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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 FISHER

March 24, 2016

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

1 The deposition of ROBERT FISHER, 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 1:10 p.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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Reported by:

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1 ROBERT FISHER

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

4 EXAMINATION

5 BY MR. SEHAM:

6 Q. Good afternoon, Captain Fisher. My name
7 is Lee Seham. I'm with the law firm of Seham,
8 Seham, Meltz & Petersen. We're representing
9 Captain Estabrook in this lawsuit. And today I'm
10 going to be asking you questions which you will be
11 responding to under oath concerning his AIR-21
12 litigation. Do you understand that?

13 A. Yes.

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

18 A. I do.

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

23 A. Yes.

24 Q. Okay. And please speak slowly and clearly
25 so that the court reporter can take down what you

1 say. Do you understand that?

2 A. Yes.

3 Q. And do you understand that your testimony
4 today is given under oath as if you were in a
5 court of law?

6 A. Yes.

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

12 A. Yes.

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

17 A. Yes.

18 Q. Have you ever testified in court before?

19 A. Yes.

20 Q. What proceeding?

21 A. It was for an Airbus landing incident.

22 Q. How long ago was that?

23 A. It was between 2000-2005.

24 Q. Oh, somewhere in a 5-year --

25 A. Sorry.

1 Q. That's the best you can recall. Okay.

2 And other than that, have you ever testified in
3 court?

4 A. No.

5 Q. Do you understand that you have sworn to
6 tell the truth, and if you fail to do so, there
7 should be -- there could be, excuse me, adverse
8 consequences?

9 A. Yes.

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

13 A. No.

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

16 A. No.

17 Q. Are you currently -- let me -- strike
18 that.

19 Do you understand everything I have said
20 up until now?

21 A. Yes.

22 Q. Please state your current name.

23 A. Robert Edward Fisher.

24 Q. Have you ever been known by any other
25 name?

1 A. Rob.

2 Q. But always the same last name, correct?

3 A. Yes.

4 Q. Did you review any documents to prepare
5 for your deposition today?

6 A. Yes.

7 Q. What documents were those?

8 A. There were some documents that -- email
9 documents between myself and certain people in the
10 Company and Mr. Estabrook.

11 Q. Can you tell me what time frame those
12 emails were exchanged in?

13 A. It would have been sometime in 2013.

14 Q. It would be --

15 A. It would be April and August time frame in
16 2013.

17 Q. So you reviewed emails from April and
18 August 2013. Were there any other documents you
19 reviewed in preparation for today?

20 A. I wouldn't say from that time frame. It
21 was during a certain time frame in April and a
22 certain time frame in August 2013.

23 Q. Fine. Fine. That's what I understood.
24 And were there any other documents that you
25 reviewed?

1 A. No.

2 Q. Did you talk to anyone besides your
3 attorney about your deposition?

4 A. No.

5 Q. What position do you currently hold with
6 Federal Express?

7 A. Currently I am the System Chief Pilot.

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

9 A. Since March of 2015. One year.

10 Q. And what was your position prior to that?

11 A. Prior to that, I was the Assistant System
12 Chief Pilot.

13 Q. The assistant assistant chief pilot?

14 A. The assistant -- I know it sounds like
15 that. Assistant system.

16 Q. Oh, I'm sorry.

17 A. The assistant to the --

18 Q. I misheard. The Assistant System Chief
19 Pilot. When did you assume that position?

20 A. I assumed that position in 2014.

21 Q. Do you recall what month?

22 A. I don't remember. It would have been
23 earlier than the half of 2014. Right around the
24 mid-2014 time frame.

25 Q. And prior to that, what position did you

1 hold?

2 A. I was the Airbus fleet captain.

3 Q. And when did you assume that position?

4 A. I assumed that position in 2011.

5 Q. And is that the position that you would
6 have held throughout the year of 2013?

7 A. Yes.

8 Q. Airbus fleet captain?

9 A. Yes.

10 Q. So what were your job responsibilities as
11 Airbus fleet captain?

12 A. Maintain safe, legal, efficient operations
13 for my fleet. Also handle any disciplinary issues
14 with the 950 some pilots at that time, crewmembers
15 of the -- and then also any personnel issues.

16 Q. What do you mean by "personal issues"?

17 MR. RIEDERER: Did you say personal
18 or personnel?

19 Q. Oh, personnel.

20 A. Yeah, personnel issues.

21 Q. Oh, okay. Maybe I misheard again. How
22 long have you been with FedEx?

23 A. Twenty-six years.

24 Q. Whoa. Excuse me. What year did you
25 start?

1 A. 1990.

2 Q. Could you give us a brief -- so we have
3 been working backwards. We could reverse
4 direction and starting with 1990 give us a brief
5 chronology of your positions over the years.

6 A. Okay. 727 second officer from 1990 to
7 1994. 1995 Airbus first officer, and then I moved
8 to the Philippines for '95 to 2005.

9 Q. Still working with FedEx?

10 A. Yes. Yes. And then we had a -- and
11 then --

12 Q. What was your position in -- while you
13 were in the Philippines?

14 A. I was a first officer, moved to a captain
15 in '98 while I was out there, Airbus. And then I
16 was the Chief Pilot for the Asia Pacific Region
17 from 2000 to 2015.

18 Q. Chief Pilot for Pacific Region?

19 A. It's Asia Pacific, Subic Bay. It was for
20 Subic Bay, Philippines. And then moved back in
21 2005, and in 2007 I was a duty officer until 2011.

22 Q. Now, so you would have entered the ranks
23 of management as of the year 2000; is that
24 correct?

25 A. Yes.

1 Q. And prior to that you were a -- if the
2 term is correct, you were a line pilot?

3 A. Yes.

4 Q. And during the years that you were a line
5 pilot, were you ever a member of a labor union?

6 A. Yes.

7 Q. What labor union were you a member of?

8 A. ALPA.

9 Q. ALPA. Were you also at any time -- I'm
10 struggling with the time frame here, but were you
11 ever at -- also a member of the Fedex Pilots
12 Association?

13 A. No.

14 Q. Are you familiar with that organization?

15 A. Not really.

16 Q. Would you agree with me that at some point
17 it was the representative of -- the certified
18 collective bargaining representative of the FedEx
19 pilots?

20 A. It was there before ALPA. Yes. I don't
21 have much information. I don't remember.

22 Q. Would you agree that its function was the
23 same as ALPA in that it was the collective
24 bargaining representative of the pilot?

25 A. Yes, for what I know.

1 MR. RIEDERER: Be sure to let him
2 finish his question before you answer so the court
3 reporter can type down what everyone says.

4 A. Sure. Yeah.

5 Q. Now, as the Airbus fleet captain, were you
6 required to be knowledgeable of Federal Aviation
7 Regulations governing the operation of FedEx
8 aircraft?

9 A. Yes.

10 Q. And did you have any responsibility for
11 the operational safety of FedEx aircraft?

12 A. Yes.

13 Q. And what does -- what did that include
14 during the time frame of the year 2013 in terms of
15 your responsibilities relating to the operational
16 safety of FedEx aircraft?

17 A. Any time it was brought to my attention or
18 I noticed anything that was unsafe within my
19 fleet, either by my boss or other sources, I was
20 to address it.

21 Q. And that would include determining pilot
22 proficiency?

23 A. Yes.

24 Q. Including determining whether they were
25 fit to fly?

1 A. Yes.

2 Q. Did you get involved in issues relating to
3 whether weather conditions might dictate either
4 the rerouting or the termination of a flight?

5 A. I did not make the decisions of whether an
6 airplane was rerouted unless I was actually flying
7 the airplane.

8 Q. Pilots themselves become involved in
9 rerouting decisions?

10 A. They do. They have sources they have to
11 talk to.

12 Q. Was the ultimate decision on rerouting the
13 decision of the pilot?

14 A. It's a joint responsibility, but
15 ultimately the captain has the final say.

16 Q. Would you agree that Federal Aviation
17 Regulations require a pilot in command to avoid
18 operating an aircraft in hazardous weather
19 conditions?

20 A. Yes.

21 Q. Would you agree with me that Federal
22 Aviation Regulations prohibit a pilot from
23 departing from an airport if that would require
24 him or her to fly into hazardous weather
25 conditions?

1 A. Could you repeat that, please.

2 Q. Would you agree that the Federal Aviation
3 Regulations -- well, actually I think I did all
4 right the first time. So if I can defer to you
5 because I will probably mess it up.

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

8 A. That's true. You would not flight plan
9 through hazardous weather conditions.

10 Q. Now, were you involved in the
11 investigation of Captain Estabrook's refusal to
12 depart from Laredo on or about April 10, 2013?

13 A. I was involved in a fact-finding meeting
14 to find out why he didn't show up for work on time
15 that day.

16 Q. Can you describe the weather conditions
17 that existed on the flight route that had been
18 assigned to Captain Estabrook that day in his
19 departure from Laredo?

20 A. I cannot. I can -- no, I cannot. I know
21 there was a line of thunderstorms over the
22 destination.

23 Q. Who directed you to conduct that
24 investigation?

25 A. My boss, the System Chief Pilot Bill

1 McDonald. It was not investigation, by the way.

2 It was a fact-finding meeting.

3 Q. It was not an investigation you say?

4 A. That's correct.

5 Q. Could you refer to Exhibit W. It's
6 paginated below ME 62. It's a letter on FedEx
7 letterhead dated April 23, 2013. Captain, did you
8 write this letter?

9 A. Yes.

10 Q. And you sent this letter to Mark
11 Estabrook?

12 A. Yes.

13 Q. And you advised him that he would be
14 subject to an investigative interview, correct?

15 A. Correct.

16 Q. Could you look at Exhibit V as in Victor.
17 Do you have that in front of you?

18 A. Yes.

19 Q. You can see it's an email dated April 29,
20 2013, from you to Katherine Walker. Do you know
21 who Katherine Walker is?

