

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES

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

DAY THREE

Wednesday,
June 8, 2016

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

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

BEFORE: HONORABLE SCOTT R. MORRIS
Administrative Law Judge

BAYLEY REPORTING, INC.
(727) 585-0600

APPEARANCES:On behalf of the Complainant:

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INDEX OF WITNESS TESTIMONY

<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>RE- DIRECT</u>	<u>RE- CROSS</u>	<u>VOIR DIRE</u>
<u>CALLED BY</u>					
<u>RESPONDENT:</u>					
TODD ONDRA	525 By Mr. Riederer	557 By Mr. Seham	610 By Mr. Riederer	614 By Mr. Seham	
WILLIAM McDONALD	621 By Mr. Tadlock	649 By Mr. Seham	710 By Mr. Tadlock		

INDEX OF EXHIBITS

<u>EXHIBITS</u>	<u>IDENTIFIED</u>	<u>RECEIVED</u>	<u>REJECTED</u>
<u>COMPLAINANT'S EXHIBITS</u>			
CX-40, CX-41	prev.	713	
CX-50	567		
CX-51	672		
<u>RESPONDENT'S EXHIBITS</u>			
RX-2	prev.	633	
RX-3 through RX-5	prev.	524	
RX-35	621		

P R O C E E D I N G S

1
2
3
4
5
6
7
8
9
10
11
12
13
14
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16
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18
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9:15 a.m.

JUDGE MORRIS: This is day three in the case of Mark Estabrook versus Federal Express Corporation, Department of Labor Case Number 2014-AIR-00022. Prior to the hearing this morning, and pursuant to my order yesterday, respondent's counsel has provided me the documents that I had directed to be produced for *in camera* inspection.

I am returning those to the respondent, and they are not going to be released. I find that they, in fact, are either attorney-client privilege or work product information and not subject to disclosure in these proceedings. You can come retrieve these, counsel. In addition, I previously asked the parties to address the redaction of any matters contained -- private matters in RX-3 through RX-5. Complainant's counsel, what's your position on this?

MR. SEHAM: Our position -- I want to be careful about this -- in the context of the Court's ruling that they are admissible, which we have opposed because we don't believe that the results of a Soviet-style psychiatric examination should be used to justify the initiation of the Soviet-style psychiatric examination. But if they are, notwithstanding, coming in our view is that they should come

1 in in their entirety so that public policy can be informed
2 and also so the enormity of the privacy invasion is a matter
3 of record.

4 JUDGE MORRIS: Respondent's counsel?

5 MR. RIEDERER: We are happy to submit them
6 unredacted. Obviously, we disagree that they go to damages
7 or that it was conduct that was taken place by FedEx.

8 JUDGE MORRIS: All right. Complainant's objection
9 is so noted. I am going to leave the record as it is with
10 the unredacted information concerning the respondent. And,
11 if it gets to that point, your point is well taken as to
12 damages.

13 [WHEREUPON, the documents
14 previously identified and marked as
15 RESPONDENT'S EXHIBITS RX-3 through
16 RX-5 were received into evidence.]

17 JUDGE MORRIS: Who is the next witness?

18 MR. RIEDERER: We would call Todd Ondra.

19 JUDGE MORRIS: Mr. Ondra?

20 MR. RIEDERER: He's out.

21 JUDGE MORRIS: All right, please call him in.

22 [WHEREUPON, prospective witness Todd
23 Ondra entered the courtroom.]

24 JUDGE MORRIS: Mr. Ondra, please step forward to
25 the witness box, turn and face me, and raise your right

1 hand.

2 WHEREUPON,

3 **TODD ONDRA**

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

6 JUDGE MORRIS: Please take your seat. Please give
7 your full name and business contact information address,
8 please.

9 THE WITNESS: Sure. Todd Allan Ondra, managing
10 director, aviation and regulatory security. Business
11 address is 3620 Hacks Cross Road, Memphis, Tennessee, 38125.

12 JUDGE MORRIS: And how do you spell your last
13 name?

14 THE WITNESS: Ondra, O-N-D-R-A.

15 JUDGE MORRIS: Go ahead, counsel.

16 **DIRECT EXAMINATION OF**

17 **TODD ONDRA**

18 BY MR. RIEDERER:

19 Q Mr. Ondra, how long have you worked for FedEx?

20 A Thirty-four years.

21 Q Can you give the Court a brief overview of your
22 employment at FedEx?

23 A Absolutely. In 1981, I was hired as a part-time
24 security officer in the FedEx Express security department.
25 In 1984, I was promoted to security specialist. In 1986, I

1 accepted a manager position in our hub operation and served
2 in there for almost two years. In 1986, I became senior
3 manager of FedEx Express security. In 1996, I became
4 managing director of -- in the security department, and then
5 in 2011 in my current position as aviation and regulatory
6 security director.

7 Q Now, you're talking about the security department.
8 If you could, please give us an overview of what the
9 security department in general does for FedEx?

10 A The security department in general provides a safe
11 and secure work environment for our employees. So primarily
12 it's three-tiered, to protect our employees, our customers'
13 property, and our company's assets. Those three things
14 align with our principle of protecting our brand and just
15 keeping our company secure and safe.

16 Q What type of -- the members of the security
17 department, what type of background do you typically look
18 for?

19 A Yeah. So we pull from a variety of backgrounds.
20 Primarily law enforcement backgrounds are where are security
21 department team members come from. We also have military
22 team members, as well. We pull from the intelligence
23 community, as well, depending on position, just a good
24 variety, good makeup, diverse background of -- not one
25 background really can do the job, in our opinion, and it

1 takes a good complement of backgrounds to make a good secure
2 department, and that's what we have.

3 Q Mr. Ondra, you testified you're in the aviation
4 security group, is that right?

5 A Yes, sir.

6 Q Can you give us an overview of what that group
7 does?

8 A Yes. So our primary mission aligns very closely
9 with what the mission of our department is. Our primary
10 mission aligns with that three-tiered concept that I
11 introduced earlier, only we apply it to the aviation field
12 in our team-specific mission -- that is, we are there to
13 protect our people.

14 In this case, it's the air crew members of the
15 company is our primary focus. Our assets are obviously
16 aircraft, to help protect our aircraft and make sure that
17 they stay safe and secure. And those two things then
18 naturally fold into protecting our customers' property. If
19 we take care of the people, the aircraft, that will take
20 care of our customers' property, and then also protect the
21 brand.

22 We are a U.S. flying carrier. We are regulated
23 heavily by the TSA, and that's a good thing, in my opinion.
24 That helps us help ensure that the airline is secure. We
25 get audited frequently by the TSA. We have to pass

1 inspections.

2 We have to live to that program, and not just say
3 we do it but prove we do it. And that's something that is
4 very important. We don't rely on that alone. However, that
5 is an important thing. We meet and exceed the requirements
6 of that program.

7 We also work closely with our internal partners at
8 FedEx. We can't do it alone in any lane. We have several
9 lanes to help make sure that the airline stays secure. We
10 do that by following the program. We do that by working
11 with our internal partners, whom we meet with regularly.
12 That includes global operations control, AirNav, and many
13 overfly departments with our company, so we meet with them
14 regularly also.

15 And we also meet regularly with other airlines in
16 other associations on a regular and frequent basis. Other
17 directors and other peers with both commercial and cargo
18 carriers we meet with regularly to help ensure that we're
19 sharing information, security-related information. There's
20 no competition in security. The goal is to share
21 information, what intel and information is out there. What
22 affects one airline will affect another, and we partner
23 closely with our partners to make sure that that happens
24 also.

25 And, finally, the last groups that we partner with

1 closely is our intelligence and law enforcement community.
2 There's a wealth of information. We need to be plugged into
3 that, and we are on a frequent basis.

4 Q As the managing director of the aviation security
5 group, what would you say your day-to-day job
6 responsibilities are?

7 A My day-to-day responsibility is just to make sure
8 that we're doing everything possible to keep the airline
9 safe and secure. Again I keep going back to those three
10 principles, but that really is our guidance for what we do.

11 It's to help make sure that our crew members stay
12 safe, that our aviation and overfly and aircraft stay safe,
13 and that our customers' property stays safe, protecting the
14 brand. That's my primary role is to organize and lead that
15 function and oversee that and just make sure that we stay on
16 the cutting edge to make sure that we stay safe and secure.

17 Q How big is your group?

18 A Pardon me?

19 Q How many employees report to you?

20 A My specific group, we have approximately 50 team
21 members within the aviation regulatory security department.
22 Having said that, that's my team. We also partner closely
23 with the domestic security team here in the U.S., and we
24 have -- I have peers in each one of the major regions within
25 FedEx that we interact with daily. They have aviation

1 security personnel in those regions, as well. So, while we
2 don't lead that, they complement, and we work together to
3 help make sure that the airline stays safe.

4 Q Can you describe your reporting chain?

5 A Absolutely. So my direct boss is Terry Harris.
6 He's the vice president of international and aviation
7 security. Terry reports to Mark Allen, who is the senior
8 vice president of international. Mark Allen reports to
9 Christine Richards -- Christine is our corporate counsel for
10 FedEx Corporation -- and Christine to Mr. Smith.

11 Q So, with Terry Harris over the international
12 security group, is there also a domestic side of that?

13 A There is also a domestic side to security. So
14 Terry has everything outside of the domestic U.S. There is
15 a domestic vice president, as well, Mark Hogan. Mark
16 Hogan's team leads all security-related efforts within the
17 U.S.

18 It's probably important to say also that FedEx
19 recently made the investment about six months ago -- there
20 is also some aviation security specialists within the
21 domestic operation that, while they don't report to us, we
22 interact with them on a regular basis, both to help ensure
23 that the TSA requirements within the U.S. are achieved and
24 overall aviation security needs are achieved.

25 Q Prior to the addition of those employees, did you

1 also work with the domestic side of security?

2 A I did. So mentioned promoted to -- well, prior to
3 2011, I was the director of security for domestic operations
4 in basically Memphis responsibility. So our team had the
5 security lead for our major -- our largest world hub here in
6 Memphis, all of our major campus locations, basically all
7 the non-operational locations within Memphis, about 32,000
8 employees within Memphis.

9 Q After you left that position, who replaced you in
10 that position?

11 A My replacement in that position was one of the
12 senior managers on our team at the time, Ken Adams.

13 Q In your role as the managing director of aviation
14 security, do you work with other officers and directors
15 outside of security?

16 A Yes. Work extensively with other officers and
17 directors outside of security, primarily, again, for the
18 relationship. And FedEx is a large company. It's very
19 complex. It's very important that we target the departments
20 that can best serve and help achieve our need of keeping the
21 airline secure. And, again, I mentioned some of those
22 departments that we work with and meet with on a regular
23 basis, and the answer to that, obviously, is yes.

24 Q Do you work with representatives in the FedEx
25 pilot union?

1 A I am -- to answer that question, no, not on a
2 regular basis. And the reason for that primarily is because
3 the pilot union is not a regulated party. We are a
4 regulated party. The company is a regulated party. I
5 mentioned earlier that we meet regularly with the other
6 airline security directors on a quarterly basis and other
7 meetings with other associations, as well. The union for --
8 the pilot union for FedEx is not a regulated party so that
9 they are not at those meeting, so I just don't have a
10 regular need to do that. They are just not present.

11 Q Would you accept information from the union if
12 they provided it?

13 A Absolutely. We'll accept information from anyone
14 that can help keep our airline secure, and very open to
15 that. Any information that we could possibly get we are
16 very open to from any party.

17 Q And, along those lines, what avenues does FedEx
18 provide employees to report concerns about safety and
19 security?

20 A There's really a multitude of ways that we
21 encourage employees to report security-related matters and
22 safety-related matters to the company. That could be the
23 employee's managers is a primary. Also human relations.
24 There is an alert line. There are air crew security
25 reports.

1 There are all kinds of avenues that we encourage
2 employees and crew members to report things to us so we're
3 aware. You can't deal with something if you're not aware of
4 it, and we encourage reporting, regardless of what that
5 report is.

6 Q And are those avenues relayed to the employees at
7 FedEx?

8 A I'm sorry, I didn't hear the question.

9 Q Are those avenues of reporting relayed to and
10 explained to the employees at FedEx?

11 A Yes, they are. They are made aware to employees
12 through e-mails, through managers' regular communications,
13 through human resources. There's a multitude of ways that
14 information is pushed to employees to make sure that they
15 know how to report things, sure.

16 Q Can employees file reports and concerns about
17 safety without fear of retaliation?

18 A Absolutely. It doesn't do any good to ask
19 employees to report things if there's any kind of fear of
20 retaliation or retribution. And that absolutely cannot
21 happen, and it's not condoned. You just want the
22 information and take it at face value and deal with that
23 information.

24 Q Are you aware of pilots ever raising concerns
25 about safety or security?

1 A Yes, many times. Many times crew members have
2 raised concerns about a variety of things, yes.

3 Q Aside from the allegations in this case, are you
4 aware of any other pilots alleging that they have been
5 retaliated against for reporting concerns of safety and
6 security?

7 A I am not aware of any, no.

8 Q Are you familiar with FedEx's package tracking
9 process?

10 A I am.

11 Q Can you describe the type of information that's
12 included in the package tracking?

13 A So the fedex.com package tracking system basically
14 provides information at a high level to customers. You can
15 log on to fedex.com. That information will provide pickup
16 data on when your shipment was picked up, as it transits
17 through our system at our major sort facilities, and then at
18 the point of delivery there will be a delivery POD or proof-
19 of-delivery scan on that shipment, as well.

20 Q And then, without publishing to customers,
21 internally does FedEx have additional information that it
22 would contain?

23 A Are you talking about from a scan data standpoint?

24 Q Correct.

25 A Yeah. So internally to our company the customer

1 has a limited number of scans that they can see. Inside
2 FedEx, for a variety of reasons, employees that have the
3 ability to can see additional scan data to include scans as
4 the shipment transits through our system and just many more
5 scans than the average customer can see.

6 Q The tracking information that's published to the
7 customers, is that in realtime?

8 A I'm not sure if it's realtime. It's probably
9 close to realtime, but I can't say that it's realtime. I
10 would imagine that it's close. I don't know the specific
11 answer to that one.

12 Q Okay. The package tracking information published
13 to customers, does that include any information on the
14 vehicle or the plane that the package is ultimately
15 transported on?

16 A No, it does not.

17 Q Are you familiar with the flight tracking
18 information?

19 A So package tracking? We're talking about aircraft
20 flight tracking?

21 Q Correct.

22 A Somewhat, yes.

23 Q And describe to me what you know about that.

24 A Just that it's flight tracking data. Obviously
25 it's out there for primarily safety reasons. The FAA -- any

1 aircraft that's up in the air -- has a need obviously to
2 know where that aircraft is for safety, for separation
3 reasons, and just a whole host of reasons that obviously the
4 FAA is aware of. So that's the primary reason for flight
5 tracking.

6 Q Does FedEx publish any flight tracking information
7 to customers?

8 A No.

9 Q Does it publish it to any third parties?

10 A No. Not that I'm aware of, no.

11 Q And do you know how the FAA collects that
12 information --

13 A No.

14 Q -- the flight tracking information?

15 A No, I don't know the detail of how the FAA --
16 obviously, technically, I don't understand how that happens.
17 But I do know that all aircraft, both cargo and passenger,
18 have a transponder, some means for that aircraft to send
19 that information I'm sure via satellite so the FAA can have
20 a visual of that aircraft, again, speed, altitude, for
21 separation and safety purposes, my understanding.

22 Q Based on your understanding of FAA laws and
23 regulations and federal safety laws and regulations, is
24 FedEx violating any kind of law or regulation by permitting
25 the FAA to determine where FedEx planes are?

1 MR. SEHAM: Objection, no foundation.

2 JUDGE MORRIS: Sustained.

3 BY MR. RIEDERER:

4 Q Are you familiar with the FAA laws and
5 regulations?

6 A I am somewhat.

7 Q Are you familiar with other federal safety laws
8 and regulations in the course of your business as the
9 managing director of aviation security?

10 A Absolutely. I have that requirement, as mentioned
11 before. Because we are regulated by the TSA, we have an
12 all-cargo security program that we and all cargo carriers
13 are responsible to know and implement, to effectively
14 implement and make sure that the processes are being carried
15 out, sure.

16 Q And your opinion, based on your position as
17 managing director of aviation security, do you believe FedEx
18 is violating any law by allowing transponders to transmit
19 their location of the planes?

20 MR. SEHAM: Objection.

21 JUDGE MORRIS: Basis?

22 MR. SEHAM: There's no foundation. I think we've
23 heard several times that he is somewhat familiar. This is
24 not a flight department individual. He said he was somewhat
25 familiar with the processes of transferral of information.

1 But this not an expert whose belief has any relevance in
2 terms of the central issues of the case, as identified by
3 the tribunal's summary judgment decision, which is, what is
4 in actuality the law?

5 Does FedEx have the ability to opt out of the
6 public dissemination of its information or not? And that's
7 a legal issue, and expert -- even if this were an expert
8 witness, and he is not -- there is no such thing as expert
9 testimony on legal issues which are in the domain of the
10 tribunal and not of a witness who has somewhat of a
11 background on this.

12 JUDGE MORRIS: Counsel?

13 MR. RIEDERER: A couple things, Your Honor.
14 First, Mr. Ondra testified that, through the course of his
15 job, he is responsible for helping to ensure that FedEx
16 complies with TSA and other governmental regulations when it
17 comes to aviation security.

18 Two, he testified that he wasn't sure technically
19 how the information is passed to the FAA, but that wasn't my
20 question here. My question is, because we transmit that
21 information -- which he does know that we do -- in his
22 opinion does he view that as being in violation of any kind
23 of a law.

24 Three, this is relevant to this case because Mr.
25 Estabrook has to prove that his raising of these concerns is

1 not only a subjective believe that we are violating the law
2 but an objective belief.

3 MR. SEHAM: Well, in fact, that misstates the law.
4 He has to show a reasonable belief that the -- present
5 facts supporting a reasonable belief of a violation of legal
6 standards. But, in any case, if we're asking an opinion
7 about what the law is, that opinion is irrelevant,
8 inadmissible. There is no such thing as an expert on what
9 the law is. The law is the law, and that is within the
10 province of this tribunal to determine.

11 MR. RIEDERER: The question, Your Honor, is
12 whether he believed he were violating the law, not what the
13 law is.

14 JUDGE MORRIS: I will be the ultimate -- or, an
15 appellate authority will be the ultimate decider of what the
16 law is. I will allow the question for the limited purposes
17 as to his understanding, but I'm going to give no weight to
18 whether or not the law was actually violated. You may
19 answer the question.

20 THE WITNESS: Just to make sure I understand,
21 could you repeat it, please?

22 BY MR. RIEDERER:

23 Q By giving this information, by allowing the FAA to
24 pull up this information from transponders in planes, is it
25 your belief that FedEx is somehow violating some sort of

1 federal safety law?

2 A I would say to the contrary. It's my belief that
3 it is not only we're not violating the law, it's my belief
4 that we have a legal requirement to do so.

5 Q In your understanding, is FedEx violating any
6 federal safety regulation or law?

7 A No, absolutely not. That is totally against the
8 mission of what our team does. It's my belief that we
9 comply with all federal aviation standards and requirements
10 and regulations. We strive to ensure that they get met.

11 Q Does FedEx take steps to deter terrorist
12 activities?

13 A FedEx takes many steps to deter terrorist
14 activities. So obviously what I talked about earlier,
15 that's the mission of our -- one of the primary missions of
16 our team, because it is so unfortunately prevalent these
17 days of terrorists and terrorist attempts.

18 We do that -- we help to do those things by
19 following our security program through the TSA. We not only
20 meet everything that's listed in the requirements listed by
21 the TSA, but we exceed -- in many cases exceed what's
22 required, because it's just good business sense.

23 It's good sense to protect our employees, number
24 one. And that is number one. But it's good business sense
25 also to help ensure that we are doing all those things

1 possible to help deter and avoid terrorist activities to
2 make sure that our employees stay safe, our aircraft and
3 aviation overfly stays safe, and our customers' property
4 stays safe. And we meet and often exceed those
5 requirements.

6 Q Does FedEx have a workplace safety program, a
7 workplace violence program?

8 A We have a workplace violence prevention program,
9 and that really is the mission of that program. And, very
10 similar to what you asked earlier, do we encourage employees
11 to report, in this program we absolutely encourage employees
12 to report those things. If we don't know about those
13 things, we can't prevent them. And that's the prevention
14 part of that program is really the key part. We have to
15 know about that. In order to prevent it, you have to know
16 about it.

17 Q Do you know Captain Mark Estabrook?

18 A Yes, sir.

19 Q Did you participate in a meeting with him on
20 August 9th, 2013?

21 A I did.

22 Q Do you recall who was present in that meeting?

23 A Yes. It was Captain Estabrook, Rob Tice and Rob
24 Fisher and myself.

25 Q Prior to this meeting, did you know Captain

1 Estabrook?

2 A I don't recall having met Mr. Estabrook before
3 this meeting.

4 Q Do you know how this meeting was set up?

5 A I believe I received a communication from Rob
6 Fisher to set that meeting up.

7 Q Did you have any communication with Bill McDonald
8 before the meeting was set up?

9 A Communication with Bill McDonald? Yes.

10 Q Did either Mr. McDonald or Mr. Fisher explain the
11 purpose of this meeting?

12 A Yes. It was to meet with Captain Estabrook about
13 some concerns that he had that were security-related.

14 Q Did Captain McDonald or Captain Fisher show you an
15 e-mail sent by Captain Estabrook?

16 A Yes, I did see that e-mail.

17 Q What's your recollection of what was written in
18 that e-mail?

19 A Best of my recollection, that e-mail stated that
20 Captain Estabrook had some concerns that weren't flight-
21 department related but they were 9/11-terrorism-related that
22 he had previously shared with -- some years ago with Bill
23 Henrikson.

24 And he asked Captain McDonald to get hold of Mr.
25 Smith and have him call him on his cell phone so he could

1 share some things with him, but he was getting ready to go
2 to sleep so he was going to turn his cell phone off and to
3 let Mr. Smith know that his cell phone is off when he
4 sleeps.

5 Q You see you have some exhibit books in front of
6 you?

7 A Yes.

8 Q In terms of the ones with the red cover, can you
9 look at the exhibit behind tab 14? That's respondent's
10 exhibit RX-14.

11 A Okay.

12 Q Can you take a moment to -- if you'll start from
13 the second page forward, and I'll have some questions about
14 that.

15 MR. SEHAM: What document?

16 MR. RIEDERER: Respondent's exhibit RX-14.

17 THE WITNESS: Okay.

18 BY MR. RIEDERER:

19 Q So on the second page, which is numbered on the
20 bottom right RX-150, is that the e-mail that -- to your
21 understanding is that the e-mail that Captain Estabrook sent
22 to Bill McDonald?

23 A Yes.

24 Q What was your impression of that e-mail?

25 A I thought the e-mail was strange for a number of

1 reasons.

2 Q Can you explain?

3 A Sure. I guess -- you know, we talked about
4 previously that there's many avenues for employees to report
5 safety- and security-related concerns. This is obviously
6 outside of what the norm would be expected for that. So,
7 number one, for someone to send an e-mail to their manager
8 asking their manager to get hold of our chairman to get back
9 with him on a security-related matter, when you have a
10 multitude of ways to report those things, seemed very odd
11 and strange.

12 I guess it also seemed very odd and strange that
13 not only would you do that but that you would say that, hey,
14 do that for me but I'm going to turn off my phone so I'm not
15 available. And then, you know, the whole e-mail for those
16 reasons just seemed very strange to me.

17 Q Now, it says in the e-mail, that he had previously
18 talked to Bill Henrikson.

19 A Yes.

20 Q Who is Bill Henrikson?

21 A Bill Henrikson was previously the vice president
22 of security. That was my boss back in I guess -- well, my
23 boss previously prior to Terry Harris.

24 Q And when -- is Bill Henrikson still employed by
25 FedEx?

1 A No, Bill has retired from FedEx.

2 Q Do you know when he retired?

3 A Bill would have retired about in the late 2000's.

4 Q At the time --

5 A I don't know the specific year.

6 Q At the time of this e-mail, was he still employed?

7 A No, Bill was retired at this time.

8 Q When you reported directly to Bill Henrikson, what
9 was your position?

10 A My position was director of security here in
11 Memphis.

12 Q Was it specifically designed with aviation
13 security?

14 A It was not aligned with aviation security at that
15 time. Again, I had responsibilities for Memphis operations.

16 Q Aside from this instance, are you aware of any
17 employees who have attempted to have their manager or their
18 manager's manager have Fred Smith contact them?

19 A I am not aware. Again, most employees that I'm
20 aware of typically go through their manager. But, again, if
21 the employee is not comfortable with their manager for
22 whatever reason, that's why those other avenues exist. That
23 could be the alert line, workplace violence prevention line.
24 There's a whole host of other ways to report those things.

25 Q Could he have contacted Mr. Smith directly?

1 A I guess he could have contacted -- any employee I
2 guess technically could attempt to contact Mr. Smith
3 directly. His name, I'm sure, is published in the employee
4 directory, just like all employees' names are. So I guess
5 he could have.

