

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of:)
)
KARLENE PETITT,) Case No. 2018-AIR-00041
)
Claimant,)
)
vs.)
)
DELTA AIR LINES, INC.,)
)
Respondent.)

VOLUME II

Tuesday,
March 26, 2019

Northwest Mountain Regional
Office
Hearing Room 5W-265
200 S. 216th Street
Des Moines, WA

The above-entitled matter came on for hearing,
pursuant to notice, at 9:02 o'clock a.m.

BEFORE: THE HONORABLE SCOTT R. MORRIS,
Administrative Law Judge

APPEARANCES:On behalf of the Complainant:

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I N D E X

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<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>ALJ</u>
Patrick Harney	251	273			282
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Karlene Petitt	286				

<u>EXHIBITS:</u>	<u>IDENTIFIED</u>	<u>RECEIVED</u>	<u>REJECTED</u>
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JOINT

(None identified, nor received.)

COMPLAINANT

199	305	305
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RESPONDENT

(None identified, nor received.)

P R O C E E D I N G S

1 (9:02 o'clock a.m.)

2 JUDGE MORRIS: Let's go back on the record.

3 This is the case of Karlene Petitt versus Delta Air
4 Lines, U.S. Department of Labor Case Number 2018-AIR-00041.
5 This is day two of the proceedings.

6 I've been talking off the record with the parties.

7 It's my understanding that we're going to take a witness out
8 of turn. After this witness then we'll recall Ms. Petitt to
9 continue her direct testimony.

10 Sir, would you please raise your right hand?

11 Whereupon,

12 PATRICK HARNEY

13 having been first duly sworn by the Administrative Law Judge,
14 was examined and testified as follows:

15 JUDGE MORRIS: Please, take your seat. After
16 you're seated, sir, please provide your full name and contact
17 information?

18 THE WITNESS: Patrick Harney, 18595 Marine View
19 Drive South West, Normandy Park, Washington 98166. Phone
20 number 206 --

21 JUDGE MORRIS: I don't need that. It's a public
22 record, unless you want everyone in the world who doesn't
23 like you to start calling.

24 What's your certificates and ratings?

1 THE WITNESS: I have certificate type ratings,
2 Commercial and also ATP. Type ratings are 727, A320, 319,
3 757, 767.

4 JUDGE MORRIS: What's your total time?

5 THE WITNESS: About 22,000 hours.

6 JUDGE MORRIS: And how many in jets?

7 THE WITNESS: Excuse me?

8 JUDGE MORRIS: How many in jets?

9 THE WITNESS: Probably 18,000.

10 JUDGE MORRIS: Do you work for the Respondent?

11 THE WITNESS: I work for Delta Air Lines.

12 JUDGE MORRIS: How long have you worked for them?

13 THE WITNESS: I'm starting my 33rd year.

14 JUDGE MORRIS: Go ahead, counsel.

15 DIRECT EXAMINATION

16 BY MR. SEHAM:

17 Q Good morning.

18 A Good morning.

19 Q And thanks for being here. Other than the position
20 of airline pilot, have you had any other positions at Delta
21 Air Lines?

22 A Yes.

23 Q What other positions?

24 A I was special project pilot on a couple of items,
25 also an instructor pilot, APD and check airman in the

1 simulator and on line checks. I also, for 25 years, have
2 done ALPA work. I was a council chairman for Council 54 and
3 also committee chairman on previous Northwest and, also,
4 currently the chairman of the RCC, Rotation Construction
5 Committee.

6 Q Okay. Thank you. And if you could give us a brief
7 overview of your airline employment history, including
8 anything other than Delta Air Lines employment?

9 A I flew as instructor, worked for AIRPAC Airlines,
10 was a corporate pilot for a couple of years for Nordstrom,
11 and then took the job here.

12 Q How long have you known Ms. Karlene Petitt?

13 A A little over 40 years.

14 Q And did you ever -- were you ever her instructor?

15 A Yes.

16 Q And could you describe the background of that?

17 A When I worked at Renton Aviation in '82, all the
18 way when I flew at Nordstrom to '86, early part of '87.

19 Q And what did you observe with respect to her
20 performance?

21 A Someone that was trying to get her pilot's license
22 to be a professional pilot.

23 MR. SEHAM: Now, I'm going to provide the witness
24 with a Joint Exhibit here.

25 JUDGE MORRIS: Which one?

1 MR. SEHAM: It's Joint Exhibit L.

2 JUDGE MORRIS: All right.

3 BY MR. SEHAM:

4 Q I'm going to ask you to -- and it's a little
5 confusing in terms of the multiple pagination, but if you see
6 at the bottom, sir, it says JX-L, and there's a number?

7 A Yes.

8 Q Okay. And using that pagination, if you could turn
9 to page 91 of this psychiatric report.

10 A Ninety-one is a blog post?

11 Q Yes. It's May 31st, 2011, "AF447 Blog Post," is
12 the title page, and then the document commences on the next
13 page?

14 A I'm at that spot.

15 Q Pardon?

16 A I'm at that spot.

17 Q Yes, oh, great. And then that continues to 101.
18 Are you familiar with this document?

19 A Yes, I am.

20 Q Okay. And briefly, could you give us the
21 background or your knowledge with respect to the background
22 of this document?

23 A The first that I was made aware of the document was
24 due to a concern from the company that a blog was put out, I
25 understand the Texas newspaper, if my understanding is

1 correct, got a hold of it and Atlanta was made aware of it.
2 I'm not sure by who. And then I was the captain
3 representative chairman for Council 54 in Seattle, and then
4 subsequently was brought up to speed. So, there was a
5 hearing or meeting with Karlene and the chief pilots.

6 Q So, it was a blog published by Ms. Petitt?

7 A I believe so.

8 Q Okay. And do you remember the general topic of the
9 blog, without going through it page by page?

10 A Yeah. It was what took place during this accident.

11 Q Okay. And if you could turn to JX-L-107. And for
12 the record, it's on Delta letterhead, dated June 30th,
13 addressed to Ms. Petitt.

14 A Yes.

15 Q And "Re: Letter of Counsel." Are you familiar with
16 this document?

17 A "Re: Letter of Counsel," I don't --

18 Q This letter of counsel?

19 A Yes, I am.

20 Q Okay. And my question is, have you seen this
21 document before?

22 A I've seen it, I have a copy of it, as well.

23 Q Okay. Now, can you tell us your involvement, if
24 any, with respect to this, the issuance of this letter of
25 counsel, and any aftermath?

1 A Yes. I represented Karlene Petitt in this case.
2 There was a pre-meeting with OC Miller and Steven Lee, the
3 assistant chief pilot, OC was the chief pilot at the time,
4 and the regional director. We had the meeting on the 30th, I
5 believe if my notes are correct, at 11:37 o'clock a.m. we
6 started the meeting with the four of us. And this letter was
7 presented to Karlene. And then we had a post-meeting with OC
8 Miller after the meeting, with Karlene.

9 Q And before you were recounting what your ALPA
10 experience was. Your ALPA experience did include the
11 representation of pilots in disciplinary proceedings?

12 A Correct.

13 Q Okay. And how many years have you done that,
14 during the course of your career?

15 A I have three years as a captain representative, who
16 would actually represent pilots during that period of time,
17 that came up.

18 Q Okay. And was the company response to Ms. Petitt's
19 blog consistent with your prior experience?

20 A Not exactly.

21 Q Could you explain that?

22 A Normally, if a pilot is disciplined, does something
23 wrong, it usually falls into different categories, in my
24 experience. If you do something wrong and you're unaware,
25 and someone brings it to your attention and they correct the

1 situation immediately, normally there's just a discussion.
2 Having a letter thrown in a box seemed a little heavy-handed,
3 in my opinion.

4 Q Well, you refer to the problem or the issue being
5 corrected immediately. What were the facts in this case, in
6 terms of addressing the company's complaint?

7 A My understanding is when this was made known and it
8 was brought to Karlene's attention, she immediately pulled it
9 down and apologized. And then we had this meeting about it
10 -- awareness of the social media policy of Delta Air Lines.

11 Q Okay. And after the aftermath of your discussions
12 or aftermath of this meeting with the company, which led to
13 the letter of counsel, did you express any concerns to Ms.
14 Pettitt?

15 A Yes, I did.

16 Q Okay. And can you explain what you expressed
17 there?

18 A I told her, I said:

19 "They're gunning for you. This is
20 heavy-handed, you have a target on your
21 back, keep your head below the ridge
22 line."

23 Q Who is OC Miller, you've referenced him?

24 A He was a regional director at the time. He's since
25 retired. And he was director or pilot of flying -- I don't

1 know what the title is -- he was the number three guy at
2 Delta back in Atlanta, when he retired.

3 Q Okay. And did you discuss this matter with OC
4 Miller?

5 A Yes, I did.

6 Q And could you explain or could you give us the
7 details of your discussion with him?

8 A The pre-meeting, we always normally do a
9 pre-meeting with the chief pilot's office. And I usually ask,
10 you know, is this a minor deal, medium deal or a big deal
11 where it's going to be a big problem. And his indication, at
12 that time, was:

13 "Hey, it's not that big a deal, we
14 just want to make sure she's aware of the
15 policy on social media."

16 So, we had the meeting and then the letter was
17 presented, signing the letter and the whole bit. I was
18 concerned that it was heavy-handed. Afterwards I asked him,
19 I said:

20 "You know, this seems a little heavy,
21 you know, are you guys going to give her
22 a line check or, you know, take any other
23 action?"

24 And OC told me, at that time, he said:

25 "No, no, we don't do that, that's not

1 how we deal with discipline."

2 I said:

3 "But you put a letter in the box,
4 which is inconsistent with other counsel,
5 with other pilots."

6 Q Why did you bring up the issue of a line check, do
7 you mean line check as a disciplinary action?

8 A Correct.

9 Q And why did you bring that up?

10 A Because I felt it was heavy-handed.

11 JUDGE MORRIS: Hold on, counsel.

12 MR. SEHAM: Yes.

13 JUDGE MORRIS: In your experience, has Delta used a
14 line check as a disciplinary means?

15 THE WITNESS: I have talked to other pilots that
16 have gotten line checks -- several of them. So, the policy
17 is they don't do it. By talking to other people, why would
18 somebody get several line checks, when you normally get one
19 every 24 months. And so when you're getting several in a
20 short period of time, that indicates to me that it's
21 inconsistent with what they say the policy is.

22 JUDGE MORRIS: Continue, counsel.

23 MR. SEHAM: Okay.

24 BY MR. SEHAM:

25 Q And do you know who Jud Crane is?

1 A Yes.

2 Q And is he a pilot for Delta Air Lines?

3 A He's a retired pilot now. He was the captain
4 representative that took over for me in Seattle. In fact,
5 when he took office, you have a briefing of what are the
6 current issues and there's pilots that you have in your
7 council that, for whatever reason, have continuing
8 monitoring, because of, you know, they went into the alcohol
9 program or other issues, or they're continuing to have the
10 discipline, you have a start and stop date, and that's the
11 end of February. Then March, so you do a briefing. The
12 briefing, in particular that's relevant to this case is I
13 mentioned to him that:

14 "Watch out, Karlene's got, you know,
15 you're going to have issues and I think
16 the company is gunning for her, she's got
17 a target on her back."

18 A And in fact, so much so, when the next
19 representative, the captain rep -- because I was still doing
20 ALPA work, I also told the one, you know, four and a half
21 years later, after Jud left because of medical and
22 retirement, I told Roger Goodman, the current captain rep
23 here in Seattle, as well, that I felt she had a target on her
24 back and just be aware that I think they're gunning for her.

25 Q And could you provide time-frames for -- when would

1 you have said this to Jud Crane?

2 A I was the chairman from March 1st of 2011, until
3 February 28th of '14, so it would have been in the month
4 prior to, so somewhere in the January to February time-frame
5 we had a discussion.

6 JUDGE MORRIS: Of 2014.

7 THE WITNESS: Of 2014, correct.

8 BY MR. SEHAM:

9 Q And do you have -- this may not be fair for me to
10 ask you this -- do you know, roughly, the time-frame for your
11 communication of this same "target on the back" concern to
12 Captain Goodwin?

13 A Well, Captain Goodwin, he was the co-pilot
14 representative at the time, and so he was briefed, as well.
15 And then when he took over as the chairman, with more
16 responsibilities, I also mentioned it to him, as well. And
17 then we had discussions with -- when the Section 15 was going
18 on with Karlene and it looked like they were going to
19 terminate, I was in discussions with them -- and it was on
20 the record/off the record. My wife has known Karlene since
21 about third or fourth grade --

22 Q I'm sorry -- I'm going to interrupt. You had
23 conversations with them -- who do you mean by "them"?

24 A Had conversations with the chairman of the council.

25 Q Okay.

1 A I'm sorry -- Jud, at the time. And had discussions
2 about that, especially in the Letter 15, and said:

3 "Hey, on the record, off the record,
4 if something is going down and you want
5 me to talk to Karlene, we've been
6 friends, my wife has known her a very
7 long time, and I would transmit, you
8 know, if they were going to terminate, is
9 this really your best, last."

10 In other words, being a friend to somebody and just
11 saying -- hey, is this a good deal or not, if they were going
12 to terminate her. Then I was surprised -- what was it, a
13 year -- a little over a year ago, I'm going to training -- I
14 think it was a year and a half ago -- I'm going to training
15 on 777 -- because just a couple months ago I had asked OC --
16 OC and I were flying out on a flight -- he used to live here
17 in Seattle -- and I said:

18 "Hey, if they're going to terminate
19 Karlene, can they, you know, offer a
20 package, and I can be an off the record,
21 you know, friend to go tell her. Hey, if
22 this is the best you're going to have,
23 can you treat her properly?"

24 OC said:

25 "It's out of my hands, the attorneys

1 have it, it's off the fourth floor."

2 I said:

3 "If it does come back to you for
4 recommendation, can you -- we've known
5 each other for a long time -- can we, you
6 know, do something, if you're going to
7 terminate her. And if that's your last
8 best deal, I can communicate something
9 off the record, because I know her so
10 well."

11 Q OC Miller said to you the issue was "off the fourth
12 floor"?

13 A It was off the fourth floor, the attorneys had it,
14 there's nothing they could do about it.

15 Q And what does that mean to you, that an issue is
16 "off the fourth floor"?

17 A Well, that it's corporate and it's out of Flight
18 Operations. In other words, out of operational control of
19 Flight Operations.

20 Q Have you, in the last few years, reported a safety
21 event to the company?

22 A Yes, I have.

23 Q Okay. Could you briefly describe what that safety
24 report consisted of?

25 A I switched airplanes, I was on a wide body 75, 76,

1 for 10 years as captain. To be more senior I down-bid to a
2 737. I finished that training two years ago, March 28th of
3 '17. Two and a half, three months on the line, I noticed
4 serious discrepancies in what we have in the Flight Ops
5 Manual plus the operation of how operations were on the
6 narrow body. In fact, in that three-month period, I had one
7 co-pilot that actually waited for checklist to be called,
8 instead of just running and doing stuff on their own. I was
9 concerned about that and wrote a letter to the company, which
10 I believe you have a copy of that. And that was to Phil
11 Davis, regional director, and to, I think it was OC -- no --
12 it was the one before -- I'd have to pull the record out. It
13 was after OC left.

14 Q Did -- I'm sorry -- keep going.

15 A I can't remember the chief pilot. So, I wrote the
16 letter about -- so, in doing ALPA work, in the transition and
17 the merger, I worked on the Joint Merger Committee, JCBA, and
18 then coming over when we did the merger. For over seven
19 years now we've had what the company classified as a "flap
20 problem." When I got to the 37, it's like this is not a flap
21 problem. I've been an instructor, I've written manuals, I've
22 done briefings, and when you have a problem you identify the
23 problem, you get together as a group, instructors and
24 management, and you work through a solution. You train that,
25 make aware to the pilots within a year, you know, three

1 months to figure it out, three months to set up the program,
2 six months to go ahead and train it, a year later you don't
3 have the problem, maybe a one-off here and there. We're
4 still having thousands of incidents of the flaps not being
5 set. And I wrote the letter in regard to that.

6 I said: "We have as systematic problem of rushing."
7 I wrote that letter to Phil and got a response from him -- it
8 was Rip -- Rip Johnson was the chief pilot in Seattle, at the
9 time. So, I wrote him a letter. They said -- Rip called me
10 back and said: "Let me understand this." And he says: "All
11 right, let me go check on it."

12 Later that afternoon -- I wrote it on a Sunday --
13 Monday morning he called me. He went out into the chief
14 pilot's office, saw a few 737 pilots, asked them questions
15 about how they do operations, and he confirmed my findings,
16 that there were captains who said you just do stuff when
17 you're supposed to, and talking to co-pilots, yeah,
18 instructors tell us just do stuff. He called me back and he
19 said: "I thought you were crazy at first." And he says:
20 "On the wide body that doesn't happen." He goes:

21 "I just briefed, I just asked a bunch
22 of guys in the office here that were just
23 coming through, at random, and they
24 confirmed what you said in the letter."

25 I said: "Well, let's deal with it."

1

2 He called Mark Steinholder, which is the chief line
3 check pilot for the 737, that next day. Mark said:

4 "In two days we're doing a phone
5 conference call with all the line check
6 guys."

7 So, Mark said:

8 "Okay. Who is teaching, you know,
9 pilot, co-pilots just to do stuff when
10 it's ready to do, just start an engine,
11 just start reading the checklist, this
12 and that?"

13 Fifty percent -- he read back to Rip about 50
14 percent of the pilots were doing that. To Mark's credit, he
15 said:

16 "No, that's not how we're doing things, that's
17 not how you're teaching things."

18 So, I wrote that letter expecting it -- also copied
19 it to ALPA Air Safety -- and months go by, no change, we
20 still had the problem with the flap problem. Then we had an
21 attempted takeoff with the engine not running, they didn't
22 start one of the engines. In that safety ops brief that was
23 sent out -- hey, a few line pilots have any comments of
24 what's going on, how we can fix this, how we can prevent this
25 -- send a letter.

1 I wrote a second letter -- here's my first letter
2 about the incident. It's not a flap problem, it's a rushing
3 problem, and here's what's going on, and I recommend this.
4 And I said, right in there I said we are going to have an
5 incident or accident, this is preventable. I'm going to get
6 off my soapbox now and I'll write you again after an incident
7 or accident. A couple months later we had the accident,
8 incident/accident, I'm not sure what the FAA did, down in San
9 Jose, where the pilot ran into the tug. And then I wrote
10 another letter, the third one -- okay, now that we have this
11 accident, are you going to consider this serious about the
12 systematic problem we have with rushing, this could have been
13 prevented.

14 And I believe you have those documents. If not, I
15 have a copy.

16 JUDGE MORRIS: I want to know -- can you tell me --
17 you talk about this flap check not set, how was that
18 significant to either takeoff or landing?

19 THE WITNESS: Without the right flaps, you're going
20 to die.

21 JUDGE MORRIS: Well, the record needs to know that.

22 THE WITNESS: It's very serious.

23 JUDGE MORRIS: And why is that?

24 THE WITNESS: Why is that?

25 JUDGE MORRIS: Just in layman's terms, flaps aren't

1 set and you're rolling down the runway, and you're heavy,
2 what's going to happen?

3 THE WITNESS: If you do not have flaps set the
4 airplane will not fly, you will run out of balance field
5 length, there's either not enough runway where you're going
6 to crash, or if you try to pull the airplane off the ground
7 early it doesn't have enough flight characteristics to
8 maintain flight and you're going to crash.

9 JUDGE MORRIS: Okay.

10 THE WITNESS: On landing, if they're not set
11 properly and you've slowed to the speed, you're going to
12 stall and possibly crash, depending how close you are to the
13 ground. It's very serious, it's deadly serious, and that's
14 why I took it serious and wrote the letter, and followed up
15 with a second and a third.

16 JUDGE MORRIS: Okay.

17 Go ahead, counsel.

18 BY MR. SEHAM:

19 Q Was the matter resolved at any point, to your
20 satisfaction?

21 A I've been flying airplanes since I was 15 years
22 old, that's 45 years. I just turned 60. I took this very
23 seriously. I've been an instructor, I've done ALPA work to
24 help fellow pilots, I've worked diligently through my whole
25 career. This is the first time that I saw something so

1 serious that I had to do something. That's how -- it
2 irritates me today, to my core. Thank god nobody gold killed
3 in that San Jose, and I'm hoping the fourth floor is doing
4 something about it and taking it as seriously as I and the
5 passenger will, if we really had a serious accident.

6 Q Have you been advised by the fourth floor of any
7 corrective or remedial action?

8 A No.

9 Q No. Could you describe the SMS training that
10 you've received from Delta?

11 A I'm involved with ALPA so the Safety Management
12 System I know about, relative to ALPA. I believe there's
13 probably a module about SMS when it first came out, but I
14 couldn't tell you any aspect of what that was.

15 Q And with respect to the rushing reports that you
16 issued, what year was that in?

17 A That was just after the merger, so 2009/2010, all
18 the way up until now, so it's almost been nine years now.

19 Q Okay. And with respect to the -- from -- with
20 respect to your "target on the back" references to Ms.
21 Petitt, from -- to give you a time-frame -- from January 1st,
22 2016, to the present, has any Delta management representative
23 ever contacted you to discuss that reference?

24 A No. Like I said, I talked to OC about it, a little
25 over a year and a half ago, because I feared that she was

1 going to be terminated, if he'd, you know, possibly could
2 intervene and do the right thing and offer a package that
3 might be commensurate with retirement, versus termination.

4 Q Did a psychiatrist by the name of Dr. Altman ever
5 contact you to discuss Ms. Petitt?

6 A No.

7 Q Did a woman by the name of Kelley Nabors ever
8 contact you to discuss Ms. Petitt?

9 A No.

10 Q Now, you were a pre-merger Northwest pilot?

11 A That's correct.

12 Q Can you compare Northwest and Delta Fatigue Policy?

13 A Yes.

14 Q Would you do that for us, please?

15 A Previous, you know, you called in fatigued, you got
16 paid.

17 Q At Northwest?

18 A At Northwest. At Delta, for a period of time it
19 was automatically denied, you had to work through it. Now
20 they've improved that a little bit, denial rate is pretty
21 low, but you still have to, you know, present your case to
22 why you should be paid and not take an away.

23 Q Have you ever heard the term "Good Ol' Boys Club"
24 used at Delta?

25 A Yes.

1 Q Okay. In what context -- what does that term mean
2 to you in the context of Delta operations?

3 A I mean it is what it is, you know. If you're in,
4 on the inside, and a certain way of doing things, this is how
5 we do it. In particular, you know, where that kind of
6 philosophy and, you know, doing that, we had two pilots, one
7 was a previous Northwest pilot, checking on the 757, one was
8 a South (sic) pilot. In the simulator the previous Northwest
9 pilot went through and he said:

10 "Okay, tell me what you're going to do
11 for a go-around or wind shear?"

12 And he goes -- almost verbatim -- what the manual
13 says about clicking out a pilot off, and pitching -- the
14 whole procedure.

15 And the instructor goes: "Okay, good." And he goes
16 to the co-pilot, he says: "So, what would you do?" "Click,
17 click, push, push." There you go. And he's like --
18 afterwards -- why was your answer -- I said exactly what
19 we're supposed to do. Well, you get this gouge book over at
20 the store, so you have to kind of know and you have to kind
21 of spent \$15.00, \$17.00, then it's like this is what hey want
22 to hear. So, you know, without going into all the, you know,
23 "Good Ol' Boys," and you know, who you know and how you get
24 in -- it is what it is.

25 Q Does it have a gender based connotation, to your

1 mind, in terms of how that term is referenced at Delta?

2 A I see people as people, so I don't see it that way.

3 Q Okay. You're familiar with the term: "Trip Buy"?

4 A Yes.

5 Q And do you know how the pilot, who receives the
6 trip buy, if it's a reserve pilot receiving a bought trip,
7 how is that pilot paid?

8 A Well, they're paid -- they're reserve guarantee, so
9 if you fly a trip on a trip buy, you're working when you
10 didn't have to and most people do it for currency.

11 Q If the pilot is not going to exceed their reserve
12 guarantee, is there any additional wage cost to the company
13 for buying that trip?

14 A No. The pilot flying the trip is either getting
15 per diem and the other pilot is not, but that's just a
16 function of paying for meals on the road.

17 Q Are you familiar with the term: "Green Slip"?

18 A Yes.

19 Q And what does that term mean within Delta
20 operations?

21 A You get paid double. It's a very nice way of
22 staffing the airline.

23 Q In what context is that invoked, how do you come to
24 get a green slip and get paid doubly?

25 A You put in for a green slip, it's voluntary. It's

1 to help the company during IRROPS or when there's nobody to
2 fly a trip. A pilot may not be inclined to fly additional,
3 but if they're paid double then that's the incentive to get
4 them to cover trips, so the operation of the airline. So,
5 you're basically getting paid double when you're getting a
6 green slip.

7 JUDGE MORRIS: What's IRROPS?

8 THE WITNESS: Oh, I'm sorry. Irregular operations.

9 JUDGE MORRIS: For the Court Reporter.

10 THE WITNESS: Okay.

11 BY MR. SEHAM:

12 Q And is there any way of multiplying that green
13 slip?

14 A Oh yeah.

15 Q Yeah. Can you describe that?

16 A So, an example, the last couple of years, the 350
17 pilots, they'll bid a trip, a line of trips, and the company
18 needs training and there's nothing out there, so they'll buy
19 a trip from a guy. Then you have no responsibility. So,
20 then they'll bid another trip and then the company says -- I
21 want that. And they'll be free to do something else. Then
22 they could green slip on the same time, because now they know
23 there's no instructors or pilots, and they're free. So, you
24 can get paid four or five times for that same four-day trip,
25 in a short period of time.

1 MR. SEHAM: I have no further questions, but both
2 the Tribunal and Delta may have.

3 JUDGE MORRIS: Counsel?

4 CROSS-EXAMINATION

5 BY MS. BROWN:

6 Q Captain Harney, you talked earlier about a June
7 309th, 2011, letter of counsel that Ms. Petitt received,
8 about the Air France blog posting she put up?

9 A Yes.

10 Q Are you aware that Ms. Petitt had previously been
11 counseled by Delta about her social media and blog posting?

12 A That was on, I believe, June 30th of '11. I took
13 office March 1st, so anything prior to that I don't recall or
14 don't remember being briefed on it.

15 Q And it was a letter of counsel, correct?

16 A Correct.

17 Q Okay. Can you grieve a letter of counsel?

18 A You can grieve anything the company does.

19 Q Letters of counsel aren't considered formal
20 discipline under the pilot working agreement, is it?

21 A No.

22 Q Are you aware that Ms. Petitt was referred for a
23 Mental Health Evaluation in 2016?

24 A I knew about that after the fact, but while it was
25 going on.

1 Q So, her letter of counsel is five years before that
2 happened?

3 A Correct.

4 Q And you said the letter of counsel was signed by OC
5 Miller, is that correct?

6 A Yes.

7 Q And do you know if OC Miller was involved at all in
8 the decision to refer Ms. Pettitt for a Mental Health
9 Evaluation?

10 A I'm unaware.

11 Q And if you'll look at JX-L-107, it references, in
12 the third paragraph, a January 12th, 2011, meeting. You
13 weren't present for that meeting?

14 A No. I didn't take office until March 1st of 2011.

15 Q Okay. So, you don't know what was discussed at
16 that meeting, do you?

17 A No.

18 Q Earlier, you also testified about hearing -- and I
19 guess secondhand -- from people, that they had experienced
20 alleged retaliatory line checks. Who, specifically, told you
21 they had experienced retaliatory line checks?

22 A I heard from several people, but the person Ken
23 Watts, Captain Ken Watts.

24 Q So, Ken Watts told you. Anyone else?

25 A Several other people, I don't remember names. I

1 know Karlene had mentioned it. I don't recall the names.

2 Q So, the only two people you can recall are Ken
3 Watts and Karlene Petitt?

4 A The names, correct.

5 Q Okay. And is a line check issued for a first
6 officer or is it for a captain?

7 A Normally it's for the captain.

8 Q And with respect to the alleged retaliatory line
9 checks that Ken Watts told you about, do you know if they
10 were connected, at all, to him reporting safety concerns?

11 A I'm unaware. Let me correct that -- I don't know.

12 Q Line checks aren't considered disciplinary, are
13 they?

14 MR. SEHAM: Objection.

15 JUDGE MORRIS: Overruled.

16 You may answer.

17 THE WITNESS: Yes, they are. You fail a line
18 check, you can be fired.

19 BY MS. BROWN:

20 Q Well, that's if you fail it, but just the act of a
21 line check isn't a disciplinary --

22 MR. SEHAM: Asked and answered, argumentative.

23 JUDGE MORRIS: Overruled.

24 You may answer.

25 THE WITNESS: When you get a line check, you are

1 being looked at by the company. If it's not during the
2 normal 24 months with the regulatory procedure, then it's
3 considered a disciplinary action in my mind. Because you are
4 getting reviewed to find out whether or not your performance
5 -- or if they're looking for something -- as being an
6 instructor, you could almost fail somebody every single time
7 by putting pressure on someone. That's not the role of the
8 instructor, but it can be used as that. I would see a line
9 check, many line checks within that 24-month period as being
10 retaliatory and disciplinary.

11 Q Are line checks required by the FAA?

12 A Yes.

13 Q And they're required under Delta policy?

14 A By virtue of the rules, correct.

15 Q Do you know who schedules line checks?

16 A Nope.

17 Q You're not aware of a specific department that's
18 responsible for them?

19 A Flight Ops.

20 Q Do you know that or are you just guessing?

21 A Flight Ops does everything with the pilots, as far
22 as I -- let me take it back. No, I don't know, I'm unaware.

23 Q So, you don't know what specific factors are used
24 to determine whether a line check is appropriate?

25 A Say the question again?

1 Q You're not aware of the specific factors Delta uses
2 to determine whether a line check is appropriate?

3 MR. SEHAM: Objection, vague. It does not provide
4 a context.

5 JUDGE MORRIS: Rephrase.

6 BY MS. BROWN:

7 Q So, if you don't know who schedules the line
8 checks, you don't know what factors are used by those
9 individuals to determine if a line check is needed?

10 A At Delta, if you had a failure in training and were
11 at a level where -- then there's increased check rides that
12 go along with that, or line checks that would go with that.
13 If there's a safety event that the company feels that part of
14 the remedial process, or the training process, would be to
15 come in the simulator and there would be a line check, but it
16 would be associated with an event. But normally, the
17 24-month or the initial check, when you're first checking out
18 on a piece of equipment, that's when you'd get the line
19 check. So, you'd get the training, you get a line check,
20 you're good to go. And then you're going to get one every 24
21 months, unless you're in a special training program or you've
22 had an event that the group of people that go through the
23 event, which is the FAA, the company and ALPA, determine that
24 you would go and get a line check. And then --

25 Q Is it correct that 50 percent of Delta pilots must

1 be checked each year?

2 A I'm unaware of that.

3 MS. BROWN: No further questions.

4 MR. SEHAM: No further questions from the
5 Complainant.

6 JUDGE MORRIS: All right. I've got a question.

7 And again, I don't know -- I'll just ask this for
8 the parties. I keep hearing two years, but I'm looking at
9 121-440 Line Checks, and it reads:

10 "No certificate holder may use any
11 person, nor may any person serve as pilot
12 in command of an airplane unless within
13 the preceding 12 calendar months that
14 person has passed a line check, in which
15 he satisfactorily performs the duties and
16 responsibilities of a pilot in command,
17 in one of the types of aircraft he is to
18 fly."

19 So, why are we talking about 12 months versus 24
20 months?

21 MR. ROSENSTEIN: Your question is whether or not
22 all pilots have to be checked every year, or whether they
23 have to be checked every two years?

24 JUDGE MORRIS: Right.

25 MR. ROSENSTEIN: Because the regulation that you're

1 reading suggests that they have to be checked every year and
2 not every two years?

3 JUDGE MORRIS: The regulation I just read says
4 within the preceding 12 calendar months.

5 MR. ROSENSTEIN: So, I think the question is to the
6 witnesses that Complainant has raised. We haven't elicited
7 testimony from any of our witnesses on that subject, so you
8 can take judicial notice of the regulation, or you can ask
9 counsel -- which I have no objection to asking, inquiring of
10 counsel -- their view of it.

11 JUDGE MORRIS: And again, I initially -- and again,
12 so you know I'm not trying to play "hide the ball," or, you
13 know, "gotcha," I go down to -- at least from what I can tell
14 from the NPRM -- the last time that regulation was modified
15 was in 2012. So, do you know, counsel?

16 MR. SEHAM: I know, with 95 percent certainty, how
17 it's been implemented, which is that every captain must have
18 one every 24 months, and that 50 percent of the pilot
19 workforce must be checked every year. In other words, there
20 has to be a constant flow of checks and regulatory of checks.

21 But the individualized requirement, as currently exists in
22 the industry, is once every two years. We'll see if that's
23 in the record. Obviously, if there's nothing else in the
24 record, you'd defer to that, but you said that's an NPRM?

25 JUDGE MORRIS: No. The Notice of Proposed Rule

1 Maker, and Final Rules implemented in 2012.

2 MR. SEHAM: Oh, I see.

3 JUDGE MORRIS: I was concerned had there been a
4 change, because I know -- and I think it's 441 -- there is a
5 change to the requirement in 121-441, beginning, I think it's
6 this year, March of this year there was a change. But that's
7 a proficiency check versus a line check.

8 MR. SEHAM: Right.

9 JUDGE MORRIS: And then there's pilot in command
10 versus all other pilots get two years, it's two years for
11 other pilots, the FOs, but for the captains I'm hearing
12 annual. And again, we can talk about this later, but --

13 MR. SEHAM: Okay.

14 MR. ROSENSTEIN: Does the statute -- does what
15 you're reading perhaps refer to airlines that are on AQP, as
16 opposed to others? It doesn't suggest that?

17 JUDGE MORRIS: It doesn't. I mean it's possible,
18 I'm just trying to look through this. I understand in 135
19 world that's the case, but it just tweaked me when we heard
20 about this line check versus proficiency check.

21 MR. ROSENSTEIN: Sure. I mean it's -- yeah,
22 without getting into the details -- some of this stuff is
23 interesting. Respondent will take the position on relevance
24 later in the case, on all of these subjects, but AQP -- but
25 we'll have a witness on the stand who will be able to answer

1 those questions.

2 JUDGE MORRIS: Okay. That's fine. And again, I
3 apologize, it's just I'm always curious when something peaks
4 my interest that I hadn't heard about before.

5 THE WITNESS: I was an APD, which licensed under
6 that program and I can answer that question.

7 JUDGE MORRIS: Well, counsel can ask the questions.

8 THE WITNESS: Okay.

9 JUDGE MORRIS: Before I get to mine.

10 MR. SEHAM: I defer to the Tribunal. It's a
11 question that you have, so.

12 JUDGE MORRIS: All right. Well, tell me?

13 THE WITNESS: Under AQP on, you know, 121 carrier
14 with AQP, they have a whole procedure that they fall under.
15 And so every nine months the pilots go into the simulator.
16 And then there's quarterly training, which they used to do
17 annually, now they do it quarterly. And then the 24-month
18 line check for that, that is a regulation unto itself and
19 each carrier has the 121 program. And then they're required
20 to follow that program. If they don't follow that program,
21 then they fall under these rules that are generic.

22 So, if a new airline started up, they'd be under
23 that rule. If they decided to transition over to AQP, the
24 training program that is currently at Delta, then those
25 provisions are what are looked at. And as long as they

1 satisfy those regulations, they're in compliance.

2 JUDGE MORRIS: All right. I do have some
3 additional questions here.

4 EXAMINATION

5 BY JUDGE MORRIS:

6 Q You made a comment, in reference to, I believe it
7 was Respondent's questions about line checks, "normally" for
8 a captain. And the inflection I took with that was, well, do
9 they do line checks for other than captains and why do they
10 do that?