22 A. I don't recall.

23 Q. Would it refresh your recollection if I
24 told you that she was a paralegal working for Alan
25 Armstrong? Well, let me actually withdraw that

1 question. Do you know who Alan Armstrong is?

2 A. I -- no.

3 Q. Captain Fisher, did you write and send
4 this email that's been identified as Exhibit V as
5 in Victor?

6 A. Yes.

7 Q. And, Captain Armstrong [sic], you see
8 below it refers -- with a Katherine Walker entry
9 it says, "please see attached letter." Her email
10 and your email are both dated April 29th. If you
11 see, I'm going to refer you to the fact that this
12 is paginated FDX 4, page 7. Do you see that at
13 the bottom?

14 A. Yes.

15 Q. Okay. And if you could, look at Exhibit R
16 as in rooster.

17 A. Okay.

18 Q. Would you agree that Exhibit R was
19 attached to the email that Katherine Walker sent
20 you on April 29th?

21 MR. RIEDERER: Can you repeat that --
22 or can you read back that question?

23 (The requested portion of the record
24 was read by the reporter.)

25 A. Yes.

1 Q. Okay. Okay. So I imagine it follows like
2 the dawn follows the night, but with respect to
3 Exhibit R, you did receive that letter from
4 Mr. Armstrong?

5 A. Yes.

6 Q. And did this refresh your recollection to
7 the effect that Alan Armstrong served as Captain
8 Estabrook's legal representative?

9 A. Okay. Yes.

10 Q. And did you read this letter when you got
11 it?

12 A. Yes.

13 Q. And, in fact, you're -- V, going back to
14 Exhibit V as in Victor, that was your response to
15 Katherine Walker -- well, strike that.

16 You advised Ms. Walker that Alan
17 Armstrong would not be permitted to attend the
18 disciplinary processes under Section 19 of the
19 FedEx ALPA Collective Bargaining Agreement,
20 correct?

21 MR. RIEDERER: Object to the form of
22 the question.

23 A. Correct.

24 Q. I didn't hear your answer. Did you get
25 that?

1 COURT REPORTER: Yes.

2 Q. And why did you tell -- why did you tell
3 Ms. Walker that Alan Armstrong would not be
4 permitted to attend?

5 A. Under advisement of my attorneys, legal
6 advice.

7 Q. You didn't have any independent reason;
8 you just followed advice you got?

9 A. That is true.

10 Q. Okay. And who was advising you at that
11 time?

12 A. Mr. Robb Tice.

13 Q. Now, prior to -- you did ultimately have a
14 face-to-face meeting with Captain Estabrook?

15 A. Yes.

16 Q. And prior to your interrogation of Captain
17 Estabrook, what steps did you take to ascertain
18 the weather conditions that prevailed at the time
19 of Captain Estabrook's departure from Laredo?

20 A. I received an email from the duty officer
21 that explained the event.

22 Q. Did that email explain the weather
23 conditions that were prevailing at the time?

24 A. Yes. I believe so.

25 Q. I'm going to go back to the answer you

1 gave me before. It was Bill McDonald who directed
2 you to have this interview with Captain Estabrook,
3 correct?

4 A. Yes.

5 Q. And was that by telephone?

6 A. I don't recall.

7 Q. Can you recall any of the content of the
8 communication from Captain McDonald to you
9 concerning this request to investigate?

10 A. Just that, you know, we have to talk to
11 Mr. Estabrook to let him know that we have to show
12 up to work on time.

13 Q. Did you listen to any recorded
14 conversations prior to your meeting with Captain
15 Estabrook on the Laredo departure issue?

16 A. Yes.

17 Q. What recorded conversations did you listen
18 to?

19 A. There was a recorded conversation between
20 Mr. Estabrook and the dispatcher, GOC dispatcher,
21 and there was a conversation between Mr. Estabrook
22 and the duty officer, as I recall.

23 Q. And do you recall the name of the GOC
24 dispatcher?

25 A. Her name was Sherrie?

1 Q. Yes. Sherrie. Oh, you don't -- do you
2 recall a last name? Could it be Hayslet?

3 A. That's it.

4 Q. And the duty officer his name was?

5 A. Mark Crook.

6 Q. And how many total conversations was it --
7 was it one for each, was it multiple
8 conversations?

9 A. I don't recall.

10 Q. And what do you recall concerning -- and
11 you listened to these before you met with Captain
12 Estabrook, correct?

13 A. Yes.

14 Q. What do you recall from the conversation
15 between Captain Estabrook and Sherrie Hayslet?

16 A. I recall that there was not enough -- not
17 enough information there for me to make a
18 determination about whether or not Mr. Estabrook
19 had communicated whether he should -- whether or
20 not he was going to be at work or not.

21 MR. SEHAM: I'm sorry, can you read
22 back the response?

23 (The requested portion of the record
24 was read by the reporter.)

25 Q. Okay. Isn't it true that in the

1 conversation, in the recorded conversation with --
2 between Captain Estabrook and Sherrie Hayslet that
3 Captain Estabrook advised her that he would be
4 remaining at the hotel with his crew until the
5 weather cleared?

6 A. You know, yeah, I don't recall. But I do
7 know there was enough question to know that there
8 was a misunderstanding possibly between the two
9 entities.

10 Q. Isn't it true that Ms. Hayslet told
11 Captain -- agreed that Captain Estabrook could
12 remain at the hotel pending the clearance of the
13 weather?

14 A. Like I said, if I were to ask GOC, that
15 wasn't their recollection. Then I talked to
16 Mr. Estabrook, that was his recollection. So that
17 was why we got together and talked.

18 Q. Well, didn't the audio tapes clarify that?

19 A. It did not clarify that.

20 Q. And what do you recall from your audio
21 tapes with Mark Crook?

22 A. I don't recall. I mean, I can tell you
23 about what I think it was -- as I recall, you
24 know, you need to come to work. You know, you
25 need to be at the airplane.

1 Q. I'm sorry, that's what you heard on the
2 tape with Mark Crook?

3 A. That's what I recall. It's a long time
4 ago.

5 Q. Isn't it true that in the course of your
6 investigation you reached the conclusion that the
7 GOC dispatcher had agreed that Captain Estabrook
8 could remain at the hotel?

9 A. No. That is not true.

10 Q. What is not true?

11 A. Can you restate your question?

12 MR. SEHAM: If you would for me,
13 please.

14 (The requested portion of the record
15 was read by the reporter.)

16 A. No. The -- what -- the conclusion I came
17 to was that there was a miscommunication between
18 the two.

19 Q. And do you have and --

20 A. So Ms. Hayslet did not agree with that
21 conversation. That was not how she saw it.
22 Mr. Estabrook that's how he saw it. So my
23 position was, you two did not communicate
24 correctly.

25 Q. And the audio tapes didn't clarify one way

1 or the other who -- who was correct?

2 A. There was enough question where I couldn't
3 come to a conclusion.

4 Q. Okay. I'm going to hand you a document
5 that will be marked as Exhibit DD, double D.

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

8 Q. I'm going to refer you down to the second
9 email on this thread. It's from Rob Fisher to
10 William McDonald with copies Mitch Matheny, Rob
11 Fisher, Cindy Sartain. Is that an email that you
12 authored on or about May 1, 2013?

13 A. Yes.

14 Q. And if you go down to one, two, three,
15 four, five -- the sixth paragraph, which begins:
16 "We told Mark that despite the fact that the
17 dispatcher agreed with him to stay in the hotel."

18 A. Yeah, that's -- that's -- let me read this
19 totally first.

20 (Witness reviews document.)

21 Okay. So despite the fact that Mark
22 thought that this dispatcher agreed with him to
23 stay in the hotel, like I said, there was -- I had
24 no -- the information I had from the recording I
25 could not make that determination. So from his

1 point of view, the point I was trying to make is,
2 Mark believed that's what happened, and I told
3 him, I said, Mark, unless you get your schedule
4 re -- you know, have the times changed on it, you
5 have to show up for work when it is -- you're
6 supposed to show up. No one is forcing you to fly
7 the airplane, but you have to show up on time.

8 So you telling them I'm not going to show
9 up, I'm pretty sure the dispatcher probably
10 thought that he was going to stand by the airplane
11 and not takeoff, which is what a dispatcher would
12 agree with that. I don't think -- I don't believe
13 the dispatcher ever believed he was still in the
14 hotel is -- you know, I -- that's kind of what I
15 think I got from her end, and I believe
16 Mr. Estabrook thought that she said you could stay
17 in the hotel. So there's why they're
18 miscommunicating.

19 Q. As far as you were concerned, that was a
20 good faith belief on Captain Estabrook's part?

21 A. I believe it was. It was enough -- not
22 enough evidence for me to believe otherwise.

23 Q. Didn't you tell Captain Estabrook after
24 the conclusion of the investigation that the tapes
25 had saved him?

1 A. I don't recall that.

2 Q. Do you exclude that as a possibility that
3 you said that?

4 A. I would not exclude that as a possibility.

5 Q. Okay. Did you talk to Captain McDonald in
6 the aftermath of your investigation?

7 A. I believe this was the email I wrote to
8 him. Yeah, this is the email I wrote. I don't
9 recall calling him prior to writing this email to
10 him.

11 Q. Now, isn't it true that Captain Estabrook
12 told you that he was being pressured by Mark Crook
13 to depart into hazardous weather conditions?

14 A. I recall him saying that, yes.

15 Q. And did you determine that that was a good
16 faith belief on his part as well?

17 A. I determined that he didn't understand
18 what Captain Mark Crook was asking of him.

19 Q. That's not responsive to my question. My
20 question, did you make a determination that
21 Captain Estabrook -- whether or not it was true
22 that Mark Crook was pressuring him, did you
23 conclude that Captain Estabrook believed in good
24 faith that Mr. Crook was pressuring him to depart?