6 Q So back to this meeting that you attended with
7 Captain Estabrook, Rob Fisher, Rob Tice and yourself -- is
8 that everyone?

9 A Yeah.

10 Q Were you aware prior to that meeting that Captain
11 Estabrook had filed a whistleblower complaint with the
12 Occupational Safety and Health Administration?

13 A No, I was not.

14 Q Were you aware of any prior complaint,
15 whistleblower-type complaints filed by Captain Estabrook?

16 A I was not, no.

17 Q Prior to that meeting, were you aware that Captain
18 Estabrook had raised concerns about being pushed to fly in
19 unsafe weather conditions?

20 A No, I was not.

21 Q Prior to that meeting, did you have any knowledge
22 of any concerns Captain Estabrook had with his direct line
23 of management?

24 A None whatsoever, no.

25 Q Prior to this meeting, did Bill McDonald express

1 any frustrations over Captain Estabrook?

2 A No.

3 Q And prior to this meeting were you aware that
4 Captain Estabrook served as a security representative for
5 the union?

6 A I was not, no.

7 Q Do you recall the date of the meeting?

8 A The meeting was August 9th.

9 Q And did you do anything to prepare for the
10 meeting?

11 A I did not, other than receive the request from
12 Bill McDonald to attend based on some security-related
13 matters.

14 Q How long did the meeting last?

15 A The meeting lasted less than an hour. I can't
16 pinpoint the exact amount of time, but it was somewhere less
17 than an hour. It was not a long meeting.

18 Q Can you tell us about the meeting?

19 A Yes. So the introductions, the meeting started.
20 It started a little bit strange. I think Mr. Estabrook
21 initially mentioned that -- he started talking about his
22 concern a little bit, talked about his military background a
23 little bit.

24 But then he immediately started talking about
25 being in I guess -- I don't know exactly why, but started

1 talking about going -- or, being in Russia and Hungary with
2 his father and being -- I really didn't understand exactly
3 what they were doing there, but something about being chased
4 through Russia and Hungary. And, as a result of what they
5 were trying to do, he ended up in prison in Hungary and was
6 placed in prison by the secret police.

7 And that's something that kind of was -- right out
8 of the gate, which was strange. And then obviously we
9 transitioned a little bit to the package tracking
10 information that was also discussed previously, talked about
11 the concerns about that, about the tracking of packages and
12 aircraft.

13 Somewhere in the conversation also Mr. Estabrook
14 talked about the one event that FedEx has had on our
15 aircraft I think in the early nineties -- '94 I believe was
16 the year that it occurred -- and that was with Auburn
17 Calloway, who was a crew member at the time that attempted
18 to take over an aircraft, a FedEx aircraft.

19 And Captain Estabrook proceeded to talk about --
20 in that meeting also that he had been made aware the past
21 six to 12 months on a couple occasions that Auburn Calloway,
22 our former crew member, had -- after he had been placed in
23 prison, had converted to the Islam religion.

24 And, as a result, it was his belief that Mr.
25 Calloway was possibly communicating with terrorist

1 organizations from his jail cell and strongly suggested that
2 FedEx security work with the Department of Justice to place
3 listening devices -- I think his words were eavesdropping
4 devices -- in Mr. Calloway's cell to pick up these
5 transmissions, because he had concerns about that.

6 Q So you -- with respect to his comments about
7 Russia, you said you recall that he was being chased through
8 Russia?

9 A That's my recollection, that Mr. Estabrook stated
10 that he and his father were being chased throughout Russia
11 and Hungary and as a result at some point was captured by
12 the secret police in Hungary and placed in jail at the age
13 of 18.

14 Q Is it possible he was saying he was chasing the
15 Russians?

16 A I guess that's possible. That's not my
17 recollection. My recollection of the meeting was he was
18 being -- was that they were being chased. But that's what I
19 recall.

20 Q Do you know why he offered that comment?

21 A I don't. I thought it was very strange. Again, I
22 don't know really where that came from or why it was stated.
23 It just seemed almost like it was one of the leading
24 comments in the meeting, and it just kind of -- just was
25 very, very odd and strange to me that someone -- one of the

1 strangest stories I've heard.

2 Q What were your impressions of his comments
3 regarding planting listening devices in Auburn Calloway's
4 jail cell?

5 A I thought those comments were strange, as well. I
6 think Mr. Calloway had been in prison at that time close to
7 20 years, and I would think if there were concerns related
8 to that that, you know, they probably would come up from
9 another means if there truly were. I thought it was very
10 odd.

11 I mean, it's a maximum-security prison. I mean, I
12 can't -- it's very difficult and odd to believe that there
13 could be regular meaningful communications coming from a
14 federal jail cell to terrorist organizations, and to further
15 state that I think eavesdropping devices should be placed in
16 those cells and get with the Department of Justice, I just
17 thought very odd.

18 Q What were Captain Estabrook's concerns with the
19 package tracking data?

20 A I think the concerns primarily were just that the
21 data was available and out there. It's not a new concept.
22 I mean, this is something that, you know, that has been --
23 package tracking has been out there for many years. There
24 are -- I guess for many things that are good, there's also
25 potentially something that -- that someone is always going

1 to take something good and try to make something bad out of
2 it.

3 But, again, I think, based on the limited amount
4 of tracking information that's available to the general
5 public and not to those within the security department and
6 some very limited-scope folks within our company that have
7 full view of that scan data, you know, that's -- but I think
8 to the question Mr. Estabrook's concerns were just that the
9 data was available.

10 Q Did he describe in any way the concern of
11 combining the package tracking data and the flight tracking
12 data?

13 A You know, I can't remember specifically if he did.
14 He may have, because I do know that Mr. Estabrook did talk
15 about FedEx package tracking data and flight tracking data,
16 so he did talk about both. I don't know if -- I don't
17 recall him bringing the two together. It's quite possible
18 he did, I just don't recall.

19 Q Did Captain Estabrook say anything concerning a
20 failure by FedEx to deter the entry of explosive devices on
21 our planes?

22 A He didn't say anything from a failure to deter
23 standpoint. He was -- offering that seemed to be more as
24 his -- you know, just out of a concern. At no time did he
25 say that he has concerns that FedEx in any way is failing to

1 deter. It was just like I want to bring these things
2 forward to make sure that you're aware, was my
3 understanding.

4 Q Did he insinuate in any way that FedEx was
5 violating a law or regulation?

6 A None whatsoever, no.

7 Q Did you find Captain Estabrook's concerns over the
8 package tracking data to be objectionable in any way?

9 A Not at all. As I mentioned earlier, it's
10 something that we've been aware of and everyone has been
11 aware of, that that data is out there. It wasn't anything
12 new. In no way was it objectionable, no.

13 Q Were you aware or do you know if Captain Estabrook
14 previously raised these concerns after 9/11?

15 A I don't know, no.

16 Q Did he mention anything to that effect during the
17 meeting?

18 A He did mention during the meeting that he had
19 mentioned in the past again to Bill Henrikson, who you
20 mentioned earlier, that he had brought that up in the past
21 to Mr. Henrikson.

22 Q How did Captain Estabrook behave during the
23 meeting?

24 A I would say Mr. Estabrook was very I would say
25 intense. When we got to the discussions about the Hungary

1 and Russia and the Auburn Calloway discussions, it almost a
2 little bit manic, just very focused, very intense, you know,
3 particularly during those times.

4 Q Did you stay for the duration of the meeting?

5 A I didn't stay for the entire meeting. At some
6 point, I left. There was another discussion point I think
7 that was going to take place that didn't involve security,
8 and I left.

9 Q Do you recall any conversation during the meeting
10 about a blog poster named Mayday Mark?

11 A I don't remember that specifically, no.

12 Q Do you have any personal knowledge of Mayday Mark?

13 A No, I don't.

14 Q Did Mayday Mark play any role in your subsequent
15 recommendations?

16 A It didn't, because I didn't -- I'm not familiar
17 with it.

18 Q Following this meeting, did you have any concerns
19 with Captain Estabrook's fitness for duty?

20 A Following the meeting, I did have some concerns.
21 It primarily relates to those two discussion points that
22 happened during that meeting. I did have some concerns,
23 yes.

24 Q Did his behavior in any way affect your concerns?

25 A Both the information provided and the behavior had

1 some bearing on that, yes.

2 Q Who did you speak with following this meeting
3 relating to your concerns?

4 A Following the meeting, I contacted and called Bill
5 McDonald.

6 Q Why did you contact him?

7 A I guess just to your point, because I had concerns
8 coming out of that meeting. I just didn't feel right about
9 what was discussed and shared and the demeanor that was
10 displayed during that meeting. I just drove back to my
11 office, and I just did not feel that -- didn't have a good
12 feeling of what had just transpired in that meeting, felt I
13 needed to tell someone.

14 Q And, prior to calling Bill McDonald, had you
15 talked to Rob Tice or Rob Fisher, who were in the meeting
16 with you?

17 A I did not, no.

18 Q Did you offer some sort of recommendation to Bill
19 McDonald?

20 A I did. I kind of relayed the same accounts that I
21 just talked about to Bill McDonald and told him I had
22 concerns, both for Mr. Estabrook and for his ability to
23 operate an aircraft based on what I had just heard and
24 witnessed. And that's primarily what I shared to Bill
25 McDonald.

1 Q At the time of that discussion, were you -- let me
2 back up. Are you familiar with 15D of the collective
3 bargaining agreement?

4 A I am familiar with the term. I'm not familiar
5 with all the aspects of that. I do know it has something to
6 do with a medical evaluation, and it's in the crew member's
7 contract with the union and that kind of thing, but I'm not
8 intimately familiar with that, no.

9 Q Did you recommend a 15D exam?

10 A I didn't. At the time, I didn't know what -- at
11 the time, I didn't know it was referred to as a 15D. I did
12 recommend that, you know, based on what I observed and saw
13 and heard that it would -- that some kind of medical
14 evaluation would be probably appropriate and that kind of
15 thing.

16 And I was told that there is some kind of -- I
17 guess it's the 15D that you're referring to, some kind of
18 process for that to happen, a medical evaluation process if
19 there are concerns. And, based on what I had communicated,
20 it was my understanding that that was going to move forward.

21 Q Prior to this occasion, had you recommended an
22 evaluation for any other pilots?

23 A No, I had not, no.

24 Q Did Captain Estabrook's original e-mail
25 referencing Mr. Smith influence your recommendation?

1 A I would not say it influenced the decision. It
2 may have laid some groundwork in that area. It was very odd
3 and strange, as I mentioned before, based -- for the reasons
4 I stated. But I wouldn't say it was one of the determining
5 factors, but it kind of laid some groundwork. It was an odd
6 e-mail, and it just came out further during the meetings,
7 some very strange things.

8 Q Following the meeting, did you investigate Captain
9 Estabrook's comments about being chased through Russia or
10 about Auburn Calloway?

11 A I did not.

12 Q Is there a particular reason why you did not?

13 A I did not primarily because I guess it would be
14 difficult to investigate those particular items. I don't
15 know how you would go -- Mr. Estabrook said he was 18 at the
16 time he was placed in jail in Hungary, and I did not really
17 know how to follow up on that one.

18 Also the Auburn Calloway, again, Auburn Calloway
19 had been in jail for 20 years, roughly, in a maximum-
20 security prison, and I just thought the statements were very
21 odd and strange and just did not follow up on them
22 specifically, no.

23 Q Once you passed your concerns to Captain McDonald,
24 did you have any other involvement with Captain Estabrook?

25 A None, no, sir.

1 Q Did you raise -- or, did you recommend a medical
2 evaluation for Captain Estabrook because he raised safety or
3 security concerns?

4 A Not at all, no. It was based on those incidents
5 that occurred in the meeting.

6 Q Have other pilots or employees raised safety or
7 security concerns to you in the past?

8 A Yes, they have.

9 Q In those instances, did you ever recommend that
10 those individuals undergo some sort of fitness for duty
11 test?

12 A No, not at all.

13 MR. RIEDERER: I'll pass the witness.

14 JUDGE MORRIS: Counsel?

15 MR. SEHAM: Do you have any objection if I have my
16 paralegal sit in the witness area?

17 JUDGE MORRIS: That's fine.

18 MR. SEHAM: Yes?

19 JUDGE MORRIS: That's fine.

20 MR. SEHAM: So she can grab the binders and so
21 forth. Do you want to sit over there?

22 **CROSS EXAMINATION OF**

23 **TODD ONDRA**

24 BY MR. SEHAM:

25 Q Good morning, Mr. Ondra.

1 A Good morning.

2 Q You heard Federal Express Corporation referred to
3 as FedEx?

4 A Not often, but I have heard that statement.

5 Q And would you agree with me that *The Commercial*
6 *Appeal* is the leading newspaper of Memphis?

7 A Yes, sir.

8 Q And if you could turn to complainant's exhibit CX-
9 39?

10 A You said, CX-39, sir?

11 Q Yes.

12 A Okay, I'm looking at it.

13 Q I'm asking you to refer to the first sentence
14 after the headline, FedEx Chairman Fred Smith Tells City
15 Council Public Safety is Top Priority, and the first
16 sentence reading, "The man at the end of the Memphis City
17 Council's conference table, the citizen of Memphis with the
18 mop of gray hair, told everyone just to call him Fred." And
19 my question to you is, does it come as -- you saw this
20 article? This article was presented to you during your
21 deposition in March, correct?

22 A Yes, sir.

23 Q And would you agree with me that it didn't come as
24 a surprise to you that Fred Smith in public invited the
25 public to call him Fred?

1 A It doesn't come as a surprise to me. But I would
2 say that most individuals that I know don't call him Fred.
3 They call him Mr. Smith out of respect, as I do.

4 Q I'm going to ask you to turn -- you didn't give
5 that answer at your deposition, did you?

6 A No, I didn't. I just answered your question at
7 the deposition, sir.

8 Q Uh-huh. Now, you knew prior to the August 9th,
9 2013 meeting that Captain Estabrook had been chairman of the
10 pilot union's security committee, correct?

11 A The question is, was I aware of it prior to that
12 meeting --

13 Q Yes.

14 A -- August 9th?

15 Q Yes.

16 A No, sir.

17 Q Wasn't that statement actually in the August 4th
18 e-mail that he had previously served as the pilot union's
19 chairman of the security committee?

20 A I'd have to see the e-mail again. But, if it was,
21 then --

22 Q Well, let's turn to that. It's respondent's
23 exhibit RX-14.

24 A Okay.

25 Q Page 2. And the entirety of the e-mail -- well,

1 let's just skip down to the second sentence.

2 MR. RIEDERER: Lee, he's looking at the wrong
3 book.

4 MR. SEHAM: There are two --

5 JUDGE MORRIS: Red binders.

6 THE WITNESS: Oh, red binders, okay. Thank you.
7 Got it, okay.

8 BY MR. SEHAM:

9 Q So, if you look at the second sentence, "I did my
10 best to protect the company and reported as much as I could
11 through Bill Henrikson when I was security chairman at
12 ALPA." Now, you read this e-mail, correct?

13 A I did.

14 Q And you decided that you thought it was odd at the
15 time?

16 A The e-mail?

17 Q Yes.

18 A Yes, for the reasons stated.

19 Q Okay.

20 A Yes, I did.

21 Q And you knew at the time you read the e-mail that
22 he had served as a security chairman, correct?

23 A Not prior to the e-mail, but at this e-mail I
24 guess when I read it I would have been aware.

25 Q And you made no effort to look into his history of

1 service or the scope of his duties as security chairman,
2 correct?

3 A None whatsoever.

4 Q And you knew who Bill Henrikson is -- or, was,
5 correct?

6 A I do know who Bill Henrikson is, yes.

7 Q And he was the vice president of corporate
8 security?

9 A Yes, he was at that -- he was previously the vice
10 president of corporate security, yes.

11 Q And he was alive at that time, correct?

12 A Yes.

13 Q And to the best of my knowledge he still is alive,
14 correct?

15 A Yes, best of my knowledge.

16 Q Did you ever call up Bill Henrikson and ask him
17 about the history of dealings that he had with Captain
18 Estabrook?

19 A No, I did not.

20 Q Now, you never engaged in any review of your
21 correspondence files prior to your August 9th, 2013 meeting
22 to see if you had had any correspondence with Captain
23 Estabrook?

24 A No, I didn't, just preparing to go to the meeting
25 based on the request of Mr. McDonald.

1 Q And isn't it true that you were never asked by
2 anyone at FedEx to review your correspondence files
3 concerning any correspondence you may have had with Captain
4 Estabrook until a week before your March 2016 deposition?

5 A I don't remember the specific time I was asked to
6 review correspondence. It was sometime after the 9th
7 meeting of August, but -- your question again, to make sure
8 I understand?

9 Q That you have no recollection of reviewing your
10 files for correspondence with Captain Estabrook until a week
11 prior to your deposition?

12 A Correct, yes.

13 Q Could you turn to complainant's exhibit CX-16?

14 JUDGE MORRIS: That would be in the white binder.

15 THE WITNESS: Thank you, sir. And you said CX-16,
16 sir, correct?

17 MR. SEHAM: Yes.

18 THE WITNESS: All right, I'm there.

19 BY MR. SEHAM:

20 Q You see the subject line is jumpseat security
21 issues? Back in the period of 2002, did you have any
22 involvement with jumpseat security issues?

23 A I may have had a limited involvement, not a
24 significant involvement.

25 Q And you see on the second page, three lines down,

1 where it reads, "We understood from today's meeting that if
2 we have questions about the items the FPA proposed we should
3 direct them to Captain Estabrook," you see where I've read?

4 JUDGE MORRIS: You said CX-16?

5 THE WITNESS: CX-16 is not -- there's not two
6 pages for CX-16, sir.

7 MR. SEHAM: I'm sorry, I may have left a page out
8 there. In fact, you know what, I was -- my apologies, I
9 skipped a page there.

10 BY MR. SEHAM:

11 Q This letter -- I'm asking about CX-16 -- this is a
12 letter -- you see that's a letter addressed to Captain
13 Estabrook, correct?

14 A I do see that, yes.

15 Q And it's referenced that -- and Bill Henrikson was
16 your boss at this time?

17 A Yes. In 2002, yes.

18 Q And that first line where it says, "I think Todd
19 and I have indicated do you," would you agree with me that's
20 a reference to you, sir, correct?

21 A Yes.

22 Q And you were copied on that letter, as indicated
23 below, correct?

24 A I was copied on this letter, yes.

25 Q Now I'm moving to complainant's exhibit CX-17, and

1 I'm asking you to move to the second page of this document.
2 And at the fourth -- or, third line here on the second
3 page, it says, "We understood from today's meeting that if
4 we have questions about the items the FPA proposed we should
5 direct them to Captain Estabrook." Now, you were copied --
6 you see on the next page you were copied on this letter, the
7 third reference there?

8 A Yes, I am copied on the letter.

9 Q And who is William Logue?

10 A William Logue at the time is listed as a senior
11 vice president, AGFS.

12 Q Now, Mr. Ondra, would you agree with me that you
13 didn't have any involvement in any FedEx determinations as
14 they related to Captain Estabrook prior to August 9th, 2013,
15 correct?

16 A Correct.

17 Q You don't know, for example, if a 15D decision had
18 not already been made at that time?

19 A At that time prior to the August 9th meeting?

20 Q Uh-huh.

21 A Correct.

22 Q Okay. And you had no involvement in placing
23 Captain Estabrook on NOQ status on August 5th, 2013,
24 correct?

25 A Correct.

1 Q Now, you say you did -- or, you had some
2 participation in the decision to refer Captain Estabrook to
3 a 15D evaluation as of August 9th?

4 A I had provided -- as stated, I provided
5 information to Mr. McDonald about concerns that I had about
6 Mr. Estabrook --

7 Q Okay, but you --

8 A -- following the August 9th meeting.

9 Q You didn't specifically recommend a 15D
10 evaluation?

11 A I did not, no.

12 Q And you had no familiarity with whatever legal or
13 contractual requirements there might have existed at that
14 time?

15 A Was not familiar with it, no.

16 Q And you had never participated in a 15D decision
17 prior to this one, correct?

18 A Had not.

19 Q But you did have some understanding of what a 15D
20 evaluation would entail?

21 A High level understanding. It was my understanding
22 it would be some type of medical evaluation at that time,
23 correct.

24 Q Based on your conversation with Captain McDonald,
25 wasn't it your understanding at that time that it would

1 involve some kind of mental health submission?

2 A I would have thought possibly that would be a part
3 of that medical evaluation, yes.

4 Q Now, that's wasn't really my question, whether it
5 was part of a medical evaluation. Wasn't it your
6 understanding at that time that 15D -- or, the 15D
7 evaluation would relate to some kind of mental health
8 submission?

9 A Again, I guess my response is, I was aware that
10 that would be potentially a part of that evaluation out of
11 concern for Mr. Estabrook and for operating an aircraft.
12 That's why I made that comment --

13 Q Okay, and you based --

14 A -- to Mr. McDonald.

15 Q And that was your understanding based on what?

16 A That there was a process for that. I didn't know
17 of 15D, and don't know the particulars of that process, but
18 I did know that there was a process for a crew member to be
19 medically evaluated.

20 JUDGE MORRIS: Did you have any questions or
21 concerns about Captain Estabrook's physical well-being after
22 that meeting?

23 THE WITNESS: I guess not so much his physical
24 well-being. I did have questions and concerns about his
25 ability to effectively operate an aircraft.

1 JUDGE MORRIS: Okay.

2 MR. SEHAM: May I approach the witness --

3 JUDGE MORRIS: Yes.

4 MR. SEHAM: -- to hand him his deposition?

5 JUDGE MORRIS: Yes. Is this going to be CX-50,
6 counsel?

7 MR. SEHAM: I believe so, for identification
8 purposes only.

9 [WHEREUPON, the document identified
10 as COMPLAINANT'S EXHIBIT CX-50 was
11 marked for identification.]

12 BY MR. SEHAM:

13 Q Now, I'm going to refer you to page 47, starting
14 at line 6.

15 A Okay.

16 Q And you see where it reads -- the question is,
17 quote, "Did you understand at the time on August 9th that a
18 15D examination was the referral of a pilot by directive of
19 the company, by order of the company, to submit to a medical
20 examination?"

21 And your answer is, "Yes, I know, from that high
22 level, I do, but the details of that I don't know. I guess
23 that's what I was trying to state earlier. I do know that
24 it's some kind of mental health submission, but I don't know
25 the details around it relating to the contract." Was that

1 your testimony at your deposition?

2 A Yes.

3 Q And isn't it true that -- as of this time based on
4 your discussion with Captain McDonald, isn't it true that
5 you understood that there would be a mental health
6 evaluation?

7 A My understanding, again, as I stated previously,
8 that that would potentially be a part of that, yes.

9 Q In fact, you discussed with Captain McDonald the
10 possibility of there being a psychological examination,
11 isn't that correct?

12 A Well, I think it's stated in that part of my
13 deposition, but I also believe in another part -- and I'd
14 have to look for it and find it, but I believe it's
15 referenced as a medical evaluation, as well. So, again, I
16 thought that that potentially would be a part of that
17 evaluation. But I thought it would be a medical evaluation,
18 as well.

19 Q Well, my question is, did the term psychological
20 come up in your discussion with Captain McDonald?

21 A I don't remember specifically if the term
22 psychological or mental or anything along those lines came
23 up in that discussion. I don't recall.

24 Q But is it possible that that term came up,
25 psychological examination?

1 A It's possible. Again, it was I guess 2013, so I
2 guess that's possible. I don't remember specifically.

3 Q Now, were you ever -- you made a recommendation to
4 Captain McDonald concerning some kind of evaluation,
5 correct?

6 A I expressed to Captain McDonald my concerns that
7 were relayed in that meeting that I heard and saw in that
8 meeting to Captain McDonald, and I believe Captain
9 McDonald's response at that time was, there is a process if
10 someone -- if there are concerns such as the ones that were
11 outlined, there's a process --

12 Q Uh-huh.

13 A -- for that within the contract.

14 Q You understand that there was an investigation by
15 the United States Department of Labor into this matter
16 concerning the referral of Captain Estabrook for a 15D
17 examination?

18 A I was not aware of that.

19 Q So no one in the company ever told you about the
20 Department of Labor interviewing a company representative?

21 A No, they did not.

22 Q Okay, and the --

23 A I'm not aware of that.

24 Q And the name of OSHA investigator Jason Brush
25 means nothing to you, correct?

1 A I think you asked me this before in the
2 deposition. And the same answer, no, I was not aware of
3 that.

4 Q Did you consider yourself the primary decision-
5 maker in this 15D referral?

6 A I considered myself, based on the information that
7 was provided, the reason -- based on the information that I
8 provided, I think that was probably the reason that that
9 action was taken. But, yes, I guess I would answer that
10 question as, not the primary decision-maker but the
11 individual that provided the areas of concern that led to
12 the medical evaluation.

13 Q Okay. And can you provide any reason for us today
14 why the company did not select you to be the representative
15 who interfaced with the United States Department of Labor
16 investigator?