11 A I say "normally," because normally you're always
12 under the 24-months impact. It hits the early month --
13 there's a three-month window, your early month, grace month,
14 the month you're due, and then you have one grace month
15 afterwards, where you have to have it. You become
16 unqualified at the end of that third month. The earliest
17 they can do it, to qualify for that 24-month check, is the
18 first of the month before that you're due. Why I say
19 "normally," is because they do line check blitzes, which are
20 more observation -- still a line check -- but it's not a line
21 check -- if you did something serious, then they're probably
22 going to have some questions, but normally on the line check
23 blitzes they're just looking at how a crew is operating, and
24 writing a report. It's an information data collection versus
25 a regular line check in your 24-month window, which is this

1 is betting your job.

2 Q Are you familiar with a 44709?

3 A The number doesn't ring any bells. But if you tell
4 me what it is, I'll probably --

5 Q Are you aware of the FAA inspector's authority to
6 conduct a reexamination at anytime, for any reason?

7 A Right, yes.

8 Q Does the Delta management or the Delta Ops Specs or
9 manuals give such discretion to anyone such as the chief
10 pilot, saying -- I don't like the way this guy landed, I want
11 to have him do a line check?

12 A I'm unaware.

13 Q You're unaware, okay.

14 MR. ROSENSTEIN: Could I ask a follow-up question
15 on just that last point that he testified about, just to
16 clarify for you?

17 JUDGE MORRIS: Go ahead.

18 REXCROSS-EXAMINATION

19 BY MR. ROSENSTEIN:

20 Q When you were talking about the observational sort
21 of checks, were you referring to LOSA, the Line Oriented
22 Safety, as opposed to like a line check?

23 A Correct.

24 Q Okay. It's different, it's a different type of --

25 A The generic line check blitz, which I'm opposed to

1 calling it that, because in football when you say you're
2 doing a blitz, you're coming after me to get me.

3 Q Right.

4 A And I think it's inappropriate to call a line check
5 "blitz," because now -- hey, we're coming after you.

6 Q Yeah. I think maybe it refers to the war term of
7 Blitzkrieg, like short where you send lightning. But I hear
8 what you're saying.

9 A Either way, not pleasant.

10 Q Yeah.

11 MR. SEHAM: It's still the Third Reich.

12 MR. ROSENSTEIN: Yes. When you're quoting the
13 Third Reich, it's not usually that --

14 EXAMINATION

15 BY JUDGE MORRIS:

16 Q My next question is, to your knowledge, if you can
17 recall, since this is eight years old, what was the
18 proprietary issue concerned with a pilot talking about a 447
19 in a crash, in this blog?

20 A My understanding is that it didn't matter what she
21 said, how she said it, what was going on, there was a
22 reference that she was a Delta pilot, that caused it to
23 negatively come back on Delta. It had nothing to do with
24 what she said or didn't say, it's just that you can't attach
25 Delta unless you have preapproval to do that.

1 Q Is there a Delta policy that specifically says you
2 cannot identify yourself as an employee or pilot when you're
3 exercising social media events?

4 A Correct.

5 Q Okay.

6 JUDGE MORRIS: Questions based on mine?

7 MR. ROSENSTEIN: You asked the one I would have
8 asked, that last one, so.

9 MR. SEHAM: No further questions.

10 JUDGE MORRIS: All right. Thank you, sir, you may
11 step down. You can stay in the public area, if you want to,
12 or you can leave.

13 THE WITNESS: Thank you.

14 (Witness excused.)

15 MR. ROSENSTEIN: Can I -- before Ms. Petitt starts,
16 can we take a short courtesy break?

17 JUDGE MORRIS: Sure. Let's take that. The court
18 is in recess, yes.

19 (Off the record at 9:47 o'clock a.m.)

20 JUDGE MORRIS: On the record. All parties present
21 when the hearing last recessed are again present.

22 Ms. Petitt, stand, please raise your right hand.

23 Whereupon,

24 KARLENE PETITT

25 having been first duly sworn by the Administrative Law Judge,

1 was examined and testified as follows:

2 JUDGE MORRIS: All right. Take a seat.

3 Please continue with your direct.

4 DIRECT EXAMINATION RESUMED

5 BY MR. SEHAM:

6 Q I took a document out of order, so I'm going to
7 take you back a week earlier than where we left off last
8 time, I believe. If you could turn to CX-11 -- are you
9 there?

10 A Oh, yeah. Sorry.

11 Q Okay. So, I'm going to turn to the second page
12 first, which is an e-mail from OC Miller to Puckett, which
13 just says: "FYI." Below that is an e-mail from Graham to OC
14 Miller, dated November 9th, 2015. And just to highlight the
15 relevant issue, in that third paragraph it says:

16 "Maybe she didn't understand that the
17 IAAAS conference she was attending was a
18 safety conference."

19 Let me pause there. Could you tell us what IAAAS
20 (sic) is?

21 A He actually has it incorrect. I was at the IASS,
22 it's the International Aviation Safety Symposium.

23 Q And is that the symposium where you heard Richard
24 Anderson speak?

25 A Yes.

1 Q Okay. It continues:

2 "Glad to meet with her anytime,
3 probably good to engage HR again, at this
4 point, given this latest e-mail to Phil,
5 as I believe we could find ourselves
6 being accused of inappropriate wrongdoing
7 by her and we need to start tracking for
8 this phase. I also think we should
9 consider whether a Section 15 is
10 appropriate, while I'm sure she would
11 find issue with that course of action, if
12 she cannot embrace and understand the
13 reasons behind our actions it stands to
14 reason she might not be able to make
15 appropriate decisions for the safe
16 operation of a flight as a crew member."

17 Now, the cover indicates that this letter was sent
18 to David -- the psychiatrist, Dr. David Altman, July 3rd.
19 Did Dr. Altman ever disclose to you that he had this e-mail
20 of November 9th, referencing a Section 15 proceeding?

21 A No, he did not.

22 Q Okay. And if you could -- that's November 9th. If
23 you could turn to CX-7?

24 A Okay.

25 Q If you can go -- I'm just going to highlight or

1 premise the next question on the middle e-mail from Jim
2 Graham to Steve Dickson, that's November 16th, one week
3 later.

4 "Here we go, just FYI, I will brief HR
5 and handle this with kid gloves. She
6 could be a candidate for a Section 15
7 after this goes through, if she continues
8 to see herself as the victim and refuses
9 to accept that she cannot just use Delta
10 proprietary information as her own, as
11 well as Delta pictures (Aircraft QRH
12 Volume 1, et cetera) and intellectual
13 knowledge. Will keep you informed. JG."

14 Did Dr. Altman ever bring this second letter, in
15 November, referencing Section 15 to your attention?

16 A No, he did not.

17 Q Now, did anyone, during this time period, either on
18 November or 9th or afterwards, or on November 16th or
19 afterward, or anytime thereafter up until March, did anyone
20 at Delta express a concern for your well-being?

21 A Many people did.

22 Q No, I'm talking about anyone in Delta management?

23 A Delta management -- absolutely not. Just the
24 fellow pilots warned me.

25 Q Okay. And did anyone within Delta management

1 suggest you seek counseling or EAP assistance?

2 A No.

3 Q With respect to these references to Aircraft QRH
4 Volume 1, in the parenthesis, as apparently proprietary
5 information, had you ever been disciplined with respect to
6 using that type of proprietary information, by which I mean
7 any formal discipline?

8 A No.

9 Q Okay. And did the letter of counsel, that the last
10 witness was testifying about, did that relate in any way to
11 -- the letter of counsel in June of 2011 -- did that relate
12 in any way to those issues?

13 A No.

14 Q No.

15 A No.

16 Q Okay. And then since your letter of counsel in
17 June of 2011, have you ever received a second letter of
18 counsel?

19 A No.

20 Q If you could turn to CX-22?

21 A Okay.

22 Q Okay. And what I want to refer you to is the top
23 of the page, an e-mail from Jim Graham to Brendan Branon,
24 Mike Coquel (phonetic), Steve Dickson, OC Miller, Phil Davis,
25 Meg Taylor. Do you know who Meg Taylor is?

1 A I do now.

2 Q Okay. Who is she?

3 A She is one of Delta's corporate attorneys.

4 Q And Mike Coquel, do you know who he is?

5 A Yeah. Mike is, I believe he is a corporate
6 communications or marketing type person.

7 Q And Brendan Branon, do you know who he is?

8 A He's an attorney.

9 Q Okay. And by way of premise for the next question,
10 I'll refer you to the first couple of sentences that read:

11 "After concurring with Mike, Brendan
12 and Meg, we have decided to give Karlene
13 Petitt her requested audience the morning
14 of December 1st. I will ensure Steve is
15 briefed up that we do not see any
16 harassment substantiation in her
17 correspondence, so we find no basis to
18 start an investigation into her singular
19 claim. We also do not find any
20 identified safety threat to the company
21 or the operation, only her assertion
22 there is a Safety Culture concern."

23 Based on your Part 5 SMS training, would you agree
24 that there's -- well -- let me not say "agree." Is there a
25 relation between Safety Culture and safety threats to a

1 company?

2 A Oh, absolutely. The culture of the airline, Safety
3 Culture of the airline is the most important aspect of
4 safety. If they don't report, if they don't adjust, if
5 they're not informed, if they're not learning, it is the
6 foundation requirement for an SMS.

7 Q Did you speak to Captain Graham prior to your
8 meeting with him on January 28th, 2016?

9 A I did.

10 Q And can you give us a time-frame for your
11 discussions with him?

12 A It was -- I don't know the exact date, but it was
13 somewhere between November 10th and the 16th, that week,
14 because it was after I had submitted the letter and we were
15 talking about meeting.

16 Q Can you give us an overview of what was discussed
17 during your teleconferences with him?

18 A Yes. He called in, and the focus of the meeting,
19 to find out what I wanted to talk to him about. And so I
20 explained the culture issue, the management threat, and I
21 went into detailed explanation of the Yellow Fever situation,
22 that I said here. That we do -- we're not following our AQP
23 practices, we manage by threat, we're giving line checks. I
24 reiterated that it was completely inappropriate that I should
25 be directed to tell my regional supervisor, write to him and

1 tell him what I'm doing, on my days off. I believe in that
2 call I also explained to him that I was also directed to not
3 speak to my chief pilot on anything, that I had to go to Phil
4 Davis only, for any request or anything that I did.

5 So, that was pretty much it. But basically, it was
6 a highlighted recap of what I wanted to talk to him about.

7 Q Did the topic that came up yesterday, concerning
8 Yellow Fever shots, was that discussed telephonically during
9 this period?

10 A Yes, yes, in detail.

11 Q Okay. And had you discussed, during this period,
12 an alternative to a face-to-face meeting?

13 A I did. He, at one point, offered to do a telephone
14 call and discuss it over the phone. And I said that I'd
15 prefer to do it in person, because I thought it warranted the
16 attention of face-to-face meeting. And I also wanted to be
17 able to give them a copy of the report in writing.

18 Q Okay. Now, if you could turn to CX0-173?

19 A Okay.

20 Q And for the record, it reads at the top:

21 "Pilot Training in a Safety Culture
22 SMS and Next Gen Demands, Karlene Petitt,
23 Affiliation Embry-Riddle Aeronautical
24 University."

25 Is this a document that you authored?

1 A It is.

2 Q And could you give us a very brief overview of what
3 it addresses?

4 A Well, we're moving into Next Gen, and that's --
5 Safety Culture SMS, it's how we operate. And our function is
6 part of that. So, I wrote a paper to highlight the
7 importance from a safety perspective, and why CRM, why SMS,
8 so it kind of took a little history of what -- to explain
9 AQP, LOSA, but then very detailed on Safety Culture and
10 Safety Management Systems, and how those were applicable to
11 training. Because Flight Operations and the Training
12 Department are part of -- the Training Department has its
13 culture in itself, and I was looking at SMS more applicable
14 to the training challenges and what we were doing as an
15 airline in training, to be assessing performance,
16 communicating, you know -- how we're being trained. And we
17 really have some challenges in that area, I believe.

18 Q Okay. And then turning two documents forward, 175,
19 which is titled:

20 "Structural Redesign of Pilot Training for
21 Aviation Safety in Automated Aircraft,
22 Karlene Petitt, Affiliation Embry-Riddle
23 Aeronautical University."

24 Is that another article that you addressed?

25 A Yes, it is.

1 Q And I would assume that the summary of what it
2 addresses is in this first paragraph?

3 A Yes.

4 Q Yes, okay. So, did you ever send these two
5 documents to Captain Graham?

6 A I did.

7 Q And when did you send them to Captain Graham?

8 A Sometime before our meeting, because much of what I
9 was discussing was about training, about culture, Safety
10 Management Systems, and so I wanted to provide the
11 references. But this particular letter, I also had sent to
12 Captain Jon Tovani, Director of Training. This is somewhat
13 significant, because I was requested to come over to Brussels
14 and speak at the Euro Control Flight Safety Foundation, on
15 this particular paper. And so I went as a representative of
16 Embry-Riddle, not as Delta. But I did let Delta know that I
17 was doing it. And I talked to Jon Tovani, and that's why I
18 gave him the paper and told him this is what I'd be speaking
19 on. He e-mailed and said, you know, good luck with your
20 meeting.

21 But this is -- out of my three events over my
22 20-year period here at Delta -- somebody -- a reporter over
23 there, not at this conference, was going through the archived
24 papers and found mine interesting, and then went and looked.

25 And anyone can have access to find out who you fly for. So,

1 he wrote an article about my structural design, and he wrote
2 it first person as if he and I were interviewing. And so
3 this issue came up and Phil Davis called me -- and actually
4 Jud Crane, my union rep, called me first. And so I
5 immediately -- I'd never heard of it, never saw it, never met
6 the man -- so I e-mailed him and explained who I was and
7 would he be willing to send a letter. And so he did write a
8 very nice letter and said, no, I've never met her and here's
9 what I did. And I submitted that in, I gave it to my union
10 rep, gave it to Captain Davis. And so it should have been
11 resolved, but they still had me come over to Seattle base and
12 told me to be careful of these things.

13 Q You referenced -- is it Captain Tovani?

14 A Yes.

15 Q And you say you provided a copy of these documents
16 to Captain Tovani?

17 A The Structural Design of Pilot Training, because
18 that was applicable, specifically, to how we were training.
19 And I think they were using -- and he had mentioned that they
20 were looking into -- at a later time -- they were looking
21 into using this for their training in the 350, in some
22 capacity.

23 Q Did you -- did he get back to you and give you
24 feedback, Captain Tovani?

25 A He actually scheduled a meeting with me. And it

1 was during a -- it was during my recurring -- because I had
2 already been down there -- so he scheduled the meeting. And
3 I went to his office and waited 30 minutes, and then he
4 showed up and was -- he forgot -- he forgot we had the
5 meeting. So, we kind of chatted a little bit, that was the
6 end of it.

7 Q If you could turn to RX-20?

8 A Okay. Which one is RX, these blue ones?

9 JUDGE MORRIS: It's Volume 4.

10 THE WITNESS: Okay.

11 BY MR. SEHAM:

12 Q I want to refer you to the bottom e-mail from
13 Karlene Petitt to Jim Graham, and passing over to the second
14 page there are italicized titles to the documents that we
15 just referenced. Would this be the cover e-mail for your
16 forwarding CX-173 and 175 to Captain Graham?

17 A Yes.

18 Q And if you go to the top, an e-mail from Jon Tovani
19 to Captain Graham, Sternstein, Ed, Shramack, Chuck, Dempsey,
20 Steve, Nutter, Scott, which commences:

21 "Hi Jim. My overall impression of the content
22 of these papers is positive. They
23 overlap quite a bit, but are both
24 interesting reads to those of us in the
25 pilot training business."

1 Did the company ever -- before discovery in this
2 litigation -- did the company ever forward this e-mail to
3 you?

4 A No, they did not.

5 Q Now, you mentioned that you provided these reports
6 to the union or was it the January 28th safety report that
7 you provided to your union?

8 A Oh, it was the January 28th safety report.

9 Q And what's the name of the attorney you provided it
10 to?

11 A Rachel Samuda.

12 Q And did she have any comments on your report?

13 A She did. She had said -- well, we spoke for the
14 better part of three hours. The only reason I went there is
15 because, once again, Jud was very concerned that something
16 was going to happen to me if I moved forward. He said:
17 "Please, at the very least, talk to the attorneys." And I
18 said: "Okay."

19 So, I went down the day before, spent the better
20 part of three hours with them. And went over why I was doing
21 it, what my intent was. She tried to convince me not to give
22 it to them in writing. The rationale -- she didn't like to
23 put anything in writing, being an attorney. And my point
24 being, I didn't want to be taken out of context. It was a
25 very lengthy report. I didn't want to run out of time. But

1 most importantly, I think there was like 10 pages in the back
2 that were all academic references, so from, you know, not
3 only academic, from FAA, that they could go in and look and
4 see that this was an FAA requirement. And so I asked her if
5 she would just read it and let me know what she thought. She
6 said it was very well written, but she didn't want me to give
7 it to him.

8 JUDGE MORRIS: Give it to him -- who is "him"?

9 THE WITNESS: To Captains Graham or Dickson, the
10 two executives I was meeting with.

11 JUDGE MORRIS: Did she tell you why?

12 THE WITNESS: Yeah, she actually did. She said
13 that -- she made the comment that they're very corporate and
14 scary, and it was just the attorney in her, she just didn't
15 want -- they don't like to put things in writing. And those
16 were the only rationales.

17 BY MR. SEHAM:

18 Q Is that her word, "scary"?

19 A Um-hum.

20 Q Yes?

21 A Yes. It was her word. Because they were so
22 corporate, that was the --

23 Q So, you met with Captains Dickson and Graham on
24 January 28th, 2016, correct?

25 A I did.

1 Q And could you provide us an overview of the
2 meeting, in terms of its tenor, it's length, and things of
3 that nature?

4 A Yes. It was supposed to be for 90 minutes, and
5 that's what I thought we were doing. And so when we first
6 got in there -- and I don't really remember how it opened or
7 what -- if I begin at the beginning, such as mentioning the
8 Yellow Fever shot, because it's kind of where it first
9 started, managed by threat -- to bring this, you know,
10 Captain Dickson up to speed. But I didn't get a word out --
11 maybe two or three -- because Captain Graham said -- went
12 into something about calling my chief pilot if I had a
13 problem. But as he knew -- when I gave the discussion before
14 -- the chief pilot is the one who called me and told me to
15 pull it.

16 So, I finally asked him:

17 "Do you wanted me to say: 'Excuse me, chief
18 pilot, I'm going to hang up on you and
19 I'm going to call you right back.'"

20 Because I just didn't know what to do.

21 And then Captain Dickson said:

22 "Some people like to sit in the back of the room
23 and throw spit wads."

24 And then they went -- proceeded to tell me what
25 they were doing with the company and where the company was

1 going and progressing. So, it kind of felt like a base visit
2 meeting, when they come out to the bases and tell us what
3 we're doing. And I kind of kept looking at my watch,
4 thinking when are we going to get to this.

5 And then the door opened, the secretary came in and
6 she said:

7 "Gentleman, the board room is filling
8 up, your meeting is about to begin."

9 And I said: "I thought we had 90 minutes." And
10 Captain Graham said: "Oh, no, we don't need that much time."

11 So, I went in, pulled these out and I said: "Yes,
12 we do." And I gave them each a copy of the report. And I
13 said: "We have a serious problem at this company." And I
14 don't remember the sequence of events, but I spouted out --
15 this and this -- and I went to we're not following AQP, we're
16 doing line checks of retaliation, we have pilots who are
17 being coerced to fly fatigued. So, I rattled off highlights
18 in that report. And they were a little bit taken aback.

19 The secretary opened the door one more time, in
20 this little period, and she looked. And I think we stayed
21 for another 20 minutes, so they were able to let me tell them
22 a little bit about what this was in. So, I handed them each
23 the report. And then I don't remember who said which, but
24 one of them said: "Maybe we should make Karlene part of the
25 Ambassador Program." The other one said: "We should make her

1 an instructor."

2 Q What's the Ambassador Program?

3 A I don't -- I think -- I don't know the details, but
4 you go out and you represent the company and talk. But my
5 thought was, I thought, boy, I sat here and got -- came down
6 for a very serious discussion, put a lot of effort into
7 writing that, and a lot of documentation to help the company,
8 and I felt we went from attack to justify, to now I'm putting
9 it in front of you and -- those comments were kind of like,
10 oh, let's give her something and make her be quiet, is the
11 way I took it. They didn't say it that way, but that's kind
12 of how I felt I took it. And I did say to Captain Dickson
13 that -- at the very end of all of this -- that not even in
14 the third grade did I sit in the back room and throw spit
15 wads. I sat in front and paid attention.

16 But I gave him the report. And then Captain Graham
17 thanked me for it. He said: "I'll read this tonight, I'll
18 get back to you." And so that was the meeting.

19 Q And now you referenced a concern expressed by the
20 ALPA attorney. Did anyone else warn you about submitting
21 your written safety report prior to January 28th?

22 A Yes. Jud Crane knew I was going to do it. I had
23 another friend who is a Seattle pilot, and he had heard,
24 through the company, from somewhere else, he had just been
25 recently, I believe, employed as part of Pilot Hiring, but he

1 had been a check airman, so he was kind of in the know. And
2 he contacted me, actually, on two occasions. One time my
3 husband and I went and had lunch with him. And he was
4 telling me:

5 "Just stop the school, stop this
6 writing, and go be a 737 captain, here's
7 what hey do."

8 And the stories he gave me, people weren't fired,
9 they were just in training and got kind of cut out of the
10 fold. And then later he told me a story -- which is in the
11 report -- of how he was speaking at -- and actually, it was
12 with Captain Davis, and justfully (sic) so, this was nice --
13 but he had a trip, a line trip, and one of our pilots passed
14 away. So, he was going to go speak at the funeral, so they
15 dropped the trip -- which they should, you know, so he could
16 go do this. And so what he was conveying to me is they
17 dropped the trip and then two or three days later I went
18 ahead and picked up a green slip. And then from that point,
19 it just went on. So, it was -- the explanation to me was --
20 don't do this --

21 Q And when you say this is coming from whom?

22 A This was coming from one of our pilots.

23 Q Okay.

24 A But anyway -- then, again, another time I met with
25 him again and he said, he told me, he says: "Karlene, don't

1 go down there, don't do this."

2 Q Okay. And Pat Harney, did you have discussions
3 with him prior to the January 28th meeting?

4 A No, I didn't talk to Pat about the safety report.
5 But I did have a line trip before that. And I don't know how
6 it came up -- I think I told the pilots, because something
7 came up where they were discussing some element of something
8 that was going on in the company. Almost every flight, every
9 flight you'll hear a story of something -- something that's
10 within this. And so something came up and I said:

11 "Well, guess what, I'm going to go
12 down and meet with Captains Dickson and
13 Graham and go over this stuff. We're
14 going to get it figured out."

15 And it was like -- no, don't do that, you know, you
16 have a target on your back. That's kind of the common thread
17 -- a target.

18 Q Okay. Now, in asking this next question, I'm not
19 looking for specifics, but just a brief answer, because there
20 will be references to documents with specifics. But do you
21 have concerns about the adequacy of pilot training at Delta?

22 A Absolutely.

23 Q I'm going to refer you to JX-B?

24 A I'm there.

25 Q And I want to refer you to page 6 of your report,

1 but it's JX-B-007 to JX-B-008.

2 A Are you saying Bravo or Delta?

3 Q Bravo. And this will be what we're now referring
4 to as your January 28th safety report?

5 A Okay.

6 JUDGE MORRIS: What page are you, counsel?

7 MR. SEHAM: In terms of JX-B pagination, it would
8 be 7 and 8.

9 JUDGE MORRIS: Seven, okay.

10 BY MR. SEHAM:

11 Q Are you there?

12 A I am.

13 Q Okay. And the bullet points -- and without getting
14 into too many specifics -- those bullet points, starting with
15 "2" on the bottom of page 007 and on to three additional ones
16 on 008, did they relate, in any way, to pilot training and
17 competency?

18 A Absolutely.

19 MR. ROSENSTEIN: Objection.

20 JUDGE MORRIS: Basis?

21 MR. ROSENSTEIN: We stipulated to protected
22 activity. The document speaks for itself as to what it says.
23 So, I'm not sure why we're eliciting testimony on that.

24 JUDGE MORRIS: I'm going to hear it. Overruled.

25 BY MR. SEHAM:

1 Q Now, if you could turn -- do you have a copy of the
2 Dickson deposition up there? You may not.

3 JUDGE MORRIS: This has been identified as CX-199.
4 Are you offering CX-199, counsel?

5 MR. SEHAM: Yes, Your Honor.

6 JUDGE MORRIS: Any objection to CX-199?

7 MR. ROSENSTEIN: No, Your Honor.

8 JUDGE MORRIS: All right. CX-199, the deposition
9 of Steven Dickson, is admitted.

10 (Complainant Exhibit No.
11 199 was marked for
12 identification and received
13 in evidence.)

14 BY MR. SEHAM:

15 Q Okay. I'm going to refer you to page 117, starting
16 at line two?

17 A Okay.

18 Q With the question being:

19 "Question: Now, the pilot states,
20 quote, 'landed in TD zone with full
21 F-stick to achieve normal TD attitude,'
22 close quote. Is that a source of concern
23 for you, as described?

24 "Answer: Yes.

25 "Question: Why would that be a source

1 of --

2 "Answer: Well, it indicates that the
3 airplane was -- because it was below the
4 final approach air speed, that in order
5 to arrest the descent for the landing,
6 that they were at maximum control
7 authority.

8 "Question: The pilot concludes,
9 quote, 'we didn't know why and lucked
10 out, any idea,' close quote. Would you
11 agree that that communication conveys a
12 degree of helplessness?

13 "Answer: Yes. And -- I mean I don't
14 know exactly what was in the author's
15 mind, exactly, but I can surmise that it
16 conveys a sense of lack of operational
17 control."

18 MR. ROSENSTEIN: Objection, that wasn't --

19 MR. SEHAM: I'm sorry. If I mis-read, I didn't
20 mean to. I'll go back.

21 "Answer: I mean I don't know what was
22 int eh author's mind, exactly, but I can
23 surmise that.

24 "Question: It conveys a sense of lack
25 of operational control, correct?

1 "Answer: Yes."

2 BY MR. SEHAM:

3 Q If you can move to the next page, starting at 17?

4 MR. ROSENSTEIN: Objection.

5 JUDGE MORRIS: Wait a minute.

6 MR. ROSENSTEIN: Yeah.

7 JUDGE MORRIS: T/D, I interpret as "Touchdown
8 Zone," is that correct?

9 THE WITNESS: That's correct.

10 JUDGE MORRIS: All right, go ahead.

11 MR. ROSENSTEIN: Objection. There's a basic
12 concept of the rule of completeness, if you're going to allow
13 deposition testimony to be read to a witness who is not the
14 deponent. And skipping around and cherry-picking lines is
15 improper.

16 JUDGE MORRIS: I'll let you do that on
17 cross-examination, but I have the entire deposition in. So,
18 feel free to cross-examine.

19 Go ahead.

20 BY MR. SEHAM:

21 Q Okay. And as a premise to the question, it follows
22 up:

23 "Question: Okay. Did you ask Ms.

24 Pettitt to identify the pilot involved?

25 "Answer: No.

1 "Question: Did you follow up in any
2 way, in terms of investigating?

3 "Answer: I did not personally follow
4 up."

5 Ms. Petitt, did anyone from Delta management follow
6 up with respect to the scenario you described in the first
7 bullet point on page JX-B-007?

8 MR. ROSENSTEIN: Objection, foundation.

9 JUDGE MORRIS: Overruled.

10 MR. ROSENSTEIN: Objection. She can only answer as
11 to her own knowledge if anybody followed up with her. She
12 doesn't know whether anybody followed up generally. That's
13 why the foundation objection for that. If the question was
14 did anybody follow up with her, I wouldn't have objected.

15 MR. SEHAM: Yes. I'm going to respond to that by
16 asking some questions. So, maybe it delays the necessity of
17 ruling on it.

18 BY MR. SEHAM:

19 Q You didn't name this pilot in the report, correct?

20 A I did not.

21 Q And did Graham or Dickson ever ask you the name of
22 the pilot during your meeting with them?

23 A They did not.

24 Q Okay. And did anyone ever ask you the name for
25 this pilot?

1 A No.

2 Q I'd like you to turn to the next page of the
3 Dickson Q&A?

4 A Which page?

5 Q The next -- sorry -- page 119?

6 A Okay.

7 Q And I'm going to ask you to -- actually, if I
8 could, before I reference the transcript, if I could ask you
9 to review, for your own edification, the bullet point two on
10 page JX-B-007?

11 A Okay.

12 Q Have you had a chance to review it?

13 A (No verbal response.)

14 Q Okay.

15 A Yes.

16 JUDGE MORRIS: Hold on one second here. So, we're
17 dealing with bullet two.

18 MR. SEHAM: Correct.

19 JUDGE MORRIS: It begins, for the record: "T/O,"
20 I'm assuming is takeoff, "PNF," I'm assuming is pilot not
21 flying.

22 THE WITNESS: Correct.

23 JUDGE MORRIS: All right.

24 BY MR. SEHAM:

25 Q Okay. Starting at 119:

1 "Question: The next bullet point
2 states, quote: 'On T/O got hookup to AS
3 and 30 degrees right bank when
4 accelerating at 3500 feet, thrust lock
5 observed, Alpha floor suspected, but not
6 observed. Hook may have just been on the
7 side. PNF captain (not sure what
8 happened).' Do you see that reference?

9 "Answer: Yes.

10 "Question: T/O means takeoff?

11 "Answer: Yes.

12 "Question: Would you agree with me
13 that takeoffs and landings are generally
14 considered the most vulnerable part of
15 flight operation?

16 "Answer: Yes.

17 "Question: And 'AS' is air speed,
18 correct?

19 "Answer: Yes.

20 "Question: Does the hookup described
21 here present an operational concern?

22 "Answer: Yes.

23 "Question: And here it means the
24 hookup signifies here that the air speed
25 is too slow, correct?

1 "Answer: Yes.

2 "Question: With a bank angle that is
3 on the airplane?

4 "Answer: Yes.

5 "Question: In the aircraft there is a
6 depiction of a hook on the air speed
7 indicator that comes up to the air speed
8 when the aircraft is operating too
9 slowly?

10 "Answer: Yes.

11 "Question: And then the thrust locks,
12 correct?

13 "Answer: Yes.

14 "Question: And then the effective of
15 the Alpha floor is that the plane then
16 goes to max power?

17 "Answer: That's correct.

18 "Question: And that is something that
19 happens automatically, without beyond the
20 pilot exercising control?

21 "Answer: Right, correct."

22 "Question: Now, when the pilot
23 reports that the Alpha floor is suspect,
24 does that present a concern for you?

25 "Answer: Yes. Alpha floor is not a

1 desirable situation to be in, but it is
2 an automated recovery mode that is an
3 Airbus flight deck architecture.

4 "Question: When Alpha floor is
5 suspected, but not observed, is there any
6 potential for having an aircraft stall?

7 "Answer: There is a potential for
8 either a stall or an over speed,
9 depending on how the recovery is done."

10 I'd then ask you to move to 121, 122, and pick it
11 up at line six.

12 "Question: When a pilot says, quote,
13 'Alpha floor suspected, but not
14 observed,' unquote, does that present a
15 concern for you?

16 "Answer: Yes.

17 "Question: What concern is that?

18 "Answer: Well, you might execute an
19 inappropriate recovery procedure if you
20 don't recognize that you are in an Alpha
21 floor condition.

22 "Question: Is it possible here, with
23 respect to his incident, that these facts
24 reflect inadequate training of the pilot?

25 "Answer: More likely a momentary loss

1 of situational awareness, but certainly
2 -- I mean these things you don't see
3 very often, they can surprise you. So,
4 if you're trained on something, you know,
5 a year or two earlier, and you encounter
6 a situation, sometimes there can be a
7 momentary loss of awareness there and
8 they might not notice, right away, what
9 the indications were.

10 "Question: In this case, perhaps the
11 pilot might have needed refresher
12 training?

13 "Answer: Possibly, and I presume that
14 would have happened if this had been
15 reported through the ASAP process.

16 "Question: Did you ask Ms. Petitt to
17 identify the pilot?

18 "Answer: No.

19 "Question: Did you follow up in any
20 way?

21 "Answer: I did not, personally,
22 follow up.

23 "Question: Do you know if anyone else
24 followed up anyway, in terms of --

25 "Answer: In terms of these overall

1 safety concerns, that is part of Captain
2 Graham's follow up on that aspect of the
3 report."

4 So, my question to you, Ms. Petitt, is, did Captain
5 Graham follow up with respect to this pilot report that you
6 shared with him?

7 MR. ROSENSTEIN: Objection.

8 THE WITNESS: No.

9 JUDGE MORRIS: To your knowledge, did he follow up.

10 MR. SEHAM: No, no, I'm asking did he follow up
11 with her. That was my intended question.

12 MR. ROSENSTEIN: You left out that part.

13 JUDGE MORRIS: You left that out.

14 MR. SEHAM: And I apologize to the Tribunal and to
15 counsel.

16 BY MR. SEHAM:

17 Q Did He follow up with you?

18 A No, he did not.

19 Q Did anyone at this conference ask you for the name
20 of this pilot?

21 A No, they did not.

22 Q Did anyone from the company ever ask you for the
23 name of this pilot?

24 A No, they did not. They didn't ask me for the names
25 of any of the pilots, for any of these bullets.

1 Q Okay.

2 MR. SEHAM: This next question that there will be
3 cross-references -- thank you sir -- I don't know which
4 notebook that is. Oh, could I ask you a favor --

5 (Asides between counsel.)

6 BY MR. SEHAM:

7 Q You can go to the fifth bullet point and just read
8 it to yourself, to have that background?

9 JUDGE MORRIS: You're talking about the bullet
10 point on page 8?

11 MR. SEHAM: Yes, correct, sir.

12 JUDGE MORRIS: All right.

13 MR. SEHAM: It would be the third on that page, but
14 the fifth in the series.

15 JUDGE MORRIS: Third bullet on page JX-B.

16 THE WITNESS: I'm ready whenever you are.

17 MR. SEHAM: Okay.

18 BY MR. SEHAM:

19 Q I'm going to direct you -- after having reviewed
20 that bullet point, I'm going to refer you to Captain
21 Dickson's testimony starting at page 129, line 12?

22 A Okay.

23 Q All right. By way of premise to the next question,
24 again starting from line 12 on page 129:

25 "Question: While reading it in the

1 context of the entire bullet point, which
2 refers to going in high and fast into
3 Detroit, did this communicate, this
4 bullet point, that there was an
5 operational safety issue on this flight?

6 "Answer: It could have been. I don't
7 know to what degree. There certainly
8 were some work -- appeared to be some
9 workload management challenges.

10 "Question: What does it mean to go
11 vertical speed or what does it mean to go
12 vertical speed on descent?

13 "Answer: It is the vertical
14 navigation mode of the aircraft for --
15 not typically a mode that you would be
16 in.

17 "Question: When would you invoke that
18 as a strategy?

19 "Answer: Well, sometimes -- I believe
20 this probably was an Airbus, although I'm
21 not 100 percent sure -- but if you were
22 not in the lateral navigation mode, you
23 will be in, you know, you won't be in --
24 you would either be in an open descent or
25 vertical speed. So, it is something

1 where the primary -- it is not going to
2 control the air speed of the aircraft,
3 except within limits, and it is just
4 going to try to climb or descend the
5 airplane at a certain rate, whatever that
6 may be, and it could cause you to a
7 distraction -- it could cause you to miss
8 an altitude restriction or an air speed
9 restriction."

10 If you could now move to the next page 131 of the
11 deposition, starting at line 13?

12 "Question: Okay. So, coming in -- so
13 coming in high and fast, using vertical
14 speed could lead to an unstable approach?

15 "Answer: Yes.

16 "Question: And the pilot could
17 inadvertently fly through an assigned
18 altitude, correct?

19 "Answer: Yes.

20 "Question: Do you know who Tom Albain
21 is?

22 "Answer: I know, I mean I don't know
23 him personally, but as a result of
24 Karlene's report I am familiar with the
25 name.

1 "Question: Okay. You've never spoken
2 to him personally?

3 "Answer" No.