25 MR. RIEDERER: Object to the form.

1 You can answer.

2 A. Well, I believe that Mark Estabrook
3 thought he was being pressured, that is correct.

4 Q. To fly into hazardous weather conditions?

5 A. Yes.

6 Q. Now, and you recall what he based that on,
7 his belief?

8 A. I think he, as I recall, based it on the
9 fact that he had to be -- Captain Crook told him
10 you need to be at the airplane on time, and I
11 think he may have misconstrued that as on time
12 meaning being at Memphis on time. Taking off on
13 time, you know, everything. That wasn't the
14 message that Duty Officer Mark Crook was giving
15 him.

16 Q. What I'm asking you is, do you have a
17 specific recollection of what evidence was adduced
18 by Captain Estabrook to establish his position
19 that he was being pressured improperly by Captain
20 Crook?

21 MR. RIEDERER: Object to the form of
22 the question.

23 Q. Do you need that read back to you?

24 A. I do.

25 (The requested portion of the record

1 was read by the reporter.)

2 A. You have to rephrase the question.

3 Q. Let me break it down then. Captain
4 Estabrook expressed to you his position that
5 Captain Crook was pressuring him to fly into
6 hazardous weather conditions, correct?

7 A. Correct.

8 Q. Right. And though you ultimately
9 disagreed with Captain Estabrook, you consider him
10 to express a good faith belief that --

11 A. Absolutely. Yes.

12 Q. What evidence did Captain Estabrook offer
13 to you or do you have -- let me strike that.

14 Do you have a recollection of what
15 evidence or statements reported with respect to
16 Captain Crook that Captain Estabrook offered to
17 substantiate his position?

18 A. I just don't recall.

19 Q. Okay. That's fine. Isn't it true that
20 you told Captain Estabrook after the conclusion of
21 your investigation of this matter that you were
22 going to counsel Captain Crook?

23 A. I don't recall.

24 Q. Do you exclude that as a possibility?

25 A. I would not exclude it.

1 Q. Let's see, is it true that the FedEx
2 Flight Operations Manual or FOM prohibits a pilot
3 in command from flying FedEx aircraft directly
4 into thunderstorms or known severe turbulence?

5 A. That is true.

6 Q. And the FOM that is required to be
7 approved by the Federal Aviation Administration,
8 correct?

9 A. Most of the FOM, yes.

10 Q. Did you recently develop, Captain Fisher,
11 a ground delay program to better manage traffic
12 into Memphis and Indianapolis?

13 A. Did FedEx Express or did I personally?

14 Q. Well, FedEx. Did FedEx develop such a
15 program?

16 A. I don't know if it's been recent, but we
17 have always had a ground delay program. ATC runs
18 that program, air traffic control, the FAA.

19 Q. You're not -- you're not aware of any
20 recent developments in this area then?

21 A. No. I mean, we are constantly developing
22 better programs through the FAA. I'm not --
23 that's not my area.

24 Q. Isn't it true that on April 10th Captain
25 Estabrook -- April 10, 2013, was under an air

1 traffic control gate hold by Memphis center and
2 Laredo?

3 A. I believe that is true.

4 Q. And isn't it true that the duty officer in
5 the audio tapes directed Captain Estabrook that he
6 should depart for Memphis?

7 A. That is not true.

8 Q. Were you aware that GOC had originally
9 issued Captain Estabrook a flight release with the
10 alternate airport on the eastern or opposite side
11 of the line of thunderstorms?

12 A. I don't recall that.

13 Q. Who has the -- with respect to a flight
14 release, who has the ultimate decision-making
15 authority on whether a FedEx aircraft will fly to
16 its destination?

17 A. It is a joint responsibility between the
18 captain and the dispatcher.

19 Q. And does each have veto power in terms of
20 that release?

21 A. They have to come to a conclusion, a
22 decision. I would say if one said no, typically
23 it would be no.

24 Q. Can a flight -- can a FedEx duty officer
25 order a captain to fly or operate a flight if the

1 captain decides it's unsafe?

2 A. Absolutely not.

3 Q. Would you agree that FedEx has an
4 obligation under federal law to defer to the
5 safety determinations of a pilot in command of a
6 particular aircraft?

7 A. Yes. The captain in the end has the
8 ultimate responsibility.

9 Q. And are there Federal Aviation Regulations
10 that you're knowledgeable of that govern an air
11 carrier's obligation to maintain the physical
12 security of the aircraft?

13 A. The physical security of the aircraft,
14 the -- you're talking about -- are we talking
15 about security now or -- I'm not --

16 Q. Let's narrow it to the -- in terms of
17 access to the aircraft, unauthorized access to the
18 aircraft.

19 A. Yes. There are rules governing who can
20 and who cannot get in the airplane.

21 Q. And if I can refer to Federal Aviation
22 Regulations as FARs, those include an obligation
23 of an air carrier to deter the introduction of
24 explosive devices into the aircraft, correct? If
25 you know. If you don't know --

1 A. I don't know if there's -- I'm sure
2 there's something there, yes, but I don't know of
3 that one. It certainly would make sense. Did you
4 say you can't bring -- I'm not sure what the
5 question is.

6 Q. I will accept your answer that you don't
7 know, but if you want to take another shot --

8 A. I don't know. Yeah.

9 Q. Okay. That's fine. I'm going to --

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

12 Q. I have handed you a document that is dated
13 January 15th on Federal Express stationery. It's
14 signed by David Knox on page 6. It's a six-page
15 letter. It's addressed to Lee Seham. Before I
16 ask you a question about this specific document,
17 you attended a meeting in Memphis on August 9,
18 2013, with Mr. Robb Tice and Todd Ondra and
19 Captain Mark Estabrook, correct?

20 A. Correct.

21 Q. And during that meeting Captain Estabrook
22 raised concerns related to the dissemination of
23 live tracking information for packages and
24 aircraft by Federal Express, correct?

25 A. That is correct.

1 Q. And if you look at the -- now at this
2 document we have identified as double E, EE, and
3 look at the language to the right RFA 8-11, the
4 second sentence reads: "FedEx admits Complainant
5 raised safety-related issues associated with the
6 industry's package tracking systems."

7 MR. RIEDERER: Sorry, what page are
8 you on?

9 MR. SEHAM: First page.

10 MR. RIEDERER: What paragraph?

11 MR. SEHAM: Third paragraph that
12 begins RFA 8-11.

13 THE WITNESS: You don't have the same
14 one.

15 MR. RIEDERER: I have a different
16 letter.

17 THE WITNESS: You gave him two
18 different ones.

19 MR. SEHAM: So that would be my
20 fault. I'm referring to a January 15th letter.

21 MR. RIEDERER: I have a December 4th,
22 2013, letter.

23 MR. SEHAM: Well, then I would ask
24 you to look on with the witness because apparently
25 I don't have a third copy.

1 MR. RIEDERER: Give me one second to
2 read it if that's okay.

3 MR. SEHAM: Sure. Sure. Sure.

4 THE WITNESS: I will need to read it
5 too.

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

8 (Off-the-record discussion.)

9 MR. SEHAM: And what I --

10 MR. RIEDERER: Do you need to read
11 the second page or --

12 A. Just that paragraph?

13 BY MR. SEHAM:

14 Q. Yes. I'm going to ask you. I will direct
15 you to the language I'm concerned about. It
16 says -- the second sentence in that paragraph that
17 begins RFA 8-11 reads: "FedEx admits Complainant
18 raised safety-related issues associated with the
19 industry's package tracking systems."

20 Would you -- do you agree that during the
21 August 9th meeting that Captain Estabrook raised
22 safety-related issues associated with the
23 industry's package tracking systems?

24 A. I agree.

25 Q. And then same with respect -- same issue

1 or same formula with respect to the second
2 sentence, which reads: "FedEx also admits
3 Complainant express" -- I believe that should be
4 expressed but it says "express concern that
5 terrorist groups could use tracking information in
6 carrying out terrorist attacks."

7 Do you agree that Captain Estabrook
8 expressed concern at that August 9th meeting that
9 terrorist groups could use tracking information in
10 carrying out terrorist attacks?

11 A. I recall something to that, yes.

12 Q. And then last sentence: "FedEx also
13 admits Complainant suggested FedEx ask the Federal
14 Department of Homeland Security to order airlines
15 to cease making tracking information available
16 online."

17 Do you agree that during the August 9th,
18 2013, meeting that Captain Estabrook suggested
19 that FedEx ask the Federal Department of Homeland
20 Security to order airlines to cease making
21 tracking information available online?

22 A. I don't recall that part.

23 Q. Do you -- would you agree that he might
24 have said something --

25 A. I would agree that he might have said

1 that.

2 Q. I'm going to hand you a document we'll
3 mark as FF.

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

6 Q. For the record this is a document date --
7 on FedEx Express stationery dated December 4th,
8 2013, addressed to Mr. Jason Brush and six pages
9 in signed by David Knox, senior counsel, Federal
10 Express Corporation. What I'm going to ask you to
11 do, Captain Fisher, is turn to page 4. And focus
12 your attention to the first full paragraph and
13 starting with the second sentence, which reads:
14 Captain -- excuse me, "Estabrook's main concerns
15 revolved around his personal belief that terrorist
16 groups like Al-Qaeda might use shipping companies
17 like FedEx as a vehicle for carrying out their
18 attacks."

19 And would you agree that Captain
20 Estabrook raised that issue at the August 9th --

21 A. I'm so sorry, I can't --

22 Q. Oh, I'm sorry, you told me --

23 A. What is the --

24 MR. RIEDERER: It's in there.

25 A. It's in here? Okay.

1 MR. TADLOCK: Take your time.

2 Q. Yeah. Yeah. Yeah.

3 A. (Witness reviews document.)

4 Q. By the way, I mean, I'm moving along at a
5 brisk pace because there's a lot of material to
6 cover, and I want to get you out before 5:00 if
7 possible. But if at any point you need me to slow
8 down, please --

9 A. No. No. Can you -- where does this
10 sentence start?

11 Q. It is the second sentence in the first
12 full paragraph.

13 A. As documented in this complaint?

14 Q. No. Is your package dated December 4th?

15 MR. RIEDERER: No, right there.

16 A. Oh, geez.

17 Q. And you see the second sentence?

18 A. I'm reading it right now.

19 Q. It says, "Estabrook's main" -- you see
20 where I am?

21 A. Yes.

22 Q. It says, "Estabrook's main concerns
23 revolved around his personal belief that terrorist
24 groups like Al-Qaeda might use shipping companies
25 like FedEx as a vehicle for carrying out their

1 attacks."