17 MR. RIEDERER: Objection, Your Honor, lacks
18 relevance, foundation, personal knowledge.

19 JUDGE MORRIS: Well, let's find out what the
20 answer is. Let's see if he has personal knowledge.

21 Overruled.

22 THE WITNESS: Could you repeat it, sir, to make
23 sure I understand?

24 MR. SEHAM: Yeah.

25 \\

1 BY MR. SEHAM:

2 Q Can you give us any reason, as you sit here today,
3 as to why you were not the individual selected by the
4 company to interface with the OSHA investigator --

5 A I don't --

6 Q -- concerning Captain Estabrook and the 15D
7 referral?

8 A I have no reason, no basis to answer that question
9 based on I didn't know it took place. So it would be
10 difficult for me to answer.

11 Q Would you have any basis -- do you have any
12 understanding as to why you might not be identified by the
13 company as the primary decision-maker relating to the 15D
14 referral?

15 MR. RIEDERER: Objection.

16 JUDGE MORRIS: Sustained.

17 BY MR. SEHAM:

18 Q Now, is it your contention that you based your 15D
19 determination exclusively on what transpired at the August 9
20 meeting?

21 MR. RIEDERER: Objection, Your Honor, it misstates
22 his testimony. He didn't make the determination.

23 JUDGE MORRIS: Rephrase, counsel.

24 BY MR. SEHAM:

25 Q Is it your contention that you made your

1 recommendation to Captain McDonald based exclusively at what
2 transpired at the August 9th meeting?

3 A Again, as I stated, the information communicated
4 in that meeting is the basis. I did think the e-mail
5 communication was -- maybe laid somewhat of a foundation for
6 that, but it wasn't the basis. The basis primarily was the
7 strange items communicated in that meeting.

8 JUDGE MORRIS: So I'm clear for what you're
9 testifying, it's the August 4th e-mail followed by the
10 August 9th interview --

11 THE WITNESS: Yes, sir.

12 JUDGE MORRIS: -- is that your understanding?

13 THE WITNESS: Correct.

14 JUDGE MORRIS: Thank you.

15 BY MR. SEHAM:

16 Q I'm going to ask you to turn to your deposition
17 testimony, page 52.

18 A I'm at page 52.

19 Q I'm going to refer you to line 11. You see where
20 the question is, "Okay, so what was it about that -- so that
21 August 4th e-mail contributed to your decision that he
22 should submit to a 15 evaluation?" Answer, "No. Let me
23 take the e-mail out of it, just, of course, with the
24 information that was shared at the meeting alone was the
25 primary contributor." Go on to say --

1 A Can I answer this?

2 Q I haven't asked you a question yet.

3 A Oh, okay.

4 Q Because I went on to nail this down because you
5 said -- was your answer going to be -- or, your response
6 going to be to emphasize that you meant a primary
7 contributor, thereby allowing for some consideration of the
8 August 4th e-mail?

9 A Is that the question?

10 Q Yeah, that's a question now.

11 A So the answer is, that was -- again, that laid
12 some foundation going into that meeting. That was not the
13 primary contributor. The primary contributor were the items
14 that I mentioned. But it was a strange e-mail and probably
15 laid some foundation for that.

16 Q I want you to follow along to see how we addressed
17 the issue of primary. Question at line 18, "Well, you keep
18 saying primary. And so what I -- primary means, to me, not
19 exclusive, and so that's really what I'm getting to. Every
20 time you say primary, my understanding is that there were
21 other factors." Answer, "Uh-huh." Question, "So my
22 question is, did you base your 15D decision exclusively on
23 what you heard at the August 9 meeting?" Answer, "Yes."
24 Now, when you gave this testimony, you were under oath,
25 correct?

1 A Yes.

2 Q All right. Sir, did you base your 15D
3 recommendation exclusively on what you heard at the August
4 9th meeting?

5 A That was the primary -- yes, that was the primary.
6 As I stated, that was the primary factors of why I
7 contacted Mr. McDonald.

8 Q And you're saying primary again. Did you see in
9 this question and answer I was asking you to eliminate
10 consideration of the term or the modifier, primary? I asked
11 you, on that day --

12 A On that day.

13 Q -- when you were under oath whether your decision
14 was based exclusively on the meeting on August 9th. Now,
15 are you disavowing this testimony?

16 A No.

17 Q So would you agree with me today that on August --
18 that your 15D recommendation was based on -- or, your
19 medical evaluation recommendation was based exclusively on
20 the events in the meeting of August 9th, as you testified
21 previously?

22 A Yes, with -- yes.

23 Q Okay. Now, is it your contention that you and
24 Captain McDonald made the 15D decision together -- or,
25 excuse me, the 15D determination together, you and Captain

1 McDonald?

2 MR. RIEDERER: Objection. Again, it misstates his
3 testimony. He didn't direct it.

4 MR. SEHAM: I'm not --

5 JUDGE MORRIS: Overruled.

6 MR. SEHAM: I'm not trying to characterize the
7 testimony. It's a freestanding question.

8 THE WITNESS: Yeah, okay.

9 MR. SEHAM: May we proceed?

10 JUDGE MORRIS: Yes.

11 THE WITNESS: So I should answer?

12 JUDGE MORRIS: Yeah, you may answer.

13 THE WITNESS: Okay. So, again, I wouldn't -- I
14 think the answer -- or, I know the answer to this question
15 is, it wasn't made collectively. I provided the information
16 that was communicated to me in this meeting as -- from my
17 perception and what I heard -- to Mr. McDonald. Mr.
18 McDonald told me there's a process for this listed within
19 the contract, and that was -- based on the information I
20 provided, Mr. McDonald I assumed would move forward with
21 that process.

22 BY MR. SEHAM:

23 Q And you don't recall -- well, one second. I just
24 want to direct your attention to transcript page 53. And,
25 before we go to the transcript, you had no discussion with

1 Captain Fisher after the meeting on August 9th?

2 A No, I did not.

3 Q Did you have any discussion with Rob Tice after
4 the meeting on August 9th?

5 A Did not. I don't recall a discussion with either
6 one of them.

7 Q All right, if I could refer you then to the
8 transcript, page 53 at line 13? Would you let me know when
9 you're on that site?

10 A Yes, sir, I'm there.

11 Q And you see the question, "But I imagine you also
12 spoke to Mr. Tice and Mr. Fisher?" Answer, "Possibly. I
13 don't recall speaking with them specifically. I do know I
14 spoke with Bill McDonald." Question, "So it was between you
15 and Mr. McDonald that the decision -- it was the two of
16 you?" Answer, "That's what I recall, yes." So you don't
17 recall any other participants in the decision to refer
18 Captain Estabrook to a 15D evaluation other than you and Mr.
19 McDonald, correct?

20 A As I stated in my deposition, that's accurate to
21 the best of my memory.

22 Q Do you have any independent knowledge of Mr. Tice
23 or Captain Fisher participating in the 15D referral
24 decision?

25 A I have no independent knowledge of that.

1 Q All right. Now, you say -- I believe you say you
2 based your 15D recommendation, in part, on Captain
3 Estabrook's purported statement to have been chased around
4 Russia -- or, chased around by Russians in his youth,
5 correct?

6 A I'm sorry, I didn't hear that.

7 Q That part of the basis for your 15D referral was
8 that you recalled statements by Captain Estabrook that he
9 had been chased around by Russians in his youth, correct?

10 A Yes, chased around throughout Russia and Hungary
11 in his youth at the age of 18, correct.

12 Q And you say you did no research into Captain
13 Estabrook's connection with Russia?

14 A I did not, no.

15 Q But Captain Estabrook, at this August 9th meeting,
16 he did inform you of his military background, correct?

17 A I do remember Mr. Estabrook said he had a military
18 background.

19 Q And then more specifically he said that -- or, he
20 mentioned that he had a background in military intelligence,
21 correct?

22 A I think Mr. Estabrook said he had a background in
23 the military, and possibly intelligence as well.

24 Q And isn't it true that you cannot specifically
25 recall if Captain Estabrook said he had been chased by

1 Russians or whether he had chased Russians himself as part
2 of his military service to his country?

3 A Yeah, my recollection is -- and it's my memory --
4 but my memory was that he had been chased throughout Hungary
5 and Russia and as a result of that was grabbed by the secret
6 police in Hungary and placed in jail at the age of 18, my
7 memory.

8 Q If you can turn to joint exhibit JX-3?

9 A Did you say JX-3, sir?

10 Q Yes.

11 A Okay, I'm there.

12 Q And if you go a little less than halfway down the
13 page where it says I -- you see where the first two words
14 are -- first of all, these are your handwritten notes,
15 correct?

16 A Okay, so you said JX-3? I must be in the wrong
17 place. I don't know what color binder.

18 Q Joint exhibit JX-3.

19 A Is that the red book?

20 Q Red book.

21 JUDGE MORRIS: JX-1 through JX-7, and then it
22 starts the numbers over again.

23 THE WITNESS: All right, sir. Okay, I'm at tab 3
24 in the red binder.

25 \\

1 BY MR. SEHAM:

2 Q And if you go down a little less than halfway you
3 see a sentence that begins with, "I've chased around
4 Russians, et cetera." Would you agree with me, based on
5 your familiarity with your handwriting, that that's what
6 that reads, I've chased around Russians?

7 A I'm at the wrong exhibit, obviously.

8 Q Oh, okay. It's JX-3, joint exhibit JX-3.

9 A Within tab 3, correct?

10 Q Yes, it's tab 3 that I'm referring you to.

11 JUDGE MORRIS: You're looking at the wrong area.

12 If you look at the red book, there are two red books.

13 THE WITNESS: Okay.

14 JUDGE MORRIS: If you take the first ones, there's
15 numbers like JX-1 to JX-7?

16 THE WITNESS: Oh, okay, I see. They both have the
17 3 tab, that's my problem. Yes, I'm looking at the document
18 now.

19 BY MR. SEHAM:

20 Q You see a little maybe less than halfway down the
21 page reads, "I've chased around Russians." Would you agree
22 with me that that's what it says there?

23 A It looks to state, "I've chased around Russians,
24 et cetera."

25 Q Now, in your conversation with Captain McDonald,

1 you say you told him that he had been chased around Hungary
2 and Russia? That's what you told him?

3 A Yes.

4 Q And you told him that you were also troubled by
5 certain references to Auburn Calloway, correct?

6 A Correct.

7 Q And did you tell Captain McDonald that Captain
8 Estabrook had asserted that Mr. Calloway had converted to
9 Islam?

10 A I believe I told Mr. McDonald that Mr. Estabrook
11 had stated that he had been told over the past six to 12
12 months by a couple of individuals that Mr. Calloway had
13 converted to Islam.

14 Q Did you understand those individuals to be fellow
15 pilots?

16 A He didn't say who they were.

17 Q You didn't ask?

18 A Did not.

19 Q You made no effort to inquire as to the
20 originators of this rumor that Captain McDonald was -- or,
21 excuse me, that Captain Estabrook was reporting?

22 A I didn't, because it really wasn't a stop
23 sentence. It was -- kind of the whole story was told at
24 that time. We went straight from that to the eavesdropping
25 devices being placed in the cell, the fact that the belief

1 that Mr. Calloway was communicating with various terrorist
2 organizations outside of his jail cell and the eavesdropping
3 devices that needed to be placed in his cell. So it wasn't
4 like a stand-alone --

5 Q Uh-huh.

6 A -- stop to ask that question.

7 Q And would you agree that it was said in passing?

8 A It was said as a part of the story that we heard
9 that day.

10 Q There weren't more than 20 or 30 seconds spent on
11 the discussion of Calloway, correct?

12 A I don't know the exact length of time, but it
13 wasn't a lengthy period.

14 Q Uh-huh. And you thought it was odd, in part,
15 because why should someone be concerned about an individual
16 who is in a maximum-security prison? Is that part of what
17 you thought was odd?

18 A I thought it was odd, again, because Mr. Calloway
19 had been incarcerated for 20 years.

20 Q Well, you know, I'd like a response to my
21 question. It's a yes or no question. My question was, was
22 part of the reason you decided that was odd and that this
23 person should be referred for a mental health examination
24 was that Captain Estabrook should have known that Calloway
25 posed no problem because Calloway was in a maximum-security

1 prison?

2 A Part of --

3 Q Was that part of your reasoning?

4 A I guess part of my reasons was -- and thought
5 process at the time was, how would Mr. Estabrook be aware
6 that Mr. Calloway was communicating with terrorist
7 organizations. And, to take it even further, that not only
8 is he communicating with them but in order to get the
9 information eavesdropping or listening devices needed to be
10 placed in his cell by the Department of Justice. I thought
11 all those things --

12 Q Okay.

13 A -- combined were strange.

14 Q I'm still not getting an answer to my question.

15 A Okay.

16 Q Let me put it this way, part of your determination
17 that these comments were irrational --

18 A Okay.

19 Q Well, let me put it this way, the fact that
20 Calloway was in a maximum-security prison did not play a
21 role in your determination?

22 A It probably played a role because it would -- one
23 would think that it's more difficult to communicate with
24 anyone inside a maximum-security prison. I know that
25 possibility exists, but it's not like someone that's not

1 incarcerated.

2 Q Uh-huh.

3 A It would be much easier to communicate outside of
4 jail.

5 Q So you told Captain Estabrook, don't you know
6 Auburn Calloway is in a maximum-security prison? Did you
7 say that to him?

8 A I think Mr. Estabrook knew that based on his
9 stating that eavesdropping --

10 MR. SEHAM: Objection, speculation as to what
11 Captain Estabrook said. I'm asking what you said to Captain
12 Estabrook.

13 BY MR. SEHAM:

14 Q Did you tell him that Auburn Calloway was in a
15 maximum-security prison?

16 MR. RIEDERER: Just for the record, Your Honor,
17 the idea that he had made a speculation objection based on
18 what Captain Estabrook said to him is not a proper
19 objection.

20 MR. SEHAM: Well, it's non-responsive. It's not
21 answering my question, and he's speculating about what
22 Captain Estabrook thought.

23 BY MR. SEHAM:

24 Q And the question is what you told Captain
25 Estabrook. Did you tell him Calloway is in a maximum-

1 security prison?

2 A Mr. Estabrook stated that the eavesdropping
3 devices should be placed in his jail cell, so I assumed that
4 he knew he was incarcerated.

5 Q That's still not an answer to my question. So
6 this is going to go much faster if you listen to my question
7 and answer it. My question was --

8 A Okay.

9 Q -- did you tell him that Calloway was in a
10 maximum-security prison?

11 A No, I did not.

12 Q Now, you said that McDonald said that there was a
13 process that would move forward based on the information you
14 provided?

15 A I believe Mr. McDonald told me that there is a
16 provision within the contract for something of this nature
17 to move forward with, and we didn't get a lot of detail
18 then. I still don't understand all the goings of that
19 process. But I assumed Mr. McDonald would move forward with
20 that process. It sounded like he would based on our
21 discussions. And I assumed he did.

22 Q Now, you say there was no discussion at that
23 meeting with Captain Estabrook that day concerning Mayday
24 Mark, is that your testimony?

25 A There was not.

1 Q But you did have a discussion with Tice and Fisher
2 prior to the meeting concerning Mayday Mark, correct?

3 A I don't recall that discussion with them about
4 Mayday Mark, no.

5 Q Do you recall anyone ever saying those two words
6 to you, Mayday Mark?

7 A I don't recall now.

8 Q Can you turn to joint exhibit JX-3?

9 A Joint exhibit JX-3?

10 JUDGE MORRIS: Your handwritten notes.

11 THE WITNESS: Okay, I'm there.

12 BY MR. SEHAM:

13 Q These are your handwritten notes, correct?

14 A Yes, sir.

15 Q And they are marked privileged and confidential,
16 correct, at the top?

17 A Yes, they are.

18 Q And why are they marked privileged and
19 confidential?

20 A I don't know.

21 Q Did you put privileged and confidential on these
22 documents?

23 A I don't recall putting privileged and confidential
24 on my handwritten notes, no.

25 Q Now, right after the -- do you see where it says

1 Mark Estabrook, Rob Fisher, Rob Tice, you see those three
2 names?

3 A I do see that.

4 Q And then you see right underneath it says Airline
5 Pilot Central, in quotes, "Mayday Mark," do you see those
6 markings?

7 A Yes, sir, I do.

8 Q And that's your handwriting, correct?

9 A Yes, it is.

10 Q Does that refresh your recollection that, in fact,
11 there was a meeting among the company representatives prior
12 to your discussion with Captain Estabrook in which you
13 discussed Mayday Mark and the importance of asking Captain
14 Estabrook questions about whether he was Mayday Mark?

15 A It really did not jog my memory. I know during
16 our meeting we did not discuss Mayday Mark.

17 Q At least when you were present?

18 A When I was present, absolutely.

19 Q And you left the meeting early?

20 A I did leave the meeting early.

21 Q When you left it, did you leave the meeting more
22 than one time?

23 A I recall just leaving the meeting when I left to
24 go back to my office.

25 Q You left the meeting after Captain Estabrook

1 completed his comments?

2 A I'm not sure I understand the question.

3 Q Captain Estabrook raised the issues that you've
4 discussed on your direct testimony, correct?

5 A Yes, sir.

6 Q When he had completed making his comments, is that
7 the point at which you departed?

8 A No. I departed obviously after those comments,
9 but I also departed after I heard Mr. Estabrook's concerns
10 that he had that he wanted to relay, as Mr. McDonald asked
11 me to attend. I heard all the comments, not just those two
12 kind of strange comments or interactions that we had. I
13 heard all the comments. And then at some point I was told
14 that there was another matter that needed to be discussed,
15 and I left the meeting and went back to my office.

16 Q Well, what my question is, you didn't remain at
17 the meeting to have any discussion with Captain Estabrook
18 about his concerns?

19 A I didn't, because I heard Mr. Estabrook's concerns
20 during the meeting.

21 Q Uh-huh.

22 A So I did not stay after, no.

23 Q You made no response to Captain Estabrook's
24 concerns, correct?

25 A I did not have follow-up conversations with Mr.

1 Estabrook following this meeting, no, I did not.

2 Q And one of your -- one of the primary goals of
3 your job is to prevent terrorist attacks, correct?

4 A That's one of our team's primary goals, and really
5 one of the goals of our company based on the environment
6 today.

7 Q And Captain Estabrook, during this meeting he made
8 several comments concerning the possible use of tracking
9 information published by FedEx by terrorists as intelligence
10 that could be exploited by terrorists for their attacks,
11 correct?

12 A He did mention that.

13 Q And Captain Estabrook asserted during this meeting
14 that Al Qaeda had sent packages through FedEx in October
15 2010 to test the system and the timelines, correct?

16 A He did mention that.

17 Q And, in fact, you were familiar with the reported
18 efforts to this effect by Al Qaeda, correct?

19 A Yes.

20 Q And they are referred to as the October 2010 cargo
21 bomb plots, correct?

22 A Yes, sir.

23 Q And those were -- those efforts by Al Qaeda were
24 published in credible media sources, correct?

25 A Yes, sir, they were.

1 Q And part of your job was to -- at that time was to
2 review that information and take it into consideration in
3 terms of Federal Express's ongoing security operations,
4 correct?

5 A It was at that time, and I did pay attention to it
6 at that time. However, I was not in this aviation security
7 role in October of 2010.

8 Q Uh-huh.

9 A So I wouldn't have had as involvement in action as
10 I would today.

11 Q But, in any case, as Captain Estabrook was telling
12 you about his concerns for tracking information and its
13 intelligence value based on the October 2010 cargo aircraft
14 bomb plots, you understood the events to which he was
15 referring, correct?

16 A Yes.

17 Q And his train of thought, as far as you were
18 concerned, was rational in that respect, correct?

19 A Yes. Again, as I stated earlier, that is not a
20 new concept or not new information.

21 Q Uh-huh.

22 A And it is rational information, yes.

23 Q But Captain Estabrook had said that he had only
24 recently come across this information on August 3rd and
25 August 4th relating to these October 2010 bomb plots,

1 correct?

2 A I don't remember that.

3 Q You don't remember, okay.

4 A I don't remember that at all.

5 Q Now, FedEx --

6 A I guess to further answer that question --

7 Q There's not a question pending. You considered
8 Captain Estabrook's comments insofar as they related to Al
9 Qaeda's potential exploitation of tracking information to be
10 rational?

11 A Yes.

12 Q Okay.

13 A Again in the scope of what I stated earlier, the
14 limited tracking information that's available to our
15 customers is much -- gives me much less concern than that
16 detail, that much more rich environment for scanning that we
17 have access to internally.

18 Q Well, the package tracking information that is
19 provided to customers exceeds just the scans on pickup and
20 final delivery, correct?

21 A Yes, sir, it does.

22 Q And there are reports on the interim position of
23 that package between initial pickup and final delivery,
24 correct?

25 A There are very high level reports intermittently

1 between pickup and delivery, high level, yes.

2 Q Well, you --

3 A But not --

4 Q But available to the customer are currently --
5 excuse me, more relevantly at that time -- would be
6 information on that package's location other than at the
7 initial pickup and final scan delivery, correct?

8 A Correct. A customer would be able to see at a
9 very high level the point of pickup, the point of delivery,
10 and when that shipment is in Memphis, for example, in our
11 sorting hub in Memphis. They could see those kind of
12 things.

13 Q Okay.

14 A But that would be -- that's limited to that kind
15 of information.

16 Q But Captain Estabrook said that, in and of itself,
17 was valuable intelligence, correct, for terrorists?

18 A I think any information that is out there
19 potentially could be of interest or value.

20 Q Uh-huh.

21 A But, again, it's tiered, you know.

22 Q Well, I'm asking what Captain Estabrook said.
23 Captain Estabrook said that the company should desist from
24 its package tracking practices and should only provide
25 information about the initial pickup and the final delivery?

1 A Mr. Estabrook did state that, he did.

2 Q And the reason he stated it was because giving --
3 putting any additional information out had value to
4 terrorists in terms of their programs of introducing
5 explosives into FedEx aircraft, correct?

6 A He did.

7 Q And the October bomb plots you said that you're
8 familiar with, based on credible news sources, those bomb
9 plots were specifically targeting UPS and Federal Express
10 aircraft, correct?

11 A Correct.

12 Q And you yourself believe that Al Qaeda was very
13 possibly responsible for the cargo bomb plots in 2010
14 directed at UPS and FedEx, correct?

15 A Correct.

16 Q And if you can turn to complainant's exhibit CX-
17 13? And I'm drawing your attention to this *Inspire* magazine
18 publication in November 2010. Part of your job -- oh, tell
19 me when you've located it.

20 A White binder?

21 Q It should be in the white binder, correct.

22 A Okay, I'm there.

23 Q And part of your job responsibilities through this
24 period in 2010 led you to monitor publications such as this,
25 correct?

1 A In 2010, no.

2 Q Well, in any case, you are familiar with this
3 publication, this *Inspire* magazine?

4 A Yes, sir, I am.

5 Q And its link to Al Qaeda, correct?

6 A I am.

7 Q And this particular publication you're familiar
8 with, this particular edition, correct?

9 A Yes, sir.

10 Q And this particular edition identifies UPS and
11 FedEx as ongoing targets of terrorist bomb plots, correct?

12 A I'd have to -- it has been some time since I have
13 looked at this document. I would have to look through it to
14 see if it says ongoing targets. I don't know exactly what
15 it states. I haven't looked at this particular edition for
16 some years.

17 Q But, in any case, it targets -- or, it identifies
18 FedEx and UPS as within the cross-hairs of Al Qaeda
19 historically?

20 A I would have to read the document.

21 Q Okay.

22 A I don't know if it states FedEx and UPS are in the
23 cross-hairs of terrorism --

24 Q Okay.

25 A -- no, sir.

1 Q Well, the document will speak for itself. But, in
2 any case, you're familiar with this now?

3 A I am. I am familiar with the document.

4 Q Now, you're knowledgeable of the fact that, during
5 this time period in 2013, your understanding of the Federal
6 Aviation Regulations was that FedEx had a legal obligation
7 to prevent and deter the carriage of any unauthorized
8 explosives, incendiaries, or other destructive substances in
9 cargo onboard an aircraft, correct?

10 A Yes.

11 JUDGE MORRIS: Counsel, do you want me to take
12 official notice of 49 C.F.R. Part 175?

13 MR. SEHAM: Yes, sir.

14 JUDGE MORRIS: And 172.101 table?

15 MR. SEHAM: Thank you.

16 BY MR. SEHAM:

17 Q And Captain Estabrook communicated to the company
18 on August 9th that its publication of tracking information
19 was -- or, constituted a failure to deter terrorists from
20 targeting FedEx in terms of their intent to introduce
21 unauthorized explosives into FedEx aircraft, correct?

22 A I don't recall Mr. Estabrook specifically saying
23 we had a failure. I do recall him stating that he had a
24 concern that that information was available.

25 Q Well, isn't it true that your impression or your

1 understanding -- better said, your understanding at that
2 time -- was that Captain Estabrook was communicating to the
3 company that it was failing to take satisfactory action to
4 deter terrorists from introducing explosives into FedEx
5 aircraft?

6 A I recall Mr. Estabrook stating that if that
7 information wasn't available that would put us in a better
8 position, but we weren't failing to meet any regulatory or
9 FAA or TSA requirement.

10 Q That last part -- now, I'm asking you questions
11 about what Captain Estabrook said. That last part that you
12 said, Captain Estabrook never said that, correct? He never
13 said, you're in compliance with regulatory requirements, did
14 he?

