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

MARK ESTABROOK,

Complainant,

Vs.

Case No. 2014-AIR-00022

FEDERAL EXPRESS CORPORATION,

Respondent.

THE DEPOSITION OF ROBERT TICE

March 24, 2016

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

1 The deposition of ROBERT TICE, taken on
2 this, the 24th day of March, 2016, on behalf of
3 the Complainant, pursuant to notice and consent of
4 counsel, beginning at approximately 9:00 a.m. in
5 the offices of FedEx Express Corporation, 3620
6 Hacks Cross Road, Building B, 2nd Floor, Memphis,
7 Tennessee.

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

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

15 The signature of the witness is waived.

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1 ROBERT TICE

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

4 EXAMINATION

5 BY MR. SEHAM:

6 Q. Good morning. My name is Lee Seham. I'm
7 with the firm of Seham, Seham, Meltz & Petersen.
8 We represent Captain Mark Estabrook.

9 (Cell phone rings.)

10 Q. We represent Captain Mark Estabrook in
11 this lawsuit. Today I'm going to be asking you
12 questions which you will be responding to under
13 oath concerning Captain Estabrook's AIR-21
14 complaint and litigation. Do you understand that?

15 A. Yes.

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

20 A. Yes.

21 Q. And do you understand that the deposition
22 today is going to be transcribed by the court
23 reporter and then everything you say here today
24 will be recorded?

25 A. Yes.

1 Q. I'm going to ask you to speak slowly and
2 clearly so that the court reporter can take down
3 what you say. Do you understand?

4 A. Yes.

5 Q. Do you understand that your testimony
6 today is given under oath as if you were in a
7 court of law?

8 A. Yes.

9 Q. All of your answers to my questions must
10 be given verbally. You cannot respond by nodding
11 your head or shrugging your shoulders since the
12 court reporter cannot take down non-verbal
13 answers. Do you understand that?

14 A. Yes.

15 Q. If you don't know an answer to a question,
16 you should say that you do not know. I do not
17 expect you to guess or speculate. Do you
18 understand?

19 A. Yes.

20 Q. Have you ever testified in court before?

21 A. Yes.

22 Q. Do you understand that you have been sworn
23 to tell the truth, and if you fail to do so, there
24 could be adverse consequences?

25 A. Yes.

1 Q. Are you taking any medication or other
2 drugs today that might impair your ability to
3 testify?

4 A. No.

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

7 A. No.

8 Q. Do you understand everything I have said
9 up until now?

10 A. I think so.

11 Q. You think so. You're not sure? What do
12 we have to go back over? Is there something I
13 asked that you didn't understand? Because I
14 thought you said yes all along.

15 A. I don't think so.

16 Q. You said I don't think so.

17 A. I don't think there is anything that you
18 said so far that I don't understand.

19 Q. Oh, I misheard you. I thought you said I
20 think so.

21 A. No, sir.

22 Q. You said I don't think so.

23 A. What was the question that you think that
24 I said the other thing to in response?

25 Q. If we can go back -- I think the question

1 was did you understand everything that I said up
2 until now? The court reporter can let me know
3 what the answer to that question was.

4 (The requested portion of the record
5 was read by the reporter.)

6 Q. Do you have any doubts about any of the
7 questions I asked before?

8 A. I don't think I do.

9 Q. You don't think? Are you approaching some
10 degree of certainty?

11 A. Jesus.

12 Q. Jesus? Excuse me, sir. Let's refrain
13 from blaspheme. Okay? I'm a Christian, and I
14 resent that kind of comment.

15 Okay. So are you approaching a level of
16 certainty in terms of understanding the questions
17 that have been posed to you?

18 A. I think so, and that is an affirmative
19 response. Thank you.

20 Q. Is there any question I have asked you up
21 to now that you have some doubt about your
22 comprehension with regard to?

23 A. I don't believe that to be the case, sir.

24 Q. Thank you, sir. Thank you. How long have
25 you worked at FedEx?

1 A. Since 2006.

2 Q. And can you provide us with an overview of
3 your -- well, actually what is your current job
4 title?

5 A. Lead counsel.

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

7 A. I think about since 2010.

8 Q. And what are your responsibilities as lead
9 counsel?

10 A. I work in the labor relations law
11 department dealing with matters involving the
12 pilot crew force.

13 Q. So your job responsibilities are
14 particularly to pilots?

15 A. Yes.

16 Q. And what did you do prior to 2010 -- well,
17 actually why don't we go back to 2006. You were
18 hired in as -- in what position?

19 A. The job titles have been somewhat
20 different. The job duties have been the same the
21 entire time. I believe I started at senior
22 attorney, but I don't remember the exact title.

23 Q. So since 2006 you have had the job
24 responsibilities you described before?

25 A. Yes, sir.

1 Q. And you were hired in with a specialized
2 focus on pilot legal issues?

3 A. I think that's probably accurate.

4 Q. Okay. And what kind of career background
5 did you have prior to hiring on at FedEx in 2006?

6 A. I did much the same work at Northwest
7 Airlines.

8 Q. And how long were you at Northwest?

9 A. 1989 until 2006.

10 Q. Do you have any training with respect to
11 the diagnosing of mental health issues?

12 A. No.

13 Q. Mr. Tice, do you ever in the course of
14 your work visit pilot website forums?

15 A. One.

16 Q. And which one is that?

17 A. We refer to it as APC. I think it's --
18 that's an acronym for its full title, but I don't
19 remember the full title.

20 Q. Okay. Would that be Airline Pilot
21 Central?

22 A. That sure sounds right.

23 Q. And with what frequency do you visit that
24 forum?

25 A. I probably look through it every morning

1 when I'm going through my morning routine on my
2 computer.

3 Q. And for what purpose do you survey that
4 site?

5 A. Usually it's just a general interest.
6 Sometimes it's in the context of issues that are
7 involving the FedEx pilot group at the time such
8 as when we are in collective bargaining.

9 Q. Why would you review pilot comments in the
10 context of collective bargaining?

11 A. I'm involved in the collective bargaining
12 administration process here at FedEx, and it seems
13 like an appropriate way to see how some people are
14 viewing the relationship between FedEx and its
15 pilot work force.

16 Q. In August of 2013, was the Company engaged
17 in collective bargaining with ALPA?

18 A. I believe so, yes.

19 Q. And would that have been the sole reason
20 for your reviewing the pilot forum at that stage
21 of time?

22 A. Mr. Seham, I think it's possible that from
23 time to time there is a disciplinary issue or
24 something that might arise that involves an issue
25 that the crew force becomes aware of, and it gets

1 discussed on the forum. I think that's the only
2 other reason I would go to that website.

3 Q. Are you aware of anyone else in FedEx
4 management who also accesses the APC website?

5 A. Yes.

6 Q. Who else?

7 A. People in the legal department have done
8 it, and I don't know the names of anyone in
9 particular in flight management who I have had
10 discussions about APC with, but I -- my general
11 fund of knowledge is that they probably have gone
12 to that website before.

13 Q. Do you know if Rob Fisher accesses APC?

14 A. I don't know that for sure.

15 Q. Do you know if Captain McDonald accesses
16 APC?

17 A. I think I'm aware of that from this case
18 that he has.

19 Q. How did you come to that knowledge in this
20 case? Did he alert you to postings on APC?

21 A. In the discussion about having a meeting
22 with your client, Captain McDonald suggested that
23 there was a poster whose avatar is a cartoon
24 character named Mayday Mark, and that perhaps this
25 is a Mayday Mark -- might be Mr. Estabrook.

1 Q. So Captain McDonald was the individual who
2 alerted you to the Mayday Mark postings, correct?

3 A. To be precise Mayday Mark is a frequent
4 poster, and he's got a cartoon character that he's
5 easily recognizable. And so if you're on the
6 website and there is a Mayday Mark posting, you
7 would be familiar with the fact that there is some
8 poster named Mayday Mark out there. He brought to
9 my attention a concern on his part that maybe
10 Mr. Estabrook was Mayday Mark.

11 Q. And why was he concerned that
12 Mr. Estabrook might be Mayday Mark?

13 A. I don't remember the details of that. He
14 just suggested that that is something we would ask
15 Mr. Estabrook about when we had the meeting that
16 I'm sure you're going to ask me questions about.

17 Q. Well, did Captain McDonald -- I guess I'm
18 confused. Captain McDonald told you he had a
19 concern about postings related to Mayday Mark, but
20 he didn't specify what his concern was?

21 A. I believe that's the case, yes. Some
22 pilots post under their own names, some pilots
23 don't, and the information that you obtain from
24 the APC website you view with a critical eye
25 because some things are wrong to your knowledge

1 and some things you don't know whether they're
2 accurate or not.

3 Q. Well, did you at Captain McDonald's
4 prompting then access APC and review postings by
5 Mayday Mark?

6 A. I did.

7 Q. And now you're saying that was prior to
8 the meeting on August 9, 2013?

9 A. Yes.

10 Q. And then did you -- did you ascertain that
11 there was significant information in those
12 postings that had to be reviewed with Captain
13 Estabrook?

14 A. No, I didn't. I -- at the request of
15 Captain McDonald, I asked him if he was Mayday
16 Mark, and he said he wasn't. As far as I could
17 tell, that was the end of it. I didn't see
18 anything in those postings that contradicted the
19 denial.

20 Q. Well, before you came to the meeting, did
21 you engage in any investigative effort to try to
22 determine whether Captain Estabrook was Mayday
23 Mark?

24 A. Nothing other than reading the postings,
25 and I couldn't tell who the poster was.

1 Q. Would it refresh your recollection if I
2 was to tell you that Captain McDonald testified
3 that Mayday Mark postings related to Laredo were
4 part of his concern?

5 A. I don't recall that conversation with
6 Captain McDonald about Laredo at all.

7 Q. Do you recall reviewing any postings from
8 Mayday Mark that related to a departure from
9 Laredo?

10 A. Not that I can recall.

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

13 Q. I will hand you an exhibit which we will
14 mark as Exhibit T. Mr. Tice, are you aware that
15 there was a discovery process or an ongoing
16 discovery process rather connected with this case
17 I believe?