2 Would you agree that on August 9th, 2013,
3 that Captain Estabrook expressed that concept?

4 A. Yes.

5 Q. Okay. And then it moves on to say, "as
6 documented in his complaint and in letters from
7 his counsel, Estabrook's August 9 conversation
8 with Fisher and Ondra centered on his belief that
9 the industry-wide practice of providing up-to-date
10 package tracking information, 'albeit
11 inadvertently, facilitate[s] and maximize[s] the
12 criminal destruction of cargo, aircraft, and human
13 lives, by granting terrorists the ability to
14 carefully select the time of detonation.'"

15 Does that statement correctly
16 characterize Captain Estabrook's expression of
17 concern at that meeting on August 9th, 2013?

18 A. I don't remember -- I don't recall that
19 much detail. I just recall overall it was a
20 tracking component of his -- of discussion, yes.

21 Q. Would you agree that he brought up the
22 issue of the timing of detonation as associated
23 with the publication of tracking information?

24 A. I don't recall.

25 Q. Okay. He might have?

1 A. Yes.

2 Q. Okay. The FedEx submission continues:
3 "This has 'the unfortunate result of encouraging
4 terrorists to view FedEx as a particularly
5 effective means of utilizing explosive, incendiary
6 and other destructive devices by placing in the
7 terrorists' hands the ability to select the most
8 optimum timing for detonation.'"

9 Did Captain Estabrook express during the
10 August 9, 2013, meeting that Federal Express was
11 not, in terms of its dissemination of tracking
12 information, was not doing enough to deter
13 terrorists from utilizing FedEx aircraft as a
14 potential weapon?

15 A. I recall, you know, basically that was the
16 conversation, yes.

17 Q. All right. Thank you. Now, would you --
18 okay. Are you familiar with the fact that -- you
19 have heard of the United States Department of
20 Labor, correct?

21 A. Yes.

22 Q. And are you familiar with the subdivision
23 of the United States Department of Labor known as
24 the Occupational Health and Safety Administration
25 [sic] otherwise known as OSHA?

1 A. Yes.

2 Q. And what is your understanding as to the
3 function of OSHA?

4 A. To maintain a safe workplace.

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

7 A. I have heard it before, but I don't
8 remember what it is.

9 Q. Okay. You understand that Captain
10 Estabrook has filed a legal claim, correct?

11 A. Yes.

12 Q. And do you understand that there is
13 federal law that prohibits retaliating against an
14 employee who brings to the attention of his
15 employer what he believes to be violations of
16 Federal Aviation standards?

17 A. Yes.

18 Q. And you knew that throughout the year of
19 2013, correct?

20 A. Yes. Sure. Yes.

21 Q. And do you know who Jason Brush is?

22 A. No.

23 Q. Were you interviewed by anyone from the
24 federal government with respect to this matter?

25 A. I was interviewed, but I don't recall it

1 being for Mr. Estabrook. I don't recall.

2 Q. All right. You have described in
3 April 2013 your immediate report was Bill
4 McDonald? Was he your boss?

5 A. Yes.

6 Q. Maybe you answered. I just didn't hear.

7 A. I thought you were -- had more to go.

8 Q. Okay. And you discussed your
9 determination with -- you determined that Captain
10 Estabrook should not be disciplined with respect
11 to the issues relating to the Laredo departure on
12 April 10, 2013, correct?

13 A. That is correct.

14 Q. You advised Bill McDonald of your
15 conclusion?

16 A. Yes, I did.

17 Q. And isn't it true that Bill McDonald
18 wanted to discipline Captain Estabrook for not
19 departing that day?

20 A. That is not true.

21 Q. Did you have a telephonic discussion with
22 him with --

23 A. I don't recall if it was telephone or
24 verbal.

25 Q. Isn't it true that you told Captain

1 Estabrook that Bill McDonald wanted to discipline
2 Captain Estabrook with respect to his
3 non-departure from Laredo?

4 A. I don't recall.

5 Q. You might have told him that?

6 A. I wouldn't think so.

7 Q. How do you know -- okay. Isn't it true
8 that you told Captain Estabrook that you had
9 advised Bill McDonald to review the taped
10 conversations between Captain Estabrook and the
11 GOC?

12 A. Could you repeat that, I'm sorry.

13 Q. Isn't it true that you advised Captain
14 McDonald that he should listen to the audio tapes?

15 A. I don't recall that.

16 Q. Isn't it true that you said to Captain
17 Estabrook that McDonald was "pissed"?

18 A. No.

19 Q. That -- let me finish the --

20 A. Okay.

21 Q. If you're going to say no, that's fine,
22 but let me -- just for the record let's get the
23 question out. That McDonald was "pissed" that
24 FedEx had to drop the disciplinary action against
25 Captain Estabrook?

1 A. No.

2 MR. SEHAM: Off the record.

3 (Brief recess.)

4 BY MR. SEHAM:

5 Q. I'm going back to the Laredo issue. After
6 you concluded your investigation with respect to
7 the April 10th Laredo departure, there came a time
8 when you advised Captain Estabrook that the
9 Company was terminating its investigation without
10 discipline, correct?

11 A. Yes.

12 Q. And was that face to face or telephonic?

13 A. I believe as I recall I said it face to
14 face at the meeting. At our meeting, yes.

15 Q. And isn't it true that Captain Estabrook
16 expressed his relief that the Company was
17 terminating its investigation?

18 A. I don't recall that.

19 Q. And isn't it true that Captain Estabrook
20 advised you that in view of the Company's
21 termination of its investigation, that Captain
22 Estabrook would be withdrawing a legal complaint
23 that he had filed?

24 A. I don't recall that.

25 Q. Is that possible?

1 A. It's possible.

2 Q. Turning your attention -- well, I'm going
3 to ask you to get Exhibit U as in unicorn. Let me
4 know when you have located that.

5 A. Yes, I have it.

6 Q. Okay. If you could turn to page 3 of this
7 document. These are interrogatories with a date
8 of response of October 29th, 2014. But if you
9 turn to the third page and look at Interrogatory
10 Number 6 it says, "identify any persons involved
11 in the decision to place the Complainant on not
12 qualified (NOQ) status on or about August 5,
13 2013." And the answer is "Respondent identifies
14 the following individuals, who may be contacted
15 through undersigned counsel: Robert Fisher,
16 William McDonald, Todd Ondra, Robb Tice."

17 My question is, did you participate in
18 the decision to place Captain Estabrook on NOQ
19 status?

20 A. Yes.

21 Q. Now, what is "NOQ"?

22 A. Not operationally qualified.

23 Q. And in your experience under what
24 circumstances is NOQ invoked and applied to a
25 pilot?

1 A. We apply it whenever the Company has to
2 remove a pilot from flying status for
3 investigations. So we make the person whole and
4 pay for any trips that he might miss.

5 Q. You also eliminate their jumpseat status,
6 correct?

7 A. That is true. That is correct.

8 Q. And why do you do that?

9 A. It's done -- you know, it's done out of
10 the abundance of caution.

11 Q. Why is there any caution required?

12 A. Caution is required because we have had --
13 I think it's an industry standard where whenever
14 you bring someone in to talk to them for whatever
15 reason, that we remove jumpseat status. It's a
16 policy.

17 Q. Did you put Captain Estabrook -- well,
18 strike that.

19 You did not put Captain Estabrook on NOQ
20 status with respect to the Laredo investigation on
21 April 10th, 2013, correct?

22 A. I don't recall. It's possible. But I
23 don't recall.

24 Q. Now, why would you have put him on NOQ
25 status in -- on August 5th of 2013 and not have

1 put him on NOQ status in April of 2013?

2 A. Well, I didn't say that I didn't. But I
3 could have on either occasion. The reason that I
4 probably didn't is because it was a -- he probably
5 didn't have a trip during that time. I can't
6 remember. Typically we would put him on NOQ, and
7 I may very well have, but I don't recall.

8 Q. You're familiar with a concept of a 19.D
9 investigation?

10 A. Yes.

11 Q. Okay. And so typically you put pilots on
12 NOQ status when you have a 19.D investigation?

13 A. Typically, yes.

14 MR. SEHAM: Off the record for a
15 second.

16 (Off-the-record discussion.)

17 MR. TADLOCK: Exhibit I.

18 BY MR. SEHAM:

19 Q. I'm going to be referring -- do you have
20 the document in front of you?

21 A. Yes, I have got it.

22 Q. And I'm going to ask you to turn to page 2
23 and look at Interrogatory Number 7.

24 A. Okay.

25 Q. Interrogatory Number 7 asks or states:

1 "State the reasons why the Complainant was placed
2 on NOQ status on or about August 5, 2013." There
3 is an initial response that reads: "Complainant
4 was placed on NOQ status on or about August 5,
5 2013, because he had been referred for examination
6 under 15.D of the Collective Bargaining Agreement
7 between Respondent and the Air Line Pilots
8 Association." And then it goes on to read:
9 "Supplemental response. This supplement responses
10 supersedes Respondent's original response.
11 Complainant was placed on administrative NOQ
12 status on or about August 5, 2013, to facilitate
13 the scheduling of a meeting he requested. The
14 effect of the placement on administrative NOQ
15 status was to clear his work schedule and prevent
16 the scheduling of conflicting activities."

17 So having read that, my questions to you
18 are, Captain Estabrook was not placed -- was not
19 referred for examination under 15.D until
20 August 16th, correct?