4 "Question: Have you ever e-mailed or
5 otherwise communicated with him?

6 "Answer: No.

7 "Question: Have you ever read any
8 reports submitted by him?

9 "Answer: No.

10 "Question: But he is -- I'm not sure
11 if you said -- he is a line check airman
12 and simulator instructor, correct?

13 "Answer: Well, I'm not sure what his
14 current status is. I know he had been an
15 instructor at one time, I don't know if
16 he is still.

17 "Question: Reading that bullet point,
18 did it present any concern to you that
19 Mr. Albain might have given the pilot
20 faulty procedural instructions?

21 "Mr. Bisbee: Objection.

22 "The Witness: No. It may have been a
23 poor instructional technique or an
24 ill-timed directive that may have
25 increased the situation awareness of the

1 pilot, but it is not, you know, per se,
2 going into vertical speed is not,
3 necessarily, a bad thing, it depends on
4 the circumstances."

5 And then finally, turn to page 133 for the last
6 reference before my question here, is starting at line 9:

7 "Question: Would you agree with me
8 that Ms. Pettitt, in conveying the last
9 bullet point concerning the OE, during
10 which the wheels fell off, did you
11 understand her to be communicating her
12 concern that faulty instructions were
13 given to the pilot involved, by Mr.
14 Albain?

15 "Mr. Bisbee: Objection, calls for
16 speculation.

17 "The Witness: I took the statement at
18 face value, you know, there could be a
19 lot of reasons why something like this --
20 and, you know, the results of what
21 actually occurred here are not stated --
22 but it was something we needed to look
23 into."

24 With respect to the pilot who made this report in
25 the fifth bullet point, did Captains Dickson or Graham ask

1 you -- and this may be redundant based on a prior answer you
2 gave -- but did they ever ask you for the name of the pilot
3 involved in this matter?

4 A No.

5 Q Did anyone in Delta management ever contact you, at
6 anytime, to ask you the identity of the pilot involved in
7 this fifth bullet point report?

8 A No.

9 Q Did you ever speak to Chief Pilot, Regional
10 Director Davis, regarding any issues in your safety report?

11 A Yes, I did.

12 Q Can you explain when that happened and -- if you
13 start, just tell us when this happened?

14 A Yes. I had met with Ms. Nabors on March 8th. And
15 then the next day I went to the Women's Aviation Conference.
16 I had returned in time -- there was a Seattle base meeting --
17 I believe it was on March 15th. I remember that date,
18 because it was two days before the date of the letter.
19 Because the base meeting was going on and there were dozens
20 of pilots in there wearing a variety of lanyards, they had
21 just come out with a lanyard policy saying that we could only
22 wear navy blue or an aircraft manufacturer. And my lanyard
23 happened to be multiple airlines and countries, it was like
24 representing everybody.

25 So, he was in the office. I happened to just ask

1 him about that. And then I brought up the concern for our
2 practice, we were deadheading pilots, but we're not calling
3 it a deadhead. And deadheading them into base to get a trip.

4 And so -- but they were for a work-around, to avoid the
5 FARs, which is actually in violation of the FARs.

6 JUDGE MORRIS: Part 117?

7 THE WITNESS: Yes.

8 JUDGE MORRIS: Taking notice of Part 117.

9 THE WITNESS: They categorized it on the computer
10 as a "PS, called "positive space." So, they would "positive
11 space" them, get them into base and then put them on their
12 trip. And so this occurred to me years before, it as in my
13 report, and I had just, in that base meeting -- and don't ask
14 me who it was, because I couldn't tell you, I didn't even
15 know the name at the time -- the guys were talking and
16 somebody was talking about getting a green slip, and had just
17 done this to get a green slip. So, they can move you for any
18 reason -- inverse assignment, green slip -- and so he was
19 kind of bragging about it.

20 So, I thought, okay, we're not fixing the problem.

21 So, I went into the office and mentioned the lanyard thing.

22 And then I got into a discussion with Captain Davis about
23 that specific situation. And the discussion ended up a
24 little distorted when it went to Dr. Altman. But my
25 contention is that we, as pilots, take responsibility for

1 ourselves, getting ourselves to duty rested and we're going
2 to do what we can. But if the company schedules it, then now
3 it's a liability, because they're violating affairs by
4 putting in an actual scheduling thing to do this. So, he and
5 I agreed to disagree and that was the end of it.

6 BY MR. SEHAM:

7 Q He disagreed with what you were saying?

8 A Yes. He said, no, it's perfectly legal.

9 Q Could you turn to CX-4?

10 A Okay. I'm there.

11 Q Is this a letter that you received via your legal
12 counsel, on or about September 8th, 2016, from the FAA?

13 A Yes.

14 Q And reviewing the letter, just to isolate the
15 second sentence reads:

16 "The investigation substantiated that
17 a violation of an order or regulation, or
18 standard of the FAA related to the air
19 carrier safety occurred."

20 Now, the report doesn't reference what issue or
21 what issue that you raised had been substantiated, but do you
22 have knowledge as to what violation of the FARs had been
23 substantiated by -- by Delta -- had been substantiated by the
24 FAA?

25 A I believe it to be FAR 117.

1 MR. ROSENSTEIN: Objection, foundation.

2 MR. SEHAM: Okay. We'll address that immediately.

3 If you could pull out --

4 JUDGE MORRIS: Sustained, because that's my
5 question is connect the dots.

6 MR. SEHAM: Yeah, we'll connect those immediately.

7 BY MR. SEHAM:

8 Q If you could find RX-138?

9 A Which volume is that one?

10 Q That should be the last one.

11 JUDGE MORRIS: Volume 7.

12 MR. SEHAM: Volume 7.

13 BY MR. SEHAM:

14 Q You're looking at the Respondent's Exhibits, right?

15 A RX-138, I have it.

16 Q And if you could turn to RX-138-014?

17 A Okay.

18 Q Is this a document that the company produced
19 through discovery process?

20 A Yes, it is.

21 Q Okay. And allegation -- do you see where it says:
22 "Allegation 1," at the bottom?

23 A I do.

24 Q Okay.

25 "Failure to account for company

1 provided travel time when commuting duty
2 day, finding substantiated."

3 A Correct.

4 Q Does that relate to the issue that Captain Davis
5 disagreed with you about in March?

6 A Yes, it does.

7 Q I'm going to ask you to refer to the -- if you have
8 it there -- the Bastian --

9 A I have one.

10 Q You have a Bastian deposition transcript. I'm
11 going to ask you to turn to page 29, line 13, which reads:

12 "Question: My first question is, were
13 you ever provided a copy of this
14 September 8th, 2016, document?

15 "Answer: No.

16 "Question: Were you ever provided
17 with knowledge that the FAA had
18 substantiated a violation of Federal
19 Aviation Standards, based on Ms. Petitt's
20 reports?

21 "Answer: No."

22 Does this -- based on your training under SMS, does
23 this present an SMS concern for you?

24 MR. ROSENSTEIN: Objection.

25 JUDGE MORRIS: Overruled.

1 THE WITNESS: Absolutely. Ed Bastian was an
2 accountable executive. And also Jim Graham stated, in his
3 testimony, he didn't know of this, either. This is serious,
4 because this fatigue violation --

5 MR. ROSENSTEIN: Objection. There's no fatigue
6 violation in the record.

7 MR. SEHAM: Only a finding by the FAA.

8 MR. ROSENSTEIN: Objection. The Tribunal can make
9 a determination and read the entire document, 138, and see
10 what the finding was on fatigue by the FAA. It was a pay
11 issue.

12 THE WITNESS: No. I will re-word --

13 JUDGE MORRIS: Wait a minute.

14 MR. ROSENSTEIN: In addition -- well -- it's
15 relevance to this case.

16 MR. SEHAM: Well, let me rephrase the question.

17 BY MR. SEHAM:

18 Q In your experience, failing to account for maximum
19 duty limitations under Part 117, can that contribute to
20 fatigue?

21 MR. ROSENSTEIN: Objection, relevance to the case.

22 JUDGE MORRIS: Overruled.

23 THE WITNESS: Yes, it can.

24 BY MR. SEHAM:

25 Q And is it a concern that -- I think you were

1 testifying about the concern that neither the accountable
2 executive, Ed Bastian, nor Vice President of Flight, Captain
3 Graham, knew of this FAA violation, and you're expressing a
4 concern in terms of SMS and Safety of Flight Operations. And
5 what was your concern in that respect?

6 A Well, absolutely. IKO (phonetic) has a risk matrix
7 that we're supposed to follow, and this event would be
8 categorized in the red category, meaning that it could be
9 catastrophic or it's very highly probable that it would
10 occur. And that mandates the attention of the accountable
11 SMS executive.

12 Q Prior to March of 2016, did you have e-mail
13 correspondence with Captain Davis?

14 A Oh, multiple.

15 Q And was it confined to narrow issues or wide
16 spectrum of issues, what did you correspond about?

17 A It was wide spectrum of issues. I was required to
18 -- by Captain Davis -- to let him know what I was doing on my
19 days off. So, if I was speaking at a school for kids or
20 hosting a flying event, whatever I might be doing, I would
21 let him know. His response, sometimes -- on one occasion he
22 was on vacation and telling me it was nice to relax with an
23 umbrella in his drink. Another occasion the contract was
24 going on, so he asked me what I thought of it. The occasion
25 that prompted the letter from my meeting with Richard

1 Anderson, he asked me what I thought about it. So, then also
2 I was required that anytime I wore my uniform to speak, which
3 was only on occasion -- the only time -- I was supposed to
4 ask for permission and let him know when I was doing it. And
5 the only time I would actually do that is when I was going to
6 go speak to the children at schools, because it was so -- it
7 was kind of neat for them to see a pilot in a uniform. And
8 so but everything else, I never, at any of my speaking
9 engagements, never wore my uniform. But when I did think it
10 would be appropriate, I asked -- they never denied.

11 Q But did you have casual correspondence with him,
12 social correspondence?

13 A They turned social, when I was opening up, telling
14 him what I was doing.

15 Q Okay. Ever talk about cocktails or what kind of
16 drinks either one of you liked to have?

17 A Well, I don't think I told him what I like to
18 drink, but he definitely told me what he did, so.

19 Q Okay. Why did you -- moving up to the period
20 before your March 8th meeting with Ms. Kelley Nabors, why did
21 you meet with Ms. Kelley Nabors?

22 A Because Captain Graham asked me -- when I received
23 that e-mail to call him, I called him and he said:

24 "Would you be willing to give a presentation on
25 this report to a group of divisional

1 leaders?"

2

3 And I said: "Absolutely."

4 So, then he said to call him when I got back from
5 my trip. And I had called him on a Saturday night in Boston,
6 we had our first conversation. So, when I returned from my
7 trip, I gave him a call and we talked about what he expected
8 me to ask his divisional leaders at that meeting. At the end
9 of this he said:

10 "We do have some questions left, would you be
11 willing to talk with an HR safety
12 investigator, just to clear up a few
13 things?"

14 And I said: "Absolutely, absolutely I'll do it."

15 And that was the premise I thought I was meeting
16 Ms. Nabors.

17 Q When you met with her on March 8th, did she have a
18 copy of your safety report, JX-B, in her possession?

19 A Yes, she did.

20 Q If you could turn to JX-D, I'm going to refer you
21 to this: "Petitt Action Plan."

22 MR. SEHAM: I'm going to pause here and see if I
23 can have just sort of the following testimony provides a more
24 coherent path for the Tribunal, and given that this is as
25 Joint Exhibit. Is counsel willing to stipulate that this was

1 an investigatory plan devised by Captain Graham, and that the
2 portion that begins on JX-D-003, under the heading of:
3 "Harassment and Unequal Treatment Concerns," was --
4 constituted the issues assigned to Ms. Nabors for
5 investigation?

6 MR. ROSENSTEIN: The first part is no. We can
7 stipulate that Captain Graham prepared this document. He'll
8 have to testify if he is the only one --

9 JUDGE MORRIS: Which document are we talking about?

10 MR. SEHAM: D.

11 MR. ROSENSTEIN: Joint D.

12 MR. SEHAM: Joint D.

13 MR. ROSENSTEIN: D as in Delta.

14 MR. SEHAM: I'm sorry if I didn't reference it.

15 JX-D, and the title is: "Petitt Action Plan."

16 JUDGE MORRIS: Okay.

17 MR. ROSENSTEIN: So, I mean if it helps to lay a
18 foundation, since you're showing, you know, we can agree that
19 that's what the document is, so that he can ask questions
20 about it. He does not have to call the Complainant back for
21 rebuttal testimony, I think that makes sense, from an
22 efficiency, standpoint.

23 MR. SEHAM: Right.

24 MR. ROSENSTEIN: As to what was sent to Ms. Nabors,
25 I don't think we can -- I think you have to ask Captain

1 Graham that, or use his -- yeah, I do.

2 MR. SEHAM: Right.

3 JUDGE MORRIS: All right. But before we go there,
4 there's another thing, just so the record is clear. I've
5 looked and the reference number EWB11637, at CX-4, links
6 RX-138. So, I have that connection for either this testimony
7 or for when I go back and look.

8 MR. SEHAM: And I apologize for proceeding,
9 perhaps, too hastily.

10 MR. ROSENSTEIN: Sorry, I didn't follow what that
11 meant, sorry.

12 MR. SEHAM: In other words, the one paragraph, FAA
13 letter, just generically saying: "We substantiate," is linked
14 numerically to the later fuller report.

15 MR. ROSENSTEIN: I understand.

16 JUDGE MORRIS: And the investigation. And I'll
17 take official notice of 2150.3B, which was in effect at this
18 point in time.

19 I'll also tell the parties about flight and duty
20 time, I am aware of the particular emphasis on crew rest
21 under Part 117, and the fact that there are at least three
22 levels of scrutiny in the FAA -- 135 operators, 121
23 operators, who do cargo operations only, and then passenger
24 carrying only aircraft. And they become increasingly focused
25 out of the concern for the risks associated with those that

1 fly under the pilot's charge.

2 You may continue.

3 MR. SEHAM: Yes. Actually, what I would like to do
4 -- and with an apology to both the Tribunal and counsel -- is
5 if we could have a five-minute break and see if I can conjure
6 up a stipulation with counsel that will facilitate and
7 expedite her testimony.

8 MR. ROSENSTEIN: Yes, that's fine.

9 MR. SEHAM: Is counsel willing to do that?

10 MR. ROSENSTEIN: Always happy to think about ways
11 to speed things.

12 JUDGE MORRIS: All right. We'll take -- we'll give
13 you eight minutes -- 10 minutes after the hour.

14 MR. SEHAM: Okay. Thank you.

15 JUDGE MORRIS: The Court is in recess.

16 (Off the record at 11:02 o'clock a.m.)

17 JUDGE MORRIS: On the record. All parties present
18 when the hearing last recessed are again present.

19 Counsel?

20 MR. SEHAM: Yes. I'll try it again. We wanted to
21 stipulate that with respect to Joint Exhibit D -- or we
22 propose that there be a stipulation that that document
23 entitled: "Petitt Action Plan," was the company's outline or
24 frame-work for an investigation of issues raised by Ms.
25 Petitt, after her meeting on January 28th with Captains

1 Graham and Dickson. And let me pause there and see if that
2 much is --

3 MR. ROSENSTEIN: Without limiting the testimony of
4 future witnesses, we would agree with your description.

5 MR. SEHAM: Okay.

6 JUDGE MORRIS: Okay.

7 MR. SEHAM: And then beyond that -- beyond that,
8 that starting on page 3, under the subtitle: "Harassment and
9 Unusual Treatment Concerns," with the first sentence, as
10 counsel pointed out off record:

11 "The following points have been delivered to EO
12 and Legal for an independent
13 investigation."

14 That these were issues that Ms. Nabors, Kelley
15 Nabors, was authorized to cover with Ms. Petitt during her
16 March 8th interview with Ms. Petitt.

17 MR. ROSENSTEIN: We believe -- again, without
18 limiting the testimony of any other witness, including Ms.
19 Nabors and Captain Graham -- the document speaks for itself.
20 And we believe that that is accurate.

21 JUDGE MORRIS: All right. Proceed.

22 MR. SEHAM: Okay.

23 BY MR. SEHAM:

24 Q Ms. Petitt, hopefully you're with me on JX-D-003?

25 A I am.

1 Q Okay. And starting with -- under the heading,
2 title heading: "Harassment and Unequal Treatment Concerns," I
3 want to refer you to the first black bullet point, which
4 references: "Structure, Flight Operations is inflexible," and
5 then goes on to have sub-bullet points of:

6 "Old School Military, Ego, Attitude, Managed by
7 Threat, Chain of Command Drive, Hidden
8 from Corporate."

9 Was it your intention -- did you raise issues
10 concerning these topics in your January 28th presentation?

11 A I did.

12 Q Okay. And was it your intention, thereby, to raise
13 equal opportunity or gender harassment issues?

14 A Absolutely not. Those were all items that were
15 identified under Safety Culture, a sub-culture called a
16 "Flexible Culture."

17 Q Okay. And did you provide a safety context to Ms.
18 Nabors during your discussion?

19 A Absolutely.

20 Q Okay. Could you summarize what you told Ms. Nabors
21 with respect to these issues?

22 A Looking at these bullet points, basically the
23 culture of the airline -- if you have "Managed by Threat" or
24 it's an "Attitude" of "we have the power, we're going to do
25 what we want," that is not conducive to a Safety Culture. It

1 doesn't work. "Chain of Command," I explained to her that I
2 think every pilot at our company thinks we have a chain of
3 command, in policy we do not, we have an open door policy.
4 And I tried to explain to her that that's a conflict of how
5 we're operating our company. It's like unwritten versus
6 written policies part of the culture. And then "Hidden From
7 Corporate," I explained to her that all the items in this
8 thing -- in this report, it felt like nothing was ever going
9 above Flight Operations to where it needed to go and that it
10 was required to go. That the CEO was required to understand
11 and know Safety Culture and SMS.

12 Q Okay. Now, moving down to the next bullet point:

13 "A pilot quotes several statements,
14 supposedly made by senior FOP managers,
15 the two most egregious."

16 Sub-bullet point:

17 "At Delta we have the power to do what
18 we want."

19 Sub-bullet point:

20 "You're not the first to receive
21 multiple retaliatory line checks."

22 And I'm going to pause here -- don't answer, yet.
23 I want to try to make a quick cross-reference to JX-B, at
24 006.

25 JUDGE MORRIS: JX?

1 MR. SEHAM: JX-B, so her safety report.

2 JUDGE MORRIS: In the same binder.

3 MR. SEHAM: Yes. You're on JX-D, so we're going to
4 move to two tabs prior to that.

5 THE WITNESS: Okay.

6 BY MR. SEHAM:

7 Q Now, I'm asking you to turn to page 6, in terms of
8 the JX numeration, or page 5 of your report. Are you on that
9 page?

10 A I am.

11 Q And do you see about 40 percent down there are five
12 bullet points?

13 A Yes.

14 Q Okay. Were the two bullet points referenced in
15 JX-D among these five bullet points?

16 A Yes, but I --

17 Q And the follow-up question is --

18 A Sorry. Yes.

19 Q Did you discuss the other remaining three bullet
20 points?

21 A I discussed all the bullet points. I never saw
22 this action plan. Ms. Nabors did not have the action plan
23 with her. She only had my safety report. And she guided the
24 discussion and she went through this and she came to these
25 bullet points. And not only did I discuss them with her, but

1 I told her who the individual who said each one of these
2 points was. I gave her a name for each one of them.

3 Q Okay. Now, the next bullet point is:

4 "Pilot contends Delta frowns upon
5 online schools and intimates Flight
6 Operations discriminates against those
7 with online degrees."

8 Can you recount what discussion you had with Ms.
9 Nabors concerning that topic?

10 A Yes. When we came to the point of the online
11 training, a little bit out of context, because I -- nobody
12 used the word "discriminate" in my language. So, there's no
13 discrimination between how we train. But I did explain to
14 her that in pilot hiring, Delta has a point system and you
15 get higher points if you're out of the military, and you get
16 points if you go to brick and mortar school, regular ground
17 based school. They really don't line online schools. And I
18 explained to her that we do training, which in my estimation,
19 would be sub-par to online schools. It's a flash drive, you
20 take it home and you learn it on your own, you don't have any
21 information. Whereas, an actual online school, there's a
22 forum where you have a professor, you have other students,
23 it's like you're in a virtual classroom. So, there's
24 discussions going on and that's how you learn. And so we had
25 that discussion regarding this, and only that discussion

1 regarding that.

2 Q With respect -- moving back -- with apologies -- to
3 the prior bullet point, and that reference: "You're not the
4 first to receive multiple retaliatory line checks." Was
5 there a discussion about the reported experience of any
6 particular pilot?

7 A Yes. And I don't know if it was based on the
8 bullet point, because we spoke for over three hours, but I
9 did tell her that Captain Watts had told me that he got
10 multiple retaliatory line checks, and that I had received
11 multiple retaliatory line checks. And not that Delta gives
12 first officers line checks, but when they give a captain a
13 line check, who is absolutely not due, that person there
14 could be one of two people, it's either you do the captain or
15 you get the first officer, so.

16 JUDGE MORRIS: Wait a minute, I have a question
17 about this whole line check thing. Is the fact that someone
18 has taken a line check, is that documented either in the
19 pilot's log book or in some other log entry that's maintained
20 by the company?

21 THE WITNESS: Yes. The company -- and I don't know
22 what they do with it -- but the company is required, when
23 they do a line check, to take not only the captain's
24 information, the name, license, medical, but all crew
25 members. And we'll get up to a opinion with this Captain

1 Albain later, where I was on one of these line checks, but
2 for some reason he never took my information, he only took
3 the other two pilots'. But yes, they're required -- the
4 company is -- they fill out a line check form and they take
5 everybody's information.

6 JUDGE MORRIS: Am I going to see evidence, at some
7 point in time, about these multiple line checks over a time
8 period?

9 MR. SEHAM: Well, we're going to discuss this
10 particular line check, and I know it's in the company's
11 exhibits, as well.

12 JUDGE MORRIS: All right.

13 BY MR. SEHAM:

14 Q Now, had you intended to raise the line check issue
15 as a gender issue?

16 A Oh, no. We have few women and many men get line
17 checks, so.

18 Q Ken Watts is not a woman?

19 A No, he's definitely not a woman.

20 Q So, if you can move down to the next bullet point,
21 let's see:

22 "Unjust Treatment: Pilot claims she
23 was penalized for writing a training blog
24 on A330 issues related to AF447, when
25 subsequently a male captain was granted

1 permission to publish a book on the same
2 subject."

3 Could you explain what you discussed with Ms.
4 Nabors, on March 8th, concerning this issue?

5 A Yes. Because that post on Air France was -- I put
6 that in my report, more so because it was -- you'll have the
7 information -- but it was never -- I never gave it to the
8 newspaper. And not only did I not give it to them, when I
9 contacted them to see if they just pulled it off my blog. I
10 have the letter from the company saying they didn't do it.
11 Never saw it, didn't do it. So, this is just another form of
12 "Manage by Threat." Move counsel in. Unlike Pat Harney said
13 that we can grieve anything, my contract administration, when
14 I tried to grieve that, said, no, you can't, because it's not
15 discipline. So, I was directed I couldn't do it, because it
16 was not discipline. Later, Ken Watts confirmed that I could
17 have, but I was told I couldn't.

18 So, this particular book, this Captain Bill Palmer,
19 he is -- I don't know if you had the opportunity to read:
20 Understanding Air France 447 -- he is, I would say, the
21 expert on the A330. He was my initial captain instructor and
22 my check airman, he gave me my check ride for the aircraft.
23 And we subsequently became friends, because I think he
24 appreciated my learning and he gave me his phone number. And
25 he was the guy, when I first got on the airplane, anything

1 that came up -- I would get there, I would e-mail him and he
2 would respond. He knew things that if he happened to be at
3 his computer, seconds later an answer would come through that
4 most people would have to go look up, he had that level of
5 knowledge, really good guy.

6 During the merger, they removed him from training
7 and he was devastated. And I convinced him to -- more so for
8 getting over that -- giving his whole life to this training
9 and now he's out of it -- I convinced him to write this book.

10 I said, because everybody wants to understand, they need to
11 know that this aircraft is safe, and that they're going to be
12 okay, and to really understand what's going on. Because all
13 this stuff was on the internet. So, I convinced him to write
14 his book, and he did give me credit in the book itself.

15 I wrote a blog because his book was more from an
16 operational perspective of the aircraft and a deeper level of
17 understanding, mine was more for operational -- hey pilots,
18 let's -- if this happens to you, here's what you do to solve
19 the problem. And so when I pulled my blog, because they
20 actually called me -- the assistant chief pilot called me --
21 he told me it was a sensitive issue between Air France -- it
22 wasn't a social media violation, he just says it was
23 sensitive because we're co-chairing with Air France. I said:
24 "Oh, I hadn't even thought about that." So, I pulled it off.

25 Q Just to have some references for the Tribunal, if

1 you could turn to JX-L, so there's one Joint Exhibit book
2 that I believe is just Dr. Altman's psychiatric analysis?

3 A Yes.

4 Q That's the one I'm referring to. And I'm going to
5 refer to page 91 through 101. My question will be or is, is
6 that the Air France blog that you're referring to?

7 A Yes, it is.

8 Q Okay. And again, referencing the psychiatric
9 report, if you can move to page 7 -- excuse me -- 107 -- is
10 that the letter of counsel that you received?

11 A Yes, it is.

12 Q And is that -- have you ever received -- aside from
13 this June 30th, 2011, letter of counsel, have you ever
14 received another letter of counsel?

15 A No.

16 Q Okay. I think you referred to -- there was concern
17 about your blog being referenced in a newspaper?

18 A Yes.

19 Q What newspaper was that?

20 A It was a Texas paper, "The Star," or something like
21 that. I don't remember the exact name. But I have the
22 letter from the attorney.

23 Q Okay. So, I'm going to refer you to your January
24 28th report, so that would be JX-B?

25 A Okay.

1 Q Well, maybe I'm taking this out of order, but as
2 long as I'm on the page, Appendix B on page JX-B-028?

3 A Okay.

4 Q And can you explain that e-mail -- actually, let me
5 ask you first, does this relate to the blog relating to Air
6 France?

7 A Yes, it does.

8 Q Okay. And from whom did you receive that e-mail?

9 A Mr. McConnell, he's the head of Airbus Industries
10 America. I guess his title is vice president.

11 Q Okay. And then referring you -- you referred to a
12 Texas paper -- if you can turn to Appendix E, which is on JX-
13 B-30, page 29 of your report?

14 A Okay.

15 MR. ROSENSTEIN: I'd object to this and take a
16 shot, anyway, at objecting to this. This is a grievance
17 procedure matter of 2011, letter of counsel and whether it
18 was fair or not. It seems like that's where this testimony
19 is going and not to the case.

20 MR. SEHAM: Well -- may I respond?

21 JUDGE MORRIS: Yeah. I'm trying to figure out how
22 this is relevant.

23 MR. SEHAM: Yeah. We sort of had the same problem,
24 but I very pointedly am referencing the documents as they
25 appear in Dr. Altman's psychiatric report. So, these

1 documents contributed to the adverse action of the bipolar
2 disorder, and this witness was not someone who was
3 emphasizing these issues. These were documents first brought
4 to Dr. Altman by the Respondent. And so going back to --
5 although there are number of adverse actions, but in my
6 opening statement we referred to three broad Roman Numerals,
7 one, the referral to Section 15, the second being a biased
8 psychiatric report, and three, you know, legal counsel
9 threat. But this falls under Roman Numeral II -- why are all
10 these documents in the psychiatric report? What was their
11 providence? Why is Delta sending these documents? And how
12 they contributed to a bipolar disorder diagnosis that was
13 later rejected by two subsequent psychiatrists?

14 MR. ROSENSTEIN: May I briefly respond? You may
15 want to say something in response, before I say anything.

16 JUDGE MORRIS: My immediate response is, aren't
17 those questions better for Dr. Altman, or -- I'm not
18 following why we need to hear this from the Complainant. She
19 had nothing to do with the gathering of the documents for Dr.
20 Altman, at least that's the evidence I have thus far.

21 MR. SEHAM: Correct.

22 JUDGE MORRIS: And I'm, frankly, curious why he
23 went back that far, myself. But I leave that for him to
24 explain, if he's going to testify.

25 MR. SEHAM: Right. But our -- okay.

1 MR. ROSENSTEIN: Can I offer a suggestion that
2 might help resolve this in a way that counsel might accept?
3 But I don't want to --

4 JUDGE MORRIS: Go ahead.

5 MR. ROSENSTEIN: I'm used to always asking
6 permission, so. But we would stipulate that when Ms. Pettitt
7 submitted information to Delta, it was not with the
8 expectation that that information would be forwarded to a
9 doctor in a Section 15 examination subsequently. I mean I
10 think that's obvious, but that seems like the point they're
11 trying to make with this witness. And we wouldn't -- we're
12 not -- you know, that is a point that I think is
13 self-apparent. But I may have misunderstood what they're
14 trying to do.

15 MR. SEHAM: No, you didn't misunderstand. And this
16 is a very central issue for us. We did go through -- and
17 perhaps too quickly -- that four months before -- the company
18 has represented that its sole reason for referring her to the
19 psychiatric --

20 JUDGE MORRIS: We have all these events in November
21 of 2015.

22 MR. SEHAM: Right.

23 JUDGE MORRIS: I'm following you.

24 MR. SEHAM: So, there was two references in
25 November, Captain Graham saying she's a candidate for Section

1 15, notwithstanding the fact that now the argument is it was
2 solely based on Ms. Nabors, who wasn't on the scene for four
3 months. Within that discussion is this issue.

4 MR. ROSENSTEIN: I don't follow that. I disagree
5 that now we're saying something. So, that's argument that I
6 disagree with, just for the record. We've never said
7 anything differently. And we'll prove that in this case,
8 that's our intent. But I'm not sure why that -- I mean we've
9 spent maybe more time discussing it than it would have taken
10 to ask the questions, but the bottom line is I still stand by
11 our objection. I don't think there's been a statement made
12 as to why this witness ought to be asked questions about a
13 2011 incident, where she got a letter of counsel and whether
14 that was fair or not, line checks from Northwestern days that
15 Ken Watts -- all of those issues, to me, are not relevant.

16 JUDGE MORRIS: Let me ask the question of the
17 witness.

18 Did Ms. Nabors ask you any questions about this
19 blog?

20 THE WITNESS: Yes. We had a lengthy discussion
21 about the blog.

22 JUDGE MORRIS: Proceed.

23 BY MR. SEHAM:

24 Q I don't know if we -- did you identify The Star
25 Telegram correspondence?

1 A Which --

2 Q That's on JX-B-030, page 29 of your report?

3 A Yes.

4 Q Okay. And I'm just going to have you read this one
5 sentence -- no -- who is Thomas Williams?

6 A Tom Williams, I believe, was the attorney for The
7 Star Telegram.

8 Q Okay. And could you read, for the record, his
9 one-sentence e-mail?

10 A "We checked The Star Telegram Sky
11 Talk Aviation Industry Blog, where this item would
12 most likely appear if it were posted,
13 from May 31st, 2011, forward, and did not
14 find this item. We also searched our
15 name on The Star Telegram website --
16 (gives the website address) -- and
17 nothing appeared."

18 Q Had you -- you had posted blog messages prior to
19 this?

20 A Yes.

21 Q And if I could ask you to turn to CX-8. Okay. And
22 then I'm going to refer you to the top e-mail, Barry Wilbur
23 to Steve Dickson, it's a short e-mail that reads:

24 "This is actually the second time her
25 name came across my desk yesterday, OC

1 forwarded the following blog to me,
2 asking about the legality about copying a
3 page of the A330 QRH on her blog.
4 Actually, seems to be a very professional
5 post that doesn't paint Delta in a bad
6 light, but posting a page from the QRH is
7 probably something she shouldn't have
8 done. I'm asking for verification on
9 that. I will get with OC on this
10 letter."

11 Who is Barry Wilbur?

12 A He was the regional director at the time, I
13 believe.

14 Q Regional director at Delta?

15 A Of Delta Air Lines Flight Operations.

16 Q And the references to the QRH, would that -- if you
17 could turn to CX-7?

18 A Okay.

19 Q Is that -- the middle e-mail from Jim Graham,
20 November 16th -- Barry Wilbur's QRH reference relate to
21 Captain Graham's QRH reference stated in the context of a
22 Section 15 referral?

23 MR. ROSENSTEIN: Objection.

24 MR. SEHAM: I'll --

25 JUDGE MORRIS: Rephrase. And where are you

1 referencing here?

2 MR. SEHAM: CX-7.

3 JUDGE MORRIS: Where?

4 MR. SEHAM: In the middle of it, the middle one
5 that reads: "Here we go, just FYI."

6 JUDGE MORRIS: Okay.

7 MR. SEHAM: Okay.

8 BY MR. SEHAM:

9 Q Other than -- well, let me ask it this way --
10 other than in the context of this blog reference by Mr.
11 Wilbur, December 21st, 2010, was that ever brought to your
12 attention that you had inappropriately published a QRH page?

13 A No. Only that -- and I don't remember it to be a
14 QRH page -- it was a performance chart, but I didn't copy
15 Delta, I pulled it off the internet. But when they told me
16 that, I pulled it off anyway, because I would imagine the
17 performance would be the same for our airline, every airline
18 writing it, so.

19 JUDGE MORRIS: Again, that's my question here. A
20 QRH is a Quick Reference Handbook for an aircraft. How would
21 that be proprietary in nature if doesn't it apply to all same
22 make, model of that -- I mean an A380 -- an A330 is an A330
23 for the most part, unless there is some STC issues, like aux
24 fuel tanks or things like that? How is it going to be
25 different between one airline and how is that proprietary?

1 MR. ROSENSTEIN: Are you asking me to answer?

2 JUDGE MORRIS: Yeah.

3 MR. ROSENSTEIN: In 2010, when this happened, and
4 currently under Delta Social Media Policy, no Delta employee
5 is supposed to post, for personal reasons, on their -- in
6 uniform or Delta equipment or anything like that. It's more
7 of a general prohibition, using that. And there will be
8 witnesses, if you'd like to hear about that, I mean again,
9 our position is this is not a grievance procedure about her
10 letter of counsel in 2010, but we can have a witness describe
11 what the Social Media Policy and why she got it. And Jim
12 Graham will be here, and he can testify about this document.
13 I'm hesitant to, you know, put record testimony in on it,
14 even though you asked me.

15 MR. SEHAM: We'll move forward. This is all in the
16 context of what was discussed with Ms. Nabors.

17 JUDGE MORRIS: And you're right, this is not a
18 grievance process.

19 MR. SEHAM: No.

20 JUDGE MORRIS: I am not going down that trail.

21 MR. SEHAM: No.

22 MR. ROSENSTEIN: Yeah. And I hope I'm -- I'm bring
23 respectful, I hope. I'm not trying to --

24 JUDGE MORRIS: No, no.

25 MR. ROSENSTEIN: Okay.

1 JUDGE MORRIS: I totally understand and agree that
2 that's not my lane.

3 MR. SEHAM: And we understand that, as well. The
4 only reason we raised these issues is to address the reasons
5 for the Section 15 referral, and the path of the psychiatric
6 analysis.

7 JUDGE MORRIS: Okay.

8 BY MR. SEHAM:

9 Q I'm looking for -- and the Tribunal, I believe,
10 asked you this question, but now that we've completed this
11 question of the blog, where the issues that you've just
12 testified to or the factual elements that you just testified
13 to, relative to this -- related to this blog, were those
14 discussed with Ms. Nabors?

15 A Yes, they were.

16 Q Now, I'm looking for brief answers here. Did you
17 explain to Ms. Nabors what SMS was?

18 A I did.

19 Q Okay. And did you also explain to her what Safety
20 Culture was, as a component of SMS?

21 A I did.

22 Q Okay. If you go back to JX-D-003, the fourth --
23 excuse me -- did you discuss that fourth bullet point:

24 "Good Deals for Buddies: Flight
25 Operations leader gave unidentified pilot

1 a month off to speak at a funeral, as
2 compared to accusing pilot's requirement
3 to present her safety concerns on days
4 off to travel to ATL on a jump seat or
5 non-revenue."