15 A No, but --

16 Q That's your opinion, when you just testified to
17 that? That's your view?

18 A It is.

19 MR. RIEDERER: Your Honor, I think the question
20 was what was Mr. Ondra's impression of Captain Estabrook's
21 comments?

22 JUDGE MORRIS: We'll let the record speak for
23 itself.

24 MR. SEHAM: Yeah, that is correct, what the
25 question was, and the answer was very non-responsive. But,

1 in any case, let's keep moving.

2 BY MR. SEHAM:

3 Q I'm going to ask you to turn to page 73 of your
4 transcript of your deposition.

5 A Okay, I'm there.

6 Q Starting at line 17, it reads, "And is it your
7 understanding of Federal Aviation Regulations that FedEx has
8 an obligation to deter terrorists from introducing
9 explosives into their aircraft?" "Yes." "And is it your --
10 would you agree that Captain Estabrook was trying to
11 communicate to the company on August 9th that FedEx's
12 dissemination of live tracking was actually a failure to
13 deter?" Answer, "It was part of his point in the
14 discussions we had." Did you give that testimony?

15 A I did.

16 Q And did you consider it truthful as you provided
17 that testimony?

18 A [No audible response.]

19 Q You have some hesitancy about that?

20 A No, I was reading what you just read again.

21 Q Well, I'm asking you a question. Were you trying
22 to be truthful? Were you making your best effort to be
23 truthful that day?

24 A I was being truthful that day.

25 Q So would you agree with me that Captain -- that,

1 as you sit here today, that on August 9th, 2013 that Captain
2 Estabrook was trying to communicate to the company that
3 FedEx's dissemination of live tracking information was
4 actually a failure to deter terrorists from introducing
5 explosives into FedEx aircraft? I'm asking you -- sir, I'm
6 asking you a question.

7 A Can I read this?

8 Q You're now looking back to try to dissect your
9 testimony to try to craft a way out of this. I'm asking you
10 to look at me.

11 MR. RIEDERER: Objection, he's badgering the
12 witness.

13 MR. SEHAM: I'm asking you to look at me and
14 answer the question.

15 JUDGE MORRIS: Okay, sir, if you would close the
16 transcript --

17 THE WITNESS: Okay.

18 JUDGE MORRIS: -- and respond to his questions?

19 MR. SEHAM: Do you need to hear that question? I
20 know you were distracted by the transcript review. Do you
21 need to hear the question again?

22 JUDGE MORRIS: Counsel, we don't need all the
23 additional verbiage. Ask the question.

24 BY MR. SEHAM:

25 Q Isn't it true, Mr. Ondra, that Captain -- that

1 your understanding of Captain Estabrook was that he was
2 trying to communicate to the company on August 9th that
3 FedEx's dissemination of tracking information constituted a
4 failure to deter terrorists from introducing explosives into
5 their aircraft?

6 A It was my understanding in that meeting on the 9th
7 that Mr. Estabrook had concerns about that scan data being
8 made available publicly.

9 Q I'm going to ask you another question, and I want
10 you to understand when I ask these questions I'm asking you
11 yes or no. If you want to say no, that's fine. But I'm
12 asking you, wasn't it your understanding on August 9th that
13 Captain Estabrook felt or was communicating that the company
14 was failing to deter terrorists from introducing explosives
15 into the aircraft by its provision of valuable intelligence
16 in the form of tracking information?

17 MR. RIEDERER: Objection, compound question, and
18 he's asking if he felt or communicated.

19 JUDGE MORRIS: Rephrase, counsel.

20 MR. SEHAM: Is there any way I can get a read-back
21 on the question and just --

22 JUDGE MORRIS: Well, you're not going to ask the
23 same question again.

24 MR. SEHAM: No, I won't. Okay.

25 \\

1 BY MR. SEHAM:

2 Q Isn't it true, Mr. Ondra, that you -- on August
3 9th, that you understood Captain Estabrook to be
4 communicating to you and the other company representatives
5 that the company was failing -- by its publication of
6 tracking information was failing to engage in satisfactory
7 efforts to deter terrorists from exploiting FedEx aircraft
8 for the carriage of explosives?

9 A No, I don't remember that he was stating we were
10 failing.

11 Q You did come to a conclusion that he faulted the
12 company for failing to deter terrorists to the degree it
13 should, correct?

14 A I came to the conclusion that Mr. Estabrook's
15 desire and ask was that that additional scan data not be
16 provided, yes.

17 Q And the purpose for him asking that the company do
18 that was to discourage terrorists from looking at FedEx as a
19 means of delivering its explosives, correct?

20 A That's what he stated, yes.

21 Q And, in fact, he felt that the company's provision
22 of this information, of tracking information, actually
23 encouraged terrorists to look to FedEx as a delivery
24 mechanism for explosives, correct?

25 A I don't remember him saying that data encouraged

1 terrorists to look at that.

2 Q I'm going to ask you to turn to transcript page
3 75.

4 A Okay, I'm there.

5 Q Okay. Let's start at line 4. Question, "Captain
6 Estabrook recommended that FedEx ask the federal Department
7 of Homeland Security -- well, let me back up, actually.
8 Whether he said that statement or not, did you understand
9 him to be saying that FedEx needed to take some actions?"
10 Answer, "Mr. Estabrook expressed that during the meeting,
11 yes." Okay, so let me pause there. Would you agree with me
12 that Captain Estabrook was telling the company it had to
13 take some affirmative actions vis-à-vis the dissemination of
14 tracking information?

15 A I would say, yes, Mr. Estabrook was asking that.

16 Q And then to read on, "And that the action, that
17 the actions they needed to take were for the purpose of
18 deterring terrorists more effectively from introducing
19 explosives into FedEx aircraft?" Answer, "He did, he did
20 get that, make that point." Were you trying to testify
21 truthfully to the best of your ability as you gave this
22 testimony --

23 A Yes.

24 Q -- Mr. Ondra?

25 A Yes.

1 Q So, Mr. Ondra, isn't it true -- and I'm going to
2 ask you to close your transcript now, okay, please? Isn't
3 it true, Mr. Ondra, that on that meeting on August 9th, 2013
4 that Captain Estabrook was explaining that the actions that
5 he was proposing that FedEx take were needed for the purpose
6 of deterring terrorists more effectively from introducing
7 explosives into FedEx aircraft?

8 A It was the point that Mr. Estabrook was trying to
9 make, yes.

10 Q Okay, thank you. Now, you never -- you say these
11 comments concerning the value of tracking intelligence and
12 Captain Estabrook's interest in deterring terrorists, that
13 those were rational thoughts that were being expressed,
14 correct?

15 A By Mr. Estabrook during that meeting?

16 Q Yes.

17 A Yes.

18 Q But you never conducted any research into the
19 issues that he had raised, correct?

20 A I didn't conduct any research because, again, I
21 understand and am familiar with the tracking data that is
22 available both internally and externally already to the
23 public.

24 Q I am asking you whether you conducted any
25 research.

1 A No, I did not.

2 Q No, you didn't conduct any research. And you
3 never got back to Captain Estabrook and explained to him why
4 he should not be concerned or why he should be concerned?

5 A I did not.

6 Q Okay. Now, you are familiar with the Calloway
7 hijacking?

8 A Yes.

9 Q And this is a pilot who -- a FedEx pilot who
10 brought on a claw-hammer and spear-guns onto an aircraft to
11 effectuate -- or, to take over control of the aircraft,
12 correct?

13 A Yes.

14 Q And those injured pilots never flew again,
15 correct?

16 A My understanding, they did not ever fly again,
17 correct.

18 Q This is one of the most traumatizing incidents in
19 the history of Federal Express as a company, correct?

20 A I would say so, yes.

21 Q And you made no effort to investigate Estabrook's
22 relationship, professional relationship, with Mr. Calloway,
23 correct?

24 A I didn't make an effort to investigate it because
25 I didn't know that there was any kind of relationship --

1 Q Okay.

2 A -- to investigate.

3 Q So my question -- so the answer to my question is
4 no, you conducted --

5 A No, I did not.

6 Q -- no investigation?

7 A Did not.

8 Q And nobody, none of the company attorneys, ever
9 told you that the company had actually passed along to him a
10 subpoena to testify in Calloway's trial?

11 A [No audible response.]

12 Q That's a yes or no question.

13 A No.

14 Q Did the company ever tell you that he had been
15 subpoenaed to trial?

16 A No.

17 Q Now, you said you never made any effort -- you
18 never asked Captain Estabrook at this meeting who had told
19 him about the rumors of Auburn Calloway's conversion,
20 correct?

21 A No, sir, did not.

22 Q But you considered his comments about -- did you
23 consider the comments -- well, let's put it this way, I
24 would assume, therefore, that, taken in isolation, you
25 didn't consider the comments relating to Auburn Calloway's

1 potential conversion to Islam, you didn't consider that
2 alone to be a matter of concern, correct?

3 A I wouldn't consider any religion anyone takes a
4 concern, no.

5 Q No, I'm talking about the reporting -- the fact
6 that Captain Estabrook told you that he heard a rumor of
7 Auburn Calloway's conversion to Islam. That, standing in
8 isolation, did that contribute to your recommendation --

9 A No.

10 Q -- for a mental health evaluation?

11 A None whatsoever. Just religion, like many
12 religions.

13 Q I think you're misunderstanding my question.

14 A Yeah.

15 Q My question is, the fact that Captain Estabrook
16 reported that he had heard a rumor --

17 A Uh-huh?

18 Q -- the fact that he was reporting that rumor of a
19 conversion to Islam, right, did Captain Estabrook's report,
20 in isolation, cause you to think that Captain Estabrook was
21 unfit for duty?

22 A No, other than I would wonder how Mr. Estabrook,
23 you know, was aware of that. But, no.

24 Q Now, you had no -- would you agree with me that
25 you had no involvement in the 15D decision-making process

1 between August 9th and August 16th?

2 A I had no involvement other than sharing the
3 information that I stated earlier that I shared with Mr.
4 McDonald.

5 Q And you shared that on August 9th, correct?

6 A Same day of the meeting, yes, sir.

7 Q All right. So from that conversation with Captain
8 McDonald -- are you familiar with the fact that on August
9 16th there was a letter issued by Captain Fisher directing
10 Captain Estabrook to submit to a 15D evaluation?

11 A I was not aware of that. I assumed that process,
12 as I was told, would progress from the information that I
13 had shared. Whatever that process was, whenever it was,
14 that it would progress as it should. I'm not aware of that.

15 Q I'm going to ask you to turn to joint exhibit JX-
16 5.

17 A Okay.

18 Q Are you looking at a letter on FedEx stationery
19 dated August 16th, 2013?

20 A I am in the wrong binder again, I'm afraid, sir.

21 Q Take your time, and just let me know when you've
22 found it.

23 JUDGE MORRIS: It's a binder with a -- begins with
24 a JX-1 through JX-7 right at the very front. Then it starts
25 to renumber RX-1 and RX-2.

1 THE WITNESS: Okay.

2 MR. RIEDERER: Which exhibit?

3 MR. SEHAM: Joint JX-4.

4 BY MR. SEHAM:

5 Q So is it your testimony that this is the first
6 time you're seeing this letter?

7 A Dated August 16th?

8 Q 2013 from Captain Mark Estabrook to Rob Fisher --
9 or, excuse me, from Rob Fisher to Captain Estabrook.

10 MR. RIEDERER: Just for clarification, what
11 exhibit are we on, JX-4 or JX-5?

12 MR. SEHAM: Oh, I'm sorry, my apologies if I
13 misidentified. Joint exhibit JX-5.

14 THE WITNESS: Joint exhibit JX-5?

15 MR. SEHAM: Yeah.

16 JUDGE MORRIS: Yeah, joint exhibit JX-5, dated
17 August 16th, the letter of August 16th.

18 THE WITNESS: Yes, sir. I'm looking at that
19 letter.

20 BY MR. SEHAM:

21 Q Is it your testimony that you have never seen this
22 letter before?

23 A It's the first time I ever recall seeing this
24 letter.

25 Q Now, my question is, from the time of your

1 conversation with Captain McDonald on August 9th until the
2 date indicated on this letter, did you have any further
3 involvement in the 15D referral process?

4 A I did not.

5 Q Now if you can turn to complainant's exhibit CX-
6 22?

7 JUDGE MORRIS: It's going to be in the white
8 binder.

9 THE WITNESS: Thank you, sir.

10 THE WITNESS: Okay, I'm at CX-22.

11 BY MR. SEHAM:

12 Q And if you could turn to -- do you see it's
13 paginated in the bottom right -- I'm going to ask you to
14 turn to C123.

15 A Okay.

16 Q Interrogatory reads, "Identify any persons
17 involved in the decision to place the complainant on not
18 qualified NOQ status on or about August 5th, 2013.
19 Respondent identifies the following individuals who may be
20 contacted through undersigned counsel, Robert Fisher,
21 William McDonald, Todd Ondra, Rob Tice." Now, Mr. Ondra,
22 you never recommended, any time between August 4th and
23 August 8th, that Captain Estabrook be placed on NOQ, isn't
24 that correct?

25 A That's correct.

1 Q If you turn to the joint exhibit JX-7?

2 JUDGE MORRIS: Back to the red binder that you
3 just had.

4 THE WITNESS: All right.

5 BY MR. SEHAM:

6 Q Now, you see that this is a letter on the
7 letterhead of Alan Armstrong dated August 13th, 2013?

8 A Yes.

9 Q And, if you flip to the very last page, you see
10 that you're listed under Rob Fisher as a cc on this letter?

11 A I do see that, yes.

12 Q Did you receive this letter from Alan Armstrong?

13 A If I was copied, I'm assuming I received it.

14 Q Did anyone ever contact you to discuss the
15 arguments made in this August 13th letter?

16 A I don't recall having been contacted about this
17 letter.

18 Q Now if you could move to complainant's exhibit CX-
19 10?

20 A Okay.

21 Q And I'm going to ask you to refer to the second
22 page -- excuse me, third page. It's paginated at the bottom
23 C47.

24 A Okay, I'm there.

25 Q And you see at block 19 -- can you locate block

1 19, please?

2 A I did.

3 Q And you see that it reads, e-mails with advice of
4 counsel between Attorney R. Tice, VP, and Attorney J.
5 Maxwell, SVP, and Attorney R. O'Keefe, Attorney Phil
6 Tadlock, Directors, T. Ondra and W. McDonald, Manager R.
7 Fisher, and cc's to paralegal C. Sartain and VP J. Bowman
8 regarding Attorney A. Armstrong 08/13/13 letter attached.
9 Do you recall getting e-mail correspondence during this
10 period about Armstrong's August 13th letter?

11 A I do not recall, no.

12 Q And you have no recollection of anyone either e-
13 mailing you or calling you to get your input in response to
14 that letter, correct?

15 A I don't recall.

16 MR. SEHAM: No further questions.

17 JUDGE MORRIS: Redirect?

18 MR. RIEDERER: Please.

19 MR. SEHAM: I'll take that back, collect my stuff
20 up there.

21 JUDGE MORRIS: Prior to doing that, I am going to
22 take official notice that explosives are considered as Class
23 I hazardous material, subject to the hazardous materials
24 regulations contained in Title 49 of the Code of Federal
25 Regulations. Go ahead, counsel.

1 MR. RIEDERER: Mr. Seham, are you ready?

2 MR. SEHAM: Yes. Thank you, though. I'm not good
3 at keeping all this stuff straight.

4 **REDIRECT EXAMINATION OF**

5 **TODD ONDRA**

6 BY MR. RIEDERER:

7 Q Mr. Ondra, you were asked about some letters that
8 were sent to -- or, that you were copied on in the 2001-2002
9 time frame --

10 A Yes.

11 Q -- either from or relating to Captain Mark
12 Estabrook?

13 A Yes, sir.

14 Q At that time, did you recommend Captain Estabrook
15 for any kind of a medical exam?

16 A I did not recommend, no.

17 Q You were asked some questions about your testimony
18 in your deposition, do you recall that?

19 A Yes.

20 Q During your deposition, did you also testify that
21 you felt that Captain Estabrook's originating e-mail was
22 strange?

23 MR. SEHAM: Objection.

24 JUDGE MORRIS: Overruled.

25 THE WITNESS: Could you ask it again, please?

1 BY MR. RIEDERER:

2 Q During your deposition, did you testify that you
3 thought his e-mail was strange?

4 A Yes.

5 Q You were asked questions about your notes from
6 that meeting, do you recall that?

7 A I do recall that, yes.

8 Q Were your notes -- in your notes, did you include
9 complete sentences?

10 A In my notes, were they complete sentences? No,
11 they were not.

12 Q Based on your role as the director of aviation
13 security, would it be your opinion that Homeland Security
14 would be aware of FedEx package tracking data?

15 MR. SEHAM: Objection.

16 JUDGE MORRIS: Overruled.

17 THE WITNESS: Yes, I would think that Homeland
18 Security would be aware of our package tracking data.

19 BY MR. RIEDERER:

20 Q Now, you were asked some questions about an
21 *Inspire* magazine --

22 A Yes.

23 Q -- do you recall that?

24 A Yes, I was.

25 Q Is that the type of publication that would be

1 available to the FAA and other government security agencies?

2 A Absolutely, it would, yes.

3 Q You were asked some questions about what Captain
4 Estabrook was attempting to report to you during that
5 meeting. Can you look at page 75, line 12 through 17 of
6 your deposition?

7 MR. SEHAM: I'm going to object because the
8 deposition transcript should be used to refresh recollection
9 and not as a substitute for eliciting testimony.

10 JUDGE MORRIS: Well, he's asking a foundational
11 question to a question I understand that you asked him.

12 MR. SEHAM: I'm just specifically objecting to the
13 use of the transcript, the deposition transcript. If it's
14 overruled, it's overruled.

15 JUDGE MORRIS: It's overruled. Page?

16 MR. RIEDERER: Page 75, lines 12 through 17.

17 JUDGE MORRIS: Now, so I'm clear, is this
18 something that was shown to him on his direct examination?

19 MR. RIEDERER: Yes, Your Honor.

20 JUDGE MORRIS: Are you there?

21 THE WITNESS: Yes, sir, I'm there.

22 JUDGE MORRIS: Okay.

23 THE WITNESS: I'm sorry.

24 BY MR. RIEDERER:

25 Q Have you read that section?

1 A I have. Yes, I have.

2 Q Was it your impression from that question that he
3 was asking you if Captain Estabrook attempted to improve
4 security efforts?

5 A It was not to deter -- my understanding of this
6 was that Mr. Estabrook was expressing some concerns that he
7 had about deterring terrorist activities from introducing
8 explosives into FedEx aircraft.

9 Q During your meeting, did Captain Estabrook --
10 well, let me back up. Do you know what ASDI is?

11 A I didn't hear, I'm sorry.

12 Q When it comes to live tracking of planes, do you
13 know what ASDI is?

14 A Somewhat familiar, yes.

15 Q Did Captain Estabrook ever raise during this
16 meeting on August 9th that he thinks FedEx should opt out of
17 the ASDI program?

18 A I don't remember him stating that during our
19 meeting, no, he did not.

20 MR. RIEDERER: No additional questions.

21 JUDGE MORRIS: If he had, would that be something
22 that you would have memorialized in your notes?

23 THE WITNESS: I would have -- I think I would have
24 made that a part of my notes, yes.

25 JUDGE MORRIS: All right.

1 MR. SEHAM: I'm sorry, do you have --

2 JUDGE MORRIS: Go ahead.

3 **RECROSS EXAMINATION OF**

4 **TODD ONDRA**

5 BY MR. SEHAM:

6 Q You would have memorialized that in your notes
7 because you thought it was significant?

8 A I think for the same reason I memorialized
9 everything that Mr. Estabrook shared as a concern. To the
10 best I can recall, that would have been a point I would have
11 listed, as well.

12 Q And, if Captain Estabrook was acting manic or
13 showing physical signs that you felt indicated poor mental
14 health, that would be in your notes, as well, correct?

15 A [No audible response.]

16 Q You have to think about that?

17 A No, no. I think I would -- that's an observation
18 that I would have made without having to make notes for that
19 specific thing.

20 Q Because that wouldn't be so important?

21 A No, because I would recall that as a direct
22 interaction, like we're having right now, as a discussion.
23 I would remember that versus having to write it down.

24 Q You had handwritten notes which you later
25 converted into typed notes, correct?

1 A That is correct, yes.

2 Q And in the typed notes you then expanded on what
3 you had originally written, correct?

4 A Well, as --

5 Q Is that not correct?

6 A The notes that I had taken were not complete
7 sentences, so they were expanded based on the reminders that
8 I listed in my notes. That's accurate.

9 Q In fact, there were whole threads of additional
10 information that you put in the written notes, isn't that
11 true?

12 A Not of the main points. No, that part is not
13 true, not of the main points of my notes. What I listed in
14 my notes was accurate. Obviously, there is -- when you
15 don't make complete sentences, there will be additional
16 information. But the main points of my notes were captured.

17 Q And there's nothing in your written notes or your
18 typed-up notes reflecting Captain Estabrook's demeanor or
19 making any allusions to his being manic, correct?

20 A I'd have to read my notes to be specific about
21 that, but I definitely remember Mr. Estabrook being
22 extremely agitated and, just as I stated, almost to the
23 point of manic when specifically those two items were
24 mentioned.

25 Q Okay, but that was not important enough to put in

1 your notes?

2 A I'd have to look at my notes again if there's not
3 a reference in there to that, but I do definitely recall
4 that.

5 JUDGE MORRIS: Is that it?

6 MR. SEHAM: Yes.

7 JUDGE MORRIS: How well known -- and I'm asking
8 for an opinion here -- how well known is the incidence of
9 the pilot using the hammer upon the crew -- I guess it
10 occurred in the nineties -- is that known throughout the
11 FedEx community?

12 THE WITNESS: It was 1994, to the best of my
13 memory. And it is well known throughout the FedEx
14 community, primarily well known within the crew force at
15 FedEx.

16 JUDGE MORRIS: Is it commonly referred to as a
17 reference point or guide for the emphasis on safety, not
18 only in the cockpit but in security as a whole?

19 THE WITNESS: You're referring to that specific
20 incident?

21 JUDGE MORRIS: That specific incident.

22 THE WITNESS: Yeah. It really was a significant
23 incident, and there were some places put in place post-
24 incident to help ensure, to the extent possible, that
25 something of that doesn't occur. It's always more

1 complicated when it involves a crew member who would
2 typically have access to a cockpit, so that complicates it.
3 But there were some additional things done.

4 JUDGE MORRIS: In your introduction when you
5 talked about your background, do you have any prior military
6 experience?

7 THE WITNESS: No, sir, I do not.

8 JUDGE MORRIS: Have you ever been to a maximum-
9 security prison?

10 THE WITNESS: I have not been to a maximum-
11 security prison.

12 JUDGE MORRIS: When FedEx hires its employees,
13 doesn't it do a background check?

14 THE WITNESS: Yes, sir.

15 JUDGE MORRIS: Did you ever pull Captain
16 Estabrook's application and background check as part of this
17 process?

18 THE WITNESS: I did not.

19 JUDGE MORRIS: Is FedEx a will or a will-not
20 hazardous material air carrier, if you know?

21 THE WITNESS: I don't know.

22 JUDGE MORRIS: Are you aware that the
23 transportation of certain explosives is forbidden on even
24 cargo aircraft?

25 THE WITNESS: Yes.

1 JUDGE MORRIS: Questions based on mine?

2 MR. SEHAM: No questions from the complainant.

3 MR. RIEDERER: None from respondent, Your Honor.

4 JUDGE MORRIS: All right, thank you, sir.

5 THE WITNESS: Thank you.

6 JUDGE MORRIS: You are dismissed.

7 THE WITNESS: Thank you very much.

8 JUDGE MORRIS: Please do not discuss your
9 testimony with anyone until after these proceedings are over
10 with, okay?

11 THE WITNESS: I will not.

12 [WHEREUPON, witness Todd Ondra was
13 excused.]

14 JUDGE MORRIS: Who is going to be the next
15 witness?

16 MR. TADLOCK: We have one more witness. That's
17 Captain Bill McDonald.

18 JUDGE MORRIS: Why don't we take a 15-minute
19 break? Let's reconvene at 20 minutes before the hour.

20 [WHEREUPON, there was a brief recess.]

21 JUDGE MORRIS: All parties present when the
22 hearing last recessed are again present. Please call your
23 next witness.

24 MR. TADLOCK: We call Bill McDonald. Before we
25 proceed, would you like to discuss the flight operations

1 manual, or do you want to do that as part of the witness
2 testimony?

3 JUDGE MORRIS: Yeah. It hasn't come up, but we
4 can talk about it --

5 MR. TADLOCK: Okay.

6 JUDGE MORRIS: -- while he's walking.

7 MR. TADLOCK: Can I approach him?

8 JUDGE MORRIS: You may. So I don't forget, please
9 raise your right hand.

10 WHEREUPON,

11 **WILLIAM McDONALD**

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

14 JUDGE MORRIS: Go ahead and grab your seat. Just
15 sit tight for one second. Okay, I have received a 19 June
16 2012 FOM, looks like chapter 2 or section 2. Complainant's
17 counsel, what's your position on this?

