q. But you were only focused on one posting
24 from Mayday Mark?

25 A. That's correct.

1 Q. And did you give that posting to anybody
2 else?

3 A. I don't recall.

4 Q. Now, after hearing from Mr. Ondra on
5 August 9th, you didn't have any suspicion that
6 Captain Estabrook had suffered a stroke, correct?

7 A. No, sir. None.

8 Q. Did you have any concern that he had an
9 eyesight issue?

10 A. No, sir.

11 Q. Now, isn't it true that your concern on
12 August 9th after hearing from Ondra was that he
13 had a mental health issue and required a
14 psychological evaluation?

15 A. No, sir.

16 Q. And I'm still puzzled, I think the
17 references to RMG, why didn't you use an RMG to
18 facilitate the meeting -- an RMG designation
19 instead of an NOQ designation to facilitate the
20 August 9th meeting?

21 A. Well, the RMG, as I said, it's activity
22 specific so -- and I'm not sure what type of
23 activities Captain Estabrook had on his schedule
24 at that time. But you would have to RMG an
25 activity and RMG the next activity and RMG the

1 next activity and RMG the next activity. If you
2 use an NOQ, an administrative NOQ, it puts the
3 pilot in a non-operationally qualified status, a
4 full pay status. It's open ended, and when the
5 business is completed, then you close the NOQ and
6 they go right back to their schedule.

7 Q. Someone who is on RMG has undiminished
8 jumpseat access, correct?

9 A. Yes, sir.

10 MR. SEHAM: No further questions.

11 EXAMINATION

12 BY MR. RIEDERER:

13 Q. When it comes to a referral for Harvey
14 Watt and as a pilot goes through that process, do
15 you ever make the determination as to whether that
16 pilot is fit to fly?

17 A. No.

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

20 MR. SEHAM: We are done.

21 (Deposition concluded at 3:05 p.m.)

22 AND FURTHER DEPONENT SAITH NOT

23 (Signature waived)

24

25

1 COURT REPORTER'S CERTIFICATE

2 STATE OF TENNESSEE:

3 COUNTY OF SHELBY:

4 I, SHERYL G. WEATHERFORD, LCR #027, CSR, RPR,
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31 for the State of Tennessee at
32 Large ***33 My commission expires:
34 June 5, 2016

35