18 A. Yes.

19 Q. And were you ever approached to
20 participate in formulating FedEx's response to
21 interrogatories?

22 A. Yes.

23 Q. Were you ever approached to provide
24 assistance in responding to document requests?

25 A. Yes.

1 Q. And were you asked specifically to provide
2 Mayday Mark-related postings that you had brought
3 to the August 9th meeting?

4 A. Yes, I was.

5 Q. Now, if you could look at this package of
6 documents, and it's been marked as Exhibit T and
7 it's paginated FDX 4, pages 24 to 48. And please
8 take your time, and the question that I will be
9 coming to is, are these the documents that you
10 provided to FedEx to produce to Captain Estabrook
11 in response to his document request?

12 A. I -- these are all marked consecutively 24
13 through --

14 Q. 48.

15 A. 48. I can't remember the content of every
16 page. I know that the pages that I had in my
17 possession I had highlighted, and so if there is
18 an original around I could probably be more
19 confident. But this appears to be what I helped
20 the legal department put together in response to
21 the discovery requests, and I believe it's
22 probably -- the Mayday Mark-related postings are
23 in this document.

24 Q. Okay. Does this in terms of volume, there
25 are 24 pages, does that approximate the volume as

1 you recall that you brought to the meeting that
2 day? Could it have been more?

3 A. Sir, it could have been more or less.
4 They weren't -- they certainly didn't have this
5 marking, the numbering on them. So I'm not sure
6 how many pages I had.

7 Q. You're familiar with the Bates stamp
8 system; that documents get stamped this way when
9 they're produced?

10 A. Yes.

11 Q. Now, you say you highlighted these
12 documents?

13 A. I use a yellow highlighter a lot, yes.

14 Q. And what were you highlighting the
15 documents for?

16 A. So that I wouldn't be looking at postings
17 by someone other than Mayday Mark, and then there
18 were some content that I highlighted that must
19 have been interesting to me at the time.

20 Q. You highlighted every Mayday Mark posting?

21 A. I don't know.

22 Q. If you look at the third page, which would
23 be FDX 4, page 26, there's a highlighted portion
24 here that I will tell you that our side did not
25 highlight, but then it reads for the record: "I

1 have had military, civilian and airline safety
2 training, and I have NEVER" -- that's in caps
3 never -- "heard of the results of safety surveys
4 not being released to the crew force. Accordingly
5 I will NEVER" -- in caps -- "volunteer to
6 participate in another FDX-sponsored 'safety
7 survey'" -- safety survey in quotes. And then
8 right underneath it says, "edit PS one of my
9 doctors thinks I have had a seizure due to being
10 chronically tired from which FedEx management
11 opened a disciplinary hearing. So much for doing
12 your best job for the Company."

13 Having read that, sir, does that refresh
14 your recollection as to the issues that were
15 prompting your concern or your interest in Captain
16 Estabrook possibly being Mayday Mark?

17 A. I don't know but that seems logical. I
18 don't remember that far back.

19 Q. Okay. You don't remember a concern that
20 Captain Estabrook -- that -- strike that.

21 Do you recall expressing your concern
22 that Captain Estabrook might have had a stroke
23 that he did not report?

24 A. I had two concerns. Number one, based on
25 what Captain McDonald told me is Mr. Estabrook

1 this poster. Number two, as I said before, is
2 there anything in this posting that is true or is
3 it something that some anonymous poster has made
4 up? And so it's information that I highlighted,
5 and that's all I recall.

6 Q. You don't have any specific recollection
7 as to whether you had a concern about Captain
8 Estabrook having suffered a stroke?

9 A. Well, it's not just the context of the
10 reference to a seizure. They said that FedEx
11 management opened a disciplinary hearing, and I
12 would be -- it would surprise me that there would
13 be a disciplinary hearing for something that
14 involved a medical issue, but again it may have
15 just been made up information by this poster. So
16 I highlighted it.

17 Q. You did bring this up at the August 9th
18 meeting with Captain Estabrook?

19 A. Bring what up?

20 Q. The issue of whether he was Mayday Mark?

21 A. Yes.

22 Q. Okay. And how much time did you spend
23 reviewing these postings during that meeting?

24 A. Man, you're really testing my memory now.
25 To the best of my recollection, at the end of the

1 meeting which had to do with the security concerns
2 that Mr. Estabrook had raised, this came up at the
3 tail end, and it was a very brief exchange, very
4 cordial. And he said, no, that's not me, and I
5 don't remember all the details of what he said in
6 support of that, but I accepted his denial that
7 that was him.

8 Q. You can't approximate in terms of numbers
9 of minutes how much time was spent discussing the
10 Mayday Mark posting?

11 A. It would all be a guess. But to the best
12 recollection that I had, it was a very short
13 exchange.

14 Q. How long did the meeting last in its
15 entirety?

16 A. I would have to -- I would have to
17 estimate, sir. Half an hour, 45 minutes. I just
18 don't know.

19 Q. Could you hand him Exhibit F.

20 COURT REPORTER: I have put all the
21 exhibits in front of Mr. Tice.

22 Q. If you could refer to Exhibit F then.

23 A. I have it.

24 Q. And you know that the Company responded to
25 admission requests from Captain Estabrook?

1 A. I do have that recollection, yes.

2 Q. And you participated in formulating the
3 responses to those admission requests?

4 A. I may have. I don't specifically
5 remember. Maybe if there's a specific question
6 you have for me about particular ones.

7 Q. I will refer you to the Request Number 7
8 and the response. And the request reads that the
9 reason for placing Captain Estabrook on NOQ status
10 on or about August 5, 2013, was that you, you here
11 meaning FedEx, suspected him of being the
12 individual identified as Mayday Mark. And the
13 response of the request is denied.

14 Now, I guess I should ask as a preface to
15 that, what is "NOQ status"? What does that
16 acronym stand for?

17 A. I think it's a payroll code that means not
18 operationally qualified, and it's a way of
19 removing someone from the various FedEx pilot
20 systems so that they're not going to be utilized
21 to operate airplanes.

22 Q. Okay. Now, here it says -- did you
23 participate in the decision -- well, actually let
24 me --

25 (Whereupon, a document was marked as

1 Exhibit No. U.)

2 Q. You're being passed a document that has
3 been marked as Exhibit U. And my apologies I
4 don't have additional -- actually I do. So we all
5 have this document which is marked Exhibit U,
6 Respondent Federal Express Corporation's Responses
7 to Complainant's First Set of Interrogatories and
8 ask you to refer to Interrogatory Number 1.

9 "Identify each person you have interviewed to
10 obtain facts relating to the complaint." And the
11 answer provides a response that lists you as the
12 first entry. You were interviewed by Company
13 legal counsel to obtain information related to the
14 AIR-21 complaint in this matter?

15 A. Yes.

16 Q. And then if you can turn to page 3,
17 Interrogatory Number 6 reads: "Identify any
18 persons involved in the decision to place the
19 Complainant on not qualified (NOQ) status on or
20 about August 15, 2013." And you look at the
21 response it continues on to the next page, it
22 reads: "Robert Fisher, William McDonald, Todd
23 Ondra, Robb Tice." Is that correct that you
24 participated in the decision to place Captain
25 Estabrook on NOQ on or about August 5, 2013?

1 A. I think so. Sure. It's a fairly
2 administrative matter.

3 Q. Okay. When you say "I think so," I don't
4 want to get into another prolonged tussle here,
5 but you're not absolutely certain whether you did
6 or not?

7 A. Well, I was certainly involved in the
8 decision to schedule a meeting so that the
9 concerns of Captain Estabrook could be brought to
10 the attention of the security organization at
11 FedEx. In order to do that, we had to make sure
12 that he was not going to be flying any trips on
13 the date we eventually were able to set the
14 meeting up for. And in order to do that, you have
15 to get the pilot in a situation where crew
16 scheduling is not going to reach out to him and
17 have him fly a trip or something like that or he
18 would pick up a trip on his own I guess would be
19 possible through the Company's computer systems as
20 well. So it's an administrative matter to place a
21 pilot on NOQ who is coming in for a meeting, and
22 to that extent I would have been involved in the
23 process. But I don't know what computer strokes
24 are necessary to place somebody on NOQ.

25 Q. If you could refer to Exhibit I as in

1 icicle, which is Respondent Federal Express
2 Corporation's Supplemental Answers to
3 Complainant's First Set of Interrogatories. Turn
4 to page 2 -- well, page 2, the interrogatory
5 reads: State the reasons why the Complainant was
6 placed on --

7 A. I'm sorry, what interrogatory number?

8 Q. Page 2, Interrogatory Number 7.

9 A. Thank you.

10 Q. It is the only one on the page. "State
11 the reasons why the Complainant was placed on NOQ
12 status on or about August 5, 2013." You see
13 there's a first response: "Complainant was placed
14 on NOQ status on or about August 5, 2013, because
15 he had been referred for examination under 15.D of
16 the Collective Bargaining Agreement between
17 Respondent and the Air Line Pilots Association."
18 Now, let me pause here and ask you a question.
19 "15.D," what does that refer to?

20 A. 15.D is a Company mandated medical
21 examination.

22 Q. So is it true that as of August 5, 2013,
23 that Captain Estabrook had been referred for a
24 15.D Company mandated medical evaluation?

25 A. The timeline in my recollection is that

1 the meeting that we held was the 13th or
2 something, and I may be off on that date. But I
3 think that whoever answered this interrogatory the
4 first time around didn't understand that the NOQ
5 status had nothing to do with Section 15.D
6 concerns at that time at all.

7 Q. Okay. And, therefore, is -- the next
8 response reads: This supplement responses -- I'm
9 sorry, that's -- I'm not misreading. That's what
10 it actually says. "This supplement responses
11 supersedes Respondent's original response.
12 Complainant was placed on administrative NOQ
13 status on or about August 5, 2013, to facilitate
14 the scheduling of a meeting he requested. The
15 effect of the placement on administrative NOQ
16 status was to clear his work schedule and prevent
17 the scheduling of conflicting activities."