6 I believe you've already given some testimony with
7 respect to that. So, I'm looking for a summary answer about
8 whether that discussion was engaged in with Ms. Nabors?

9 A Yes. I did, but not in that context. There was a
10 comparison on the pilot. He didn't get a whole month off, he
11 dropped a trip, which would turn into a month off, so he
12 could pick up the green slip. That was in comparison to
13 another pilot whose spouse of 30 years had just died, and she
14 got three days off. The part about the jump seating,
15 required to jump seat to a meeting to present safety
16 information was contradictory to when I was requested to come
17 into the office, they dropped a reserve day and had me come
18 into the office to discuss an issue that had already been
19 resolved, with knowledge that I never met with any
20 interviewer or reported with them. And so that was a
21 comparison on those two.

22 Q And you described that in the context of Safety
23 Culture?

24 A Yes.

25 Q Okay. And moving to the next bullet point:

1 "Manage by Threat: Pilot claims
2 letter of counsel, LOC, was inaccurate
3 and intentionally falsified."

4 And I believe we've already had testimony on that,
5 but did you discuss those issues with Ms. Nabors, as well?

6 A Yes. And that was when we were talking about the
7 blog.

8 JUDGE MORRIS: Well, wait a minute. I haven't
9 heard any testimony about intentional falsification. That's
10 a red star cluster in aviation, so --

11 MR. SEHAM: All right.

12 BY MR. SEHAM:

13 Q So, how did you explain that reference or did you
14 get into that sub-topic with Ms. Nabors?

15 A I did. I told her that's why I put it into the
16 report, because when they called and said it was a sensitive
17 issue, I'll remove it immediately. And I think there was
18 about a month time span between when I put the blog up -- I'd
19 have to go look at the records -- but I believe a month
20 before I did it, and they called me in. And when they called
21 me in, OC Miller, at the meeting, said: "I didn't even know
22 they were going to do this."

23 Then when I read the letter, I looked through and I
24 thought -- well, wait a minute, just say we have a letter of
25 counsel because you posted a blog for a sensitive issue. And

1 what they had done is, they said that I gave it to The Star
2 Telegram. I had, on my blog, that nobody is allowed to
3 remove anything. So, I called them and I told -- that's why
4 the attorney got involved, because he had me write a letter
5 -- I said, no harm, no foul, one of your reporters took this,
6 because they were interested, I'm not going to file actions,
7 but the company is concerned, so I'd just like to know what
8 the public's response was. And that's why I called the
9 attorney -- called the newspaper, just to see what the
10 response was, was it negative or positive? And he responded
11 with: "We never posted it." So, I learned that that was an
12 error.

13 They said that it was incorrect for performance.
14 And that's why I reached out to my contact, Clay McConnell,
15 who, whenever I posted something -- I would always run it by
16 him. And he said: "No, we appreciate it."

17 And then it was accurate, and that's why Bill
18 Palmer's name came up. So, I expressed to Ms. Nabors that he
19 was expert, and when they asked me to pull it, he's the one
20 that -- he reached out to me and asked me: "Why did you pull
21 this?" And he gave me -- I said: "Well, because the company
22 said it was a sensitive issue." And he had conveyed that it
23 was the most accurate thing he had read at the time, on the
24 internet, because everybody was speculating. And so I asked
25 him if he would write a letter on my behalf for the accuracy,

1 if it needed.

2 So, the only accurate thing in that letter of
3 counsel is, yes, I blogged, yes, I am a Delta pilot, yes, it
4 was about Air France 447. But everything else was false.
5 So, it's almost as if that letter of counsel, itself, was a
6 threat. We're going to put something in here to warn you --
7 watch out. And if it had been discipline, then I could have
8 grieved it and then it would have gone away. So, because I
9 had validated proof that it was not accurate. So, it wasn't
10 the letter of counsel I objected to, it was the falsity of it
11 and manufactured statements in it.

12 MR. ROSENSTEIN: I have to state an objection,
13 again. My understanding was the ruling to proceed was based
14 on what Complainant said to Ms. Nabors. But we're getting
15 very unclear testimony as to whether or not what the witness
16 is describing was something that was told to Ms. Nabors
17 during their interview, or was just her general ideas about
18 the unfairness of the 2011 letter of counsel. And if it's
19 just the latter, then I feel like the original objection
20 should have been sustained, because of what Your Honor said.

21 It's not a grievance about that. If we're here only to hear
22 what she said to Ms. Nabors, let's hear what she said to Ms.
23 Nabors.

24 MR. SEHAM: My first point was she was responding
25 to a question from the Tribunal. But maybe we can just

1 rectify that.

2 BY MR. SEHAM:

3 Q Did you explain these issues, that you've just
4 recounted --

5 MR. ROSENSTEIN: Well, I would like to hear from
6 the Tribunal, if you don't mind.

7 JUDGE MORRIS: I took the testimony for the limited
8 purposes of her explaining the subsequent actions that she
9 took, not as to the underlying validity of the facts
10 themselves. So, it's for a limited purpose.

11 MR. ROSENSTEIN: But can I -- we have to wait --
12 which I'm happy to do, but you'd like us to wait until cross
13 to find out which -- what part of that testimony was said to
14 Ms. Nabors and what part of it is not? Which we can do, of
15 course, but --

16 MR. SEHAM: I'll ask now.

17 MR. ROSENSTEIN: Well, again, I just want --

18 JUDGE MORRIS: No, I'm going to allow him to ask,
19 to clarify that, the concern that you've raised.

20 MR. ROSENSTEIN: Okay.

21 BY MR. SEHAM:

22 Q The facts to which you just testified, concerning
23 supporting your contention that the letter of counseling
24 contained false information, did you explain those facts to
25 Ms. Nabors?

1 A Yes, I did explain. All these were appendices in
2 the report itself. So, I showed her the letter, that it
3 never got published. I showed her the letter from Bill
4 Palmer. And I showed her the letter from The Star Telegraph
5 publisher and from Clay McConnell. And they said it was
6 accurate.

7 Q To clarify, when you say in the report itself,
8 you're referring to the January 28th, safety report?

9 A Correct, my safety that she had on her the table
10 when we spoke.

11 Q Moving on, the next bullet point in Joint Exhibit
12 4, is:

13 "Flight Training Instructor Alban
14 (sic), during A330 training" -- and then
15 sub-bullet points -- "Did not give
16 oral. Showed up 10 minutes prior to SIM
17 box entry time. Falsified documents
18 concerning items satisfactorily
19 completed. Texted continuously during
20 SIM training session. Performance noted
21 by instructor placed pilot in special
22 training and checking stack."

23 When did this training event occur?

24 A It was my first recurrent, after being checked out
25 on the airplane, and it would be 2010 or 2011, I'm not sure

1 which year, but probably 2011, maybe.

2 Q Okay. With reference to that last sub-bullet
3 point:

4 "Performance noted by instructor,
5 placed pilot in special training and
6 checking stack."

7 Is that sometimes referred to as "Special
8 Tracking"?

9 A Yes. I had never heard of the term "stack" until I
10 read Dr. Altman's report. I had always heard of it as
11 "Special Tracking."

12 Q And what were the performance issues that led to
13 you being placed in "Special Tracking"?

14 A I have absolutely no idea. No check ride is
15 perfect, but he sat in the back and texted, he --

16 JUDGE MORRIS: Who is he?

17 THE WITNESS: Tom -- and it's not Albain (sic) --
18 it's actually Tom Albain, it's A-l-b-a-i-n.

19 BY MR. SEHAM:

20 Q It's the flight instructor that's referenced in the
21 first line, but you say that's misspelled?

22 A That was misspelled. It's actually Albain. And so
23 the night before -- we do two days of simulator, so the first
24 day is kind of a warmup, we do everything, and the second day
25 is an LOE, which is actually more simple than day one. And

1 we received a phone call, in the simulator, from my
2 instructor, and they said show up and he gave me the time,
3 which the time frame he told us to show up would have been 10
4 minutes before we were scheduled to go into that simulator.
5 We were required to have a 90-minute brief.

6 Q Required by what?

7 A By Delta's Training Manual.

8 Q Okay.

9 A So, the approved manual. So, we were required to
10 have a 90-minute brief. And the other -- my other seat
11 support, we were two first officers swapping seats on day
12 one, he said: "Boy, you're going to get lucky on this." And
13 I thought: "I believe know, because all this issue of the
14 Christmas party and the blog." So, a little question, but I
15 didn't show up. I showed up 90 minutes ahead of time and he
16 did not show up. I was supposed to have a seat support.
17 They didn't allow the two first officers to fly the LOE
18 together, we had to split up, and I was going to have a
19 captain seat support. And the captain who showed up -- and
20 he did show up significantly later -- he didn't show up 90
21 minutes ahead of time, but he did come before Tom Albain
22 showed up -- it was a captain that I had flown -- Bill Durnan
23 (phonetic) -- up in Alaska, on a 747 with.

24 And so I asked him why he was here. And he had
25 failed his day one about three days before. He was one of

1 that group of 747 pilots that were struggling with the A330.

2 And so he came in. And so he had to do recheck. So, now he
3 was ready to go and we paired up together.

4 So, Tom Albain shows up and I told him that I had
5 been on the airplane for a year, this is my first check ride,
6 that I hadn't been flying. And he said: "Oh, you're making
7 excuses already." The captain -- we share experience, we let
8 each other known -- he hadn't gotten on an airplane, you say,
9 hey, I haven't been flying or here's how long I've been on
10 the fleet -- this is just what we do, because it's part of
11 our assessment, experience level.

12 And so there was no oral. And we went in and the
13 captain flew -- he was taking off -- and at 700 feet we had
14 an electrical problem. So, the instruments clicked off and
15 lights and bells flashed. And the captain rotated the
16 airplane -- and this happened -- and he took his hands off
17 and he said: "You've got it." And so the A330 is very
18 stable, and whatever you pitch it to and it goes to that, it
19 will hold it. And so he pitched it, hands off, it just was
20 right there, so I said: "Okay." I took it, reached up,
21 autopilot didn't work. Reached up, tried the autopilot and
22 engaged. And then he pulled out his -- and when this
23 happened, it was so odd to me. I've never, in my career,
24 flown with a captain or any other pilot, or even as an
25 instructor in 14,000 hours, saw pilots hands off at a

1 critical phase of flight, with enough -- at anytime -- say:
2 "You've got it."

3 And so when that happened, I looked back to see
4 when this guy is going to be jumping into this scenario, and
5 he had his seat pushed all the way back and he's back there
6 doing this on his cell phone, so he's not even watching. And
7 so the captain pulls out his QRH, and he starts going through
8 it. And then all these messages -- because it's an
9 electrical com -- start coming up in this sequence and they
10 start prioritizing. And he's looking at all this, and he
11 thinks that he has the top one, where he's -- and something
12 else pops up. So, he finally says -- takes it and he gives
13 me his QRH and he says: "I've got the airplane, you do this."

14 And at that point Tom jumps up in the air and he says:
15 "Karlene, why in the blank do you have the QRH open?"
16 Because we're supposed to run the procedure first.

17 I had my own still stuck in, it was clearly his.
18 And the captain says: "Well, because I gave it to her." And
19 he says, you know, so we run through, we come in and we land.

20 And then we do a SPOT. It's a Special -- I believe it's
21 Special Operations -- it's a training maneuver, it's not
22 flight. And he had told the captain, Bill Durnan, he was
23 going to, he was going to fly this.

24 And what it was, it was a high altitude, place is
25 out over the ocean somewhere, and we're going to get a high

1 altitude descent, engine failure. So, anyway, we get there.

2 And he was supposed to be doing it and he finally says:

3 "Okay, Karlene, you do this, you do it." "Okay."

4 The person who wrote that procedure was Bill
5 Palmer. And when Bill Palmer wrote it, he actually sent it
6 to me to go through and edit it. So, I was very, very
7 familiar with this procedure. And I said: "Okay, fine." And
8 so I flew it. The captain -- at this point Tom actually did
9 work with him, because he was struggling even to shut down
10 and secure the engine and run through the QRH -- to his
11 benefit, he had been a captain, he was about to retire in, I
12 think, two years, so he was over 60 -- I don't know, but he
13 was ready to retire, really close. And he had flown this
14 whale, this old classic whale forever. And dependent upon
15 me, I was the second officer on that aircraft.

16 JUDGE MORRIS: When you say "whale," you mean the
17 747.

18 THE WITNESS: The 747, yeah. Sorry.

19 So, I was the second officer and these captains
20 depended on us, because they get over in that left seat,
21 their systems acknowledge everything. And so he actually
22 hadn't run the checklist and hadn't gone through those steps,
23 and that was his biggest struggle with this airplane. He
24 could navigate and fly, but it was the other stuff.

25 And so anyway, afterwards we landed. The bridge

1 came down, we walked out and I looked at Tom Albain and I
2 told him, I said: "That was appalling." I said: "Because you
3 didn't give us our oral." And I said: "That's absolutely
4 appalling." And I said: "I am going to call in training, I'm
5 going to get a new check ride tomorrow." I said: "This was
6 unacceptable."

7 So, I went down the hall, went to the restroom. I
8 came back into the room and he said: "I'm going to Special
9 Track you." And my question: "Why?" And he says: "Because
10 at Delta we have the power to do it." And I said: "Do you
11 have any debriefing items, any performance issues?" "No." I
12 said: "Okay."

13 And so we left. And then I called my friend,
14 Cheryl Muelken, who had been our scheduler over at Northwest,
15 and I called her the next day and she says: "Boy, I never saw
16 it come in." And I thought, maybe he's just messing around.

17 But I told her, I said: "Cheryl, I'd like to get another
18 check ride." And she goes: "Well, let me talk to Bill," who
19 was her boss, who I also knew and worked with over at
20 Northwest.

21 And so she called me up a day or two later and
22 said: "Karlene, it did come through, you're getting Special
23 Track." She goes: "You've got to talk to Bill, do you mind
24 if I patch you through?"

25 So, I talked to Bill Langstrom and Bill said --

1 made the comment:

2 "Yeah, we're having problems. We've
3 had a number of comments. We had
4 problems over at Northwest with it."

5 Because he was a Northwest instructor. And he
6 said: "This is so severe." He says: "I think you need to talk
7 to Popeye."

8 Popeye is Mike Doyle, he was the director -- I
9 don't believe he was a director Training, he was a fleet
10 training captain on the 330, 777, on that wide-body fleet.

11 And I said: "Absolutely, I'll talk to him." And so
12 I actually had been over at the YMCA and I got this phone
13 call, and I took it and went into a little room, and I told
14 him what went on. And he said:

15 "Well, yeah, a lot of our instructors
16 have a problem texting."

17 And I said:

18 "Hey, I don't have a problem with
19 taking a text, I've been a SIM
20 instructor, something came through -- but
21 we were a crew, a brand new crew that
22 needed attention. I hadn't flown, brand
23 new, on the airplane, the captain had a
24 failure. This is a crew that needed
25 attention."

1 And he said: "Well, I'm sure there's two sides to
2 every story."

3 And I said: "Probably three." His side, my side
4 and then maybe a different perspective. I said:

5 "But when you ask him his side, ask
6 him what grades he gave us when he put
7 them into the computer and falsified
8 records."

9 And then there was a moment of silence and he said:

10 "What do you want?" And I said: "I
11 want to come back for another check ride,
12 today, tomorrow, I don't care, I want to
13 come back. I want to know that I'm
14 safe."

15 I said:

16 "I haven't been flying and these
17 assessment measures are for a reason. I
18 depend on him to tell me my -- fix me, if
19 I'm doing something wrong."

20 And so he said:

21 "We don't have time for that, but
22 Karlene, we've got you in Special
23 Tracking, so you know what, I see you
24 haven't been flying, so you know what,
25 when you want to come back and get a SIM

1 session, we'll give it completely to you.

2 You can do anything you want."

3 I said: "I can get engine failures, to cross-wind
4 landings?" "Absolutely." I said: "Okay, it works for me."

5 So, I figured it was reported, it would be dealt
6 with and I was going to get to go back and get at least some
7 flying in the SIM time. Which the next thing I did was open
8 up and I thought, you know what, if I'm not flying and I'm
9 not getting assessed, I need to do something more than
10 armchair fly and read my manuals. And so I started the
11 process of trying to buy a trip shortly after that -- to no
12 avail, so.

13 BY MR. SEHAM:

14 Q You brought this up to Fleet Training Captain Mike
15 Doyle?

16 A Yes, I did.

17 Q And then Manager of Training Bill Engstrom, did you
18 raise it with him?

19 A Yes.

20 Q Did the company, back when this happened -- and you
21 say it happened, was it 2009 or --

22 A Well, it's hard, because when we merged. We merged
23 in '08, operating -- '09, it might have been 2010 or '11, it
24 was my first check ride back on this aircraft.

25 Q At that time, did the company initiate an EEO

1 investigation?

2 A No.

3 Q Did they initiate any investigation that you were
4 allowed to participate in?

5 A No, other than my talking to Mike Doyle, I never
6 heard anything about that again.

7 Q Okay. And did they -- at some point did you learn
8 that they did investigate this scenario?

9 A They only investigated it, apparently, because I
10 had put it into my safety report. So, now nine, 10 years
11 later, they looked into it.

12 MR. ROSENSTEIN: Objection, foundation.

13 MR. SEHAM: It's still just the exhibits that the
14 company has submitted, but we'll --

15 MR. ROSENSTEIN: Sorry, just so I understand. Are
16 we talking about an investigation into the --

17 MR. SEHAM: The check.

18 MR. ROSENSTEIN: The alleged retaliatory line
19 check?

20 MR. SEHAM: Yeah, yeah.

21 JUDGE MORRIS: Falsification.

22 MR. ROSENSTEIN: I object on foundation. And I
23 don't believe there's a document that will --

24 MR. SEHAM: We'll withdraw. We'll make it easy and
25 we'll withdraw the question and we'll do it through

1 cross-examination of Respondent's witnesses.

2 MR. ROSENSTEIN: Fair enough.

3 JUDGE MORRIS: All right.

4 BY MR. SEHAM:

5 Q Moving along to the next bullet point, in terms of
6 -- and I'm sorry -- just to confirm, you explained these
7 facts to Ms. Nabors?

8 A I did.

9 Q Now, the next bullet point appears to be -- I think
10 that's already been covered by your testimony, maybe I can
11 just ask you. Has this already been covered by your
12 testimony concerning Captain Doyle's reaction, was that
13 related to the same issue -- the same training event?

14 A Yes. When I looked at this action plan and then I
15 looked at my safety report, all the events are in the safety
16 report, but this was not in this sequence. So, when we got
17 to the issues, it was there, but somehow it was broken out in
18 different periods. So, she didn't ask me when and then ask
19 me again, we just got to the point in the safety report where
20 it was applicable, and then we discussed it, discussed the
21 issues at that point.

22 Q Did Ms. Nabors have any -- when you -- if you could
23 explain, briefly, what you talked about, "falsifying grades,"
24 can you explain what you meant by that?

25 A Yes. So, we're required to put in our -- the

1 company, when they give you an oral, they're supposed to put
2 you in a grade for the different items, and even for your
3 flight performance -- satisfactory or 1 through 5, of they
4 give some grading system. And that's a metric that is
5 required to assess pilot's performance under AQP.

6 And so when I told Ms. Nabors that he had done
7 this, and I said: "So, he had to falsify records, because he
8 didn't do it." And she asked me:

9 "Well, what if he only did it once,
10 what if he only got caught once, how bad
11 would that be."

12 And I was fairly dumbfounded about that question.
13 And I said:

14 "How bad would it be if you robbed a
15 bank and only got caught once?"

16 I said: "That's the severity." And I shared a
17 story with her at Northwest where two instructors had -- the
18 FAA was coming and doing a random audit and looked at the SIM
19 log and saw that they were supposed to be in there, and they
20 were not in there. And so what they had done is they had
21 pulled -- and I shared this example with her -- that they had
22 -- the FAA came in and made that instructor, every pilot he
23 had checked for six months, they made them all come back and
24 get rechecked. That's how severe it is. And I explained to
25 her that this is contingent upon our AQP program, that

1 assessment under AQP is, to date, one of the most difficult
2 challenges with AQP.

3 Personally, I think they should go out and just
4 assess performance. But they're doing it on this grading
5 assessment and it's very subjective, if the pilot is looking,
6 if they're not looking, but it's difficult. And I told her,
7 I said:

8 "Our entire AQP program -- how severe
9 this is -- could be in jeopardy for
10 falsifying records, for not doing what
11 they're supposed to be doing, and for
12 falsifying."

13 And I said: "And then the company is required to do
14 a self-disclosure." I don't know if that's what it's called,
15 but that's what I've always termed it, where they notify the
16 FAA and say -- hey, we made an error, or one of our pilots
17 did, either inadvertently or intentionally, but here's how
18 we're going to solve the problem. And the FAA is very -- in
19 those cases -- okay, you're solving the problem, we're going
20 to let you solve your problem.

21 And so they never -- to my knowledge -- Delta never
22 made a self-disclosure on this. So, it was -- her comment
23 about how bad would it be if he just did it once, set me down
24 a very bad path.

25 Q Moving on to the next bullet point, the second dark

1 one on JX-D-004:

2 "Return to SIM for takeoff, landing
3 recency, pilot claims FTI Albian (sic)"
4 -- which I understand should be "Albain"
5 -- intentionally picked her period to
6 instruct her and when she asked to be
7 moved to a different period, Albian
8 purposely sabotaged her SIM by getting
9 access to the SIM prior to her period and
10 moving switches from normal positions."

11 Can you tell us what you -- did you discuss this
12 issue with Ms. Nabors and, if so, what did you tell Ms.
13 Nabors?

14 A Yes. And that's also a little bit out of context,
15 because it was two different events. I was going back for a
16 recency. So, this trip buy, I could never get a trip buy,
17 but I was going back for a recency and I was due for that
18 Special Tracking, I think within a month's period of time.
19 And so I remember asking Cheryl:

20 "Why don't we just do it at the same time,
21 instead of -- we're tight on simulators,
22 we're having issues."

23 And she said: "Because that would make sense." And
24 we kind of laughed -- ha ha.

25 So, I showed up for my recency, it happened to be

1 in Minnesota, we were at Northwest Airlines Training Center,
2 at the time, they hadn't moved all the simulators, yet. And
3 I was at the hotel and I -- oh, I decided I was going to go
4 look to see who my instructor was. And so I logged into the
5 computer system and saw it was Tom Albain, that instructor
6 that I reported. So, I called Cheryl on her cell phone, and
7 she happened to be in Minnesota at the time, she was on
8 vacation, and she said:

9 "Karlene, I never would have scheduled
10 you with him. I know I would not have
11 done that." She goes: "Let me call
12 Bill."

13 And so she calls her boss at 9:00 or 9:30 o'clock
14 p.m., at night. And while they're doing that I'm on the
15 computer looking and seeing how we can swap instructors,
16 maybe. And she calls me back and says:

17 "Bill and I both agree, we don't want
18 you to go in the simulator with him."

19 And I said:

20 "Well, how about if we let him teach
21 that other student and we can just swap."

22 She said:

23 "We looked at that, but the other
24 student is having problems and we prefer
25 not to do that. Do you mind staying one

1 more night?"

2 "Okay. No, that's fine."

3 So, I stayed that night. Went in for my recency,
4 which is supposed to be takeoffs, just do three takeoffs and
5 landings. And I showed up and there was a check airman and
6 another check airman, and they were now going to -- they were
7 doing a checking -- the check airmen checking me on a
8 recency. So, we ended up doing engine failure, fire,
9 cross-wind, just way outside the bounds of a normal recency.
10 And about an hour into it the check airman said:

11 "Okay, I've had enough of this, you're both
12 doing great. I'm out of here."

13 So, he left. And then I asked that instructor: "Do
14 you mind if we just stay and work on cross-wind landing?"
15 And he said: "No, not at all." So, he stayed and flew with
16 me and we got some value out of the session.

17 The moving of the switches was now I came back,
18 shortly thereafter, for my check ride and I walked in the
19 briefing room -- it was Captain Coleman. And he said:
20 "Karlene, what is going on here?" And I said -- so I gave
21 him the Reader's Digest version of what had happened. And I
22 said: "But Popeye said we get to do anything we want." And
23 he kind of gets this whole look on his face, he says: "Well,
24 there's a letter waiting for me." And he said: "I'm supposed
25 to give you a full oral and an LOE." And I said: "Oh, okay."

1 So, which led me to believe one of two things --
2 they had talked to Tom Albain, found out they hadn't done it,
3 so now they're going to be in compliance, or maybe they were
4 just going to try to throw me off, expecting I would show up
5 to the simulator and wouldn't be prepared.

6 So, Bill gave me my oral. And we went in and we
7 did the -- and it was the same scenario as before with Tom
8 Albain, and we did the scenario. And to date, I have never
9 had the official high altitude training, but I had a seat
10 support in Bill Palmer, and he says: "Let's go practice and
11 see what Air France did." And so we went through some very
12 unusual scenario sessions, one of which -- when I was flying
13 -- pulled the power all the way off and let the aircraft just
14 then turn itself, as we were descending, and once it caught
15 up with itself we flew out of it. If you left the power in,
16 once it started gaining speed, it would start porpoising. And
17 so I said: "Wow, that's really interesting." And Bill goes:
18 "Yeah, it's the simulator, I don't know."

19 So, I wrote to Clay McConnell and said: "Here's
20 what we did in the simulator." I said:

21 "Could I write about this, if this is
22 helping the pilots, just cut the power."

23

24 And he says:

25 "It sounds logical, but," he said, "it

1 is a simulator, we don't know if that
2 simulator had been tested outside the
3 limits, so it would be safe not to do
4 it."

5 And I go, okay. And so I never did. But that was
6 my -- I got better -- I probably had better high altitude
7 training, but not the official high altitude training.

8 Q Were these facts that you recounted to the
9 Tribunal, presented to Ms. Nabors?

10 A They were.

11 Q And did you complain about these actions at the
12 time they occurred?

13 A No. I ended up -- that was another point I made.
14 Those switches out of place -- when we first got into the
15 simulator, every switch was at things that maintenance
16 doesn't even turn off, every button was pushed. And Bill
17 kind of: "Well, I guess I don't have to give you any Easter
18 Eggs." Easter Egg is something where they go put a little
19 switch, you know, change a switch to see if you get it on
20 your pre-flight. And so I went through and set it up. And
21 the captain flying with me, he says: "This is blankity blank,
22 who was the SIM instructor before us? And I said: "One
23 hundred bucks says it was Tom Albain." And he opens up his
24 schedule and he says: "Yeah, Karlene wins." And so we kind
25 of laughed, but it had been two hours between -- and I can't

1 say he did it for sure, I can't say that, he had just had the
2 SIM session two hours before we went in there. But I never
3 said anything at that point.

4 It was subsequently I had been told: "Don't ever
5 report an instructor," and that's kind of the rule.

6 Q Moving to the next bullet point and subject, for
7 the purpose of expediting -- the learned counsel is free to
8 object if he has a problem with how I'm doing this -- but
9 you've testified before about the requirement that you report
10 your off-duty activities. That appears to be the reference
11 in the next bullet point. Did you tell that to Ms. Nabors on
12 March 8th?

13 A I did.

14 Q Okay. And if you move to the next bullet point,
15 there's: "Reward for inappropriate behavior," can you tell us
16 if that issue came up with Ms. Nabors and, briefly, what you
17 told her with respect to that issue?

18 A Which bullet point?

19 Q I'm sorry. We're a little less than halfway down
20 the page on D-004, the bullet point that begins: "Reward for
21 inappropriate behavior"?

22 A Oh, that was just in the context that OC Miller,
23 shortly after I had my letter of counsel, had gotten his
24 promotion. Tom Albain went from SIM to the line. Maybe that
25 was their way of addressing it. But whether the promotions

1 -- wait -- they're not even promotions -- you know, if they
2 get moved up to something, some other position or get a
3 benefit, it's whether or not they did it. And this is what I
4 explained to Ms. Nabors. It doesn't matter if -- and I
5 wasn't saying that, oh you did that behavior, we're going to
6 give you a promotion, it's a perception of the culture.
7 People -- the pilots kind of know the steps going on and they
8 see the behavior out there. And then when they see the
9 person who is doing this behavior gets rewarded for it,
10 that's, you know, it comes across as we're being rewarded for
11 doing what the company says, even if it's wrong, even if it's
12 in violation.

13 Q And I'm looking for a brief answer to this. As you
14 discussed this with Ms. Nabors, did you put it in an SMS or
15 Safety Culture context?

16 A Absolutely. Every part of -- every one of these
17 that was going through, I kept telling her this is what
18 Safety Culture -- because all the bullets were under a
19 heading of "Just," or "Flexible" or "Reporting." Every
20 single item we discussed -- how I made out the report -- was
21 under a culture of Safety Cultures.

22 Q I'd like to move forward to this: "Management pilot
23 using computer and flight deck to prove good guy."

24 A Yeah. OC Miller, I mean the guys talk out on the
25 line, okay.

1 Q The question is, what did you present to Ms.
2 Nabors, and that's the only --

3 A Yeah, that's what I told -- I told Ms. Nabors that
4 OC Miller, the person who was promoted and put that letter in
5 my file, that he was out -- that one of the pilots on the
6 line -- and I didn't see that, I've never seen him do this --
7 but one of the pilots said:

8 "Oh, yeah, OC is a great guy, great guy, he'll
9 even open up his laptop and start working
10 while you're flying."

11 And so that perception, when you're a management
12 pilot rule breaker, with the guys, you're a really cool guy,
13 you're a good guy.

14 Q Okay. And I'm not sure I heard it, and if I missed
15 it, I apologize, again, to the Tribunal and to counsel. Is
16 that consistent with the FOM at Delta, to have the computer
17 open in the cockpit?

18 A Absolutely not.

19 Q Now, the next bullet point is: "Forced to fly even
20 though fatigued, due to caring for hospitalized husband."
21 Did this come up with Ms. Nabors, and if so, what did you
22 tell her?

23 A It did. My husband had been in the hospital, in
24 ICU, for a week. I was -- we thought he was going to come
25 out, they kept delaying. And so I'm at the point, knowing I

1 had a trip coming up and I didn't know what to do, so I
2 called the chief pilot's port center and spoke to Baker
3 Stern, who was manager down there, and asked them: "Should I
4 use" -- because I hadn't used any vacation -- and I said:

5 "Should I use my vacation or my sick
6 leave, I'm in the hospital with my
7 husband, I'm going to have to use
8 something with this trip that's coming
9 up, because I have been here for a full
10 week."

11 And he said: "Use your sick leave, because that's
12 going to be replenish in June anyway."

13 And then he said: "Wait a minute, who's in the
14 hospital?"

15 I said: "My husband."

16 He said: "That doesn't pass the sniff test."

17 And then I said: "Baker, I have been here all night
18 long for a week." I go: "I haven't slept for a week." I
19 said: "I am in no condition to fly."

20 He goes: "That doesn't pass the sniff test, you'd
21 better call your chief pilot."

22 And that was the end of the conversation.

23 Then when I tried to get into the computer to
24 access, I was blocked out of it. So, now I'm thinking, he's
25 going to die, I'm not going to have a job, how am I going to

1 pay for insurance, you know, it was just horrible. So, when
2 I called the Seattle base chief pilot and told Christina
3 Wallace what had happened, and she said that:

4 "Oh, no, he knows that, we had a pilot
5 down in LA do it. You have Family Care
6 Act here in Washington State and LA."

7 And she says: "We will get it sorted out."

8 So, that was the example, just another example of a
9 cultural issue. I mean we solved the problem, I didn't go
10 fly, and I didn't have to go fly. And I would not have gone
11 and flown in that condition anyway. But it was just the
12 culture of the company that would even think that it was okay
13 to do something like that.

14 Q I'm going to move down to the last bullet point on
15 the page: "Flight operations leaders only pick favorites, not
16 most qualified." Did you discuss that with Ms. Nabors?

17 A I absolutely did. That's a subject matter expert.

18 The FAA required pilots -- at the very beginning -- that
19 pilots have type ratings, because the weren't going to let
20 these airlines start and let managers run Flight Ops, because
21 they didn't know anything about it.

22 Over at Northwest, the captains that were put into
23 these training positions and these chief pilot positions, had
24 thousands of hours on the respective equipment, or you didn't
25 get that position. It was an hour based -- flight hour based

1 experienced based position.

2 Over at Delta, they put Popeye in charge. Popeye
3 didn't have any Airbus experience. He didn't have any
4 international experience at the time. There was a pilot who
5 -- I think I named him -- I might have named him in the
6 report -- Gary Hogan, who had been a management position, he
7 was experienced, thousands of hours on all the fleet, the
8 wide-body, and he knew the airplane, type rated on the A330,
9 type rated on the 777, type rated on the 747, he had type
10 rated and flown these aircraft. And so I just found it
11 interesting that they put people in positions that aren't,
12 necessarily, highly qualified. They're just somebody's
13 buddy. And so that's, as far as, you know, risk mitigation,
14 that's a knowledge and understanding from learning and they
15 just don't have the knowledge to understand what they're
16 doing to do the job the best they can in the safest way.

17 So, I explained that to her. And I also brought up
18 another situation that we had, and the importance of it, and
19 this how I tied Bill Palmer into it, once again, is that I
20 have Bill Palmer's cell phone, and I told everyone, if we
21 ever have an A330 at Delta Air Lines, an incident in flight,
22 we have nobody to call on the ground that really understands
23 the airplane to help. I had Bill's phone number. I always
24 told Bill: "I'm calling you from the SAT phone, if we run
25 into something we don't know." And why this is pertinent is,

1 there was a Captain John Doherty, Director of Training over
2 at Northwest -- I don't know if you remember the Northwest
3 Orient 400, where it had a rudder hard-over, and they
4 subsequently made a video -- well they called Captain Doherty
5 from the SAT phone. He was a director of Training, and had
6 flown the airplane and knew it. He was integral in that
7 flight's successful outcome and going through manuals from an
8 operational perspective. That's important. That's what we
9 need and that's not what this airline does anymore. It's
10 like they just type somebody so they're technically legal and
11 now we can call them the manager.

12 MR. SEHAM: If I can address the Tribunal. We are
13 -- in terms of following this outline in Joint Exhibit D --
14 we're down to the last bullet point under that title of the
15 EO Investigation. However, that is an incident of some
16 duration, in terms of the telling of it. And I would propose
17 that --

18 MR. ROSENSTEIN: Sounds like lunch.

19 MR. SEHAM: Sounds like -- that's my loquacious way
20 of saying can we eat now?

21 JUDGE MORRIS: Yeah. Let's -- is quarter after
22 1:00 o'clock p.m., going to be enough time for you guys?

23 MR. ROSENSTEIN: Yes.

24 MR. SEHAM: Absolutely.

25 MR. ROSENSTEIN: We're just going to the cafeteria,

1 so it should be. As long as the escorts are available,
2 obviously.

3 JUDGE MORRIS: All right. The Court is in recess
4 until 1:15 o'clock p.m.

5 Do not discuss your testimony during the break,
6 okay.

7 Off the record.

8 (Whereupon, at 12:25 the hearing was recessed for
9 lunch.)

10 --o0o--

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1 AFTERNOON SESSION

1:23 O'CLOCK P.M.

2 JUDGE MORRIS: We're back on the record. All
3 parties present when the hearing last recessed are again
4 present.

5 Please, continue with your direct examination.

6 MR. SEHAM: Okay.

7 DIRECT EXAMINATION RESUMED

8 BY MR. SEHAM:

9 Q Well, we were going through the bullet points in
10 JX-D, and we had reached the last one within the EO
11 subsection on page JX-D-005. So, that is the specific
12 harassment concern, hostile work environment -- skipping over
13 to the second one -- "Pilot claims her next trip had a line
14 check due to" -- I shouldn't skip it over.

15 "Hostile work environment initially identified
16 as September 9th, 2015, when she notified
17 her supervisor, via letter. The pilot
18 claims her next trip had a line check due
19 to her concern, it was conducted by the
20 FTI in question."