21 A. That's not correct.

22 Q. When was he referred to a 15.D?

23 A. He was referred verbally the same day that
24 we met. It would have been that night.

25 Q. And what did you -- and who did that?

1 A. I made that phone call.

2 Q. Okay. And what did you say to him?

3 A. I said that out of the abundance of safety
4 we need to have you examined by the aeromedical
5 advisor under the 15.D of the contract based on,
6 you know, the meeting that we had.

7 Q. You had actually already -- at the
8 conclusion of your meeting with him on August 9th,
9 you had actually reinstated him to flight status,
10 correct?

11 A. That's correct.

12 Q. And you had made that decision in concert
13 with Mr. Tice, correct?

14 A. Yes.

15 Q. And that decision was later overruled by
16 Todd Ondra, correct?

17 A. That's correct.

18 Q. Did someone tell you to reverse your
19 decision?

20 A. Mr. Tice called me, yes, and said that
21 we -- he should have called, talked to Mr. Ondra
22 first, and so it was our mistake. But he called
23 me and said, we are going to have to reverse it.
24 We are going to recommend a 15.D.

25 Q. Todd Ondra did not contact you directly

1 then?

2 A. I was not contacted by Todd Ondra.

3 Q. And did you receive any contact from Bill
4 McDonald?

5 A. No. I reached out to Bill McDonald after
6 the call from Mr. Tice.

7 Q. And recount for us, please, this
8 conversation that you had with Mr. Tice. What did
9 Mr. Tice say?

10 A. I don't recall just -- it was just that,
11 hey, Rob, we are going to have to put him --
12 Mr. -- Captain Estabrook back on NOQ status. I
13 have been advised we are going to go place him on
14 a 15.D as per the contract.

15 Q. Did Mr. Tice go into the reasons?

16 A. Yes. You know, long time ago, but as I
17 recall --

18 Q. I mean, on that call, on that telephone
19 call. Did -- when Mr. Tice called you, did he
20 say -- he said, put him on a 15.D, and then did he
21 explain why?

22 A. I don't recall. Yes. He explained that
23 the reason was because Mr. Ondra had recommended
24 it.

25 Q. Okay.

1 A. Our security specialist.

2 Q. And did he explain why Mr. Ondra
3 recommended it during that phone call?

4 A. Just out of the interest of caution, let's
5 place Captain Estabrook on a 15.D.

6 Q. And that -- and the --

7 A. That's really -- that's it. Yes.

8 Q. And then after that -- how soon after did
9 you call Captain Estabrook and give him your
10 decision?

11 A. It was that same day. It would have been
12 later in the day. I first, like I said, contacted
13 my boss to make sure he understood what was going
14 on, and then I called Captain Estabrook shortly
15 after that. All the same day.

16 Q. So would it, say, be within 15, 20 minutes
17 of the call from Mr. Tice that you were calling
18 Captain Estabrook?

19 A. I have no idea. I can't recall.

20 Q. Within an hour?

21 A. I can't recall.

22 Q. Well, can we assume it was fairly prompt
23 because you were --

24 A. It was fairly prompt, yes.

25 Q. And when you called Captain McDonald, was

1 it to obtain advice from him or was it just to
2 tell him the action that was going to be taken?

3 A. It was to obtain advice.

4 Q. So there was -- there is some substance to
5 this conversation with Captain McDonald?

6 A. It was. Yes.

7 Q. So what advice can you ask from him?

8 A. My advice was we had just told Captain
9 Estabrook that we are finished, and you're no
10 longer on NOQ. And now I got to call him back and
11 say you are on an NOQ, and I said, you know, I'm a
12 little bit uncomfortable. So I need more
13 information about what happened with Mr. Ondra.

14 Q. And what information did he give you?

15 A. The information is in the interest of
16 caution there's enough there that Mr. Ondra felt
17 that in the abundance of caution, that we should
18 have him checked with -- under the contract for a
19 15.D.

20 Q. So would you agree that Captain McDonald
21 didn't give you any more substantive information
22 than Mr. Tice had given you?

23 A. Well, actually that is enough information
24 for me. Mr. Ondra is a professional in Security.
25 I am not an expert in that area. So I just need

1 to make sure I heard from my boss.

2 Q. I understand that you thought that was
3 enough. I'm just trying to get to the facts in
4 terms of what was actually said. Your testimony
5 is that Mr. Tice told you that we need to refer
6 him to a 15.D out of an abundance of caution?

7 A. Correct.

8 Q. And that was pretty much it. Correct?

9 A. Correct.

10 Q. Did Captain McDonald go beyond that
11 directive?

12 A. He did not.

13 Q. So is it a fair statement then that you,
14 Captain Fisher, did not participate in the
15 decision to refer Captain Estabrook to a 15.D
16 examination other than to convey the decision of
17 Mr. Ondra?

18 A. No. That's not true. Once I spoke to --
19 Mr. Tice called me, then I called my boss, and he
20 reiterated that we are -- Mr. Ondra is a
21 professional. Based on his experience in
22 security, based on what he saw, he recommends a
23 15.D. I thought the -- I definitely owned the
24 decision to place him on 15.D. I am
25 Mr. Estabrook's boss.

1 Q. But you had no reason for doing it other
2 than your deference to Todd Ondra's expertise?

3 A. That is a true statement.

4 Q. Now, are you familiar with -- I'm going to
5 refer you to -- back to where we were, Exhibit I.

6 A. Okay.

7 Q. Page 2, going to the -- now I'm recalling
8 we got off track because we went from the NOQ
9 issue to the August 9th meeting. But the
10 supplemental answer, and in particular the second
11 sentence of the supplemental 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." Is
15 that -- is that a correct statement?

16 A. From what I recall, yes, that would be
17 accurate.

18 Q. Had you made any determination at that
19 point that Captain Estabrook had a fitness for
20 duty issue?

21 A. Before the meeting?

22 Q. Yes.

23 A. No.

24 Q. Do you recall any discussion with anybody
25 prior to August 9th along the lines that Captain

1 Estabrook had a fitness for duty issue?

2 A. No. I hear August 9th and August 5th.
3 I'm sorry, what --

4 Q. August 5th was the NOQ -- the reason I
5 refer to these dates is that August 5th is the NOQ
6 decision.

7 A. Okay.

8 Q. And August 9th is the meeting in Memphis.

9 A. Okay.

10 Q. So my question is, is prior to August 9th
11 do you recall any discussion about -- you know,
12 prior to that August 9th meeting, do you recall
13 any discussion with anybody to the effect that
14 Captain Estabrook had a fitness for duty issue?

15 A. No.

16 Q. And did you have any concerns prior to
17 August 9th that Captain Estabrook was -- had
18 manifested behavior that would warrant a 15.D
19 examination?

20 A. No.

21 Q. One reason for an NOQ would be a suspicion
22 that a pilot was suffering from a mental health
23 problem, correct?

24 A. No.

25 Q. No?

1 A. No.

2 Q. And why no? There would be --

3 A. First of all, we don't make the call of
4 whether someone has a psychological issue. We
5 send people to aeromedical advisors. They make
6 that determination. So by definition I could
7 never make someone NOQ for what I feel is a -- I
8 think what you said was a mental issue.

9 Q. Have you ever been exposed to a pilot's
10 behavior that made you question in your own mind
11 his mental balance?

12 A. No. I have had someone advise me, another
13 pilot say that he flew with someone that was --
14 that had some issues that he wanted to look at.

15 Q. Now, he described the conduct that --

16 A. Yes.

17 Q. -- raised that concern with the fellow
18 pilot, correct?

19 A. Correct.

20 Q. And you evaluated that information that
21 you got from the fellow pilot in order to make a
22 determination as to whether that person would be
23 referred to a 15.D examination, correct?

24 A. Correct.

25 Q. So is that a situation where a pilot would

1 be placed on NOQ?

2 A. If I recommend them for an aeromedical
3 advisor look for a 15.D, that is a true statement,
4 I would place them on NOQ.

5 Q. And did you do that in the circumstance
6 that you just described?

7 A. Did I do that for Mr. Estabrook?

8 Q. No. Did you do that in -- you were
9 describing a situation where --

10 A. Yes. Yes.

11 MR. RIEDERER: Remember. Let him
12 finish his statement.

13 A. Okay.

14 Q. I understand you just want to get this
15 over with. Actually, you know what, I credited --
16 it doesn't bother me. It's just a question of
17 keeping the record as clean as possible.

18 Do you recall -- in that situation, do
19 you recall the information, without identifying
20 the person, the individual pilot, can you recall
21 the information that you were provided with
22 that -- concerning the other pilot's behavior that
23 led you to make a 15.D determination?

24 A. Yes -- I'm sorry, say that again.

25 Q. You described a prior situation --

1 A. Yes.

2 Q. -- where a pilot reported questionable
3 conduct concerning another pilot. Can you recall
4 what that questionable conduct that was reported
5 to you consisted of?

6 A. Yes. There was a question of whether or
7 not this man was suffering from Alzheimer's. That
8 was the -- what this other pilot was saying.

9 Q. Now, are you familiar with the acronym,
10 the scheduling acronym, RMG?

11 A. Yes.

12 Q. What does that stand for?

13 A. I believe it stands for Remove for
14 Management.

15 Q. Removed --

16 A. Remove for Management.

17 Q. In what circumstances is -- does the
18 Company resort to an RMG schedule?

19 A. Typically if -- let's say you want to have
20 a meeting with someone and they had a flight
21 during this very important meeting that you want
22 them to be a part of. You would RMG them from
23 that trip. In other words, you're going to pay
24 for that trip, but they're going to have them do
25 something for them.

1 Q. That would be for the purposes of having
2 them come to a meeting?

3 A. Typically if I have a -- you know at the
4 time when Bill McDonald was -- he was having these
5 meetings for cultural awareness, whatever it was,
6 and it's hard to get everyone at one date that
7 doesn't have at least one person has a trip, you
8 would sometimes RMG someone for a trip.