18 Is that an accurate description of the
19 purpose behind the placement of -- in your view,
20 an accurate statement of the reasons behind the
21 placement of Captain Estabrook on NOQ status on
22 August 5, 2013?

23 A. Yes. And I believe that's what I just
24 said a minute ago.

25 Q. Well, I just want to be clear. As of

1 August 5, 2013, did you have any concern about
2 Captain Estabrook's physical health?

3 A. No.

4 Q. And as of August 5, 2013, did you have any
5 concerns about Captain Estabrook's mental health?

6 A. No.

7 Q. Did you know of anyone -- you were
8 consulting with the other participants in the NOQ
9 decision, Mr. Ondra, Captain McDonald, Captain
10 Fisher, correct? You were having communications
11 with them concerning his placement on NOQ status,
12 correct?

13 A. In the context, yes, of setting up the
14 meeting that was eventually set up.

15 Q. Did any of them express a concern in the
16 run-up to the placement on NOQ status that Captain
17 Estabrook had a physical health problem?

18 A. No, sir. Not from a fitness for duty as a
19 pilot standpoint at all.

20 Q. Did any of those three individuals, you're
21 Mr. Tice, Captain McDonald, Captain Fisher and
22 Mr. Ondra, did any of them express a concern about
23 the mental health of Captain Estabrook in the
24 run-up to the placement on August 5th on NOQ
25 status for Captain Estabrook?

1 A. No, sir. Not from a fitness for duty as a
2 pilot standpoint. Only a discussion of this is an
3 odd situation that we find ourselves in.

4 Q. Now, you knew at the time of the
5 scheduling of the meeting with Captain Estabrook
6 that followed his email request, you knew at that
7 time that he had served the pilots' Union as the
8 chairman of its Security Committee, correct?

9 MR. RIEDERER: Object to the form of
10 the question.

11 THE WITNESS: You want me to answer
12 it?

13 MR. RIEDERER: Yeah.

14 A. I didn't know anything about his past. I
15 saw what he wrote in the email. That's the only
16 information I had about any security involvement
17 by Captain Estabrook.

18 BY MR. SEHAM:

19 Q. Did you make any effort prior to the
20 August 9th meeting to confirm whether he had
21 previously been involved as chairman of the
22 Union's Security Committee?

23 A. No.

24 Q. Now, after you concluded by the end of
25 this -- the meeting on August 9, 2013, that

1 Captain Estabrook was not Mayday Mark, correct?

2 A. Yes.

3 Q. And, therefore, you also concluded that
4 there was no reason to suspect that he had
5 suffered a stroke, correct?

6 A. Correct.

7 Q. And did you make any further effort to
8 determine -- well, let me back up.

9 There's reason to believe that whoever
10 Mayday Mark was was a Federal Express pilot,
11 correct?

12 A. Based on the content of a lot of the
13 information, it looked like he was, but maybe was
14 on LTD or something. I mean, it's hard to tell if
15 they're telling the truth or not when they write
16 what they write.

17 Q. After the conclusion of the August 9th
18 meeting, did you make -- engage in any further
19 efforts to determine who Mayday Mark was?

20 A. No.

21 Q. Did anyone else in the Company to your
22 knowledge engage in any efforts to determine who
23 Mayday Mark was?

24 A. Not to my knowledge.

25 Q. On behalf of management, the attendees

1 were yourself, Mr. Tice, Mr. Ondra, and Captain
2 Fisher, correct?

3 A. At the meeting on --

4 Q. On August 9th?

5 A. Was it August 9th? I couldn't remember
6 the date.

7 MR. SEHAM: Yeah. Can we stipulate
8 to that just so we can move forward?

9 MR. RIEDERER: Yes.

10 Q. August 9, 2013. So at that meeting
11 attending for management would be yourself,
12 Mr. Tice, Captain Fisher, and Mr. Ondra, correct?

13 A. Yes.

14 Q. Now, did y'all arrive together?

15 A. I certainly don't remember that.

16 Q. You don't remember what?

17 A. I know where the meeting was. I don't
18 imagine we arrived together simply because that
19 was not the usual place for me to be so...

20 Q. Did you have any prior consultation among
21 management team before you went in?

22 A. I don't remember, but I would be surprised
23 if we did not.

24 Q. And how many times did Todd Ondra leave
25 the meeting during the course of the discussion

1 with Captain Estabrook?

2 A. I don't remember. I do know that he left
3 once and didn't come back because he had some
4 other scheduling issue. Whether he left on other
5 occasions and returned, I don't recall.

6 Q. How far into the meeting did he leave?

7 A. Pretty far. I didn't check the time or
8 anything. I believe that -- well, you -- no
9 question was pending.

10 Q. Well, was he there for any of the
11 discussion relating to Mayday Mark?

12 A. Not that I can recall for sure. I don't
13 think so, but if he was, that surprises me.

14 Q. It surprises you that he was there for
15 that portion?

16 A. Yeah. That's just my best effort to
17 recollect something that happened a couple of
18 years ago. I think he left and then that issue
19 was discussed kind of at the tail end of
20 everything. That's just the best of my
21 recollection.

22 Q. Okay. Now, you're aware that on or about
23 April 10th of 2013, Captain Estabrook raised
24 safety of flight issues related to a departure
25 from Laredo, correct?

1 A. I'm trying to remember what I knew then
2 and compare it to what I learned later. So I'm
3 not exactly sure when I learned that there was
4 some safety issue and whether my initial learning
5 was that it was a failure to show up at an airport
6 issue. So I don't know that I can answer your
7 question with a yes or no.

8 Q. It came to your attention sometime in
9 April 13, 2013, that Captain Estabrook asserted
10 the position that FedEx's interrogation of him
11 with respect to a Laredo departure violated his
12 rights to engage in protected activity under
13 AIR-21, correct?

14 A. That was a long sentence. Can I have the
15 court reporter repeat it?

16 Q. Sure.

17 (The requested portion of the record
18 was read by the reporter.)

19 A. I can't state for certain that I learned
20 that there was some issue relating to the Laredo
21 case and some safety component to it that early.
22 I just don't remember. I knew that there was an
23 issue that I became aware of fairly early on that
24 involved failure to show up at the Laredo airport
25 on time. If it turned into an issue of some

1 safety complaint and some interrogation, I don't
2 think I knew it that early.

3 Q. Could you look at Exhibit R as in rooster.
4 Did you receive -- do you have that in front of
5 you?

6 A. I do.

7 Q. Do you see this is a letter from Alan
8 Armstrong, Attorney at Law, dated April 29, 2013.
9 And it's Bates stamped FDX 4, pages 8 to 14. Did
10 you receive this -- oh, and to help you along a
11 little further, if you can look at the second page
12 that lists the cc's, it lists you, Robert Tice,
13 senior counsel. Did you have this -- did you
14 receive this letter from Alan Armstrong?

15 A. If it was sent to me, I received it, but I
16 just don't remember it.

17 Q. I'm struggling what to do with that
18 answer. If it was sent to you, you received it,
19 but you just don't remember. So you have no
20 recollection of receiving this letter?

21 A. That's right.

22 Q. I'm going to ask you to look at Exhibit S
23 as in Sam.

24 A. I'm there.

25 Q. And I'm going to refer you to -- this is

1 defendant's log of privileged documents that
2 are -- and there's an entry at Document Number 3
3 dated 4/29/13. "Emails with advice of counsel
4 between manager R. Fisher and attorney R. Tice,
5 and paralegal C. Sartain regarding 4/29/13 letter
6 from attorney A. Armstrong."

7 I refer you to block number 4, 4/29/13
8 email from attorney Tice to paralegal C. Sartain
9 and attorney S. Williams regarding manager R.
10 Fisher letter to attorney A. Armstrong. And then
11 block 5, April 29, 2013, between director W.
12 McDonald and attorney Tice regarding manager R.
13 Fisher letter to attorney A. Armstrong.

14 Does this refresh your recollection that
15 you had discussions with either Captain Fisher and
16 Captain McDonald concerning Exhibit R?

17 A. No. It doesn't refresh my recollection.

18 Q. Would you agree that it is a fair
19 conclusion that you did, in fact, have discussions
20 with Captain McDonald and Captain Fisher
21 concerning document Exhibit R?

22 A. That is a better source than my memory.
23 So I would say that's probably true.

24 MR. SEHAM: Off the record.

25 (Brief recess.)

1 (Whereupon, a document was marked as
2 Exhibit V.)

3 BY MR. SEHAM:

4 Q. Mr. Tice, you have been handed a letter
5 dated -- excuse me, an email at the top it says
6 MaryAnne Miller, but it's from Rob Fisher to
7 Katherine Walker and a carbon copy includes Alan
8 Armstrong, Robb Tice, Terry McTigue of ALPA, Coy
9 Briant of ALPA, Rob Fisher, and Mitch Matheny, Re:
10 Mark Estabrook. And would you have received this
11 email on or about April 29th, 2013?

12 A. I must have.

13 Q. And do you see going down it -- there is a
14 reference -- the second email in the thread it's
15 from Katherine Walker with a copy to Alan
16 Armstrong, and it says, "please see attached
17 letter." The signatory being Katherine Walker,
18 paralegal for Alan Armstrong, Esquire. And if you
19 note at the bottom it says FDX 4, page 7 for the
20 Bates stamp. And then I will refer you back to
21 Exhibit R to note that the pagination there --
22 well, first of all, page 7 was referring to
23 "please see attached letter," and it's dated
24 April 29th, and the FedEx produced documents in
25 terms of their pagination continues at Exhibit R

1 with page 8 through 14. Does this refresh your
2 recollection that the attached letter from
3 Katherine Walker would have been Exhibit R?

4 A. I can just assume that it was. I don't
5 know for sure.

6 Q. You think that is a fair assumption?

7 A. Yes.

8 Q. If you read Exhibit V, Rob Fisher states:
9 "I acknowledge receipt of your letter. In
10 accordance with established practice at FedEx,
11 pilots participating in disciplinary processes
12 under Section 19 of the FedEx/ALPA Collective
13 Bargaining Agreement are entitled to
14 representation by ALPA. No outside attorneys are
15 permitted to attend or otherwise participate in
16 those processes."