21 Before I ask you the generic question, if I could
22 refer you to JX-B,, your safety report. And specifically to
23 Appendix K, on page JX-B-035, which is page 34 of your
24 report. Is that the appropriate cross-reference to the
25 letter of September 9th, 2015, that's referenced here in

1 JX-D?

2 A It is.

3 Q Okay. And then can you tell us what you told Ms.
4 Nabors concerning this bullet point?

5 A This bullet point, I told her why I wrote that
6 letter, was because I had been -- had flown with Captain Ken
7 Watts, on an A330 trip, and so we were chatting. And when he
8 learned that I was not allowed to go to my chief pilot, that
9 I was directed to tell my days off, that I had received line
10 checks -- and then he shared with me he got line checks. And
11 he was kind of appalled at what had been going on with
12 directives from outside the contract. And he said:

13 "I know how, I'll help you write a letter, I
14 know how to make this stop."

15 He said: "Just use the language 'harassment,' that
16 will make them stop."

17 I said: "Okay."

18 So, really this letter became, because of the
19 behavior had been going on, just to end it, hopefully to end
20 it.

21 Q And could you briefly explain this complaint about
22 a line check?

23 A Yeah. So, it was just -- I think a line check four
24 days later, but we found out two days later. I was called
25 out on a trip. The captain --

1 Q I'm sorry, I want to apologize for the question I
2 asked. So, your September 9th, 2015 complaint was followed
3 by a line check, is that what you're complaining about?

4 A Correct. That's what that was regarding.

5 Q Okay. So, could you explain those circumstances?

6 A I showed up to Flight Ops, the captain said:

7 "Hey, why are we getting a line check?

8 I'm not due for four months."

9 And I said: "Probably me." I said:

10 "I wrote a letter to Captain Davis,
11 told him, you know, I didn't want to be
12 treated differently anymore."

13 And so I went into my chief pilot's office, Rip
14 Johnson, and said: "Rip, you guys can give us a line check if
15 you want, but" -- and that was another thing, it was Tom
16 Albain, that's when it came up, because he's the instructor I
17 reported. And I said:

18 "You can give us a line check if you
19 want, but let's make it somebody other
20 than Tom Albain, because I was told don't
21 get in the simulator with him."

22 Probably shouldn't be operating in an aircraft that
23 capacity with him. And Rip said: "Karlene, just do it. I'll
24 stand by you if anything comes of it, just do it."

25 And so I still had no intention of just doing it.

1 I talked to him, then we flew -- I forget what the legs, but
2 it was -- we flew from there, I believe, to New York. I
3 don't think we had a leg in between there.

4 I had called, in the meantime, called the union.
5 Somebody was out -- there was a loss -- the office was kind
6 of shutdown, got a voice mail message, nobody returned it.
7 Wrote to Phil and said:

8 "Phil, I can't overlook the
9 coincidence that we're getting this line
10 check shortly after I wrote that letter
11 to you."

12 And so we ended up getting a line check -- we ended
13 up getting the line check by Tom Albain, out of New York to
14 Paris. He had flown in -- oh, I forget where he said he came
15 from, but somewhere -- he had flown in that day, got in early
16 that morning and sat at the airport. We had an evening
17 departure. We were late. Normally we're there about two
18 hours before, for an international departure, at least try to
19 be. We ended up 45 minutes before departure.

20 So, I left Flight Ops. I printed the paperwork
21 for the guys, gave it to them. Then I went to pre-flight the
22 airplane, do the walk around. And we had words on that
23 airplane. He came in. And I sat down and I asked him if we
24 were going to have problems tonight. And he said: "Not if
25 you keep your mouth shut." I said: "Okay. I just want to

1 know we're okay here." And he conveyed that there was going
2 to be an issue, so I stepped out. When the rest of them came
3 back, they must have thought I was going to walk off the
4 airplane. And actually, before that, he said that he could
5 have me removed. And I told him that he can't. I said:

6 "I don't think you're legally rested
7 to take this flight, but if you want to
8 remove me, that's fine, but I don't think
9 you can take the flight if you're
10 commuting in today."

11 Well, it goes back to the positive space thing, he
12 just positive spaced in to avoid the scheduling of a
13 deadhead. Because even if he's a line check airman, he's
14 still obligated, under FAR 117, follow the rules. So, we had
15 this discussion.

16 So, I went in the restroom, came back and the agent
17 there said: "See, I told you she didn't leave, she was the
18 first one the plane." So, apparently they thought I had
19 left. So, I was third pilot, sat in the seat right between
20 the captain and the other FO, and we took off.

21 So, I took first break. I went out. This was at a
22 time we were -- didn't have crew bunks, we were -- they had
23 removed our crew bunks -- so I had a seat. And he came back
24 to his seat, shortly after takeoff. Then when I went for my
25 break, he was in his seat, I could see him in his seat

1 sleeping. I went up, sat in the captain's seat. The captain
2 went back to take his break, his rest. So, he came up and we
3 did a little restroom swap, and then I went and got in the
4 right seat. And the captain came back in the left seat and
5 the other first officer took his break.

6 And so he asked me: "Would you be okay if I let the
7 other pilot sit in the right seat." So, this is my check
8 ride, I'm not -- but he wasn't due for four months -- and he
9 says:

10 "This is my check ride, I don't know
11 what's going on, but just so it doesn't
12 impact me."

13 And I said: "Sure, if that makes you feel more
14 comfortable."

15 So, Captain Albain came up and he started -- I
16 said: "So, are you going to the hotel with us?" He said:
17 "No, I'm going to try to catch the flight back, if I make
18 it." We were running a little bit late, so he wasn't sure if
19 he could get through security or not. And so we just started
20 amicably talking and I thought everything was fine at that
21 point, would alleviate the captain's concern.

22 So, when the other first officer came up, we took a
23 restroom break. And then he sat in the seat and I came back
24 and we were all fine, so I sat in the third seat. He never
25 took my -- he took my name on the form, my medical or asked

1 for medical or my pilot's license on that line check, for
2 whatever reason, didn't do it.

3 And then we went into Paris. He went back through,
4 got back on an airplane, went back home. I have no idea if
5 he did another line check or not in that process.

6 So, he came out specifically just to do this one
7 leg with our crew, when the captain wasn't due for four
8 months. But nothing ever came of it -- so I thought.

9 JUDGE MORRIS: And a line check is considered duty
10 time?

11 THE WITNESS: It is. A line check is duty time,
12 definitely.

13 BY MR. SEHAM:

14 Q I'm going to refer you to -- do you remember
15 anything particular happening in the course of that trip,
16 after the stay in Paris?

17 A Yes. After the Paris flight, we were flying into
18 New York, and we were about -- we had already gone through
19 top of descent, and we got a message from the flight
20 attendant that they were very concerned that a passenger back
21 in coach section who had been sweating profusely, in and out
22 of the restroom, couldn't speak English, and this was at the
23 time when Ebola was an issue. And so we got on with the
24 company -- I actually ended up flying the airplane pretty
25 much single pilot, while they were communicating. It was

1 below altitude, because I was surprised our ACARS was dingling
2 below 10,000 feet, and I had thought that it was supposed to
3 be silenced out, you're not supposed to get random messages
4 during that stage of the flight. So, we had to get the
5 Health Services to the aircraft. And it turned out that he
6 wasn't in an Ebola country, and we were looking on the map,
7 but the country he came from was surrounded by it. So, it
8 became quite a concern. And then the flight attendants were
9 concerned. But anyway, pretty much the other two captains,
10 the other pilot, dealt with that and then I flew the
11 aircraft.

12 JUDGE MORRIS: And ACARS is A-C-A-R-S, correct?

13 THE WITNESS: Correct.

14 JUDGE MORRIS: And it stands for?

15 THE WITNESS: Aviation Crew Reporting System or Air
16 Crew Reporting System. Probably Air Crew Reporting System.

17 BY MR. SEHAM:

18 Q Okay. And I'm going to ask you to refer, again, to
19 the psychiatric report of Dr. Altman, JX-L and page 125
20 therein?

21 A Okay.

22 Q For the record, I'll note that this is the same
23 document that we found at RX-18, but within the psychiatric
24 report it starts at page 125 and continues to page 127. And
25 does this letter reference the events of September 18th,

1 2015, and the line check that you were just discussing?

2 A It references Tom Albain's perspective of the line
3 check.

4 Q Okay. So, this January 8th letter refers to events
5 September 18th, 2015?

6 A Correct.

7 Q And when did you first see this letter?

8 A I first saw this letter in January of 2017, in Dr.
9 Altman's medical report.

10 Q Dr. Altman did not provide you a copy during the
11 course of your analysis?

12 A No.

13 Q Did Delta ever directly provide you a copy of this
14 letter?

15 A No.

16 Q Can you identify, with this letter of January 8th,
17 2016, any inconsistencies between the representations in this
18 letter and Delta Flight Operations Policy?

19 A There's definitely an inconsistency with it. He
20 identified, in this letter, that I was regulated to the jump
21 seat, because I was emotionally unstable and a threat to the
22 safety of the operation. And that would be a Level 4
23 security threat that would have dictated having me removed
24 from the flight deck and possibly diverting. Not only did
25 that not happen -- so for that assessment -- and he portrayed

1 it that the other captain made that allegation -- but for
2 that assessment to occur, that meant both he and another
3 captain thought that I was a threat to the safety of the
4 operations, but they allowed me to fly the aircraft in the
5 left seat with the cockpit door closed, while they were
6 locked out. He stayed on the flight and left me out for the
7 duration of that flight. They allowed me to continually fly
8 with nobody ever saying anything. If this really had
9 occurred at the time that he said, and really even was an
10 authentic allegation, so many warning bells would have been
11 going off and I definitely would have heard about it. I
12 definitely should have -- if this were the case, I should
13 have been removed on that flight.

14 Q Aside from whether or not you got a copy of this
15 letter from Dr. Altman, did he ever discuss with you Captain
16 Albain's account of what transpired during the check?

17 A No.

18 Q Did your chief pilot ever discuss with you what
19 transpired during this check?

20 A No.

21 Q Did Dr. Faulkner ever raise it with you?

22 A No.

23 Q Did Captains Graham or Dickson discuss it with you
24 during your January 28th meeting in 2016?

25 A No.

1 Q Okay. Did anybody within the company ever talk to
2 you about this?

3 A No.

4 Q And remind me, who was the captain during this
5 check?

6 A Captain Dave Sheldahl.

7 Q And if you could turn to the psychiatric report,
8 again, JX-L-181, I'm referring you to a document within the
9 psychiatric report, with the title:

10 "Subject: Meeting Notes, Present:

11 Captain Dave Sheldahl, Captain Scott

12 Woolfrey, Captain Phil Davis, Captain Rip

13 Johnson, dated 13 July, 2016, 11:00 PDT."

14 Did Dr. Altman ever provide you a copy of this
15 document?

16 A No, he did not.

17 Q Did anyone from Delta management provide you a copy
18 of this document?

19 A No.

20 Q Did Dr. Altman ever give you an account of Captain
21 Sheldahl's perspectives on the events of the check?

22 A No.

23 Q Have you ever spoken to Captain Sheldahl concerning
24 that flight sequence?

25 A I did.

1 Q Okay. And can you account for us the discussion
2 you had with him?

3 A Yes. I had read the letter and e-mailed -- as I
4 was going through this 386 or 366-page report, as I came to
5 things that I thought -- well, wait a minute, that's not what
6 happened -- and I read Tom Albain's letter -- I e-mailed
7 Captain Sheldahl and said:

8 "Hey, Dave, in my medical report I
9 just saw this letter that said you
10 regulated me to the jump seat because I
11 was emotionally unstable and a threat to
12 the aircraft operation."
13 And he responded with: "I can't imagine ever saying
14 that."

15 MR. ROSENSTEIN: Objection.

16 JUDGE MORRIS: Overruled.

17 THE WITNESS: And so, he said: "I can't ever
18 imagine saying that." And then I said: "Well, can you
19 reflect what went on?" And he said: "That was too long ago,
20 I can't remember."

21 So, then I went through further in the report and
22 then I found that they interviewed him. So, I e-mailed him
23 and said:

24 "Dave, apparently they interviewed
25 you, so you don't have to go back to the

1 report, just, you know, a few months ago,
2 what happened with this."

3 And so he said, in response to his interview, he
4 said:

5 "Well, I told them that you were an
6 absolute asset to our flight going into
7 New York and that you, you know, what you
8 did on that flight, and how
9 professional."

10 And I actually called him at one point. But what
11 he said here isn't really what Albain said. And did he stand
12 up in front of these guys and say, no, this is wrong, I'm
13 standing up -- no, he didn't. Disappointing, but
14 understandable, you know, I understand why. Because everyone
15 is afraid.

16 BY MR. SEHAM:

17 Q Are the positive comments that Captain Sheldahl
18 advised you he had made to management representatives, are
19 they found in this document?

20 A No, they're not.

21 Q Did you --

22 JUDGE MORRIS: Hold on. Is there a signed copy of
23 this anywhere?

24 MR. ROSENSTEIN: I believe that's his signature
25 underneath his name.

1 THE WITNESS: I don't see a signature.

2 JUDGE MORRIS: I don't see a signature.

3 MR. ROSENSTEIN: You have 24755?

4 MR. BISBEE: They're looking at different
5 documents.

6 MR. ROSENSTEIN: You can look at Respondent's
7 Exhibit 83.

8 JUDGE MORRIS: Okay.

9 BY MR. SEHAM:

10 Q Did Ms. Nabors discuss with you Captain Albain's
11 letter of January 8th, 2016?

12 A No. The only discussion was the fact that I
13 reiterated the event, why I got line checked for writing that
14 letter.

15 Q How would you -- going back to your interview with
16 Ms. Nabors as a whole, how would you characterize the
17 principal focus of your discussion with Ms. Nabors?

18 A The entire focus was only on my safety report, and
19 on the elements that I identified as being adverse to a
20 positive Safety Culture.

21 Q Did you understand what you were participating in
22 to be an EO investigation?

23 A Absolutely not.

24 Q Are there any items in Captain Graham's EO action
25 plan, under the heading that we just went through, that you

1 considered to be an EO concern?

2 A No.

3 Q When -- in drafting your assessment of Delta Air
4 Lines Flight Operations Safety Culture, the safety report you
5 provided to management representatives Graham and Dickson on
6 January 28th, 2016, there are multiple references to "Said
7 Pilot." To whom is that referring -- what does that
8 reference signify?

9 A The examples I put in this report were not only
10 mine, they were those that I heard from other pilots. And
11 quite a few of them were women. And as I was writing it, I
12 thought, man, it says she, she, she, and I didn't want to go
13 down a gender issue with this. So, actually, when I gave the
14 report to my mother, to line edit, it was her suggestion that
15 "Said Pilot," would be a good thing. I thought, yeah, that's
16 a good idea. So, I changed it to "Said Pilot," so it
17 wouldn't be just "I" or "she," but it was just -- they were
18 examples. So, it wasn't supposed to be me. The events that
19 I identified were me, were very identifiable, because they
20 knew, at each occurrence, I had reported them.

21 But there are many incidents in that report that
22 weren't me, one of which was a 757 pilot that Dr. Altman
23 diagnosed as mentally unstable, thinking that it was me. And
24 I had not flown a 757 for Northwest Airlines, so.

25 Q Was your intent to make the report gender neutral?

1 A Absolutely.

2 Q Do you know, procedurally, how to go about filing
3 an EO complaint?

4 A You would contact HR and say: "I would like to file
5 an EO complaint."

6 Q Did Ms. Nabors ask you anything that you perceived
7 to be an EO question?

8 A There was only one question that could have even
9 possibly been EO driven, and she asked me why I thought I
10 didn't get an interview for the assistant chief pilot
11 position. And I told her either it was Delta's diversity
12 challenge, because I had been -- received from Steve Gorman
13 in '09, that they had difficulty with women at that level,
14 or it was that falsified letter in my file. And I said, I
15 would suspect it's that falsified letter in my file, because
16 why would any manager want somebody they thought openly
17 violated company policy, they wouldn't even consider me, so.

18 Q Had you filed a complaint with respect to that
19 denial of an interview?

20 A Oh no, no.

21 Q Never?

22 A Never.

23 Q Some of the -- as pointed out by counsel -- some of
24 the issues in your safety report are six years old or 10
25 years old. Why did you wait so long to report these

1 incidents?

2 A I did not wait to report anything. Anytime an
3 event occurred, I reported it at the time of the event. They
4 just never did anything with any of this. So, after I got
5 into my Doctoral program, really learned how important Safety
6 Culture was to an SMS program, I thought, okay, we need to do
7 this. And so I outlined it and I utilized examples,
8 preferably firsthand, because they would not be hearsay, I
9 lived them, or examples that came from people that were very
10 close friends and they needed to be true, and I used those
11 for supporting documentation for what I was saying. Here's
12 the Safety Culture, it's a flexible culture, here's how we
13 are not flexible, here's how we are not just, here violates a
14 reporting culture. And so I just used all those. So, that's
15 why I titled that report based on this, when I gave the
16 presentation, "Ethnographic Study," because those are
17 observations, over a period of time, of the behaviors,
18 policies, practices at this airline.

19 Q My focus is at the time you said you raised the
20 issues as they occurred. Did the company initiate any EO
21 investigation at the time you raised any of those issues as
22 they occurred?

23 A Never, never.

24 Q Do you know -- are you familiar with the term:
25 "Look Back" as utilized at Delta Air Lines?

1 A I am.

2 Q Could you describe for the Tribunal what that term
3 is?

4 A Yeah. A "Look Back" -- Delta has many policies
5 that they don't really adhere to daily, and they know that
6 people are somewhat violating them. We're not allowed to
7 give our password out to our spouse or anyone to get on a
8 computer, but they know pretty much probably everyone does
9 it. I don't. People don't sit short-call in base, you know,
10 they look at the flights are all gone and so what is the
11 purpose of me sitting here, I'm going to go home, too,
12 because I can't possibly get called. So, they use a judgment
13 whether they should sit there or not. So, those are the type
14 of things that people do.

15 And so what the company does, with knowing this, if
16 there's an issue and they decide they want to fire, terminate
17 an employee, they will use that "Look Back" to go back one
18 year, two years, three years, and it's a very laborious
19 process, they have to go each single day to try to track back
20 what they did. And then they find all these items that they
21 did, and then they'll fire them, because you violated policy.

22 Q Do you travel to sell your books, ever?

23 A I do.

24 Q Do you use company passes to do that?

25 A Never. I buy tickets on Alaska Airlines.

1 Q Do you sit short-call on base?

2 A Absolutely.

3 Q Are there some pilots who don't?

4 A It was more prevalent until -- the word out is now,
5 when they're doing these "Look Backs," pilots are getting
6 fired, terminated for this, so it's -- most pilots don't do
7 that anymore.

8 MR. ROSENSTEIN: I have to at least state my
9 objection, for the record, on this whole line of speculative
10 testimony, without attribution about something.

11 MR. SEHAM: Well, we'll move on.

12 JUDGE MORRIS: The objection is noted.

13 MR. ROSENSTEIN: Thank you.

14 JUDGE MORRIS: And I am very aware of --

15 MR. ROSENSTEIN: I know.

16 JUDGE MORRIS: -- the hearsay nature and the weight
17 that will be afforded.

18 BY MR. SEHAM:

19 Q Well, are you aware of any specific incidents where
20 the company has conducted a "Look Back," after a pilot
21 reported safety violations?

22 A Yes. One I sat in the court and watched, Karl
23 Seuring.

24 MR. ROSENSTEIN: Objection. I don't know if you
25 could hear, Court Reporter, over the cough, but I couldn't

1 hear her testimony. But I think I know what she said. Was
2 that -- did she use the -- could she be asked to repeat the
3 name of the person she said, because I couldn't hear?

4 JUDGE MORRIS: Sure.

5 THE WITNESS: Captain Karl Seuring.

6 BY MR. SEHAM:

7 Q Where did you --

8 JUDGE MORRIS: Hold it. So, the record is clear, I
9 happened to also be the Judge in that case and I will not
10 infer any evidence from that case to this case and will limit
11 it to the testimony at this hearing.

12 MR. SEHAM: Well, then we'll move on to the next
13 subject.

14 BY MR. SEHAM:

15 Q Physically, in terms of physical location, where
16 did you meet with Ms. Kelley Nabors?

17 A At the hotel lobby that they're staying at, Crowne
18 Plaza.

19 Q Okay. Can you explain why you and Ms. Nabors ended
20 up having your meeting at a hotel -- did you say where in the
21 hotel?

22 A In the lobby.

23 Q In the lobby.

24 A Yeah. It was kind of a -- you walk in the front
25 door and there's an outer lobby right by the front desk, and

1 you go a little bit further, the restaurant is off in the
2 corner. And at the time they had all these tables set up, so
3 people could bring food out and kind of sit around. And
4 there were quite a few people there when we met.

5 Q And can you explain to us, if you can, why did you
6 meet with her in a hotel lobby?

7 A When I asked her where I would meet her at SeaTac
8 Airport, she said: "I'd prefer to keep it away from here."

9 And then I said:

10 "Well, I live 10 minutes away from the
11 airport, we can do it at my house, only
12 my husband is here, we could have a cup
13 of tea."

14 And she said: "No, I have a room at the hotel."
15 And I thought, okay. So, I assumed she booked a room to go
16 meet in, like a meeting room.

17 Q How long was your meeting with Ms. Nabors?

18 A It was three hours.

19 Q Had you prearranged for the meeting to be three
20 hours?

21 A No. We didn't have any time, but she was watching
22 her -- watching the time on her phone and then she said she
23 had to go because she had a flight. She had to catch a
24 flight back to Atlanta.

25 Q And do you remember who arrived at the hotel lobby

1 first?

2 A She did.

3 Q Okay. Can you remember what she was doing as you
4 arrived?

5 A Yes, because I came in, went to the front desk and
6 said I was meeting Ms. Kelley Nabors, she had a room, and the
7 front desk, a young man standing there, said: "We haven't
8 booked any rooms." And I said: "Really? It's with Delta Air
9 Lines." And then some gal goes: "Oh, the Delta gal, she's
10 right over there." And I -- okay. So, I wandered over
11 there. And she had two cell phones on, and I sat down and
12 said hello. And she said: "Just a minute." And she was
13 texting, and I commented and said: "Oh, your children?" And
14 she said: "No, I work." And she said: "I'm sorry, I'm sorry,
15 it's my mom." And she said something about being worried
16 about her mother. So, she was texting something with her mom
17 and apologized for that. But it wasn't a big deal, we hadn't
18 started or anything, I had just arrived.

19 Q As you discussed -- as you raised safety and
20 compliance issues with Ms. Nabors, do you recall any reaction
21 on her part, physically or facially?

22 A Yes. She, sometimes, would tilt her head a little
23 bit, her brow would furrow, sometimes her eyes got a little
24 bit wide. It was hard to read it. It felt like she didn't
25 understand what I was saying, and so I kind of kept going

1 deeper and deeper with explanation, trying to help her.

2 Q Did you -- at some point did Ms. Nabors raise the
3 issue of contacting police?

4 A She did.

5 Q Okay. Can you explain what had been discussed
6 right before the remark?

7 A I had told her that I had been warned about giving
8 a safety report, that I had a target on my back. First I
9 told her Jud Crane had told me I was going to get a Section
10 15, and warned me. And that I had been warned I had a target
11 on my back. And that, from that came: "Did you contact the
12 police?"

13 Q And what was your response when she asked you that?

14 A And I said:

15 "Why would I contact the police? These were
16 just friends being kind to me, telling
17 me, hey, watch out."

18 Q Did you provide what I'm referring to as your
19 January 28th, report, did you provide that to your mother?

20 A I did.

21 Q For what purpose did you provide it to your mother?

22 A To line edit.

23 Q And why would you give it to your mother to line
24 edit?

25 A Well, she reads all my work, all my homework and

1 stuff, she's very interested, so I give her things and then
2 we talk about it.

3 Q Did you tell Ms. Nabors that you gave your mother
4 your safety report?

5 A I did.

6 Q Why did you mention that to Ms. Nabors?

7 A Well, after three hours of going through really
8 critical safety issues -- I mean I gave her some examples of
9 near crashes or should have been crashes at Delta Air Lines,
10 to support what I was talking about -- and her commentary of
11 going to the police or is it that bad if you just did it
12 once --

13 Q I'm sorry -- it's that bad?

14 A Bad if -- Albain -- I'm referring to Albain
15 falsifying the records.

16 Q Okay.

17 A If you just did it once and got caught once. And I
18 was dumbfounded, because I thought this woman works for an
19 airline, she's an HR Safety investigator, she's here to talk
20 about the safety report, we're going through some really
21 serious issues. And it was as if she didn't understand any
22 of it. But when I had given it to my mother, she was like --
23 she said something about we should give this to the
24 shareholders -- she was just appalled that these activities
25 and the safety issues were going on. And I kept thinking,

1 how can this woman, who works for the airline, not understand
2 and my mom gets it? She's -- sorry mom -- but she's as lay
3 person, she's -- I don't mean that bad, but she's not -- she
4 only knows aviation of what I write, you know, through me.
5 And here this woman is working. So, we were actually -- the
6 meeting was over -- standing at her elevator, waiting for her
7 to catch her elevator to go up and get her bag to go catch
8 her flight, and it was one of those things that's like, you
9 know, I gave this to my mom, she understands, she wanted to
10 give it to the shareholders, because of the significance.
11 And so, really, it was just to convey to her this lay person
12 gets it, how come -- and I was trying to think -- how come
13 you don't get it? I was perplexed.

14 Q Did that concern, that you just expressed, cause
15 you to do anything when you got home?

16 A Absolutely. I walked through the house, I told my
17 husband -- I don't understand, she knew absolutely nothing.
18 I got on the computer and I started searching in Delta to
19 find out who she was, because I could not believe she was an
20 HR Safety investigator.

21 Q And who did you find out that she was?

22 A The first thing I found was she's the manager of
23 the Pass Travel Complaint Department. She had joint title,
24 apparently they grouped EO Complaint Division with Pass
25 Travel. I went back and looked up her e-mails and at the

1 bottom it said EOPASS. So, had I any doubt, I could have
2 known ahead of time it was something other, but I never
3 really had a reason to look, not until I went and thought
4 this is not right, this didn't make sense.

5 Q Did Captain Graham describe her position to you
6 before the March 8th interview?

7 A He told me that -- he asked me if I'd be willing to
8 speak to an HR Safety investigator.

9 Q And how did you reply to that?

10 A I said absolutely.

11 Q Okay. And how would you have responded if Captain
12 Graham had told you it was an EO investigator?

13 MR. ROSENSTEIN: Objection.

14 THE WITNESS: I would have said the same thing I
15 told him the first time -- no.

16 JUDGE MORRIS: Overruled. Again, hearsay is
17 admissible in these proceedings.

18 MR. ROSENSTEIN: That called for speculation. "How
19 would you have if he had said something different?" That was
20 the objection on that one. But understood.

21 BY MR. SEHAM:

22 Q I'm going to ask you to turn again to Dr. Altman's
23 report, which is JX-L. And I think I'm looking for page 47.

24 JUDGE MORRIS: Before you do that. Am I going to
25 hear from this Captain Sheldahl in these proceedings?

1 MR. SEHAM: We do not intend to present him, no.

2 JUDGE MORRIS: Okay. So, what was your exhibit
3 number then, we were moving to?

4 MR. SEHAM: JX-L.

5 JUDGE MORRIS: JX-L. All right, thank you.

6 MR. SEHAM: And page 47.

7 THE WITNESS: Okay.

8 BY MR. SEHAM:

9 Q Now, this is --

10 MR. ROSENSTEIN: I'm sorry, could you give the page
11 number? I apologize.

12 MR. SEHAM: No, that's all right. JX-L-47.

13 MR. ROSENSTEIN: Thank you.

14 BY MR. SEHAM:

15 Q So, this is titled: "Investigation Summary," and
16 subtitle: "Kelley Nabors, Manager Equal Opportunity and Pass
17 Protection (Investigator)."

18 And prior to discovery or -- I'm sorry -- prior to
19 receiving Dr. Altman's psychiatric report, were you ever
20 given a copy of Ms. Nabors report hat begins on this page?

21 A No.

22 Q Were you ever provided an overview of what she
23 reported?

24 A No.

25 Q Were you ever given a chance, during Dr. Altman's

1 interviews of you, to rebut anything she had said?

2 A Now, without going through the report, page by
3 page, you have since reviewed this, correct?

4 A Oh, definitely.

5 Q And can you identify -- if there are any -- any
6 salient, factual inaccuracies, from your perspective?

7 A Yeah, there were many inaccuracies, but because we
8 didn't have that second person there, that's supposed to be
9 representing, when they do these type of interviews -- by
10 this type, I mean EO interviews -- this wasn't supposed to be
11 an EO interview, so I never imagined -- but so it was just
12 she and I. So, it's a she said/she said document. So, what
13 I did is, I went through and thought, okay, what are facts
14 that can prove that what was said as inaccurate. And one of
15 the statements she made in there, that I had reported to her,
16 that I called the "Sick Line." Now, we don't have a "Sick
17 Line" at Delta Air Lines. If was going to call in sick, I
18 would call Crew Scheduling. So, we have no such thing as
19 "Sick Line."

20 She put in a reference that I gave my report to my
21 mom, because I thought that I would be -- I forget how she
22 worded it -- I'd be harmed -- she said I didn't say that, but
23 she inferred it, that I would be harmed. And the reason I
24 gave it to my mom to keep, and not to my husband, because she
25 said my husband was going to be busy raising our children.

1 But our children are adults and have families of their own,
2 and we're in no part raising them.

3 She made a statement in there that -- she did put
4 in there that she asked me why I didn't get the management
5 position. But she also put in there that she had asked me
6 why I wasn't hired as an instructor, and that my response was
7 because I was a woman. Well, I've never applied to be an
8 instructor at Delta Air Lines, ever. And that conversation
9 never even occurred. So, I found it odd. But that can be
10 validated. They could go see that I have never applied to be
11 an instructor at Delta.

12 So, those are the types of facts that clearly
13 indicated that it might not be what really happened.

14 Q Are you knowledgeable of Ms. Nabors having
15 attributed her actions, after your interview of March 8th, as
16 undertaken with the intent to promote your well-being?

17 A Oh, absolutely no intent, because --

18 Q I just want -- you understand that she said that?

19 A I did. I understand that after I had been through
20 all the depositions and I've listened to this. But -- and
21 the company -- she said that she was promoting my well-being,
22 but the company took her statement of a meeting, without any
23 witnesses, without ever even telling me why, and said it was
24 because they were so concerned for my well-being. And had
25 that been the case, she never would have left me standing in

1 the hotel lobby, she would have called and got help, which I
2 would think the reasonable person would do if they thought --
3 especially representing an airline, the employer -- that a
4 reasonable person would go -- if they thought their employee
5 was distraught or in some kind of, you know, bad way, that
6 they're going to be a threat to themselves or others -- that
7 they would do something about it. Not only did she leave me
8 there, but she knew that I went off and was going off to a
9 Women in Aviation conference, getting on an airplane, going
10 through security, flying to the conference, speaking at that
11 particular conference. And I didn't know any of this was
12 going on until I returned a week later.

13 Q Do you know who Dr. Thomas Faulkner is?

14 A Yes. He's the DHS, Director of Health Services at
15 Delta Air Lines.

16 Q Did you meet with him, sometime after your March
17 8th -- sometime after the Section 15 referral?

18 A I met with him six weeks after the referral.

19 Q Did Dr. Faulkner provide you with any assessment of
20 his own, with respect to your meeting with Ms. Nabors?

21 A He told me that he thought that this was a
22 misunderstanding.

23 Q And when you met with him six weeks after, where
24 did that meeting with Dr. Faulkner take place?

25 A In Atlanta.

1 Q And did you travel specifically to see Dr.
2 Faulkner?

3 A No. This is the day after they had pulled me for
4 my Mental Health Evaluation, I spoke to Captain Graham and he
5 asked me -- and actually, during the meeting of giving me the
6 letter, Phil Davis said: "Captain Graham still wants you to
7 do this." My union rep said: "No, Karlene, don't do it." On
8 the side he said: "They're setting you up, I wouldn't go down
9 there." My thought -- why would you invite somebody who is
10 mentally unstable, for whatever reason -- he wouldn't tell me
11 why, only he compared me to the Germanwings pilot and told me
12 that's why they were pulling me -- invite me down. But sure
13 enough, the next day Captain Graham called and said he would
14 like me to come down and present my safety report to his
15 divisional leaders.

16 Q In the intervening six weeks between the Nabors
17 interview and your meeting with Dr. Faulkner, did anyone from
18 Flight management contact you to inquire as to your
19 well-being?

20 A No, they did not.

21 Q Did anyone call you to suggest counseling?

22 A No.

23 Q Did anyone call to suggest that you visit the EAP?

24 A No.

25 Q Did anyone contact you to provide you with an

1 account of what Ms. Nabors had reported about your March 8th
2 Ms. Petitt?

3 A No.

4 Q Have you, in your studies, conducted research with
5 respect to the Germanwings pilot and that accident?

6 A I have.

7 Q And could you give a brief explanation of your
8 understanding of what transpired?

9 A There was a mentally unstable individual, a doctor
10 identified it, had told him that he was going to be notifying
11 the company and be removed from duty. And then shortly
12 thereafter he flew the airplane into a mountain.

13 Q And are you familiar with a hijacking conducted by
14 a Fed Ex pilot by the name of Auburn Calloway?

15 A I am.

16 Q And based on your research and reading, what's your
17 brief understanding of that, what transpired there?

18 A I actually had the opportunity to speak one-on-one
19 with the captain who was hit with the ax on that aircraft,
20 and once again it was a pilot that the company was bringing
21 in, he knew he was going to be disciplined or something,
22 removed from duty, and he subsequently tried to get the
23 airplane, he was attempting to fly it into -- hijack it and
24 fly into the SORT Center.

25 Q Do you consider those cases comparable to your

1 situation?

2 A Comparable in the fact that these were both known
3 that a mentally unstable pilot could do severe damage and
4 attempt to. And I was being -- they hadn't mentioned
5 Calloway, but they aligned me with Germanwings, and so they
6 pulled me with only that something I said in my behavior with
7 Ms. Nabors -- and we took Germanwings seriously -- but then
8 they did nothing to reach out to me. I tried calling Dr.
9 Faulkner, pretty much a couple times every week for six
10 weeks, without a return phone call. And the company had the
11 company never reached out to me. The only conversation I had
12 was with Captain Graham the day after I had been pulled
13 regarding my giving a safety presentation.

14 Q So, you met face-to-face with Dr. Faulkner?

15 A Yes, right after I gave the presentation.

16 Q And what was your initial impression of Dr.
17 Faulkner's view of the case?

18 A Well, my initial impression of Dr. Faulkner is
19 really nice. He reminded me of Marcus Welby. He was very
20 relaxed, laid back. He said that -- asked me if -- he asked
21 me what I thought could happen to me for reporting. And I
22 said: "Oh, they could mess with my simulator or give me a
23 line check." I said they had done both. I said the captain
24 rep told me I could get a Section 15. And I went on to
25 expand on that at anytime anyone could get checked, a line

1 check. So, I've always taken personal pride in no matter
2 what event I show up to, whether it's flying aircraft, going
3 for recency or preparing for check ride, that I've always
4 prepared the best I can for that event.

5 So, granted, they can do anything to you, but you
6 can only do what you can do yourself. And then he asked me
7 how my meeting went, the presentation went, and I shared with
8 him that. Shared with him that I had attempted to give
9 Captain Graham a thank you note for the meeting, but I told
10 him it was a bill and he would not open the envelope, as much
11 as I begged just open it, and he wouldn't do it. We talked
12 about that. And then he gave me Dr. Riccitello's phone
13 number, who works for -- used to be ALPA Air Medical, but now
14 they're called AMS, Aviation Medical Services, I think. And
15 he said:

16 "Here's my friend, call Dr.
17 Riccitello, and we'll get this, you know,
18 sorted out."

19 And he said:

20 "I think you have a misunderstanding
21 -- this is a misunderstanding -- I'll
22 call you tomorrow."