9 Q. So RMG is just used for group of pilots,
10 not for individual pilots?

11 A. It can be used for many things. I am just
12 giving you one example.

13 Q. So it could be used to schedule a meeting
14 with an individual pilot?

15 A. Correct. Yes.

16 Q. So why wasn't the RMG status used for
17 Captain Estabrook's meeting on August 9th on 2013?

18 A. I don't know. We -- I -- no.

19 Q. Okay. Now, at this August 9th meeting,
20 would you agree that the first issue that was
21 taken up was the issue of live tracking?

22 A. I don't know which one was first but I --
23 I don't recall.

24 Q. Would you agree that Captain Estabrook
25 brought up during the meeting that he was well

1 versed in military intelligence issues?

2 A. I recall something in that area, yes.

3 Q. Would you agree that he brought up the
4 fact that he had served in the United States Air
5 Force?

6 A. I recall that.

7 Q. Okay. Do you recall that he brought up
8 that he had served on an AWACS aircraft?

9 A. I don't recall.

10 Q. Would you agree that he brought up the
11 fact that he had engaged in surveillance of
12 Russian bombers?

13 A. I don't recall.

14 Q. Would you agree that he described his
15 military service as including chasing Russians?

16 A. Don't recall.

17 Q. Do you recall any reference to Russians
18 coming up during that meeting?

19 A. I do not.

20 Q. Or any reference to Russia coming up
21 during that meeting?

22 A. No.

23 Q. You don't recall?

24 A. I don't recall.

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

1 and I'm going to direct your attention to about a
2 third of the way down the page where it says -- it
3 begins with a third line of text in a clump. It
4 begins "I have chased." Do you see those
5 two words?

6 A. Oh, there it is. Got it.

7 Q. Do you see "I have chased around Russia."
8 Would you agree that that is what that sentence
9 reads?

10 A. I -- the word Russian doesn't look like it
11 says Russian, but I can --

12 Q. Okay. Well, does that -- and then the
13 answer -- well, does this refresh your
14 recollection as to whether either the topic of
15 Russia or Russians came up during --

16 A. No.

17 Q. All right. Knowing -- now, Todd Ondra did
18 not stay for the entire -- well, let me back up.

19 How long was the entire August 9th
20 meeting?

21 A. I would say less than an hour. Around an
22 hour.

23 Q. And Todd Ondra left before the meeting was
24 over, correct?

25 A. Yes.

1 Q. How much of the meeting did he miss?

2 A. Five minutes maybe. Not much.

3 Q. And isn't it true that he left the
4 meeting -- even before he left the meeting
5 permanently, there are also -- he departed during
6 interim phases of that meeting?

7 A. I don't recall.

8 Q. Do you know who Mayday Mark is?

9 A. It was a moniker that Robb Tice was
10 interested in. Probably the best way to say it.

11 Q. And did Robb Tice explain to you why he
12 was interested in this moniker?

13 A. He was interested to see if Mr. -- or
14 Captain Estabrook was that person.

15 Q. And he was interested as to whether Mark
16 Estabrook was that person because Mayday Mark had
17 posted that he had suffered a stroke, correct?

18 A. I don't know.

19 Q. You don't know. I'm going to ask you to
20 turn to a document or Exhibit X, and direct your
21 attention to the second full paragraph starting
22 with the third sentence. And for the record this
23 is an August 16th letter from Robb Tice to Alan
24 Armstrong, and the third sentence of that second
25 paragraph reads: "I merely asked if Captain

1 Estabrook is 'Mayday Mark' because that poster had
2 written that he had sustained a stroke."

3 Does that refresh your recollection as to
4 why Robb Tice was asking questions about Mayday
5 Mark?

6 A. I just don't recall.

7 Q. Did you conduct any investigation relating
8 to the identity of Mayday Mark after the
9 conclusion of the August 9th, 2013, meeting?

10 A. No.

11 Q. Did anyone ask you to conduct such an
12 investigation?

13 A. No.

14 Q. To the best of your knowledge, did the
15 reason for putting Mark Estabrook on NOQ status on
16 August 5, 2013, have any relation to the
17 possibility that he was Mayday Mark?

18 A. No.

19 Q. And in your own words what was the reason
20 for putting Captain Estabrook on NOQ status on
21 August 5th?

22 A. To get -- to give him time to come to meet
23 with us and make him whole for any trips that he
24 may miss with our meeting.

25 Q. And that's -- okay. Now, having put

1 Captain Estabrook on NOQ status on August 5th,
2 FedEx was required to purchase him a commercial
3 airline ticket so he could attend the meeting,
4 correct?

5 A. Yes.

6 Q. Now, if you could look at Exhibit Q, and
7 that's an August 16th letter from you to Captain
8 Estabrook.

9 MR. RIEDERER: Here.

10 THE WITNESS: Thank you.

11 BY MR. SEHAM:

12 Q. So you sent this letter dated August 16,
13 2013, to Captain Estabrook?

14 A. Yes.

15 Q. And you stated that the Company has a
16 reasonable basis to question whether you have
17 developed an impairment to your ability to perform
18 duties as a pilot. Now, as of August 16th, did
19 your -- was there any change in your understanding
20 of the reasonable basis between August 9th and
21 August 16th?

22 A. No.

23 Q. So the reasonable basis was based on a
24 deference to the expertise of Mr. Ondra with
25 respect to security issues?

1 A. Correct.

2 Q. Now, so you did not review his -- Mr. --
3 Captain Estabrook's employment files before
4 sending this August 16th directive, correct?

5 A. No.

6 Q. You didn't review his military files in
7 the Company's records, correct?

8 A. No.

9 Q. You didn't review his past involvement in
10 security issues in his capacity as a Union
11 representative, correct?

12 A. Correct.

13 Q. Was it later explained to you what the
14 basis for Mr. Ondra's recommendation was?

15 A. No.

16 MR. SEHAM: Okay. Five-minute break?

17 MR. RIEDERER: Sure.

18 (Brief recess.)

19 BY MR. SEHAM:

20 Q. Captain Fisher, to try to set this -- the
21 background for this next question, I am going to
22 ask you a couple of foundational questions. On
23 August 9th, 2013, nobody told you the basis for
24 Mr. Ondra's determination in terms of specific
25 comments made by Captain Estabrook during the

1 meeting, correct?

2 A. Correct.

3 Q. And as of August 16th, did that continue
4 to be the case that no one told you specifically
5 what Mr. Ondra found concerning with respect to
6 Captain Estabrook's statements during the
7 August 9th meeting?

8 A. Correct.

9 Q. Did there come a time when someone did
10 tell you here specifically are the comments made
11 by Captain Estabrook that prompted Mr. Ondra's
12 concern?

13 A. Can you re-word that?

14 Q. Did there come -- did there come a time --
15 and I apologize because I'm fumbling with this a
16 little bit and so -- and I -- your request to
17 rephrase is well received frankly.

18 Did there come a time when someone told
19 you of the specific comments made by Captain
20 Estabrook at that August 9th, 2013, meeting that
21 prompted Mr. Ondra's concern and recommendation of
22 a 15.D?

23 A. No. Not by my recollection.

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

1 Q. Before we get to this, you reinstated --
2 your initial decision was to reinstate Captain
3 Estabrook to flight status, correct, on
4 August 9th?

5 A. That was based on a conversation between
6 Mr. Tice and I, correct.

7 Q. And so you had no concerns at the
8 conclusion of that meeting which would have led
9 you to recommend a 15.D evaluation, correct?

10 A. Based on what -- on my expertise, correct.

11 Q. Okay. So referring to this GG exhibit,
12 you see that after the initial introductory email
13 from Cindy Sartain, it appears to be an email from
14 you to Christopher Johnson. Do you know who
15 Christopher Johnson is?

16 A. I believe he is someone that works at
17 Harvey Watt, our aeromedical advisor.

18 Q. And if you read the third paragraph, it
19 says, "the meeting was held on August 9th, 2013.
20 Captain Estabrook proceeded to describe a number
21 of security concerns that he has, many of which
22 relate to Al-Qaeda, and the possibility that FedEx
23 Express could be a target for Al-Qaeda terrorist
24 acts. In addition, perhaps most concerning,
25 Captain Estabrook describes his thinking regarding

1 Auburn Calloway. You may be aware that
2 Mr. Calloway is a former FedEx Express pilot who
3 was imprisoned following his criminal convictions
4 resulting from his attempt to hijack a FedEx
5 Express aircraft. During the course of which, he
6 inflicted serious and permanent injuries on the
7 operating crewmembers of that aircraft. Captain
8 Estabrook stated that he has heard rumors that
9 Mr. Calloway has converted to the Muslim faith,
10 and he is concerned that Calloway might be
11 secretly communicating with Al-Qaeda terrorists."

12 My question is, did someone draft this
13 email for you?

14 A. Myself and Mr. Tice got together and wrote
15 this. That is true.

16 Q. Okay. Proceeding to the next paragraph it
17 says, "it may very well be that Captain Estabrook
18 is medically fit for flight duty. However, as you
19 know, FedEx Express and all other U.S. airlines
20 are required to conduct their air operations to
21 the highest degree of safety and the public
22 interest. Mr. Ondra has extensive experience in
23 security matters. Largely at Mr. Ondra's urging,
24 FedEx Express flight management has determined
25 that in the issue of flight safety, Captain

1 Estabrook should be referred to the FedEx Express
2 aeromedical advisor for an evaluation of his
3 fitness for duty."

4 Now, my question, Captain, is with --
5 would this -- with this email before you, does
6 this lead you to revise your prior testimony that
7 no one ever told you what --

8 A. No. No. It does not revise it. I still
9 have never talked to Mr. Ondra, and from what I
10 understand Mr. Tice still had not spoke to
11 Mr. Ondra about why his decision was what it was.
12 However, based on all the things together -- now,
13 remember it was an email to Mr. -- to Bill
14 McDonald concerning Mr. Smith, and then we met
15 with Mr. Estabrook and he had concerns about
16 Al-Qaeda and a concern about Auburn Calloway. You
17 know, the letter to Mr. Smith and Auburn Calloway
18 seemed a bit curious, and that's why we put this
19 in this letter to say, hey, based on these things
20 that we know, Mr. Ondra has recommended, and we
21 have agreed, that we want to place you on a 15.D.