17 Did you have a discussion with Rob Fisher
18 on or about April 29th about a determination to
19 deny Captain Estabrook his choice of counsel in
20 the Company examination related to the Laredo
21 departure?

22 MR. RIEDERER: Object. I think this
23 is going to cross over to an attorney-client
24 privilege communication between Mr. Tice and
25 Mr. Fisher.

1 MR. SEHAM: So you're directing the
2 witness not to answer?

3 MR. RIEDERER: Yes.

4 BY MR. SEHAM:

5 Q. And can you tell me, as an alternative
6 question, can you tell me is that consistent with
7 Company policy to deny a pilot the right to his
8 private counsel in the context of disciplinary
9 processes under Section 19?

10 A. Your question can't be accurately answered
11 with a yes or no. At the -- if a matter gets
12 to -- before a System Board of Adjustment, the
13 past practice at FedEx has been that outside
14 counsel participate. But prior to that stage of
15 the Collective Bargaining Agreement's disciplinary
16 process, it's been explained to me that that is
17 the past practice that outside attorneys are not
18 participants.

19 Q. Did you -- do you recall that there
20 were -- do you recall the reasons for the
21 initiation of an examination of Captain Estabrook
22 in April 2013 by Rob Fisher?

23 A. I have a sketchy recollection, yes.

24 Q. And what is the best of your -- could you
25 share with us please the -- your best

1 recollection.

2 A. My best recollection is that I was
3 involved in some other pending matter and was only
4 tangentially involved in this matter. And so
5 early on I was aware that there was a failure to
6 report to an airport issue, and I didn't get
7 involved further, and what started out to perhaps
8 be a 19.E hearing under the CBA, at some point I
9 think contemporaneous with the Alan Armstrong
10 letter that changed to just a meeting under what
11 we call 19.D, an interview, and I don't know what
12 happened there because I didn't participate.
13 That's -- I don't think I strayed from what your
14 question was. I'm sorry if I did.

15 Q. I credit you with answering to the best of
16 your ability. Did you review any audio tapes
17 related to this matter?

18 A. No.

19 Q. And is it your testimony that to the best
20 of your recollection what had originally been
21 tended as a 19.E examination culminated in no
22 disciplinary action?

23 A. I am not sure what happened. I didn't get
24 involved in it. I wasn't privy to it.

25 Q. So you don't know one way or another

1 whether there was a -- whether there was
2 discipline meted out to Captain Estabrook?

3 A. Again, in the -- in the context of being
4 involved in this process today, I had an
5 understanding, but I didn't have that
6 understanding until I got involved in this
7 process.

8 Q. So back -- you're saying back in April and
9 May of 2013, you had no knowledge of how this
10 investigation culminated?

11 A. That's a fair statement, yes.

12 Q. I would like you to refer to Exhibit M
13 which is a letter on Alan Armstrong, Attorney at
14 Law stationery dated August 13th, 2013. It's
15 Bates stamped FDX 4-65 to 68. And it shows you as
16 a cc on the last page along with Mr. Ondra,
17 Captain Fisher -- I'm sorry, not as a cc. I
18 apologize. You're a direct addressee at the top
19 of the page on page 65, and it shows that it was
20 copied to Captain Fisher, Mr. Ondra, and Captain
21 McDonald. And did you receive Exhibit M, the
22 August 13th letter from Mr. Alan Armstrong on or
23 about August 13, 2013?

24 A. I'm sure that I did. As far as the date
25 is concerned, I'm not sure, but I did get the

1 letter.

2 Q. And if you can refer now to Exhibit S and
3 look at block 19 on page 3, which states
4 August 13th -- references August 13th, 2013,
5 emails with advice of counsel between attorney
6 Tice, VP and attorney J. Maxwell, SVP and attorney
7 R. O'Keefe, attorney Phil Tadlock, directors T.
8 Ondra and W. McDonald, manager R. Fisher with cc's
9 to paralegal C. Sartain and VP J. Bowman regarding
10 attorney A. Armstrong 8/13/13 letter.

11 Does that -- in view of that entry, would
12 you agree that you not only received
13 Mr. Armstrong's August 13th letter on August 13th,
14 but that you also discussed it with Mr. Ondra and
15 Captain Fisher and Captain McDonald -- at least
16 communicated with them via email on August 13th?

17 A. Yes.

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

20 Q. I'm going to hand you a document we will
21 mark as Exhibit W. It's a letter dated April 23,
22 2013, and it's paginated -- the first page is
23 paginated ME 62. The second one is paginated FDX
24 4, page 4, and it's an email or it's an electronic
25 mail from Captain Robert Fisher to Captain Mark

1 Estabrook. It's dated April 23, 2013. It lists
2 you as counsel -- as the first cc, and then on the
3 second page -- well, it is the same -- my -- I
4 think it's the same letter. My apologies. It
5 looks to be the same letter. It's just that one
6 version is Bates stamped by us and one is Bates
7 stamped by you. But in either case would you
8 agree that you received this letter on -- from
9 Captain Fisher on April 23, 2013?

10 A. I probably did.

11 Q. Do you recall that Captain Estabrook's
12 counsel, legal counsel, made repeated requests to
13 you that you provide FedEx's "reasonable basis"
14 for compelling Captain Estabrook to submit to a
15 15.D mental health examination?

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

18 A. I don't know how many. I do recall that
19 that request was made.

20 Q. Are you familiar with that concept of the
21 necessity of having a reasonable basis in order to
22 initiate a 15.D mental health examination?

23 A. Well, first of all, it's not a 15.D mental
24 health evaluation. That's a Company mandated
25 medical evaluation I think is the phrase in the

1 book, and I am familiar with that language from
2 that section of that contract.

3 Q. Can you explain how that -- what
4 obligation exists for the Company in terms of a
5 15.D examination -- initiating a 15.D examination?

6 A. I would want to read the contract language
7 to expound upon that.

8 Q. I'm asking you from the best of your
9 recollection, what is your understanding as you
10 sit here today?

11 A. I need the key words to answer.

12 Q. I'm asking you what is your understanding
13 as you sit here today?

14 MR. RIEDERER: I think his answer was
15 that he would need to look at the contract in
16 order to answer that question.

17 Q. So you have no understanding at all
18 concerning that concept?

19 A. I want to answer your question as
20 accurately as I can.

21 Q. And I'm asking you to answer my question.
22 This is --

23 A. It seems unfair not to look at a document.

24 Q. I'm going to say -- it's not about what is
25 fair or not at this point. We don't have any

1 judge here to resolve objections, and that's the
2 issue. We have reserved all objections in this
3 process. I don't know if you're familiar with
4 Federal Rules for -- applicable to depositions.
5 So really we're at a point here where I'm hearing
6 a refusal -- I'm saying this as calmly as
7 possible, but I'm warning you in effect that what
8 we have here is refusal to respond to the
9 question.

10 A. Let me hear your question again because
11 you I think used words from the contract. I'm not
12 sure that you did. I know that you used mental
13 status, and that's not in there.

14 MR. RIEDERER: If you don't
15 understand a question, you can ask him to rephrase
16 it.

17 A. There we go.

18 MR. SEHAM: If the court reporter
19 could read the question back, the original
20 question.

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

23 MR. SEHAM: And if you could read
24 without his response at that point, just if you
25 could reread that question posed.

1 (The requested portion of the record
2 was read by the reporter.)

3 BY MR. SEHAM:

4 Q. I'm asking you to respond to that
5 question, Mr. Tice.

6 A. Yeah. I think you used a phrase
7 reasonable basis. I'm not sure those are the
8 words in the contract, Mr. Seham. But without
9 having the benefit of knowing exactly what the
10 printed words are, my response is this: If a
11 member of flight management has a reasonable
12 objective basis for questioning whether or not a
13 pilot is either fit or unfit for duty, then the
14 contract gives that flight manager the contractual
15 right to require a Company mandated medical
16 evaluation.

17 Q. Thank you. If you could refer back to
18 Exhibit S.

19 A. I'm there.

20 Q. I'm going to refer you to block item 23.
21 You see that it refers to "emails with advice of
22 counsel between manager R. Fisher, attorney R.
23 Tice, paralegal C. Sartain and director W.
24 McDonald regarding Estabrook 15.D letter."
25 Mr. Tice, were you having legal consultations with

1 Mr. McDonald -- Captain McDonald and Captain
2 Fisher on August 15th concerning whether or not to
3 send Captain Estabrook a 15.D letter?

4 MR. RIEDERER: Object. I believe
5 that invades the attorney-client privilege. I
6 think this privilege log speaks for itself. That
7 there were communications relating to the 15.D
8 letter, but I'm instructing him not to answer what
9 advice and what discussions he had other than the
10 fact that that log says what it says.

11 MR. SEHAM: And I'm not trying to get
12 to -- I don't object to your being cautious about
13 this, and I'm not trying to get to the content of
14 the conversation. We have had rulings from the
15 judge on -- or the predecessor judge on this
16 issue. But I'm just trying to get from the
17 witness a confirmation that during this time on
18 August 15, 2013, that there were -- he had
19 discussions with Captain McDonald and Captain
20 Fisher about a 15.D letter.

21 MR. RIEDERER: I guess to wrap it up
22 and move this along, I don't object to him
23 confirming what is reflected in this privilege
24 log, but anything more than that, I would have
25 some concerns that it would be covered by the

1 attorney-client privilege.

2 MR. SEHAM: Did the question as I
3 just posed it, is that acceptable to you?

4 MR. RIEDERER: Yeah.

5 MR. SEHAM: So could you read back
6 the question so we can get an answer?

7 MR. RIEDERER: May I consult with my
8 client so that he doesn't --

9 MR. SEHAM: Yeah, sure. On kind of a
10 non-precedential basis.

11 (Mr. Riederer consults with the
12 witness.)