18 MR. SEHAM: We object based on the late
19 introduction of this document and that it's just an
20 excerpted version of a much larger document, and there could
21 be and would appear to be other elements of that larger
22 document that could be relevant.

23 MR. TADLOCK: We would offer that at the beginning
24 of this proceeding it was brought to our attention that we
25 had provided a not-then-current version of this. This is

1 the current version. For the purposes of this proceeding,
2 the sections that are provided are the provisions that are
3 relevant for purposes of Captain McDonald's testimony, and
4 we would offer them for that purpose, just to ensure that
5 the parties have the policy that was in effect at the time
6 the applicable decisions were made.

7 And I think the Court will find that these
8 policies are substantially similar -- or, that the policy
9 that we provided previously and the policy in front of the
10 Court right now are nearly identical, with perhaps one
11 sentence difference. When we look at section, I believe it
12 is --

13 JUDGE MORRIS: Well, wait a minute.

14 MR. TADLOCK: Section 2.14.

15 JUDGE MORRIS: My trouble is, complainant has
16 objected because it wasn't provided in discovery. What I
17 will allow you to do is, if you want to offer this for
18 identification purposes, and if the last witness can explain
19 any differences between what's in the record and what's not
20 in the record, that's fine. But I will accept this for
21 identification purposes only, not substantively, but give
22 you the opportunity to address any differences, okay?

23 MR. SEHAM: You don't have a copy for us?

24 JUDGE MORRIS: Is that your only copy?

25 MR. TADLOCK: No, I have multiple copies. May I

1 approach?

2 JUDGE MORRIS: Yes. No, that goes to the witness.

3 MR. TADLOCK: One second, Your Honor.

4 JUDGE MORRIS: And what's the number for this?

5 MR. SEHAM: I believe it's respondent's exhibit
6 RX-36, RX-35 being Captain Estabrook's deposition marked for
7 identification. I'm sorry, it should be RX-35 with Captain
8 Estabrook's deposition marked as RX-34 for identification
9 purposes.

10 JUDGE MORRIS: Let me see, make sure I've got all
11 this. Okay, it's marked RX-35 for identification.

12 [WHEREUPON, the document identified
13 as RESPONDENT'S EXHIBIT RX-35 was
14 marked for identification.]

15 JUDGE MORRIS: Go ahead, counsel. Oh, please give
16 your full name and address for the record, please, business
17 address?

18 THE WITNESS: William Wood McDonald, 3620 Hacks
19 Cross Road, Memphis, Tennessee, 38125.

20 JUDGE MORRIS: Your witness.

21 **DIRECT EXAMINATION OF**

22 **WILLIAM McDONALD**

23 BY MR. TADLOCK:

24 Q Captain McDonald, are you currently employed by
25 FedEx Express?

1 A Yes, sir.

2 Q And what is your current position?

3 A Managing director of flight ops contract
4 administration.

5 MR. SEHAM: Could I ask that the Court ask the
6 witness to speak up because I'm not quite hearing him?

7 JUDGE MORRIS: If you could speak up a little bit,
8 please?

9 THE WITNESS: Managing director of flight ops
10 contract administration.

11 BY MR. TADLOCK:

12 Q Are you currently on FedEx Express's pilot master
13 seniority list?

14 A Yes, sir.

15 Q And what was your date of hire by FedEx Express?

16 A April 9, 1984.

17 Q And can you tell the Court what crew positions you
18 have held at FedEx Express?

19 A 727 second officer, DC-10 second officer, DC-10
20 first officer, 727 captain, Airbus first officer, Airbus
21 captain, MD-11 captain, 777 captain.

22 Q Can you please tell the Court about your
23 background prior to coming to FedEx?

24 A I flew in the Navy from 1976 until approximately
25 1987, almost six years active and about three years in the

1 reserves. I left the Navy, went back to school for a short
2 period of time, worked for another airline, Ryanair, flying
3 a 727, and then came to Federal Express in 1984.

4 Q While at FedEx Express, have you served in any
5 position with the union that represents the pilots?

6 A Yes, sir.

7 Q Can you tell the Court what those roles were?

8 A Yes, sir. When ALPA was on -- originally, when
9 first ALPA was on the property, I served on the scheduling
10 committee. When ALPA was replaced by the FedEx Pilots
11 Association, I served on the scheduling committee and then
12 served on the negotiating committee. I served as the first
13 contract administrator. I served as the first SIG chairman.
14 I served as the negotiating committee chairman, and when I
15 left the union I was chairman of the negotiating committee.

16 Q Have you also worked as a pilot manager for the
17 company?

18 A Yes, I have.

19 Q And can you please tell the Court what management
20 positions you've held at FedEx Express?

21 A My first management position was as a flight
22 operations duty officer and system chief pilot. I served in
23 that role for about a year and a half. I then took over as
24 senior manager of flight operations. I was there for a
25 little over a year.

1 I was then managing director of contract
2 administration, did that for a little over four years. I
3 went to the chief pilot's role, managing director of flight
4 operations, system chief pilot. I did that for about three
5 and a half years, little over three years. And then this
6 last year and a half I've been the managing director of
7 flight ops contract administration.

8 Q In 2013, were you the system chief pilot?

9 A Yes, I was.

10 Q And as the system chief pilot what are your job
11 duties -- or, what were your job duties?

12 A To oversee the safe, legal and reliable operation
13 of the flight operation and to oversee the crew force.

14 Q How many pilots did you manage while you were the
15 system chief pilot?

16 A It varied, I think from a high of about 4,600 down
17 to a low of about 4,200.

18 Q Okay. Do pilots play a safety role at FedEx
19 Express?

20 A Yes, they do.

21 Q Can you please tell me what that role is?

22 A Well, pilots are -- they operate our airplanes.
23 And safety is obviously our primary concern in flight
24 operations, and it's their primary role when they're
25 operating.

1 Q What sort of daily supervision do pilots receive
2 at FedEx?

3 A Pilots are not highly supervised. They have very
4 little direct interface with their management chain, except
5 on rare occasions, but daily supervision probably is a
6 reach-out thing. If a pilot needs help during a daily
7 operation, he usually contacts the flight operations duty
8 officer, who is a manager, or their fleet captain. That
9 would be their primary interfaces.

10 Q And what role does safety play in FedEx Express's
11 overall operations?

12 A Safety is our primary focus.

13 Q And, if there's a tension between delivering a
14 package on time or getting a plane out or addressing a
15 safety concern, based on your experience as system chief
16 pilot, and as a pilot, which prevails?

17 A There should be no question for any pilot at FedEx
18 that safety is the number one priority.

19 Q And does FedEx maintain policies with respect to
20 safety of operations?

21 A Yes, they do.

22 Q And where might those be found?

23 A They'll be -- for the flight crew, it's in the
24 flight operations manual.

25 Q And I would like you to turn to respondent's

1 exhibit RX-2. It should be in the red binder in front of
2 you.

3 A What am I looking for?

4 Q Is that a copy of at least excerpts of FedEx
5 Express's flight operations manual?

6 A No, sir.

7 Q Make sure you're looking at the right --

8 JUDGE MORRIS: The one that starts JX-1 through
9 JX-7 and then has RX-1 and RX-2.

10 MR. TADLOCK: It's respondent's exhibits volume
11 one.

12 THE WITNESS: I'm sorry. Yes, it is. I have
13 that.

14 BY MR. TADLOCK:

15 Q And can you tell the Court what that document is?

16 A It looks like it's excerpts of the flight
17 operations manual.

18 Q Are there sections within those excerpts that deal
19 with safety of operations?

20 A Yes, sir.

21 Q Can you point the Court to those?

22 A On page RX-050, FOM section 2.03, safety and crew
23 member responsibility. The paragraph starts off with,
24 "Safety is the most important consideration in all FedEx
25 operations."

1 MR. SEHAM: I just want to object. We're now
2 getting into the substance of this, not just the
3 identification of it, and we do have a standing objection.
4 I don't know if the tribunal's at least partial recognition
5 of our objection and the conditional nature of its
6 identification has been addressed.

7 JUDGE MORRIS: Well, RX-2 was already admitted
8 into evidence. You have a different type of objection?

9 MR. SEHAM: No, then perhaps I -- then I must have
10 misunderstood. I thought this was -- that we received today
11 a replacement for this, is that -- or have I misunderstood?

12 MR. TADLOCK: It was not a replacement. You
13 received -- the statement that was brought up at the
14 beginning of the proceedings was, I believe there was a
15 request for a copy of the version of the FOM then in effect
16 in 2013. And that has been provided and has been marked
17 conditionally as respondent's exhibit RX-35.

18 MR. SEHAM: I take it the objection -- our
19 objection to RX-2 is overruled?

20 JUDGE MORRIS: It is overruled to the extent that
21 this at least indicates to me -- and counsel will have an
22 opportunity to clarify -- that this is the FOM in effect in
23 May 2015.

24 MR. TADLOCK: We'll get there.

25 JUDGE MORRIS: Go ahead.

1 MR. SEHAM: And I'm sorry -- and our objection to
2 the extent it concerned non-production in discovery and that
3 this is a partial excerpted document, those have been
4 overruled?

5 JUDGE MORRIS: What has been ruled is, this
6 portion is available. Did you request the entire FOM?

7 MR. SEHAM: We objected on the grounds that it was
8 the partial.

9 JUDGE MORRIS: Well, if you want to, you can
10 submit the entire FOM. I mean, under the rule of
11 completeness, if you want the entire FOM into evidence, it
12 can come in. The problem is, I don't know if you asked for
13 the entire FOM.

14 MR. SEHAM: Well, we asked for all documents that
15 were going to be presented at trial.

16 JUDGE MORRIS: Okay. Well, they are offering RX-
17 2. They have apparently, as I understand it, pursuant to
18 the objection earlier, proffered the portion of the FOM that
19 may or may not have been in effect at the time -- we'll have
20 to wait until we get evidence -- to mirror those two up as
21 to whether or not there's any substantive difference between
22 the two.

23 MR. SEHAM: Okay. I just wanted -- I don't want
24 to belabor the point, and I don't want to hold up the
25 proceeding. Our objection in terms of its lack of

1 completeness is -- the Court is saying that we're permitted
2 to submit the complete document?

3 JUDGE MORRIS: Yeah. If you wanted to have
4 submitted it, you absolutely could have.

5 MR. SEHAM: But not after the hearing? I mean, we
6 have objected that the company has come with a document that
7 they've never produced, and they came having not produced
8 it, submitting a partial document.

9 JUDGE MORRIS: What evidence do you have that the
10 other portions of the flight operations manual would be
11 relevant to these proceedings?

12 MR. SEHAM: Well, just looking at the captions,
13 one has to do with weather.

14 JUDGE MORRIS: Have you looked at the flight
15 operations manual?

16 MR. SEHAM: No, I have not.

17 JUDGE MORRIS: Did you request the flight
18 operations manual?

19 MR. SEHAM: I requested -- not with particularity.
20 We requested all documents that were going to be used at
21 trial.

22 JUDGE MORRIS: Well, we're not offering the other
23 portions, so overruled. Go ahead, counsel.

24 BY MR. TADLOCK:

25 Q And I'm going to skip through the sections to

1 highlight the relevant language. On the first bullet on
2 section 2.03, it says, "During times when various priorities
3 of safety, legality and reliability appear to be in
4 conflict, it is the responsibility of all crew members in
5 general, and the captain in particular, to ensure that
6 safety remains the primary focus." Any uncertainty
7 regarding the third bullet? Any uncertainty regarding the
8 safety of an operation is to be questioned and
9 satisfactorily resolved before that operation is conducted
10 or continued?

11 A Section 2.04, safety management system describes
12 the safety management system and says, "The safety risk
13 management and safety assurance are at the heart of the
14 FedEx safety management system."

15 If you'd look at 2.10, flight operations duty
16 officer, "The flight operations duty officer is designated
17 by the director of flight operations to act in his behalf to
18 ensure the safe, legal and reliable and cost-effective
19 operation of the global air network."

20 Section 2.13, flight safety report, describes the
21 reporting system, how a crew member can bring safety issues
22 to the notice of the operation. 2.14, aviation safety
23 action program -- this is the ASAP program, also another
24 venue for a crew member to bring safety-related issues to
25 the fore.

1 Q I'll stop you there, Captain McDonald. Do you
2 understand that to be a copy of the FOM that was in effect
3 in 2015?

4 A 2015, yes, sir.

5 Q Do you understand that to be substantially similar
6 to the document that was in effect in -- the FOM that was in
7 effect in -- or, at least for purposes of those sections --
8 in effect in 2013?

9 A Yes, sir.

10 Q I'd like you to reference respondent's exhibit RX-
11 35, which you should have in front of you.

12 JUDGE MORRIS: And it's for identification.

13 MR. TADLOCK: For identification.

14 THE WITNESS: Okay.

15 BY MR. TADLOCK:

16 Q Have you had a chance to review that document?

17 A No, I have not.

18 Q Would you please review it? And what I would ask
19 to keep in mind as you review it is, do you find any
20 material differences between what's in -- with respect to
21 the safety sections you identified, what's in respondent's
22 exhibit RX-35 and what's found in respondent's exhibit RX-2?

23 MR. SEHAM: Objection.

24 JUDGE MORRIS: Basis?

25 MR. SEHAM: Unless he's going through it section

1 [WHEREUPON, the document previously
2 identified and marked as
3 RESPONDENT'S EXHIBIT RX-2 was
4 received into evidence.]

5 BY MR. TADLOCK:

6 Q Turning to RX-2, including the processes
7 identified in the flight operations manual, how would you
8 understand a pilot to report a safety or security concern
9 that he might have?

10 A There are a number of venues available for a pilot
11 to report a safety concern. One would be the flight safety
12 reporting system. The other would be the ASAP reporting
13 system. The pilot could always, with a day-of-ops issue,
14 have direct contact with the flight operations duty officer.
15 He could always contact his fleet manager or anyone in the
16 operational management chain to raise a safety concern.

17 For a security concern, there's a very similar
18 process. The ASR, the air crew security report, is your --
19 probably the initial -- that's where I would start if I was
20 going to report a security concern. The flight ops
21 department maintains up until recently a flight ops threat
22 awareness coordinator position. You could report your
23 security concerns to that position.

24 You could always report security concerns to the
25 flight ops duty officer, who would relay those concerns.

1 And you can report it to your fleet captain or anyone in the
2 operational chain of management. And we also maintain a
3 flight safety department, and they are available through the
4 safety hotline too.

5 Q Are you aware of safety or security concerns being
6 reported to FedEx through these means?

7 A Yes.

8 Q Does FedEx actively encourage employees to report
9 any threat they perceive relating to safety or security?

10 A Yes, they do.

11 Q Are there policies in place to protect against
12 retaliation in the event someone raises a safety or security
13 concern?

14 A Yes, there are.

15 Q And could you direct the Court to which policy you
16 believe does that?

17 A It's on page RX-052, section 2.13, the flight
18 safety report. If you look at the last sentence of the
19 first paragraph, it states, "No FSR shall be used by FedEx
20 management as the basis for disciplinary action against or
21 evidence in determining misconduct of an employee."

22 Q Are you aware of any pilot at FedEx Express who
23 has been disciplined for reporting a safety or security
24 concern?

25 A No, sir. I have never known an employee to be --

1 a pilot or an employee to be disciplined for a safety or
2 security concern.

3 Q As system chief pilot in your current role, are
4 you familiar with section 15D of the collective bargaining
5 agreement?

6 A Yes, sir, I am.

7 Q Can you briefly describe to the Court what that
8 process is?

9 A The 15D is the company-mandated medical
10 examination that's contained in the collective bargaining
11 agreement. It provides for the company, if they have a
12 reasonable basis for one of the -- either the vice
13 president, the system chief pilot, the regional chief pilot,
14 or the assistant chief pilot, to send a pilot for a company-
15 mandated medical examination if there is a reasonable basis
16 for them to believe that his fitness for duty is
17 questionable.

18 Q In your opinion, does 15D relate to operational
19 safety?

20 A Absolutely.

21 Q How does that section relate to operational
22 safety?

23 A Well, anytime there is a question on a pilot's
24 ability to operate and whether they are fit for duty, it
25 could have an impact on operational safety. The company is

1 obligated to address those concerns and ensure that safety
2 remains the primary concern of operations.

3 Q Have you seen instances in 15D -- or, through the
4 15D process where you noted cognitive behavioral concerns
5 that you reported or where you directed a pilot to a medical
6 evaluation?

7 A I have had pilot issues reported to my office at
8 the time, and, yes, we submitted the pilot -- we sent the
9 pilot to a company-mandated medical exam, the 15D process.
10 And some of those issues were resolved.

11 Q Can you provide the Court with some examples of
12 that?

13 A Well, one of the best examples is, we had a pilot
14 that had been exhibiting abnormal behavior, as was reported
15 by some of the other crew members. We interviewed the crew
16 member, and we looked at his record and sent him for a
17 company-mandated medical examination. It was determined
18 that he had a brain tumor, unbeknownst to him, and in this
19 case he was successfully operated on, and he returned to the
20 line and was able to keep his job and potentially may have
21 saved his life.

22 Q And you were the system chief pilot in 2013,
23 correct?

24 A That is correct.

25 Q At some point, did you become aware of an incident

1 involving Captain Estabrook in Laredo, Texas?

2 A I did.

3 Q What did you come to learn?

4 A It was reported to me by the duty officer, Captain
5 Mark Crook, that Captain Estabrook had not reported to the
6 ramp at his assigned time and that he had had conversations
7 with him. Captain Crook sent a follow-up e-mail.

8 Q And you've reviewed that e-mail?

9 A I have.

10 Q As you understand it, is Captain Estabrook's
11 behavior consistent with how you would expect a pilot to act
12 in this sort of situation?

13 A It is not.

14 Q And can you explain to the Court why?

15 A FedEx crew members are required to report to the
16 ramp when they at an out-station one hour prior to show
17 time, unless it has been coordinated through GOC and the
18 duty officer and crew scheduling for some alternative time.

19 Q In this circumstance, did you understand there to
20 be any issue with Captain Estabrook making it to the ramp
21 itself?

22 A From the hotel to the ramp?

23 Q Yes. I'm sorry.

24 A No, I never understood there to be an issue with
25 transportation from the hotel to the ramp.

1 Q Are you aware of any prior instances where a pilot
2 had made the decision to stay at his hotel by himself
3 because of weather at his destination?

4 A Not for weather, no.

5 Q What did you do in response to learning about this
6 incident?

7 A I asked Captain Fisher, his fleet captain, to
8 bring Mark in for an interview.

9 Q Okay, and do you know what means he did that
10 through?

11 A I think he contacted him via e-mail and told Mark
12 that he was going to bring him in for a 19D process --

13 Q Okay.

14 A -- interview process.

15 Q And you briefly explain to the Court what you
16 understand the section 19D process to be?

17 A Section 19D, if we have questions about the
18 operation or pilot performance, we have the ability under
19 the CBA to bring a pilot in to question him to have a better
20 understanding of what took place.

21 Q Is that the CBA's contractual means to conduct an
22 investigation?

23 A Yes, sir, that is correct.

24 Q Can a pilot be disciplined as a result of a
25 section 19D meeting?

1 A He may not be disciplined.

2 Q Is it your understanding that Captain Fisher held
3 a section 19D meeting with Captain Estabrook?

4 A Yes, sir.

5 Q Was Captain Estabrook disciplined as a result of
6 this meeting?

7 A No, sir.

8 Q Were you satisfied with how this was resolved?

9 A Yes, sir.

10 Q Can you explain to the Court why?

11 A It was my understanding after talking to Captain
12 Fisher that he was satisfied with Captain Estabrook's
13 explanation, that he had counseled him on proper conduct on
14 when to show at the ramp. Captain Estabrook told him that
15 he understood, and there wasn't any further repetition of
16 that.

17 Q Did this resolution upset you?

18 A Not at all.

19 Q Did you --

20 A It was the resolution I wanted.

21 Q Did at any point you direct Captain Fisher to
22 discipline Captain Estabrook?

23 A I did not.

24 Q And, lastly, did you bear any grudge against
25 Captain Estabrook because of this incident?

1 A No, sir.

2 Q Or because he was not disciplined?

3 A No.

4 Q And you were still the system chief pilot in
5 August 2013, correct?

6 A Yes, sir.

7 Q Do you recall receiving an e-mail from Captain
8 Estabrook on or about this time?

9 A Yes, I do.

10 Q I would direct your attention to respondent's
11 exhibit RX-13.

12 A I'm there.

13 Q Is that a copy of the e-mail you received?

14 A Yes, sir.

15 Q What was your reaction to that e-mail, Captain
16 McDonald?

17 A Well, I thought it was a bit unusual and curious.

18 Q Can you explain to the Court why?

19 A Well, the e-mail starts off with, Bill, I need to
20 speak to -- I need to talk to Fred. And it's unusual that a
21 line crew member would contact me and say he needs to speak
22 directly to the CEO. It says it deals with something
23 related to 9/11. And, you know, 9/11 was quite some time
24 ago.

25 And then it says, ask Fred to call my cell but

1 realize I turn it off when I sleep, I'm about to close my
2 eyes and call it a day. So I thought it was unusual that he
3 would contact me to try and contact Mr. Smith and also
4 unusual that he would provide his cell phone and ask me to
5 give it to Mr. Smith so he could call him and then say that
6 he probably wasn't going to be available.

7 Q Had Captain Estabrook ever contacted you to raise
8 a security concern before?

9 A He had not.

10 Q In that letter, it discussed the fact that he was
11 the security chairman at ALPA. Did you have any
12 recollection of that?

13 A I was unaware of that at the time.

14 Q Would you know how to set up a phone call with
15 Fred Smith?

16 A I don't think so, other than maybe look up his
17 number and call his office.

18 Q Is that something you have ever done before?

19 A I have not.

20 Q Did you provide Captain Estabrook with the
21 opportunity to discuss his concerns?

22 A I did. I sent Captain Estabrook a reply to his e-
23 mail. I told him that I was going to set up a meeting with
24 his fleet captain and with the managing director of
25 corporate security, aviation corporate security, which was

1 Todd Ondra, and that I was going to place him in an NOQ
2 status until we could effect that meeting.

3 Q Can you tell the Court what NOQ status is?

4 A Not operationally qualified.

5 Q What sort of -- is that an administrative code?
6 What is --

7 A It is. It's an administrative code which means
8 the pilot is not available to operate a FedEx aircraft, not
9 available to crew scheduling to be utilized in an
10 operational capacity.

11 Q Is the pilot still compensated during the period
12 he's on NOQ status?

13 A He is pay-protected throughout that period of
14 time.

15 Q Is he paid as if he had operated an aircraft?

16 A Essentially, yes, with the -- I believe with the
17 exception of international override and per diem.

18 Q Is there another type of status known as RMG?

19 A There is.

20 Q Can you explain to the Court what -- you know, I
21 think that has been discussed before. Why did you use the
22 NOQ status instead of the RMG status?

23 A NOQ status is open-ended. When I have a -- when
24 I'm trying to set something up when I don't know how long
25 it's going to take, the NOQ status would let crew scheduling

1 know that he's unavailable at this period of time until such
2 time as, in this case, the meeting was complete and until he
3 is returned to line operation status, until the NOQ is
4 removed.

5 Q I'd like to direct your attention to respondent's
6 exhibit RX-14.

7 A I'm there.

8 Q Did Captain Estabrook respond to your e-mail?

9 A Yes, he did.

10 Q Did you understand him to be upset by your
11 decision to set up a meeting with fleet management and
12 security?

13 A No, he didn't seem to be upset about that. He
14 said that he wanted to fly his trip to Panama, but he
15 understood why he was removed from the trip. And then he
16 reiterated that it would just be a conference call with Mr.
17 Smith and corporate security for -- where 15 minutes would
18 suffice.

19 Q Did you attend the meeting that was set up to hear
20 Captain Estabrook's security concerns?

21 A No, I did not.

22 Q And can you tell the Court why you were not there?

23 A Well, I asked that the meeting be set up with
24 Captain Fisher. Captain Fisher is his direct manager. He
25 was the fleet captain of the Airbus and somebody I had

1 confidence in to represent flight operations. Todd Ondra,
2 who was the managing director of aviation security group,
3 was going to be present, and Rob Tice from labor relations
4 was going to be there, as well. So I felt no need to be
5 present at the meeting.

6 Q Did you learn the results of that meeting? Or,
7 did you receive a report on how that meeting went?

8 A I did.

9 Q Can you explain what you learned?

10 A The first response, the first notice of what took
11 place, I received a phone call from Todd Ondra I think later
12 that afternoon of the same day of the meeting.

13 Q And what did Todd Ondra tell you?

14 A He told me that he had concerns about Captain
15 Estabrook's fitness for duty, that he was concerned about
16 his mental state, and that there were some -- a number of
17 times where he was concerned about the issues that he had
18 raised, specifically relating to Auburn Calloway, the
19 potential passing of operational information to Al Qaeda,
20 and the desire to have his cell wiretapped.

21 Q As system chief pilot -- and let me back up,
22 actually. Did Todd Ondra recommend any particular course of
23 action in light of these concerns?