22 Q. So the content of this letter in terms of
23 the references to Al-Qaeda and Calloway is not
24 based on information provided to you and Mr. Tice
25 from Mr. Ondra?

1 A. That's correct.

2 Q. So that --

3 A. That was not information from Mr. Ondra to
4 me, and as I understand it, neither to Mr. Tice.

5 Q. So you independently determined that the
6 comments relating to Mr. Calloway legitimized a
7 15.D evaluation; is that correct?

8 A. That is correct.

9 Q. And what specifically were the comments
10 concerning Mr. Calloway that you felt legitimized
11 the 15.D referral?

12 A. To me just the overall reference to
13 Mr. Calloway because, you know -- that he had
14 switched his faith -- you know, this is a man that
15 has been in jail for a long time. Any information
16 he would have about FedEx would be very old
17 information. We just found it once again curious.
18 It would be something that a professional security
19 person would be into or -- it just -- it was
20 enough of a flag that that, along with a letter
21 that stated, hey, have Mr. Smith call me if I
22 can't get back to him, you know, it's a
23 combination -- combination of issues.

24 Q. What did specifically Captain Estabrook
25 say concerning Mr. Calloway?

1 A. As I recall, there is a reference to him
2 switching religions to Islam, and that he may
3 possibly be reaching out to other terrorists as I
4 recall.

5 Q. And specifically what did he say about
6 switching to Islam?

7 A. That's all I recall is that he switched to
8 Islam. That he had heard that he switched to
9 Islam.

10 Q. Would you agree with me that what Captain
11 Estabrook said on August 9, 2013, was that he had
12 heard a rumor that Mr. Calloway had converted to
13 Islam?

14 A. I don't recall. It's possible.

15 Q. And then as I recall your testimony, he
16 also made mention of the fact that Mr. Calloway
17 might be cooperating with other terrorists; is
18 that your recollection?

19 A. That's my recollection.

20 Q. So those two statements about Mr. Calloway
21 you felt were part of the legitimization of a 15.D
22 referral, correct?

23 A. It's a combination of several things.

24 Yes.

25 Q. But I'm asking did those two statements

1 contribute to?

2 A. They contributed, yes.

3 Q. And then what did he say about -- he
4 described a number of security concerns, many of
5 which relate to Al-Qaeda, and the possibility that
6 Federal Express could be a target for Al-Qaeda
7 terrorist attacks. To the best of your
8 recollection, what were those statements that he
9 made?

10 A. We had talked about this earlier about
11 tracking, the real-time tracking of our packages.

12 Q. And so that is part of the reasoning or
13 those statements were part of your rationale for
14 the 15.D referral as well?

15 A. That was the least part of it, but it was
16 one of them. Yes.

17 Q. Okay.

18 A. There were -- yes.

19 Q. Okay. And then you referred to a
20 reference to Fred?

21 A. (Nods head affirmatively.)

22 Q. So what specifically are you referring
23 to -- and that's -- let me preface it this way:
24 The reference to Fred was part of the reason that
25 you felt it was legitimate to refer him to a 15.D

1 evaluation?

2 A. That combined with all other things I felt
3 that, yes, it was warranted.

4 Q. Okay. And what was that reference to Fred
5 that you're alluding to?

6 A. It's an email that was sent from Captain
7 Estabrook to Bill McDonald, Captain McDonald. And
8 I can only paraphrase it about I need to talk to
9 Fred, and if he calls me, tell him I may be
10 sleeping because I'm operating a trip, and then I
11 will call you back.

12 Q. I don't want to leave anything out. I
13 just want to get the whole basket. And if I
14 misrepresent anything, please, please tell me. So
15 as I understand your testimony, it was the
16 combination of the references to Fred in the
17 August 4th, 2013, email, the references to
18 Mr. Calloway and the references to Al-Qaeda and
19 the live tracking issues that together as a whole
20 constituted your basis for referring Captain
21 Estabrook to a 15.D evaluation; is that correct?

22 A. Correct. Correct.

23 Q. Now, do you recall when you called Captain
24 Estabrook to advise him that he was going to be
25 restored to NOQ status, you also told him in the

1 same conversation that he would be referred to a
2 15.D evaluation?

3 A. Yes. As I recall, that's what I said over
4 the phone. Yes.

5 Q. If you could pull out Exhibit M, I'm going
6 to refer you to -- well, first of all, I will
7 refer you to the fact that this is a letter from
8 Alan Armstrong. It's addressed to Robert Tice and
9 James Ferguson. But if you look at the last page,
10 paginated FDX 4-68, it has cc's of Rob Fisher,
11 Todd Ondra, and Captain William McDonald. Did you
12 receive a copy of this letter dated August 13,
13 2013?

14 A. Yes.

15 Q. Okay. And now if you look at the -- if
16 you look at the third page under paragraph 12, and
17 then I'm going to refer you to B, it reads -- have
18 you located that portion of the letter?

19 A. Yes.

20 Q. It states that Federal Express withdraw
21 any request made by and through Chief Pilot Rob
22 Fisher that my client undergo a psychiatric
23 evaluation. This is prior -- would you agree it's
24 prior -- three days prior to your August 16th
25 letter where you put in writing that he had to go

1 to -- he was required to go to a 15.D evaluation.
2 And so my question is, did you have a conversation
3 either on August 9th, or any time prior to
4 August -- between August 9th and August 13th in
5 which you advised Captain Estabrook that he would
6 have to undergo a psychiatric evaluation?

7 A. Did I have another conversation between
8 the 9th -- I had the conversation on the 9th.

9 Q. Was it either during the conversation on
10 the 9th or at any time up to August 13th where you
11 made mention of a psychiatric evaluation to
12 Captain Estabrook?

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

15 A. I don't recall.

16 Q. Is it possible that during that time frame
17 you might have mentioned to Captain Estabrook that
18 there was a psychiatric evaluation that he would
19 be required to undergo?

20 A. I don't recall.

21 Q. It's possible? Is it possible?

22 A. It's possible.

23 Q. Now, under the -- are you responsible for
24 being knowledgeable of the Collective Bargaining
25 Agreement?

1 A. I'm -- yes.

2 Q. You're familiar with -- we have referred
3 to 15.D over and over, and you're familiar with
4 15.D?

5 A. Yes.

6 Q. And would you agree that 15.D requires
7 that the 15.D determination be made by someone in
8 flight management?

9 A. Yes.

10 Q. And Mr. Ondra is not in flight management,
11 correct?

12 A. That's correct.

13 Q. But it's your testimony you made an
14 independent decision to implement his
15 recommendation; is that correct?

16 A. Ultimately, yes.

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

19 Q. Now, I have handed you a four-page
20 document of handwritten notes, and at the top it
21 says, Captain Fisher, flight captain for Airbus,
22 January 2011 to March 14 and then a date of
23 4/30/2014. And under that it is written in
24 handwriting: "NOQ happens once per month. I
25 would say that is pretty common."

1 My question is, would you say that --
2 would you agree with me that at FedEx there is --
3 a pilot is put on NOQ status about once per month?

4 A. Who wrote this? I'm sorry.

5 Q. That's -- that's not my question.

6 A. Right.

7 Q. My question is based on -- I'm asking to
8 read along with me.

9 A. Okay.

10 Q. And where it says "NOQ."

11 A. Sure.

12 Q. "Happens once per month I would say."

13 Would you agree with that statement that at
14 Federal Express an NOQ is -- there's an NOQ
15 designation to a pilot about once per month?

16 A. I would say that's certainly true.

17 Q. Okay. If you go down one paragraph,
18 there's handwriting that states: If Company has
19 reasonable cause to believe, and it says psyc,
20 P-S-Y-C, issues, we can send a pilot for
21 evaluation. Would you agree that FedEx can send
22 someone for a psychiatric evaluation if it has
23 reasonable cause?

24 A. I would not agree with that.

25 Q. Okay. Now, going down the last sentence

1 says, "in hindsight, we probably should have kept
2 him off flight status and conferred with Todd
3 Ondra rather than make the decision on our own."
4 Captain Fisher, would you agree that in your view
5 it was a mistake for you to have reinstated
6 Captain Estabrook to flight status without first
7 conferring with Todd Ondra?

8 A. Yes. Yes. I agree.

9 Q. If you go to the third page of the second
10 to last paragraph, it reads: "I am responsible
11 for 950 pilots." Captain Fisher, are you in your
12 position or in your position at the time that you
13 were making these decisions in 2013, were you
14 responsible for 950 pilots?

15 A. Yes.

16 Q. It says after that "he was another guy in
17 the crowd." Would you say that is your position
18 with respect to Captain Estabrook that he was just
19 another guy in the crowd?

20 A. Yes. I don't like that wording, but he
21 did not stand out as someone that caused problems.
22 He didn't stand out as, you know, I -- I think
23 he -- I would say that he was another guy that was
24 doing his job in our crew force, if that's what
25 you're -- I'm not sure what that means, that

1 sentence.

2 Q. Captain Fisher, I'm asking you now, does
3 this refresh your recollection that you were, in
4 fact, interviewed by a government representative
5 with respect to this case?

6 A. I don't recall. It does not -- it does
7 not refresh my memory.

8 Q. I'm going to refer you to the third page
9 marked ME 1486. You see at the top line reads:
10 "May 2013 I brought Mark in and counseled him
11 about the weather incident." Is it your position
12 that in May 2013 you counseled Mark about the
13 Laredo-related weather incident?

14 A. I believe that was in April of 2013 that
15 that happened.

16 Q. Looking at the next sentence: "We tell
17 him when to be at work. He tells us when he is
18 going to move the airplane." Did you communicate
19 to Captain Estabrook words to that effect?