23 And so I wasn't in his office more than 30 -- maybe
24 45 minutes. He had a patient waiting for him when I left.
25 And then it was a very long day to fly, do the meeting, go

1 through that, and then because they had taken away my "known
2 crew member," I had a very difficult time getting through
3 security and I missed my flight. All the flights were
4 over-sold.

5 I called Rip Johnson, my chief pilot, and he sighed
6 and goes: "Let me take care of this for you." So, he got me
7 a ticket and got me out of town.

8 Q Could you turn to -- actually, let me -- JX-K.
9 Now, I'm going to ask you to turn to the second page, is this
10 the paper that you presented at the meeting in Atlanta, that
11 you were just referring to?

12 A Yes, it is.

13 Q Okay. Now, this first page, the cover e-mail is
14 from Chris Puckett to David Altman. Did you, on your own
15 initiative, provide your "Ethnographic Study of Delta Air
16 Lines" to Dr. Altman?

17 A No.

18 Q Now, this is a paper -- was this related to your
19 work at Embry-Riddle for a Doctorate?

20 A Yes. Actually, I was just finishing up my last
21 class with Embry-Riddle. This is when my final, and it was
22 an SMS course, and I talked to my professor and told him I
23 was invited to give a presentation to Delta Air Lines, and I
24 was going to write a paper for that. And I asked him if I
25 could use that paper for my final course work, as my final

1 paper for the course.

2 Q Was the paper graded?

3 A Yes, it was.

4 Q What did you get?

5 A I got an "A." However, I had been warned before
6 this, before he allowed me to do this, he did say if it is
7 biased in any manner or not completely objective your grade
8 will reflect it, so.

9 Q With respect to -- so, you conducted a presentation
10 based on this document?

11 A I did.

12 Q And that was in Atlanta, on the same day you met
13 with Dr. Faulkner?

14 A Yes.

15 Q And did -- excuse me -- did Captain Graham attend
16 the presentation?

17 A No. He showed up and he introduced me.

18 Q Okay.

19 A And then he left.

20 Q And can you describe his -- and then he left, you
21 said?

22 A Yes, he did.

23 Q Okay. Can you describe his introduction?

24 A It was -- I don't know if "condescending" is the
25 right word, it was almost like -- I go speak at schools and

1 it felt like a teacher was saying -- now students, pay
2 attention, this is Ms. Petitt and give her your attention.
3 Because what he said, he says:

4 "Gentlemen, this is First Officer Karlene
5 Petitt, she's here to share some safety
6 information and I'd like you to all pay
7 attention."

8 Which is indicative of the Safety Culture, because
9 if -- they should pay attention -- you shouldn't have to tell
10 executive leaders to pay attention, you know. And the "First
11 Officer" -- I'm very proud to be a first officer, but in the
12 Delta culture it's almost like a Korean culture, it's very
13 hierarchy type thing, there are power levels, so there's a
14 clear -- in this case the very "She is a First Officer,"
15 almost felt -- we can take your level -- I want you to pay
16 attention to her, but don't worry about what she's saying,
17 because it's a first officer.

18 Q And at that time -- now this is several weeks after
19 you had received your Section 15 referral?

20 A Six weeks.

21 Q Six weeks, all right. And why did you tell Captain
22 Graham that you were giving him a bill for this study?

23 A Well, I was trying to lighten it a little bit, but
24 I told him that pilots don't work for free and I put a lot of
25 effort into this, and that I was fighting for my sanity and I

1 didn't want anyone to think I was crazy to do this much work
2 for free. But he would not open the envelope. I said: "No,
3 just please open it." "No, I can't open it, then I would
4 have knowledge."

5 Q Okay.

6 A And it's -- he wouldn't take it.

7 Q And in fact, it was not a bill?

8 A No. It was a thank you note.

9 Q Okay. How did the presentation go?

10 A It went very well, despite the two pilot
11 representatives that were there.

12 Q Why do you say that?

13 A Captain Jon Tovani -- just to give you an image --
14 we're at a long table, there's six individuals there, five
15 from the company, one from ALPA Training rep, and the
16 PowerPoint presentation was on the far wall, I was on one
17 end, Captain Tovani was on the far left, Captain Steve
18 Dempsey was on the right. When I introduced myself, I gave
19 everyone a printed and bound copy of this. I told them that
20 it was theirs to keep, write on it, do whatever they want. I
21 asked them if they wouldn't mind holding questions until the
22 end, because there's a lot of material, and that I'd be
23 willing to stay after and discuss anything, or we could
24 e-mail or set up another time I would come talk to them, but
25 I just wanted to try to have a real timing on how to get

1 through all this. That's how it began.

2 And within the first 10 minutes, Captain Tovani,
3 probably, jumped in four or five times. He got very angry at
4 me, very angry, I guess is probably a word, very upset,
5 because at the beginning I asked them: "What are Delta's
6 rules of the road?" "What are Delta's core values?" And
7 they didn't know. Only one of the people there got two of
8 them. Now, they're very basic. We could probably ask anyone
9 what are your core values and they'd say truth, honesty,
10 integrity, don't tell lies, don't harm other people. They
11 couldn't get any of that.

12 And so this was a Safety Culture presentation. And
13 where I went from there is to impress upon them that we, as
14 leaders, don't understand our own rules of the road, our own
15 guiding principles that are outlined and identified as SMS.
16 Then how do we expect our employees to follow them? And so
17 that started the challenge off, and it got so distracting I
18 finally -- and it was probably about 10 minutes into the
19 meeting -- I asked, told Jon that I knew it was comfortable
20 for him, and said that all the sides were in the
21 presentation, and that if it was too uncomfortable he could
22 take the report and leave. And he sucked it up and didn't
23 interrupt like that anymore and we pressed on.

24 Q How long was the meeting?

25 A That meeting was -- it seems like my Delta meetings

1 are all three hours, but that meeting was three hours, also.

2

3 Captain Dempsey, at one point -- on the other side
4 -- and I think this is what Jud was concerned about that I
5 would react to this -- but Captain Dempsey -- on the other
6 side -- sat back, leaned in his chair and glared at me when
7 the presentation was right there. And it got -- so it got to
8 a point I finally said: "Captain Dempsey, will you turn
9 around and pay attention to the board." And he said: "You
10 said everything is in here." And I said: "Yeah, but this is
11 a good visual, it's much preferable than glaring at me." And
12 he just -- and he turned and he did it.

13 So, that was the meeting. And after that it went
14 -- I was able to get through most of the material, but I gave
15 everyone a packet. And then I went over and talked to
16 Captain Graham for a few minutes, and then went over to meet
17 Dr. Faulkner.

18 Q Did you tell Dr. Faulkner or did he ask you about
19 the presentation?

20 A He did. He asked me how it went and I told him
21 what had transpired with Captain Dempsey and Captain Tovani.

22 Q And you told -- did you bring up the fact that you
23 had presented Captain Graham with a joke bill?

24 A I did. I didn't use the term "joke," though, but I
25 told him what transpired. Later I learned, in his notes, he

1 said that I said something about \$39,000.00. He came up with
2 a figure later. But I don't know where that figure came
3 from, because if I were to bill him, I'd probably bill him
4 about twice that much, because I wouldn't have charged him a
5 green slip pay.

6 Q Did you have any discussion with him about concerns
7 related to retaliation?

8 A Well, I told him about the line checks and the
9 warnings, but.

10 Q And did the phrase: "Target on my back," come up?

11 A Oh, yeah, yeah, I definitely told him that.

12 Q And that you had received those from fellow pilots?

13 A Yeah, that was in the alignment when he was asking
14 me about what I thought would happen to me.

15 Q Did you bring up Ms. Nabors' comments about the
16 police?

17 A I don't remember if I did or not.

18 Q And --

19 A You know, I don't remember, but it was so prominent
20 that I -- I'm going to speculate I probably would have, but I
21 just don't remember if I did or not.

22 Q And did the issue -- the topic of line checks come
23 up?

24 A Yes.

25 Q Would you tell us what you discussed with Dr.

1 Faulkner about line checks?

2 A Well, when he asked me what I thought would happen,
3 I told him that they could give retaliatory line checks,
4 because they've done that before.

5 Q And how long did you meet with Dr. Faulkner?

6 A Thirty to 45 minutes, maybe.

7 JUDGE MORRIS: I've heard several times about
8 "retaliatory line checks," what happens if a pilot at Delta
9 fails a line check?

10 THE WITNESS: They will be grounded. They'll be
11 pulled from duty. And it depends what they did. Actually,
12 one pilot, who is a very good friend of mine, who did fail a
13 line check, is no longer working at the airline.

14 JUDGE MORRIS: Okay.

15 BY MR. SEHAM:

16 Q Did he give you contact information for anybody
17 during your meeting?

18 A Dr. Riccitello.

19 Q Okay. Did he -- and how was the meeting left, in
20 terms of future contacts with him?

21 A He told me to go catch your flight, get on home. I
22 had already missed it, I knew that at that point. But he
23 said he would call me. He said: "I'll call you tomorrow."

24 Q Okay. And did he call you the next day?

25 A He did.

1 Q And what did you discuss then?

2 A That was the conversation where he told me that he
3 couldn't do anything about this, because he was an M.D., not
4 a psychiatrist. And he said he was going to send me to a
5 good friend, Dr. Altman. I asked him: "Am I going to get a
6 neuro-psychological testing?" He said: "You know about
7 that?" And I said: "Yes." And then he said: "I don't know,
8 it depends what Dr. Altman wants to do."

9 Q And did anyone -- in the conversation you just
10 described, was there anyone present for that conversation?

11 A Yes. My husband was.

12 Q Okay. And did the conversation -- was that on
13 speaker phone?

14 A Yes.

15 Q And did you call Dr. Riccitello?

16 A I did.

17 Q And what did you discuss with Dr. Riccitello?

18 A He basically -- at that time, he basically just
19 said to go through the process and, you know, I had to do it.

20 Q Okay. Did you ever call him -- did you ever have
21 occasion to call him again?

22 A I did. I called him a couple times after that.
23 One time I called him after my first evaluation, my first
24 meeting with Dr. Altman, because I was greatly concerned.
25 The first meeting was six hours, no break, dead-bolted in his

1 room, very cold -- in his office -- very cold. He asked me
2 questions about -- he was challenging me about going to
3 college, when I had small children at home, and asked me if I
4 expressed my milk so my husband could feed my babies while I
5 was gone. We're talking 30 some years before. It was very
6 odd questioning. And so I called Dr. Riccitello to convey
7 this to him. And then my medical was coming up and I told
8 him that -- I don't know if it was on that same hone call --
9 but I was going to get my medical, and he has suggested that
10 I don't get my medical, I don't need my medical. In my mind,
11 it can't hurt to get my medical, to prove my mental health.
12 And then he suggested not to put that I was seeing a
13 psychiatrists on the form, because I wouldn't get my medical.

14

15 Well, my AME, Aviation Medical Examiner, and I
16 spoke and I said: "I don't feel comfortable with that,"
17 because I relayed the conversation to him. And he said: "FAA
18 looks at omission as a lie." And he agreed with me,
19 wholeheartedly. And so we talked about it and came up with
20 language on the medical form, we put -- listed Dr. Altman,
21 Dr. Faulkner, Dr. Cornett, who they sent me for the
22 neuro-psychological testing, and we listed these doctors and
23 put: "Labor dispute AIR-21 filed." And the FAA never
24 questioned it. I got my medical. They never did an
25 investigation after that came back. He was quite surprised

1 when I told him I got my medical and that I had listed these
2 doctors.

3 The next time -- I called him occasionally, because
4 this was just dragging on for so long, the whole --

5 Q What was dragging on?

6 A This process.

7 Q The Section 15 process?

8 A The Section 15, yeah. I had gone to Dr. Altman two
9 weeks, consecutive, in July, and I believe the next one flew
10 me back to Chicago for a one-hour meeting, and asked me
11 probably questions that should have been asked by the doctor
12 on day one -- do you drink, do you take drugs -- those type
13 of things. And after that, it was shortly thereafter that
14 Dr. Riccitello, he had left me a message and said that he
15 understood that I was bipolar, because I had manic episodes,
16 raising children, going to college and at the same time, and
17 flying. And my comment was -- obviously I was going to
18 defend this -- he said: "I'm not here to argue." But I found
19 it odd, because that was probably in late November, maybe,
20 but I never heard anything from the company.

21 So, not until -- I actually got my notification
22 from Dr. Altman on Christmas Eve. Now, to his defense, he
23 wrote the letter on the 22nd and did overnight it, but it was
24 pouring down rain in Seattle and they had left it out kind of
25 in the driveway, and when it got -- I couldn't even read it.

1 So, I had e-mailed him and said something came in the mail
2 from you. And so he -- delay away -- and then sent it on
3 Christmas Eve, and he Fed Ex'd another envelope and e-mailed
4 me, on Christmas Eve, a copy of his letter that I would no
5 longer be flying.

6 Q Through the duration of this Section 15 process,
7 culminating in your ultimate reinstatement to active flying
8 at Delta, did you lose your first class medical at anytime?

9 A Never.

10 Q Now, back to the process being followed by Dr.
11 Faulkner, did he, in fact, schedule neuro-psychological
12 testing for you?

13 A He did.

14 Q And do you remember, approximately, when he
15 notified you?

16 A Very well, it was on my birthday, May 4th, and said
17 that I would be going to testing. And I believe he wanted to
18 schedule it for May 10th. And I requested a delay, because I
19 wanted to prepare for it. And he e-mailed me and said there
20 was absolutely no way a pilot or anyone could prepare for the
21 neuro-psychological testing, because it was on our innate
22 ability and this is how we work --

23 Q Let me, if I may, stop you. If you could refer to
24 CX-55?

25 A Which volume is that?

1 JUDGE MORRIS: Volume 2.

2 THE WITNESS: I've got it.

3 MR. SEHAM: Thank you.

4 BY MR. SEHAM:

5 Q You more or less covered in your testimony, but is
6 that an e-mail that you received from Dr. Faulkner on or
7 about May 5th --

8 A Yes.

9 Q -- 2016?

10 A Yes.

11 Q And the third paragraph, which reads:

12 "Regarding preparation for the
13 testing, it is not something that you can
14 study for. The testing is focused on
15 your longstanding abilities and that's
16 something that changes over
17 weeks/months."

18 Is that the communication you were alluding to?

19 A Yes.

20 Q Okay. And did you ever come to have reason to
21 believe that one could prepare for a neuro-psychological
22 testing?

23 A Absolutely. As it turns out, one of our pilots was
24 sent to psychological testing, because his FAA doctor
25 identified a problem. And he went to testing and he failed.

1 And he contacted Dr. Faulkner and said: "I failed this
2 testing." And he said: "Yeah, your scores weren't very
3 good." So, he sent him to a Dr. Odie Bracy in Indianapolis
4 to prepare. Now, since this process started, I've learned
5 that American Airlines has 98 of these. I am now friends
6 with six of the people over there, I don't know all the
7 cases, but -- so I know a great deal about this psychological
8 testing. And there is a facility -- Dr. Bracy -- is it Brady
9 or Bracy, I forget -- it's Bracy, I believe -- he has a
10 testing facility training, where they train pilots to pass
11 this test. Now that I've taken it, you can absolutely train
12 for it. It's something you can. Like one of the tests they
13 gave you was a picture and they said draw the picture. And
14 you can find them on the internet. So, I drew the picture.
15 And then at the end of this long day, they give you blank
16 paper and say draw that picture again -- they don't say
17 memorize -- you haven't memorized it. So, now I know I can
18 go online, pull up all the pictures and just memorize them
19 and go in and get it good. So, you can train, it's kind of a
20 -- the point is you can train for it, he told me you
21 couldn't. And he, personally, sent one of our pilots there,
22 and he gave him three months off to do it. And this pilot
23 subsequently passed.

24 MR. ROSENSTEIN: Objection, done.

25 MR. SEHAM: Well, we'll --

1 MR. ROSENSTEIN: I mean there's no foundation for
2 it, at all. Also, by the way, I'm not sure what the
3 relevance is, because that's -- all right, I'll reserve. I'm
4 losing my patience and I shouldn't do that.

5 MR. SEHAM: Okay.

6 BY MR. SEHAM:

7 Q How many days --

8 MR. SEHAM: Oh, is there a ruling pending or may I
9 proceed?

10 JUDGE MORRIS: You may proceed. It's overruled.

11 MR. SEHAM: Okay.

12 BY MR. SEHAM:

13 Q How many days were you allowed --

14 JUDGE MORRIS: Let me finish.

15 MR. SEHAM: Yeah.

16 JUDGE MORRIS: Part of that is because you can
17 clarify that with Dr. Faulkner, when he comes to testify.

18 MR. ROSENSTEIN: I didn't finish it. I can talk to
19 Dr. Faulkner on -- yeah, no, that's fine.

20 JUDGE MORRIS: Her statements, as to what was
21 conveyed to her.

22 BY MR. SEHAM:

23 Q How many days were you allowed for your neuro-
24 psychological testing?

25 A They scheduled me for one day.

1 Q And do you have any reason for believing that that
2 was not the standard?

3 A Yes, multiple reasons. So, I had personally spoken
4 to six pilots who have taken this test. It's scheduled for a
5 three-day event, day one testing, day two testing, day three
6 they meet with the evaluator. My test -- I didn't know that
7 at the time -- so I went in and halfway through this test --
8 and the only way to compare it would be like taking a check
9 ride without -- for eight hours -- without any training and
10 without any QRH. The bells and whistles in it just -- it was
11 probably one of the most challenging things I've ever done.

12 So, I went in and halfway through this the little
13 gal is rushing from room to room to do these tests. And I
14 told her, I said: "I am brain dead, is this normal to do
15 this?" And she said:

16 "Oh, heavens, no. The human brain
17 can't process this much information in a
18 short amount of time."

19 And I said: "Why am I doing this then?"

20 She said: "Your doctor ordered it."

21 MR. ROSENSTEIN: Objection. How can I respond to
22 this triple hearsay, irrelevant testimony in this case?

23 JUDGE MORRIS: Dr. Altman is going to testify.

24 MR. ROSENSTEIN: That's not Dr. Altman. This has
25 nothing to do with Dr. Altman. This has to do with a

1 separate doctor who she saw for a neurological testing, which
2 she did fine on, by the way, there was no issue in this case,
3 she got a report on. I don't understand what the relevance
4 of any of this testimony is. And we're going on and on and
5 on, and it just doesn't make any sense to me.

6 JUDGE MORRIS: Well, I can see that -- I'm assuming
7 that Dr. Altman is qualified to provide neurological testing,
8 as a psychiatrist, and he could testify as to whether or not
9 it's a one day exam or a three day exam.

10 MR. ROSENSTEIN: Although, it wasn't -- okay.

11 JUDGE MORRIS: In normal course.

12 MR. ROSENSTEIN: But he's -- I mean we're having
13 testimony that there are 98 people from American Airlines and
14 they all -- I mean I don't know -- all right. I mean I am
15 getting frustrated and I don't want to let my frustration
16 show. I'm trying to let the testimony flow. I hear your
17 ruling, I will stop talking. Thank you.

18 JUDGE MORRIS: All right.

19 BY MR. SEHAM:

20 Q Who is Dr. Trenergy, T-r-e-n-e-r-y?

21 A He was one of the 10 Mayo Clinic doctors involved
22 in my case.

23 JUDGE MORRIS: Okay. Hold on. Are you done with
24 CX-55?

25 MR. SEHAM: Yes, sir.

1 JUDGE MORRIS: Okay. I have a question on CX-55,
2 before we turn. And that is, on the first sentence it says:
3 "And received word that I should not change you (sic)
4 appointment."

5 Do you know -- do you know, personally, or have you
6 come to learn where Dr. Faulkner received that word that that
7 testing should not change?

8 THE WITNESS: I believe it was from the company. I
9 think there's another e-mail -- probably in here somewhere --
10 that said it was the company.

11 JUDGE MORRIS: All right, counsel, as long as I can
12 connect that point. Go ahead.

13 MR. SEHAM: Okay. I may not be able to do it right
14 now.

15 THE WITNESS: Ah --

16 MR. SEHAM: Yes.

17 THE WITNESS: Can I answer that question, why I say
18 that? Actually, I think it's because of the next sentence.

19 "As you are currently removed from
20 flight duty for this administrative
21 process, you're being paid with the
22 expectation you comply with the
23 examination process -- attending the
24 testing, moving this along in a timely
25 manner is important. Arranging

1 appointment with a specialist may be
2 challenging."

3 Somewhere in there --

4 MR. SEHAM: That's probably the reference that I
5 was thinking about, that it referenced back to flight duties.

6 THE WITNESS: Yeah.

7 MR. SEHAM: And that you're being paid by the
8 company and, therefore, that's why this has to proceed. I
9 wouldn't be able to say that we have something more concrete
10 than that. But I, as an advocate, say that that's pretty
11 substantial.

12 JUDGE MORRIS: All right. Maybe I'll ask Dr.
13 Faulkner.

14 MR. SEHAM: Okay.

15 BY MR. SEHAM:

16 Q So, I had asked you who is Dr. Trenergy. I'm sorry,
17 I think you answered that.

18 Now, the Mayo Clinic, that was the organization you
19 selected to be your PME?

20 A I did.

21 Q Okay. And the PME is the Pilot Medical Examiner?

22 A Yes.

23 Q That you said you were hiring to review the CME's
24 decision, correct?

25 A Correct.

1 Q Okay. And you retained not just one psychiatrist,
2 but a group?

3 A Going to Mayo Clinic, I got a group. I didn't get
4 to select them, they just had a whole Aviation Medical
5 Department that they have participants. I saw -- I met four
6 doctors, personally, and then the rest of the panel reviewed
7 all the results of -- they all read Dr. Altman's report. And
8 then each of the individual psychiatrists, that I met with --
9 and they did blood work and they kind of ran me through the
10 whole gamut. They took all those reports and then had a
11 meeting with nine of the 10.

12 JUDGE MORRIS: Is that reflected in a report
13 somewhere, I'm going to see?

14 MR. SEHAM: The Mayo Clinic?

15 THE WITNESS: Yes.

16 JUDGE MORRIS: Yes.

17 MR. SEHAM: Yeah, that's a Joint Exhibit.

18 JUDGE MORRIS: Okay. I'm assuming the Mayo Clinic
19 people will tell me what Mayo Clinic did.

20 MR. SEHAM: We have not arranged for them to
21 testify in this case.

22 JUDGE MORRIS: But I'm assuming it's in the report.

23 MR. SEHAM: Oh, I'm sorry.

24 THE WITNESS: Yes.

25 MR. SEHAM: Yeah, it's in JX-M, it's a Joint

1 Exhibit, JX-M.

2 JUDGE MORRIS: Okay. All right.

3 BY MR. SEHAM:

4 Q I may have lost track here. But did you talk about
5 having additional neuro-psychological testing with Dr.
6 Trenergy?

7 A Yes. I was under the assumption, when I went
8 there, I would just repeat the test, because they were going
9 to run a full medical examination. Dr. Steinkraus, I met
10 with him, and told him --

11 Q I'm sorry -- he's one of the Mayo Clinic --

12 A -- he's one of the psychiatrists. When I met with
13 Dr. Steinkraus and told him about taking this series of tests
14 -- because the series of tests could be in one day, if they
15 don't give you all of them, there's this whole list, it's
16 just how many they give you determines, you know. And so for
17 the pilot tests, so far I deduced that it was that whole
18 battery of tests is supposed to be two days. Well, when I
19 told Dr. Steinkraus and Dr. Altchuler, who was also another
20 psychiatrist there, they were both very surprised. And then
21 it was Dr. Steinkraus who told me: "Make sure you tell Dr.
22 Trenergy that you took that test in one day." And I said:
23 "Okay." And I did.

24 Q And did Dr. Trenergy provide you with an assessment
25 of your MMSP?

1 A I don't know. The neuro-psychological testing was
2 -- the test, they told me that they weren't going to repeat
3 it, because I did excellent in most areas, and that those I
4 didn't were just fine. But he did redo the MMPI test, the
5 MMPI, the Minnesota -- you know what that is -- okay.

6 JUDGE MORRIS: Multi-Phase --

7 MR. SEHAM: Minnesota Multiphasic Personality
8 Inventory.

9 THE WITNESS: Yeah. So, we did repeat that. And
10 then the results came out exactly as they did with Dr.
11 Cornett. But the interesting thing with Dr. Trenerly, he
12 explained to me -- because Dr. Cornett had made some comment
13 in her report that my K-score was high -- it's a ratio of --
14 some way they grade these things -- and she said it was high,
15 meaning that they couldn't determine if I was telling the
16 truth, because of my answers. And so Dr. Trenerly -- my
17 K-score came out high again -- and he said this is very
18 common, high K-score with pilots, with doctors and with new
19 hires, he said, because you're on your best behavior and you
20 just want to say -- hey, look at me, I'm great. Because he
21 said you never want to show up to an airplane and have your
22 pilot say -- ah, I hope we can make it today -- the same with
23 a doctor. And so he said: "That's normal."

24 And then he did tell me, he says: "Now, if you pull
25 this out of that of that score," he says: "it's a little

1 high." He says: "But that's because you're a woman." And
2 that was a fascinating discussion, because apparently I have
3 the K-score of being a pilot, but when you take out the other
4 factors, I am still a woman, even though I might be
5 assertive, I still have the gender traits that we might take
6 a step back sometimes and let other people go with it. So,
7 he explained it more articulately than that, but it was really
8 interesting. But he said there was no problem with that.
9 And he did ask me -- he looked at me somewhat perplexed and
10 asked me how I was able to sit here in his office with such
11 composure after being put through -- being put through this
12 ordeal, because he said this ordeal is enough to drive anyone
13 crazy.

14 BY MR. SEHAM:

15 Q You said you received Dr. Altman's report two days
16 before Christmas?

17 A I didn't receive his report. He wouldn't give me
18 the report. I believe that is a contractual thing, somewhere
19 in the letters I read later, that he's not allowed to give it
20 to me. Apparently the company received it in October and I
21 received notice, official notice, on Christmas Eve. And then
22 I had to go to the AMS group, the medical people, to get my
23 copy. And they had given me a link to download it, and --
24 our youngest granddaughter's birthday is on the 1st, so I
25 just thought I'm not even going to even deal with this now.

1 And actually went in to get it, but I never opened it. And
2 then when I came back from her little birthday trip, I
3 couldn't get into it. So, I actually didn't see the report
4 until about mid-January, itself.

5 Q And what was your reaction upon reviewing the
6 Altman report?

7 A Oh, it was the most horrific two weeks of my life,
8 and it took me that long to go through it, because I had to
9 keep breaking away when I read these things. I was shocked
10 that the company had given this stuff to him. I don't have a
11 psychiatric degree, but I do have a Master's in Human
12 Services. And at a Master's level I've got quite a bit of
13 information, because I researched human behavior. And from
14 the very basic of going to the FAA website to look at the
15 requirements for a Mental Health Evaluation, he didn't even
16 follow those. And to associate mania with calling Ed Bastian
17 by "Ed," which everyone in the company does -- then we'd have
18 a whole manic airline. He referred to my speech pattern,
19 which I do talk rapidly, but that's not indicative. That's
20 why the bipolar specialist called my husband -- have I always
21 been like this where I'm up and down.

22 So, it was very distraughtful. And then seeing the
23 letters, the little bits and pieces. Even the captain that I
24 flew with, they waited for seven years to contact this man,
25 and he had already been retired. And I called him and I

1 said: "Bill, you know, what's going on?" And I told him and
2 what happened. And he said: "No, that's not what I said."
3 And so he sent me an e-mail and said: "This the lady and
4 gentleman who interviewed me must have been under the wrong
5 impression" -- he e-mailed me.

6 So, they didn't -- I wasn't even aware all these
7 interviews were going on. The only little bits and pieces
8 that were in that, I followed through. There was something
9 that Bill Palmer, they questioned Bill Palmer about being
10 sexually harassed. Bill Palmer was like the most wonderful
11 instructor I've had on this Airbus, he's -- he'd be my A330
12 mentor, I would say.

13 So, it was just a lot of odd stuff. And then just
14 the effort. And this 366-page document came -- I think it
15 was over 1300 pages of documents, because of safety related
16 information given to Dr. Altman.

17 Q Now, I'm going to ask you a question about
18 representations in the report relating to your flight hours.

19 And I'm going to ask you -- I'm not -- the question is not
20 for the purpose of asking you to comment on Dr. Altman's
21 conclusions, based on your flight hours, but just in terms of
22 facts. Did you feel that the Altman report reflected
23 accurate information concerning your flight hours and
24 experience?

25 A Absolutely not. In Dr. Altman's report, the record

1 came from Delta Air Lines and they told him it was either 28
2 hours or 38 hours -- I forget the number -- but I averaged 28
3 hours of operational duty at Northwest Airlines for a 10-year
4 period. So, not even close. I was an 80 to 90-hour employee
5 every month. So, where did that come from? I later learned,
6 after we got the subpoenaed documents from Dr. Altman, how
7 that transpired.

8 They also, in my medical report, it identified --
9 so a pilot will be -- say we get a bid on an aircraft, but we
10 may not check out for three months, and then we may not even
11 get to the line for another month, okay. So, we've got these
12 four months of this lapse. Well, I got a position on a
13 747-400, I did my checkout on that aircraft, flew it for two
14 months and then went out with a hip replacement. What they
15 did is -- and actually, I think I flew it for three months,
16 because it was almost 275 hours -- I'm guessing. That
17 three-month period of time that I actually flew the aircraft,
18 the company told Dr. Altman that that was like a two or
19 three-year period. So, they averaged my hours for that
20 little short time I actually flew it, because I was out for
21 14 months, and I had got on it before and before I got
22 checked out. And then they did the same thing with the A330.
23 And you know, like I got -- I was assigned a 777, I bid the
24 777 while I was out on a CADM status, well, obviously, I
25 didn't get checked out on it for a year and a half.

1 So, the hours that they had given him were in no
2 way reflective of my actual hours. For Dr. Altman's credit
3 on that one, he can only deal with what he receives, but --
4 but this was a strategy and he put it in writing -- "Delta, I
5 have a strategy."

6 Q Do you have Captain Dickson's deposition?
7 Actually, I have -- is it there?

8 A Probably. This is Captain Bastian -- thank you --
9 JUDGE MORRIS: CX-199.

10 MR. SEHAM: Yes.

11 BY MR. SEHAM:

12 Q And I'm going to ask you to refer to page 37, at
13 line 15:

14 "Question: Would you agree that your
15 total number of flight hours are
16 substantially less than the average Delta
17 pilot of 10 years tenure with the
18 airline?

19 "Bisbee: Objection, asked and
20 answered.

21 "The Witness: My hours are certainly
22 less than if I had flown the line for my
23 entire career, yes.

24 "By Mr. Seham:

25 "Question: Would you agree that that

1 makes you less qualified to render
2 opinions of Flight Operation issues than
3 pilots who have more hours than you?

4 "Answer: No.

5 "Question: Can you explain why the
6 answer is no?

7 "Answer: Experience. Experience is
8 important, but you know, beyond a certain
9 point, you know, I've always maintained
10 my qualifications and currency throughout
11 my tenure, and have the benefit of bench-
12 marking Flight Operations and safety
13 programs not only within the U.S., but
14 around the world."

15 And then skipping down to line 22:

16 "Question: Would you agree with the
17 proposition that the more hours that
18 somebody has, the more valid his opinions
19 are about --

20 MR. ROSENSTEIN: Objection.

21 MR. SEHAM: -- operational issues?

22 "Answer": No."

23 JUDGE MORRIS: Hold on.

24 Basis of objection?

25 MR. ROSENSTEIN: For the record, same objection.

1 And I know that you have the whole transcript, but this one
2 is particularly egregious to skip the rest of it. It takes
3 the entire testimony out of context. Without Captain Dickson
4 talking about himself, by the way, not talking about the
5 witness.

6 JUDGE MORRIS: I assumed that he was talking about
7 himself.

8 MR. ROSENSTEIN: Right.

9 MR. SEHAM: Yes.

10 JUDGE MORRIS: Okay. Your objection is noted.

11 MR. ROSENSTEIN: Thank you.

12 JUDGE MORRIS: Again, I'm going to go back and --
13 although you're highlighting it, I'm assuming this is a
14 replacement of actual testimony, so I'm going to read this
15 thing cover to cover, as I am with Mr. Bastian's, as well.

16 MR. ROSENSTEIN: Thank you, Your Honor.

17 BY MR. SEHAM:

18 Q Do you concur with the testimony, in terms of the
19 correlation between flight hours and expertise, or
20 non-correlation?

21 A Absolutely.

22 Q If you can turn to CX-14? I'm going to refer you
23 to the very bottom. Just for the record, there are years
24 posted in quarters, with reference with hours flown, trips
25 landed, blank, but the reference I would like to make is at

1 the bottom:

2 "With this data it is possible to
3 answer the question over the time. Is
4 First Officer Petitt changing the amount
5 of time flying and the number of times is
6 piloting the plane? The strategy is to
7 graph time against cumulative hours or
8 cumulative flights."

9 Is this one of the documents you were referring to,
10 when you said that Dr. Altman and Delta were conferring on a
11 strategy related to your flight hours?

12 A Just one of them, there's more.

13 Q If you could turn to CX-84?

14 JUDGE MORRIS: Are we still talking about flight
15 time?

16 MR. SEHAM: Yes, sir.

17 JUDGE MORRIS: Okay. Go ahead.

18 MR. SEHAM: Did you have a question?

19 JUDGE MORRIS: No, I'll wait -- for once.

20 MR. SEHAM: Okay.

21 THE WITNESS: Okay.

22 BY MR. SEHAM:

23 Q I'm going to refer to the second e-mail in this
24 thread, which starts a little under halfway down the page.

25 "Dear Phil and Chris, the issue of how

1 much FO Petitt is flying continues to be
2 an issue. It is her position that being
3 an A330 pilot in Seattle makes it very
4 difficult to not have to use regency to
5 maintain her status. I have thought of a
6 strategy, which has the possibility of
7 confirming her opinion or refuting it.
8 The problem is it is very intensive."
9 It continues:

10 "It involves comparing her to her
11 peers and seeing if she is an outlier or
12 not."

13 Now, did Dr. Altman ever alert you to the strategy
14 that he was following with respect to your flight hours?

15 A No.

16 Q Did he ever ask you to explain whether you might or
17 might not be an outlier, with respect to your peers?

18 A No.

19 JUDGE MORRIS: Do you maintain a log book?

20 THE WITNESS: I used to, but I keep track on the
21 company and I just print those out, so the company keeps a
22 record.

23 MR. ROSENSTEIN: Is this a decent time for a
24 bathroom break?

25 MR. SEHAM: Sure.

1 JUDGE MORRIS: All right. Let's take 10. See you
2 at 10 after the hour, actually, closer to 15.

3 (Off the record at 2:56 o'clock p.m.)

4 JUDGE MORRIS: Back on the record. All parties
5 present when the hearing last recessed are again present.
6 Please, continue your direct.

7 MR. SEHAM: Okay.

8 DIRECT EXAMINATION RESUMED

9 BY MR. SEHAM:

10 Q Ms. Petitt, you my have testified, but just to set
11 the foundation again, the first time that you saw Ms. Nabors'
12 report was at what time?

13 A January 20, 2017.

14 Q And why did you have an opportunity to see it at
15 that time?

16 A Because it was in Dr. Altman's medical report.

17 Q Okay. So -- and you read it at that time?

18 A I did.

19 Q Do you recall references to you being emotional
20 during the March 8th interview?

21 A I do.

22 Q Did you show any emotion at the meeting with Ms.
23 Nabors?

24 A I did. When I first sat down, she reached over,
25 touched my hand and said: "We're going to get to the bottom

1 of this." And my eyes watered, I may have teared a little
2 bit, and then she shoved a box of tissues over to me, and
3 that was kind of the end of that moment. But yeah, it was, I
4 did initially, because I had been going through so much
5 trying to bring this to somebody's attention, they were
6 finally taking it serious. I had so many warnings that they
7 were going to get me, and everybody was wrong, they weren't
8 going to get me, but -- yeah, so I did at that moment.

9 But the further comments that I was crying
10 throughout, absolutely not. There was nothing to be
11 emotional about. I've been loving this for a long time,
12 wrote it and gave the same presentation to the regional --
13 five regional directors, so.