24 A Yes. We discussed the possibility of having a
25 medical evaluation. Mr. Ondra wanted some type of mental or

1 psychological evaluation. I explained to him that that was
2 outside of our ability in flight operations to do that, that
3 it was prohibited by the CBA. However, there was an ability
4 to send Captain Estabrook for a company-mandated medical
5 evaluation. And, if the company's aeromedical advisor
6 deemed it appropriate, that those type of examinations could
7 be administered.

8 Q Did you support -- or, did you agree with Ondra's
9 assessment that some sort of evaluation might be
10 appropriate?

11 A Yes, I did.

12 Q And why did you agree with him?

13 A Well, I had my initial concerns about his
14 situational awareness, as portrayed in his e-mails. And
15 then after I spoke to Todd that was reaffirmed. And Todd
16 and I had worked together for quite a while. I have a lot
17 of confidence and faith in his ability to assess a
18 situation, and I took his recommendation.

19 Q Is Todd's judgment something you trust?

20 A Absolutely.

21 Q And can you explain to the Court why?

22 A Well, he's in a very sensitive position at Federal
23 Express, at FedEx Express. He's responsible for the
24 security and safety of our system in a number of areas. My
25 interface with him has always been professional. Every time

1 I have interfaced with Todd, he has just been of the highest
2 quality, highest caliber.

3 Q Okay.

4 A So, when he gave me his recommendation, I saw no
5 need to question it.

6 Q What did you do next?

7 A I believe I talked with Mr. Tice, and then I
8 talked with Captain Fisher.

9 Q Did either of them provide you with any new
10 information or different information that impacted your
11 decision whether to send Captain Estabrook to a 15D medical
12 evaluation?

13 A They did not. Captain Fisher, however, told me
14 that he had already removed the NOQ from Captain Estabrook
15 and returned him to line operations. I instructed Captain
16 Fisher to reinstate the NOQ and to prepare a 15D
17 notification for Captain Estabrook.

18 Q Is it your position that you made the decision to
19 refer Captain Estabrook to a 15D exam?

20 A Yes.

21 Q Was that --

22 A It was my decision.

23 Q And was that decision made on August 9th?

24 A It was.

25 Q Can you tell me what happened next with respect to

1 this?

2 A I believe Captain Fisher called and spoke with
3 Captain Estabrook. Captain Fisher reported to me that he
4 had had the conversation with Captain Estabrook, and after
5 that, you know, the administrative process kicked in and a
6 letter was generated directing Captain Estabrook to contact
7 Harvey Watt, our aeromedical advisor, to arrange for the
8 15D, the beginning of the 15D process. And a letter was
9 also generated to Harvey Watt.

10 Q Does the company ever try to interfere or
11 influence a 15D evaluation?

12 MR. SEHAM: Objection.

13 JUDGE MORRIS: Basis?

14 MR. SEHAM: Well, he can't speak for the entire
15 company. He can only speak for himself.

16 JUDGE MORRIS: Rephrase.

17 BY MR. TADLOCK:

18 Q In your experience as system chief pilot, are you
19 aware of whether flight operations or people charged with
20 administering the 15D process tried to influence or
21 interfere with that?

22 A To the best of my knowledge, no. Once a pilot is
23 recommended for a 15D, a company-mandated medical
24 examination, they are directed to contact Harvey Watt. And
25 our part of the process is pretty much complete except for

1 arranging transportation to and from Harvey Watt's
2 facilities in Atlanta.

3 Q Does the company provide Harvey Watt with the
4 basis for its referral?

5 A Yes, it does.

6 Q Does the company -- based on your understanding of
7 the 15D process, does the company have any further
8 involvement?

9 A No, no further involvement until we receive a
10 notification from Harvey Watt. We get either a yes the
11 pilot is fit for duty, or a no he is no fit for duty, at
12 which point, if he's fit for duty, he's returned to line
13 operations. If he's not fit for duty, he either enters sick
14 leave, LTD, or a medical leave of absence, depending on the
15 situation.

16 Q Do you understand that a 15D referral might be
17 upsetting to a pilot?

18 A Yes. I have seen that on a number of occasions.

19 Q Why did you -- knowing that, why did you believe a
20 15D referral was appropriate here?

21 A I would say the primary basis was the
22 recommendation of Todd Ondra after the interview with
23 Captain Estabrook.

24 Q What role does safety play in this referral?

25 A Well, it plays a critical role. If there's a

1 fitness for duty issue with Captain Estabrook that may be
2 caused by some undetected physiological or cognitive issue
3 and it's discovered through the company-mandated medical
4 examination, then not only have we served the pilot but we
5 have also served the company and maintained safety.

6 Q Are you aware that Captain Estabrook returned to
7 work following the completion of I guess the 15G or 15D
8 process?

9 A Yes, sir, I am.

10 Q Are you aware that he went through some training
11 following his return to work?

12 A I'm aware that, yes, every pilot, if they return
13 to the line, has to re-qualify.

14 Q At any point, did you try to influence or
15 manipulate Captain Estabrook's training schedule?

16 A I have no ability to do that.

17 MR. TADLOCK: I have no further questions.

18 JUDGE MORRIS: Counsel?

19 MR. SEHAM: Yeah, I'll just pack up stuff over
20 here.

21 **CROSS EXAMINATION OF**

22 **WILLIAM McDONALD**

23 BY MR. SEHAM:

24 Q Captain McDonald, you testified on direct about
25 the flight operations manual, which I will refer to as the

1 FOM. An FOM is required by the FAA in order for FedEx to
2 operate as an air carrier, correct?

3 A I believe so, yes, sir.

4 Q In fact, a lot of the content of the FOM is
5 dictated by the FAA?

6 A By regulation, yes, sir.

7 Q So do you know -- in terms of the elements of the
8 FOM -- which parts are FedEx-developed policy, as opposed to
9 which parts are dictated to FedEx by the FAA?

10 A I'd have to look at the document itself, sir, and
11 I believe there are FAR references in each section which
12 identify which section of the FAR's the policies are
13 meeting.

14 Q Now, where in the FOM does it address the
15 requirements that the carrier must adhere to in terms of the
16 dissemination of tracking information for packages and
17 aircraft?

18 A I know of no place.

19 Q Now, you've been with Federal Express how many
20 years?

21 A A little over 32.

22 Q Describe the scope and depth of your participation
23 in the elaboration of policies relating to aircraft and
24 package tracking.

25 A I have never had any -- never any involvement with

1 any package tracking issues. And, as far as the
2 dissemination of aircraft tracking, no participation there
3 either.

4 Q And, in fact, the elaboration of those policies
5 falls outside the scope of flight management, isn't that
6 correct?

7 A Yes, sir.

8 Q So would you agree with me there would be no point
9 in following -- or, submitting complaints or reports to
10 flight -- to Captain Estabrook's flight management superiors
11 with respect to data tracking issues?

12 A I would say that would depend. If it was a
13 security-related issue, if he submitted it to flight
14 management, it would probably wind up with the security
15 department. If he filed an aviation security report -- or,
16 I mean a flight crew security report, an FSR, it would be
17 reviewed by the FOTEC and by Todd's organization and
18 followed up, as necessary.

19 Q The issues which he ultimately raised in that
20 August 9th meeting, would you agree with me that the flight
21 department had no authority to address and resolve his
22 concerns?

23 A The flight department did not.

24 Q Now, you talked about prior situations where you
25 invoked an NOQ based on your perception of flight duty? Do

1 you recall that on direct, flight -- excuse me, in terms of
2 fitness for duty?

3 A Yes, sir.

4 Q And you talked about an issue involving cognitive
5 behavioral issues?

6 A Yes, sir.

7 Q And so you identified someone whom you believed
8 might have cognitive behavioral duties [*sic*]?

9 A I didn't personally identify him. It was brought
10 to the attention of the flight operations department, and
11 there was an investigation that ensued. And the result of
12 that investigation was, the captain was directed to undergo
13 a company-mandated medical examination.

14 Q And what was the source of your initial
15 information?

16 A YouTube.

17 Q YouTube?

18 A YouTube.

19 Q What did you see on YouTube?

20 A We had a video of an aircraft that was approaching
21 the airport in Chicago and did not have its gear extended
22 until approximately 500 feet.

23 Q Did you ever hear from any other pilots concerning
24 the aberrational or worrisome behavior of the pilot in
25 question?

1 A As we conducted our investigation, yes, sir.

2 Q So you had evidence of flight operation
3 deficiencies with respect to this individual whom you
4 consigned to a 15D process, correct?

5 A Yes, sir.

6 Q And what other 15D referrals have been involved
7 with?

8 A A number throughout the training department.
9 Usually, when a pilot has -- a pilot who has been a good
10 pilot for a number of years suddenly has training issues or
11 operational issues -- but in this case training issues --
12 and becomes incapable of passing a training program.

13 JUDGE MORRIS: A check ride is what you're talking
14 about?

15 THE WITNESS: A check ride or an upgrade.

16 JUDGE MORRIS: Okay.

17 THE WITNESS: Or a transition. If they stumble
18 and have continued issues, after a while we usually send
19 them for a company-mandated medical examination to ensure
20 that there's no underlying physiological or cognitive
21 issues. I will say, a large majority of the times when that
22 happens, it comes back that there is an underlying issue
23 that hopefully we can correct and bring them back to line
24 operations.

25 \\

1 BY MR. SEHAM:

2 Q So you've identified individuals whom you sent to
3 a 15D evaluation based on their performance in the training
4 department, and then a YouTube video of another pilot who
5 did not lower the landing gear and about whom a fellow pilot
6 reported performance deficiencies. And any other examples
7 of 15D referrals?

8 A Yes, sir. If there is a question of having a
9 substance or alcohol problem --

10 Q Uh-huh.

11 A -- if we question a pilot in that regard, they are
12 sent to a 15D company-mandated medical evaluation.

13 Q You have specific examples in mind?

14 A [No audible response.]

15 Q Or are you talking about general policy, or were
16 you actually involved in some cases?

17 A I was involved in some cases, yes.

18 Q And the cases involved indications of inebriation
19 or substance abuse?

20 A Either they came back with a positive drug or
21 alcohol test or they were referred by another individual, or
22 they turned themselves in.

23 Q All right, so we have substance abuse issues
24 concerning which you had direct evidence. We have training
25 department issues. You have the individual who didn't lower

1 the landing gear and whose fellow pilot informed you about
2 performance deficiencies. Any other 15D?

3 A Well, it was behavioral deficiencies is what the
4 pilot reported during the investigation.

5 Q Okay, I'll accept that. Any other 15D instances
6 you can recall?

7 A I'm sure there are others. I don't remember any
8 others right off the bat.

9 Q Now, Captain Estabrook, there were no -- he didn't
10 have a positive drug test, did he?

11 A Not that I'm aware of, no.

12 Q Was there any pilot, fellow pilot, who reported
13 operational deficiencies on his part?

14 A No, sir.

15 Q Did you have any complaints from a fellow pilot
16 concerning CRM -- cockpit resource management -- behaviors?

17 A No, sir.

18 Q Captain Estabrook never failed to lower a landing
19 gear, correct?

20 A Not that I'm aware of, no, sir.

21 Q You had no reports from any source indicating
22 performance deficiencies, either in actual operations or in
23 training, correct?

24 A That is correct.

25 Q You talked about a 19D evaluation or a 19D

1 examination process, and you say you're familiar with the
2 contract? You don't like the way I stated that. Correct me
3 if --

4 A Yeah, 19D is an investigation.

5 Q Correct, okay. So 19D is an investigation. But
6 you didn't like -- you thought the term examination was
7 improper?

8 A Yes, sir.

9 Q So a 19D investigation -- or, at 19D
10 investigations the individual has a right to be legally
11 represented by a union representative, correct?

12 A They have the right to have an association
13 representative present at a 19D, yes, sir.

14 Q And part of the reason for that is because a 19D
15 can be converted into a 19E, even as that meeting is
16 progressing?

17 A I would say that's incorrect. If you're
18 conducting a 19D investigation, and if it appears that
19 discipline may be a result of that meeting --

20 Q Uh-huh.

21 A -- then the meeting is stopped, a formal notice of
22 a 19D hearing is sent out, and then usually we bring in the
23 attorneys, both the pilot and the company, into a 19E
24 meeting.

25 Q So it's anticipated by the contract that a 19D, in

1 terms of the investigation and the interrogation of the
2 individual, could lead to information that progresses to as
3 19E?

4 A That's one of the possibilities, yes, sir.

5 Q And it's your testimony that sometimes -- well,
6 strike that. Now, you say you had a call from Mark Crook
7 even before he sent you that e-mail?

8 A I talked to Mark Crook. I'm not sure if it was
9 before or after, but I think it might have been before. It
10 might have been prior to him sending the e-mail.

11 Q Uh-huh. And did you ask him to send --

12 A I don't recall.

13 Q Did you ask him to send you an e-mail?

14 A I don't remember requesting the e-mail, but, if I
15 talked to him, I probably asked him to send an e-mail.

16 Q Now, part of the reason you thought the August 4th
17 e-mail from Captain Estabrook was odd was that he referred
18 to the terrorist attacks of September 11th, 2001?

19 A No, I didn't think that in and of itself was odd.
20 I thought that him raising an issue with the terrorist
21 attacks in September of 2001 at this point in time seemed a
22 little out of sync.

23 Q So you don't think the company no longer takes
24 into consideration what happened on 9/11/2001?

25 A Oh, I think they do every day.

1 Q And you thought it was odd that he didn't complain
2 to -- or, that he did not raise his tracking information
3 issue with flight management first?

4 A I thought it was odd that, if he had a security
5 concern, that he didn't file a flight crew member security
6 report.

7 Q You didn't --

8 A Or use one of the other more immediate venues to
9 address security concerns --

10 Q Uh-huh.

11 A -- than say, I'd like to speak with the CEO of the
12 parent corporation.

13 Q But you knew at the time he had already raised his
14 concerns previously with Mr. Henrikson, correct?

15 A No, sir, I did not. I didn't know which concerns
16 he was going to raise.

17 Q Didn't he tell you --

18 A I believed --

19 Q -- in that e-mail that he had raised these issues
20 before with Mr. Henrikson?

21 A He said he had spoken to Mr. Henrikson with these
22 issues, yes. But I didn't know what the issues were.

23 Q And part of your decision -- now, it was your
24 decision to put him on NOQ?

25 A Yes, sir. I was the one that directed Captain

1 Estabrook to be placed in an NOQ status.

2 Q And who had input with respect to that decision?
3 Or did you make that completely alone without any
4 consultation whatsoever?

5 A No, I asked some guidance from above.

6 Q And, when you say above, is that Our Father Who
7 Art In Heaven, or was it a superior within the FedEx
8 management?

9 A No, I asked other people within FedEx management.

10 Q Whom did you ask?

11 A Captain --

12 MR. TADLOCK: I'm going to object to the extent
13 that it requests attorney-client privileged information.

14 MR. SEHAM: Well, I'm asking for the
15 identification of persons at this point.

16 JUDGE MORRIS: Overruled.

17 BY MR. SEHAM:

18 Q Whom from above did you consult concerning your
19 NOQ designation?

20 A Other flight management and other sources in the
21 legal department.

22 Q Could you name the names, please?

23 A Captain Jim Bowman and Mr. John Maxwell.

24 Q Isn't it true that, during this period of August
25 4th and August 5th, you had discussions with other

1 individuals concerning the e-mail and/or the NOQ
2 designation?

3 MR. TADLOCK: I'm going to have a standing
4 objection with respect to --

5 MR. SEHAM: Not asking for substance. I'm just
6 asking whether he had discussions with other persons.

7 JUDGE MORRIS: Overruled.

8 THE WITNESS: I'm sure I talked to Todd Ondra
9 about it, and I'm sure I talked to Rob Fisher about it, and
10 Rob Tice, as well.

11 BY MR. SEHAM:

12 Q You say you spoke to Todd Ondra? You've been
13 here, and you've heard the testimony of all the witnesses in
14 this case up until now, isn't that correct?

15 A Yes, sir.

16 Q And did you hear Todd Ondra testify that he had no
17 input into the NOQ decision of August 5th?

18 A Yes, sir. I didn't think that was the question.

19 Q I'm asking you, did you hear that testimony?

20 A Yes.

21 Q And did you --

22 A Oh, yes. Todd didn't have any input into the NOQ
23 process.

24 Q And did Rob Fisher have any input into the NOQ
25 determination?

1 A Well, Rob was the person that probably entered him
2 into the NOQ, and so I'm sure we discussed it.

3 Q Well, I'm asking, did he make suggestions? Was he
4 just the implement by which it was implemented, or did he
5 actually give you some input and deliberate with you about
6 whether he should be placed on NOQ or not?

7 MR. TADLOCK: To the extent this involves
8 attorney-client privileged information and the seeking of
9 legal advice where attorneys are involved, I think he's now
10 getting into the substance of discussions.

11 JUDGE MORRIS: Overruled.

12 MR. SEHAM: I'm asking if he had a discussion with
13 Rob Fisher.

14 THE WITNESS: I don't remember the specific
15 conversation, other than me asking Rob to place him in an
16 NOQ status.

17 BY MR. SEHAM:

18 Q So you didn't get any advice --

19 JUDGE MORRIS: Wait a minute. So I'm clear, we're
20 talking about Captain Fisher, right?

21 MR. SEHAM: Yes.

22 JUDGE MORRIS: We're not talking about an
23 attorney?

24 MR. SEHAM: Yes.

25 THE WITNESS: Correct.

1 JUDGE MORRIS: Okay, overruled.

2 BY MR. SEHAM:

3 Q And you did get input from Jim Bowman?

4 A Yes, I did.

5 Q And Jim Bowman raised issues about whether Captain
6 Estabrook should have access to the jumpseat based on the
7 August 4th e-mail, correct?

8 MR. TADLOCK: Objection to the extent that it
9 involved communications with an attorney.

10 JUDGE MORRIS: Is Jim Bowman an attorney?

11 MR. TADLOCK: No, but to the extent -- I'm not
12 sure in these communications who Jim Bowman was speaking to
13 with respect to --

14 JUDGE MORRIS: Well, we'll find out.

15 MR. TADLOCK: Okay.

16 JUDGE MORRIS: Overruled.

17 THE WITNESS: I'm not sure whether he had concerns
18 or not. I would have to go back and review some
19 communications.

20 BY MR. SEHAM:

21 Q You don't recall? It's possible that Jim Bowman
22 had a concern as of August 5th about whether Captain
23 Estabrook should have continued jumpseat access?

24 A It could be possible.

25 Q Now, a very large portion of FedEx pilot flying is

1 on what we call the back seat of the clock, correct?

2 A Back side of the clock.

3 Q Back side, back seat, okay. Thank you for the
4 correction. The back side of the clock, correct?

5 A Yes, sir.

6 Q And that's very -- would you agree with me, that's
7 very disruptive of normal sleep cycles, correct?

8 A It can be for most people, yes.

9 Q It can be for most people. And, in fact, would
10 you agree with me that pilot fatigue is a very significant
11 safety issue?

12 A Yes, sir, I would agree that fatigue is a very
13 critical safety issue.

14 Q In fact, pilots are required to disqualify
15 themselves from flight if they feel excessive fatigue,
16 correct?

17 A Well, they don't disqualify themselves. They
18 report that they are fatigued, and they are removed from --
19 they are put into rest.

20 Q And that's different from disqualifying
21 themselves?

22 A But it's not disqualifying. Not, it's not
23 disqualifying, per se. You're not losing your
24 qualification.

25 Q Okay.

1 A You're just placed into rest.

2 JUDGE MORRIS: Counsel, this whole area is very
3 term-of-art intensive.

4 MR. SEHAM: Yes. No, I understand. So I stand
5 corrected, perhaps.

6 BY MR. SEHAM:

7 Q So they will disqualify themselves in the sense of
8 fitness for duty for the immediate flight based on their
9 perception of their own fatigue?

10 A When a pilot calls in fatigued, he has made the
11 determination that he is not safe to fly, not that he's not
12 fit to fly.

13 Q Uh-huh.

14 A So he's not safe to operate the next duty period
15 or the next leg. He's placed into rest until such time as
16 he feels that he's safe to fly again.

17 Q And it didn't -- it struck you odd that Captain
18 Estabrook asked the company representatives not to interrupt
19 his sleep?

20 A No. It struck me as odd that Captain Estabrook
21 said, here's my cell phone number, have Fred call me but not
22 right now, I'm going to shut my phone off.

23 Q And that contributed to your NOQ decision?

24 A I think it started the base of support, yes.

25 Q Uh-huh.

1 A And I would also say that the majority of the
2 decision to place Captain Estabrook in an NOQ at that time,
3 in the August 4th time frame, was not based on his e-mail
4 but based on the need to coordinate the meeting between
5 Captain Estabrook, Captain Fisher, Todd Ondra, and Rob Tice,
6 to find a suitable time when we could put the four of them
7 together in a room to get the meeting started.

8 Q Captain Estabrook told you he could deal with the
9 matter in 15 minutes, correct?

10 A In his second e-mail, he did.

11 Q Okay.

12 A After he acknowledged that he understood why he
13 was placed in an NOQ status.

14 Q And so you say -- I think the term you used, the
15 majority, the majority consideration for the NOQ --

16 A Right.

17 Q -- was to facilitate a meeting?

18 A Yeah, that's the -- yes, sir, that was the primary
19 reason for placing --

20 Q Okay.

21 A -- Captain Estabrook in an NOQ status.

22 Q And what were the other reasons? What were the
23 secondary reasons?

24 A Well, I was concerned about his situational
25 awareness, as raised in the original e-mail.

1 Q Now, you testified that your 15D determination --
2 as of August 9th it's your testimony that it was based on a
3 report from Todd Ondra, correct?

4 A Partially, yes.

5 Q And then what else?

6 A I would say that my initial concerns with Captain
7 Estabrook's situational awareness, as raised with his
8 original e-mail, then with the recommendation of Todd Ondra,
9 those in concert led me to direct Captain Estabrook to
10 undergo a company-mandated medical examination.

11 Q Now, to the extent it rested on -- and I'm
12 understanding that your testimony today is that it was based
13 in part on the August 4th e-mail. To the extent it was
14 dependent on Todd Ondra's report, what was it in that report
15 that prompted you to reinstate Captain Estabrook to NOQ
16 status and refer him for a 15D evaluation?

17 A Todd Ondra told me that he was concerned with his
18 fitness for duty, that he was concerned with his mental
19 state, the concerns he raised in relationship to Auburn
20 Calloway, his thoughts that he may be transmitting
21 information to Al Qaeda and the desire to have his cell in
22 prison wiretapped, led to that decision.

23 Q Anything else?

24 A Not that I recall right now.

25 Q Now, you recall that you were deposed in this

1 matter, correct?

2 A Yes, sir.

3 Q And do you recall testifying that it was not until
4 March 2016 that you had any notice that Captain Estabrook
5 had served as the chairman of a pilot union security
6 committee?

7 A That's the first time that I understood that he
8 served as the chairman of a security committee, yes, sir.

9 Q March 2016?

10 A Yes, sir.

11 Q And you're aware that he identified himself --
12 today, as we sit here, you're aware that he identified
13 himself as the chairman of the pilot union security
14 committee in his August 4th e-mail --

15 A Yes, sir.

16 Q -- correct?

17 A I'm aware of that.

18 Q And so did you make any effort to research what
19 his role was and what the scope of his duties were or the
20 scope of his interfacing with company representatives?

21 A No, sir, I did not.

22 Q But you knew at that time that he had had
23 transactions with VP of corporate security Bill Henrikson,
24 correct?

25 A I know that he said that.

1 Q Well, did you make any --

2 A I didn't know that he did it.

3 Q Did you make any effort to inquire into that or
4 verify that?

5 A Did not.

6 Q And would you agree with me that it's an important
7 contractual agreement between the pilots collectively and
8 Federal Express that the aeromedical advisor and not flight
9 management determine whether an individual should be subject
10 to a mental health examination?

11 A Absolutely. Yes, sir, I do.

12 Q Now, you say you bore no grudge about the Laredo
13 incident, correct?

14 A Yes, sir, that's correct.

15 Q Isn't it true that when you referred Captain
16 Estabrook to Harvey Watt, the aeromedical advisor, that you
17 had -- that it's your contention that you had no
18 anticipation that it would be for a psychological
19 examination?

20 A Could you say that again?

21 Q Yes. When you referred Captain Estabrook to
22 Harvey Watt, is it your contention that you had no
23 anticipation that the result would be a psychological
24 examination?

25 A That decision is up to Dr. Bettles at Harvey Watt.

1 Q No, but I'm asking whether you had any
2 anticipation that it would be for a psychological
3 examination.

4 A I don't anticipate either way. My role, once the
5 decision is made, is to direct the pilot to contact Harvey
6 Watt for the company-mandated medical examination. A letter
7 is sent to Dr. Bettes outlining our concerns. Dr. Bettes
8 interviews the pilot. He makes the determination on what
9 evaluations, if any, will be necessary.

10 Q Could you turn to joint exhibit -- well, hold on,
11 I'll withdraw that question for now. Isn't it true that you
12 discussed with Mr. Ondra that you would refer Captain
13 Estabrook to Harvey Watt to determine whether a
14 psychological examination of him was warranted?