13 BY MR. SEHAM:

14 Q. Do you need the question read to you
15 again?

16 MR. RIEDERER: Yes, please.

17 A. I think I understand it.

18 MR. RIEDERER: Go ahead. If you know
19 the question, then you can answer.

20 A. I think that the privilege log does
21 indicate that there were discussions about the
22 Estabrook 15.D letter on that date.

23 Q. I know what the privilege log reflects.
24 I'm asking you as a witness under oath were you
25 having discussions at that time concerning the

1 15.D issue?

2 A. Based on the privilege log, my memory is
3 served that I must have been.

4 Q. Could you look at Exhibit Q.

5 A. I'm there.

6 Q. And this is a letter dated August 16th
7 from Captain Rob Fisher to Captain Estabrook, and
8 you're listed as the second cc, Robb Tice. Do you
9 recall receiving a copy of this letter?

10 A. Not specifically, but it would have been
11 routine for me to have done so.

12 Q. Would you agree with me that this was the
13 15.D directive received by Captain Estabrook from
14 FedEx in this matter?

15 A. It certainly appears to be, yes.

16 Q. Do you recall at what time -- do you
17 recall the date of the final determination of
18 FedEx that Captain Estabrook should be referred
19 for a Section 15.D examination?

20 A. Well, there was a process that began on
21 the day of the meeting. So August 13, if that was
22 the -- was it August 9 the date of the meeting?

23 Q. August 9 was the date of the meeting.

24 A. I believe that the decision was made on
25 August 9.

1 Q. Okay.

2 A. But not during the meeting. Afterwards.

3 Q. I'm sorry, say again?

4 A. Not during the meeting, but afterwards.

5 Q. But on that same day?

6 A. That same day to my recollection, yes.

7 Q. Can you offer any explanation as to why it
8 took the Company a week to send the letter out if
9 the decision had been made on August 9th?

10 A. I guess I would have to piece together an
11 answer from documentation. I just -- I can't tell
12 you off the cuff here today, no.

13 Q. Do you have any recollection of the
14 Armstrong letter of August 13th being taken into
15 consideration?

16 A. That's the kind of piecing together that I
17 think I was referring to. That may have something
18 to do with it. Yeah.

19 Q. So the Company had not made -- how can I
20 phrase this? The decision was not so set in stone
21 that consideration of the Armstrong letter of
22 August 13th was precluded?

23 A. That's what I --

24 MR. RIEDERER: Object to the form.

25 That misstates his testimony.

1 Q. I'm asking a question.

2 A. I'm trying to answer.

3 Q. Yeah, I know. I want to respect --

4 MR. RIEDERER: He already said that
5 the decision was made after the meeting. I mean,
6 you're trying to put words in his mouth.

7 MR. SEHAM: No. I'm -- what I really
8 don't want to see here is some coaching of the
9 witness which is exactly what I'm --

10 MR. RIEDERER: I'm not coaching. I'm
11 objecting to misstating his testimony.

12 MR. SEHAM: Let's give the court
13 reporter a break here try to speak once at a time.
14 But I am very -- I want to object very strongly to
15 the coaching that I just heard.

16 MR. RIEDERER: I'm not intending to
17 coach. I'm just explaining my objection.

18 MR. SEHAM: But you did, and that's a
19 problem.

20 BY MR. SEHAM:

21 Q. You were about to provide some testimony
22 before it was cutoff. So...

23 A. I said before that there was a process.
24 And from my perspective after I got a phone call
25 from Todd Ondra expressing his concerns that he

1 hadn't had an opportunity to express until he
2 called me, it appeared that there was going to
3 need to be a 15.D evaluation. And so -- and
4 whether or not that got interrupted and didn't
5 result in a letter for a week, that appears to be
6 what happened, and there apparently were
7 involvement of some folks who are identified on
8 that privilege log that you referred me to. So I
9 would imagine that somebody at my pay grade can
10 think that something is a decision that can get
11 looked at by people higher in the pay grade. And
12 that's what appears to be what happened to me.

13 Q. Do you have any specific recollection of
14 the arguments being presented in Mr. Armstrong's
15 August 13th letter being considered in the 15.D
16 deliberative process?

17 A. I don't remember what those arguments
18 were, and I don't remember the specific
19 discussions about particular arguments, sir.

20 Q. Well, who made the decision to issue the
21 15.D letter to Captain Estabrook?

22 A. My understanding is that that would have
23 been his direct manager in the Flight Operations
24 department who was I think the fleet captain at
25 the time, and that was Captain Fisher.

1 Q. When you say that is your understanding,
2 what do you base that understanding on?

3 A. My involvement in the process.

4 Q. Did anyone else participate in the 15.D
5 decision?

6 A. Mr. Ondra called me. I called Rob Fisher,
7 and to the best of my recollection, Rob Fisher
8 acquiesced in the request of Mr. Ondra to have a
9 Company mandated medical evaluation conducted.

10 Q. Did Mr. Ondra call you -- this was -- he
11 called you after the August 9th meeting?

12 A. Yes. As I explained earlier, he had to
13 leave, and we didn't get a debrief opportunity and
14 he called me later.

15 Q. Did he call you for the purpose of
16 obtaining legal advice or for the purpose of
17 telling you how he wanted the matter to proceed?

18 A. He called me to ask me my impressions, and
19 then he gave me his impressions.

20 Q. Was he asking you for legal advice?

21 A. I believe there was a component of that in
22 there, but my attorney has told me to provide this
23 testimony with respect to the facts discussed. Am
24 I right on that?

25 MR. RIEDERER: For the record if you

1 gave him legal advice, you're not talk to about
2 it, but if you talked about your impressions from
3 that meeting, then you can talk about it.

4 Q. What did he tell you, Mr. Ondra, about his
5 impressions?

6 A. He told me that he was very concerned
7 about the statements that Mr. Estabrook had made
8 about Auburn Calloway perhaps, who is in prison at
9 the time, having converted to Islam and secretly
10 communicating with Al-Qaeda, and Mr. Ondra
11 regarded that as sufficiently disconcerting that
12 he wanted to make sure that if there was anything
13 the Company could do under the Collective
14 Bargaining Agreement to have an evaluation
15 conducted that that was his -- that was his
16 suggestion or opinion.

17 Q. Anything else in terms of what he
18 communicated vis-a-vis his concerns?

19 A. There may have been, sir. That's what
20 sticks out in my mind.

21 Q. Okay. You have no specific recollection
22 of anything -- concerns expressed other than the
23 Calloway concerns as you sit here today?

24 A. He had previously expressed concerns about
25 the email that Captain Estabrook had sent to

1 Captain McDonald, and that was a matter of
2 discussion amongst Captain Fisher, myself, Captain
3 McDonald, and Mr. Ondra. But I think his primary
4 emphasis was on the Al-Qaeda reference to Auburn
5 Calloway.

6 Q. And he brought up the email on August 9th
7 in his telephonic exchange with you?

8 A. That's what I said I don't think so. It
9 was on a prior occasion that he had expressed
10 concerns that it was -- that it was an unusual way
11 to attempt to communicate a security concern with
12 a request that somebody -- that his boss have the
13 CEO of the parent corporation give him a call and
14 not interrupt his rest.

15 Q. So to the best of your recollection, the
16 concerns he expressed in terms of seeking some
17 examination of Captain Estabrook related to Auburn
18 Calloway's conversion to Islam and possible
19 communication with Al-Qaeda, correct?

20 A. That's what I can recall from that
21 telephone conversation.

22 Q. I'm handing you a document we will mark as
23 Exhibit X.

24 (Whereupon, a document was marked as
25 Exhibit X.)

1 Q. Now, this is paginated FDX 4, pages 445 to
2 446. A letter appears to be signed by you and
3 sent to Alan Armstrong, copy to Captain Fisher,
4 Mr. Ondra, and Captain McDonald. Is this a letter
5 that you sent to Mr. Armstrong on August 16, 2013?

6 A. Yes.

7 Q. And you read the -- in the second
8 paragraph I merely asked in the -- well, let me
9 read the first three sentences. It reads: "First
10 in your letter you request that Captain McDonald
11 and I retract any accusations that Captain
12 Estabrook is the individual named Mark who has
13 posted on an electronic bulletin board. No such
14 accusation was made at the August 9, 2013 meeting,
15 which your letter seems to explicitly acknowledge.
16 I merely asked if Captain Estabrook is Mayday Mark
17 because that poster had written that he had
18 sustained a stroke."

19 Does that refresh your recollection as to
20 why you were asking questions related to the
21 Mayday Mark postings?

22 A. Yes.

23 Q. And would so --

24 A. I mean, it doesn't refresh my recollection
25 so much as it replaces the lack of a recollection.

1 Q. Well --

2 A. If that makes any sense.

3 Q. So would it be your testimony that the
4 purpose for your questioning Captain Estabrook
5 about Mayday Mark postings was to determine
6 whether Captain Estabrook had suffered a stroke?

7 A. Yeah. I would say that I had a better
8 recollection in August of '13 than I do today
9 about the details of that question and answer.

10 Q. Well, is the answer that even with this
11 letter before you, you don't have any recollection
12 as to your purpose for asking questions about the
13 Mayday Mark postings?

14 A. Well, I tried to give more detail in my
15 prior testimony, which was that Captain McDonald
16 asked me to ask that question, which I did.

17 Q. And so in other words, what you wrote here
18 might not be true?

19 A. Absolutely not.

20 Q. Okay. So what you wrote here is true?

21 A. Yes, sir.

22 Q. Thank you. Now, this letter was in
23 response to his letter of August 13th, 2013,
24 correct?

25 A. If that's the right date of the letter. I

1 didn't mention it in my letter. Did you want an
2 answer to that question?

3 Q. Huh?

4 A. Did you want an answer to that question?

5 MR. RIEDERER: We can stipulate that
6 it was August 13th, the letter from Alan
7 Armstrong.

8 MR. SEHAM: So this Exhibit X was --
9 and we are stipulating that Exhibit X was in
10 response to Alan Armstrong's letter of August 13,
11 2013. That's the stipulation, counsel?

12 MR. RIEDERER: Yeah, I believe so. I
13 mean, that was your intent, right? I was
14 stipulating to the date of the letter. I'm not
15 stipulating to what this is in response to, but
16 the date of the Alan Armstrong letter was
17 August 13th.