14 Q Do you know who Mike Levis is?

15 A I do.

16 Q Did you ever talk to him about pilot's crying?

17 A I did. Mike Levis is our new regional chief pilot
18 and he was LAX chief pilot. And I want to say two, three
19 weeks ago, I was at a meeting with him and we were talking
20 about emotion and he had asked me: "Did you cry with Ms.
21 Nabors?" I told him what happened, and he says: "Oh, I get
22 guys coming in," he goes: "I have a box of tissues on my
23 desk," he says: "I have the guys come in here all the time
24 and cry." He says: "Once we had a gal," he says: "for sure
25 she was cranky" -- he kind of laughed and he says: "She's the

1 only one who didn't cry." And I go: "Well."

2 But the thing is, they should be able to cry.
3 People should have emotion. That's not a mental health
4 issue. If I cried during that whole meeting, giving this,
5 because it was so frustrating, you know, that would make me
6 emotional, not crazy. I mean that's not what happened, but
7 it's a little offensive that it's here or tied to a mental
8 health issue.

9 Q Were you ever so upset that you could not speak
10 during that March 8th interview?

11 A No. And that was another -- the fact things that I
12 was looking through -- that was also a conflicting statement.
13 She made two statements -- that I was emotional through most
14 of the meeting, that I could not speak. But then somewhere
15 else in that exact same report she said that I talked
16 incessantly and I wouldn't let her get a word in edgewise.

17 Q Is that a fair statement that you talked at length,
18 where she couldn't get in a word?

19 A Probably. And she did get in words, but I did talk
20 at length when she brought something up, and then she brought
21 up a point, and then I would talk about it. And she had, you
22 know, this look on her face, so I'd expand upon it and went
23 down the safety path. And then when we finished that, she
24 would bring up another point and I did the same thing and
25 discussed, at length, my concern and what was actually going

1 on.

2 Q Did you, as was characterized, did you "jump" from
3 EO topics to safety topics?

4 A No. And there was no jumping, at all. And I
5 didn't know they were EO topics. And I apologize for being
6 speculative right now, but in hindsight, seeing that
7 statement this late in the game, and the fact that she
8 thought that this was an EO concern, because I was a woman
9 reporting, and all the issues she spoke of were safety issues
10 -- if she brought up something and I wasn't saying -- oh,
11 they did that to me, I'm a girl -- I just went down a safety
12 path. Could I see how she assumed that? Probably. But
13 there was no jumping, because every issue in there was on the
14 topic of safety and every issue she brought up -- and we went
15 from start to finish on that, and then we went to the next
16 one.

17 Q Did you ever give any indication to Ms. Nabors,
18 during the March 9th interview, that you were concerned about
19 being harmed?

20 A No. And the only reference to -- I mean I told her
21 I had warnings and a target on my back. I did tell her a
22 story, something about when I was talking to Jud Crane and
23 said, yeah, I've got target on my back, but that's okay,
24 because I walk to the gym, I always carry my textbooks in the
25 front of my coat -- and then I go -- wait a minute, that

1 won't help me if the target is on my back, you know, so,
2 just, you know, kind of joking about the target on my back in
3 the discussion, but it was no harm.

4 Q Did you ever make a comment to her about or
5 concerning being physically harmed?

6 A Never.

7 Q Based on your interview and face-to-face with Ms.
8 Nabors, did you have any reason to believe that Ms. Nabors
9 was emotionally upset?

10 A Emotional -- she didn't really show emotional. She
11 showed, perhaps, confusion or blank stares sometimes. In
12 hindsight, after listening to her testimony, I probably
13 scared the heck out of her.

14 Q Did you say anything that would scare her?

15 A Well, not at the time, because at the time I
16 thought she was a safety investigator. But then when I found
17 out that she had never interviewed a pilot before, that she
18 was afraid of flying, she said takeoffs and landings are the
19 worst, and she said that she couldn't sleep that night.
20 After I heard that testimony, I went back and I thought, man,
21 I'm surprised she didn't sleep for a week after what I told
22 her.

23 Q Well, did you actually discuss any catastrophic
24 events or near catastrophic events with Ms. Nabors?

25 A I did. There were actually four in particular.

1 One of them was -- ended up -- Dr. Altman received this, also
2 -- it was we had a 737 that was the pilots were destabilized,
3 got behind the approach, selected TOGA -- takeoff/go around
4 -- thought that that's what they were doing. They disengaged
5 autopilot, they were flying directly into the ground. When
6 this manifested was they were at 186 feet altitude, 2000 foot
7 per minute descent.

8 JUDGE MORRIS: 186 AGL?

9 THE WITNESS: AGL. And 2000 feet per minute. And
10 before they pulled out of it. They were within seconds --
11 seconds -- of impacting the homes at the end of the runway.
12 And I shared this with her and I said -- because this was a
13 training issue and it involved Captain Dempsey, who made the
14 procedure subsequently after that, who subsequently declared
15 an emergency, because he lost his auto flight system. And he
16 didn't lose it, they took off and they didn't have it. And I
17 don't -- if a pilot feels uncomfortable flying the airplane,
18 he should go back and land. He did not. He went up and flew
19 an RVSM air space without an autopilot. He identified -- the
20 company --

21 JUDGE MORRIS: Wait a minute. Reduced Visual
22 Separation Minimums, I believe.

23 THE WITNESS: Correct. The company turned this
24 event into a Workload Management video. And I just saw all
25 things wrong with this, so I went and looked up his name and

1 e-mailed him and asked him questions. And I had heard about
2 the 737 almost hitting the ground from talk, but he e-mailed
3 me the actual numbers. That's why I know precisely where
4 they were at, what altitude. He's in charge of the -- he's
5 the chair of the Human Resource or Human Factors Committee,
6 and he gathers the data. And he e-mailed me and told me that
7 Delta, as a group, cannot fly Level 0, nor can we fly Level
8 4, so says ASAP. Level 0 meaning is when there's no
9 automation on, complete manual flight, and that would be
10 flight director, auto thrust, autopilot. And Level 4 is
11 fully automated, what we would consider going into next gen
12 or we just manage and it flies. And he said we, as a group
13 -- and he said for his flying skills -- he told me he flew
14 like 1500 sorties in the military -- and for his necessity to
15 declare an emergency for manual flight was a personal wake-up
16 call.

17 So, what the company identified was we have an
18 entire group of pilots who can't fly an aircraft. And here
19 this captain, who is writing all the training procedures for
20 this -- he had to declare an emergency. So, what they did
21 is, they used him and called it Workload Management. What
22 they were really saying is -- pilots, we know you can't fly,
23 so if something happens just declare an emergency. This was
24 a big point of meeting with Dr. Altman. I didn't know why it
25 came up, but it did come up. And when I got into depth with

1 it, because he didn't know I had these e-mail exchanges from
2 Captain Dempsey at the time, I knew very detailed what had
3 happened beyond the training, it turned out that Delta had
4 given him the transcript to this Workload Management video.

5 But anyway, with Ms. Nabors -- back to Ms. Nabors,
6 I was explaining to her this incident of coming within
7 seconds. I shared with her an incident -- I was brand new to
8 the A330, they called me out of Seattle to go down to
9 Atlanta, flew this trip. It didn't go exceptionally well
10 into Amsterdam, but it was a line check coming back into
11 Atlanta on the 330. It was shortly after the merger. We had
12 the check airman was a Northwest check airman, sitting in the
13 right seat, brand new Delta captain in the left seat.

14 We're coming into Atlanta, on a downwind -- they
15 vector you in tight quite often -- if you can't do something
16 AT tells you, you should say we can't, but they accept, they
17 come in. They're coming in to intercept the glide -- or
18 coming in to intercept the localizer and the captain -- we'll
19 call it captain, left seat, he went up to slow the air speed
20 down and ran the speed down. The pilot in the right seat,
21 the check airman, reaches up and says -- no, this airplane
22 you want to keep it up, at least up to 170 knots, gear down,
23 flaps, full speed, we're going to give you the best. So,
24 he's flying his airplane for him, he reaches up, he pulls
25 full speed brakes, he dumps the gear, then he reaches over

1 and gives -- so it was two guys doing this, hand-flying this
2 airplane. And I'm sitting in there watching this whole show.

3 And it ended up manifesting it got completely dirty, meaning
4 flap speed, everything it out, and now we're -- oh, and he
5 disengaged the autopilot, because why is it not going
6 down -- and oh, it wasn't going down, because he went --
7 instead of -- he ran his -- when he first reached over to do
8 the air speed, he inadvertently got the altitude, so the
9 airplane captured the altitude. So, he messed it up for him.

10 So, they got it sorted out. So, they disengaged the
11 autopilot and he's shooting down, and they go through the
12 glide slope and now they're coming up and we're getting --
13 power is coming up -- on the A330 the thrust levers don't
14 move, but the power on the engines -- you can see on the
15 instruments -- is coming up. And the nose is pitching up and
16 the power is coming up and we're still bellying into the
17 ground, towards the ground, and getting: "Terrain, Terrain."

18 And both these guys just sat there and they didn't respond.

19 And I looked up and saw and I yelled: "Speed brakes." He
20 jams the speed brakes forward, the airplane kind of like --
21 it's almost like it kind of popped up to the glide, but
22 caught itself, and within seconds we were landed on that
23 runway.

24 So, everyone deals with their near life/death --
25 near death experiences differently, and my heart is obviously

1 pounding. This left seat guy decides he's going to take over
2 this cockpit, he's going to now be in charge. And so he
3 tells me to get us a gate and then the right seat captain
4 tells the left seat captain -- no, we don't do that, there's
5 two pilots, we have to take care of ourselves, not at Delta
6 the third pilot. So, they're arguing over this. And he
7 yells: "Get us a gate." So, called the ramp in Atlanta and
8 said: "Do you have a gate for Delta?" And she said:
9 "Sweetheart, where are you?" And as I got up and kind of
10 looked out to see the taxiway, see where we are to explain to
11 her, she said: "Wait till you come around."

12 Well, then the next thing was, he shuts down the
13 number one -- the number two engine, the right engine. And
14 we're going to make two left turns. Now, we don't have any
15 power on this outside engine. So, the first one is kind of
16 right turn and we get up to this gate, and we're here, and
17 the gate is there, and this airplane -- you are not allowed
18 to pivot turn, okay -- so you're not allowed to pivot turn
19 and I'm just sitting there thinking what are they going to
20 do, start the APU, get the other engine running, are we going
21 to taxi out and come back in and get another angle? And what
22 he does is, he runs the power up and squeaks it in and goes
23 into the gate. And the check airman in the right seat shook
24 his hand said: "Good job, get out of here, go catch your
25 flight." And he signed him off for his check right.

1 And I shared that when I met with Ms. Kelley
2 Nabors. So, she heard the 747, she heard that one --

3 Q Was there an A330 event in Boston that you told her
4 about?

5 A There was. We had an Airbus -- that's what Captain
6 Corbin was talking about, the approach mode. So, these
7 airplanes, on the Airbus, have two approaches. And
8 historically, Boeing, is you select the approach, you tell
9 the computer we want to go fly this ILS in glide slope.
10 Well, you do that on the Airbus, too, but the computer has an
11 approach mode also and you have to say -- what it does is,
12 the computer knows different phases of flight, you have to
13 tell the computer, okay, now I'm going to go for approach.
14 So, you have to go and select approach, just a button push.
15 And if you don't do that, what happens is -- we call manage
16 our speed, so we pull the speed out and we can run it back --
17 but just on final, before we land, we want to give the speed
18 back to the airplane to manage, so you push the button -- so
19 you select or reselect or manage -- you push the managed
20 speed. When you do that, at this phase, the airplane doesn't
21 know it's supposed to land, the power comes up. So, these
22 guys on the 330 came in, FO is flying, the pilot flying,
23 captain is in the left seat. They go manage speed, power
24 comes out, the air speed at the initial comes up to 220 -- I
25 think 250 knots on the first time. What to do? I don't know

1 what to do. So, they fly around and they do the exact same
2 thing, exactly the same. This time it came up to green dot.

3 Green dot it actually a little green dot on the air speed
4 indicators, and it flops up on the air speed, and I would --
5 based on -- it would probably be about 210 to 220 knots. So,
6 the second time they did the same thing and went around.
7 They did that three times. The first officer finally -- the
8 captain on the last pass in said go around -- and he said no
9 and he disengaged -- or he said no, and he kept flying it.
10 And when the airplane said -- they got it close enough to the
11 ground -- it said: "Retard, retard" -- was the first time
12 they ever pulled the thrust back. They almost went off the
13 end of the runway with that one.

14 Q And you gave this account to Ms. Nabors?

15 A I gave this account to Ms. Nabors.

16 Q Did you give her an account regarding a flight into
17 Taipei?

18 A Yes, and that was another flight that I was on.
19 Flying with, once again, one of the Anchorage captains. And
20 we were -- Taipei, they were bringing us in pretty close,
21 right into almost on a 90 degree right at the outer markers,
22 pretty tight. So, we were coming in -- that was a little bit
23 before, because we were coming in and it was kind of a real
24 -- everything was quick. So, we hadn't cleaned up the flight
25 plan. All cleaning up the flight plan is, is when you get a

1 vector you're just clearing off your way point, so you don't
2 see all that clutter on your map.

3 And so I was the pilot flying, we're coming in and
4 everything was set up. And the captain said: "Oh, I forgot
5 to clean up the flight plan." I said: "Don't worry, fine,
6 just leave it." "Oh, no, I've got it." Ding, ding, ding,
7 boom. What happened? He wiped everything out. I did --
8 when I say everything out, it was the map, the map was gone,
9 we couldn't see it. But I did have my raw data, my slope and
10 my localizer. And at this point I could see all the little
11 blips of all the other traffic out there, they're not
12 speaking English -- where are they going, what they're doing.

13 And so it was one of those moments of do I continue or do I
14 go around. And is the missed approach in the box or did it
15 go away, too. You know, it was one of those decisions, and
16 so I just decided I'm going to push this.

17 So, probably at about 1,000 feet -- we're supposed
18 to be at 1,000 feet, we can, if we're going to exceed that a
19 little bit, identify, so we know we're doing it -- probably
20 at about 1,200 feet per minute descent to recapture this
21 glide slope, because I got a little bit behind the airplane
22 right at that moment and was not behind the airplane, on top
23 of the airplane, so I knew situationally where we were, what
24 was going on and capturing it. And then I did. And then
25 probably about 300 feet everything -- and I'm going -- and

1 I'm saying, okay, we're on glide slope, on localizer, missed
2 approach, altitude is -- I said, that's okay, our minimums
3 are -- and I said -- and they were gone. And I said, I know
4 what they were. So, I recited them and then he confirmed,
5 but we broke out, saw visual, land the airplane. And he
6 said: "Why didn't do that?" And it's just a lack of
7 training.

8 And this stuff is not -- these are not isolated
9 events, this stuff is going on all the time. And it's a
10 cultural problem in that Training Department. And this is
11 why, you know -- so when I was talking to Ms. Nabors and
12 giving her these examples of this is what's happening, this
13 is how critical this is. But I had no idea -- no idea she
14 was afraid of flying, no idea takeoffs and landings were
15 worse, because each one of these was a landing phase flight,
16 and --

17 Q Was there another incident related to a flight into
18 Atlanta, that you recounted to Ms. Nabors?

19 A The Atlanta flight was the flight I was on in the
20 jump seat, when the speed brake was out.

21 Q Oh. And you say that you were referring to
22 training, which of these incidents related to proficiency of
23 training?

24 A All of them. All of them.

25 Q If you could turn to JX-B at 18?

1 JUDGE MORRIS: B as in Bravo?

2 MR. SEHAM: Bravo, yeah.

3 BY MR. SEHAM:

4 Q And I'm going to direct your attention -- oh, I'm
5 sorry, I may not have given the page number -- I'm referring
6 you to page 18 of your report, or JX-B-19. To the last
7 subject header: "Captain Emergency."

8 Now, is this -- tell me when you get there?

9 A I'm there.

10 Q Is this one of the incidents you already described
11 or is this an additional?

12 A Yeah. No, this was in -- this "Captain Emergency"
13 was in reference to Captain Dempsey's -- that Workload
14 Management video and identifying the pilots, as a whole, at
15 Delta Air Lines cannot fly. And the fact that he was the one
16 responsible for making the missed approach procedure,
17 changing procedures, because of that incident where they were
18 within seconds in Atlanta, because that one was in a 737.

19 Q I'm going to refer you to the Dickson deposition
20 CX-199, page 162.

21 A CX or his deposition?

22 Q His deposition -- do you have his deposition?

23 A I have his deposition, so what page would that be?

24 Q Yes, yes, it's page 162.

25 A 162.

1 Q I'm just saying, for the record, we've now
2 identified this as CX-199, as an exhibit.

3 A Oh, I'm sorry.

4 Q Okay. And direct your attention to line 14. And
5 the relevant part, if I could read, starts at that point:

6 "Question: If I could direct your
7 attention to page 16, Bates stamp number
8 193, specifically, less than halfway down
9 the page, that begins with: 'Captain
10 Emergency'?"

11 "Answer: No -- hold on -- yes.

12 "Question: The two paragraphs
13 beginning with the subtitle: 'Captain
14 Emergency,' which reads:

15 'Captain Emergency: Shortly after
16 departure our flight lost their auto
17 flight system. The captain continued to
18 fly to Atlanta. He requested a block
19 altitude and flew in RVSM air space.
20 Then, upon arrival, not when the issue
21 began, they declared an emergency because
22 ATC would not provide a block altitude
23 for the arrival phase. The Training
24 Department used this as an example of
25 workload management, created a video. The

1 problems with this video were many and
2 the author can only suspect a lack of
3 SMEs involved. Did not understand the
4 ramifications of what happened and how
5 the video created a liability for Delta.

6 An FAA advisory, FAA 2013, and Delta,
7 have encouraged hand-flying due to loss
8 of hand-flying skills. However, this
9 training video stated that hand-flying is
10 an emergency procedure.

11 Secondly, the pilot flew in RVSM air
12 space without required equipment,
13 thinking that requesting a block altitude
14 would alter that requirement, legally did
15 not.'

16 So, did I read that much correctly?

17 "Answer: Yes.

18 "Question: And then ATC stands for
19 what?

20 "Answer: Air Traffic Control.

21 "Question: And SME, is that Subject
22 Matter Expert?

23 "Answer: Yes.

24 "Question: And RVSM, what does that
25 refer to?

1 "Answer: Restricted vertical
2 separation minimums, I believe.

3 "Question: As read to you, and
4 assuming the facts are accurate, do these
5 facts, are they a source of concern?

6 "Answer: Yes, they would be.

7 "Question: Why would they be a source
8 of concern?

9 "Answer: Well, because an airplane
10 flying in RVSM air space would need to
11 maintain a very precise altitude. So,
12 again, it gives the impression that we
13 are going to place operational
14 requirements above safety requirements.
15 It probably would have been a better
16 decision to return the airplane around
17 and get it repaired.

18 "Question: A better decision? But
19 also, would you agree that providing that
20 there was no problem with the originating
21 airport --

22 "Answer: As far as we know.

23 "Question: Yeah. Assuming that is
24 the case, then in fact is the requirement
25 that you return to that airport or the

1 closest airport, rather than traveling
2 several hours to a destination, correct?

3 "Answer: Yes.

4 "Question: That is the course of your
5 concern, that this could reflect
6 elevating completion of the schedule over
7 safety?

8 "Answer: So, I don't know the context
9 behind this one, I don't remember this
10 particular event, but that is something
11 that we would have needed to look at.

12 "Question: Would you agree with me
13 that for the A330,
14 hand-flying is not an emergency
15 procedure?

16 "Answer: I would agree with that."

17 Ms. Petitt, would you agree with Captain Dickson,
18 that for the A330, hand-flying is not an emergency procedure?

19 A I agree with that and I agree that hand-flying any
20 airplane should not be an emergency procedure.

21 Q Okay. Are you familiar with the terms: "Level 0"
22 and "Level 4"?

23 A Yes.

24 Q What do those refer to?

25 A As previous testimony, Level 0 is no automation.

1 Level 4 is fully automated.

2 Q Now, did you discuss the events under the subtitle
3 of "Captain Emergency," with Dr. Altman?

4 A At length.

5 Q Okay. And did you refer, at all, to your
6 conversations with Captain Dempsey?

7 A I did. During that conversation, I had told him
8 that I had e-mails and shared with him what I learned from
9 Captain Dempsey. He did request me to send them to him, so
10 he did have, in his possession, after this section of this
11 meeting, he did receive them.

12 Q And how did Altman respond to your account?

13 A It was -- this discussion was more of a debate on
14 whether hand-flying was an emergency or not. I believed it
15 wasn't. He believed that Delta was okay doing this. He
16 appeared to get frustrated, at one point, so he pulled out
17 some papers and it turns out that they had given him the
18 transcript to this Workload Management video. And he said:

19 "See, see, he didn't -- they weren't -- they
20 had their autopilot, because it said the
21 first officer did a pretty good job
22 maintaining altitude."

23 And at that point I told him that indicated that if
24 they were doing a pretty good job at maintaining altitude,
25 that they didn't have the autopilot on, because it would have

1 maintained altitude. And he said: "Well, they had their auto
2 thrust." And I said: "No, they didn't." He said: "Here, it
3 said it was unreliable." I said: "Well if it's unreliable,
4 we don't use it." And he said: "Ah ha, look," and he says:
5 "That doesn't work." And then I said to him -- because I was
6 "Ah ha, look at this" -- and I said: "Well, unreliable, you
7 don't use it." So, as I was reading that, I kind of looked
8 down and go: "Look, you see right here it says their auto
9 flight system wasn't on." He say: "Yes." And he said:
10 "What's an auto flight system?" And I'm thinking, why am I
11 even debating you over auto flight system and discussing
12 manual fight and RVSM air space for 45 minutes -- this is --
13 I was thinking this is supposed to be my Mental Health
14 Evaluation. I felt, going through this, that I was probably
15 the worst FAA examiner I ever had, where the FAA examiner
16 didn't know. But the examiners always knew more than I did,
17 so yeah, this was -- I was dumbfounded that we spent a
18 lengthy time going through this.

19 Q Could you turn to CX-176, and that should be Volume
20 6?

21 A Okay.

22 Q Are these e-mails that you exchanged with Captain
23 Steven F. Dempsey, Chair of the Delta Human Factors Working
24 Group?

25 A They are.

1 Q And I want to try to expedite things a little.
2 Just reference one paragraph, if you could turn to the sixth
3 page, so that would be CX-176-006, and let me know when
4 you've reached that page?

5 A I'm there.

6 Q Are you there?

7 A I'm there.

8 Q Okay. I'm going to refer you to the last paragraph
9 of that page, which is really halfway down the page, which
10 reads:

11 "You know, as a T-38 instructor, I
12 flew 1500 sorties with no AP or AT. I
13 was pretty good at hand-flying back then.
14 To have my skills degrade to a point
15 where a Level 0 VMC landing in Atlanta
16 required declaring an emergency is a
17 personal wake-up call. I hate to think
18 that someday manual flight ops will be an
19 assumed emergency, but that day may be
20 approaching. Good luck in your
21 presentation. Steve."

22 Did you receive that particular e-mail, as well,
23 from Mr. Dempsey?

24 A Yes.

25 Q And --

1 JUDGE MORRIS: Wait a minute. So, I'm assuming A/P
2 is autopilot?

3 THE WITNESS: Correct.

4 JUDGE MORRIS: And A/T is auto trim?

5 THE WITNESS: Auto thrust.

6 JUDGE MORRIS: Auto thrust. Okay.

7 BY MR. SEHAM:

8 Q And did you tell Dr. Altman about these exchanges
9 that you had with Captain Dempsey?

10 A I did. And he asked me to send them to him, and I
11 did. I e-mailed them all.

12 Q Did he reference this admission from Captain
13 Dempsey for this -- or these statements -- let me put it in a
14 neutral way -- did he reference them in his analytical
15 report?

16 A No, he didn't mention any of that portion at all.

17 Q You discussed your Air France A330 blog post with
18 Ms. Nabors?

19 A I did.

20 Q Okay. And did you talk about the particulars of
21 the operation and the reasons behind the fatal accident?

22 A I did. And I expressed to her why I put that on
23 there. And at the time I had heard rumors that prior to Air
24 France crashing that Delta Air Lines had numerous talus probe
25 malfunctions, just like Air France. And you know, it's just

1 when you hear stuff like that. But in Dr. Altman's documents
2 that we received, that Delta had given him, Delta actually
3 gave him not only A330 training manuals, QRH documents, but
4 they gave him the documents that identified precisely what
5 happened. Even though I knew it, that was very sobering,
6 because as I -- and indicative of this not following SMS,
7 because you're supposed to be proactive and mitigate risk --
8 Delta Air Lines had numerous incidents where the exact same
9 thing happened as Air France, the only difference is those
10 pilots it occurred to, they were not in the clouds and in
11 turbulence. And so, you know, we can pick on the pilots and
12 say why did they do what they did, but we were all -- I was
13 trained to stall in this airplane -- the airplane can't
14 stall. And the demonstration was just pull the stick like a
15 watch. And so I know why they were thinking that. Now
16 they're in the clouds. If you lose all your instruments,
17 just fly by wire technology, it's not like a traditional, you
18 know, airplane where you bank left and you go left, and you
19 go neutral and the airplane lowers its wings neutral. That
20 was the oddest thing to me, because when I got in this
21 Airbus, where visual conditions, the instructor, you know,
22 Bill says, okay, turn right, I turn right. He say, okay, now
23 roll your wings level, and I went back to neutral, thinking
24 that would be level, and the plane started going that way.
25 It just stopped the amount of bank I was putting into it.

1 So, these airplanes, this airplane hits a
2 turbulence and the first thing they do is they're going to
3 grab something, they're going to grab that stick. Once you
4 start banking, there is absolutely no way they can see -- you
5 can see in the report it went greater, greater, greater, and
6 then they're pulling back. And then the sensing of the stall
7 warning coming on, when they're pushing the nose over,
8 because it quits at a certain air space, it's not flying
9 anymore, because there's a stall warning going while we're
10 departing, push down, it comes back, pull back, goes away.
11 Those pilots went through a horrendous event. But this
12 happened before, they just weren't in the clouds. If you're
13 in stable flight and it goes away, and the plane is flying,
14 you just take your hands off and you just wait and it all
15 comes back.

16 And that happened to Delta and they knew it. And
17 if they would have reported it and notified the FAA, notified
18 TALUS (phonetic) -- done something, they could have got an AD
19 out on that airplane before Air France happened, and they did
20 not.

21 JUDGE MORRIS: AD stands for Airworthiness
22 Directive, correct?

23 THE WITNESS: Yes. And so what the documents they
24 gave to Dr. Altman were not only after Air France and they
25 came out with AD, oh, here's AD and here's what we're going

1 to do, now we're going to train for high altitude, now we're
2 going to do all these things and fix this problem, they also
3 gave him all the documents that identified they knew -- they
4 knew and they did nothing. And that's -- that is -- it would
5 be a top red level on that risk matrix of catastrophic. Air
6 France proved that.

7 MR. ROSENSTEIN: For the record, I object to the
8 entire testimony as non-responsive. I don't even remember
9 what the question was, but it was, I think, what did you tell
10 Kelley Nabors -- it was a long time ago. And I object to the
11 characterization and the hearsay about what Delta did and
12 knew in 2010, for the record.

13 JUDGE MORRIS: It's noted.

14 BY MR. SEHAM:

15 Q Did you give this account to Ms. Nabors?

16 A I did. The only thing that I couldn't give her,
17 the fact that it was proven, and I just told her that I had
18 heard -- I told her that I had heard this was going on, that
19 they knew about it. But that wasn't the issue. I just told
20 her, explained to her what those pilots would have been
21 experiencing and how I hadn't been trained at high altitude
22 training, and how I was trained in a stall. So, I gave her
23 that part. I couldn't tell her that Delta already, you know,
24 definitively knew, but -- and the interesting thing is I had
25 heard that there had been 100 of these events, and it wasn't

1 close to 100, I forget the number, it was half dozen, maybe,
2 but one is enough.

3 Q Did Delta modify its training in the aftermath --
4 its training modules in the aftermath of the Air France?

5 MR. ROSENSTEIN: Objection. Objection.

6 THE WITNESS: They did, and they changed it the
7 month that I was going into --

8 JUDGE MORRIS: Hold on. Basis for the objection?

9 MR. ROSENSTEIN: Foundation.

10 JUDGE MORRIS: Overruled.

11 MR. ROSENSTEIN: Causation. I mean they might have
12 changed it, but the witness doesn't have a foundation whether
13 it was anything that was changed -- well, we haven't heard
14 the foundation, yet, as to why they might have changed or any
15 connection between the tragedy of Air France. I mean it's
16 just speculation. If they lay the foundation, she can
17 testify about it, in my opinion, but otherwise it's just
18 speculation.

19 BY MR. SEHAM:

20 Q Do you have knowledge of Delta's training program?

21 A I do. As does Doctor -- I do, because I went
22 through the training program. And Dr. Altman has knowledge
23 of the training program, because they gave it to him, and
24 they gave to him their changes, as well.

25 JUDGE MORRIS: Wait a minute. Did those changes

1 occur after Flight 447?

2 THE WITNESS: Yes.

3 JUDGE MORRIS: Okay.

4 BY MR. SEHAM:

5 Q And did you receive the modified training?

6 A I did not, I did not.

7 Q And did you -- would that be unusual that your
8 instructor did not provide you with the modified training?

9 MR. ROSENSTEIN: Objection, relevance and
10 speculation.

11 MR. SEHAM: This all goes to communications with
12 Nabors. It's all going to be followed up with are these
13 things that you brought to the attention of Nabors, and
14 brought to the attention of --

15 MR. ROSENSTEIN: I mean she talks fast, but it's
16 only a three-hour meeting.

17 MR. SEHAM: I don't hear an objection. I just hear
18 sarcasm and hostility there.

19 JUDGE MORRIS: Well, hold on. Connect it to the
20 interview with Ms. Nabors.

21 BY MR. SEHAM:

22 Q Did you discuss, with Ms. Nabors, any omission from
23 your training?

24 A I did. I told her about the Air France. I told
25 her how I was trained. I told her that when I was being

1 called in for my letter of counsel, that is when I learned I
2 was supposed to have been trained. It turns out that the
3 training program clicked on, I want to say March 1st or 3rd,
4 and I went around the 4th, so it was within days of me coming
5 in. So, that's why it would be not unusual that the
6 instructor just didn't know that this new program came about.

7 \

8 I also told her that the discussion of whether or
9 not I was going to get a line check, between Captain Harney
10 and Captain OC Miller came up. And he said, no. And Steve
11 Lee was sitting there and I jokingly said: "Doesn't matter, I
12 can't get a trip, they'll never get me anyway." I left. I
13 wasn't out in the parking garage, I was called for a reserve
14 trip. And the very next day I showed up, and the captain --
15 the captain got a line check. He had just done his annual
16 required check. He had just come through recurrent and he
17 was going to retire, he was turning 60, I believe in three or
18 four months. He was definitely not a problem captain, he's
19 one of those impeccable career type people.

20 And so the check airmen, sometimes they'll get --
21 sometimes they get you, because they have this requirement
22 that they've got to fail so many, and so if they're out doing
23 a line check and they actually went to the hotel and rested,
24 sometimes they'll just pick up somebody and get them back so
25 they can kind of say: "I got you," and they're not wasting a

1 trip deadheading.

2 This check airman deadheaded from, I want to say, I
3 think he lives in Memphis, to, I believe it was New York, to
4 fly to Paris -- no -- actually, it was Boston, we flew out of
5 Boston to Paris. He did two deadhead legs to go
6 international, nothing else, to get us to come back into the
7 base. And it turned out he was my -- chairman. And so he
8 had flown with me and he knew -- and I asked him, I said:
9 "Why are we getting a line check?" He said: "I don't know,
10 they just told me to come out here and do this."

11 So, anyway, I told him that I hadn't -- because
12 this was a trip just before I found out that I didn't have my
13 high altitude, and I was very concerned. I called OC, I
14 texted OC, I said: "I know now I didn't get my high altitude
15 training during my check, am I legal to fly?" The ALPA
16 training rep said: "Well, if you put it in the records,
17 you're good." And I made a comment about: "So we pencil it
18 in written documents, it's okay." And then he got upset with
19 me for saying that. And I apologized, and I thought about
20 it, I thought -- okay, I'm going to be legal on this one,
21 because I know how the system works. If they put it on --
22 they have within a year to get my check -- or at least within
23 my nine months, so I wasn't expiring. So, we could have got
24 me later. So, that's why I went out and flew the trip. And
25 then we got a line check. And so I told Captain

1 (indiscernible) what was going on, and he says -- with this
2 - I didn't get my altitude training -- and he says:

3 "Karlene, you guys, okay, I'm taking my FAA hat
4 off right now, you've got to do something
5 about this."

6 And I said: "Don't know what to do, don't know what
7 to do."

8 Q During your meeting with Ms. Nabors -- well, did
9 you discuss with her the comments that Pat Harney had made to
10 you after your letter of counsel meeting concerning being a
11 potential target for a line check?

12 A I did.

13 Q And did you give her any names of pilots who had
14 given you warnings that you might be subject to retaliation?

15 A I told her Pat Harney. I told her Captain Watts.
16 I told her Bob Hilton, he was since retired. And the one
17 captain that I didn't tell was the one who got the -- did the
18 green slip and warned me -- I went to the funeral thing --
19 and it was -- because he was getting the good deals. And I
20 asked him if he would speak to the investigator and he said
21 he wouldn't because he was still getting good deals, and part
22 of the club, so.

23 Q Did Jud Crane come up?

24 A And then Jud Crane warned me, also.

25 Q Did you --

1 A And I told her that, I told her he was warning me
2 about the Section 15, itself.

3 Q And don't answer rough -- before you put this in
4 your testimony -- but was Bill Palmer's name referenced
5 during the Nabors interview?

6 A He was. In the reference of being my -- that came
7 up with his supporting my Air France blog, and his being my
8 check airman.

9 Q Okay. When Captain Davis gave you the letter of
10 removal, which I believe the parties have stipulated was on
11 March 22nd, 2016, did he tell you why you were being given a
12 Section 15 letter?

13 A He said he had no idea, that it was something that
14 I said to Ms. Nabors about we take Germanwings very
15 seriously.

16 Q Well, did you ask him what it was that Ms. Nabors
17 had said, that had raised concerns?

18 A I did. And he said - he either said he couldn't
19 tell me or he didn't know, but it was because it was
20 confidential and he couldn't tell me. So, whether he had
21 knowledge of not -- but I think he told me -- I believe he
22 didn't know. I took face value that he didn't know, that's
23 why he wouldn't tell me.

24 Q After this conversation with Captain Davis, did
25 anyone provide you with further details of what Ms. Nabors

1 had reported, that prompted a Section 15 referral?

2 A No.

3 Q Would having had that knowledge assisted you in
4 responding to the Section 15 referral?

5 A Absolutely. Because the emotion and the crying at
6 home, three hours of instability, I would have gone down to
7 the hotel, in a timely fashion, because the two people I
8 spoke to at the front desk, I would have said: "Remember me,
9 I was the one coming in meeting with the Delta lady?" "Yes,
10 we did." I could have gone down there and found witnesses to
11 show -- or I could have said: "Do you guys have tapes," or
12 "Do you remember?" You know, a year and a half later there's
13 nobody who is going to remember something that didn't even
14 happen, but then they could have said, yeah, we remember you
15 talking. I could have asked them was I crying, was I upset,
16 was there any source of concern, did anyone report us, that
17 were sitting at the table besides us -- anything. They
18 didn't provide that opportunity. I could have reached out,
19 like I did when I knew I was going through this, and people
20 who knew me or had worked with me could have reached out and
21 said, hey, will you go talk to the company and let them know
22 my performance or what you think my behavior is.

23 The reason that I told Corbin is because he had
24 e-mailed me and said -- told me he nominated me for that
25 award, and sent me what he said. And if they escalated --

1 the 747, I was the Airbus person."

2 And he's looking at me and I said:

3 "And during the break the regional
4 fight surgeon called and you said: 'Oh,
5 go take your call, you're doing great.'"