15 A No, sir.

16 Q Can you turn to joint exhibit JX-3?

17 JUDGE MORRIS: I'm sorry, what was the exhibit?

18 MR. SEHAM: What?

19 JUDGE MORRIS: What was the exhibit?

20 MR. SEHAM: Joint exhibit JX-3.

21 THE WITNESS: Are those Todd Ondra's handwritten
22 notes?

23 MR. SEHAM: Yes.

24 BY MR. SEHAM:

25 Q You see in the circled portion off to the right

1 where it starts, per B. McDonald, do you see that?

2 A Yes, sir.

3 Q And then below that, three lines down, it says,
4 sending to aeromedical to see warrants a psychological
5 examination?

6 A Yes, sir.

7 Q Do you see that? But it's your testimony that you
8 never discussed with Mr. Ondra the issue of a psychological
9 examination?

10 A No. I said I didn't discuss with -- that's why we
11 would send him to Harvey Watt. I think I was very clear
12 with Todd that we couldn't order a psychological
13 examination. What I could order was a company-mandated 15D
14 company-mandated medical exam. If Dr. Bettles felt that a
15 psychological exam as warranted, Dr. Bettles would make that
16 determination.

17 Q So you did discuss with Mr. Ondra that the purpose
18 of referring Captain Estabrook to Harvey Watt was to
19 determine whether a psychological examination was warranted,
20 correct?

21 A No, sir. I discussed with Todd Ondra that we
22 could not recommend a psychological -- or, send Captain
23 Estabrook for a psychological examination. What we could do
24 is, we could send him for a 15D company-mandated medical
25 examination.

1 And Dr. Bettles, after his interview with Captain
2 Estabrook, would make the determination on what type of
3 examinations would be conducted. And I told Todd Ondra that
4 a psychological examination or a cognitive exam could be
5 part of that. But it's up to Dr. Bettles to make that
6 determination.

7 Q Todd Ondra wanted a psychological examination?

8 A I believe so.

9 Q And would you agree with me that the FAR's and the
10 FOM require avoidance of hazardous weather conditions?

11 A Yes, sir.

12 Q And it was you who directed that an investigation
13 of Captain Estabrook take place after his Laredo departure?

14 A Yes, sir.

15 Q Now, is it your contention that you did not know
16 whether Captain Estabrook declined to depart on schedule
17 from Laredo on April 10th based on weather conditions?

18 A Did he --

19 Q Well, let me put it another way? Captain
20 Estabrook declined to depart on schedule from Laredo on
21 April 10th, 2013 based on issues he had raised relating to
22 weather conditions --

23 A Yes.

24 Q -- correct?

25 A Yes, sir. That is correct.

1 Q And you knew that at that time?

2 A Yes, sir.

3 MR. SEHAM: Permission to approach the witness
4 with this?

5 JUDGE MORRIS: You may. This is two copies,
6 counsel.

7 MR. SEHAM: Is it?

8 JUDGE MORRIS: CX-51 for identification, by my
9 count, is that right?

10 MR. SEHAM: Correct.

11 [WHEREUPON, the document identified
12 as COMPLAINANT'S EXHIBIT CX-51 was
13 marked for identification.]

14 BY MR. SEHAM:

15 Q Do you remember you were deposed on March 23, 2016
16 in this matter?

17 A Yes, sir.

18 Q And, turning to page 23, line 4, the question --
19 are you there?

20 A Yes, sir.

21 Q And it says, "Now, on or about April 10th, 2013,
22 Captain Estabrook declined to depart from Laredo based on
23 weather conditions, is that correct?" Answer, "I'm not
24 sure. I'm not sure if that's the case, Mr. Seham. I don't
25 know if that's the case."

1 A Okay.

2 Q Were you testifying truthfully when you said that,
3 or were you attempting to testify --

4 A Yes, sir. At the time I think that was my
5 recollection.

6 Q And you have a different recollection today?

7 A I think based on what I've heard is that Captain
8 Estabrook delayed his departure from Laredo based upon his
9 concerns with the line of thunderstorms moving through
10 Memphis.

11 Q I want you to turn to --

12 JUDGE MORRIS: Wait a minute. Are you saying
13 based on what you've heard during the hearing?

14 THE WITNESS: Yes, sir.

15 JUDGE MORRIS: Okay, thank you.

16 BY MR. SEHAM:

17 Q Now I want you to turn to respondent's exhibit RX-
18 8.

19 A Is that the Captain Crook e-mail?

20 Q Correct.

21 A Yes, sir, I'm there.

22 Q You are? So, if I can direct you to the second
23 sentence of his e-mail, it says, "Captain Estabrook told me
24 he had coordinated staying at the hotel with dispatcher
25 Sherrie Hayslett and was not going to operate an aircraft

1 through a line of thunderstorms." So you had this e-mail on
2 April 10th, 2013?

3 A Yes, sir.

4 Q And you actually were in possession of audio tapes
5 concerning Captain Estabrook's exchanges with the duty
6 officer and the dispatcher, correct?

7 A I probably was.

8 Q And did you -- before you ordered an investigation
9 pursuant to 19D, did you listen to those audio tapes?

10 A I would be speculating, but I would say, yes, I
11 probably listened to them.

12 Q Okay.

13 A If they were sent to me, I probably listened to
14 them. And I don't recall listening to them specifically,
15 but, if they were sent to me, I would have listened.

16 Q Did Mark Crook tell you -- and you say you had a
17 conversation with Mark Crook?

18 A I believe so.

19 Q Did Mark Crook admit to you during those
20 conversations that he had telephone calls with Captain
21 Estabrook other than the ones that had been recorded?

22 A I don't recall the specific details of our
23 conversation. I imagine we probably talked about the
24 situation, yes, sir.

25 Q Did you ever call Captain Estabrook to get his

1 side of he story prior to ordering a 19D investigation?

2 A I did not. That is specifically what a 19D is
3 for.

4 Q Did you ever ask Rob Fisher -- or, is it your
5 testimony that -- do you ever give advice to pilots?

6 A Advice? Yes, I think throughout my career --

7 Q Uh-huh.

8 A -- I have been mentored, and I have tried to
9 mentor.

10 Q Do you ever go to the crew room and talk to pilots
11 about operations?

12 A Frequently, yeah.

13 Q Do you ever give them counsel and advice about
14 what's the best way to operate aircraft?

15 A Yes, sir.

16 Q When you go to a crew room and assemble some
17 pilots to chat about operations, you don't evoke 19D of the
18 collective bargaining agreement, do you?

19 A I do not.

20 Q Now, if you -- so you say you think you did listen
21 to those audio tapes?

22 A Yes, sir.

23 Q Okay.

24 A I think so. I think I probably did.

25 Q And you have no -- do you have any recollection

1 one way or the other of Captain Estabrook telling Mark Crook
2 that he was still at the hotel?

3 A I have no recollection of that.

4 Q Do you have any recollection of --

5 A But I have listened to the tapes a number of times
6 during the proceedings, and so now I'm intimately familiar
7 with the conversations, so it's difficult for me to separate
8 my knowledge of hearing the tapes now versus my knowledge of
9 hearing the tapes three-plus years ago.

10 Q Well, you've heard the tapes -- you say you have
11 heard all three tapes?

12 A Yes, sir.

13 Q Was there any point in any of those tapes where
14 Mark Crook said to Captain Estabrook, you're in violation of
15 the FOM requirement to report one hour in advance?

16 A No, he did not specifically mention that to
17 Captain Estabrook.

18 Q But he did ask him, when are you going to take
19 off?

20 A That's correct.

21 Q And Captain Fisher concluded that Mark Estabrook
22 had a good-faith belief that he was being pushed into flying
23 in a hazardous situation, correct?

24 A I don't recall that, no.

25 Q Well, do you recall hearing it at this hearing?

1 A I do not.

2 Q Do you have any specific recollection of
3 discussing the Laredo departure with Captain Fisher during
4 the period of April 2013?

5 A The departure from --

6 Q Laredo.

7 A The departure from the Laredo airport to Memphis?

8 Q Yes.

9 A No, I had no discussions with Captain Fisher about
10 that.

11 Q Either before or after the 19D?

12 A The issue was not the departure from Laredo. The
13 issue was that Captain Estabrook did not report to the ramp
14 one hour prior to departure time and did not coordinate with
15 GOC when he decided to stay at the hotel.

16 Q Okay, let's --

17 A It had nothing to do with the departure.

18 Q Let's hear -- okay, so I'll try to facilitate so
19 we're not splitting hairs here. Let's call it the Laredo
20 incident, encompassing the allegations of pilot-pushing and
21 reporting on time and the solid line of thunderstorms
22 through which --

23 A Reporting on time --

24 Q -- a dispatcher --

25 A -- is the only issue.

1 Q What?

2 A Reporting on time is the only issue.

3 Q Sir, I'm defining a term, right? I know that's
4 your contention, which we don't believe.

5 A Okay.

6 Q And that's the purpose of this examination. Now,
7 so we don't confuse the issue, let's talk about the global
8 incidents that occurred as the Laredo incident so that you
9 don't misapprehend my questions. With respect to the Laredo
10 incident, all issues relating to Laredo, Captain Estabrook
11 on April 10th, 2013, did you discuss the issue
12 telephonically with Captain Fisher?

13 A I don't recall.

14 Q Okay.

15 A Either telephonically or in person, I'm sure I
16 did.

17 Q But you have no specific recollection?

18 A No, sir, I do not.

19 Q Okay. And you don't have any recollection whether
20 it was before the 19D hearing or subsequent to the 19D
21 hearing?

22 A I do not.

23 Q And you're familiar with the term pilot-pushing,
24 correct?

25 A Yes, sir.

1 Q And Captain Estabrook believed that he had been
2 subject to pilot-pushing at the hands of Captain Crook,
3 correct?

4 A I believe that, yes, Captain Estabrook made that
5 accusation.

6 Q And did you ever order an investigation of Mark
7 Crook's conduct?

8 A I did not.

9 Q And you knew that Captain Estabrook was upset
10 enough about how he had been treated in terms of pilot-
11 pushing, you were aware that he was upset enough to hire an
12 attorney to represent him, correct?

13 A I didn't know that at the time, but I later came
14 to understand that, yes, sir.

15 Q You say you didn't know that at the time?

16 A No, sir, I don't recall specifically when I
17 learned of it.

18 Q Could you turn to complainant's exhibit CX-5,
19 please? No, strike that, complainant's exhibit CX-10.

20 A Complainant's exhibit CX-10?

21 Q Uh-huh, correct. Have you reached that? It
22 begins with the pagination at the lower right-hand corner C-
23 45.

24 A Yes, sir, I'm there.

25 Q Do you know who Rob Tice is?

1 A Yes, sir.

2 Q And do you ever correspond with Rob Tice via e-
3 mail?

4 A Yes, sir.

5 Q And do you -- what's his role in terms of his
6 interfacing with you?

7 A He's an attorney in the legal department.

8 Q And he gives you legal advice?

9 A Yes, sir.

10 Q And at this time you were Captain Fisher's
11 superior, correct?

12 A That's correct.

13 Q And you were the one who directed him to conduct
14 the 19D hearing?

15 A Yes, sir.

16 Q Correct?

17 A Yes, sir.

18 Q And, if you look at item 5 on complainant's
19 exhibit CX-5 [sic], it's dated 04/29/13, and you see there's
20 an e-mail between Director W. McDonald and Attorney Rob Tice
21 regarding R. Fisher letter to Attorney Alan Armstrong?

22 A Yes, sir.

23 Q If your subordinate, Captain Fisher, was writing a
24 letter to an attorney representing a pilot, is that
25 something that you would be aware of in normal practice?

1 A Yes, sir.

2 Q I want you to turn to complainant's exhibit CX-8.
3 you see -- are you there?

4 A Yes, sir.

5 Q And you see that this is an e-mail from Rob Fisher
6 to karenwalker@alanarmstronglaw.com and also to Rob Tice,
7 Terry McTigue -- Terry McTigue you know is an attorney for
8 ALPA, correct?

9 A Yes, sir, that's correct.

10 Q Coy Briant, that's also an attorney for ALPA?

11 A No, he was -- at the time, he was the grievance
12 committee chairman at ALPA.

13 Q Grievance committee chair. Rob Fisher, Matt
14 Matheny.

15 A Mitch.

16 Q Mitch, excuse me, Mitch Matheny, thank you. You
17 received a copy of this e-mail, correct?

18 A I don't know.

19 Q In the normal course of business, you would expect
20 to receive an e-mail such as this where your subordinate is
21 writing to legal counsel for a pilot?

22 A Yes, I would think so. I don't see my -- I'm not
23 on the cc list, though.

24 Q But you are in the item 5 on the privilege log
25 indicating that you were discussing this correspondence with

1 Rob Tice, correct?

2 A I think it's the letter, not the e-mail
3 communication.

4 MR. TADLOCK: I'm going to object to the extent
5 that counsel is trying to delve into the substance of the
6 correspondence.

7 JUDGE MORRIS: Sustained.

8 MR. SEHAM: The substance of which correspondence?
9 I'm just trying to confirm that he got this.

10 JUDGE MORRIS: The communication between counsel
11 in the preparation of the letter is privileged information.

12 MR. SEHAM: No, I understand. Really, my intent
13 of the questions is to confirm that this individual received
14 this letter and was discussing it with counsel on or about
15 August 29th, 2013.

16 JUDGE MORRIS: Do you recall seeing this letter at
17 some point in time?

18 THE WITNESS: The letter, or the e-mail?

19 JUDGE MORRIS: The letter from Captain Fisher in
20 response to the letter from Mr. Armstrong.

21 THE WITNESS: I don't recall specifically seeing
22 it, but I'm sure I must have.

23 JUDGE MORRIS: Move on.

24 BY MR. SEHAM:

25 Q With respect to the Laredo incident, do you know

1 if there was any delay in the departure as a result of
2 Captain Estabrook not reporting within an hour of push time?

3 A I do not believe there was.

4 Q Would you agree with me that you have no
5 recollection of Todd Ondra referencing Russia or Russians
6 during your teleconference with him on August 9th?

7 A That's correct, I don't have any recollection of
8 that subject being discussed in my conversation with Todd
9 Ondra that day.

10 Q Now, would you agree that you made the 15D
11 decision after consulting with Ondra, Fisher and Tice?

12 A I would say that I probably made the decision
13 after my conversation with Todd Ondra, and then I spoke to
14 Mr. Tice and Captain Fisher after that. I raised the issue
15 that my intent was to send Captain Estabrook to a 15D
16 medical evaluation, and they did not offer any reasons to do
17 otherwise.

18 Q I'm going to ask you to turn to your deposition,
19 page 42.

20 JUDGE MORRIS: CX-51 for identification?

21 MR. SEHAM: Yeah, CX-51 for identification.

22 THE WITNESS: I think I'm on page 42.

23 MR. SEHAM: Yes, okay.

24 BY MR. SEHAM:

25 Q So I'm going to ask you to direct your attention

1 to line 9, which reads, "When did you make your decision
2 that Captain Estabrook should be required to undergo a 15D
3 examination? Was it the same day that you got the call?"
4 Answer, "I would have to say yes. I believe that was when,
5 after consulting with Todd Ondra and Captain Fisher and Mr.
6 Tice, made the decision to send Captain Estabrook for
7 medical evaluation." Now, do you recall giving this
8 testimony?

9 A Yes, sir.

10 Q And you recall being under oath to tell the truth
11 at this time?

12 A Yes, sir.

13 Q And would you agree with me that you made the 15D
14 decision after consulting with Todd Ondra and Captain Fisher
15 and Mr. Tice?

16 A I would say in total, yes.

17 Q Now, how did it come about that Captain Fisher --
18 well, I'll turn you to -- I'll refer you to joint exhibit
19 JX-5. Do you recognize this letter dated August 16th?

20 A This is the company-mandated medical examination?

21 Q Yes.

22 A Yes, sir.

23 Q And it was signed by Captain Fisher, correct?

24 A Yes, sir.

25 Q And Captain Fisher worked with Rob Tice in

1 drafting and sending out this letter, correct?

2 A That's my understanding, yes, sir.

3 Q Did you direct Captain Fisher to send this letter
4 out?

5 A Yes, sir.

6 Q And if you could turn to JX-7?

7 A Okay.

8 Q Now, this is a letter dated August 13th from
9 Attorney Alan Armstrong, and I'll ask you to turn to the
10 final page. Do you see that you are copied on this letter,
11 the very last cc?

12 A Yes, sir.

13 Q Did you receive a copy of this letter?

14 A I'm sure I did.

15 Q And, in fact, you engaged in correspondence with
16 company counsel concerning the impact of this letter on the
17 15D decision, correct?

18 MR. TADLOCK: Objection. That goes to the
19 substance.

20 JUDGE MORRIS: Sustained.

21 MR. SEHAM: I'd like to address the Court on this.
22 I'm not asking for the substance of it, but just the fact
23 whether there were consultations or not. That's the only --

24 JUDGE MORRIS: I don't believe that's the way the
25 question was phrased.

1 MR. SEHAM: Well, okay. Well, then, let me try to
2 rephrase it.

3 BY MR. SEHAM:

4 Q Well, let me approach it this way, could you move
5 to -- or, refer to complainant's exhibit CX-10?

6 A Yes, sir. Page C-45, that's where I am.

7 Q And do you see -- I'm referring you to item 19 on
8 the third page?

9 A Yes, sir.

10 Q Which reads, "E-mails with advice of counsel
11 between Attorney R. Tice, VP, and Attorney J. Maxwell, SVP,
12 and Attorney R. O'Keefe, Attorney Phil Tadlock, Directors
13 T. Ondra and W. McDonald." I'll pause there. That would be
14 you, correct?

15 A Yes, sir.

16 Q "Manager R. Fisher, with cc's to Paralegal C.
17 Sartain and VP J. Bowman regarding Attorney A. Armstrong
18 letter 08/13/13, letter attached." So would you agree with
19 me that you had consultations with FedEx legal counsel
20 concerning this letter of August 13th, 2013?

21 A Yes, sir, I'm sure I did.

22 Q And do you know whether Captain Fisher took into
23 consideration any of the arguments made by Attorney
24 Armstrong in the letter of August 13th?

25 MR. TADLOCK: I'm going to --

1 THE WITNESS: I do not know that.

2 BY MR. SEHAM:

3 Q Would he have been prohibited from taking those
4 arguments into consideration?

5 MR. TADLOCK: Objection to the --

6 JUDGE MORRIS: Sustained.

7 MR. SEHAM: Well, I --

8 JUDGE MORRIS: You're asking him whether or not
9 his counsel would have advised him to address something.

10 MR. SEHAM: No, I'm sorry. Well, then, let me
11 rephrase the question.

12 BY MR. SEHAM:

13 Q Would you have prohibited Captain Fisher from
14 working with Rob Tice in terms of responding to this letter?

15 MR. TADLOCK: I'm objecting because it's now -- I
16 think we're in total speculation-land, and I think he's
17 asking for speculation about what his privileged
18 communications might be with counsel.

19 MR. SEHAM: Well, what -- may I respond?

20 JUDGE MORRIS: Well, yeah. I don't see the
21 privilege side, but I am concerned about the speculation
22 side, counsel.

23 MR. SEHAM: To remove us from speculation-land, as
24 referred to by counsel, I'll explain the concept that I
25 think there is a lot of confusion in this record about

1 decision-makers and their relative role. And I anticipate
2 part of the defense of the company is to try to say Person X
3 did this and not Person Y and Z.

4 We are trying to establish a record that everyone
5 had some role to play, and part of the role that Fisher and
6 Tice appeared to have had was consulting with respect to
7 this letter and developing responses or taking --
8 anticipating those arguments.

9 JUDGE MORRIS: You may ask him, did he prohibit.

10 MR. SEHAM: Okay, fair enough.

11 BY MR. SEHAM:

12 Q Did you prohibit Captain Fisher from taking the
13 Armstrong letter of August 13th into consideration in terms
14 of the issuance -- his subsequent issuance of the August
15 16th 15D letter?

16 A No, sir.

17 Q Did you issue such a prohibition to Mr. Tice?

18 A No, sir.

19 Q Now, how long have you been a pilot?

20 A A little over 40 years.

21 Q And would you agree with me that a pilot's career
22 depends on his maintaining a minimum level of physical and
23 mental health?

24 A Professional pilot, yes, sir.

25 Q Yeah. And FedEx has, in fact, grounded pilots in

1 the past with serious mental health issues, correct?

2 A No, the FAA grounds the pilots.

3 Q When you place a pilot on NOQ, does that not have
4 the effect of FedEx grounding a pilot?

5 A Yes, sir. But you said for serious medical
6 issues. If a pilot has a serious medical issue and he can't
7 maintain his medical certificate, it's the FAA that takes
8 his certificate or suspends his certificate, not FedEx.

9 Q Okay. But you, in fact, have participated in
10 decisions to ground a pilot via NOQ based on your
11 conclusions of cognitive deficiencies, correct?

12 A No, sir. I take -- when I place a pilot on NOQ, I
13 remove them from operating a FedEx airplane. But they are
14 still -- they are not grounded. They can fly any other type
15 of flight they want.

16 Q But they are grounded with respect to FedEx
17 operations, correct?

18 A They are no longer available to fly line
19 operations, that's correct.

20 Q You have trouble with the verb grounded?

21 A Yes, sir.

22 Q Okay.

23 A Grounded means you can't fly at all.

24 Q For any airline?

25 A For anybody, period.

1 Q Okay.

2 A You can't fly any airplane.

3 Q But an NOQ, for example, has the effect of --
4 well, I'm not sure what verb to use now. But it has the
5 effect -- it reflects FedEx's decision that that pilot is no
6 longer permitted to operate FedEx aircraft or board FedEx
7 aircraft?

8 A No. They are no longer permitted to operate FedEx
9 aircraft.

10 Q Now, you directed that Captain Estabrook be placed
11 on NOQ UFN, correct?

12 A No, sir.

13 Q What does UFN -- do you understand what UFN means?

14 A I think I do, but we refer to NOQ as open-ended.
15 We call it an open-ended NOQ. That means you have a start
16 date but you don't have an end date. You haven't identified
17 an end date for the NOQ process. I think UFN was used as
18 until further notice, which is essentially an open-ended
19 NOQ.

20 Q Now, you were aware that Captain Estabrook had
21 been placed on NOQ UFN, correct?

22 A Yes, sir. He was placed in an open-ended NOQ.

23 Q And it's your testimony that you made that
24 decision alone?

25 A In which instance, sir?

1 Q The August 5th NOQ?

2 A Yes, sir.

3 Q Now, typical reasons for placing a pilot on NOQ
4 designation would be a failed check ride, sick leave in
5 excess of 30 days, losing medical certification, long-term
6 disability, or being subject to an investigation, correct?

7 A Yes, sir, those are some of the reasons. Not all.
8 But, yes.

9 Q I'm trying to recall your previous testimony. You
10 said that the primary reason for your placement of Captain
11 Estabrook on NOQ status was to facilitate a meeting that
12 later occurred on August 9th, correct?

13 A This is the August 4th NOQ?

14 Q Yes. August 5th.

15 A August 5th NOQ?

16 Q Yes.

17 A Yes, sir. That's correct.

18 Q But there was a secondary reason, which was that
19 you had concerns about his mental balance?

20 A No, I never said that.

21 Q Okay, can you tell me -- because I'm failing to
22 recall what you testified to --

23 A I said --

24 Q -- that there was a secondary reason?

25 A I said I had some concerns about his situational

1 awareness based upon his e-mail.

2 Q And what does that mean, situational -- that's a
3 new term for me, situational awareness?

4 A I felt that, as a 20-plus-year captain at Federal
5 Express, that Captain Estabrook should have known how to
6 raise a safety concern. I think he should have been aware
7 of the vehicles that were available to him to raise a safety
8 or a security concern. I think he should have understood
9 the reporting structure within FedEx Express and the parent
10 company. I think he should have understood the security
11 organization to a better degree than his e-mail
12 demonstrated.

13 Q Uh-huh.

14 A I think that, if he had wanted to speak with Mr.
15 Smith, honestly wanted to speak with Mr. Smith, then he
16 would have called his office rather than call me. And I
17 think that, if you're asking the CEO of the largest express
18 corporation in the world, one that you've worked for for
19 many years, to contact you, that you wouldn't just say, hey,
20 but I'm not available right now, I'm turning my phone off.

21 Q Uh-huh.

22 A So, yes, that type of situational awareness for
23 the requests that he was making I considered odd.

24 Q So you took issue with the manner in which he
25 raised safety issues, correct?

1 A No. No, sir, I didn't take issue with that. I
2 thought he should have known better. I thought he should
3 have availed himself of the available vehicles to raise
4 safety and security concerns. I have no problem with him
5 calling me directly.

6 But what I would have anticipated -- or coming
7 into my office and say, hey, Bill, you know, here are the
8 issues that I'm concerned about. But that's not what
9 happened. It was an e-mail saying, have Fred give me a
10 call.