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

20 BY MR. SEHAM:

21 Q. I have handed you a letter that has been
22 marked Exhibit Y from Alan Armstrong, Attorney at
23 Law, and it is paginated ME 40 to ME 45. It's
24 dated August 20, 2013, and addressed to Robert
25 Tice, yourself, and James Ferguson. And did you

1 receive this letter from Alan Armstrong?

2 A. Yes. Or from a paralegal or whatever.

3 Q. Did anyone within FedEx management to your
4 knowledge give any consideration to the arguments
5 that were made in Mr. Armstrong's letter of
6 August 20th with respect to whether the 15.D
7 decision and examination should proceed?

8 A. I think that might get into privileged
9 areas.

10 MR. RIEDERER: Well, I think his
11 question was, do you know if anyone in management
12 considered that. It's not asking if you gave --
13 had any discussions with management. So if you
14 know of someone from management took it into
15 consideration, you can answer.

16 A. I don't have a recollection of responses
17 that were generated within FedEx to this. I just
18 don't have a recollection. I'm sorry. If you can
19 show me something that suggests that I got
20 involved further, I will be glad to read it.

21 Q. I want to refer you to the fifth page
22 under the heading Contract Violations. It says,
23 "the CBA states clearly that management may only
24 direct the pilot to see the Company aeromedical
25 advisor and that his directive may issue if, and

1 only if, it has a 'reasonable basis' for believing
2 that a pilot is suffering from an impairment."

3 A. You're reading from a different page than
4 I --

5 MR. RIEDERER: It's --

6 A. I don't see if, and only if, in there.
7 Maybe I got the wrong place.

8 Q. Yeah. You're at the wrong place unless I
9 misspoke. Under Contract Violations as a
10 subheading, third paragraph.

11 A. Thank you.

12 Q. First sentence of the third paragraph.
13 And then it continues with the fourth paragraph:
14 "If the Company intends to press forward with its
15 demands for a psychiatric medical evaluation, we
16 hereby request that it provide a written
17 explanation of its 'reasonable basis' for
18 suspecting that Captain Estabrook is suffering
19 from an impairment and identify the witnesses and
20 the documentary information (including all
21 electronic documents and correspondence on which
22 it relies, including, but not limited to those
23 emails from and between Captain William McDonald
24 and Captain Robert Fisher, FedEx Security
25 personnel, FedEx Legal Department and all FedEx

1 management copied in the correspondence involving
2 Captain Mark Estabrook's actions this calendar
3 year)."

4 And my question, Mr. Tice, is, did you
5 ever get back to Mr. Armstrong and provide him the
6 reason -- the reasonable basis or articulate to
7 him the reasonable basis for the 15.D referral?

8 A. I don't remember if I did or not. I know
9 that another attorney got involved in the case,
10 and I'm not sure of the timing of that.

11 Q. Well, is that -- in the normal course of
12 business when a pilot's counsel requests that the
13 Company articulate what the reasonable basis is
14 for a 15.D examination, would you normally provide
15 that reasonable basis, that articulation?

16 A. Well, to be precise the normal course of
17 business is to communicate with the Air Line
18 Pilots Association regarding these matters, not an
19 outside attorney. I don't know what happened in
20 this case.

21 Q. Okay. When Air Line Pilots Association,
22 ALPA, when ALPA in the past has requested that the
23 Company articulate the reasonable basis prior to
24 proceeding with a 15.D examination, has FedEx
25 honored that request?

1 A. I have to search my memory. If that
2 request came from ALPA, it would be my practice to
3 respond to it. Yes. But they don't always make
4 that request.

5 (Whereupon, a document was marked as
6 Exhibit Z.)

7 Q. Mr. Tice, I have handed you a document
8 dated August 23, addressed to Alan Armstrong with
9 yourself as the signatory. It's paginated ME 91.
10 Is this the letter that you responded with to Alan
11 Armstrong's letter of August 20th, 2013?

12 A. It must be. That's my -- that's my
13 signature and my letterhead.

14 (Whereupon, a document was marked as
15 Exhibit AA.)

16 Q. You have been handed an exhibit that has
17 been identified as AA, and it's dated August 27th,
18 2013. It's addressed to you and -- from Lee
19 Seham, and it's paginated FDX 4, pages 103 to 104.
20 Did you receive this letter on or about August 27,
21 2013?

22 A. I'm sure I did. It came to my email
23 address.

24 Q. And you see in the third paragraph that
25 states: "We again demand that the Company

1 disclose the 'reasonable basis'" -- those
2 two words being in quotes -- "upon which it relied
3 for the purpose of compelling Captain Estabrook to
4 submit to a referral to the aeromedical advisor
5 under Section 15.D of the CBA." And, Mr. Tice,
6 did you ever respond to Mr. Seham with the
7 reasonable basis upon which FedEx relied?

8 A. I don't recall.

9 Q. Would there be any reason why you -- that
10 you can articulate today as you sit here why you
11 wouldn't have provided the reasonable basis?

12 A. I don't recall that I did or didn't. So I
13 don't think I can speculate on the answer to that
14 question.

15 Q. Well, okay. The question I'm asking is
16 and -- well, let me ask the question. Assuming
17 you did not, can you think of any reason as you
18 sit here today as to why you would not have
19 provided that reasonable basis?

20 MR. RIEDERER: Object to the form of
21 the question. You can answer if you can.

22 A. As I mentioned before, there was a --
23 there was a transfer of some responsibility on
24 this file to another attorney, and I don't know
25 when that happened or the details. I'm sorry,

1 that I can't remember a case that happened a
2 couple of years ago. I'm sorry. I don't know all
3 those details.

4 Q. As you sit here -- is it fair to say that
5 as you sit here today, a reason for withholding
6 that information as to the reasonable basis does
7 not occur to you?

8 A. State it again.

9 Q. As you sit here today in your witness
10 seat, no reason occurs to you for the withholding
11 of the information requested in this letter
12 concerning what the reasonable basis was?

13 A. That's right.

14 Q. Now, you're familiar with the Calloway
15 hijacking?

16 A. I'm aware of it. Familiar with it, I
17 don't know.

18 Q. Okay.

19 A. I have done some research on it, but I
20 don't -- I wasn't here then.

21 Q. Well, what do you know about it?

22 A. In the mid-nineties a pilot was coming in
23 for or was scheduled to come in for an
24 investigation into whether he had committed
25 application fraud or something like that. And he

1 took some weapons on board a FedEx airplane as a
2 jumpseater and attacked the crew and was
3 eventually imprisoned. That's a fairly high level
4 summary.

5 Q. Would you agree that it was subsequently
6 determined that Mr. Calloway's intent was to use
7 the plane as a missile to destroy the Company's
8 Memphis sorting facility?

9 MR. RIEDERER: Object to the form of
10 the question.

11 A. You know, I have read a book about the
12 case, and I don't remember if that's in there or
13 not or if I heard it from somewhere else. But
14 your description doesn't sound like it was wholly
15 erroneous, but I don't know if he's admitted it or
16 not, or I don't know how that detail ended up part
17 of the lore.

18 Q. And you said Mr. Calloway had been -- was
19 it notified for a disciplinary investigation?

20 A. Yeah. You're -- you're talking to
21 somebody who wasn't employed here and wasn't
22 familiar with it until I became employed here I
23 think about a decade later. So my information is
24 pretty sketchy, sir. And second or third-hand
25 information.

1 Q. To the best of your -- well, what your
2 understanding is is relevant from our perspective.
3 Your understanding is that he was subject to a
4 disciplinary investigation for résumé fraud; is
5 that right?

6 A. I think that's what I said, and that's
7 what I heard from somebody.

8 Q. Do you know whether he had been terminated
9 at the time of the hijacking?

10 A. My understanding again, second and third-
11 hand information, is that he was still an employee
12 who was going to be examined and questioned about
13 the issue. And before that ever happened, the
14 hijacking took place.

15 Q. Does the issue of or the Calloway incident
16 still come up within management circles and
17 discussions relating to security?

18 A. In response to questions about some
19 policies that are in effect as a result of that
20 horrible incident.

21 Q. So since you have -- since you joined the
22 Company, you have heard -- you have been involved
23 in discussions that relate to the Calloway -- the
24 Calloway incident and its impact on policy at
25 FedEx? I thought that's what I --

1 A. Only specific, not all policies. On
2 specific issues, yes.

3 Q. Okay. And what issues would those be?

4 A. Removing someone's jumpseat travel
5 authority just in an abundance of caution when
6 they are under some kind of disciplinary
7 investigation. And I guess it also, at least in
8 my perspective, has to do with how much security
9 there is around FedEx as an enterprise. Maybe
10 that's just my impression.

11 Q. Why would a -- what is your understanding
12 of jumpseat authority? I think that's the
13 expression you used, jumpseat authority. Could
14 you explain what that means, "jumpseat authority"?

15 A. FedEx pilots have the ability to travel,
16 particularly to commute, to and from where they
17 happen to be to where they need to be for either
18 business or personal purposes. So they can use a
19 FedEx extra seat on the airplane for travel.

20 Q. And under what circumstances would a pilot
21 be deprived of his jumpseat authority?

22 A. There are -- I gather there's several
23 circumstances.

24 Q. Well, what circumstances are you familiar
25 with?

1 A. I don't know that I know them all, but I
2 can give you off the top of my head a list.

3 Q. Okay.

4 A. There are some sick leave issues, if
5 you -- and I don't know the details of when you
6 are able to use the jumpseat privilege, but my
7 understanding roughly is that if you call in sick,
8 you shouldn't be traveling around on a jumpseat.
9 If you are under investigation for a significant
10 matter, then the jumpseat privilege is withheld,
11 and we bring you to the place of the investigation
12 or hearing with commercial airline travel at the
13 Company's expense. If you fail to follow some of
14 the rules associated with jumpseat reservations
15 and cancellations, etc., you can I guess have some
16 loss of jumpseat privileges for some period of
17 time. That's all I can think of off the top of my
18 head.