6

7 And he suddenly goes: "Oh, yeah, yeah, yeah, I
8 remember now."

9 So, one year removed we had a -- you know, he's
10 like -- I kind of remember you, but let's put it in a
11 reference. And that's what goes on. You see -- as an
12 instructor, I would see students, two pairs, 18, 36 students
13 a month, you know, eight, nine, 10 months a year, at Delta,
14 and they'd stay in the school house for the whole year.

15 So, yeah, if they were going to investigate, it
16 should have been done in a timely manner, at the time, and
17 asked everybody -- hey, did this happen and what happened.
18 And they didn't. They only brought it up because of this
19 report I gave.

20 JUDGE MORRIS: Counsel, next question.

21 MR. SEHAM: Yeah. I'm shifting to a different
22 topic. I'd ask for a five-minute break.

23 JUDGE MORRIS: All right. We'll take five.

24 (Off the record at 4:02 o'clock p.m.)

25 JUDGE MORRIS: All right, back on the record. All

1 parties present when the hearing last recessed are again
2 present.

3 Please, continue with your direct.

4 MR. SEHAM: Okay.

5 DIRECT EXAMINATION RESUMED

6 BY MR. SEHAM:

7 Q If you could turn to CX-32?

8 A Okay.

9 Q Do you have it?

10 A I do.

11 Q Okay. Are you familiar with this -- the document
12 is titled: "Pilot Fitness Aviation Rule Making Committee
13 Report, November 18th, 2015"?

14 A I am.

15 Q Are you familiar with this?

16 A Yes.

17 Q And are you familiar with the events that resulted
18 in this committee being formed and producing this report?

19 A Yes.

20 Q Okay. What were the circumstances?

21 A This was a result of what do to because of the
22 Germanwings accident.

23 Q I want to read a couple paragraphs as a premise to
24 the next question. And actually, the first page of the
25 report or second page does explain the origin of this

1 document and I intend to ask Dr. Faulkner more questions
2 about it. But for the current purposes, unless the Tribunal
3 requests, I would let it go at that for now.

4 The references are -- first, if you could turn to
5 page 12, which is CX-32-014. It's the 14th page of the
6 exhibit, the 12th page of the report. Let me know when
7 you've gotten there?

8 A I'm there.

9 Q So, by way of premise for the next question, the
10 paragraph four up from the bottom reads:

11 "Even when symptoms are recognized,
12 reporting may be perceived by pilots as a
13 pirus situation, financial and career
14 implications can be significant, even for
15 short term medical disqualification,
16 misinformation, anecdotes and hearsay,
17 propagate in this perception that all
18 mental illness is career ending. In the
19 United States and Canada, less than 0.5
20 percent of airmen have their medical
21 certificates denied once they have
22 provided all requested information."

23 And moving to page 10, if you could -- two pages
24 before what I've just read, and referring to the bottom
25 paragraph:

1 "The working group examined how an
2 event is handled in which air carrier
3 management receives a report concerning
4 the emotional or mental health of a
5 pilot, in those cases an investigation is
6 initiated to determine the credibility of
7 the report. After this evaluation, if
8 management determines additional research
9 into the report is necessary, the pilot
10 will be removed from flying status and a
11 mandatory Fitness for Duty Examination
12 may be required."

13 Q My question is, were you ever given a chance to
14 challenge the credibility of Ms. Nabors' report?

15 A No.

16 Q Do you have any reason or basis for believing that
17 Delta was familiar with the ARC recommended processes
18 described in this committee report?

19 A Yes, because their attorney, Labor Relations, Chris
20 Puckett, is named in this report as one of the committee
21 members. He's involved in it somehow. He doesn't identify
22 him as Delta, he identifies himself as Airline for Americas,
23 but he is actually Delta's attorney.

24 Q Over your years as a professional pilot, how many
25 first class medical certificates have you received?

1 A Well, at the time of this, I think I had 76 or
2 probably 79 now.

3 Q And are you familiar then with the process of
4 evaluation?

5

6 A Very familiar.

7 Q Is there a mental health evaluation component?

8 JUDGE MORRIS: The Tribunal will take official
9 notice of FAR 67.

10 THE WITNESS: The AME is supposed to evaluate, when
11 they talk to you, and see if they see any abnormal behavior.

12 Quite often, if there had been -- they can identify if
13 there's numerous like visits to the hospital or, you know,
14 things like that, or maybe excessive drinking or something,
15 they'll flag them. They are now being trained to look more
16 for mental health, also.

17 BY MR. SEHAM:

18 Q Who was your AME at the time?

19 A Dr. Larry Greenblatt.

20 Q Did Dr. Faulkner ever contact Larry Greenblatt?

21 A He did not.

22 Q And how about Dr. Altman?

23 A He did not.

24 Q Did Dr. Faulkner contact your school to assess your
25 grades?

1 A He did not.

2 Q Did Dr. Faulkner request your medical records?

3 A He did not.

4 Q Did Dr. Faulkner contact anyone you had worked
5 with?

6

7 A Not to my knowledge.

8 Q And did he contact any member of your family?

9 A No.

10 Q Have you ever had a performance issue with Delta
11 Air Lines?

12 A Never.

13 Q What were you flying when they gave you the Section
14 15 referral in March of 2016?

15 A The Airbus A330.

16 Q And how many years were you removed from flight, as
17 a result of the March 15th, Section 15 referral?

18 A Just shy of two years.

19 Q And when you returned to active duty, can you give
20 us an approximate date when you returned?

21 A I returned -- to duty or to training?

22 Q To training?

23 A To training, I started training in January of 2018
24 -- yeah, 2018.

25 Q Okay. And what -- did you return to the A330?

1 A No. In the Boeing 777.

2 Q Did you have any training issues, complications,
3 when you came back?

4 A None.

5 Q Were you -- did you require supplementary training
6 of any kind?

7 A No.

8 Q I think you already gave us an account of the first
9 day of examination by Dr. Altman. On the second visit, what
10 was the focus of discussion?

11 MR. ROSENSTEIN: Objection to the form of the
12 question. I don't think there's been testimony there's been
13 an examination by Dr. Faulkner (sic).

14 JUDGE MORRIS: All right. Rephrase.

15 BY MR. SEHAM:

16 Q On the second visit you had with Dr. Altman, could
17 you describe -- give us an overview of what was discussed?

18 A Yeah, the second day was primarily all my safety
19 related information, was on day two.

20 Q And did you engage in discussions about manual
21 flight?

22 A We did. That was with the Workload Management
23 video.

24 Q Did you discuss A330 training?

25 A We did.

1 Q The third time you met with him, what did you
2 discuss?

3 A We discussed alcohol, drug abuse. He asked me if
4 -- his statement was:

5 "Oh, this is a good question for you
6 West Coast people, what are your
7 political and religious views on
8 suicide?"

9 Q He asked for your political and religious views?

10 A Correct.

11 JUDGE MORRIS: Did he use the phrase: "For you West
12 Coast people"?

13 THE WITNESS: He did.

14 JUDGE MORRIS: Okay.

15 BY MR. SEHAM:

16 Q And how did you respond to that?

17 A I told him that I didn't have any political or
18 religious views on suicide. I had my own views on suicide.

19 Q Now, you received a diagnosis or the report of Dr.
20 Altman concluded that you had bipolar disorder, correct?

21 A Correct.

22 Q And do you know who Dr. Gitlow is?

23 A Yes.

24 Q And who is he?

25 A Dr. Gitlow is a forensic psychiatrist. And I was

1 recommended -- when this came about, my AME recommended for
2 me to go to the Mayo Clinic, because he had heard Dr.
3 Altchuler speak at a conference. And another American pilot
4 had gone to Mayo Clinic, and it took her four months to get
5 in. And so I was searching around a little bit, and through
6 the chain I was recommended by another doctor -- oh, you've
7 got to go see Dr. Gitlow. This is a guy that laughed,
8 because he said I was -- they really must want me gone, I was
9 the first one he had heard got a bipolar diagnosis. So, he
10 sent me to Dr. Gitlow. And my thought was, oh, we'll get the
11 Mayo Clinic set up in four months, I'll go to Gitlow first.

12 Q May I pause you, so we understand what you're
13 trying to accomplish here. Was the interview with Dr. Gitlow
14 for the purpose of utilizing him as the PME, the Pilot
15 Medical Examiner?

16 A Correct.

17 Q Okay.

18 A Correct. And so Dr. Gitlow -- we spoke on the
19 phone for a rather lengthy time. And he asked me questions
20 about my education, what my grades were, if I had failed
21 anything. He asked me how many type ratings I had, what my
22 pattern of sick leave was. I think I went for the first 20
23 years of my career without ever calling in sick. And so he
24 asked -- and he said: "You're not bipolar." And I said:
25 "Well, thank you." And he says: "Okay, here's what we're

1 going to do, we'll schedule the meeting." So, we scheduled a
2 time. I asked him -- he asked me to send him the materials.

3 Well, I had already asked AMS to send them to Mayo Clinic,
4 so when I contacted them they said, well, we already sent
5 them to Mayo Clinic, or we're sending them there. I said,
6 well, I'd like to go to Dr. Gitlow. And so they were very
7 reluctant.

8 So, I called Dr. Gitlow back and said:

9 "Would you be okay if I just e-mailed
10 you this whole medical report and all
11 these documents? "

12 And he said: "Sure, that would be fine."

13 Q You meant the Altman report?

14 A I mean the Altman report, yeah. My medical report
15 from Dr. Altman. And so he told me that that would be fine.

16 And we sent it off. And I got my airline ticket
17 and booked my hotel. And about a week later, he sent me --
18 maybe it wasn't a week later, maybe it was a week before we
19 were going to meet -- he sent me an e-mail and said: "Please,
20 call me."

21 So, I called him and he said that he was really
22 sorry, that he had a conflict of interest. He said:

23 "I can't tell you what it is. I can
24 probably tell you in six months, but I'm
25 really sorry."

1 He says: "But you're definitely not bipolar and I'm
2 going to tell you why."

3 And so he told me -- because he had read Dr.
4 Altman's report -- he told me, specifically, the reasons why
5 that didn't meet any of the criteria. And so what I did was,
6 I wrote it down. And I had made a rebuttal on Dr. Altman's
7 report, which is in here somewhere. But the cover page was:
8 "Dr. Gitlow's Statements."

9 Anyway, at the time I told him, I said: "I'm really
10 sad that you can't help me." And he said: "I am too."

11 So, in the meantime, Mayo Clinic, because of my
12 AME, was able to get me in, in February, mid February, so I
13 didn't have to wait four months. So, that was good news and
14 I just went to them for my PME.

15 Q Did you later acquire some knowledge as to what the
16 source of Dr. Gitlow's purported conflict was?

17 A I did. I had called him in six months. He said he
18 still couldn't tell me, it was still a conflict. And then I
19 called him about six months later, now he's not answering the
20 phone now. So, then I called him from a different line and
21 asked him -- it's when Delta was wanting all my documents,
22 they wanted to know who I went to, why I went to these people
23 -- and part of the issue was I had bought a positive space
24 flight for discount, which I didn't, at the time, realize
25 that it was considered pass travel, because I paid them like

1 \$600.00 to buy this ticket, so I'd be positive space, back to
2 the evaluation. So, that kind of became an issue. So, I had
3 to disclose who Dr. Gitlow was and why I wasn't coming. So,
4 I called him up from a different phone and he answered. And
5 I said:

6 "Dr. Gitlow, this is Karlene Petitt,
7 and we are now going to court for this
8 AIR-21, and I've got to disclose why
9 you're not, you know, what your conflict
10 of interest."

11 He says: "Because I work for Delta Air Lines."

12 And then, during the deposition with Chris Puckett,
13 he stated, in his deposition, that they did, in fact, talk
14 about me and that he told Dr. Gitlow that if he wanted to
15 work for Delta Air Lines he could not be my medical examiner.

16 Q Have you experienced any continuing hostility to
17 your efforts to raise safety and compliance issues since you
18 returned to flying?

19 A I have.

20 Q Could you give us a brief overview of those
21 incidents?

22 A Well, since I returned to flying -- it wasn't
23 before. We have this URS training, this Upset Recovery
24 training that Corbin had addressed, and I wrote a letter,
25 because our training does not meet the FAA standards. And so

1 I thought, you know what, I'm already on the hatchet,
2 chopping block, I might as well send this in. And I sent it
3 into them and received reluctance to this. During Captain
4 Graham's testimony, he believed I still have a mental health
5 issue, because I addressed that issue.

6 I received hostility by the counsel for my safety
7 report, threatened that if I gave it to anybody I would get
8 sanctions. The waving of the finger.

9 Q We'll come to that. Anything else?

10 A No, not that I can think of.

11 Q Okay. Do you still have concerns with respect to
12 Delta's compliance with its SMS program?

13 A Absolutely. I'm more concerned --

14 MR. ROSENSTEIN: Objection.

15 MR. SEHAM: Hold on, there's an objection.

16 MR. ROSENSTEIN: Sorry. Relevance of her current
17 concerns with Delta's SMS, in this case.

18 JUDGE MORRIS: Counsel?

19 MR. SEHAM: It has to do with -- I would submit
20 that it's relevant under the DiFrancesco analysis that either
21 hostility to protected activity or even indifference, which
22 is another form of hostility, is relevant to this proceeding.

23 JUDGE MORRIS: Okay.

24 MR. ROSENSTEIN: I don't understand that argument.

25 How is her current view of problems with the SMS indicating

1 hostility or indifference to anything in this case? I'm
2 confused. He asked her whether she's experienced hostility
3 and she testified, and then she said nothing else. So, that
4 question has been resolved. So, how could this question go
5 to hostility when she's already answered it?

6 JUDGE MORRIS: Counsel?

7 MR. SEHAM: The issue had to do with specific
8 operational flight operations compliance issue, whereas --

9 JUDGE MORRIS: Are you trying to establish
10 continuing retaliation?

11 MR. SEHAM: Let me pause and try to give you a
12 straight -- well, let me give an answer which may or may not
13 satisfy you and I'll live with the response. Because I think
14 the objection appropriately identifies a distinction that I
15 should make between the operational issue and the overall SMS
16 program. There is linkage, but there's room for distinction.

17 But we would submit that an ongoing recalcitrance, in terms
18 of reforming operations is indicative of hostility.

19 JUDGE MORRIS: I'm going to allow it, but I may
20 disregard it later on, when I go to my decision making. I'd
21 rather have more information than less when I go back to it.

22 My thought process on this is, if it is established, and you
23 don't overcome your burden, one of the rules for this
24 Tribunal, at least the Tribunal views one of its roles, is
25 deterrence of whistleblowers and the ongoing retaliation, if

1 it is, in fact, established, not only of the company, but
2 those who might know of the company's conduct. And again,
3 emphasize, underline, exclamation point, italicize "IF" all
4 those steps are made. And the actions of the company
5 continuing to ignore potential safety issues, in the face of
6 what's presented, is a factor that I would consider in the
7 context, particularly in the responses, if they are in fact
8 retaliatory. For that limited purpose, I'm going to
9 consider, at this point.

10 MR. SEHAM: Okay. And I'm -- I want to just be
11 very up front -- and my father would probably slap me down if
12 he were still alive, for being so up front -- I used to work
13 for my dad -- but I'm not 100 percent confident that the
14 testimony I'm about to elicit falls within those parameters.

15 I just don't want the Tribunal to think I'm being a wise guy
16 here. So, I'm going to ask the question and --

17 JUDGE MORRIS: It's the beauty of Judge-alone
18 trials, as I have been anointed with the unique abilities, as
19 a Judge, to disregard information in the process -- and I
20 will.

21 MR. SEHAM: Okay.

22 JUDGE MORRIS: I'll say that in the decision, if I
23 come to that conclusion, as well.

24 MR. SEHAM: Okay.

25 BY MR. SEHAM:

1 Q Are you aware of or do you have ongoing concerns
2 with respect to Delta's SMS compliance and, if so, explain?

3 A Absolutely, because (a) none of the pilots know
4 about this, we don't train them, we don't --

5 Q When you say "this," I'm sorry?

6 A "This," Safety Management Systems. We do not have
7 a reporting culture. Everybody is afraid. The CEO doesn't
8 know what SMS is. He doesn't know he was the accountable
9 executive. He stated, in his testimony: "I don't even know
10 what accountable executive is." So, if the leader doesn't
11 know, if the head of the company, the accountable executive,
12 doesn't know what SMS is, it's not going to work. And you
13 have to have a Safety Culture.

14 The examples I gave today, there are pilots on a
15 couple of those that have recently identified check airmen
16 doing bad things, and they're afraid to come forward. This
17 is not just me, despite what the company is saying. We have
18 a very poor Safety Culture. They say we have an open door,
19 they say we have this, but they don't. The structure is set
20 up to go to the chief pilot, so the chief pilot can kind of
21 keep it down here.

22 JUDGE MORRIS: I've heard that four times.

23 MR. SEHAM: Okay.

24 THE WITNESS: Yeah. So, but no --

25 MR. ROSENSTEIN: Objection, for the record, move to

1 strike the testimony about what the CEO knows and doesn't
2 know, which was not based on foundation.

3 JUDGE MORRIS: I'll rely on Mr. Bastian's
4 deposition.

5 MR. ROSENSTEIN: Thank you.

6 BY MR. SEHAM:

7 Q Were you ever threatened by anyone since this
8 litigation began, if you were to give your safety report, the
9 January 28th safety report to anyone?

10 A Yes, by Mr. Bisbee.

11 MR. ROSENSTEIN: Objection.

12 JUDGE MORRIS: Basis?

13 MR. ROSENSTEIN: I move to dismiss the claim that
14 -- or renew our motion to dismiss the claim that was amended
15 to the complaint, related to Mr. Bisbee's alleged conduct
16 during a deposition. You have the deposition transcripts, or
17 can have the deposition -- you do have the deposition
18 transcript of Mr. Dickson's deposition, and you can read what
19 actually occurred during that deposition, and what Mr. Bisbee
20 said on the record, not to Ms. Petitt, but to Mr. Seham. And
21 it is beyond the "lane," as you've used the term before, but
22 beyond, I believe, the jurisdiction of AIR-21 to be
23 determining that an outside counsel, lawyer, sitting next to
24 me at this table, engaged in retaliatory actions by making a
25 statement on the record during a deposition, to another

1 attorney, regarding the compliance with the Protective Order
2 that Your Honor signed, and the potential consequences for
3 violating that Protective Order.

4 I would point out that in every deposition that we
5 attended, Mr. Seham -- and the initial questions asked --
6 tells every witness that you must answer these questions
7 honestly and if you don't there are consequences for not
8 answering these questions honestly. I don't object to that,
9 because that's perfectly fine to advise the witness. That
10 wouldn't be retaliation if I said the same thing to the
11 Complainant during a deposition -- which I don't, because
12 that's not one of my questions that I ask in a deposition.

13 But certainly, Mr. Bisbee had the absolute right to
14 speak to opposing counsel and make a statement on the record
15 about a Protective Order and compliance with that Protective
16 Order, without being sued, himself, essentially, as an agent
17 of Delta, for retaliating against the Complainant in this
18 case.

19 And so for those reasons, I believe that that claim
20 should be dismissed, and there should not be any testimony
21 elicited from anybody. It would also be impossible, really,
22 to defend against that case without calling the people who
23 are at the deposition, which would, as we've said during the
24 argument initially, would require Mr. Seham to testify, it
25 would require Mr. Bisbee to testify, perhaps me, I was there

1 during that deposition, which, as Your Honor pointed out, is
2 something that you would not allow here, and for good reason.

3 Because of that, there's no real way for us to respond to
4 the allegation.

5 I have no idea why it's in this case. We heard, in
6 the opening statement, that the case is about attorneys fees
7 first and then other damages. And during the argument we had
8 before, Mr. Seham said that he would, you know, try to see if
9 it could be resolved. I think that came up in front of you.

10 But there is no basis to attempt to resolve that claim and
11 there's no reason that we should have to resolve that claim.

12 It should be dismissed.

13 Thank you for your attention to that.

14 JUDGE MORRIS: Counsel?

15 MR. SEHAM: Well, I have a couple of equitable
16 arguments and then a far hardcore sensitive argument.

17 JUDGE MORRIS: Before I forget, did you ever answer
18 the amended complaint?

19 MR. ROSENSTEIN: We did not answer the amended
20 complaint, no, we did not answer the amended complaint, under
21 the process -- I can't remember why -- but I believe you had
22 told us that there was no response required to the amended
23 complaint, as drafted. But I can't remember, I don't want to
24 get that wrong.

25 JUDGE MORRIS: Well, I'd be surprised if I said

1 that. There's a separate issue, if you never provided an
2 answer to the amended complaint in the paragraph, but we'll
3 ignore that for now. But go ahead.

4 MR. SEHAM: Well, the issue was fully briefed.
5 There was a motion to amend the complaint. And many of the
6 arguments that are currently being made were made at that
7 time and rejected by the Court. Some of these issues were
8 raised later in a telephonic conference with the Tribunal, in
9 which I said I did not mean to hamstring the other side, but
10 that there might possibly be some discussion about whether
11 Mr. Bisbee should be an advocate in this case and, at a
12 minimum, he should not be permitted to cross-examine the
13 Complainant, because there were going to be credibility
14 issues and issues that go beyond the transcript, as we'll
15 come to in a moment. And the way that was resolved, as we
16 recall, is that the Tribunal said Mr. Bisbee won't be a
17 witness. During those discussions, part of the comment I
18 made was I wasn't looking to have the firm dismissed, but the
19 argument was raised whether I would be a witness, and I cited
20 reference to at least New York Ethical Rules, where an
21 attorney -- if an attorney is providing testimony that's
22 duplicative -- which my testimony would be duplicative of
23 this witness -- then there is no conflict of interest.

24 But perhaps the most important substantive point I
25 would make is, in terms of proceeding, just to put all the

1 cards on the table, my intent was to show the transcript,
2 have the witness confirm that it was accurate, and then ask
3 her if anything else happened that was not recorded in the
4 transcript. And I anticipate there will be additional
5 testimony that goes beyond the transcript.

6 JUDGE MORRIS: All right.

7 Counsel?

8 MR. ROSENSTEIN: Well, first of all, I have your
9 order, so Mr. Seham mis-characterized that, in my view. I
10 can read you what you actually ordered, which is that:

11 + "The Tribunal finds it is best to
12 fully vet the allegations during the
13 hearing already scheduled, especially
14 since these events were part and parcel
15 of other discovery issues. At that
16 point, Respondent will be free to dispute
17 Complainant's factual allegations and
18 argue that its actions cannot constitute
19 adverse action under AIR-21."

20 Motion to dismiss is different than a motion to
21 amend a complaint, it's a different standard. You have,
22 again, the Dickson transcript where the information came
23 forward. And again, if Complainant is going to testify about
24 something that happened in that hearing room, she, in my
25 view, will be stating something that requires a response. It

1 would permit us to call Mr. Seham as a witness in the case,
2 since he was in the hearing room, the Court Reporter, and
3 everybody else who was in that hearing room, to either -- I
4 don't know what she could possibly say -- but to refute that
5 allegation. She didn't include anything in the amended
6 complaint that would allow us to be prepared to respond to
7 any kind of allegation. I can't think of any reason why that
8 wouldn't have been included in the actual amended complaint.

9

10 But we're being ambushed with this argument and
11 it's a due process issue that I think undermines the entire
12 hearing process. And in 30 years of practice, the concept
13 that the lawyer can be held liable for retaliation, for
14 comments made during the deposition of somebody else, where
15 it was not even Complainant's deposition, it was the
16 deposition of, at the time, a third party, I think goes
17 beyond the pale, really, beyond the pale. It's an outrage.

18 MR. SEHAM: May I briefly respond?

19 JUDGE MORRIS: Sure.

20 MR. SEHAM: There is substantial Title 7 precedent.

21 We're not suing Mr. Bisbee, that argument that we're
22 attacking his purse is not the case. But their law firm acts
23 as an agent of Delta, and we raised this issue saying this is
24 inappropriate, and it continued. The confidentiality
25 designation, the consequences of that, and the impact of the

1 threats that had been made lingered for weeks and weeks and
2 weeks. It is not beyond the pale. It is a well established
3 principle in Title 7, under Title 7 precedent, which is an
4 analogous discrimination statute, this is a discrimination
5 statute, AIR-21, is that one means of cognizable retaliation
6 is legal retaliation, even counter claims can be recognized
7 as retaliation under Title 7.

8 And so it is regrettable that any of this happened.

9 And we understand there's not AIR-21 precedent. And we made
10 a motion and we prevailed on that motion. Since that time
11 there was no motion in limine, there was no contact from the
12 company telling us that we're beyond the pale. And I always
13 hesitate to use the word "ambush," but it was used just a
14 couple minutes ago. I think we are the party with this 11th
15 hour motion that has been ambushed.

16 MR. ROSENSTEIN: Well, we responded to the order,
17 which said that it would be dealt with at the hearing. So, I
18 think that's, again, adding another unreasonable, unfair
19 statement to --

20 JUDGE MORRIS: I'm denying the motion to dismiss.
21 I'm going to hear -- you have the burden, with the amended
22 complaint. Yes, there are two components here, whether or
23 not this qualifies under a retaliation under AIR-21, the
24 Tribunal has a separate authority for the regulation of
25 counsel and counsel's conduct. And there are consequences

1 associated with that if it is established. And I'm not at
2 all, Mr. Bisbee, saying it's established, or it's going to be
3 established. But this Tribunal has separate rules, separate
4 processes, that's why this Tribunal mandates a Notice of
5 Appearance, because when counsel come before the Tribunal,
6 it's to comport itself with the attorneys rules, the Rules of
7 Practice under 29 CFR Part 18, and the appropriate ethics
8 rules.

9 As an example -- frankly, it's a bad example, but
10 it's the only one that I can think of, because it just
11 happened yesterday -- we just had a fairly well known
12 attorney being jailed for his shakedown in litigation. And
13 again, Mr. Bisbee, please, I'm not at all accusing you of any
14 type of conduct remotely involved with that.

15 I have not seen, in-depth, what happened during
16 this deposition. I will tell you I will look at it. I will
17 tell you that I take allegations -- counsel is fully entitled
18 to zealously represent their client. They can make
19 representations in the defense of their client. And I'm
20 going to approach that as such. So, that is a factor I'm
21 going to consider in this matter.

22 Counsel has an obligation, an ethical obligation to
23 zealously represent their client in the best means possible.

24 I don't know whether Mr. Bisbee at all crossed the line. I
25 will look at that, at some point in time. Whether or not

1 that's retaliation, frankly, as far as I can think, you're
2 right, this is probably a situation of first impression, at
3 least for an Administrative Law Judge to address, but there's
4 always a first.

5 So, I will hear the evidence and I'll leave it at
6 that.

7 MR. ROSENSTEIN: Does the Tribunal's authority over
8 counsel also provide for sanctions if a claim is brought in
9 bad faith, similar to Rule 11? And would Respondent have the
10 ability to make such an application after the evidence is
11 presented?

12 JUDGE MORRIS: I'd have to go back and look. I
13 believe it's in 1822 -- 29 CFR 1822, there are provisions,
14 depending on certain findings, that a party can make a
15 request or petition to the Chief Administrative Law Judge.
16 If that's warranted, and if I recall correctly, a separate
17 investigation would then occur, associated with that.

18 Again, frankly, that's something that I'm loathe to
19 go down. In all of my years, I've only ever seen that happen
20 -- where I have thought it warranted going down that path --
21 a couple of times. I've seen no evidence of that at this
22 point. That doesn't mean that there is or that there isn't.

23 But I want to hear what the evidence is and then we'll go
24 forward from there, all right.

25 So, you may proceed, Mr. Seham.

1 MR. SEHAM: Yes.

2 BY MR. SEHAM:

3 Q I'm going to refer you first to CX-194?

4 A Yes.

5 Q Let me know when you've gotten to that document?

6 A I'm there.

7 Q Okay. And with the permission of the Tribunal, I'm
8 just going to ask you to read the transcript to yourself,
9 from line 15 to the end of the document. The question I'm
10 going to ask of you is, is that transcript accurate to the
11 best of your recollection?

12 A Yes.

13 Q Okay. And then after the conclusion of the
14 recorded deposition, do you recall any further discussion
15 relevant to confidentiality designations?

16 A I do. Everybody was standing up, packing their
17 stuff up. I don't remember who started, but both Mr. Seham
18 and Mr. Bisbee engaged in this protective discussion. And it
19 got to the point where Mr. Bisbee was looking at me, but
20 turned to me and said: "If she gives this to anyone, she will
21 meet appropriate sanctions." And so he was talking third
22 person, he was talking to Lee, but he turned and looked at me
23 and was wagging his finger at me, referring to "She will."
24 And that's not the only time he threatened me, though.

25 Q Well, did you provide anything else with respect to

1 confidential designations that day?

2 A Yes. That I was not allowed to give my safety --
3 that was a discussion, that I wrote the safety report and I
4 was not allowed to give it to anybody, that it was now
5 protected. And what Mr. Seham said, no, she has the right to
6 give it, she can go give it to a State Senator if she wants
7 to. So, that's where this came out, it was based on the
8 report that I had written to and given to Captains Graham and
9 Dickson, is what this was regarding. That if I gave it to
10 anyone, I was going to face sanctions.

11 Q Now, after that incident that day, did you provide
12 your report to anybody else?

13 A I did not.

14 Q And why did you not?

15 A Because I can't afford anymore legal battles, which
16 leads me to the next threat, because there was another threat
17 by counsel.

18 MR. SEHAM: I imagine -- well, we're at -- could we
19 go off record?

20 JUDGE MORRIS: We're not stopping now.

21 MR. SEHAM: Oh, okay. That's all I had on that
22 issue.

23 JUDGE MORRIS: So, we're done with the attorney
24 stuff?

25 MR. SEHAM: Correct.

1 JUDGE MORRIS: All the attorney stuff? Are we
2 going to hear anymore evidence concerning conduct of counsel?

3 MR. SEHAM: No.

4 JUDGE MORRIS: Is that it?

5 MR. SEHAM: That's it.

6 JUDGE MORRIS: I want to make -- those are the only
7 documents?

8 MR. SEHAM: Well, no, there are documents in terms
9 of the designations and the e-mails where we requested -- we
10 made the argument that this is suppressing her protected
11 activity, that the Court's power is being harnessed to
12 suppress, through the Protective Order, her protected
13 activity and repeated requests that the company --

14 JUDGE MORRIS: Well, I just heard testimony that
15 she was threatened by counsel in another fashion. Is that
16 something you're going to go down? What I want to do is, I
17 want to address -- if we've got an issue here -- talking
18 about the AIR-21 and the deposition, or anything dealing with
19 counsel, I'm going to deal with it now.

20 MR. SEHAM: Okay. I guess I'm not understanding
21 the question, but let me just say that's the only testimony
22 concerning the live comments by Mr. Bisbee. Everything else
23 is in documents, exhibits that have been admitted, concerning
24 the designations and the correspondence between respective
25 counsel.

1 JUDGE MORRIS: Between counsel?

2 MR. SEHAM: Yes.

3 JUDGE MORRIS: And only counsel?

4 MR. SEHAM: Correct.

5 JUDGE MORRIS: Anything else, counsel?

6 MR. ROSENSTEIN: I would renew my motion to
7 dismiss.

8 JUDGE MORRIS: The motion is granted. The
9 paragraph dealing with the amended complaint is hereby
10 stricken from the record.

11 MR. SEHAM: Okay. I don't know if I have a half
12 hour or an hour left, but it's been going a little bit faster
13 now than I anticipated. So, I don't know if you still want
14 to break at 5:00 o'clock p.m.? I just genuinely don't know
15 whether I have a half hour or an hour left.

16 JUDGE MORRIS: Well, I've got to pull up my clock
17 here.

18 MR. SEHAM: It's 5:02 o'clock p.m.

19 MR. ROSENSTEIN: It's 5:00 o'clock p.m.

20 JUDGE MORRIS: How much more do you have?

21 MR. SEHAM: I don't know.

22 JUDGE MORRIS: Do you want to stop now?

23 MR. SEHAM: I would prefer to, just because I'm
24 really --

25 JUDGE MORRIS: I think that might be a good point.

1 MR. ROSENSTEIN: No objection from us to stopping.

2 That was a heated discussion.

3 MR. SEHAM: Yeah, yeah. I'm just trying to see,
4 you know, really -- you raised concerns about Altman, and
5 what I'm seeing here is if we go into --

6 MR. ROSENSTEIN: Oh, that's nice of you. I
7 appreciate that.

8 MR. SEHAM: Yeah, I'm trying to be nice.

9 MR. ROSENSTEIN: Appreciate that.

10 MR. SEHAM: I see there's -- I was going to elicit
11 testimony about comparable invoices, with the amount of
12 money.

13 MR. ROSENSTEIN: That's something that I think
14 would make sense to do, and that could be done in the
15 morning, too, if you wanted.

16 JUDGE MORRIS: All right. Does this need to be on
17 the record, while we're haggling over this?

18 MR. ROSENSTEIN: No, definitely not.

19 MR. SEHAM: Okay. No.

20 JUDGE MORRIS: All right. Before we go off the
21 record, the reason why I'm granting this motion is, from the
22 testimony that I've received in this, is I think it's clearly
23 within the pale of counsel in this case to represent, to make
24 representations to the opposing counsel, to include being in
25 the presence of their clients. I understand that at times

1 during depositions, and even during the hearings, things can
2 become heated and people may be inartful, and I'm going to
3 give all benefit of the doubt to a licensed attorney before
4 we go any further in that. Okay.

5 MR. SEHAM: And just to preserve -- I'm resigned to
6 the determination -- may I make a quick comment, just to
7 preserve the record for appeal?

8 JUDGE MORRIS: You certainly may.

9 MR. SEHAM: Which is that irrespective of those
10 comments that it's our position that analogous case law under
11 Title 7 provides that making counter claims or otherwise
12 using legal vehicles in retaliation or response to protected
13 activity, is actionable. And we think this case, even in the
14 absence of whatever comments Mr. Bisbee said on the record or
15 off the record, the designation and the continued
16 designation, despite repeated requests from Complainant's
17 counsel that there is no justification, which was later
18 confirmed by the Tribunal that there was no justification or
19 designating Complainant authored protected activity and now
20 making that subject to sanctions, that issue, standing alone,
21 under comparable Title 7 precedent, would be unlawful
22 retaliatory actions.

23 JUDGE MORRIS: And again, I will tell you it's my
24 recollection, and maybe I'm wrong, and I'm sure if I'm wrong
25 and if my decision, however it goes, gets appealed, is I see

1 no bad faith in this case, which is my recollection of what
2 has to be established, and that I just -- the facts dealing
3 with her is when I saw the argument made by Respondents, I
4 grant you I viewed it as a stretch, but that's what lawyers
5 do in the best interest of their clients, to try and include
6 the Complainant's report, under that protective order. I
7 believe if there was any doubt, I cured that in my order,
8 specifically authorizing its use and release.

9 MR. SEHAM: Okay.

10 JUDGE MORRIS: All right.

11 MR. SEHAM: Very good. And we could go off the
12 record. I really, at this point, I'm pretty darn confident
13 that we would finish within an hour. So, if you'd like to
14 delay Altman until 10:00 o'clock a.m., that's fine. If you
15 want to start Altman at 9:00 o'clock a.m., that's fine.

16 MR. ROSENSTEIN: No, let's do it at 10:00 o'clock
17 a.m.

18 MR. SEHAM: All right.

19 JUDGE MORRIS: Okay.

20 MR. ROSENSTEIN: Thank you.

21 JUDGE MORRIS: Yeah.

22 Off the record.

23 (Whereupon, the proceedings adjourned at 5:06
24 o'clock p.m.)

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REPORTER'S CERTIFICATE

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TITLE: Petitt vs. DELTA AIR LINES, INC.,
CASE NUMBER: 2018-AIR-00041
OWCP NUMBER: n/a
DATE: March 26, 2019
LOCATION: Des Moines, WA

This is to certify that the attached proceedings before the United States Department of Labor, were held according to the record and that this is the original, complete, true and accurate transcript which has been compared to the reporting or recording accomplished at the hearing.

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