11 Q Well, what I'm trying understand is, were your
12 concerns that he was being insubordinate?

13 A No, not at all.

14 Q So your concerns -- what you mean by situational
15 awareness is, there was an oddness that troubled you?

16 A Yes.

17 Q And it was an oddness related to his thought
18 processes?

19 A To his situational awareness.

20 Q And my concern is, you know what situational
21 awareness means, and I don't. So did you have concern about
22 his thought processes?

23 A I had concerns about his situational awareness.
24 And, as I tried to explain to you, I thought that a pilot
25 who had been present and employed at Federal Express for the

1 period of time that he had should have known what was
2 available to him and the proper channels to raise the
3 concerns that he had.

4 I felt that there was a disconnect, and I was
5 trying my best to understand that. And the way I tried to
6 address that was to set up a meeting with Captain Estabrook
7 and our security department. Anytime a pilot raises
8 security concerns, we want to be responsive to that.

9 We have a number of ways that a pilot can do that.
10 Captain Estabrook chose not to avail himself of any of
11 those means. He came directly to me, requesting that I set
12 up a phone conversation with Mr. Smith. So, yes, I was
13 concerned about his situational awareness.

14 Q Does that mean you placed him on NOQ in part
15 because of his lack of respect for the chain of command?

16 A No, sir, it does not.

17 Q You thought it was odd, correct?

18 A Yes, sir.

19 Q You thought his August 4th e-mail reflected odd
20 thinking, correct?

21 A I thought his August 4th e-mail reflected a lack
22 of situational awareness and that it appeared odd in its
23 presentation.

24 Q You recall having stated that you don't think you
25 ever had cause to question Captain Estabrook's mental

1 health?

2 A Do I recall it in this deposition?

3 Q Do you recall saying that to anybody?

4 A I don't know. I didn't have -- I don't know when
5 that would be. It depends when it would be.

6 Q Would you agree with me that you never had cause
7 to question Captain Estabrook's mental health?

8 A It's not my job to question Captain Estabrook's
9 mental health. If I have a question about his fitness for
10 duty, his ability to safely operate a FedEx aircraft, if I
11 have a concern that there's an underlying medical reason for
12 that, then it's my responsibility and my duty to both the
13 pilot and the corporation to see that that's addressed. The
14 way for me to address that is through the section 15D
15 company-mandated medical examination process.

16 Q Captain, I'm asking you a yes or no question. And
17 it's not dependent on whether it's your job or not, all
18 right? That's not how I posed the question, so I'm going to
19 ask you to listen carefully to my question. My question is,
20 did you ever have cause to question the mental health of
21 Captain Estabrook?

22 A I would say yes.

23 Q And at what time did that occur?

24 A The question probably occurred after my
25 conversation with Todd Ondra after his meeting with Captain

1 Estabrook.

2 Q I'm going to ask you to turn to page 55 of the
3 transcripts. Let me know when you're on the page.

4 JUDGE MORRIS: His deposition?

5 MR. SEHAM: Yes, sir.

6 THE WITNESS: I'm there.

7 MR. SEHAM: It's complainant's exhibit CX-51 for
8 identification.

9 THE WITNESS: Yes, sir, I'm there.

10 BY MR. SEHAM:

11 Q So I'm going to read to you from line 7. "At the
12 time of the NOQ, had you already determined that there was
13 cause to question his mental health?" Answer, "No, sir, I
14 don't think I ever had cause to question his mental health."

15 Did you testify in that manner --

16 A I believe that's --

17 Q -- during your deposition?

18 A I believe that was my testimony.

19 Q Okay, Captain McDonald, would you agree that
20 you've stated to others that the NOQ was not due to any
21 question concerning Captain Estabrook's mental health?

22 MR. TADLOCK: Objection to the extent -- could we
23 limit who the others are? I'm not sure if he's trying to --

24 BY MR. SEHAM:

25 Q Have you ever stated your view that the NOQ of

1 August 5th was not due to any question concerning Captain
2 Estabrook's mental health?

3 A Could you rephrase that?

4 Q Have you ever stated to others -- or anybody at
5 any time -- that the NOQ of August 5th was not due to a
6 question concerning Captain Estabrook's mental health?

7 A That NOQ was not due to -- I'm not sure what you
8 mean.

9 MR. TADLOCK: I'm going object to being vague.

10 MR. SEHAM: I'm sorry, go ahead and object. The
11 answer was non-responsive.

12 THE WITNESS: I'm trying to understand the
13 question.

14 MR. SEHAM: There's an objection.

15 MR. TADLOCK: I think there's -- my objection is,
16 I think it's vague. I personally don't understand the
17 question. And I think there's also a vagueness with respect
18 to which NOQ decision we're talking about too.

19 JUDGE MORRIS: Rephrase, counsel.

20 BY MR. SEHAM:

21 Q Have you ever stated your position that the August
22 5th NOQ was not due to a question of mental health?

23 A I can't recall.

24 Q Huh?

25 A I can't recall.

1 Q You can't recall? Is it your contention that,
2 after the report of Todd Ondra on August 9th, that you had a
3 concern that Captain Estabrook had a mental health issue and
4 required a psychological evaluation?

5 A I had a question on Captain Estabrook's fitness
6 for duty, and I made a determination to send him to a 15D
7 medical evaluation.

8 Q I'd like you to turn to page 72.

9 JUDGE MORRIS: Of his deposition?

10 MR. SEHAM: Yes, I'm sorry, 72 of complainant's
11 exhibit CX-51 for identification.

12 BY MR. SEHAM:

13 Q Now, moving down to line 11, question, "Now, isn't
14 it true that your concern on August 9th, after hearing from
15 Ondra, was that he had a mental health issue and required a
16 psychological evaluation?" Your answer was, "No, sir." And
17 is that the testimony that you gave during your deposition?

18 A Yes, sir, it is.

19 Q And you had no concern at that time -- between
20 August 5th and August 16th, did you engage in any
21 investigation of Captain Estabrook's involvement in
22 security-related and safety-related issues?

23 A No, sir, I did not.

24 Q Are you aware if anyone else within FedEx engaged
25 in such investigations?

1 A No, sir, I'm not aware.

2 Q And what does RMG stand for?

3 A Management removal.

4 Q And would you agree with me that RMG is a type of
5 leave designed for us on a one-time basis to allow for a
6 specific activity?

7 A It's a removal code that takes a pilot off a
8 scheduled activity for a time-definite period.

9 Q And, by contrast, the NOQ designation is an open-
10 ended designation designed as part of a longer
11 administrative process, correct?

12 A Potentially longer, yes, sir, that's correct.

13 Q Now, prior to August 4th, you received messages
14 that had been posted on the internet by a self-styled Mayday
15 Mark, correct?

16 A Yes, sir.

17 Q And who provided you with these postings?

18 A I do not recall. I know that all the postings,
19 one was brought to my attention to Rob Tice, I believe.

20 Q And so Rob Tice provided you some of the postings?

21 A Based on these exhibits I read some postings, and
22 I believe Rob Tice showed me one of those previously.

23 Q And did you obtain others independently?

24 A Other people have shown me postings from Mayday
25 Mark, yes, sir.

1 Q And these postings interested you because they
2 related to the April 10th, 2013 Laredo incident, correct?

3 A My recollection is, the first time I was brought
4 to -- the Mayday Mark was brought to my attention was
5 because it closely resembled the events associated with
6 Captain Estabrook's experience in Laredo.

7 Q And can you tell us how you came to draw that
8 conclusion?

9 A It was -- all I can do is rely on my recollections
10 from that period of time, and I think it was that I was --
11 he was purporting to have delayed his departure and the
12 company was attempting to discipline him.

13 Q And it was your view that the information posted
14 by Mayday Mark concerning Laredo was tightly held
15 information, correct?

16 A I didn't know if it was Laredo. But, for someone
17 to post that and mischaracterize it as a disciplinary event,
18 yes, I thought that that was inappropriate.

19 Q And you thought it was possible that Mayday Mark
20 was Captain Estabrook, correct?

21 A I had a suspicion that -- I didn't know of any
22 other circumstances -- or, one other circumstance that fit
23 but it didn't fit the specific circumstances in the blog.

24 Q And you gave these postings to Rob Tice?

25 A I gave them to nobody.

1 Q You destroyed them at some point?

2 A I didn't destroy -- I don't know. I just looked
3 at it. Someone brought it to my attention, I looked at it
4 and discarded it.

5 Q Okay. And, after having reviewed it and discarded
6 it, you asked Rob Tice to inquire with Captain Estabrook as
7 to whether he was Mayday Mark, correct?

8 A I don't remember asking Mr. Tice to do that. I
9 probably expressed to him that I'd like to know if Mayday
10 Mark was Mark Estabrook, but I have -- I don't recall asking
11 him to specifically ask Captain Estabrook if that was -- if
12 he was the blogger.

13 Q And why would you have asked him to do that?

14 A To find out who Mayday Mark was.

15 Q To find out who was discussing the Laredo
16 incident?

17 A That would be one case, yes.

18 Q Now, you don't recall any reference to a stroke in
19 the Mayday Mark postings that you reviewed, correct?

20 A No, sir, I do not.

21 Q And you were in possession of these Mayday Mark
22 postings prior to the August 5th NOQ decision, correct?

23 A I don't recall if I was or not. After reviewing
24 the exhibits here, I imagine I probably saw them.

25 Q I'm sorry, you imagine what?

1 A I imagine I probably saw them, but I don't recall
2 if I had them in my possession.

3 Q Well, does it help for you to -- and I may not
4 have heard your last answer, but these postings by Mayday
5 Mark related to the Laredo incident, you would agree that
6 you probably were in possession of those prior to the August
7 5th NOQ designation?

8 A Yes, it would have been prior to that.

9 Q And it was your view at the time that the
10 disclosure of the Laredo incident information probably
11 constituted a violation of Federal Express company policy,
12 correct?

13 A I would say that would depend on who was making
14 the posting. If the event was -- if Captain Estabrook was
15 making the posting and he wants to tell people about his
16 experiences, you know, that's his prerogative. If it's
17 somebody else trying to relay false information about the
18 company, then, yeah, that's a different problem.

19 Q You said that would have been Captain Estabrook's
20 prerogative?

21 A If he wants to discuss his situation in Laredo
22 accurately and honestly, then I have no problems with it.

23 Q Uh-huh. But, if you felt that it was inaccurate
24 in any way, that might be grounds for discipline?

25 A No. Posting on a blog is never grounds for

1 discipline.

2 Q Okay.

3 A I want to -- excuse me, I'd like to retract that.
4 If you publish company information, proprietary company
5 information, photos of an aircraft cockpit, sections of the
6 FOM, proprietary company information on a public forum, that
7 would be a violation of FedEx policy, I believe.

8 Q Was there anything in the Laredo postings that
9 constituted proprietary information?

10 A No, sir, not that I know of.

11 Q But you still thought at the time that the poster
12 was possibly violating FedEx policy, correct?

13 A I thought that might be the case.

14 Q And your interest in finding out whether Captain
15 Mark Estabrook was Mayday Mark was to investigate whether
16 there might be a violation --

17 A No, sir.

18 Q -- of company policy?

19 A No, sir.

20 Q So why was it important for you to know whether
21 Captain Estabrook was Mayday Mark?

22 A I don't think it was important. I think it was a
23 curiosity.

24 Q I'd like to direct your attention to page 64 of
25 your deposition transcript, complainant's exhibit CX-51 for

1 identification purposes.

2 A Page 64, Mr. Seham?

3 Q Uh-huh. Yeah, commencing at line 11, question,
4 "Okay, so you were concerned about the disclosure of
5 operational information to a wider public audience,
6 correct?" Answer, "Not on operational information, but it
7 was information that is between the pilot and flight
8 management, and that's not the place for it to be aired."
9 Question, "So it would be a violation of FedEx policy?"
10 Answer, "I would say so." So was that your testimony during
11 your deposition?

12 A That was my testimony during my deposition.

13 Q So isn't it true that, at the time you got these
14 Laredo incident postings, that you thought that poster, if
15 it had been Captain Estabrook, that he might have been
16 violating company policy?

17 A [No audible response.]

18 Q I'm not asking you to look at the transcript. In
19 fact, I'm asking you to close the transcript and not refer
20 to it.

21 A Yes.

22 Q But I'm asking you a question right now in live
23 time --

24 A Yes, sir, and I think --

25 Q -- as you sit here --

1 A -- it's later in the deposition I said --

2 Q -- if you testified truthfully.

3 A I think I said later in the deposition that if it
4 was Captain Estabrook I wouldn't have a problem with it.

5 Q So I'm asking you right now, all right, on the eve
6 of this August 5th NOQ decision, you had concerns that
7 whoever had been the poster of that material might have been
8 violating FedEx policy?

9 A No, sir, the Laredo incident was a great deal of
10 time prior to that. And I don't think the posting that I
11 recall seeing on Laredo, it didn't happen the evening of the
12 August 5th NOQ, or the day before. I was much earlier than
13 that.

14 Q Didn't you just testify that you got the Laredo
15 material prior?

16 A Prior. Not just prior, prior.

17 Q Okay, prior. And, just prior to the meeting, you
18 asked Rob Tice to ask questions to Mark Estabrook concerning
19 the posting, correct?

20 A I do not recall asking Rob Tice to ask Captain
21 Estabrook that.

22 Q Okay.

23 A I expressed a concern to Mr. Tice that I would
24 like to know if Captain Estabrook was Mayday Mark, but I
25 don't remember telling him -- or, asking him to question

1 Captain Estabrook in that regard.

2 Q I'm sorry, your testimony just now was you recall
3 telling Rob Tice that you would like to know who Mayday Mark
4 was?

5 A Well, I'm sure I did. When we looked at the
6 postings, yes, I would have liked to have known who Mayday
7 Mark was.

8 Q And you told him that you suspected that it was
9 Mark Estabrook, correct?

10 A At one time, I think I did, yes.

11 Q Uh-huh. And did Mr. Tice ever report back to you
12 about the questions he had asked Captain Estabrook about
13 Mayday Mark?

14 A Yes, sir, he did. After the meeting with Captain
15 Estabrook, Rob Tice told me that he had asked Captain
16 Estabrook if he was Mayday Mark, and Captain Estabrook said
17 that he was not.

18 Q Did you conduct any further investigation for the
19 purposes of determining who Mayday Mark was?

20 A I did not.

21 Q Did you ask anybody to conduct any further
22 investigations as to the identity of Mayday Mark?

23 A I did not ask anybody else to do that.

24 JUDGE MORRIS: Counsel, I'm going to interject a
25 question. You said that you learned from Mr. Tice that

1 Captain Estabrook said he was not Mayday Mark?

2 THE WITNESS: Yes, sir.

3 JUDGE MORRIS: When?

4 THE WITNESS: I think it was the day of the
5 meeting.

6 JUDGE MORRIS: The day of the meeting, okay, thank
7 you.

8 BY MR. SEHAM:

9 Q Can you explain why you didn't engage in any
10 further investigation as to the identity of Mayday Mark?

11 A I don't think it was important. It wasn't
12 relevant.

13 Q Okay. It was only relevant if it was Mark
14 Estabrook?

15 A No, it was just general information.

16 Q Now, was the --

17 JUDGE MORRIS: Counsel, let me know when there's a
18 proper time to take a break. We've been going over two
19 hours.

20 MR. SEHAM: Now is fine.

21 JUDGE MORRIS: How much time, 10 minutes?

22 MR. SEHAM: That's fine.

23 JUDGE MORRIS: Let's take a 10-minute break.

24 [WHEREUPON, there was a brief recess.]

25 MR. SEHAM: Just a few more questions.

1 JUDGE MORRIS: Hold on.

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

3 JUDGE MORRIS: All parties present when the
4 hearing last recessed are again present. Go ahead, counsel.

5 MR. SEHAM: Yes, just a few more questions.

6 BY MR. SEHAM:

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

9 JUDGE MORRIS: While you're doing that, the record
10 should reflect I handed those documents back to respondent's
11 counsel.

12 THE WITNESS: Is that 151, Mr. Seham?

13 MR. SEHAM: One-five, respondent's exhibit RX-15.

14 THE WITNESS: Yeah, but it is RX-151?

15 MR. SEHAM: Oh, in terms of pagination?

16 THE WITNESS: Yeah.

17 MR. SEHAM: The version I got doesn't have
18 pagination. I'm referring to the August 16th e-mail from
19 Rob Fisher to Christopher Johnson.

20 THE WITNESS: Yes, sir.

21 MR. SEHAM: You're there?

22 THE WITNESS: Yes, sir.

23 BY MR. SEHAM:

24 Q And, if you'll look at the third paragraph, the
25 concluding sentence of that paragraph says that Captain

1 Estabrook stated that he has heard rumors that Mr. Calloway
2 has converted to the Muslim faith and he is concerned that
3 Calloway might be secretly communicating with Al Qaeda
4 terrorists. Is that the substance of what Mr. Ondra had
5 told you on the August 9th teleconference you had with him?

6 A Yes, sir, that's part of it.

7 Q And was the term -- did Ondra in his conversation
8 with you use the term rumors?

9 A I can't recall.

10 Q Well, were you under the impression that Captain
11 Estabrook at the August 9th meeting was asserting that he
12 had affirmative knowledge or whether he had just heard
13 rumors from other sources?

14 A I don't remember. I don't remember if he asserted
15 or if he said rumors. I wasn't there, and I don't remember
16 how Todd phrased it to me.

17 Q Now, will you agree with me that Captain
18 Estabrook's reference to Fred Smith by the single name Fred
19 was not part of the August 9 15D decision?

20 A That has nothing to do with it.

21 Q And, in fact, it is fairly common for FedEx pilots
22 to refer to Fred Smith as Fred, correct?

23 A Yes, sir.

24 MR. SEHAM: No further questions.

25 JUDGE MORRIS: Redirect?

REDIRECT EXAMINATION OF**WILLIAM McDONALD**1
2
3 BY MR. TADLOCK:4 Q You referenced individuals previously referred to
5 the 15D process, do you recall that?

6 A Yes, sir.

7 Q Had any of those individuals raised safety or
8 security concerns prior to the referral?

9 A No, sir.

10 Q You also talked about Dr. Bettes potentially
11 recommending some sort of examination following his initial
12 consultation or evaluation --

13 A Yes, sir.

14 Q -- do you recall that?

15 A Yes, sir.

16 Q Is it the case that Dr. Bettes might not recommend
17 anything at all?

18 A That's certainly an option.

19 Q Does the company trust Dr. Bettes to make that
20 determination?

21 A Yes, sir.

22 Q Does it try to influence what Dr. Bettes's
23 determination is?

24 A No, sir, never.

25 Q In April and May 2013, with respect to -- I think

1 we've defined it as the Laredo incident, what was the
2 company's concern?

3 MR. SEHAM: Objection.

4 JUDGE MORRIS: Basis?

5 MR. SEHAM: The monolith of the company.

6 JUDGE MORRIS: Rephrase.

7 BY MR. TADLOCK:

8 Q What was flight management's concern?

9 MR. SEHAM: Objection. Same objection.

10 JUDGE MORRIS: Rephrase.

11 BY MR. TADLOCK:

12 Q What was your concern?

13 A My singular concern was that Captain Estabrook did
14 not report to the ramp at his scheduled report time.

15 Q What date was the decision to send Captain
16 Estabrook to a 15D evaluation made, to the best of your
17 knowledge?

18 A I believe it was April 9th.

19 Q I'm sorry?

20 A I mean, August 9th, excuse me.

21 MR. TADLOCK: No further questions.

22 JUDGE MORRIS: Any recross?

23 MR. SEHAM: No, Your Honor.

24 JUDGE MORRIS: All right. Maybe I'm missing
25 something, but I think after three days I keep hearing about

1 the pilots are required to report one hour prior to
2 departure. Where is that in your operating procedures?

3 THE WITNESS: FOM, section 12.

4 JUDGE MORRIS: Do we have that in the record?

5 MR. RIEDERER: Did you say CBA or --

6 THE WITNESS: No, excuse me, it's CBA section 12.

7 And I'm sure I can get an FOM reference and the countdown
8 parameters also.

9 MR. RIEDERER: I would direct the Court to it's --
10 yes, complainant's exhibit CX-1. And I think, Phil, if I
11 could direct your attention to -- is that a joint exhibit?

12 THE WITNESS: Company what, exhibit CX-1?

13 JUDGE MORRIS: Respondent's exhibit RX-1.

14 MR. TADLOCK: Respondent's exhibit RX-1.

15 THE WITNESS: At respondent's exhibit RX-1.

16 JUDGE MORRIS: Okay.

17 MR. RIEDERER: Flip it to page 6.

18 MR. TADLOCK: And if you look at 12(B)(1)(a), it
19 says, "Duty Periods. Duty periods begin and terminate as
20 follows: When the first activity in a duty period is flight
21 deck duty, that duty period shall begin with a show time one
22 hour before the scheduled block-out or actual check-in time,
23 whichever is later."

24 JUDGE MORRIS: Yeah.

25 THE WITNESS: It should also be listed in the FOM

1 under countdown parameters. I don't know if we have that
2 section here, though.

3 JUDGE MORRIS: Okay. Is it a common practice for
4 pilots to turn off their cell phones during the pilot's crew
5 rest period?

6 THE WITNESS: I'd be guessing.

7 JUDGE MORRIS: Then that's all I need to know.
8 Questions based on mine?

9 MR. SEHAM: None, Your Honor.

10 MR. TADLOCK: No.

11 JUDGE MORRIS: All right. Thank you, sir.

12 THE WITNESS: Yes, sir.

13 [WHEREUPON, witness William McDonald was
14 excused.]

15 JUDGE MORRIS: Anything else?

16 MR. SEHAM: No, Your Honor.

17 MR. RIEDERER: Nothing from respondent.

18 JUDGE MORRIS: All right. Joint exhibits JX-1
19 through JX-7, respondent's exhibits RX-1 through RX-33 are
20 admitted into evidence. I'm summarizing the evidence, make
21 sure we're all on the same sheet of music. Respondent's
22 exhibits RX-34 and RX-35 are not admitted into evidence.
23 Complainant's exhibits CX-1 through CX-47, it's my
24 recollection, are admitted into evidence.

25 \\

1 [WHEREUPON, the documents
2 previously identified and marked as
3 COMPLAINANT'S EXHIBITS CX-40 and
4 CX-41 were received into evidence.]

5 JUDGE MORRIS: But complainant's exhibits RX-48
6 through RX-51 are for identification only and not admitted
7 into evidence. Is that the parties' understanding, as well?

8 MR. RIEDERER: Yes, Your Honor.

9 MR. SEHAM: Yes, Your Honor.

10 JUDGE MORRIS: All right. Do we need any time for
11 post-hearing briefs, other than for -- in lieu of closing
12 argument? I'm talking about any other motions or anything
13 else like that.

14 MR. SEHAM: Not that we're aware of, Your Honor.

15 MR. RIEDERER: None from respondent.

16 JUDGE MORRIS: Complainant's brief is due August
17 12th. Complainant's brief is limited to 50 pages.
18 Respondent's brief is due September 13th, because of the
19 Labor Day weekend. It similarly is limited to 50 pages.
20 Complainant's rebuttal brief is due September 28th, and it
21 is limited to 20 pages. Are there any additional matters
22 that we need to address during these proceedings?

23 MR. SEHAM: No, Your Honor.

24 MR. RIEDERER: No, Your Honor.

25 JUDGE MORRIS: All right. This hearing is closed.

1 And the other thing I will tell the parties is, given -- I
2 am losing my law clerk, gaining another law clerk, and this
3 law clerk I have has been really good at understanding AIR-
4 21, and I'm going to get a law clerk who doesn't even know
5 how to spell AIR-21.

6 Do not anticipate a ruling from this decision
7 until probably this time next year, I'm just laying that out
8 for you for a timeline, because I've got at least AIR-21
9 cases ahead of me. And the last thing that I'll do -- we're
10 still on the record, right?

11 COURT REPORTER: Yes, sir.

12 JUDGE MORRIS: The items I would like some
13 particular focus in on is, on the complainant's side --

14 MR. RIEDERER: I'm sorry, is this on the record?

15 JUDGE MORRIS: It is on the record.

16 MR. RIEDERER: Okay, good.

17 JUDGE MORRIS: On the complainant's side, I would
18 like you to provide me some specificity and connect me the
19 dots on how the -- I'll call it the second incident, not the
20 Laredo incident but the August 2013 incident -- falls under
21 49 U.S.C. 42121 as a protected activity specifically.

22 MR. SEHAM: The August 9th?

23 JUDGE MORRIS: The August 9th one.

24 MR. SEHAM: Uh-huh.

25 JUDGE MORRIS: For the respondents, I would like

1 you to focus in on the clear and convincing portion of the
2 case, okay?

3 MR. RIEDERER: Yes, Your Honor.

4 JUDGE MORRIS: Thank you, gentlemen. This hearing
5 is closed.

6 [WHEREUPON, the hearing was concluded at
7 2:15 p.m.]

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TITLE: Mark Estabrook v. Federal Express Corporation
CASE NO.: 2014-AIR-00022
DATE: June 8, 2016
LOCATION: Memphis, Tennessee

This is to certify that the attached proceedings before the United States Department of Labor, Office of Administrative Law Judges, were held according to the record, and that this is the original, complete, true and accurate recording accomplished at this hearing.

June 8, 2016

BAYLEY REPORTING, INC.

Date