19 Q. Are you aware of any document that
20 embodies the Company's jumpseat policy and the
21 reasons why someone might lose their jumpseat
22 authority?

23 A. I think so. I think it's in the pilot
24 benefit book there's a jumpseat reference, and
25 online there are places where pilots can go to

1 learn about jumpseat rules and regulations.

2 Q. Now, we received some email correspondence
3 that was produced relating to a Calloway -- a
4 video related to the Calloway incident being shown
5 to pilots. Are you familiar with that video?

6 A. No.

7 Q. Now, you say in the meeting of August 9th
8 that the topic of Auburn Calloway came up. What
9 exactly did Captain Estabrook say relating to
10 Auburn Calloway?

11 A. The way you formed that is difficult.

12 Q. To the best of your recollection.

13 A. Exactly I don't know. I don't recall
14 exactly. I didn't take any notes so...

15 Q. You didn't take any notes?

16 A. I took no notes, and I can recall what I
17 view as the sum and substance of what he said.
18 That's about it. So if you want me to tell you
19 that, I will.

20 Q. Well, I want to -- actually I want to back
21 up. To hear you didn't take notes, did you
22 consider this a meeting of some importance, the
23 August 9th meeting?

24 A. I considered this to be an opportunity for
25 Mr. Estabrook to explain to the security expert in

1 the room what his concerns were, not to be
2 anything that had to do with my usual presence,
3 which has to do with discipline matters.

4 Q. So you took no notes?

5 A. I took no notes.

6 Q. All right. So to the best of your
7 recollection, what did Captain Estabrook say
8 concerning Auburn Calloway?

9 A. Somewhere fairly late into his
10 presentation he brought up the issue of there may
11 be a rumor -- maybe rumor wasn't the word he used,
12 but that was my impression -- that Auburn Calloway
13 had converted to Islam, and it's possible that he
14 may be communicating in some fashion with
15 Al-Qaeda. That's the sum and substance of what I
16 recall.

17 Q. You can't recall anything beyond that?

18 A. Well, I -- I'm sorry. He asked us -- I
19 guess I shouldn't say us -- Mr. Ondra who was the
20 security expert in the room whether or not that
21 was something that could be looked into, and I
22 don't remember the details of that. Now, I think
23 I have covered it all.

24 Q. Okay. Thank you. Did you engage in any
25 effort to research Captain Estabrook's past

1 relationship with Auburn Calloway?

2 A. No.

3 Q. Did you engage in any effort to
4 investigate Captain Estabrook's prior service on
5 Union security committees?

6 A. No.

7 Q. Do you know of anyone else who engaged in
8 research on behalf of the Company concerning
9 Captain Estabrook's past relationship with Auburn
10 Calloway?

11 A. I'm trying to be as precise as I can. I
12 think in connection with defending this AIR-21
13 case that may have been done with the legal
14 department's involvement, but I didn't do it.

15 Q. Well, okay. Do you know -- let me refine
16 my question a little bit. Prior to the issuance
17 of the August 16, 2013, 15.D letter, do you know
18 if anyone from the Company engaged in any research
19 regarding Captain Estabrook's past relationship
20 with Auburn Calloway?

21 A. No.

22 Q. And same question as it relates to his
23 past service as a Union representative -- as
24 chairman of Union security committees, do you know
25 if prior to August -- the issuance of the

1 August 16th 15.D letter whether any management
2 representative engaged in any research concerning
3 his role?

4 A. No.

5 Q. Now, during the August 9th meeting,
6 Captain Estabrook also raised concerns about
7 Al-Qaeda's exploitation of live tracking data
8 released by Federal Express, correct?

9 MR. RIEDERER: Object to the form of
10 the question.

11 A. I don't know about the details of your
12 question. I remember there was a discussion about
13 the live tracking data, but I don't know that -- I
14 don't recall that it was Al-Qaeda in particular or
15 just terrorist organizations in general. Does
16 that --

17 Q. Well, you can only testify as to your
18 recollection. So I can't ask you for more than
19 that. I might ask a few more leading questions to
20 see if I can extract something else. But if you
21 don't know, then you don't know. So isn't it true
22 that Captain Estabrook expressed his concern that
23 the Company's live tracking policies were --
24 actually assisted terrorists in their efforts to
25 use FedEx planes as a delivery system for

1 explosives?

2 A. That topic came up. I don't know that he
3 used the same words you just used. He talked
4 about the ability of terrorists to know when a
5 package leaves and when it arrives, and that's
6 what I recall.

7 Q. You don't recall anything beyond that?

8 A. No, sir.

9 Q. Well, would it be fair to say that Captain
10 Estabrook in the -- in his discussion of live
11 tracking communicated to the Company that FedEx
12 was not engaged in sufficient efforts to deter
13 terrorists from introducing explosives into FedEx
14 aircraft?

15 A. There were comments along that line, as
16 well as acknowledging that he didn't know all the
17 details that perhaps the FedEx Security
18 organization knows that they probably weren't at
19 liberty to disclose. Some conversation along
20 those lines and awareness on his part that
21 there's -- there's a need to keep some stuff
22 within the Security organization and not share it
23 with him or something like that. That's my
24 impression.

25 Q. I'm not sure if I understood that

1 last part. He acknowledged that FedEx could not
2 be completely forthcoming, is that it?

3 A. With him because he was not part of that
4 organization. That's -- that was the impression
5 that I had from what I heard.

6 MR. SEHAM: Off the record for a
7 second.

8 (Brief recess.)

9 BY MR. SEHAM:

10 Q. Mr. Tice, with respect to the August 9,
11 2013, meeting with Captain Estabrook, did you
12 consider that to be disciplinary in nature?

13 A. No.

14 Q. Did you expect Captain Estabrook to bring
15 Union representation along with him to that
16 meeting?

17 A. I didn't expect it. If he had wanted to,
18 it would have been okay.

19 Q. Were you surprised when he came without
20 Union representation or would -- strike that.

21 Did there come a time when you learned
22 that he would not be coming with Union
23 representation?

24 A. I don't remember that detail.

25 Q. Do you recall being surprised that Captain

1 Estabrook did not come with Union representation?

2 A. I don't remember that at all.

3 Q. Can you --

4 A. You know, he mentioned it in his email,
5 but other than that, I don't remember ALPA being a
6 subject in this meeting.

7 Q. Do you participate in pilot disciplinary
8 investigations?

9 A. Yes.

10 Q. Under what circumstances would a pilot
11 bring a Union representative with him to a meeting
12 with management representatives?

13 A. Well, I don't attend all management --
14 flight management meetings with pilots. So there
15 are a lot of opportunities to meet with your
16 manager and not have it be -- have any Union
17 involvement at all. So when I get involved, it's
18 usually because it's a Section 19 case. This was
19 not one of those occasions.

20 Q. My question is under what -- in your
21 experience being involved, specializing in pilot
22 legal issues and the pilot Collective Bargaining
23 Agreement, under what circumstances would you
24 expect a pilot to bring a Union representative to
25 a meeting with management representatives?

1 A. I don't know. They have the right under
2 the CBA to a Union rep if they want it. If they
3 didn't want it, they wouldn't have to.

4 Q. So it sounds like you can't answer the
5 question, but I just want to confirm it. I don't
6 want to beat a dead horse, but you can't -- is it
7 the case that you can't answer the question as to
8 the circumstances under which you would expect a
9 pilot to bring a Union representative to a meeting
10 with management?

11 A. Would not expect?

12 Q. Where you would expect.

13 A. Would expect that there would be no Union
14 rep? You're going to have to rephrase it.

15 Q. I will try again. I will try again. Are
16 there -- can you answer this question: Are there
17 circumstances or -- strike that.

18 What are the circumstances under which
19 you would expect a pilot to bring Union
20 representation to a meeting with management
21 representatives?

22 A. If it was a disciplinary meeting, I would
23 expect that there would be a Union representative
24 present.

25 Q. Okay. Thank you. Any other circumstances

1 that occur to you?

2 A. You're kind of asking me to free
3 associate. I can't think of anything.

4 Q. Thank you.

5 (Whereupon, a document was marked as
6 Exhibit BB.)

7 Q. Okay. I have given you a document that
8 has been Bates stamped FDX 4, pages 51 and 52, and
9 the top email indicates from Robb Tice to Terry
10 McTigue, Sago, Latasha with copies to Rob Fisher
11 and Cindy Sartain. Is this an email that you sent
12 on August 7, 2013.

13 A. Yes.

14 (Whereupon, a document was marked as
15 Exhibit CC.)

16 Q. I have handed you a Company privilege log
17 related to its September 25, 2015, production.
18 You know what, I'm not going to ask any questions
19 on that for now, and I may not at all.

20 All right. To get an overview of this
21 August 9th meeting, the first issue that came up
22 was Captain Estabrook's presentation of his
23 concerns relating to live tracking, correct?

24 A. I don't remember if he -- if he gave a
25 biographical summary of his involvement. I just

1 don't know -- that kind of rings a bell with me a
2 little bit maybe that took place first. I don't
3 know. I can't remember.

4 Q. So you don't know what happened first?

5 A. That's right.

6 Q. Okay. When the meeting -- you say
7 Mr. Ondra left before the meeting had concluded,
8 correct?

9 A. I think the last thing we did was the
10 Mayday Mark stuff. So I don't -- any security-
11 related issues I believe Mr. Ondra was there for
12 the entire time.

13 Q. What I'm getting to is more -- and I'm not
14 at this point harping on the duration of his
15 absence, but rather the fact that when the meeting
16 was completed, Mr. Ondra was not there, correct?

17 A. Yes.

18 Q. And so there were just three people in the
19 room when the meeting came to its conclusion, you
20 and Captain Fisher and Captain Estabrook, correct?

21 A. I can't recall anybody else joining that
22 threesome.

23 Q. And at that point Captain Fisher actually
24 made a decision to restore Captain Estabrook to
25 flight status; isn't that correct?

1 A. Yes.

2 Q. And did you concur in that decision?

3 A. I had no objection to it.

4 Q. So is it fair to say that Mr. Ondra and
5 Captain McDonald overruled the decision of Captain
6 Fisher to restore Captain Estabrook to flight
7 status?