20 A. Most likely it would have been something
21 like that, yes. Report to work on time, but when
22 you move the airplane, you work that out with the
23 dispatcher and yourself and operate a safe flight.

24 Q. And the next line reads: "I did not know
25 Mark filed a whistle-blower complaint until you

1 just told me." Have you ever told any interviewer
2 looking into this matter that you were -- you had
3 no knowledge that Mark filed a whistle-blower
4 complaint related to the April 10 Laredo departure
5 and the subsequent investigation?

6 MR. RIEDERER: Object to the form of
7 the question.

8 MR. SEHAM: Could you read the
9 question back so the witness can hear it again.

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

12 A. I do not recall this meeting. I do not
13 recall this conversation.

14 BY MR. SEHAM:

15 Q. Do you recall saying that to anybody that
16 you didn't have any knowledge of Captain
17 Estabrook's whistle-blower complaint related to
18 the Laredo departure?

19 A. I recall at some point someone told me
20 there was a complaint, but I don't remember when
21 or who made that -- talked to me about that.

22 MR. SEHAM: Off the record for a
23 second.

24 (Brief recess.)

25 BY MR. SEHAM:

1 Q. Captain Fisher, how are the A300 fleet
2 captain telephone line conversations recorded?

3 A. They're not recorded. So...

4 Q. Okay. Are you knowledgeable to what
5 extent Federal Express does record telephone
6 calls?

7 A. I know some telephone lines that are
8 recorded. We have recorded lines with our GOC and
9 our duty officer, and that's -- that's it.

10 Q. Okay. Do you know how they're stored,
11 these recordings?

12 A. I do not.

13 Q. Isn't it true that you would sometimes
14 call Captain Estabrook on your personal cell line
15 to discuss issues?

16 A. I recall calling him on my cell phone
17 before, yes.

18 Q. And then wasn't part of the reason for
19 doing that to avoid the recording of telephone
20 calls between you and him?

21 A. No. That was not at all.

22 Q. Isn't it true that you wrote an article
23 for the FedEx pilot website about Fred Smith
24 visiting the crew lounge last year to celebrate
25 the renovation of Flight Operations in Memphis?

1 A. I recall that, yes.

2 Q. And there was a -- management tore --
3 literally tore down a wall in the middle of the
4 pilot operations area?

5 A. Yes. We knocked a hole in the wall I
6 think or we -- yeah, something happening to that
7 effect, correct.

8 Q. And the Company treated that as a symbolic
9 gesture encouraging increased communication
10 between the line pilots and management, correct?

11 A. Correct.

12 Q. And then in connection with that, Fred
13 Smith paid a visit to the crew lounge, correct?

14 A. Correct.

15 Q. Now, would you agree that pilots
16 frequently refer to Fred Smith as Fred, just by
17 his first name?

18 A. There are people that say that, yes. Most
19 people say Mr. Smith, but some say Fred.

20 Q. Are you aware that Fred Smith challenged
21 Captain Estabrook to a public debate on the front
22 page of *The Commercial Appeal* during a Union
23 election in the 1990's?

24 A. I'm not aware.

25 Q. Are you aware that articles have been

1 published in *The Commercial Appeal* in which Fred
2 Smith is quoted as asking the public to refer to
3 him as -- just by his first name, Fred?

4 A. I'm not aware of that.

5 Q. When you called Captain Estabrook after
6 you received -- and I apologize, I'm forgetting
7 how this worked. You didn't get a call directly
8 from Ondra. You got a call from Mr. Tice?

9 A. Correct. We are talking about the
10 August 2013?

11 Q. August 9th.

12 A. 9th.

13 Q. Okay. And then subsequently you made a
14 call to Captain Estabrook telling him he was going
15 to be put back on NOQ status, correct?

16 A. Correct.

17 Q. And in the context of that conversation,
18 isn't it true that you told him that it was in
19 part because he knew too much?

20 A. Not exactly.

21 Q. Okay. What exactly did you say?

22 A. As I recall, Mark said, is it because I
23 know too much? And my response was perhaps.

24 Q. And what were you referring to when you
25 said "perhaps"?

1 A. I have to -- it was a regretful comment.
2 I was -- it was a fairly emotional conversation,
3 and it was -- I was ready to get off the phone at
4 that point because we kept asking the same
5 questions over and over, and I think in retrospect
6 I said it to end the conversation.

7 Q. Captain Estabrook was very upset?

8 A. He was.

9 Q. Did you have some sympathy for his being
10 upset?

11 A. Yes, of course. Yes.

12 MR. SEHAM: We will pass the witness.

13 MR. RIEDERER: Can I have two minutes
14 just to talk with --

15 MR. SEHAM: Sure. Sure.

16 (Brief recess.)

17 EXAMINATION

18 BY MR. RIEDERER:

19 Q. Captain Fisher, can you pull Exhibit L.

20 A. Yes.

21 (Off the record.)

22 BY MR. RIEDERER:

23 Q. Exhibit J is a portion of the Collective
24 Bargaining Agreement; is that correct?

25 A. Yes.

1 Q. Can you turn to the page that at the
2 bottom is numbered ME 396?

3 A. Yes.

4 Q. Do you see the paragraph that is lettered
5 D?

6 A. Yes.

7 Q. Can you take a look at paragraph 1 of that
8 subsection?

9 A. Yes.

10 Q. Tell me what that subsection says.

11 A. The VP of Flight Operations, the System
12 Chief Pilot, a Regional Chief Pilot or a Chief
13 Pilot may direct a pilot to contact or see the
14 Company's aeromedical advisor if the Company has a
15 reasonable basis to question whether a pilot has
16 developed or recovered from an impairment to his
17 ability to perform his duties as a pilot.

18 Q. Is there anything in the Collective
19 Bargaining Agreement that requires the VP of
20 Flight Operations, the System Chief Pilot or
21 Regional Chief Pilot or a Chief Pilot to decide
22 that a pilot must see an aeromedical advisor?

23 A. No.

24 MR. SEHAM: I will object to form.

25 Q. Did you say no?

1 A. No.

2 Q. You did not say no or you did say no?

3 A. I did say no.

4 MR. SEHAM: My apologies. That's
5 probably my fault because I was objecting, but
6 could I hear that question and answer?

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

9 Q. Captain Fisher, did the fact that Captain
10 Estabrook raised security concerns in the
11 August 9th meeting motivate your decision to refer
12 him to a 15.D examination?

13 A. No.

14 Q. Did the fact that Captain Estabrook
15 referred to Mr. Smith as Fred motivate your
16 decision to refer him to a 15.D evaluation?

17 A. No.

18 Q. What about that -- the email that was
19 previously mentioned, the email from Captain
20 Estabrook to Bill McDonald, what about that email
21 did you find strange?

22 A. I think the part that I found curious was
23 the part about call me and I'm working. So if I
24 don't answer, leave me a message and I will call
25 you back.

1 Q. Okay. Following the meeting with -- the
2 August 9th meeting with Mr. Estabrook, you did
3 call him at some point and advise him that he was
4 going to have to undergo a 15.D medical
5 evaluation; is that true?

6 A. Yes.

7 Q. Did you ever tell him that he was going to
8 have to undergo a psychiatric evaluation?

9 A. No.

10 Q. In your understanding of how the
11 Collective Bargaining Agreement works, are you
12 able to make a determination as to whether someone
13 needs to undergo a psychiatric evaluation?

14 A. No.

15 Q. Is it your understanding that -- let me
16 rephrase.

17 Do you ever make a determination of a
18 pilot's fitness for duty?

19 MR. SEHAM: Objection to form. I'm
20 sorry. I withdraw that.

21 A. No. I don't make that call.

22 Q. At any point did you make a determination
23 as to whether Captain Estabrook was fit for duty?

24 A. No.

25 MR. RIEDERER: I don't have any other

1 questions.

2 EXAMINATION

3 BY MR. SEHAM:

4 Q. I just want to -- it relates to I believe
5 the first question and answer relating to 15.D of
6 the Collective Bargaining Agreement. That
7 sentence under D.1 that reads: The VP of Flight
8 Operations, the System Chief Pilot or Regional
9 Chief Pilot or a Chief Pilot may direct a pilot to
10 contact or see the Company's aeromedical advisor
11 if the Company has a reasonable basis to question
12 whether a pilot has developed or recovered from an
13 impairment to his ability to perform his duties as
14 a pilot. Is it your testimony that a 15.D
15 evaluation can be initiated by someone other than
16 those four positions?

17 A. Well, my job is to direct the person to a
18 15.D based on information I get from other
19 sources. I'm not sure if that's what you're
20 asking.

21 Q. Well, I want to -- I guess I'm -- in the
22 testimony and the question and answer you got from
23 FedEx counsel, was it your intent to communicate
24 the concept that Todd Ondra had the ability to
25 implement a 15.D evaluation?

1 A. Todd Ondra's recommendation was the basis
2 for me directing Mark Estabrook to a 15.D as per
3 the contract.

4 MR. SEHAM: No further questions.

5 MR. RIEDERER: Okay.

6 (Deposition concluded at 4:12 p.m.)

7 AND FURTHER DEPONENT SAITH NOT

8 (Signature waived)

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1 COURT REPORTER'S CERTIFICATE

2 STATE OF TENNESSEE:

3 COUNTY OF SHELBY:

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

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

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

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

18 4. I FURTHER CERTIFY that this transcript is
19 the work product of this court reporting agency
20 **and any unauthorized reproduction AND/OR transfer**
21 **of it will be in violation of Tennessee Code**
22 **Annotated 39-14-104, Theft of Services.**

23 WITNESS MY SIGNATURE, this, the 12th day of
24 April, 2016.

25 _____
26 SHERYL G. WEATHERFORD
27 Registered Professional Reporter,
28 Tennessee Licensed Court Reporter
29 #027, Arkansas Certified Court
30 Reporter #500, Notary Public
31 for the State of Tennessee at
32 Large ***

33 My commission expires:
34 June 5, 2016

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