8 A. I believe that -- I don't know the process
9 that took place after I spoke with Captain Fisher
10 having previously just gotten a call from Todd
11 Ondra. I communicated to Rob Fisher what Todd
12 Ondra's concerns were.

13 Q. Okay.

14 A. And then as I think everybody knows, there
15 was a decision to take him back away from flight
16 status pending a 15.D medical evaluation.

17 Q. And who made that decision?

18 A. I believe his flight manager did, Rob
19 Fisher, but again I don't know what the
20 interaction was between Fisher and McDonald on
21 the -- on the question.

22 Q. So the sequence was the meeting was over,
23 Captain Estabrook was restored to flight status,
24 and then you got a call from Mr. Ondra?

25 A. I don't know the period of time that

1 elapsed, but I was back in my office when I got
2 the call here at the Hacks Cross campus, and the
3 meeting had been at the AOC at the airport. So
4 whatever period of time it takes to drive between
5 here and there was at least the period of time
6 that elapsed.

7 Q. When Mr. Ondra called you, did he already
8 know that Captain Estabrook had been restored to
9 flight status?

10 A. I don't believe he did. I think he was
11 calling me to ask the current status, and I told
12 him.

13 Q. And did he express alarm?

14 A. He expressed his view that I testified to
15 earlier that there should be consideration given
16 to an evaluation based on the Auburn Calloway/
17 Al-Qaeda communication issue that I discussed
18 earlier.

19 Q. And what kind of evaluation? Was that the
20 term he used, "evaluation"?

21 A. I don't remember the terminology used, but
22 he asked that -- isn't there something that can be
23 done from a medical evaluation standpoint. Words
24 to that effect.

25 Q. And then what -- what action did you take

1 after that?

2 A. I believe I shortly thereafter called Rob
3 Fisher.

4 Q. Did you have any exchanges with Captain
5 McDonald?

6 A. Not that I can recall. I could have, but
7 I just don't recall.

8 Q. And so after your conversation with
9 Mr. Ondra, you contacted Captain Fisher and
10 relayed the concerns that Mr. Ondra had
11 communicated to you?

12 A. Yes.

13 Q. And what did you relay as Mr. Ondra's
14 concerns to Captain Fisher?

15 A. Just what I testified to before today I
16 think.

17 Q. Well, yeah, but now I'm asking -- you
18 know, they talk about the game of telephone that
19 sometimes you get a message from one person, you
20 pass it on to another, it can change. So it is a
21 similar question, but it is distinct if you
22 understand my meaning that I'm asking what did you
23 communicate to Captain Fisher with respect to
24 Mr. Ondra's concerns?

25 A. Again that Mr. Ondra had concerns about

1 the Auburn Calloway/Al-Qaeda information that
2 Captain Estabrook had provided which gave him
3 concerns about whether or not there is a need for
4 a medical evaluation of Captain Estabrook. And
5 that in light of that input from a participant in
6 the meeting who has, you know, special security
7 expertise, perhaps we should revisit the issue of
8 whether he should be returned to flight status,
9 notwithstanding that he had been told that he
10 would, and the conversation with Rob Fisher
11 consisted of that information.

12 Q. Okay. And then Captain Fisher told you
13 that he would initiate a 15.D evaluation at that
14 point?

15 A. I don't remember if he said he was going
16 to talk to his boss or not, but that he certainly
17 appreciated Todd Ondra's concerns being expressed,
18 and he wished that he had -- we had had a
19 debriefing there and then, instead of him having
20 to leave for another meeting.

21 Q. So you don't recollect Captain Fisher
22 coming to a final determination in the course of
23 your phone call?

24 A. I'm sorry, I am just not positive about
25 that. I can't recall if he reluctantly said I

1 guess this is what we need to do or not. I just
2 don't remember.

3 Q. And I apologize if I have asked you this
4 before, but at the time of the August -- let's put
5 the date August 16th, 2013, determination, you had
6 no knowledge of the scope of Captain Estabrook's
7 service as a Union representative, correct?

8 A. No. The only thing I had was on the
9 email.

10 Q. Okay.

11 A. Well, let me say that whatever he said in
12 the meeting on August 9 about his involvement, I
13 just don't remember the details of that. But as I
14 said before, I think he gave some kind of bio of
15 his involvement, but I had no knowledge from any
16 other source.

17 Q. And you didn't conduct any investigation
18 on your own?

19 A. Correct.

20 Q. Are you familiar with the acronym AWACS,
21 A-W-A-C-S, as it is used in the United States Air
22 Force?

23 A. I have heard it. I don't know what the
24 acronym stands for. It's a big airplane in the
25 sky.

1 Q. Yeah. That's about what I know. Well,
2 beyond that, do you know it to be an aircraft that
3 engages in aerial surveillance of enemy aircraft?

4 A. I don't know if that's what it does or if
5 that's all it does.

6 Q. Okay. Now, isn't it true that Captain
7 Estabrook referenced at the August 9th meeting
8 that his military service had included service on
9 an AWACS aircraft surveilling Russian bombers?

10 A. You know, I don't remember the details of
11 what he said his military service was. I know
12 he -- I seem to have some recollection of the
13 North Atlantic being referenced, but I don't know
14 beyond that.

15 Q. And again I apologize if I asked you, you
16 never -- prior to the decision or the issuance of
17 the August 16, 2013, 15.D letter, you never took
18 any action to investigate or research his military
19 service, correct?

20 A. No, sir. I did not. I could...

21 Q. I'm going to ask you to look at Exhibit K.

22 MR. RIEDERER: What is that exhibit?

23 MR. SEHAM: That's the notes, Ondra
24 notes. K as in kangaroo.

25 MR. RIEDERER: Go ahead. I know what

1 they are.

2 BY MR. SEHAM:

3 Q. Okay. I'm going to have you look about a
4 little over a third down the page to these notes
5 that begin with "I have chased around Russian,
6 etc." Do you see that?

7 A. Is that what that word is Russia?

8 Q. Well, that's how I read it. But maybe I
9 will just use this to see if I can refresh your
10 recollection. Would you agree or isn't it true
11 that Captain Estabrook stated during the
12 August 9th, 2013, meeting that his military and
13 service involved chasing around Russians?

14 A. Again you're asking me questions about
15 something that happened two and a half years ago
16 or whatever it is, and I didn't take notes and I
17 don't remember that. But if these are Todd
18 Ondra's notes, and I think they are, I don't think
19 he took anything down that wasn't said. So I'm
20 not -- I'm not going to vouch for everything that
21 he wrote in here, but I don't have any reason to
22 disagree with that. I just don't remember.

23 Q. Do you have any specific recollection of
24 any comments by Captain Estabrook relating to
25 Russians?

1 A. This page 1 confirms my recollection that
2 he gave a bio. I already testified to that. I
3 don't remember much more than that.

4 Q. Okay. And I don't mean to try your
5 patience, I really don't, but the specific
6 question that I want an answer to is, do you have
7 any recollection of Captain Estabrook making
8 comments relating to Russians or Russia?

9 A. No.

10 Q. Now, you're familiar with the acronym
11 OSHA?

12 A. Yes.

13 Q. And do you know what that stands for?

14 A. Yes.

15 Q. What does it stand for?

16 A. Occupational Safety and Health
17 Administration I think.

18 Q. And you know that they have conducted --
19 that they conducted an investigation related to
20 this matter, correct?

21 A. Yes.

22 Q. And are you aware that they at some point
23 interviewed a FedEx management representative?

24 A. I don't know the details. I wouldn't be
25 surprised. I just don't remember.

1 Q. Were you ever interviewed by an OSHA
2 investigator?

3 A. Boy, I'm sorry, I do not recall this. I
4 could have been. I just don't remember. I know
5 that I was talking to the attorney handling the
6 file at the time, and I just don't remember being
7 on the phone or -- maybe I was in a room with
8 them. I just -- sorry, I just don't remember. If
9 you have got something that shows I was, I will be
10 glad to search my memory.

11 Q. No. In fact, I don't. So my -- I
12 anticipated the answer that no, you weren't
13 investigated. But you just don't recall one way
14 or the other? And I don't want to -- okay.

15 A. I don't -- I'm having a hard time
16 remembering whether I was told stuff by David Knox
17 about the investigator. I just don't remember.

18 MR. RIEDERER: Robb, just answer the
19 question. If you remember, you remember. If you
20 don't, you don't.

21 Q. And so you don't know -- you don't have
22 any recollection of who or if anybody was
23 interviewed by OSHA investigators?

24 A. No, sir.

25 MR. SEHAM: Same as the last two --

1 off the record.

2 (Brief recess.)

3 BY MR. SEHAM:

4 Q. I believe I only have one more question
5 for you. Isn't it true that at the August 9th
6 meeting that you said to Captain Estabrook that
7 Bob McDonald --

8 CAPTAIN ESTABROOK: No, Bill.

9 Q. Bill, excuse me. That Bill McDonald
10 thinks you had a stroke?

11 A. I don't remember that. I don't remember
12 that.

13 Q. Okay. Do you exclude it as a possibility
14 or you just don't remember?

15 A. I just don't remember. I don't exclude it
16 as a possibility.

17 MR. SEHAM: Pass the witness.

18 MR. RIEDERER: I have no questions.

19 MR. SEHAM: Thank you very much.

20 Sorry it took so long.

21 (Deposition concluded at 11:55 a.m.)

22 AND FURTHER DEPONENT SAITH NOT

23 (Signature waived)

24

25

1 COURT REPORTER'S CERTIFICATE

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3 COUNTY OF SHELBY:

4 I, SHERYL G. WEATHERFORD, LCR #027, CSR, RPR,
5 and Notary Public, Shelby County, Tennessee,
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26 SHERYL G. WEATHERFORD
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28 Tennessee Licensed Court Reporter
29 #027, Arkansas Certified Court
30 Reporter #500, Notary Public
31 for the State of Tennessee at
32 Large ***33 My commission expires:
34 June 5, 2016

35